

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5288 (S.C. Ct. App. filed 1/7/2015)

12-GS-39-00850-00853, 00860-00861, 00960.

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DAMON T. BROWN,

PETITIONER

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Damon T. Brown, Appellant.

Appellate Case No. 2012-213548

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5288
Heard October 7, 2014 – Filed January 7, 2015

AFFIRMED

Appellate Defender Lara M. Caudy, of Columbia, for
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WILLIAMS, J.: Damon Tyler Brown (Appellant) appeals his convictions for one count of first-degree criminal sexual conduct (CSC) with a minor, three counts of lewd act upon a child, and three counts of first-degree sexual exploitation of a minor. Appellant argues the circuit court erred in allowing the State's child abuse dynamics and delayed disclosures expert to testify regarding general behavioral characteristics because her testimony (1) concerned information within the realm

of lay knowledge, (2) improperly bolstered the minor victims' credibility, and (3) prejudiced Appellant's case. We affirm.

FACTS/PROCEDURAL HISTORY

On November 20, 2012, the Pickens County Grand Jury indicted Appellant on one count of first-degree CSC with a minor, three counts of lewd act upon a child, and three counts of first-degree sexual exploitation of a minor. The case was called for a jury trial on November 26, 2012.

During the period of sexual abuse, between 2003 and 2006, Appellant lived with his sixteen-year-old girlfriend and her family, including her two brothers (Older Brother and Younger Brother), as well as her mother and stepfather, in a two-bedroom mobile home in Central, South Carolina. Older Brother was ten years old and Younger Brother was eight years old when Appellant first began touching them inappropriately around their private areas.

At trial, Older Brother described countless graphic incidents in which Appellant sexually abused him in the family's mobile home, testifying the abuse occurred almost daily until he was twelve years old. According to Older Brother, Appellant also abused Younger Brother during this time. Younger Brother corroborated Older Brother's recollections of Appellant repeatedly abusing them, testifying the abuse lasted until he was ten years old. Further, Younger Brother recalled one occasion when Appellant forced him to anally penetrate the boys' best friend (Minor Friend) in the bathroom of the mobile home. Minor Friend corroborated Younger Brother's testimony regarding the bathroom incident and testified Appellant sexually abused her and the boys in the mobile home on two occasions. According to the three minor victims, Appellant's only rule was they could never tell anyone what happened when he played with them. If the minor victims broke the rule, Appellant indicated they would get blamed for everything and stated he would "get really mad and something bad would happen."

Older Brother did not disclose the abuse to authorities until May 2009. Although Younger Brother initially refused to speak with law enforcement at that time, he later gave police a written statement describing the abuse in July 2009. Law enforcement then contacted Minor Friend, who described the abuse in a written statement in July 2009 and provided a more detailed account in an August 2010 statement. Older Brother testified he did not provide details about the other minor victims when he first reported the abuse because he thought everybody would hate him or be mad at him. Younger Brother testified he did not initially tell law

enforcement what happened to him because he was embarrassed. Likewise, Minor Friend testified she thought people would blame her for not stopping the abuse and view her as "this disgusting little girl." Appellant extensively cross-examined Older Brother, Younger Brother, and Minor Friend regarding their delayed disclosure of the abuse, as well as discrepancies between the statements they gave to police and the testimony they offered at trial.

The circuit court then held an in-camera hearing to determine the admissibility of testimony from the State's expert witness, Ms. Shauna Galloway-Williams. After the hearing, the circuit court qualified Galloway-Williams as an expert in child abuse dynamics and disclosure, concluding her testimony was relevant and would assist the jury because the seated jurors "would not have any prior knowledge from family members or otherwise as to sex abuse directly."

Subsequently, Galloway-Williams testified she did not review any incident reports or statements associated with this case, never met with or interviewed the minor victims prior to trial, and was not present for their testimony during trial. In fact, her only knowledge about the case came from discussions with the Solicitor's Office. According to Galloway-Williams, research indicates that between seventy and eighty percent of abused children delay disclosing the abuse into adulthood. Further, she stated children delay disclosing abuse for a number of reasons, including: (1) fear of consequences to themselves, the perpetrator, or someone the child loves; (2) the child's age; (3) the child's relationship to the perpetrator; (4) a lack of vocabulary or language to describe what has happened to them; (5) threats by the perpetrator; (6) grooming by the perpetrator; and (7) the perpetrator's normalization of the abusive conduct. Galloway-Williams further explained that most disclosures happen accidentally, and children generally reveal more details over time throughout the disclosure process. When children suffer chronic abuse, she stated it is more difficult for them to sort out the timing of individual incidents and the order in which they occurred. Galloway-Williams also explained that having a close and trusting relationship with the perpetrator can have a very strong impact on whether a child feels like he or she can disclose the abuse. Finally, she testified that child abuse victims will sometimes tolerate sexual abuse to maintain a relationship, particularly if the perpetrator is someone they love and trust.

During its closing argument, the State stressed that Galloway-Williams never met or interviewed the victims; rather, she only testified about symptoms of child abuse in general. The State then related the symptoms she discussed, including delayed disclosure, to those exhibited by the individual victims in this case. At the conclusion of trial, the jury found Appellant guilty of all seven counts. The circuit

court sentenced Appellant to a total of 359 months incarceration: 176 months for first-degree CSC, 128 months for one count of lewd act upon a child, 55 months consecutive for one count of first-degree sexual exploitation of a minor, 55 months concurrent for each of the two remaining counts of first-degree sexual exploitation of a minor, and 128 months concurrent for each of the remaining two counts of lewd act upon a child. This appeal followed.

ISSUE ON APPEAL

Did the circuit court abuse its discretion by admitting testimony from the State's expert on child abuse dynamics and delayed disclosures regarding general behavioral characteristics of child sex abuse victims?

STANDARD OF REVIEW

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (quoting *Douglas*, 369 S.C. at 429-30, 632 S.E.2d at 848) (internal quotation marks omitted). "A [circuit] court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs*, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003) (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (Ct. App. 2001)). To show prejudice, the appellant must prove "that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citing *Means*, 348 S.C. at 166, 558 S.E.2d at 924).

LAW/ANALYSIS

Appellant argues the circuit court abused its discretion by allowing the State's expert witness on child abuse dynamics and delayed disclosures to testify regarding general behavioral characteristics of sex abuse victims because her testimony (1) was not outside the realm of lay testimony, (2) improperly bolstered the minor victims' testimony, and (3) prejudiced Appellant's case.

I. Lay Testimony

Appellant first argues the circuit court abused its discretion by allowing Galloway-Williams to testify as an expert because the subject matter of her testimony was not beyond the ordinary knowledge of the jury. Appellant contends the jury did not require expert knowledge or opinions to understand why the minor victims delayed disclosing the abuse, as well as what caused them to eventually disclose, because the jury could make its own determination based on the minor victims' testimony. We disagree.

A party is allowed to present expert testimony to the factfinder if "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." *Grubbs*, 353 S.C. at 379, 577 S.E.2d at 496 (quoting Rule 702, SCRE) (internal quotation marks omitted). "Expert testimony may be used to help the jury determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). In *Watson*, our supreme court reviewed the differences between expert testimony and lay testimony:

Expert testimony differs from lay testimony in that an expert is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions. On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.

Id. at 445-46, 699 S.E.2d at 175. Further, the court provided a three-prong test that a circuit court must consider before allowing the jury to hear expert testimony:

First, the [circuit] court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the [circuit] court must find

that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the [circuit] court must evaluate the substance of the testimony and determine whether it is reliable.¹

Id. at 446, 699 S.E.2d at 175.

In *State v. Weaverling*, this court confirmed that "both 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." 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) (quoting *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993)) (internal quotation marks omitted). Further, this court made the following observations:

Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the abused child's often strange demeanor.

Id. at 474-75, 523 S.E.2d at 794. Therefore, this court held the expert testimony was properly admitted because it was relevant and simply explained the effect of sexual abuse on a victim's subsequent conduct. *Id.* at 475, 523 S.E.2d at 794-95. Likewise, in *State v. White*, our supreme court confirmed the admissibility of expert testimony and behavioral evidence in sexual abuse cases, holding such testimony was relevant regardless of the victim's age. 361 S.C. 407, 415, 605

¹ Because Appellant did not challenge Galloway-Williams' qualifications as an expert in child abuse dynamics and delayed disclosures, we decline to address the second prong of the *Watson* test. See *State v. Tyndall*, 336 S.C. 8, 16-17, 518 S.E.2d 278, 282-83 (Ct. App. 1999) (noting an issue not argued in the appellate brief is deemed abandoned on appeal); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

S.E.2d 540, 544 (2004). The supreme court stated expert testimony "may be more crucial" when the victims are children because their "inexperience and impressionability often render them unable to effectively articulate" incidents of criminal sexual abuse. *Id.* at 414-15, 605 S.E.2d at 544.

In the instant case, the circuit court overruled Appellant's objection to Galloway-Williams testifying as an expert and found that, based on the jurors' qualifications and their responses to questions during voir dire, the empaneled jury "would not have any prior knowledge from family members or otherwise as to sex abuse directly." At trial, Appellant cross-examined the minor victims extensively regarding their delays in disclosure as well as the varying accounts of the abuse they gave authorities. Indeed, the minor victims delayed disclosing the abuse for almost three years, were unable to recall specific days or dates on which they were abused, gave varying accounts of certain instances of abuse, and divulged more facts each time they spoke about the abuse. Such behavior undoubtedly became a fact at issue in this case, raising questions of credibility or accuracy that might not be explained by experiences common to jurors. *See Weaverling*, 337 S.C. at 474-75, 523 S.E.2d at 794. Accordingly, we find Galloway-Williams' specialized knowledge of the behavioral characteristics of child sex abuse victims was relevant and crucial in assisting the jury's understanding of why children might delay disclosing sexual abuse, as well as why their recollections may become clearer each time they discuss the instances of abuse. *See White*, 361 S.C. at 414-15, 605 S.E.2d at 544; *Weaverling*, 337 S.C. at 474-75, 523 S.E.2d at 794.

Numerous jurisdictions considering this issue have similarly concluded it is more appropriate for an expert to explain the behavioral traits of child sex abuse victims to a jury. *See, e.g., Keri v. State*, 347 S.E.2d 236, 238 (Ga. Ct. App. 1986) (finding expert testimony assisted the jury in understanding why sexually abused victims are secretive and frightened, why they may act out and become disciplinary problems, and why they could not give specific dates for the acts the defendant allegedly committed); *State v. Carpenter*, 556 S.E.2d 316, 321-22 (N.C. Ct. App. 2001) (stating that the nature of child sexual abuse places lay jurors at a disadvantage and expert witness testimony regarding the fact that delayed and incomplete disclosure is not unusual in cases of child abuse was appropriate); *see also* John E.B. Meyers, *Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion*, 14 U.C. DAVIS J. JUV. L. & POL'Y 1, 45-46 (2010) ("Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. . . . Thus, from a psychological point of view, expert testimony about delay, inconsistency, and

recantation is not controversial. From the legal perspective, such testimony is not worrisome."). We believe the unique and often perplexing behavior exhibited by child sex abuse victims does not fall within the ordinary knowledge of a juror with no prior experience—either directly or indirectly—with sexual abuse. The general behavioral characteristics of child sex abuse victims are, therefore, more appropriate for an expert qualified in the field to explain to the jury, so long as the expert does not improperly bolster the victims' testimony.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' expert testimony because child abuse dynamics and delayed disclosures were subjects beyond the ordinary knowledge of the jury.

II. Bolstering

Next, Appellant argues the circuit court erred in admitting Galloway-Williams' expert testimony because it improperly bolstered the minor victims' testimony. We disagree.

"[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." *State v. Portillo*, 408 S.C. 66, 71, 757 S.E.2d 721, 724 (Ct. App. 2014) (quoting *Kromah*, 401 S.C. at 358, 737 S.E.2d at 499) (alteration in original) (internal quotation marks omitted). "The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). Consequently, "it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." *Kromah*, 401 S.C. at 358-59, 737 S.E.2d at 500 (citations omitted).

In *Kromah*, our supreme court held forensic interviewers should avoid (1) stating the child was instructed to be truthful; (2) offering a direct opinion on the "child's veracity or tendency to tell the truth"; (3) indirectly vouching for the child, "such as stating the interviewer has made a 'compelling finding' of abuse"; (4) indicating "the interviewer believes the child's allegations in the current matter"; or (5) opining "the child's behavior indicated the child was telling the truth." 401 S.C. at 360, 737 S.E.2d at 500.

In addition to *Kromah*, Appellant cites several cases in support of his argument that testimony from the State's expert witness was unnecessary and only offered to improperly bolster the minor victims' testimony. *See id.* at 356, 358, 737 S.E.2d at 498-99 (finding the forensic interviewer's testimony regarding a "compelling

finding' of physical child abuse" was problematic and noting experts "may not offer an opinion regarding the credibility of others"); *Smith v. State*, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding "[t]he forensic interviewer's hearsay testimony impermissibly corroborated the [v]ictim's identification of [the defendant] as the assailant, and the forensic interviewer's subsequent opinion testimony improperly bolstered the [v]ictim's credibility"); *McKerley*, 397 S.C. at 465, 725 S.E.2d at 142 (finding the circuit court erred in admitting the forensic interviewer's testimony, which included "comments on the credibility of the victim's account of the alleged sexual assault"). In contrast to the instant case, these cases involved expert testimony from forensic interviewers who interviewed the victims. Moreover, the experts in *Kromah*, *Smith*, and *McKerley* each indicated, in some manner, that they believed the victims' allegations of abuse. In this case, however, Galloway-Williams never interviewed the victims and had no knowledge of the facts of the case beyond her discussions with the solicitor's office prior to trial. This case is further distinguishable because Galloway-Williams never commented—directly or indirectly—about the credibility of the victims' allegations or testimony, nor did she make any of the statements prohibited by our supreme court in *Kromah*. See *Kromah*, 401 S.C. at 360, 737 S.E.2d at 500.

Appellant also relies on several cases in which our appellate courts have held a forensic interviewer's testimony was improperly admitted at trial. See *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) ("For an expert to comment on the veracity of a child's accusations of sexual abuse is improper."); *State v. Dawkins*, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (finding testimony of psychiatrist who treated child victim of sexual assault was improper because psychiatrist answered "yes" to solicitor's question regarding whether, based on his examination and observations of the victim, he was "of the impression that [the victim's] symptoms [were] genuine"); *State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309-10 (Ct. App. 2000) (finding the "professional treating therapist in [this] child sex abuse case improperly vouched for the victim's credibility by answering affirmatively when asked his opinion as to whether the child's symptoms of sexual abuse were 'genuine'"). In *Jennings*, our supreme court held the written report prepared by a forensic interviewer regarding her interviews with the victims was inadmissible hearsay and impermissibly vouched for the victims' credibility because the expert concluded the victims "provided a compelling disclosure of abuse." 394 S.C. at 480, 716 S.E.2d at 94. Both *Dawkins* and *Dempsey* involved therapists who actually treated the victims and offered testimony clearly indicating they believed the victims were telling the truth about the allegations of sexual abuse. *Dawkins*, 297 S.C. at 393-94, 377 S.E.2d at 302;

Dempsey, 340 S.C. at 571, 532 S.E.2d at 309-10. Contrary to the experts in those cases, Galloway-Williams (1) was not testifying as a forensic interviewer, (2) never interviewed the victims, (3) did not prepare a report for her testimony, (4) did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations, and (5) did not express an opinion regarding the credibility of the minor victims in this case. Thus, we agree with the State's argument that the cases cited by Appellant are factually and legally distinguishable from this case.

Further, because Galloway-Williams never commented on the credibility of the minor victims, but rather offered admissible expert testimony regarding the general behavioral characteristics of child sex abuse victims, we find such testimony did not improperly bolster the minor victims' testimony. Although Galloway-Williams testified that between seventy and eighty percent of children delay disclosing abuse, she never commented on the applicability of that statistic to the victims in this case. Instead, Galloway-Williams testified in broad terms regarding various reasons sex abuse victims may delay disclosure and how the disclosure process progresses more generally. The fact that her testimony corroborated some of the minor victims' reasons for delaying disclosure of the abuse does not mean her testimony improperly bolstered their accounts. *See Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794 ("An expert may give an opinion based upon personal observations or in answer to a properly framed hypothetical question that is based on facts supported by the record." (quoting *State v. Evans*, 316 S.C. 303, 311, 450 S.E.2d 47, 52 (1994) (internal quotation marks omitted))). Galloway-Williams merely offered reasons why children might delay disclosing instances of sexual abuse to assist the trier of fact's understanding of the complex dynamics of child victims in sexual abuse cases.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' expert testimony over Appellant's objection at trial because she did not inappropriately vouch for the victims' allegations and, therefore, did not improperly bolster their testimony.

III. Prejudice

Finally, Appellant argues the circuit court erred in admitting Galloway-Williams' testimony because it was cumulative and highly prejudicial to Appellant. We disagree.

Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless

presentation of cumulative evidence." "Improper corroboration testimony that is merely cumulative to the victim's testimony, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration." *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) (emphasis omitted) (citation omitted). Nevertheless, "both expert testimony and behavioral evidence are admissible . . . where the probative value of such evidence outweighs its prejudicial effect." *Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794 (citing *Schumpert*, 312 S.C. at 506, 435 S.E.2d at 862).

[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a "forensic interviewer" as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert[,] the impermissible harm is compounded.

Portillo, 408 S.C. at 71, 757 S.E.2d at 724 (quoting *Kromah*, 401 S.C. at 358, 737 S.E.2d at 499) (alteration in original). In *Kromah*, our supreme court expressed its concerns about forensic interviewers testifying as experts at trial:

[W]e can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate. Forensic interviewers might be useful as a tool to aid law enforcement officers in their investigative process, but this does not make their work appropriate for use in the courtroom. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of abuse. . . . [A]n interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns[] are all factors that can

influence the interviewer's conclusions in this regard. Such subjects, while undoubtedly important in the investigative process, are not appropriate in a court of law when they run afoul of evidentiary rules and a defendant's constitutional rights.

401 S.C. at 357 n.5, 737 S.E.2d at 499 n.5.

We find Galloway-Williams' testimony did not merely restate or improperly corroborate the minor victims' testimony. Similar to the expert in *Weaverling*, Galloway-Williams did not interview the victims prior to testifying at trial and her knowledge of this case was limited to discussions with the solicitor. See *Weaverling*, 337 S.C. at 473, 523 S.E.2d at 794. Further, she did not express an opinion on the credibility of the minor victims in this case. Cf. *Dawkins v. State*, 346 S.C. 151, 156-57, 551 S.E.2d 260, 263 (2001) (finding the testimony of four witnesses corroborating what the victim "told them regarding her alleged sexual abuse served only to bolster [the victim's] credibility" and concluding such improper corroboration had a "devastating impact" on petitioner's trial"). Based on the foregoing, we find her testimony did not improperly corroborate—and, therefore, was not cumulative to—the minor victims' testimony.

Moreover, we find the high probative value of Galloway-Williams' testimony outweighed any prejudicial effect on Appellant's case. See Rule 403, SCRE. Galloway-Williams' testimony was relevant to help the jury understand various aspects of victims' behavior and provided insight into the often strange demeanors of sexually abused children. See *Weaverling*, 337 S.C. at 474, 523 S.E.2d at 794. Additionally, her testimony assisted in explaining the psychological effects of sexual abuse on child victims' behavior—a topic about which neither the children nor a lay witness did or could have properly testified. Galloway-Williams' testimony was also crucial in explaining to the jury why child sex abuse victims are often unable to effectively relay incidents of criminal sexual abuse. See *White*, 361 S.C. at 414-15, 605 S.E.2d at 544 (noting "[t]he inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior"). As noted above, Galloway-Williams did not repeat any of the minor victims' allegations, vouch for their credibility, or otherwise make any statements that improperly corroborated their testimony at trial. In addition, she was not qualified as an expert in forensic interviewing. Thus, the concerns our supreme court expressed in *Kromah* regarding forensic interviewers testifying as experts in child sexual abuse cases are inapplicable to the instant case because the danger of prejudice—which could

result from the jury giving undue weight to the expert testimony of a forensic interviewer who interviews the victim and expresses an opinion as to the child's credibility—is simply not present here. *See Kromah*, 401 S.C. at 357 n.5, 358, 737 S.E.2d at 499 & n.5.

Accordingly, we hold the circuit court properly admitted Galloway-Williams' testimony because her testimony did not improperly corroborate the minor victims' testimony, was not cumulative, and its probative value substantially outweighed any prejudice Appellant experienced from its submission to the jury.

CONCLUSION

Based on the foregoing, we hold the circuit court properly admitted Galloway-Williams' expert testimony regarding general behavioral characteristics of child sex abuse victims and delayed disclosures because the subject matter fell outside the realm of lay testimony. Moreover, we hold Galloway-Williams' expert testimony did not improperly bolster the minor victims' testimony because (1) she never met with the minor victims, (2) her knowledge of this case was limited to her discussions with the solicitor, (3) she did not comment on the credibility of the minor victims in the instant case, and (4) she did not express an opinion or belief regarding the credibility of child sex abuse victims' allegations more generally. We further find her testimony did not improperly corroborate—and, therefore, was not cumulative to—the minor victims' testimony. Finally, we hold the high probative value of Galloway-Williams' testimony outweighed any prejudicial effect on Appellant's case. Accordingly, the circuit court's decision is

AFFIRMED.

GEATHERS and McDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DAMON T. BROWN,

APPELLANT

APPELLATE CASE NO. 2012-213548

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 5288

PETITION FOR REHEARING

Appellant, Damon Tyler Brown, by and through his undersigned counsel, respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR because this Court misapprehends the fact that (1) child abuse dynamics and delayed disclosures are not subjects beyond the ordinary knowledge of the jury, (2) Shauna Galloway-Williams' testimony did improperly bolster the minor complainants' credibility and improperly corroborate their testimony, and (3) any probative value of Galloway-Williams' testimony was substantially outweighed by the

danger of unfair prejudice to Appellant. Appellant respectfully asks this Court to reexamine its opinion and grant rehearing.

This Court misapprehends the argument that the subject matter of Galloway-Williams' testimony was not beyond the ordinary knowledge of the jury. In Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), the South Carolina Supreme Court specified the following three-prong test for expert testimony:

[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. **First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.** Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.

Id. at 446, 699 S.E.2d 169, 175 (internal citations omitted) (emphasis added).

The first prong of the three-prong test in Watson was not met in this case. As defense counsel argued at trial, "[T]his is not outside the realm of ordinary lay knowledge . . . the jury can make their own determination based on the witnesses' own testimony. They've testified already as to why they delayed in disclosure, why they didn't report it, why they reported it when they did. And so the jury can already make that decision based on what they've heard. They don't need an expert to come on the stand and help them resolve why they would do that." R. 241, ll. 2-10; see also R. 240, l. 14 – 241, l. 2.

Defense counsel's assertions at trial were correct. The complainants had thoroughly explained their actions and thoughts to the jury. No expert knowledge or opinions were required

for the jury to understand or make its own determination as to why the complainants were delayed in disclosing and what caused them to eventually disclose. The complainants testified they were embarrassed, afraid to disclose, or blamed themselves. A juror can understand that a victim of sexual abuse may not disclose immediately because of fear, embarrassment, or an irrational desire to blame themselves. A juror can also understand that it is possible the more one discusses a past experience the more details one may provide, especially when being asked specific questions. The jury did not need expert testimony to explain this subject matter as it did not involve scientific, technical, or other specialized knowledge. See Rule 702, SCRE. Therefore, the trial judge abused his discretion by allowing Galloway-Williams to testify as an expert.

Additionally, the Court misapprehends the highly prejudicial nature of Galloway-Williams' improper bolstering testimony in light of the lack of physical evidence in this case. Moreover, this Court failed to properly reconcile the outdated opinions in State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) and State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) with our Supreme Court's holding in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). After Kromah, Weaverling and Schumpert are no longer good law.

This Court reads Kromah too narrowly. The intent of Kromah and the line of cases that preceded it, including State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000), Smith v. State, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), and State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012), among others, was to eliminate opinions vouching for the credibility of witnesses. The state has simply renamed forensic interviewers as experts in spurious fields like "child abuse dynamics

and disclosure.” This testimony does not aid the trier of fact. Rather, it invades the province of the jury.

It is clear from the record that the state in this case attempted to circumvent Kromah by presenting a witness who had not met with the complainants, but who was familiar with the case, and presumably the complainants’ testimony and specific allegations, as a result of discussions with the Solicitor’s Office. While Galloway-Williams did not meet with the complainants, the state still used her to indirectly comment on the complainants’ credibility and provide greater weight to their testimony which is prohibited by Kromah.

Galloway-Williams’ testimony was very likely interpreted by the jury to express that they should believe the complainants because their behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. For example, Galloway-Williams testified that between *seventy and eighty percent* of children are delayed in disclosing abuse just like the complainants in this case. Her testimony strongly implied that because the complainants acted in the same manner as other victims of sexual abuse they must be telling the truth.

Therefore, admitting her as an expert and allowing her to testify was error for “[t]he assessment of witness credibility is within the exclusive province of the jury.” McKerley, 397 S.C. at 464, 725 S.E.2d at 141 (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)).

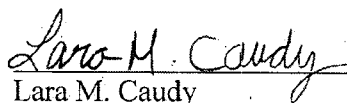
Not only was Galloway-Williams’ testimony used to bolster the complainants’ testimony, it was also highly prejudicial to Appellant and cumulative. Under Rule 403, SCRE, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence.” Because the complainants had already testified as to why they disclosed when they did and what caused them to disclose, among other details, Galloway-Williams’ testimony was merely cumulative. It was used solely

by the state to reinforce and reiterate the reasoning for the complainants' actions and behavior. See Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) ("Improper corroboration testimony that is *merely cumulative to the victim's testimony*, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.") (emphasis in original).

Galloway-Williams' testimony was also prejudicial to Appellant because there was no physical evidence presented in the case and the sole issue was the credibility of the complainants. Because the complainants' credibility was the most critical determination of this case and Galloway-Williams' testimony was used solely to bolster their credibility, Appellant was clearly prejudiced and should be granted a new trial. See Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 ("Because the children's credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer's] written reports was not harmless.").

Appellant respectfully requests this Court grant rehearing and decide this case under the correct legal standard set forth by our Supreme Court in Kromah and the line of cases that preceded it.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

This 22nd day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

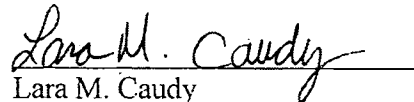
DAMON T. BROWN,

APPELLANT

APPELLATE CASE NO. 2012-213548

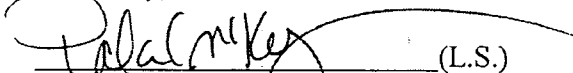
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of January, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of January, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

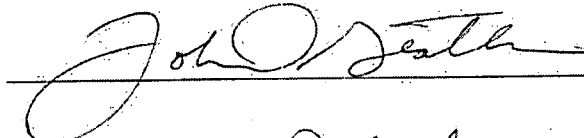
Damon T. Brown, Appellant.

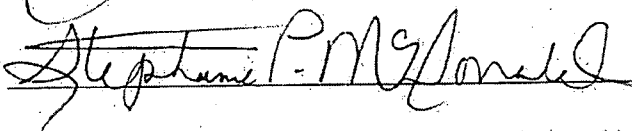
Appellate Case No. 2012-213548

ORDER

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

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Lara Mary Caudy, Esquire

Deborah R.J. Shupe, Esquire

William Walter Wilkins, III, Esquire

FILED

February 11, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMON T. BROWN,

APPELLANT

APPELLATE CASE NO. 2012-213548

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

DAMON BROWN,)

DEFENDANT.)

2010-GS-39-850-853
2010-GS-39-860, 861, 960

November 26, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BRANDI HINTON, ESQUIRE
JENNY HAMAKER, ESQUIRE
ATTORNEYS FOR THE STATE

STEVEN ALEXANDER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
71	Fish, Robin E	W	F				x
117	Jones, Scotty L	B	M		x		
170	Norris, Cerrie C	W	F			x	
223	Tomlinson, Teresa P	W	F			x	
120	Kelly, John D	W	M				x
5	Altop, Michael E	W	M				x
121	Kent, John A	W	M				x
191	Rigdon, Evelyn E	W	F			x	
137	Locke, James G	W	M				x
101	Holliday, Anthony D	B	M		x		
221	Porter, Lance J	W	M			x	
46	Chappell, Ronald L	W	M				x
18	Black, Thomas E	W	M		x		
150	McCoy, Laura V	W	F			x	
126	Kyriakakis, George C	W	M			x	
40	Burrell, Ralph E III	W	M		x		
80	Krutson, Hilary R	W	F			x	
30	Breedlove, Sandra K	W	F			x	
98	Hembree, Gary S	W	M			x	
69	Finley, Keri H	W	F				x
104	Holmes, Janice D	W	F				x
89	Hanson, Lori C	W	F				x
243	William, Teresa M	W	F				x
234	Wave, Denise A	W	F				x
123	Kimmell, Wayne O	W	M				x
95	Hayes, Fulton F	W	M				x

1 **November 26, 2012**

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

4 THE COURT: All right. Can y'all give me a list
5 of what motions you may have, both from the State and from
6 the Defense?

7 MS. HINTON: Yes, Your Honor. We have a
8 consolidation motion, a rape shield compliance motion, a
9 Jackson v. Denno. Your Honor, we have -- I'm trying to
10 decide the best way to couch this -- a motion as to
11 evidence of reason of disclosure. We have a motion to
12 introduce criminal domestic violence against a family
13 member on behalf of the Defendant. Your Honor, we're also
14 going to ask that the witnesses be sequestered. And we
15 also have some pictures that we would like to introduce
16 into evidence that I believe the Defense objects to.

17 THE COURT: All right. Mr. Alexander, do you
18 have motions that are unrelated to those?

19 MR. ALEXANDER: Yes. I have -- I'll just go
20 through my list. The motion for consolidation, I do oppose
21 that as to one of the -- the criminal sexual conduct
22 charge. I do have a motion on the rape shield compliance,
23 a motion to admit or be allowed to inquire as to prior
24 allegations of sexual abuse made by the alleged victims.
25 Jackson v. Denno. A motion to exclude prior bad acts

1 alleged to be committed by the Defendant, which would
2 encompass the State's motion for their reason of
3 disclosure. It's just an alleged prior bad act. And then
4 the alleged, the CDV allegation, as well. Also, the
5 witnesses sequestered.

6 THE COURT: So y'all are in agreement on the
7 sequestration?

8 MR. ALEXANDER: Yes, sir.

9 MS. HINTON: In addition to that, the State would
10 ask for any non-essential parties also be cleared of the
11 courtroom when the victims testify.

12 MR. ALEXANDER: I would oppose that, Your Honor.
13 The additional motions I would have, Your Honor, is Shauna
14 Galloway-Williams is listed as a potential witness. I
15 obviously don't know what she's going to say exactly. But
16 I have an idea what she might testify to. And I would ask
17 for, a minimum, an in-camera hearing to determine whether
18 her testimony is relevant and therefore admissible. And
19 would also to exclude her testimony. And I believe that's,
20 that's really the only separate motion I have. I guess the
21 rest of them are all kind of tied into the State's motions.

22 THE COURT: All right. How about the Jackson
23 versus Denno hearing? I'm assuming that's a statement made
24 by the Defendant?

25 MS. HINTON: Yes, Your Honor.

1 the case. But I inclined to let this in. I'll let the
2 testimony flow as far as the distance from the woods. Let
3 me give you your indictments back to you.

4 MS. HINTON: And, Your Honor, there's also a
5 sketch that we intend to introduce of what the trailer did
6 look like. I don't believe that there is an objection at
7 this time to that one?

8 MR. ALEXANDER: Yeah. I mean, it's the first
9 time I've seen it today, but I mean, I think they would be
10 allowed to use it for demonstrative purposes.

11 THE COURT: All right. I'm working backwards,
12 Solicitor. The CDV, that was for impeachment purposes if
13 he testifies. Is that right?

14 MS. BARWICK: Your Honor, the reason why the
15 State wants to get into the CDV aspect of things is the
16 Defendant was actually dating the victim's older sister
17 when all of this was going on and they had two children in
18 common. Shauna Galloway-Williams will be able to testify
19 that a lot of times there is a delay in disclosing because
20 of direct and indirect threats. The fact that Older

21 , one of the victims, saw the Defendant abusing his
22 older sister, is an indirect threat to the victim. He sees
23 what the Defendant is capable of with others when he
24 becomes angry at them. He doesn't want the same
25 repercussions and that's part of the reason he delayed in

1 disclosing.

2 And, Your Honor, also, a lot of times in cases like
3 these, the -- when it's chronic sexual abuse, the victim
4 sometimes can remember the first time or the last time or
5 the worst time, but they all kind of blend together.

6 Older Brother is able to testify that he remembers the
7 last time the Defendant sexually abused him was the same
8 day that his sister had called the law enforcement on the
9 Defendant for physically abusing her. Older Brother will say
10 that he was abused earlier that day, sexually abused
11 earlier that day, the same day that law enforcement was
12 called out.

13 THE COURT: This is a CDV first offense?

14 MS. BARWICK: Your Honor, he wasn't actually -- I
15 don't believe he was charged with it. And I don't believe
16 he was convicted of it. When law enforcement arrived, they
17 discovered that the Defendant had outstanding warrants and
18 just simply arrested him on those warrants.

19 THE COURT: Mr. Alexander?

20 MR. ALEXANDER: We obviously oppose that, Your
21 Honor. I think it's a blatant violation of, you know,
22 introducing prior bad acts and it's not proper to do so.
23 It's not -- you know, doesn't meet any of the criteria
24 under Rule 404. You know, common scheme, absence of
25 mistake, intent, motive, I.D. The sole purpose of it is to

1 try to bolster and show more credibility for the alleged
2 victim's testimony. That's the only purpose, to try to
3 bolster and explain away this delay in report. And it all
4 goes back to -- if Ms. Galloway-Williams is going to
5 testify about that, it goes to my motion on why she should
6 be excluded for a lot of the same reasons. We can get into
7 that at the appropriate time.

8 But even if, for some reason it fit under some Rule
9 404 or whatever, any probative value it would have is
10 outweighed by the prejudicial effect. You know, it's
11 allegations that he apparently was never convicted of. And
12 even if he was, it would only be a criminal domestic
13 violence first offense, as far as we're aware, which is
14 not, in itself, admissible, I would submit under that rule
15 of prior bad acts, prior criminal convictions. So the
16 prejudicial effect substantially outweighs any probative
17 value, I would submit.

18 And, I mean, it's my position that that and Ms.
19 Galloway-Williams testimony, it's all being offered to
20 bolster the witness's testimony, to improperly comment on
21 their credibility, which, you know, is improper, I submit
22 to the Court.

23 So we would oppose that, Your Honor, that all of that
24 be excluded. And we have no -- this is the first we're
25 hearing of it today, anyway, that that was even an issue.

1 THE COURT: All right. I can see perhaps the
2 need of the State to show a relation to the event. I
3 believe the State can do that without getting into the
4 sister having to call the police because of CDV. He can
5 simply say that I remember that's the day they were having
6 a fuss and the police had to come. Maybe they won't know
7 if the neighbors called the police or who called the
8 police. I think that can be -- the testimony can be
9 elicited from the witness to the extent that he recalls the
10 day of the alleged abuse, because that was the day that my
11 sister and the Defendant got into a fuss or altercation and
12 the police had to come out.

13 That doesn't -- I think that certainly cures any
14 prejudice toward your client, Mr. Alexander. It doesn't
15 say who had to call the police. It doesn't say what the
16 police did. It just puts in for his testimony the time
17 when the last alleged abuse took place.

18 MR. ALEXANDER: So it will be limited to simply
19 that the police were called out to the house for some
20 reason?

21 THE COURT: Right. Right. And that's how he can
22 tie in that that was the time that he was last abused, if
23 that's his testimony, which the Solicitor says it will be.
24 That's the way he ties in the same day that they were
25 fussing and the police had to come out. Certainly, he

1 wouldn't get into anybody being arrested on outstanding
2 warrants or who was arrested or what was going on. But the
3 purpose of the need for the CDV was to show that. So I
4 think that can be shown more euphemistically than the State
5 proposes. So there won't be any discussion of a prior CDV
6 charge.

7 All right. It seems like we've gotten into Ms.
8 Galloway-Williams' testimony. Did she actually interview
9 either of the victims?

10 MS. BARWICK: No, sir. She did not. She's never
11 met the victims. She's never spoken with the victims.
12 They never had a forensic interview.

13 THE COURT: What is the purpose of her testimony,
14 Solicitor?

15 MS. BARWICK: Your Honor, the State seeks to
16 enter her as an expert in counseling sexually abused
17 children and their families. Your Honor, the State will
18 use her to explain delayed disclosures, partial
19 disclosures, physical symptoms victims experience. How
20 knowing someone and being close with someone could affect
21 the disclosure process. Children's memories and ability to
22 recall. That's basically it, Your Honor.

23 She will not be commenting on anything about the
24 credibility of the victim or it sounds like what they're
25 saying is the truth, nothing along those lines. Simply

1 speaking about victims of child abuse in general terms.

2 THE COURT: Yes, sir, Mr. Alexander?

3 MR. ALEXANDER: And she may not directly comment
4 on these witnesses' specific testimony, but her testifying
5 as to every single one of those things that Ms. Barwick
6 just listed, all it's going to do is go directly to
7 commenting on their credibility, to bolster their testimony
8 that there's a late disclosure for these reasons. And in
9 this case, we have a late disclosure. Five years, or four
10 or five years late disclosure. Partial disclosures,
11 they've apparently got -- the testimony is going to be
12 greatly more detailed than their written statements, which
13 were given three years ago. Physical symptoms.

14 All of that does nothing but tell the jury, you should
15 believe these witnesses because of these reasons. And I
16 would further say that her testimony is not necessary. I
17 mean, you need expert -- expert testimony can be used, I
18 believe, in the case law or I think it's under Rule 702, to
19 help the jury determine a fact at issue based on their
20 specialized knowledge, experience, skill, and it's
21 necessary in cases where it falls outside the realm of
22 ordinary lay knowledge. I mean, these are not outside any
23 lay knowledge. It's certainly, you know, things that is
24 not openly discussed in public or anything or even in
25 privacy, but we don't need an expert to help the jury

State of South Carolina -vs- Damon Brown (2010-GS-39-850-853 and 860, 861, 960)
Jury Voir Dire

16

1 determine, you know, any particular reason why there would
2 be a delay in disclosure. They can hear the witnesses
3 themselves and make that determination. That's for the
4 jury to determine on their credibility.

5 And so I think it all goes to that, Your Honor.
6 That's the sole purpose of it, is to try to explain away
7 this delayed disclosure, these partial disclosures that
8 have apparently trickled in over the years. And she's
9 never met them. You know, it's simply trying to get in the
10 testimony to help corroborate, you know, what these alleged
11 victims are apparently going to testify to.

12 MS. BARWICK: Judge, in State versus Weaverling,
13 the court allows ---

14 THE COURT: The State versus what?

15 MS. BARWICK: Weaverling, W-E-A-V-E-R-L-I-N-G.
16 And I apologize. I don't have a citation for that.
17 Actually, I do, Your Honor. It's 523 S.E.2d, Southeastern
18 Second, 787. And in that case, the court allowed testimony
19 from an expert who had not interviewed or counseled the
20 victim before trial. The state's expert was allowed to
21 give opinion in response to properly framed hypothetical
22 questions based on facts supported by the record.

23 MR. ALEXANDER: Well, I don't know the facts of
24 that case at all, Your Honor. But, I mean, the recent case
25 law on these forensic interviewers is very clear, State v.

1 McKerley, 397 S.C. 461. It's improper to comment on
2 credibility and improperly bolster any witness's testimony
3 at trial. That's an exclusive province of the jury. And
4 that built on State v. Jennings, 394 S.C. 473; which I
5 think just excluded a written report that said that. But
6 McKerley directly addressed direct testimony from the
7 forensic interviewer. It talked -- admittedly, it talked
8 about statements akin to them saying, you know, provided
9 compelling disclosure and things like that. But this
10 testimony is right in line with that, you know. Compelling
11 disclosure, you know, her saying the reason someone would
12 delay in reporting is this. You know, it's doing nothing
13 but to bolster their credibility and their testimony.

14 MS. BARWICK: And, Judge, both of those cases
15 that Mr. Alexander cited pertain to the forensic
16 interviewer who actually met the child, spoke with the
17 child. This is a blind expert. She has never met with the
18 children. She's not going to comment on credibility,
19 saying this is a compelling disclosure or this has internal
20 coherence or this makes sense. She's not commenting on
21 that. She's just commenting on what she knows that her
22 training and experience on how children react when they've
23 been sexually abused. And she bases it on statistics and
24 research. It has nothing to do with these victims in
25 general -- or specifically these victims. It has to do

State of South Carolina -vs- Damon Brown (2010-GS-39-850-853 and 860, 861, 960)
Jury Voir Dire

18

1 with victims of child abuse in general. So she's not
2 talking about the credibility of these victims.

3 MR. ALEXANDER: The only thing I would add, Your
4 Honor, the case I was referring to about -- I think, as the
5 Court knows, the Trial Judge is the gatekeeper of this type
6 of evidence. And I think it's a civil case actually, 389
7 S.C. 434, *Watson v. Ford Motor Company*, but it's my
8 position that the Court is, I believe, required to have an
9 in-camera hearing and hear the witness's testimony. Or a
10 minimum, I would request to have Ms. Galloway-Williams
11 testify in-camera and Your Honor determine based on exactly
12 what she's saying, whether it's relevant and then whether
13 it is admissible. And to be frank, you know, this is an
14 issue that I would like to know whether she's going to be
15 allowed to testify, obviously, before we get started. And
16 I don't know if it will have a direct impact on how I go
17 forward, but it certainly could. But it's obviously up to
18 Your Honor.

19 THE COURT: When was Ms. Galloway-Williams, when
20 was the State intending to call her? First?

21 MS. BARWICK: No, sir, Your Honor. She'll be
22 towards the end.

23 THE COURT: All right. Mr. Alexander, we'll
24 leave that one for now. Let's go to the consolidation of
25 the cases. You believe they should be severed?

1 seated.

2 All right. The next question I have, ladies and
3 gentleman, has several parts. I'll just ask you to listen
4 carefully if any of these apply to you. I need to know if
5 there's any member of the jury panel or a member of your
6 immediate family who has ever been accused or arrested or
7 convicted of any crime involving an act of violence against
8 another person, an offense of child abuse or sexual abuse
9 of any kind. Or I need to know if you've ever been the
10 victim of any crime of violence where a person accosted you
11 personally or a member of your family, or have you ever
12 been the victim of any abuse as a child, as an adult. If
13 you've ever made a complaint through Department of Social
14 Services or any other law enforcement agency. Or if you've
15 ever been accused through Department of Social Services or
16 any other legal agency or a member of your immediate family
17 has ever had such accusations or been a victim, so that
18 those agencies were involved. If you or a family member
19 has ever been accused or if you've ever been a victim of
20 any offenses of that nature of violent acts or sexual acts
21 or abusive acts, would you please stand? All right. We
22 have eight people.

23 What I want you to do, those of you who are standing
24 now, I want to just talk to you privately with the
25 attorneys down here with the court reporter. So if you

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1 would come one at a time, I'll be glad to talk with your
2 about your eligibility to serve.

3 THE COURT: Yes, ma'am, if you would state your
4 name, please.

5 THE JUROR: Laura McCoy.

6 THE COURT: Did it happen to you?

7 THE JUROR: Well, it happened to me and my
8 sisters. Never turned it in. It was handled within the
9 family. It was my uncle. Sexual abuse.

10 THE COURT: You feel like you could hear a case
11 of this nature?

12 THE JUROR: I think so. It never involved
13 anything major because the family took care of it.

14 THE COURT: How long ago did this take place?

15 THE JUROR: I was probably eight. So I'm forty-
16 eight now. Forty years ago.

17 THE COURT: Do you believe that that happening to
18 you that time ago would not affect your ability to be a
19 fair juror?

20 THE JUROR: I don't think so.

21 THE COURT: Well, do you have any hesitancy at
22 all?

23 THE JUROR: No.

24 THE COURT: You could be fair to both sides?

25 THE JUROR: I think so, yeah.

1 THE COURT: Okay. Thank you.

2 Your name, please?

3 THE JUROR: Lorraine Cooper. I was a victim of
4 rape twice, up until five years ago.

5 THE COURT: Would that affect your ability to be
6 a fair juror?

7 THE JUROR: It would be hard because me being
8 verbally and sexually and mentally abuse.

9 THE COURT: I'm going to excuse you from this
10 case. If you just would be seated. You don't need to
11 respond to any of my other questions.

12 THE JUROR: Okay. Thank you.

13 THE COURT: Your name, please.

14 THE JUROR: Anthony Holliday, juror number 101.
15 My grandfather was recently accused of sexual assault.

16 THE COURT: It did not involve you?

17 THE JUROR: uh-uh (negative).

18 THE COURT: Would that affect your ability to be
19 a fair juror?

20 THE JUROR: No, sir.

21 THE COURT: In other words, you're going to hear
22 allegations of that and you believe you could be fair to
23 both sides?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. Thank you. You may be

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1 seated.

2 Yes, ma'am.

3 THE JUROR: I am actively out on bond for a drug
4 charge that has put me in -- DSS has gotten involved in
5 that case.

6 THE COURT: Okay. Do you believe that might put
7 you in an awkward position ---

8 THE JUROR: No.

9 THE COURT: --- to handle this case?

10 THE JUROR: No.

11 THE COURT: So they're involved because of your
12 children or whatever?

13 THE JUROR: Yes. But nothing violent or nothing,
14 just I have been locked up. So ...

15 THE COURT: Do you believe you could be a fair
16 juror in this case?

17 THE JUROR: Yes.

18 THE COURT: To both sides?

19 THE JUROR: (Affirmative nod.)

20 THE COURT: Okay. Thank you very much.

21 Hello. How are you? Your name, please.

22 THE JUROR: Linda Jackson.

23 THE COURT: Yes, ma'am. Did it occur to you or a
24 family member?

25 THE JUROR: My daughter and niece.

1 THE COURT: How long ago was this?

2 THE JUROR: Well, the niece has been -- they
3 finally found out about it years ago. And my daughter,
4 fifteen years.

5 THE COURT: Do you believe that that would affect
6 your ability to be a fair juror?

7 THE JUROR: Yes.

8 THE COURT: It would? Thank you. I'm going to
9 excuse you from the trial of this case. If you'll just
10 have a seat. You don't need to respond to the other
11 questions I ask, okay? Thank you, ma'am.

12 THE JUROR: 115.

13 THE COURT: You're number 115?

14 THE JUROR: Yes, sir.

15 THE COURT: And did it happen to you or another -
16 --

17 THE JUROR: No, no, no, no. I might have
18 misunderstood. I just wanted to make sure. But I was the
19 victim of an attempted armed robbery at an ATM.

20 THE COURT: As an eighteen year old. That's an
21 act of violence. You didn't misunderstand. That's what I
22 asked you about. The fact that you were victimized then,
23 do you believe that would affect your ability to be a fair
24 juror?

25 THE JUROR: No, sir.

1 THE COURT: That was when you were eighteen, you
2 say?

3 THE JUROR: No, that was in October of this year.

4 THE COURT: Oh, this year. You can be fair to
5 both sides?

6 THE JUROR: Yes, sir.

7 THE COURT: Listen to the evidence and make a
8 decision on that and the law?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you, ma'am. You may be seated.
11 Yes, sir, your name.

12 THE JUROR: Jimmy Kelly, 119. And I've got a
13 brother that is a registered sex offender.

14 THE COURT: Okay. Would that affect your ability
15 to be a fair juror in this case?

16 THE JUROR: No, sir.

17 THE COURT: You could weigh all the evidence and
18 make a decision?

19 THE JUROR: Yeah. The evidence is there, you
20 know, it's there.

21 THE COURT: Okay. Thank you. You may be seated.
22 Hello. What's your name, please?

23 THE JUROR: Tony Holliday.

24 THE COURT: Did something happen to you or a
25 family member?

1 THE JUROR: Yes. When I was growing up every
2 time I'd leave, they always beat all the time. I did
3 report it, but my siblings would never vouch for me so
4 there was really nothing much done.

5 THE COURT: Do you feel like this might not be a
6 case that you could participate in?

7 THE JUROR: Yeah.

8 THE COURT: I'm going to excuse you from this
9 case then. And you don't need to respond to the other
10 questions I ask. But if you'll just be seated now. Okay?

11 THE JUROR: Thank you.

12 THE COURT: Hey.

13 THE JUROR: Number 98.

14 THE COURT: Yes, sir.

15 THE JUROR: Fifteen, twenty years ago my wife's
16 brother was convicted on lewd acts on a minor.

17 THE COURT: Do you think that would affect your
18 ability to be a fair juror?

19 THE JUROR: No.

20 THE COURT: You could set all of that aside and
21 make a decision on this case ---

22 THE JUROR: I didn't have nothing to do ---

23 THE COURT: --- and this alone?

24 THE JUROR: --- with none of that.

25 THE COURT: Thank you for sharing that with us.

1 You may return to your seat.

2 What's your name, please?

3 THE JUROR: My name is Sandra Breedlove. And my
4 first husband that I was married to, he was very abusive to
5 me. He broke out my front teeth. He took a plank and I
6 had to ---

7 THE COURT: Do you believe that would affect your
8 ability ---

9 THE JUROR: --- I had to have stitches. He
10 busted my eye.

11 THE COURT: I'm sorry that happened. But I can
12 see how ---

13 THE JUROR: I feel that I wasn't protected
14 enough.

15 THE COURT: Do you believe you need to be excused
16 from this trial then? Do you think that could affect your
17 ability to be a good juror?

18 THE JUROR: Do what, sir?

19 THE COURT: Do you think that could affect your
20 ability in this case to be a good juror?

21 THE JUROR: No.

22 THE COURT: You could be ---

23 THE JUROR: I didn't like what happened to me,
24 but if it's proven the person did do that, I think I could
25 be objective enough to protect ---

1 THE COURT: Okay. Well, thank you.

2 THE COURT: --- the person that it did happen to.

3 THE COURT: Thank you, ma'am. Appreciate you
4 coming up. I'm striking 103, 110 and 52.

5 Is there any member of the jury panel or a member of
6 your immediate family who has ever been a volunteer
7 guardian ad litem for any child at a court proceedings? If
8 so, would you please stand? If you've been a guardian ad
9 litem in the past?

10 Again, if you would state your name for the record?

11 THE JUROR: Anthony Holliday.

12 THE COURT: All right, sir. Are you an on-going
13 guardian or just one time that you did that?

14 THE JUROR: My grandmother does it right now, for
15 guardian ad litem.

16 THE COURT: Excuse me?

17 THE JUROR: For guardian ad litem, my grandmother
18 does it.

19 THE COURT: All right. Your name, please, ma'am?

20 THE JUROR: Michelle Thompson. And my parents-
21 in-law are guardians ad litem.

22 THE COURT: Okay. Thank you for sharing that.

23 Is there any member of the jury panel or a member of
24 your immediate family who is in the business or volunteers
25 as a counselor or a care giver or treatment for any victims

1 of sexual assault or sexual abuse. If you're in the
2 counseling business or a member of your immediate family is
3 in the counseling of sex abuse victims or victims of sexual
4 assault, would you please stand?

5 (No response.)

6 THE COURT: Thank you there is no response.

7 At this time, I'm going to ask the attorneys, if you
8 would please, stand and introduce yourselves to the jury.
9 Solicitors.

10 MS. HINTON: Thank you, Your Honor. Good
11 afternoon. My name is Brandi Hinton. I'm an Assistant
12 Solicitor here in Pickens County.

13 MS. BARWICK: My name is Jenny Barwick, and I
14 work alongside Brandi Hinton.

15 THE COURT: Mr. Alexander.

16 MR. ALEXANDER: My name is Steven Alexander. I
17 am an attorney here in Pickens. I practice across the
18 street with my father, James Alexander.

19 THE COURT: All right. Thank you. Is there any
20 member of the jury panel related by blood or marriage to
21 any of these attorneys? And if so, would you please stand?

22 (No response.)

23 THE COURT: Is there a member of the panel who
24 has a close business or a social, a personal relationship
25 with either of these attorneys or anyone that's on their

1 evidence. If for any reason you believe you could not be a
2 fair juror, would you please stand?

3 You don't believe you could be fair in this case,
4 ma'am?

5 THE JUROR: I don't.

6 THE COURT: Okay. I talked with you earlier, I
7 think. So your name and number again, please.

8 THE JUROR: Michelle Thompson, 221.

9 THE COURT: All right. I'll excuse from this
10 case.

11 Any other questions from the State?

12 MS. HINTON: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. ALEXANDER: No, Your Honor.

15 THE COURT: All right. Then let's empanel our
16 jury.

17 THE CLERK: When I call your name, if you'll
18 please come forward and stand here and face the attorneys.

19 Juror number 71, Robin Fish. What says the State?

20 MS. HINTON: Please present Ms. Fish.

21 THE COURT: The Defense?

22 MR. ALEXANDER: What was the juror's number?

23 THE CLERK: 71, Robin Fish.

24 MR. ALEXANDER: Please seat the juror.

25 THE CLERK: Please have a seat in the jury box.

1 Juror number 117, Scotty Jones. What says the State?

2 MS. HINTON: Please excuse Mr. Jones.

3 THE CLERK: Juror number 170, Cerrie Norris.

4 What says the State?

5 MS. HINTON: Please present Ms. Norris.

6 THE CLERK: The Defense?

7 MR. ALEXANDER: Please excuse Ms. Norris.

8 THE CLERK: Juror number 223, Teresa Tomlinson.

9 What says the State?

10 MS. HINTON: Please present Ms. Tomlinson.

11 THE CLERK: The Defense?

12 MR. ALEXANDER: Please excuse Ms. Tomlinson.

13 THE CLERK: Juror number 120, John Kelly. What

14 says the State?

15 MS. HINTON: Please present Mr. Kelly.

16 THE CLERK: The Defense?

17 MR. ALEXANDER: Please seat Mr. Kelly.

18 THE CLERK: Juror number 5, Michael Altop. What

19 says the State?

20 MS. HINTON: Please present Mr. Altop.

21 MR. ALEXANDER: Please present Mr. Altop.

22 THE CLERK: Please have a seat in the jury box.

23 Juror number 121, John Kent. What says the State?

24 MS. HINTON: Please present Mr. Kent.

25 THE CLERK: The Defense?

1 MR. ALEXANDER: Please present Mr. Kent.

2 THE CLERK: Please have a seat in the jury box.

3 Juror number 191, Evelyn Rigdon. What says the State?

4 MS. HINTON: Please present Ms. Rigdon.

5 THE CLERK: The Defense?

6 MR. ALEXANDER: Please excuse Ms. Rigdon.

7 THE CLERK: Please have a seat.

8 Juror number 137, James Locke. What says the State?

9 MS. HINTON: Please present Mr. Locke.

10 MR. ALEXANDER: Please present Mr. Locke.

11 THE CLERK: Please have a seat in the jury box.

12 Juror number 101, Anthony Holliday. What says the

13 State?

14 MS. HINTON: Please excuse Mr. Holliday.

15 THE CLERK: Juror number 186, Lance Porter. What

16 says the State?

17 MS. HINTON: Please present Mr. Porter.

18 THE CLERK: The Defense?

19 MR. ALEXANDER: Please excuse Mr. Porter.

20 THE CLERK: Juror number 46, Ronald Chappell.

21 What says the State?

22 MS. HINTON: Please present Mr. Chappell.

23 MR. ALEXANDER: Please present Mr. Chappell.

24 THE CLERK: Please have a seat in the jury box.

25 Juror number 18, Thomas Black. What says the State?

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1 MS. HINTON: Please excuse Mr. Black.

2 THE CLERK: Juror number 150, Laura McCoy. What
3 says the State?

4 MS. HINTON: Please present Ms. McCoy.

5 THE CLERK: What says the Defense?

6 MR. ALEXANDER: Please excuse Ms. McCoy.

7 THE CLERK: Juror number 126, George Kyriakakis.
8 What says the State?

9 MS. HINTON: Please present Mr. Kyriakakis.

10 THE CLERK: The Defense?

11 MR. ALEXANDER: Please excuse Mr. Kyriakakis.

12 THE CLERK: Number 40, Ralph Burrell. What says
13 the State?

14 MS. HINTON: Please excuse Mr. Burrell.

15 THE CLERK: Juror number 80, Hilary Krutson.
16 What say the State?

17 MS. HINTON: Please present Ms. Krutson.

18 THE CLERK: What says the Defense?

19 MR. ALEXANDER: Please excuse this juror.

20 THE CLERK: Juror number 30, Sandra Breedlove.
21 What says the State?

22 MS. HINTON: Please present Ms. Breedlove.

23 MR. ALEXANDER: Please excuse this juror.

24 THE CLERK: Okay. Please have a seat, ma'am.
25 Number 98, Gary Hembree. What says the State?

1 MS. HINTON: Please present Mr. Hembree.

2 THE CLERK: The Defense?

3 MR. ALEXANDER: Please excuse Mr. Hembree.

4 THE CLERK: Number 69, Keri Finley. What says
5 the State?

6 MS. HINTON: Please present Ms. Finley.

7 THE CLERK: The Defense?

8 MR. ALEXANDER: Please seat Ms. Finley.

9 THE CLERK: Please have a seat in the jury box.

10 Juror number 104, Janice Holmes. What says the State?

11 MS. HINTON: Please present Ms. Holmes.

12 THE CLERK: The Defense?

13 MR. ALEXANDER: Please seat Ms. Holmes.

14 THE CLERK: Please have a seat in the jury box.

15 Juror number 89, Lori Hanson. What says the State?

16 MS. HINTON: Please present Ms. Hanson.

17 THE CLERK: The Defense?

18 MR. ALEXANDER: Please seat Ms. Hanson.

19 THE CLERK: Please have a seat in the jury box.

20 Juror number 243, Teresa Williams. What says the

21 State?

22 MS. HINTON: Please present Ms. Williams.

23 THE CLERK: The Defense?

24 MR. ALEXANDER: Please seat Ms. Williams.

25 THE CLERK: Please have a seat in the jury box.

1 Juror number 234, Denise Wave. What says the State?

2 MS. HINTON: Please present Ms. Wave.

3 THE CLERK: The Defense?

4 MR. ALEXANDER: Please seat Ms. Wave.

5 THE CLERK: Please have a seat in the jury box.

6 Juror number 123, Wayne Kimmell. What says the State?

7 MS. HINTON: Please present Mr. Kimmell.

8 THE CLERK: The Defense?

9 MR. ALEXANDER: Please present Mr. Kimmell.

10 THE CLERK: Please have a seat in the jury box.

11 This will be for the alternate. Juror number 95,

12 Fulton Hayes. What says the State?

13 MS. HINTON: Please present Mr. Hayes.

14 THE CLERK: The Defense?

15 MR. ALEXANDER: Please present Mr. Hayes.

16 THE CLERK: Please have a seat in the jury box?

17 THE COURT: Any matters we need to take care of

18 as far as the selection of the jury in this case? From the

19 State?

20 MS. HINTON: No, Your Honor.

21 THE COURT: From the Defense?

22 MR. ALEXANDER: None from the Defense, Your

23 Honor.

24 THE COURT: Ladies and gentlemen, you've had a

25 long day here. You're now excused for the day. I

1 examination. Your motion is denied.

2 Is there some evidence or do y'all just want to be
3 heard on this reporting, as far as -- just before we broke,
4 I think there was something about a Ms. Brook -- that she
5 was available as a witness and so forth?

6 MS. BARWICK: Well, Your Honor, the State
7 understands how you're going to rule and the State is fine
8 with just having Older Brother testify, I had a conversation with
9 a girl on a bus, not what the subject matter was, not
10 anything relating to that, but having this conversation
11 made me realize that I needed to come forward, so I did.

12 THE COURT: Any objection to that? From the
13 Defense?

14 MR. ALEXANDER: No. I mean, I think I would
15 certainly be allowed -- with no -- as long as there's no
16 implication or anything like that as to the nature of the
17 conversation or anything that Ms. Brooke Smith may have
18 said to him.

19 THE COURT: Well, we've talked briefly in the
20 hallway just before we came back. Certainly, there's not
21 going to be any testimony elicited from the State relating
22 to any person talking about this particular Defendant,
23 anything that happened with this particular Defendant or
24 any details of any other acts, but rather just as Ms.
25 Barwick has stated, that there was an encounter and based

1 MR. ALEXANDER: Yeah, I think -- right.

2 THE COURT: That she had an opportunity,

3 basically, is what you're ---

4 MR. ALEXANDER: Yeah, after the alleged
5 allegations were supposedly happening she had contact with
6 law enforcement, was interviewed, and had the opportunity
7 to disclose that.

8 MS. BARWICK: And the State's fine with that
9 exact question. Did you have the opportunity to report
10 this to law enforcement?

11 MR. ALEXANDER: But that doesn't bring out the
12 fact that she actually spoke to law enforcement. I mean,
13 it's different -- of course, she had the opportunity to
14 disclose it. It's different that she actually was
15 interviewed by a police officer. Not for this, but that
16 there was -- it was there.

17 THE COURT: Well, maybe you can work on your
18 phrasing of the question. Because, you know, I can see how
19 this might go where you would not want it go, nor the State
20 would want it to go. So maybe over the evening you can ---

21 MR. ALEXANDER: I can do that, Your Honor.

22 THE COURT: --- work on that and make sure that
23 the witness knows the parameters in which to answer that.

24 MR. ALEXANDER: Yes, sir.

25 THE COURT: All right. And then I understand,

1 too, again, from our conference as we were coming back in,
2 that the issue of the expert witness is going to be a
3 proffer of evidence by the State for determining the
4 factors under Watson as to the expertise and the need for
5 expert witnesses, sometime tomorrow before the witness is
6 called to testify. Is that correct?

7 MR. ALEXANDER: That's the Defense's request,
8 Your Honor, yes, sir.

9 MS. HINTON: Judge, just for scheduling purposes,
10 because she does work in Greenville, do you have a
11 preference on when that motion is heard?

12 THE COURT: Whenever we can work it in, that'll
13 be fine. We'll do the Jackson versus Denno first thing in
14 the morning. We're really not going to do opening
15 statements this afternoon, even though we had talked about
16 that. I'll discharge the jury and we'll be able to swear
17 them first thing in the morning to get started.

18 As I mentioned to the lawyers, the reason we were
19 talking in the hallway was to let them know that I probably
20 wouldn't be able to read very well first thing in the
21 morning. I have an eye examination. I'll do my best. Is
22 there a statement, written statement?

23 MR. ALEXANDER: No, sir, Your Honor, it's a
24 verbal statement.

25 THE COURT: Great. My appointment is fairly

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1 yourself, perhaps, have taken this oath in different states
2 throughout our country, today even. Listen carefully as it
3 is administered to you.

4 After the oath is given to you, then the attorneys
5 will have a chance to address you in their opening
6 statements. What the lawyers have to say to you in their
7 opening statements and their closing statements is not
8 evidence. Nevertheless, I urge you to listen carefully as
9 they address you. I'm confident that each of them can give
10 you some insights to perhaps help you as the case develops
11 in listening to the appropriate things that you need to be
12 aware of.

13 All right. Ms. Garrett, if you would administer the
14 oath to the jury.

15 THE CLERK: Please stand and raise your right
16 hand. And after the oath is administered, please say I
17 will.

18 You shall well and truly try the issue joined in this
19 case of the State versus Damon Brown, and a true verdict
20 render according to law and evidence, so help you God?

21 (WHEREUPON, the jury was duly sworn.)

22 THE COURT: Solicitor, you may address the jury
23 in your opening.

24 MS. BARWICK: Thank you, Your Honor. Mr.
25 Alexander.

1

OPENING STATEMENT2 **BY MS. BARWICK:**

3 I can still say good morning for the next fifteen
4 minutes. Again, my name is Jenny Barwick. This is Brandi
5 Hinton. Together we represent the State of South Carolina
6 in the prosecution of criminals. We work for the
7 solicitor's office. In some states they call us a DA,
8 district attorney, some states they call us prosecutors.
9 In South Carolina, they happen to call us solicitors. We
10 don't solicit. You know, you see the signs on the doors
11 that say no solicitation. We still go in there and have
12 lunch. So I think solicitor is kind of a weird term.

13 You've heard what the Defendant, Damon Tyler Brown,
14 has been charged with. He goes by Tyler, so we'll call him
15 that. But Damon Tyler Brown is the Defendant and he's been
16 charged with multiple counts of child molestation charges.
17 He's been indicted by the Grand Jury on these charges.

18 The first thing that he has been charged and indicted
19 for is criminal sexual conduct with a minor in the first
20 degree. It's a mouthful so we simply say CSC with a minor
21 in the first degree. To prove CSC with a minor in the
22 first degree the State has the burden of proof and we must
23 prove the following elements: That the child, the victim,
24 was under the age of eleven and that the Defendant
25 performed a sexual battery on the child. What does sexual

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1 battery mean? Well, it's vaginal intercourse, anal
2 intercourse, oral sex, or intrusion, however slight, into
3 the body part of the victim. He's been indicted and
4 charged with one count of that.

5 He also has been charged and indicted for three counts
6 of lewd act on a minor, three counts, three victims. To
7 prove that, the State must prove elements, as well. The
8 state must prove that the Defendant was over the age of
9 fourteen, that the children were under the age of sixteen,
10 and that he either touched them or did something with their
11 bodies to appeal to or gratify his own sexual desires or
12 that of the children. Three counts of that, three victims,
13 Older Brother Younger and Minor

14 All right. He's also been charged and indicted with
15 three counts of sexual exploitation of a minor in the first
16 degree. The State must prove the following elements: That
17 the children were under the age of eighteen, and that the
18 Defendant encouraged, assisted, coerced, helped, used these
19 children to engage in a live sexual performance. That's
20 what he's been charged with.

21 And I'm sure Mr. Alexander will tell you this, but I
22 will go ahead and tell you it now. The burden of proof
23 rests right here with the State. We welcome that burden.
24 We have no problem with that burden. Beyond a reasonable
25 is not an impossible standard. To find this Defendant

1 guilty, you must find him guilty beyond a reasonable doubt.

2 What is a reasonable doubt? It's not all doubt. It's
3 a reasonable doubt. It's the kind of doubt that would
4 cause you to hesitate to act in the most important of your
5 own affairs. Hesitate to act. I'm not saying after you
6 hear the first witness or the second witness or the third
7 witness, I'm saying after the entire trial is over, when
8 all twelve of you go back in that jury room and you've
9 listened to all the evidence, and you've discuss with your
10 peers, that's where I'm saying if you hesitate to act you
11 must turn him free, let him leave, let him go home. But if
12 you do find him guilty beyond a reasonable doubt when y'all
13 get together back in that jury room, you must return a
14 verdict of guilty.

15 We like to say that twelve minds are better than one.
16 That's why we need twelve of you and we must have a
17 unanimous verdict in order to convict him. I hate that
18 word, it always annoys me a little bit. Beyond a
19 reasonable doubt is not an impossible doubt. Every person
20 that has ever been convicted in this country, since the
21 beginning of this country, has been found guilty beyond a
22 reasonable doubt. We have been convicting people based on
23 that standard for centuries.

24 All right. Let's talk about the structure a little
25 bit. The Judge did that some yesterday. We give our

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1 opening, the State presents evidence, the Defendant can
2 choose to present a case or not. You cannot use that
3 against him if he decides not to. Then there's closings.

4 Once in a while you'll hear an objection. That's when
5 whichever side is objecting to a piece of evidence coming
6 into evidence, when the Judge says, sustained, that means
7 it doesn't come in. When he says overruled, that means it
8 comes in.

9 Let's talk a little bit about these kinds of crimes.
10 Child sex crimes are different than most crimes. They're
11 crimes of shame, guilt, and fear. Shame that the child
12 feels, guilt that the child feels, and fear that the child
13 feels. People do not molest children in public. They
14 don't do it. It's done behind closed doors by people who
15 have access to the children. That's where these crimes
16 occur. And they're done by calculated predators who
17 specifically target their victims and choose a victim they
18 think they can get away with their actions with, and won't
19 tell.

20 I'm going to apologize right now because you're going
21 to hear things that you don't wish to hear, that you don't
22 want to hear, that you would never hope to have heard.
23 It's sometimes hard for me and Ms. Hinton to forget that
24 what we discuss on a daily basis is often never spoken of
25 in most circles. It's hard to wrap your mind around the

1 possibility of somebody being able to do this to children.
2 But we hear about it everyday. I'm going to tell you a
3 little bit about what the evidence is going to show. And
4 all the evidence, of course, will come from the witness
5 stand. But this is what the evidence is going to show.

6 Back in about August of 2003, sixteen year old Jessica
7 Whitaker, she is now called Jessica Bradshaw, met the
8 Defendant. And their relationship progressed very quickly
9 and she found out she was pregnant around September,
10 October 2003. The Defendant moved in with Jessica and her
11 family around January, February 2004. They were living in
12 a two-bedroom mobile home with Jessica's mom, stepfather
13 and her two younger brothers, Older ~~Brother~~ and Younger ~~Brother~~
14 was about ten at the time, Younger ~~Brother~~ was about eight at that
15 time. The evidence will also show that Jessica, Older ~~Brother~~
16 and Younger ~~Brother~~ had very difficult childhoods with little
17 parental supervision or guidance. The evidence will show
18 that when the Defendant moved into the house, that he got
19 along with the boys, Older ~~Brother~~ and Younger ~~Brother~~ They liked him.
20 He was their buddy. They were happy to finally be getting
21 attention from somebody because they weren't getting it
22 from anywhere else. At the time, the Defendant was
23 nineteen. Well, the evidence will also show that the
24 Defendant used that trust with the children that he built
25 up to his advantage and soon started molesting them. The

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1 evidence will show that started off as wrestling with an
2 occasional grope, turned into a game of truth or dare,
3 which quickly turned into a twisted game of truth or dare
4 where the boys would be dared to do sexual acts on each
5 other. The evidence will also show that the game of truth
6 or dare led into something else called military showers.
7 The evidence will show that these military showers included
8 the Defendant getting into the shower with Older Brother and
9 Younger and performing sexual acts with them in there. It
10 didn't stop there. The evidence will show that the
11 Defendant then brought Older Brother and Younger ten-year-old
12 friend, Minor Friend, into the mix. She was ten. And made
13 her join the game of truth or dare where the boys and Minor Friend
14 had to perform sexual acts on each other in front of the
15 Defendant for his own sexual gratification. The evidence
16 will show that this happened to Older Brother and Younger
17 frequently, because the Defendant had open access to them,
18 to both the boys, from around January of 2004, all the way
19 through December of 2006, when Jessica and the Defendant
20 broke up. The evidence will also show that Older Brother in May
21 of 2009, finally worked up the courage to explain what had
22 been happening to him, his brother and Minor Friend. And that is
23 why we are here today.

24 I encourage you to listen patiently as Older Brother
25 Younger and Minor Friend tell you what happened to them on almost

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1 a daily basis for Older and Younger I appreciate your
2 time. And I know you are sacrificing a lot to be here.
3 You have already done so yesterday and again today, but
4 thank you for your time.

5 THE COURT: Mr. Alexander, you may address the
6 jury.

7 MR. ALEXANDER: Thank you, Your Honor. Madam
8 Solicitors.

9 **OPENING STATEMENT**

10 **BY MR. ALEXANDER:**

11 I introduced myself yesterday. I'm Steven Alexander.
12 I represent Damon Tyler Brown in this matter. I want to
13 thank you for your service in advance.

14 And I agree Ms. Barwick, some of what she said. One,
15 this is not going to be an easy case to hear. These are
16 difficult cases to try as attorneys, difficult cases
17 especially for jurors, in particular, I would imagine, to
18 hear and ultimately make a decision on. And that's just
19 because of the nature of these charges, the allegations in
20 place. The Judge read the indictments to you as to what
21 Mr. Brown has been charged with. And as he stated, he's
22 pleading not guilty to these charges. Indictments don't
23 mean anything. It's simply the document that gets this
24 case to court and eventually gets it into your hand to make
25 a decision based on the evidence that you hear from that

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1 witness stand.

2 I'm going to ask you just to keep a few things in mind
3 so that we can get to what matters in this case, which is
4 the evidence to be presented to you.

5 As the State said, they have the burden of proof in
6 the case. The Defense, Mr. Brown, we don't have to prove
7 anything. They have to establish their case beyond a
8 reasonable doubt. I won't drag that out. She explained
9 that and the Judge will explain that again, I'm sure. So
10 they'll cover that bases. But just from this point
11 throughout, just keep that in the back of your mind. But
12 also keep in mind that, as Mr. Brown sits before you today
13 and throughout this trial and when you go back in the jury
14 room to deliberate, he's presumed innocent of these
15 charges. He has, as we say, a cloak of innocence around
16 him that the State has to chip away at. And they don't
17 meet their burden of proof of beyond a reasonable doubt
18 until they chip away that cloak of innocence. And just
19 keep that in mind as you hear all the evidence as we go
20 forward and wait until everything is in.

21 These cases are especially difficult because of the
22 nature of the charges. You're going to hear testimony from
23 several witnesses about disturbing things that they're
24 alleging happened to them. Disturbing things that normal
25 people don't like to talk about, even in the privacy of

1 their own home, much less, you know, in an open courtroom
2 or even hear about. So you've got to look past the nature
3 of the charges. And I know that's difficult, but I ask you
4 to do that, to just keep in mind that they still have --
5 it's the same burden of proof. They're starting at the
6 same level as this -- as if this was a burglary charge.
7 The fact that these are sexual abuse type charges, they're
8 not starting any higher. But I ask you to look past the
9 nature of those charges.

10 Now, the key factor in this case is going to be the
11 credibility of the witnesses. I anticipate this case
12 coming down to simply, to put it in simple terms, whether
13 or not you believe the State's witnesses, the complaining
14 parties in this case, whether you believe what they said
15 happened, happened to them. And in order to do that,
16 you've got to judge their credibility and you do that on
17 the various things, and the Judge will explain that some,
18 I'm sure. But in part, you base it on their demeanor, how
19 they act on the stand. But just overall circumstances of
20 the evidence that you hear. You're going to hear about
21 different statements they made at different times. Listen
22 carefully as to what they said and when they said it. When
23 they said something, when they're saying something
24 happened. I believe the evidence is going to show from the
25 State that they present that, as she stated -- I think she

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1 already mentioned the time line on this. Obviously,
2 there's great delay from when they say these things
3 happened to when they were reported, the allegations were
4 reported to law enforcement. So that's another factor that
5 you need to weigh in the credibility.

6 And there's other factors in there. You use your
7 common sense in these cases and in all criminal cases. You
8 don't leave that at the door. You bring -- and I encourage
9 you and I'm sure the Judge will encourage you that you keep
10 your common sense, your everyday experiences and your day-
11 to-day lives. Those are important things when you're
12 listening to evidence and eventually deliberating regarding
13 these charges, to keep those things in mind.

14 And, you know, as you see the State's cases -- their
15 witnesses rather, you know, you can judge credibility and
16 the strength of their case based on people that, you know,
17 maybe they haven't called, that aren't witnesses, that
18 aren't here. So overall, this is an important case. It's
19 an important case to Mr. Brown. His life is on the line
20 here, so to speak. So we certainly appreciate your
21 attention in advance and ask you to please keep all these
22 matters in mind. Thank you.

23 THE COURT: You may call your first witness,
24 Solicitor.

25 MS. HINTON: Thank you, Your Honor. The State

1 would call Older Brother

2 THE CLERK: Place your left hand on the bible and
3 raise your right hand.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give is the truth, the whole truth and
6 nothing but the truth, so help you God?

7 THE WITNESS: Yes, I do.

8 THE CLERK: Have a seat and state your name for
9 the record, please.

10 THE WITNESS: Older
Brother

11 Older Brother

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. HINTON:

15 Q. Older Brother I'm going to stand back here because there's
16 a loud air conditioning unit right here. So I'm just going
17 to make sure that these jurors can hear what you have to
18 say, okay?

19 A. Okay.

20 Q. Older Brother how old are you?

21 A. I'm nineteen years old.

22 Q. And when's your birthday?

23 A. . I was born in ' .

24 Q. Okay. And where do you currently live?

25 A. I live on -- I live in Dacusville, South Carolina.

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Older Brother - Direct Examination by Ms. Hinton

1 Q. And who do you live with?

2 A. I live with my older sister, Jessica, her husband, and
3 their three kids.

4 Q. Okay. And did you ever live at

5 A. Yes, I did.

6 Q. When did you live there?

7 A. From the time I was like five until I was about
8 thirteen or fourteen.

9 Q. And when you lived there, who did you live with?

10 A. I lived with my mother, my step-father, my sister and
11 my little brother.

12 Q. Okay. And when you say your sister, are you talking
13 about Jessica?

14 A. Yes, Jessica.

15 Q. And what's your little brother's name?

16 A. Younger Brother

17 Q. And what's your mom's name?

18 A. Kendra Durham.

19 Q. And what's your step-dad's name?

20 A. Timothy Durham.

21 Q. Okay. And who did you live with from 2003 to 2006?

22 A. I lived with my mother, my step-father, my sister, my
23 little brother and my sister's boyfriend, at the time.

24 Q. And who was that?

25 A. Tyler Brown.

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Older Brother - Direct Examination by Ms. Hinton

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- 1 Q. And was that at
- 2 A. Yes.
- 3 Q. Older Brother what was your family life like growing up?
- 4 A. It was very distant, abusive, and neglective.
- 5 Q. And when you say abusive, who was abusive?
- 6 A. My -- pretty much everybody involved in my life at
- 7 that point in time.
- 8 Q. How many brothers and sisters do you have on your
- 9 mom's side?
- 10 A. I have three brothers and one sister on my mom's side.
- 11 Q. And are Younger and Jessica included in that?
- 12 A. Yes.
- 13 Q. And how many brothers and sisters do you have on your
- 14 dad's side?
- 15 A. I have two sisters and two brothers.
- 16 Q. Are you close to any of them?
- 17 A. Yes.
- 18 Q. Who are you close to?
- 19 A. I'm really close to Younger That's like the light of
- 20 my life. That's my baby brother, you know. I'm close to
- 21 Jessica and my sister Serena, too.
- 22 Q. Okay. And when did you meet -- you know Younger as
- 23 your brother?
- 24 A. Yes.
- 25 Q. And how much younger is he than you?

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Older Brother - Direct Examination by Ms. Hinton

1 A. He's two years younger than me.

2 Q. Okay. And does Younger live with you now?

3 A. Yes -- well, no, not right -- not now.

4 Q. Did he live with you back between 2003 and 2006?

5 A. Yes.

6 Q. And do you know Minor Friend

7 A. Yes.

8 Q. How do you know Minor

9 A. Her mother is friends with my mother. We kind of grew
10 up together.

11 Q. And how long have you known Minor

12 A. Since elementary school.

13 Q. And do you know if she ever moved out of Pickens
14 County?

15 A. Yes, she did.

16 Q. And did you remain in contact with her when she was
17 gone?

18 A. No.

19 Q. When's the last time you've seen Minor Friend

20 A. It's been years ago.

21 Q. When's the last time you spoke to Minor

22 A. Years ago.

23 Q. What about Tina Upton?

24 A. Years ago. It's been a long time.

25 Q. And tell me again how you know Tyler Brown?

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Older Brother - *Direct Examination by Ms. Hinton*

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- 1 A. He was my sister's boyfriend.
- 2 Q. When did you first meet Tyler?
- 3 A. In August of '05.
- 4 Q. Okay. In August of '05 you met him?
- 5 A. Uh-huh (affirmative).
- 6 Q. Okay.
- 7 A. Well, was it '03 or -- I'm sorry.
- 8 Q. What was the circumstances surrounding the first time
- 9 you met him?
- 10 A. My sister was living at my grandmother's house, you
- 11 know.
- 12 Q. How old were you when you met him?
- 13 A. I was ten years old when I met him.
- 14 Q. Okay. And when did you say you were born?
- 15 A. In '93.
- 16 Q. Okay. So ten years later?
- 17 A. Pretty much.
- 18 Q. Okay. So would that be 2003?
- 19 A. Yes.
- 20 Q. And what was your family life like around the time you
- 21 met Tyler?
- 22 A. Still very neglective. I rarely even spoke to my
- 23 mother or my sisters or my brothers. I didn't really -- I
- 24 kind of tried to keep to myself, you know, and everybody
- 25 kept to themselves. And when we didn't, it was rather

1 abusive.

2 Q. And when you first met Tyler, what was your
3 relationship like with him?

4 A. You know, we were -- when I met him, you know, he
5 seemed really cool. You know, we became really cool
6 friends. You know, we had like inside jokes and stuff like
7 that and played around a lot.

8 Q. Okay. And you said you play around, what would y'all
9 play?

10 A. We would play like -- we would wrestle around and
11 stuff. We would play truth or dare, you know. Or we'd
12 just make up our own little pretend games and play around
13 all the time.

14 Q. Okay. In looking back on that wrestling, was there
15 anything odd about it?

16 A. He would get kind of handsy, you know, like touches
17 and grazes where, you know, where it was inappropriate, you
18 know.

19 Q. And when you say where it's inappropriate, what are
20 you talking about?

21 A. I'm referring to my private areas.

22 Q. And how often did you wrestle with Tyler?

23 A. Almost every time we hung out.

24 Q. And how often would that wrestling involve the
25 touching?

1 A. Well, it got to a point where it was every time we
2 were wrestling.

3 Q. Would Younger wrestle with Tyler too?

4 A. Yes.

5 Q. You said you played truth or dare with Tyler?

6 A. Yes.

7 Q. Do you remember the first time you played truth or
8 dare with him?

9 A. Yes.

10 Q. Okay. When was that?

11 A. I don't know. It was cold outside, is what I
12 remember.

13 Q. Do you remember how old you were?

14 A. I was ten years old.

15 Q. And where were you living at the time?

16 A. I was living on

17 Q. Okay. And is that in Pickens County?

18 A. Yes.

19 Q. And is that where y'all played the game?

20 A. Uh-huh (affirmative).

21 Q. Is that a yes?

22 A. Yes. Sorry.

23 Q. That's okay. And what was going on at the house that
24 night?

25 A. We were having a bond fire.

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Older Brother - Direct Examination by Ms. Hinton

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1 Q. And where was the bond fire at the house?

2 A. It was in the back yard.

3 Q. Okay. And Younger I'm going to put up here -- I'm
4 sorry. Older Brother I'm going to put up here what's marked as
5 State's Exhibit Number 1.

6 THE COURT: Has that been introduced?

7 MS. HINTON: I'm sorry, Judge.

8 THE COURT: Can we identify it first before we
9 publish it to the jury.

10 MS. HINTON: Yes, certainly.

11 Q. Older Brother can you tell from this what this is?

12 A. That was my residence on

13 Q. Is it a picture of it or ---

14 A. It's a -- no, it's like a diagram of it.

15 Q. Okay. Is this the best you can tell of a diagram true
16 to ---

17 A. It seems pretty scale to me.

18 Q. Okay.

19 THE COURT: Are you offering that into evidence?

20 MS. HINTON: Not yet, Judge. Would you prefer
21 that I do prior to ---

22 THE COURT: Well, is there any objection? Before
23 the jury sees it. I didn't know if was going to be a piece
24 of evidence or not. Is it demonstrative or is it ---

25 MR. ALEXANDER: I don't object to her using it

1 for demonstrative purposes at this point, Your Honor.

2 THE COURT: Okay. We'll cross that bridge about
3 admissibility later.

4 MS. HINTON: Okay. Thank you, Judge.

5 THE COURT: Okay.

6 MS. HINTON: At this time, the State's not
7 necessarily entering it.

8 THE COURT: Okay.

9 Q. Older Brother what is this area right here on State's
10 Exhibit Number 1?

11 A. That's the front porch.

12 Q. Okay. So now that we've determined that that's the
13 front porch, where was the bond fire?

14 A. It was almost directly behind it, in the back yard.
15 It was back a ways.

16 Q. Back around that area?

17 A. I would say further back than that.

18 MR. ALEXANDER: Your Honor, --

19 THE COURT: Can you see that with the light on?
20 I think we need to ---

21 MR. ALEXANDER: That's what I was going to --
22 because I can barely see it.

23 THE COURT: If you can get that one light off,
24 maybe. All right. There we go.

25 Q. Older Brother I'm going to give you this right here. It

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- 1 says laser. If you'll use that to kind of ...
- 2 A. I've just got to push the button?
- 3 Q. Uh-huh (affirmative.) So can you tell us about where
- 4 the bond fire was in relation to the house?
- 5 A. It was back here somewhere.
- 6 Q. Okay. And just to orient the jury, what room is this?
- 7 A. That is the living room.
- 8 Q. And what is that?
- 9 A. I don't know what that is actually.
- 10 Q. Okay. All right. This right here, what is that?
- 11 A. That's the back window that faces the back yard.
- 12 Q. Okay. And these are?
- 13 A. Those are the couch and the love seat.
- 14 Q. Okay. And what is that?
- 15 A. That's the TV.
- 16 Q. Okay. And do you know what that is?
- 17 A. That's a coffee table.
- 18 Q. Okay. And is that the living room?
- 19 A. Uh-huh (affirmative).
- 20 Q. Did y'all have bond fires often at the house?
- 21 A. Yes.
- 22 Q. And you said that people were at the house for the
- 23 bond fire. Who all was there?
- 24 A. It was me, my older sister, my little brother, my
- 25 aunts, Tara and Candace, and -- who did I say? I'm sorry.

- 1 Q. You said your brother ---
- 2 A. My little brother.
- 3 Q. Your younger brother, who's that?
- 4 A. Younger
- 5 Q. Your sister, who's that?
- 6 A. Jessica.
- 7 Q. And then you said Tara and Candace?
- 8 A. Yes.
- 9 Q. Anybody else?
- 10 A. And Tyler Brown.
- 11 Q. Okay. And where was Tyler living at the time?
- 12 A. He was living with us.
- 13 Q. Okay. And tell me how that first game of truth or
- 14 dare started?
- 15 A. Me and Younger and Tyler came in from the bond fire,
- 16 just to come inside, I guess. And he asked us if we wanted
- 17 to play truth or dare.
- 18 Q. And what room were you in when he asked you that?
- 19 A. We were in the living room.
- 20 Q. And did y'all want to play the game?
- 21 A. Yeah. I mean, we didn't see anything wrong with it.
- 22 Q. Okay. And were there any rules to the game?
- 23 A. He told us that, you know, whatever happens in the
- 24 game, you know, we got to keep to ourselves or the person
- 25 that told about the game would be the one blamed for all of

1 it.

2 Q. And when we say he, who are we talking about?

3 A. Tyler.

4 Q. Okay. And did Tyler ever remind you about the rules
5 of the game?

6 A. Every time we played.

7 Q. The first time that you played truth or dare, what did
8 Tyler dare you to do?

9 A. He dared me and Younger to compare the sizes of our
10 penises.

11 Q. Okay. Did you have your clothes on or off?

12 A. We removed our pants and our underwear.

13 Q. Okay. And what did he use to measure the size of your
14 penises?

15 A. After they became erect, he used his fingers to, along
16 the sides of them, to measure how long they were.

17 Q. And how did your penises become erect?

18 A. He asked us to play with them until they were erect.

19 Q. And when he measured them with his fingers, did he
20 touch your penis?

21 A. Yes.

22 Q. Do you know if Tyler had an erection that night?

23 A. Yes, he did.

24 Q. How do you know that?

25 A. He flashed us.

1 Q. Did anyone come into the house while that was
2 happening?

3 A. No.

4 Q. And aside from the measuring, did Tyler touch you at
5 all that night otherwise?

6 A. No.

7 Q. What about Younger

8 A. Uh-uh (negative).

9 Q. How was Tyler acting when y'all were playing this
10 first game of truth or dare?

11 A. Fidgety, kind of like looking around and stuff, you
12 know, peeking out the window, and stuff like that.

13 Q. Okay. And when you say that he was peeking out the
14 window, which window are you talking about? Can you use
15 the laser pointer?

16 A. That big window back there.

17 Q. You said it was a big window?

18 A. Yes.

19 Q. And could you see outside of that window?

20 A. You could see outside, but you couldn't see in. We
21 had the blinds turned to where like the curvy part was
22 facing inward.

23 Q. Okay. Did Tyler say anything to you while y'all were
24 playing truth or dare this first time?

25 A. No.

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- 1 Q Did anything else happen that night?
- 2 A. Uh-uh (negative).
- 3 Q. And how old were you when that happened?
- 4 A. I was ten years old.
- 5 Q. And how old was Younger
- 6 A. He was eight.
- 7 Q. And when you first played truth or dare with Tyler,
- 8 did you think that there was anything wrong with what you
- 9 were doing?
- 10 A. No. I mean, you know, I thought it was like one of
- 11 those weird games like, you know, spin the bottle. I
- 12 thought it innocently, I guess.
- 13 Q. Okay. And after that first incident, how often did
- 14 this abuse happen with Tyler?
- 15 A. Almost every time we hung out, we would play truth or
- 16 dare, when we got a minute alone, you know.
- 17 Q. And how often did y'all hang out?
- 18 A. Almost every day.
- 19 Q. Did the abuse ever get worse?
- 20 A. Yes.
- 21 Q. Did Tyler ever do anything to entice you to continue
- 22 playing with him?
- 23 A. We had this, like, ranking system where we would, you
- 24 know, if we did something good, you know, we would go up a
- 25 rank, get a new nickname, play new games. And if we did

1 something that he didn't like, we would go down a rank.

2 Q. Okay. And when you would go up a rank, what did that
3 mean?

4 A. We would, I guess, -- you know, he would treat us
5 better. He would play with us nicer and stuff like that.
6 We would get to do, you know, more grownup privileges.

7 And, you know, we would get new nicknames like mine was
8 Older Brother . And Younger was Titanium Younger

9 Q. Okay. And what would cause you to go up in rank?

10 A. If we did something, you know, I guess that pleased
11 him, as long as, you know -- I guess as long as we kind of
12 just went along with everything. Like, you know, if we
13 would steal from the store or do sexual stuff without
14 crying or, you know, saying no.

15 Q. What would cause you to go down in rank?

16 A. If, you know, we cried or refused to do something or,
17 you know, if we didn't beat each other up.

18 Q. And when you say beat each other up, who are you
19 talking about?

20 A. Me and Younger Tyler would ask us to beat each other
21 up often. He would get us to fight each other.

22 Q. And these times when you were hanging out with Tyler,
23 other than Younger was anyone else around?

24 A. There was -- at one point Minor was around us.

25 Q. But aside from that, what about your family?

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1 A. I mean, you know, I guess they were there sometimes,
2 but it was like they weren't -- they might as well not have
3 been.

4 Q. Now, we've talked about the living room. Did he ever
5 abuse you in any room of the trailer, other than the living
6 room?

7 A. Yes. Mine and Younger bedroom and the bathroom.

8 Q. Okay. Can you point out on that sketch where the
9 bedroom is, of -- your and Younger bedroom?

10 A. That room is the bedroom and that is the bathroom.

11 Q. Okay. All right. And let's talk about the bathroom
12 first. What would happen in the bathroom?

13 A. We would take what he called military showers.

14 Q. Okay. And who would call them military showers?

15 A. Tyler.

16 Q. And what did Tyler say a military shower was?

17 A. He said it was like a common ---

18 MR. ALEXANDER: Objection, Your Honor. That's
19 hearsay.

20 MS. HINTON: Your Honor, it's a statement of the
21 Defendant.

22 THE COURT: As far as what the Defendant would
23 say? I'll allow that. Overruled.

24 A. He said a military shower was -- he said it was
25 something very common in the Army, you know. They would,

1 you know, shower together really quick, you know. Usually,
2 it took sixty seconds. They would, you know, help each
3 other wash and then they would hop out.

4 Q. Okay. Did you ever take a military shower with Tyler?

5 A. Yes.

6 Q. And when you did, what was a military shower?

7 A. Completely different than what he said it was. It
8 often involved him touching me and penetrating me.

9 Q. Okay. Do you remember the first time you had a
10 military shower with Tyler?

11 A. Yes.

12 Q. How old were you?

13 A. I was ten years old.

14 Q. And who was in the house during that shower?

15 A. As far as I can remember, just me and my baby brother.

16 Q. Your baby brother, you mean Younger

17 A. Yeah.

18 Q. What led up to you and Tyler taking that first
19 military shower?

20 A. He asked me if I wanted to try marijuana. And, I
21 mean, you know, that was one of the grownup privileges, I
22 guess, you know. And so, of course, I said, yeah. And we,
23 we smoked some marijuana and he offered me some alcohol.
24 And I think it was vodka. I'm not sure.

25 Q. Okay. And after -- was that before the military

1 shower?

2 A. Yes.

3 Q. Okay. So after y'all did that, how did Tyler initiate
4 the military shower?

5 A. He walked with me down the hallway and when we got in
6 the bathroom, he helped me undress myself and I helped him
7 remove his shorts. They were blue and had white paint
8 speckled on them and I think some gray paint. I'm not
9 sure.

10 Q. And so were y'all naked at that time?

11 A. Yes.

12 Q. Okay. And did you get in the shower with Tyler?

13 A. Yes.

14 Q. And what happened once you were in the shower?

15 A. You know, I washed his back and stuff and he washed my
16 hair and my back. And ---

17 Q. What happened after he washed your back?

18 A. He pressed his face into the back of my neck and began
19 kissing the back of my neck. And then reached around and
20 started playing with my penis until it became erect.

21 Q. Was Tyler erect at that time?

22 A. Yes.

23 Q. Was there anything that you noticed about his penis?

24 A. It had a curve to it.

25 Q. Once you were both erect, what did he do?

1 A. He, he got me to perform oral sex on him. And then
2 proceeded to do oral sex on me.

3 Q. Okay. And did he say anything to you during the oral
4 sex?

5 A. He said I was doing good.

6 Q. And did anything come out of his penis?

7 A. He ejaculated in my mouth.

8 Q. Did anything come out of your penis?

9 A. No.

10 Q. And why was that?

11 A. I was only ten. I hadn't hit puberty yet.

12 Q. After the oral sex, did anything else happen in the
13 shower?

14 A. Yes. He grabbed the bottle of conditioner and
15 lubricated his fingers and began to penetrate me with his
16 fingers.

17 Q. Where did he penetrate you?

18 A. My anus.

19 Q. Okay. And did anything else happen after he
20 penetrated you with his finger?

21 A. Yes. He then lubricated his penis with the
22 conditioner and began to penetrate me with that, as well.

23 Q. After -- was he in front of you or behind you when
24 this was going on?

25 A. He was behind me.

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1 Q. Did you say anything, did you say anything at that
2 point?

3 A. No.

4 Q. Did he say anything to you once he penetrated you?

5 A. He told me I whimpered too much and referred to me as
6 tight.

7 Q. Did you know what that meant?

8 A. No.

9 Q. After this first military shower, how often did y'all
10 take military showers?

11 A. Really often. Like -- I wouldn't say every day, but
12 mostly -- mainly like one or two times a week I would say.

13 Q. And how often would he penetrate you in the showers?

14 A. Almost every time.

15 Q. And are we talking about just anally or did he --
16 would he also do oral sex?

17 A. Both.

18 Q. Were the military showers painful?

19 A. Yes.

20 Q. Did you ever say anything during the military showers?

21 A. I would occasionally ask him to stop, or I would say,
22 no.

23 Q. Did you notice anything different about your body
24 immediately after those showers?

25 A. I had some tearing and I bled a lot.

1 Q. Did you go to the doctor about your bleeding?

2 A. No.

3 Q. Did you try to do anything yourself to help the
4 bleeding?

5 A. I once tried to clean it up with alcohol, rubbing
6 alcohol.

7 Q. How did that feel?

8 A. Extremely painful.

9 Q. Did you ever see Younger have to take a military
10 shower with Tyler?

11 A. Yes.

12 Q. Did y'all ever take them at the same time?

13 A. No.

14 Q. Did he ever talk about the ranking system with the
15 shower?

16 A. The ranking system tied into everything.

17 Q. Were there ever times that he made you feel
18 uncomfortable in the shower when you weren't in there with
19 him?

20 A. Yes.

21 Q. What would he do?

22 A. There was a hole between the shower wall and my
23 bedroom.

24 Q. Can you point out on that diagram where that hole was,
25 roughly?

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1 A. It was right in there. That used to be a closet area.

2 But, you know, the doors were removed and stuff like that.

3 And the -- I'm sorry. It was right in there.

4 Q. Okay. And so you were saying that there was a hole?

5 A. And we would often watch each other shower.

6 Q. Okay. Did you know that he was watching you?

7 A. Yes.

8 Q. And you said we would often watch each other shower.

9 Did you watch him shower?

10 A. Yes.

11 Q. And is him Tyler?

12 A. Yes.

13 Q. And how -- did he know that you were watching him?

14 A. Yes.

15 Q. How do you know that he knew?

16 A. Because he would look at me through the hole and he
17 would say stuff. I can't think of what he would say, but
18 then he would begin masturbating.

19 Q. All right. You also said that he had abused you in
20 yours and Younger bedroom?

21 A. Yes.

22 Q. How was that bedroom set up?

23 A. Should I use this?

24 Q. That'll be fine.

25 A. That was our bunk bed and that was the dresser. I

1 don't know what that is.

2 Q. Okay. And that little room off of the bedroom, what
3 is that?

4 A. This one? Oh, this is the laundry room. You could
5 only access it through the hallway.

6 Q. You slept -- initially, who slept on the top bunk and
7 who slept on the bottom bunk?

8 A. Initially, I slept on the top bunk and my little
9 brother slept on the bottom bunk.

10 Q. And your little brother's Younger

11 A. Yes.

12 Q. And when Tyler would abuse you in that bedroom, was it
13 during the day or at night?

14 A. It was at night.

15 Q. And when Tyler lived at your house, where would he
16 sleep?

17 A. Should I use this? Okay. This was the fold-out couch
18 that had a mattress on it. And that's where him and my
19 sister would sleep.

20 Q. Okay. Do you remember the first time you saw him come
21 into y'all's bedroom at night?

22 A. Yes.

23 Q. Okay. And where were you sleeping?

24 A. I was sleeping on the top bunk.

25 Q. And who was sleeping on bottom bunk?

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- 1 A. And Younger was on bottom.
- 2 Q. Did he come in there for you or Younger
- 3 A. Younger
- 4 Q. Did you see what he was doing with Younger that night?
- 5 A. Not a lot of it, but I saw his hands underneath the
- 6 covers, around Younger privates.
- 7 Q. Did you see anything else happen?
- 8 A. No.
- 9 Q. Did he ever come in the bedroom at night for you?
- 10 A. Yes. After I switched bunks with my little brother.
- 11 Q. When did you switch bunks with Younger
- 12 A. After I saw him come in for the first time.
- 13 Q. And why did you switch with him?
- 14 A. It made me uneasy knowing that Younger was on bottom
- 15 bunk and that was happening. So I told him that, you know,
- 16 I told him I was going to squish him if I stayed him on top
- 17 bunk, and I got him to switch with me.
- 18 Q. Did Tyler ever abuse you at night when you were on the
- 19 top bunk?
- 20 A. No.
- 21 Q. Did he ever abuse Younger at night that you saw when
- 22 Younger was on top bunk?
- 23 A. No.
- 24 Q. When he would come in there at night for you, what
- 25 would happen?

1 A. It started out as just fondling underneath the covers
2 and stuff like that. Occasionally, I would pretend to be
3 asleep. And it eventually changed into oral sex occurring.

4 Q. Okay. Would he perform oral sex on you?

5 A. Both. Both of us.

6 Q. Would he say anything when he was in bed with you?

7 A. Uh-uh (negative). I mean, occasionally he'd be like,
8 shhhh or something because I'd get giggly.

9 Q. When you saw him come in to your bedroom, how would he
10 act?

11 A. He would tiptoe through the room. We had a very messy
12 room and he would tiptoe through it, when he would usually
13 just trudge through it.

14 Q. Okay. When you saw him coming in at night into your
15 bedroom, how did that make you feel?

16 A. A little uneasy. But in all honesty, I kind of feel
17 like at that point in time, it was something that I wanted.

18 Q. How old were you when this was happening?

19 A. I was about ten years old.

20 Q. Did he ever abuse you outside of the trailer?

21 A. Yes.

22 Q. I'm going to show you what's been marked as State's
23 Exhibit Number 2. Can you tell me what that's a picture
24 of?

25 A. That's the trailer on

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1 Q. Okay. And what angle is that?

2 A. It's from the side of the house.

3 Q. And is that what the trailer looks like -- looked like
4 when you lived in it?

5 A. No. It's been stripped of all the metal.

6 Q. Okay. And this area back here, what is that?

7 A. That's the wood line, that's the woods.

8 MS. HINTON: Your Honor, at this time, the State
9 would like to move State's Exhibit Number 2 into evidence
10 and publish it for the jury.

11 THE COURT: Any objection?

12 MR. ALEXANDER: Just what we stated previously
13 for purposes of showing the distance between the trailer
14 and wood line would be my only objection, since the
15 trailer's not in the condition it was.

16 THE COURT: Okay. Objection is overruled. I
17 will allow it in.

18 (WHEREUPON, State Exhibit Number 2 was admitted into
19 evidence.)

20 Q. Now, Older Brother you said that the trailer is not in the
21 same condition. Is it in the same location?

22 A. Yes.

23 Q. All right. When he would -- I think I asked you, did
24 he ever abuse you outside the trailer?

25 A. Yes.

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- 1 Q. Okay. Where would he abuse you?
- 2 A. In the woods.
- 3 Q. Okay. Can you point to the woods?
- 4 A. There.
- 5 Q. And are there any instances in particular that you
- 6 remember about him abusing him outside of the trailer?
- 7 A. We would often go on hikes, me, him and my little
- 8 brother. We would just go to the woods.
- 9 Q. And what would happen on your hikes?
- 10 A. They were -- I don't know what they're called. They
- 11 looked like porches in trees, I don't know. But we would
- 12 go up there and he would touch us.
- 13 Q. Would he touch you over your clothes or under your
- 14 clothes?
- 15 A. He would reach into our clothes.
- 16 Q. And what part of you would he touch?
- 17 A. Our penises.
- 18 Q. And you said our, who are you talking about?
- 19 A. Me and Younger
- 20 Q. And who would touch you?
- 21 A. Tyler.
- 22 Q. Would Tyler make you touch him?
- 23 A. Yes.
- 24 Q. Are there any other instances outside the trailer that
- 25 you remember?

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1 A. One Christmas we got, me and Younger got tents. And
2 we went camping out there.

3 Q. Okay. Do you remember what Christmas that was?

4 A. It was Christmas of '04.

5 Q. So did you go camping before or after Christmas?

6 A. After.

7 Q. And you said y'all got tents for Christmas?

8 A. Uh-huh (affirmative).

9 Q. Did y'all take those tents into the woods?

10 A. Well, we didn't take them into the woods. We took
11 them to the wood line.

12 Q. Okay. And who is we?

13 A. Me, Younger and Tyler.

14 Q. How many tents did y'all have?

15 A. Two.

16 Q. And did y'all set those tents up?

17 A. Yes.

18 Q. And how many people could the tents hold?

19 A. They were supposed to be one person to each tent.

20 Q. And who was sleeping where?

21 A. Of course, I was in my tent and Younger was supposed
22 to be in his tent. And Tyler hadn't really decided, I
23 don't think, where he was going to sleep.

24 Q. Did Tyler come into your tent?

25 A. Yes.

1 Q. And when he came into your tent, what happened?

2 A. We kind of just talked and joked around, you know,
3 like we usually did.

4 Q. And did you ever see Tyler go into Younger tent?

5 A. Yeah.

6 Q. And did he say anything to you before he went into
7 Younger tent?

8 A. No, he didn't. He didn't say anything to me before he
9 went into his tent. He kind of just, I don't know ...

10 Q. What was his demeanor like when he went into Younger
11 tent?

12 A. He looked kind of like a chetah going after a gazelle.

13 MR. ALEXANDER: Your Honor, I object to that
14 characterization.

15 THE COURT: I overrule your objection.

16 Q. Did you see anything that happened in Younger tent
17 that night?

18 A. No.

19 Q. Did y'all stay out there and camp that night?

20 A. No. We wound up going back inside. It was too cold.

21 Q. Okay. Did Tyler ever make you and Younger aside from
22 compare penis sizes, did he ever make y'all do anything
23 else to each other?

24 A. Yes.

25 Q. What would he make you do?

1 A. He had us perform oral sex on each other and he would
2 make us play with each other.

3 Q. How old were y'all when that was happening?

4 A. I was, you know, from the ages of ten to eleven, I
5 think. And Younger was eight to nine.

6 Q. Did you know what you were doing?

7 A. No.

8 Q. Did you know how to do it?

9 A. No. He showed us.

10 Q. When you say he showed you, what do you mean?

11 A. He kind of talked us through it and positioned us.

12 Q. Did you ever witness Tyler do anything else to

13 Younger

14 A. Yes.

15 Q. What did you see?

16 A. He had Younger play with him and he would play with
17 Younger penis, as well.

18 Q. Aside from Younger did you ever see Tyler sexually
19 abuse anyone else?

20 A. Yes.

21 Q. And who was that?

22 A. Minor Friend

23 Q. And how old were you when that happened?

24 A. I was ten.

25 Q. And where would he abuse Minor

- 1 A. In the living room.
- 2 Q. In the living room of that trailer?
- 3 A. Yes.
- 4 Q. On
- 5 A. Yes.
- 6 Q. And why was Minor at your house?
- 7 A. Her mom and my mom are good friends and my mother
- 8 would babysit her, and my sister babysat her for a while.
- 9 Q. Okay. When Minor would come over to be babysat by
- 10 your mom, would your mom actually babysit her?
- 11 A. No.
- 12 Q. Where was your mom?
- 13 A. She was in the back bedroom with my step-father where
- 14 she was always at.
- 15 Q. Okay. Was Jessica home all of the time during that
- 16 time period?
- 17 A. No. She was working at House of Pizza, I think.
- 18 Q. How long did Minor come over to your house to be
- 19 babysat?
- 20 A. For a short time, really. It was a month, two, three,
- 21 maybe.
- 22 Q. Prior to you seeing Minor be sexually abused by Tyler,
- 23 would Minor ever come over after you had been sexually
- 24 abused?
- 25 A. Yes.

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- 1 Q. Would you ever say anything to her about it?
- 2 A. No. But I wanted to.
- 3 Q. And you said you saw Tyler sexually abuse Minor in the
- 4 living room?
- 5 A. Yes.
- 6 Q. Who else was there when it happened?
- 7 A. Younger
- 8 Q. Anybody else?
- 9 A. No.
- 10 Q. Did Minor ever play truth or dare with y'all?
- 11 A. Yes.
- 12 Q. And tell me, were you and Younger playing truth or
- 13 dare also?
- 14 A. Yes.
- 15 Q. And how did the game of truth of dare with the three
- 16 of y'all begin?
- 17 A. It started out like a normal game of it, you know. He
- 18 would have us kiss each other and rub on each other.
- 19 Q. And when you say each other, who ---
- 20 A. Between me, him, Younger and Minor
- 21 Q. Were y'all all touching each other?
- 22 A. Yes.
- 23 Q. Anything else happen?
- 24 A. Yes.
- 25 Q. What else?

- 1 A. He had Younger penetrate her.
- 2 Q. Penetrate who?
- 3 A. Minor
- 4 Q. How did that happen?
- 5 A. We were playing the game of truth or dare and he said
- 6 he dared Younger to F her in the ass.
- 7 Q. Okay. And her is?
- 8 A. Minor
- 9 Q. And where did that happen?
- 10 A. In the bathroom.
- 11 Q. I'm going to put back up State's Exhibit Number 1.
- 12 Can you point out the bathroom one more time?
- 13 A. It's right there.
- 14 Q. And how did they get to the bathroom from the living
- 15 room?
- 16 A. Tyler walked with them down the hall and they told me
- 17 to stay in there. But when they got into the bathroom,
- 18 they left the door open and I stood behind the door and
- 19 watched what happened.
- 20 Q. And what did you see happen in the bathroom?
- 21 A. He grabbed the lotion off the back of the toilet.
- 22 Q. Who is he?
- 23 A. Tyler. And Younger back was facing towards the door
- 24 and Minor was in front of him. And Tyler was kind of
- 25 walking around them, helping Younger angle his penis.

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- 1 Q. Did Tyler touch Younger penis to do that?
- 2 A. Yes.
- 3 Q. And angle it to do what?
- 4 A. To insert into Minor .
- 5 Q. Where?
- 6 A. In her butt.
- 7 Q. Did anything else happen in that bathroom?
- 8 A. Nothing other than what I've already said.
- 9 Q. Did you -- could you actually see Younger penetrate
- 10 Minor a's butt?
- 11 A. Yes.
- 12 Q. Anything else happen during that truth or dare game?
- 13 A. Yes.
- 14 Q. What else happened?
- 15 A. He dared me and Minor to dry hump each other on the
- 16 couch.
- 17 Q. Was that back in the living room?
- 18 A. Yes. Do you want me to point out the couch?
- 19 Q. That's fine.
- 20 A. It was that one.
- 21 Q. Okay. And when you were dry humping Minor ---
- 22 A. Yes.
- 23 Q. What does that mean?
- 24 A. We were still in our clothes. I mean, we were in our
- 25 underwear and we basically just laid on top of each other

1 and pelvic thrusts.

2 Q. Okay. And what was Tyler doing while y'all were doing
3 that?

4 A. He was touching on Minor, grabbing her breasts and
5 running his hands all over the rest of her and kissing on
6 her.

7 Q. Was Tyler say anything to y'all while the truth or
8 dare game was going on that day?

9 A. No. I mean, we were all just laughing and cutting up
10 about it. I mean, we just thought it was a game.

11 Q. Did Tyler ever threaten y'all during that game?

12 A. Yes. When he initially asked them to do that ---

13 Q. What's that?

14 A. For Younger to penetrate Minor, they said no, that
15 they were uncomfortable about it. And he told us we would
16 get in trouble if we didn't.

17 Q. Okay. Would he tell you -- is that the only time he
18 ever told you you would get in trouble?

19 A. No.

20 Q. How often would he tell you that?

21 A. Every time we played a game.

22 Q. When Minor was there and this game was going on, where
23 was Jessica?

24 A. Jessica was pregnant at the time and she was also
25 working. So I'm guessing that she was either at work or

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- 1 she was sleeping at home.
- 2 Q. Was sleeping something she did regularly?
- 3 A. Yes. Her and Tylenol P.M. were best friends.
- 4 Q. And who was she pregnant by?
- 5 A. Tyler.
- 6 Q. And was she pregnant with her first child, her second
- 7 or third?
- 8 A. Her first child, J.B.
- 9 Q. Older Brother do you remember the last time you were abused
- 10 by Tyler?
- 11 A. Yes.
- 12 Q. And where were you when that happened?
- 13 A.
- 14 Q. And is that in Pickens County?
- 15 A. Yes.
- 16 Q. And who was living there?
- 17 A. Me and my mother and my sister and my sister's two
- 18 kids.
- 19 Q. So by that time, she had more than one?
- 20 A. Yes.
- 21 Q. And do you remember when that was?
- 22 A. It was Christmas. It was Christmas Day.
- 23 Q. Do you remember what year?
- 24 A. No, I'm not sure.
- 25 Q. And where were you when Tyler abused you that last

1 time?

2 A. When he came over, I was already in the middle of
3 playing this game where I was like a time traveler or
4 something. And I was gone to the woods -- well, not the
5 woods. I wouldn't say the woods. It was just really thick
6 bamboo. And I was playing around the shed and he came out
7 to the shed and played with me, played the game with me.

8 Q. Okay. And what happened in the shed?

9 A. He stuck his hand down into my pants and I quickly
10 said, no, and I ran off.

11 Q. Did anything else happen that day?

12 A. No.

13 Q. And why do you remember that day as being the last
14 time you were abused by Tyler?

15 A. Him and my sister had gotten into a really big
16 argument and the cops were called.

17 Q. Was that the last time that Tyler was around you and
18 your family in a family environment?

19 A. Yes.

20 Q. Aside from that -- have you seen Tyler out in public
21 since then?

22 A. Out in public? Yes.

23 Q. But aside from that Christmas Day, have you spent any
24 time with him?

25 A. No.

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1 Q. Why didn't you ever tell anybody what was happening to
2 you?

3 A. I was scared and embarrassed. I thought I was going
4 to get in trouble for it.

5 Q. Why did you think you were going to get in trouble?

6 A. He really drilled it into our heads that if we said
7 anything we would be the ones held accountable for it.

8 Q. Who's he?

9 A. Tyler.

10 Q. And how long did this go on? How old were you when
11 all of this was happening?

12 A. From the ages of ten until I was twelve.

13 Q. Were you twelve the last time you were abused?

14 A. Yes.

15 Q. When you first told, who did you tell?

16 A. I told Officer Ticknor at Liberty High School. He was
17 the School Resource Officer.

18 Q. And why did you tell Officer Ticknor what happened?

19 A. I bumped into this girl on the bus and we got talking
20 and it just -- I realized that I had to do it. It was
21 time.

22 Q. And why did you feel comfortable talking to Officer
23 Ticknor?

24 A. We spent a lot of time together. We hung out often.
25 I was in Police Explorers and I stayed after school every

1 single day.

2 Q. What's Police Explorers?

3 A. It's where we were training to be police officers.

4 We got to run around with pellet guns and shoot each other
5 and stuff. It was cool.

6 Q. Okay. How old were you when you finally told Officer
7 Ticknor?

8 A. I was fifteen years old.

9 Q. And when Tyler was abusing you during this time
10 period, did he make you feel like what you were doing was
11 bad?

12 A. No.

13 Q. How did he make it sound?

14 A. It was just like a, I guess, a grownup thing. It was
15 a privilege.

16 Q. Did he let you do any other grownup things during that
17 time?

18 A. Yes. You know, we would smoke marijuana with him and
19 stuff like that, cigarettes. He would get us to go steal
20 and all kinds of stuff.

21 Q. Did any of those grownup things turn sexual?

22 A. Yes.

23 Q. What happened?

24 A. He told us that when we took the candy from J.R.'s
25 down the road, to stuff it in our underwear. And when we'd

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1 get back he wouldn't get us to hand it to him, he would
2 reach in and grab it.

3 Q. And how often did that happen?

4 A. We were going up to J.R.'s to steal, at the very
5 least, once a week.

6 Q. And during this time period was Tyler ever physically
7 abusive to you?

8 A. Yes.

9 Q. And do you remember any of those times?

10 A. You know, if we were, if we were whinny or, you know,
11 refused to do anything, he would hit us. And if we would
12 refuse to fight each other, he would beat us both up.

13 Q. And us being?

14 A. Me and Younger

15 Q. Do you remember any other specific times of him being
16 abusive towards you?

17 A. On occasion I was asking him if, you know, we could
18 get somebody else to play our games and he told me that I
19 wasn't supposed to be talking about it and he punched me.

20 Q. Okay. And what games were you talking about?

21 A. Truth or dare and -- I mean, we played, we played lots
22 of other games. I just -- the names of them aren't coming
23 to me.

24 Q. All right. And when you told Officer Ticker about you
25 being abused, did you tell him about anyone else?

1 A. Yes. I briefly mentioned Younger and Minor

2 Q. Why didn't you go into detail about Younger and Minor
3 when you talked to Officer Ticknor?

4 A. I felt like it would upset them. I felt like they
5 would hate me or be mad at me.

6 Q. And they being?

7 A. Younger and Minor, and pretty much everybody.

8 Q. When all of this abuse was going on, how did it make
9 you feel?

10 A. Like all the things he told me I was, like a faggot
11 and a fairy and a poo nanny.

12 Q. Aside from Tyler did anyone else call you those names?

13 A. Yes. My step-father.

14 Q. Was Tyler around when your step-father would call you
15 those names?

16 A. Yes.

17 Q. Now that you've told someone, how do you feel?

18 A. Almost relieved.

19 Q. Older Brother that's all I have right now. Answer any
20 questions that Mr. Alexander may have.

21 A. Can I get some water, please?

22 Q. Yes.

23 THE COURT: Mr. Alexander, you may cross-examine
24 the witness.

25 MR. ALEXANDER: Thank you, Your Honor.

1 **CROSS-EXAMINATION**

2 **BY MR. ALEXANDER:**

3 Q. Older Brother let's start -- let's go back a little bit.

4 Let's talk about -- make sure I've got this time line of

5 what you're saying happened. You're saying that the first

6 incident occurred when it was cold outside and you were ten

7 years old; correct?

8 A. Yes. I had just turned ten.

9 Q. Okay. And you turned ten September 6, 2003. Is that
10 correct?

11 A. Yes.

12 Q. Okay. So it would have been sometime that winter?

13 A. I mean, as far as around my birthday, I'm not sure.

14 Q. All right. And then you reported these allegations to

15 Officer Ticknor and eventually talked with Detective

16 Culbreath. Is that right?

17 A. Yes.

18 Q. And that was in May of 2009?

19 A. Yes.

20 Q. After May of 2009, did you talk with Detective

21 Culbreath or any other police officers about these

22 allegations after that?

23 A. No. I mainly just talked to my Solicitor, Pete Them,

24 at the time.

25 Q. Okay. Pete Them, the former Solicitor in the case?

- 1 A. (Affirmative nod.)
- 2 Q. Is that a yes?
- 3 A. Yes.
- 4 Q. So after you talked with Detective Culbreath, you
- 5 talked with your sister, Jessica. Is that what you said?
- 6 A. My sister, I didn't ---
- 7 Q. I'm not trying to put words in your mouth. I'm just
- 8 ---
- 9 A. I didn't let my sister read my statement for a while.
- 10 Q. Okay. Well, let's go back. All right. So you
- 11 actually gave a written statement to ---
- 12 A. Yes.
- 13 Q. --- I believe it might have been Deputy Swofford?
- 14 A. No.
- 15 Q. No?
- 16 A. That was Officer Ticknor.
- 17 Q. Okay.
- 18 A. I sat in his office at the high school and wrote it.
- 19 Q. Okay. And then you talked verbally, a few days later,
- 20 with Detective Culbreath. Is that right?
- 21 A. No. It actually took a minute before anybody even
- 22 contacted us. After I wrote the statement, it was almost a
- 23 year before I really heard from anybody.
- 24 Q. Okay. So you didn't talk with Detective Culbreath at
- 25 all at the school?

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1 A. Not at the school.

2 Q. All right. So you only talked with Officer Ticknor?

3 A. Yes.

4 Q. Okay. So when was it that you talked with Detective
5 Culbreath next, or for the first time?

6 A. I don't remember like the day or nothing like that.
7 But it was a significant amount of time later.

8 Q. You think it was about a year later?

9 A. Yeah.

10 Q. Okay. All right. So after that -- other than that,
11 did you talk to anybody else about these allegations?

12 A. Uh-uh (negative).

13 Q. Nobody?

14 A. No.

15 Q. You've got to verbally answer?

16 A. Oh, I'm sorry. No.

17 Q. Okay. You said something about your sister. Did you
18 eventually talk to your sister about the allegations?

19 A. Yes. I waited until like the ball got rolling, I
20 guess you could say, before I really even mentioned much to
21 my mother or anybody.

22 MR. ALEXANDER: One moment, Your Honor.

23 Q. Are you sure you didn't speak with Detective Culbreath
24 after you talked with Officer Ticknor at the school, where
25 you told him that it started in May of 2004? Do you

1 remember telling Detective Culbreath that?

2 A. No.

3 Q. Okay. Saying that you knew when it happened because
4 it was just before your sister's baby was born in June?

5 You don't remember saying that?

6 A. I don't remember that.

7 Q. Okay. All right. Okay. So you're saying you lived
8 at this whole time. Is that right?

9 A. No. From the time I was five until I was about
10 thirteen, fourteen, somewhere in there.

11 Q. That was a badly phrased question. That time period
12 is what I was referring to?

13 A. Oh, yes.

14 Q. Okay. All right. So you testified earlier that the
15 first incident, when it was cold outside, involved you and
16 Younger in the living room ---

17 A. Yes.

18 Q. --- of right?

19 A. Yes.

20 Q. And y'all were having a bond fire outside?

21 A. Yes.

22 Q. Okay. And that Tyler took you and Younger in the
23 house. And you're saying he did these things to you in the
24 living room?

25 A. Yes.

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1 Q. And your sister and cousins were outside?

2 A. Aunts, yes.

3 Q. Aunts, I apologize. Tara and Candace were your aunts?
4 They're around your age, though; is that right?

5 A. Candace is. Tara passed away recently.

6 Q. And they were outside this big window you said ---

7 A. Yes.

8 Q. --- and the bond fire is right there?

9 A. Yes.

10 Q. All right.. And then after that you said that this
11 would almost occur daily. Is that what you said?

12 A. Well, yeah. We would play truth or dare every time we
13 would be around each other, I guess.

14 Q. All right. Now, when did you -- you mention these
15 military showers. And you said the first time it happened
16 you were about ten years old?

17 A. Yes. I was ten.

18 Q. I mean, if you're saying the first incident happened,
19 the bond fire incident, toward the end of 2003. Is that
20 right?

21 A. I'm not quite sure. I mean ---

22 Q. You said it was after you turned ten, which was in --
23 the end of 2003; right?

24 A. Yes.

25 Q. So how long after that alleged bond fire incident are

- 1 you saying that this first military shower occurred?
- 2 A. I don't know for sure.
- 3 Q. Okay. Was it before your next birthday?
- 4 A. Yes.
- 5 Q. But you're not sure?
- 6 A. Oh, I'm sure it is. It was.
- 7 Q. Okay. So you're saying you're sure it was before your
8 eleventh birthday?
- 9 A. Yes.
- 10 Q. All right. So at -- I think you said this
11 already, but your mom, Kendra Durham, and her -- is it her
12 husband, Timothy Durham? Were they married?
- 13 A. I don't know if they were married at the time.
- 14 Q. Okay. And her, at least, boyfriend, common law
15 husband?
- 16 A. Pretty much my step-dad, yes.
- 17 Q. They lived there. And they didn't have any kids
18 together; did they?
- 19 A. No.
- 20 Q. Okay. You and your brother, Younger lived there?
- 21 A. Yes.
- 22 Q. And Jessica and Mr. Brown lived there, Tyler lived
23 there?
- 24 A. Yes. What year are we talking about?
- 25 Q. I'm talking about -- I'm referring to the time period

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1 that you're saying that these allegations happened?

2 A. I mean, they weren't constantly living there. I mean,
3 they moved out a couple of times, were bouncing around from
4 house to house. But the majority of the time they would
5 come crash on the couch.

6 Q. Isn't it true that you and your mom would go to
7 different houses, as well, too? You didn't constantly live
8 at did you?

9 A. No. We were very poor. So sometimes we would live on
10 with my grandmother, but it would be for very
11 short periods of time. Just until, you know, the next
12 paycheck came and we could afford, you know, the power
13 bill.

14 Q. And who owned the property? Who owned
15 that trailer and land? Do you know?

16 A. I think it's my great grandmother, but I'm not sure.

17 Q. It's some family member of your mother's?

18 A. Yes.

19 Q. And pretty much y'all just had to pay the power bill
20 and water bill?

21 A. Uh-huh (affirmative).

22 Q. Is that a yes?

23 A. Yes.

24 Q. All right. Do you remember giving -- I think you've
25 already said, a written statement to -- you said you gave

1 it to Michael, Officer Michael Ticknor. Is that right?

2 A. Yes.

3 Q. I'm going to show you a document and tell me if you
4 recognize it?

5 A. Yes. This is my statement.

6 Q. And you wrote that statement?

7 A. Yes.

8 Q. Okay. And you wrote that on May 1st, 2009?

9 A. Yes.

10 Q. And that was done at Liberty High School?

11 A. Yes.

12 Q. All right. I want you to read -- well, you see in
13 there where you stated ---

14 MR. ALEXANDER: Your Honor, if I may just point
15 out a line instead of counting it?

16 THE COURT: Yes, sir.

17 Q. Read this sentence starting right here. The first,
18 the first two words.

19 A. The first milestone involved ---

20 MS. HINTON: Judge, I'm going to object and ask
21 that if he's going to pick apart parts of the statement
22 that the jury get to hear the whole thing.

23 THE COURT: Well, I'll allow you to redirect.

24 MS. HINTON: Thank you, Your Honor.

25 A. Do I have to read the whole thing now? No.

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1 Q. Not at this moment, unless the Judge instructs you to.

2 A. Okay.

3 THE COURT: Did you ask him to read it aloud or
4 to himself? What are you asking him to do?

5 MR. ALEXANDER: I apologize. I'll rephrase the
6 question, Your Honor.

7 THE COURT: All right.

8 Q. Older Brother could you please read aloud that sentence?

9 A. Yes. The first milestone involved me, Younger and my
10 friend, Minor Friend Do I continue from there?

11 Q. That's good. We'll keep going in a second. But
12 that's not what you testified to previously, just a while
13 ago; is it?

14 A. No, sir.

15 Q. And your statement, when you originally reported this,
16 you said the first incident of any molestation you,
17 Younger and Minor were all involved in it. Is that right?

18 A. No.

19 Q. No?

20 A. That's not correct.

21 Q. Isn't that what you told ---

22 A. That's what I told him.

23 Q. That's what you wrote in your statement and told
24 Officer Ticknor; correct?

25 A. Yes.

1 Q. Okay. But you're saying that that's not true now?

2 A. Yes.

3 Q. That Minor was not ---

4 A. It wasn't true then.

5 Q. It wasn't true then?

6 A. No.

7 Q. Okay. So you lied to Detective -- or Officer Ticknor
8 at that time?

9 A. Yes.

10 Q. Okay. All right. And in your statement, in your
11 written statement to Officer Ticknor, you don't mention
12 anything about a ranking system. Is that correct?

13 A. That is correct.

14 Q. All right. Do you say anything about having to
15 perform oral sex in front of either Minor or Younger

16 A. No.

17 Q. That's not in your statement?

18 A. Not that I know of. It's been years.

19 Q. Are you alleging that you ever had to perform oral sex
20 in front of Minor or Younger

21 A. No. Wait. What does alleging mean?

22 Q. Are you saying that you were forced to do that?

23 A. No.

24 Q. So that never happened?

25 A. No, not in front of them, I don't think.

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1 Q. All right. But you've testified that you're -- you're
2 saying that at some point there was involve with yourself,
3 Younger and Minor in these truth or dare games. Is that
4 what you're saying?

5 A. Yes.

6 Q. And the only other -- you're saying the other person
7 there was Tyler. Is that right?

8 A. Yes. I'm sure my mother and sister came and gone and
9 stuff like that. But like I said, we weren't very active
10 in each other's lives.

11 Q. All right. Well, let me rephrase the question. When
12 you say that Tyler was making you, Younger and Minor do
13 these things to each other, your mom was not present
14 watching that; was she?

15 A. Oh, no.

16 Q. And her boyfriend, Timothy Durham, was not present?

17 A. No.

18 Q. And your sister, Jessica Whitaker, Jessica Bradshaw,
19 is her name now.

20 A. Bradshaw.

21 Q. At the time she was Jessica Whitaker; correct?

22 A. Yes.

23 Q. She was not present. Is that what you're saying?

24 A. No, she wasn't.

25 Q. All right. If you would turn to the third page of

1 that statement. Read the sentence on the third line there
2 that starts, he took military showers. Read that sentence
3 for me out loud.

4 A. He took military showers with me and my little
5 brother, not at the same time. But he never had me do
6 anything after that.

7 Q. All right. So in your written statement to Officer
8 Ticknor, you alleged or you said that Tyler made you take
9 this shower and made you do these things in the first
10 shower that he made you take. Is that right?

11 A. Yes.

12 Q. Could you speak up?

13 A. Yes. I was too ashamed to tell him about any other
14 times. I mean, Officer Ticknor was like my best friend at
15 the time.

16 Q. So you weren't ashamed enough to not say anything at
17 all, but you only wanted to talk about one incident?

18 A. Yes.

19 Q. And you lied about that it not happened at any other
20 time?

21 A. Yes.

22 Q. Okay. Also in that written statement you don't have
23 anything in there about Tyler making you go into the
24 bedroom by yourself. Is that right?

25 A. That's right.

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1 Q. With Minor and Younger having to stay in the living
2 room?

3 A. No. They went into the bathroom and I was supposed to
4 stay in the living room.

5 Q. But there was never an incident where Minor and
6 Younger were made to stay in the living room and he took
7 you back to the bedroom. That never happened; right?

8 A. Not to the bedroom. But there was an incident where
9 we had gone into the bathroom and them two stayed in the
10 living room because we were continuing a game of truth or
11 dare. I don't remember exactly what the dare was.

12 Q. Okay. So this is something new from what you've
13 previously testified to?

14 A. No. I mean, I've mentioned it, I think. I'm not
15 quite sure. I mean, it's not in the written statement.

16 Q. All right. Now, your sister Jessica, and Tyler, they
17 separated at some point shortly after Jessica's second
18 child was born; right?

19 A. Yes.

20 Q. Would you say a matter of maybe less than a month
21 after -- is it ---

22 A. It was like two months afterwards. His name is

23 D.B. D.B. .

24 Q. D.B. D.B. right. So after D.B. D.B. was
25 born, a couple of months they separated. Is that right?

1 A. Yes.

2 Q. And so Jessica has two children with Tyler, D.B.

3 D.B. and then the older ---

4 A. And J.B.

5 Q. --- J.B. right? Okay. All right. And are you
6 aware that at some point Tyler and Jessica actually lost
7 custody of those kids to Tyler's parents? Are you aware of
8 that?

9 A. I was living with my father, but I've heard it since.

10 Q. Okay. And that was -- any reason to believe that
11 around 2005 was about when that happened?

12 A. D.B. was born in 2006, I think.

13 Q. That's okay. If you don't know the exact date, that's
14 fine. And then at some point Jessica got custody back. Is
15 that right?

16 A. Yes.

17 Q. A couple of years later, right?

18 A. (No verbal response.)

19 Q. At least a year later?

20 A. I would say like a year or so.

21 Q. At least a year; right?

22 A. Yeah.

23 Q. And as a result of that, Tyler's parents actually got
24 visitation rights with at least, J.B. is that right? Are
25 you aware of that?

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1 A. Yes.

2 Q. All right. And are you aware that in 2009, that your
3 mother, Kendra, got custody of J.B. and Vincent; right?

4 A. Yes. My sister was going to join the Army.

5 Q. Well, I guess the hearing was actually January of
6 2010, is about ---

7 A. I'm not sure of the date. I know it was some time
8 after the bond hearing for this.

9 Q. All right. And you and your family wanted your
10 mother, Kendra Durham, to get custody of those two kids;
11 right?

12 A. I have no opinion on it.

13 Q. You didn't care at all?

14 A. Not really, no.

15 Q. You weren't worried at all about somebody else getting
16 custody?

17 A. No. I mean ...

18 Q. Okay. Have you ever been to Behavioral Health
19 Services, Older Brother

20 A. Yes.

21 Q. Okay. You went there for counseling?

22 A. Yes.

23 Q. Starting sometime in the end of 2009, I think it was?

24 A. I'm not sure.

25 Q. If I were to tell you December 17th, 2009, ---

1 A. Yes.

2 Q. --- any reason to think that's inaccurate?

3 A. No reason.

4 Q. And you don't -- do you remember telling your
5 counselor in January of 2010, January 14th, 2010, to be
6 specific, that you were concerned that your mother would
7 not get custody of your niece and nephew because she was on
8 the sex offender registry or that she was a sex offender
9 and that Damon's parents would get custody. Did you tell
10 your counselor that?

11 A. I'm not denying that I did, but I'm not quite sure.
12 We talked a lot. We talked about a lot of things in my
13 counseling.

14 Q. Okay. So in telling your counselor that, you were
15 obviously concerned that your mother wouldn't get custody;
16 correct?

17 A. I mean, I guess at that point in time I saw my mother
18 as the person best fit for the young'uns while my sister
19 went into the Army.

20 Q. And, in fact, that was ongoing since these allegations
21 came about. Isn't that correct?

22 A. What do you mean by that? Rephrase it, please. I'm
23 sorry.

24 Q. That these charges, these things that you're saying
25 Tyler did, all came about because of this custody action

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1 ---

2 A. No.

3 Q. --- involving Jessica and Tyler's children. Isn't
4 that true?

5 A. No. That's unrelated.

6 Q. That's unrelated?

7 A. Completely unrelated.

8 Q. Doesn't have anything to do with this case?

9 A. No.

10 Q. It's just a coincidence that ---

11 A. My sister had already had custody of the kids
12 beforehand.

13 Q. Okay. I understand that. She had custody in 2009,
14 early 2009 -- or throughout 2009; correct?

15 A. Yes.

16 Q. But in reality, your mother actually took care of them
17 pretty much full-time. Isn't that true?

18 A. Yes.

19 Q. And they lived with you, your mother and Younger
20 primarily; correct?

21 A. Yes.

22 Q. And isn't it true that starting, you know, a year or
23 two before these charges came about that you brought these
24 allegations on Tyler, that Tyler had actually started
25 becoming back involved with his children's lives.

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- 1 A. No.
- 2 Q. Getting them for visitation. Isn't that correct?
- 3 A. No, that's not true. He had nothing ---
- 4 Q. He hadn't seen them at all?
- 5 A. He had nothing to do with them.
- 6 Q. He did come over and take J.B. for the weekends to
- 7 stay at his apartment?
- 8 A. No.
- 9 Q. He never did that?
- 10 A. Not that I know of.
- 11 Q. Okay. And you lived with your mother throughout 2007,
- 12 2008, 2009?
- 13 A. Back and forth between my mother and my father.
- 14 Q. Okay. But during that time, Kendra, your mother, had
- 15 J.B. and Vincent; correct?
- 16 A. Yeah.
- 17 Q. And Tyler -- if Tyler was becoming back involved in
- 18 their lives, that was going to cause problems with your
- 19 mother retaining custody; right?
- 20 A. I had no clue about that kind of stuff.
- 21 Q. Okay. And she wanted to keep custody; right?
- 22 A. As far as I know. I mean ---
- 23 Q. And Jessica wanted her to have custody; correct?
- 24 MS. HINTON: Objection, Your Honor. He has no
- 25 idea what Jessica wanted.

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1 THE COURT: I'll allow him to answer if he knows.

2 I overrule the objection.

3 A. I don't know. I'm not in nobody's head but my own.

4 Q. Okay. How many times have you talked to Younger about
5 these allegations since May of 2009?

6 A. We try not to talk about it.

7 Q. Okay. But how many times? I mean, how often do y'all
8 talk about it?

9 A. Not very often at all.

10 Q. Well, let's start -- starting in May of 2009, between
11 May and, say, the start of the school year in August 2009,
12 how many times did you talk to Younger about ---

13 A. What's going on?

14 Q. --- what you say was going on?

15 A. I wouldn't say very often at all, really. You know, I
16 mean ---

17 Q. But you did talk to him about it?

18 A. Just kind of like helping each other grieve. That's
19 about -- I don't know if grieve would be the word.

20 Q. Okay. Y'all didn't talk about what he needed to tell
21 the police when he eventually talked with them?

22 A. No.

23 Q. Okay. Do you know whether or not your mother talked
24 to Younger about that?

25 A. No. In fact, my little brother didn't want to talk to

1 my mother about it at all.

2 Q. Okay. All right. Let's go back to your time at
3 Behavioral Health Services a little bit. Is it true that
4 you told your counselor that you have hallucinations?

5 A. I wouldn't say hallucinations. I mean, ---

6 Q. Well, what was your wording? What did you tell your
7 counselor you were having, what issues you were having?

8 A. I told her I was always hearing these voices putting
9 me down and stuff. I mean, when I say voices, I mean, I
10 guess it's just the voices we all have; the voices of
11 doubt, self-loathing.

12 Q. Okay. And you talked to -- you talked with them about
13 physical abuse that -- you basically told them that
14 everyone you knew had physically abused you. Do you
15 remember telling them that?

16 A. Yes.

17 Q. Your mother, step-father, your babysitter?

18 A. Yes.

19 Q. You talked to them about over the summer of 2009
20 drinking alcohol on a daily basis to make you feel better.
21 Did you tell them that?

22 A. I wouldn't say to make me feel better, but ...

23 Q. But you drank alcohol on a daily basis?

24 A. Not on a daily basis, no.

25 Q. Okay. Where did you get that alcohol at?

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1 A. From my grandmother's freezer.

2 Q. Did you steal it?

3 A.. Yes.

4 Q. Okay. And going back to the, for lack of a better
5 word, hallucinations, the hearing the voices, you told the
6 counselor that you heard voices and you would carry on full
7 conversations with them. And you've heard them for as long
8 as you can remember. Did you tell them that?

9 A. I was probably being over-dramatic.

10 Q. Okay. Do you have a tendency to do that, to be over-
11 dramatic?

12 A. No, not really. But ...

13 Q. But you happened to be with your counselor, be over
14 dramatic?

15 A. I thought she was really pretty. I don't know.

16 Q. Okay. Did you tell your counselor that you saw people
17 that were not really there and you chased them through your
18 house or chased them out of your house?

19 A. No, I don't remember saying that. But I'm not saying
20 I didn't say it.

21 Q. Okay. That you saw captions on the TV that weren't
22 really there?

23 A. No. We had a really old messed-up TV. There was
24 captions that were all kinds of crazy on the TV.

25 Q. All right. Did you tell her that you had difficulty

1 distinguishing between what was real and what was not real?

2 A. I would say I have a pretty firm grasp on reality.

3 Q. So you deny telling them that you had difficulty

4 distinguishing between reality and ---

5 A. Yes.

6 Q. --- hallucinations?

7 A. Yes.

8 Q. Okay.

9 A. She may have assumed that that's what I was thinking
10 or saying, but I never said that.

11 Q. Did you tell her that you had a hard time
12 distinguishing between real memories and unreal memories?

13 A. No. I did, however, tell her that I had a few dreams
14 that felt as if they were almost memories. But I never
15 said that I didn't know what was real and what wasn't.

16 Q. Okay. You had problems at school getting picked on;
17 didn't you?

18 A. Yes.

19 Q. You felt that you were discriminated against by the
20 staff, teachers, and faculty?

21 A. I was very effeminate in nature and even my principal
22 had called me a faggot.

23 Q. In fact, your mother didn't like that either; did she?

24 A. No.

25 Q. So you mentioned that a lot to your counselor, that

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- 1 your mother was not accepting of your sexuality?
- 2 A. At that point in time, no. I'm openly bi-sexual now.
- 3 Q. But your mother had a problem with it; right?
- 4 A. Yes.
- 5 Q. And that had been going on for several years prior to
- 6 2009; correct?
- 7 A. Yes.
- 8 Q. All right. And your mother's out of the picture now;
- 9 right?
- 10 A. No.
- 11 Q. Does she live in Louisiana?
- 12 A. She lives in Louisiana, but we talk.
- 13 Q. Does she still have custody of J.B. and Vincent or
- 14 where do they live at now?
- 15 A. I don't know the situation. I know they live with me
- 16 and my sister.
- 17 Q. I'm talking about right now.
- 18 A. Right now ---
- 19 Q. Yeah.
- 20 A. --- they're living with me and my sister.
- 21 Q. Okay. So they're here in South Carolina?
- 22 A. Yeah.
- 23 Q. So Jessica -- they're back with Jessica now?
- 24 A. Yes.
- 25 Q. So when you said you lived with Jessica, her husband

- 1 and three kids ---
- 2 A. Uh-huh (affirmative).
- 3 Q. --- two of those kids are J.B. and Vincent?
- 4 A. Yes. But they know Michael to be their father.
- 5 Q. Okay. So Jessica and -- they got what they wanted.
- 6 They got Tyler out of those kids' lives; didn't they?
- 7 A. Yeah, I guess. I don't know what they wanted.
- 8 Q. Well, he hasn't been involved in their lives since May
- 9 of 2009; has he?
- 10 A. No.
- 11 Q. When you made these allegations; right?
- 12 A. (No verbal response).
- 13 Q. All right. So I just want to go over a few more
- 14 things and then we'll be done, Older Brother You've known Minor
- 15 since y'all were in elementary school together?
- 16 A. Yes. We attended Liberty Elementary together.
- 17 Q. What school were you in when you were ten years old?
- 18 Where were you going to school?
- 19 A. Edwards Middle School -- well, no. At ten years old I
- 20 was in Central Elementary School.
- 21 Q. Maybe sixth grade?
- 22 A. I'm not quite sure.
- 23 Q. You said that you and Tyler and Younger too, would
- 24 wrestle almost on a daily basis? Every time you hung out,
- 25 which was almost daily; right?

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1 A. Yes.

2 Q. And that it would get handsy and inappropriate. He
3 would touch you in inappropriate areas?

4 A. Yes.

5 Q. And none of that is in any of your prior statements;
6 correct? You didn't tell any of that to Officer Ticknor;
7 right?

8 A. That's correct.

9 Q. And you lied to him about Minor being present when you
10 say the first incident occurred; correct?

11 A. I tried to cram as much into my statement as I could
12 without -- before I chickened myself out of it, I suppose.

13 Q. But you've very clear in your written statement by
14 saying the first molestation involved me and Younger and my
15 friend Minor Friend correct?

16 A. That's what it says.

17 Q. But that's a lie?

18 A. That's a lie.

19 Q. Okay. And you don't say anything about the ranking
20 system?

21 A. No.

22 Q. Not even mention it at all; right?

23 A. That's right.

24 Q. And you said you lied about the military shower
25 incidents; correct?

1 A. Yes.

2 Q. Who did your laundry for you?

3 A. Who did my laundry for me?

4 Q. Yeah. Who washed and dried your clothes?

5 A. Well, we actually -- if I didn't do it myself, it
6 didn't always get done. I actually used to have like this
7 big pile of clothes beside the bunk beds, towards the head
8 of the bunk beds, that I called Mount Stinkamongous. It
9 was like a huge pile of clothes.

10 Q. Well, would your mother or Jessica at times do the
11 laundry, including your laundry?

12 A. Well, I guess so. I kind of just left it dirty and
13 walked away from it like any other kid.

14 Q. Okay. They never noticed any blood or anything in
15 your underwear or anything like that?

16 MS. HINTON: Objection, Your Honor. He has,
17 again, no idea what they noticed.

18 MR. ALEXANDER: Withdrawn, Your Honor.

19 THE COURT: I overrule your objection. If he
20 knows the answer, he can answer it.

21 A. Not to my knowledge did they notice anything.

22 Q. Nobody ever asked you about any blood in your
23 underwear?

24 A. No. But they often did ask me why my underpants were
25 very crusty.

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1 Q. Okay. And this hole in the shower ---

2 A. Yes.

3 Q. --- and y'all were watching -- allegedly watching each
4 other, that's not in your written statement at all; is it?

5 A. It made me feel very creepy to have watched somebody
6 shower.

7 Q. Okay. It made you feel creepy when you say you did it
8 or when you were talking to Officer Ticknor about it?

9 A. What do you mean by that?

10 Q. You said it made you feel creepy. When are you
11 referring to?

12 A. Even presently. I still feel it's very creepy of me
13 to have done.

14 Q. Okay. Now, the incident involving ^{Minor} , did you say
15 that that happened on more than one occasion or was it just
16 one time?

17 A. To my knowledge, it was just one time.

18 Q. Well, this is your testimony, Older Brother

19 A. I know.

20 Q. So it was one time?

21 A. Yes.

22 Q. Okay. And you're saying it happened in the living
23 room or it started in the living?

24 A. Started in the living room.

25 Q. But your mother and Mr. Durham were in the back

- 1 bedroom. Is that right?
- 2 A. They could have left. I don't know.
- 3 Q. Well, is that the front door, the living room? Is
4 there a back exit or anything?
- 5 A. Yes. There's the -- should I use this to point out?
- 6 Q. Yeah. You can do that. Point to the exits on the
7 trailer for us?
- 8 A. There's the back door.
- 9 Q. Okay.
- 10 A. There's -- this door is the front door. And that's
11 the door to the bathroom.
- 12 Q. So the bedroom there on the far left is where your
13 mother and Mr. Durham were at when you're saying Tyler was
14 making you put on these shows in the living room; right?
15 Is that correct?
- 16 A. Yes.
- 17 Q. Okay. And this is a single-wide mobile home; correct?
- 18 A. Yes.
- 19 Q. Very small, ---
- 20 A. Very small.
- 21 Q. --- cramped together; correct?
- 22 A. Yes.
- 23 Q. Okay. And you're saying that they may have left
24 during this process?
- 25 A. I didn't really pay much attention to my mother or my

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1 step-father.

2 Q. Okay.

3 A. Nor did they to me.

4 Q. Okay. So you're saying that they would have ignored
5 this type of behavior if it was going on in their house?

6 A. I wouldn't say ignored. I just think overlooked.

7 Q. Okay. They were just pretending like it didn't
8 happen?

9 A. No, sir. I mean, if they would have noticed
10 something, I'm sure they would have reacted.

11 Q. Okay. And you said Jessica was living there at that
12 time?

13 A. Yeah.

14 Q. We're still talking about the incident with Minor ?

15 A. Yes..

16 Q. But you think she was working that day?

17 A. Yes. She had a job at House of Pizza at the time.
18 They had her working all kinds of crazy hours.

19 Q. All right. So during this alleged incident with your
20 mom and Mr. Durham in the back bedroom, you're saying that
21 Tyler took Younger and Minor to the bathroom, which is
22 right next to the bedroom where your mother was at;
23 correct?

24 A. Well, she may or may not have been at. But, yes,
25 correct.

1 Q. As far as you know, she was in the bedroom. You never
2 saw her leave; correct?

3 A. Correct, yes.

4 Q. All right. Never heard a car pull off or anything
5 like that?

6 A. I guess you could say it was blissfully oblivious.

7 Q. Okay. All right. And in this bathroom, right next to
8 the bedroom, Tyler's supposedly giving Younger instructions
9 on how to ---

10 A. How to.

11 Q. --- anally penetrate Minor ?

12 A. Yes.

13 Q. Is what you're saying?

14 A. Yes.

15 Q. Okay. And then y'all went back to the living room and
16 he dared you to dry hump Minor on the couch?

17 A. Yes.

18 Q. Okay. And that part about him -- Tyler supposedly
19 taking Younger and Minor to the bathroom, that's nowhere in
20 your written statement; is it?

21 A. Not to my knowledge. I'm not sure.

22 Q. Well, take a look and correct me if I'm wrong.

23 A. No, it's not.

24 Q. And this alleged last time that he abused you, you're
25 saying that it was on Christmas Day, but you're not sure

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- 1 what year it happened?
- 2 A. It was the first year of D.B. life.
- 3 Q. And when was he born?
- 4 A. I'm terrible with dates, sir.
- 5 Q. Okay. October 2006?
- 6 A. Okay.
- 7 Q. So you're saying that happened around December 2006?
- 8 A. Yes.
- 9 Q. Okay. Did you ever suffer any bruises where -- when
- 10 you say Tyler or Younger -- when y'all would hit each other
- 11 or anything?
- 12 A. Yes.
- 13 Q. Did anybody ever ask you, where did you get those
- 14 bruises?
- 15 A. Well, I mean, we wrestled around a lot. And, I mean,
- 16 people saw us wrestle.
- 17 Q. And where were the bruises at?
- 18 A. They were like on our arms or our chest and stuff.
- 19 Q. Okay. As far as you know, people just thought you got
- 20 them when you were wrestling?
- 21 A. Yes. I know we wrestled often. Not every time was in
- 22 that kind of play.
- 23 Q. You said you hadn't talked to Minor in years. Have
- 24 you talked to her at all since May of 2009?
- 25 A. No.

1 Q. You never called her up in North Carolina to talk
2 about these allegations?

3 A. No.

4 Q. Okay.

5 MR. ALEXANDER: One moment, Your Honor.

6 Q. Overall, Older Brother would you agree that your testimony
7 here today is a lot more detailed than your statement to
8 Officer Ticknor in 2009?

9 A. Yes.

10 Q. And a lot more detail in the allegations that you
11 didn't tell him or even allude to; correct?

12 A. Yes. I mean, in fact, I didn't tell him anything. I
13 kind of just wrote it down.

14 Q. And you waited -- these allegations supposedly
15 happened in 2004, 2005; correct? From the end of 2003 to
16 2004 and '05; right?

17 A. Yes.

18 Q. And you waited until 2009 to say anything. Is that
19 right?

20 A. Yes.

21 Q. All right. And waited until Tyler was getting back
22 involved with his kids' lives that your mother had physical
23 custody of; correct?

24 A. That's unrelated at all. That had nothing to do with
25 that.

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Older Brother - Redirect Examination by Ms. HINTON

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1 Q. You may say it's unrelated, but that's the time period
2 when all of this happened correct? When you allegedly
3 reported it; correct?

4 A. Yes. I suppose.

5 Q. And that helped your mother and Jessica make sure that
6 Tyler didn't get any custody or any visitation with his
7 kids; correct?

8 A. As far as I know, that wasn't even mentioned in the
9 custody of anything.

10 Q. It certainly helped prevent him from having any
11 position to argue; correct?

12 A. I don't know.

13 MR. ALEXANDER: That's all I have, Your Honor.

14 THE COURT: Any redirect?

15 MS. HINTON: Briefly, Your Honor.

16 THE COURT: Briefly?

17 MS. HINTON: Yes, Your Honor.

18 THE COURT: All right.

19 **REDIRECT EXAMINATION**

20 **BY MS. HINTON:**

21 Q. Older Brother when you talked about these voices that you
22 heard, what were they saying?

23 A. They were basically just telling me that, you know, I
24 was sad, I was poor, worthless, I was a faggot.

25 Q. And do you have any trouble distinguishing reality

1 from fantasy?

2 A. No.

3 Q. Is your testimony about Tyler sexually assaulting you
4 reality or fantasy?

5 A. It's reality. Sadly, it's reality.

6 Q. I think you testified that this was your mother and
7 step-father's bedroom; correct?

8 A. Yes.

9 Q. And what is this right here?

10 A. That's the back door.

11 Q. Okay. And what is this?

12 A. That's their bed.

13 Q. Okay. So is their bed pushed up against this door?

14 A. Yes.

15 Q. Older Brother what were your mom and your step-dad doing in
16 their bedroom when they were back there all the time?

17 A. They were back there smoking meth and whatever drugs
18 they did then. They were ---

19 MR. ALEXANDER: Your Honor, I'm going to object.
20 I mean, he's testifying about people that aren't even here.
21 And he wasn't in the room. He can't testify as to what
22 they were doing or not.

23 THE COURT: Well, I'll allow him to answer the
24 question if he knows. Again, make your question more
25 specific, if you would, Solicitor.

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Older Brother - Redirect Examination by Ms. HINTON

- 1 Q. Older Brother is your mother here?
- 2 A. Yes.
- 3 Q. Where is she?
- 4 A. She's right there.
- 5 Q. Okay. Do you know what your mother was doing in that
- 6 back room ---
- 7 A. Yes.
- 8 Q. --- when you were left alone all that time?
- 9 A. Yes.
- 10 Q. What was she doing?
- 11 A. She was doing drugs.
- 12 Q. Okay. What was your step-father doing?
- 13 A. Drugs.
- 14 (WHEREUPON, State Exhibit Number 3 was marked for
- 15 identification.)
- 16 Q. Older Brother I'm going to show you what's been marked as
- 17 State's Exhibit Number 3. What is that?
- 18 A. That is my statement.
- 19 Q. And who did you give that statement to?
- 20 A. Officer Ticknor.
- 21 Q. And how old were you when you gave that statement?
- 22 A. I was fifteen years old.
- 23 Q. Is that the same statement that Mr. Alexander was just
- 24 speaking to you about?
- 25 A. Yes.

1 MS. HINTON: Your Honor, I'm going to ask at this
2 time that State's Number 3 be moved into evidence?

3 THE COURT: Any objection?

4 MR. ALEXANDER: No objection.

5 THE COURT: All right. Without objection,
6 Exhibit 3 is admitted into evidence.

7 MS. HINTON: Thank you, Your Honor.

8 (WHEREUPON, State Exhibit Number 3 was admitted into
9 evidence.)

10 Q. Older Brother will you read that statement to the jury?

11 A. The entire statement?

12 Q. The entire statement?

13 A. I, Older Brother am writing this statement because
14 Damon Tyler Brown on multiple occasions has raped and
15 molested me and my little brother, Younger Brother Most
16 of the occurrences have been when I lived in Central, South
17 Carolina on I was around ten years old
18 when it began. The first molestation involved me, Younger
19 and my friend Minor Friend He, Damon, asked me if we
20 wanted to play truth or dare. The game became very sexual
21 very soon after we agreed to play. He dared me to touch
22 his penis and laughed when it became erect. He dared
23 Younger to stick his penis in Minor's butt. Then he told
24 me to dry hump Minor. I had to shed my clothes before we
25 did. Damon began to make us play often, every chance he

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1 had, when my mom and sister were gone or asleep. One day
2 in the summer, he randomly asked me if I wanted to try
3 marijuana. He sat on the couch in the living room and
4 smoked with me. He started drinking. When I asked to try
5 that too, he said, no. He walked into the hall. He told
6 me he wanted to show me how to take a military shower. He
7 led me into the bathroom where he began shedding his
8 clothes and helped me with mine. When we entered the
9 shower, he turned on the water and asked if I needed my
10 back washed for me. I agreed and he started down my spine
11 and reached around and touched me. He started moving
12 faster as I, not completely in my right state of mind, just
13 let him move. He pressed his face on the back of my neck
14 and stuck himself inside my butt and started pelvic
15 thrusting. He pulled it out and smiled in a devilish way
16 and told me that I was doing good so far, but that I
17 whimpered too much. And then he pushed down on my head and
18 made me suck on it. After he was finished, he stuck mine
19 into his mouth until I told him I was done too. We rinsed
20 off and got out of the shower. I put on my clothes and sat
21 down to watch TV. He sat down beside me and we watched the
22 Simpson's, I think. I don't remember all of what happened
23 because I was still high. He took military showers with me
24 and my little brother, not at the same time. But he never
25 had me do anything after that one. Some nights, I would

1 wake up to him grabbing me under the covers. Sometimes I
2 would grab his and sometimes I would play with it. We
3 would often go into the woods, me, Younger and Damon and
4 he would flash us or masturbate next to us. He would
5 always cry and apologize. He did the same when he would
6 hit me. But he wouldn't cry. He didn't need to because we
7 would be best buds again afterwards. This is the end of my
8 statement.

9 Q. Older Brother when you wrote that statement when you were
10 fifteen, what was your state of mind when you were doing
11 it?

12 A. I was scared, embarrassed. I didn't even know how to
13 go about doing it.

14 Q. Did you tell Officer Ticknor everything that happened
15 with you and Tyler?

16 A. No.

17 Q. And why not?

18 A. Because me and Officer Ticknor were really close.

19 And, although I did respect him as an officer, I
20 appreciated him more as a friend and I felt like that was
21 the only person I could go to at that point in time. But I
22 didn't want to, I guess you could say, over -- over-explain
23 myself, I guess.

24 Q. When you first wrote this statement for Officer
25 Ticknor, was Officer Ticknor asking you specific questions

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1 about what happened?

2 A. No.

3 Q. Did you talk to him at all about it or did you just
4 write the statement?

5 A. When I was writing it, I did explain to him that I was
6 going to have to go, too. I guess you could say an
7 author's state of mind. I had to distance myself from it
8 while I wrote it, but that's about all I said to him. And
9 we stayed pretty quiet after he began reading it.

10 MS. HINTON: That's all I have, Judge.

11 THE COURT: All right. Thank you, sir. You may
12 step down.

13 MR. SPEARMAN: Thank you. What do you want me to
14 do with these papers?

15 THE COURT: Just leave it right there will be
16 fine, sir.

17 MS. HINTON: Your Honor, may he be excused?

18 THE COURT: Any objection to this witness being
19 excused from his subpoena?

20 MR. ALEXANDER: No, Your Honor.

21 THE COURT: All right. Without objection. Thank
22 you, sir.

23 Ladies and gentlemen, you've been patient. We've
24 tried to finish this witness. I'll now excuse you for
25 lunch. Mr. Welborn has been kind enough to order some

1 lunch. You'll have it back in your room. Since we got a
2 little late start, I was wanting to see if we could catch
3 up a little bit today. So let's take about a forty-five
4 minute lunch break. If you want to go out and about and
5 walk around, that's certainly fine. But if you could
6 finish eating and then whenever y'all are reassembled, if
7 we could start back, we'll be ready to do that, as well.
8 Have a good lunch. It's back there for you. We'll try to
9 be ready to start back about two-thirty, if possible. I
10 remind you again not to discuss the case while you're out
11 and about.

12 (WHEREUPON, the jury exited the open court at
13 approximately 1:47 P.M.)

14 THE COURT: All right. Let's take about a forty-
15 five minute break and be ready to start back. We might
16 even save our Jackson versus Denno until the end of the day
17 or first thing in the morning. We'll see how the other
18 witnesses work out. Y'all probably need a break, too,
19 rather than doing it right now. We'll just try to work
20 that out later.

21 MS. HINTON: Thank you, Your Honor.

22 MR. ALEXANDER: Thank you, Your Honor.

23 THE COURT: If you would be back at two thirty.

24 MR. ALEXANDER: Yes, sir.

25 (WHEREUPON, the court stood at recess for a lunch

1 break.)

2 THE COURT: All right. Everybody ready to
3 proceed?

4 MS. HINTON: Judge, can I bring one thing to the
5 Court's attention?

6 THE COURT: Yes, ma'am.

7 MS. HINTON: Your Honor, I know that the
8 witnesses have been sequestered, but there have been some
9 attempts to speak to Older Brother and his brother, his family
10 that have been out there, by potential witnesses. And
11 however harmless it may be, I would just ask they be
12 reminded that they cannot speak to them.

13 THE COURT: Okay. Well, we all -- we've heard
14 the order about the sequestration. So make sure that you
15 don't -- make sure your witnesses and your clients know
16 that they're not to talk with anyone about the case, about
17 their testimony, potential testimony or testimony that has
18 been given. Anything else?

19 MS. HINTON: That's all, Judge. Thank you.

20 THE COURT: Okay. Let's have our jury come in if
21 they're ready.

22 (WHEREUPON, the jury entered the open court at
23 approximately 2:45 P.M.)

24 THE COURT: Solicitor, you may call your next
25 witness.

1 MS. BARWICK: Thank you, Your Honor. The State
2 would call Younger Brother to the stand.

3 THE CLERK: Place your left hand on the bible and
4 raise your right hand.

5 Do you solemnly swear or affirm that the testimony
6 you're about to give is the truth, the whole truth and
7 nothing but the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: Have a seat and state your name for
10 the record, please.

11 THE WITNESS: My name is Younger Brother

12 Younger Brother

13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MS. BARWICK:**

16 Q. Younger how old are you?

17 A. Seventeen.

18 Q. What's your date of birth?

19 A.

20 Q. So you just recently turned seventeen?

21 A. Yes.

22 Q. Do you remember back when you were eight years old?

23 A. Vaguely.

24 Q. And what do you mean by vaguely?

25 A. I've repressed the memories back and I've tried to

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1 keep them from coming up.

2 Q. But you do remember parts from back when you were
3 eight? Eight and nine?

4 A. Bits and pieces.

5 Q. Back when you were eight, nine, ten, do you remember
6 where you were living?

7 A. I think it was

8 Q. Okay. Do you know where that's located?

9 A. Central.

10 Q. Okay. And back when you were eight or nine and ten,
11 who all was living with you at

12 A. It was me, my brother, Older Brother, my mom, Kendra, her
13 boyfriend, Timothy, and my sister, Jessica.

14 Q. When you -- well, let's step back a little bit. Let's
15 talk about some family dynamics. Back when you were eight
16 or nine, what was your relationship like with your mom at
17 the time?

18 A. I barely seen her. Like, she would always be cooped
19 up in her room or gone.

20 Q. Okay. So do you know what she would be doing in her
21 room?

22 A. I have no idea.

23 Q. And was she ever back there with anybody?

24 A. My step-dad chilled back there with her sometimes.

25 Q. Was your mom working?

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- 1 A. Not that I can remember.
- 2 Q. Was your step-dad?
- 3 A. He worked with construction.
- 4 Q. How many brothers and sisters do you have? Well,
- 5 let's talk about from your mom, on your mom's side of
- 6 things. How many brothers and sisters?
- 7 A. I have one sister and two brothers.
- 8 Q. Your sister being Jessica, ---
- 9 A. Yes.
- 10 Q. --- Older Brother another brother, and there's a second
- 11 brother?
- 12 A. Yeah.
- 13 Q. And what about over on your dad's side?
- 14 A. I have one brother and two sisters.
- 15 Q. Back in May of -- I'm sorry. Back when you were eight
- 16 or nine years old, you were living with your mom?
- 17 A. Yes.
- 18 Q. Where are you living now?
- 19 A. I'm living with my dad.
- 20 Q. How would you describe your relationship with your
- 21 step-dad back then?
- 22 A. I didn't really see him much either. I was just like
- 23 being a kid at the time.
- 24 Q. And the times you did see him, what were those like?
- 25 A. He used to call us names and stuff at that time.

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- 1 Q. What kinds of names?
- 2 A. Like homo, queer, faggot.
- 3 Q. Would he call you those names more so than Older Brother or
- 4 Older Brother more so than you?
- 5 A. I can't really remember.
- 6 Q. Would your step-dad ever physically abuse you or
- 7 Older Brother
- 8 A. Yes.
- 9 Q. What kinds of things would he do?
- 10 A. He would slap us across the head and like pull our
- 11 ears really hard and thump our head.
- 12 Q. Would he do anything to your mom?
- 13 A. Yes.
- 14 Q. What would he do to your mom?
- 15 A. He would beat my mom.
- 16 Q. Did your mom ever witness your step-dad beating on
- 17 your or Older Brother
- 18 A. Yes.
- 19 Q. What did she do?
- 20 A. She tried to get him to stop. But if she really did,
- 21 then he would hit her.
- 22 Q. Did you have a lot of friends back then?
- 23 A. I didn't have any friends.
- 24 Q. What about Older Brother
- 25 A. He was the only person I really talked to.

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- 1 Q. Back when you were eight or nine, how was your
2 relationship with your brother, Older Brother
3 A. It was basically me and him versus the world.
4 Q. Do you -- what about your relationship with your
5 sister, Jessica, what was that like back then?
6 A. I saw her like every now and then. But like she tried
7 to do her own thing.
8 Q. Was she about sixteen at that time when you were eight
9 or nine?
10 A. I think so.
11 Q. And what -- when you said she tried to do her own
12 thing, what do you mean by that?
13 A. She was trying to like figure out her own life and
14 stuff like that.
15 Q. Do you know the Defendant?
16 A. Yes.
17 Q. Who is he?
18 A. Damon Tyler Brown.
19 Q. And how do you know him?
20 A. He was my sister's boyfriend at the time.
21 Q. Do you remember when you were first introduced to
22 Tyler?
23 A. Not really.
24 Q. Do you remember how Tyler was when he first started
25 coming around you?

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1 A. He was friendly.

2 Q. And how did you look at him?

3 A. I was trying to make friends with him because I didn't
4 have many friends.

5 Q. Now, before the abuse started and once you got to know
6 him a little bit more, how would you characterize your
7 relationship with him?

8 A. We were like best friends.

9 Q. What kind of things would y'all do together?

10 A. We would like go out in the woods and like climb trees
11 and stuff. And we would -- I need a minute. I need a
12 minute.

13 THE COURT: All right.

14 Q. Well, before anything started happening, let's focus
15 on that first, would y'all play video games together?

16 A. Yes.

17 Q. Would y'all wrestle?

18 A. Yeah.

19 Q. Would you ---

20 MR. ALEXANDER: Objection. Leading, Your Honor.

21 THE COURT: Overruled.

22 Q. Would you go hiking together in the woods?

23 A. Yeah.

24 Q. Would y'all play truth or dare together?

25 A. Yes.

1 MR. ALEXANDER: Objection, Your Honor, leading.

2 THE COURT: All right. I sustain the objection.

3 MS. BARWICK: Yes, sir.

4 THE COURT: If you would, rephrase your question,
5 Solicitor?

6 MS. BARWICK: Yes, sir.

7 Q. What other games did you play together?

8 A. We would play truth or dare.

9 Q. Okay.

10 A. And wrestle and stuff.

11 Q. When y'all first started playing truth or dare, was it
12 normal truth or dare or was there something different?

13 A. It was what I thought was normal.

14 Q. What kinds of things would you be dared to do?

15 A. Just stuff that was like dangerous, I guess.

16 Q. Do you have any specific examples?

17 A. Not really.

18 Q. Was it the kind of truth or dare most kids would play?

19 A. Yes.

20 Q. Did it turn into anything else?

21 A. Yes.

22 Q. If you'll tell me about that.

23 A. Eventually, it progressed into something sexual.

24 Q. And would you be dared to do anything?

25 A. Yes.

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1 Q. What would you be dared to do?

2 A. He would dare me and Older Brother to take off our pants and
3 compare sizes of our genitals.

4 Q. And how often would that come into the truth or dare
5 game?

6 A. It happened -- I can't really remember exactly how
7 many times it happened.

8 Q. More than once?

9 A. (Affirmative nod.)

10 Q. More than ten times?

11 A. Not that I can remember.

12 Q. And you were eight when this was going on?

13 A. Yes.

14 Q. Were there any other dares that Tyler would dare you
15 to do, just pertaining to you and Older Brother

16 A. Yeah.

17 Q. What else would he dare you to do?

18 A. He dared us to grab each other sometimes.

19 Q. And when you say grab each other, where would you have
20 to grab each other?

21 A. On our genitals.

22 Q. Was there any other dares that the Defendant made you
23 do?

24 A. Not that I can remember.

25 Q. Did you ever see -- well, let's back up a little bit.

1 Were there any rules to this game of truth or dare?

2 A. He said that if we tell anybody that all the blame
3 would get cast onto the person who told.

4 Q. Did you believe him?

5 A. Yes.

6 Q. Back when you were eight or nine, did you tell anyone?

7 A. No.

8 Q. Did the Defendant ever speak with you about military
9 showers?

10 A. Yes.

11 Q. What did he say those were?

12 A. He said it was what they do in the military. They
13 would undress each other and hop in the shower and wash
14 each other off as fast as they could and get out.

15 Q. And I know I'm kind of going out of order. Back to
16 the truth or dare games, did you ever hesitate in doing one
17 of those dares?

18 A. Yes.

19 Q. What would happen if you hesitated?

20 A. He would like -- he had this ranking system for us.
21 And he would like demote us if we did something that he
22 didn't like.

23 Q. And if you did something he liked?

24 A. He would promote us.

25 Q. What would happen if you got demoted?

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1 A. We would get picked on and made fun of and he got my
2 brother to beat me up sometimes.

3 Q. What would happen if you got promoted?

4 A. We would be able to like do more stuff together.

5 Q. Did he have any nicknames for you?

6 A. The only two that I can remember, and these are -- I
7 think they were the highest that we could get. The highest
8 I could get was like Titanium Younger And the highest

9 Older could get was Maximus Older
10 Older

10 Q. So that's the highest rank y'all could get?

11 A. That I can remember.

12 Q. Did the Defendant ever call you any names?

13 A. Yes.

14 Q. What names would he call you?

15 A. He would call us like queer, faggot, homo.

16 Q. With the military showers, did they start off being
17 exactly what the Defendant described them as?

18 A. For me, that I can remember, yeah.

19 Q. Did they turn into something else?

20 A. Yes.

21 Q. Do you remember the time it turned into something
22 else?

23 A. Yes.

24 Q. Can you tell me about that?

25 A. I got in the shower, and I didn't want to get into the

1 shower to begin with because there was spiders on a window
2 and the window was broken. So there was a lot of spiders
3 in it. And he told me that he would get in the shower with
4 me to like help kill the spiders. And when we got in the
5 shower, he held my genitalia and held his. And he said,
6 this is what a real man looks like. You have a long way to
7 go.

8 Q. So in the shower he actually touched your genitalia?

9 A. Yes.

10 Q. Are you talking about your penis?

11 A. Yes.

12 Q. After that did he say anything about what happened in
13 that shower?

14 A. Not that I can remember.

15 Q. Once he got in the shower with you, tell me what
16 happened after that, after he compared sizes with you?

17 A. We just like washed off and got out. And I went down
18 the hallway crying and woke up my sister.

19 Q. Why were you crying?

20 A. Because I didn't want to take a shower.

21 Q. Did you like taking showers?

22 A. No.

23 Q. You said you came down the hallway and your sister
24 woke to you crying?

25 A. Yes.

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- 1 Q. Back when that happened was your sister pregnant?
- 2 A. Yes.
- 3 Q. Tell me about how she would be during her pregnancies?
- 4 A. Very moody.
- 5 Q. Moody, you said?
- 6 A. Yes.
- 7 Q. What about her sleeping habits, what were those like?
- 8 A. My sleeping habits?
- 9 Q. Your sister's?
- 10 A. Oh, she slept on the fold-out couch on the living
- 11 room.
- 12 Q. Would she sleep not very often or often?
- 13 A. Often.
- 14 Q. Was she a deep sleeper or a light sleeper?
- 15 A. I don't really know.
- 16 Q. Okay. That's fair enough. When you came out there
- 17 crying, did your sister say anything?
- 18 A. She asked why I was ---
- 19 MR. ALEXANDER: Objection to hearsay.
- 20 THE COURT: I sustain the objection.
- 21 MS. BARWICK: Judge, can we approach?
- 22 THE COURT: Yes, ma'am.
- 23 (WHEREUPON, Ms. Barwick and Mr. Alexander approached
- 24 the bar.)
- 25 Q. Younger without telling me what she asked you, did

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- 1 she ask you a question?
- 2 A. Yes.
- 3 Q. Did you respond to her?
- 4 A. No.
- 5 Q. Did Tyler respond to her?
- 6 A. Yes.
- 7 Q. What did Tyler tell her?
- 8 A. He said that he made me take a shower.
- 9 Q. Okay. But you didn't tell her why you were crying?
- 10 A. No.
- 11 Q. Let's talking about this living arrangement. You said
- 12 your sister slept on the couch. Did anyone else sleep on
- 13 the couch with her?
- 14 A. Tyler did.
- 15 Q. And where did you and Older ^{brother} sleep?
- 16 A. In our room on a bunk bed.
- 17 Q. When Tyler first started staying with you and your
- 18 brother, did you have the top bunk or the bottom bunk?
- 19 A. I had the bottom bunk.
- 20 Q. Did that change?
- 21 A. Yes.
- 22 Q. How come?
- 23 A. Well, my brother told me that he was getting too big
- 24 to sleep on the top bunk.
- 25 Q. So you switched?

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1 A. Yes.

2 Q. Do you ever remember the Defendant coming into your
3 bedroom at night?

4 A. One time.

5 Q. Were you on the top bunk or the bottom bunk?

6 A. I was on the top bunk.

7 Q. What did you see?

8 A. I saw his head over the railing and I looked, like I
9 followed his head, and I looked down and he crawled in bed
10 with my brother. And I just went to sleep.

11 Q. Were you a light sleeper or a deep sleeper?

12 A. Deep sleeper.

13 Q. Was there anything unusual about the way you would go
14 to sleep at night?

15 A. I would wrap myself up in a cocoon with the cover.

16 Q. Let's talk about these bunk beds. You and I both know
17 what a regular bunk bed looks like. Is this different than
18 a regular bunk bed?

19 A. Not that I can tell.

20 Q. That was a silly way for me to ask the question. Were
21 the bunk beds the same size, right on top of each other?

22 A. No.

23 Q. All right. Tell me how it was different.

24 A. The top bunk was a single mattress and the bottom bunk
25 was like a double mattress.

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- 1 Q. So the bottom bunk was bigger?
- 2 A. Yes.
- 3 Q. When these incidents were going on, where would your
- 4 mom be?
- 5 A. I don't know.
- 6 Q. Would she be in the room?
- 7 A. I don't know.
- 8 Q. I guess the better question is, would she see what was
- 9 happening to you?
- 10 A. No.
- 11 Q. You just didn't know where she was?
- 12 A. Yeah.
- 13 Q. Could she have been away?
- 14 A. Yes.
- 15 Q. Could she have been in her room?
- 16 A. Yes.
- 17 Q. Who's Minor Friend
- 18 A. She is one of my mom's old friend's daughter.
- 19 Q. Do you remember about how old you were the last time
- 20 you saw or spoke with Minor ?
- 21 A. No.
- 22 Q. How old -- you're seventeen now?
- 23 A. Yes.
- 24 Q. Do you know how many years ago it was about that you
- 25 last saw or spoke to Minor ?

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- 1 A. No.
- 2 Q. Were you in elementary school or middle school?
- 3 A. I think I was in elementary.
- 4 Q. Would ^{Minor}_{Friend} ever come over to your house?
- 5 A. Yes.
- 6 Q. And when she came over -- well, why would she come
- 7 over to your house?
- 8 A. Because my mom babysitted her.
- 9 Q. Would your mom actually be the one watching her or
- 10 would it be someone else?
- 11 A. She would watch her sometimes, but she left. And when
- 12 -- she left her with Jessica sometimes.
- 13 Q. Did your mom ever leave the supervision of ^{Minor}_{Friend} to
- 14 the Defendant?
- 15 A. I think.
- 16 Q. Do you -- was ^{Minor}_{Friend} ever brought into the game of
- 17 truth or dare?
- 18 A. Yes.
- 19 Q. Tell me about that?
- 20 A. Could you readdress the question?
- 21 Q. Did ^{Minor}_{Friend} ever participate in truth or dare with you,
- 22 Tyler and your brother?
- 23 A. Yes.
- 24 Q. Was it normal kind of truth or dare or sexual truth or
- 25 dare?

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1 A. It was sexual.

2 Q. And were you dared to do anything to Minor ?

3 A. Yes.

4 MR. ALEXANDER: Objection, Your Honor. Leading.

5 THE COURT: Rephrase your question. I sustain
6 the objection.

7 Q. What kind of dares did you and Minor do with each
8 other?

9 A. He dared me to put my penis in her butt.

10 Q. What was your reaction to that at first?

11 A. I didn't want to do it at first.

12 Q. When you were hesitant, did the Defendant do anything?

13 A. He told me I would get a dollar if I did it.

14 Q. Did you take him up on the dare?

15 A. Yes.

16 Q. And where did that occur?

17 A. In the bathroom.

18 Q. Who was in the bathroom when you did this?

19 A. It was me, Minor and Tyler.

20 Q. When you -- well, tell me what happened?

21 A. Could you rephrase the question?

22 Q. You're going to have to tell me what happened in that
23 bathroom?

24 A. I had anal intercourse with Minor Friend

25 Q. Okay. Did Tyler guide you at all?

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1 A. Yes.

2 MR. ALEXANDER: Objection. Leading, Your Honor.

3 THE COURT: I sustain the objection as the
4 question was asked. If you would rephrase your question.

5 Q. What was Tyler's -- did Tyler participate in this?

6 A. He just told me where to put it.

7 Q. Did it work at first?

8 A. No.

9 Q. Well, tell me about that?

10 MR. Younger : I need another minute.

11 THE COURT: Yes, sir.

12 A. Could you restate the question?

13 Q. When Tyler dared you to perform anal intercourse on
14 Minor , tell me about that, in the bathroom?
Friend

15 A. I tried to put my penis in her butt, but it didn't go
16 at first.

17 Q. And you said it didn't go at first. What made it go?

18 A. He handed me lotion off the top of the shelf, above
19 the toilet.

20 Q. And then what happened?

21 A. It went in.

22 Q. What did you do with the lotion?

23 A. I used it as lubrication.

24 Q. Where was Older during this?
Partner

25 A. I thought he was in the living room, but in my mind I

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1 can kind of remember that he was at -- his eyes were
2 looking through the door.

3 Q. Younger did you ever receive any counseling?

4 A. Not that I can remember.

5 Q. What made you disclose?

6 A. I came home from school and my brother was hugging my
7 sister, crying. And my sister told me that she was sorry.

8 Q. Did you know what she was sorry for?

9 A. Not at first. But then my brother told me.

10 Q. Is that what made you tell?

11 A. Yes.

12 Q. And do you remember about how old you were when you
13 told?

14 A. No. I just remember that I was in seventh grade.

15 Q. Did you tell law enforcement what happened to you?

16 A. We went up to the LEC, but I didn't tell them at
17 first.

18 Q. How come?

19 A. I was embarrassed.

20 Q. Did you eventually end up telling law enforcement what
21 happened to you?

22 A. Yes.

23 Q. What gave you the courage to tell law enforcement the
24 second time you met with them?

25 A. My brother told me that it happened to someone else

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1 that he knew. And they ---

2 MR. ALEXANDER: Objection, Your Honor. Hearsay.

3 THE COURT: Sustain the objection.

4 MS. BARWICK: Your Honor, the State has no
5 further questions at this time.

6 THE COURT: All right. You may cross-examine the
7 witness, Mr. Alexander.

8 MR. ALEXANDER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ALEXANDER:

11 Q. Younger my name is Steven Alexander. I represent
12 Tyler in this matter. All right. So it's your testimony
13 that these allegations happened when you were eight years
14 old?

15 A. Yes.

16 Q. As far as, I guess, time line of this kind of thing,
17 what you talked to the police about anyway -- well, let's
18 -- strike that. You said that you came home one day and

19 Older was hugging your sister or she was crying,
20 something of that nature?

21 A. Yes.

22 Q. And was that in May of 2004, as best that you can
23 remember?

24 A. I don't really know.

25 Q. Okay. But you remember going to the Law Enforcement

- 1 Center where the detective wanted to talk with you; right?
- 2 A. Yes.
- 3 Q. And that you didn't talk with him at that point?
- 4 A. Yes.
- 5 Q. Did your mom go with you?
- 6 A. Yes.
- 7 Q. Do you know whether or not she was -- after that
- 8 attempt to interview you, whether or not she was supposed
- 9 to take you to get some counseling so that you could talk
- 10 to the detective?
- 11 A. I don't really know.
- 12 Q. But you never -- as far as you know, you never went
- 13 and talked to any professional or anything about that;
- 14 right?
- 15 A. Not that I can remember.
- 16 Q. Okay. But you talked to your mother about it?
- 17 A. Yes.
- 18 Q. And you talked to your sister about it?
- 19 A. Yes.
- 20 Q. And you talked to your brother, Older Brother about it?
- 21 A. Yes.
- 22 Q. And he's the one that convinced you to go back and
- 23 talk to the detective?
- 24 A. Yes.
- 25 Q. And did he tell you what to say?

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1 A. No.

2 Q. And when you met with the detective -- is it fair to
3 say you didn't give very many details to the detective when
4 you talked to him; did you?

5 A. I didn't give many details.

6 Q. Let's back up a minute. I think you testified
7 something about wrestling. How often -- you would wrestle
8 with Tyler and Older Brother

9 A. Yes.

10 Q. And how often would that happen?

11 A. More than twenty times.

12 Q. More than twenty times over a three-year period or
13 what? More than twenty times over what period of time?

14 A. In like a month.

15 Q. In a month?

16 A. Yeah. Like each -- we would wrestle every chance that
17 we could get.

18 Q. Okay. But just for a month. You didn't -- other than
19 that month?

20 A. No. We wrestled like everyday.

21 Q. Okay. All right. What was -- you testified, I think,
22 a little bit about this, but you had -- your mother was
23 living there and her boyfriend; right? Is that right?

24 A. Yes.

25 Q. And Jessica and Tyler and you and Older Brother Is that

- 1 correct?
- 2 A. Yes.
- 3 Q. And your mother didn't work; correct?
- 4 A. Not to my knowledge.
- 5 Q. But Mr. Durham worked; right?
- 6 A. To my knowledge, yes.
- 7 Q. And Tyler worked with Mr. Durham; correct?
- 8 A. I don't really know.
- 9 Q. Okay. But he would leave during the day and go work
10 somewhere; right?
- 11 A. Every now and then.
- 12 Q. Okay. And then Jessica was pregnant. Did she work?
- 13 A. Not that I can remember.
- 14 Q. Was she at home most of the time?
- 15 A. Not that I can remember.
- 16 Q. Okay. But you don't know whether she was home or not,
17 I guess is what you're saying?
- 18 A. I remember her being home sometimes, but ...
- 19 Q. Okay. All right. Do you remember you testified about
20 this alleged initial truth or dare -- well, at first you
21 said you were playing normal truth or dare games, like
22 dangerous stuff; right?
- 23 A. Yes.
- 24 Q. Like I dare you to jump off the roof or jump off the
25 porch or something like that?

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1 A. Just like jumping off the porch.

2 Q. Okay. How long did this normal truth or dare game go
3 on, I guess?

4 A. Not very long.

5 Q. Was that like a month, less or more than a month?

6 A. Until he moved in.

7 Q. So that was before he moved in?

8 A. Yeah.

9 Q. Okay. Before he moved in, how often was he over at
10 y'all's house?

11 A. He came over there every now and then.

12 Q. And isn't it true that him and Jessica would kind of
13 float around from place to place? They didn't always live
14 at

15 A. Yes.

16 Q. Do you remember the longest period of time that they
17 like lived for one stretch with y'all at

18 A. Not very much.

19 Q. They would be there for a couple of months and then
20 they would ---

21 A. No. I can't remember much about it.

22 Q. Okay. You can't remember? Okay. That's fine. So
23 this first alleged game of truth or dare, are you saying
24 that it was just you and Older and Tyler present?

25 A. To my knowledge, yes.

1 Q. Do you remember where your mom was during that
2 incident?

3 A. No.

4 Q. How about your sister?

5 A. No.

6 Q. Could they have been home?

7 A. I don't know.

8 Q. Do you remember any specific event that y'all were
9 doing that day when that happened?

10 A. What do you mean?

11 Q. Anything that distinguishes that day other than the
12 alleged truth or dare game?

13 A. Not that I can remember.

14 Q. All right. And so you testified about the so-called
15 military showers?

16 A. Yes, sir.

17 Q. Is Tyler the only person you've heard that term from?

18 A. Yes.

19 Q. Okay. Do you remember talking to Detective Culbreath?

20 A. (No verbal response.)

21 Q. Or do you remember talking to a police officer about
22 these matters?

23 A. I don't really remember who I talked to.

24 Q. Okay. Well, you had already testified that you went
25 one time and didn't say anything to them, and then you went

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1 back and gave them a statement; right?

2 A. Yes.

3 Q. Okay. And that detective, did he -- do you remember
4 if you were asked specifically about these military
5 showers?

6 A. Not that I can remember.

7 Q. You don't remember if the detective asked you -- or
8 did you tell the detective that Tyler made you take showers
9 with him?

10 A. Not that I can remember.

11 Q. Okay. And did he ask you if he made you do anything
12 to him or whether or not he made you, or vice versa?

13 A. Not that I can remember.

14 Q. You don't remember telling the detective that Tyler,
15 during those alleged showers, that he did not make you do
16 anything to him or that he did anything to you?

17 A. Will you rephrase the question?

18 Q. All right. Did you tell the detective that when the
19 shower incident -- when you were made -- when you say you
20 were made to take a shower with Tyler, and he asked you did
21 he make you do anything else in the shower, did you tell
22 him no?

23 A. Not that I can remember.

24 Q. Okay. If you did tell him that, that's different than
25 what you're testifying here today; right?

1 A. I don't understand the question.

2 Q. You testified earlier that Tyler touched you in the
3 shower and that he made you touch him; right? I believe
4 that was your testimony.

5 A. He never made me touch him.

6 Q. Okay. I'm sorry. But you're saying he touched you in
7 the shower?

8 A. Uh-huh (affirmative).

9 Q. Is that a yes?

10 A. Yes.

11 Q. But you didn't tell the detective that; right?

12 A. Not that I can remember.

13 Q. And you said that your step-dad would call y'all
14 names?

15 A. Yes.

16 Q. Homo, faggot, things of that nature?

17 A. Yes.

18 Q. Your mother, are you aware that your mother was not
19 accepting of your brother's sexuality?

20 A. Yes.

21 Q. You were aware of that?

22 A. Yes.

23 Q. How often would Minor Friend come over to your house?

24 A. I don't really know.

25 Q. Okay. Let me try it a different way. Were you still

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1 about eight years old when she would come over and be
2 babysat?

3 A. I guess so.

4 Q. Okay. Do you recall how many times you're saying

5 Minor was involved in these truth or dare games?
Friend

6 A. I don't know.

7 Q. You don't remember?

8 A. (Negative nod.)

9 Q. Was it more than one?

10 A. Yes.

11 Q. More than one?

12 A. It was definitely more than one.

13 Q. And the incident that you're alleging regarding anal
14 intercourse in the bathroom, your mother's bedroom is right
15 next to that bathroom; correct?

16 A. Yes.

17 Q. And she was home during that incident?

18 A. I don't know.

19 Q. Okay. And you're saying that happened when you were
20 eight years old?

21 A. Eight to nine.

22 Q. Eight to nine. Now, as far as who was present in the
23 house when that happened, when you say that happened,

24 you're saying Older Brother was there. Is that right?

25 A. Yes.

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1 Q. Minor and yourself. And you're saying Tyler was
2 there; right?

3 A. Yes.

4 Q. Was Jessica there?

5 A. Not that I can remember.

6 Q. You don't remember if she was there watching?

7 A. No, she wasn't there. She wasn't there.

8 Q. So she was not present when that occurred?

9 A. Not at all.

10 MR. ALEXANDER: One moment, Your Honor.

11 Q. And the statement that you did give to the detective,
12 you didn't handwrite a statement out; correct?

13 A. No.

14 Q. Actually the detective typed it up for you and you
15 signed it?

16 A. Yes.

17 Q. Have you ever gotten in trouble at school?

18 MS. BARWICK: Judge, I'm going to object.

19 MR. ALEXANDER: It goes to credibility, Your
20 Honor.

21 MS. BARWICK: No, it goes back to character
22 evidence, Your Honor.

23 MR. ALEXANDER: Approach, Your Honor?

24 THE COURT: Let me talk to the attorneys up here.

25 (WHEREUPON, Ms. Barwick and Mr. Alexander approached

Younger - Cross Examination by Mr. Alexander

1 the bar.)

2 Q. So have you ever gotten in trouble at school, Younger

3 A. Yes.

4 Q. Have you gotten in trouble at school for lying at
5 times?

6 A. No.

7 Q. You never got in trouble for lying about taking
8 another student's homework?

9 A. No.

10 Q. No? So if your school discipline records reflect
11 that, that would be inaccurate?

12 MS. BARWICK: Judge, he asked and answered. If
13 he wants to introduce ---

14 THE COURT: The answer's been given.

15 MR. ALEXANDER: Thank you, Your Honor.

16 Q. Are you close to your older brother?

17 A. Yes.

18 Q. You testified earlier that, I guess back when you were
19 eight you didn't have any friends other than your brother;
20 right?

21 A. Yes.

22 Q. Is that true today? Is he still one of your only
23 friends or ...

24 A. I have a lot of friends now.

25 Q. Okay. But you're still close with your brother today?

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- 1 A. Yes.
- 2 Q. Are you close with your sister, Jessica?
- 3 A. Somewhat.
- 4 Q. And you're currently -- you live with your dad. Is
- 5 that correct?
- 6 A. Yes, sir.
- 7 Q. And ^{Older}~~Brother~~ lives with Jessica?
- 8 A. My sister.
- 9 Q. Are you still in school?
- 10 A. Yes, sir.
- 11 Q. So just to make sure I've got this right, Younger. So
- 12 you came home to your brother hugging your sister and
- 13 crying. And that was sometime around May of 2009?
- 14 A. I don't know the date of when it occurred.
- 15 Q. All right. But it was shortly thereafter, within a
- 16 week or so, that you first went and talked or at least
- 17 tried to talk to a detective and didn't tell him anything;
- 18 right?
- 19 A. I don't know.
- 20 Q. And then it was a couple of months after that, that
- 21 you went back and gave your statement; right?
- 22 A. I don't know.
- 23 Q. You don't remember?
- 24 A. I don't know. I don't remember hardly any of the
- 25 dates at the time.

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1 Q. Okay. And during that two-month time period or
2 whatever amount it was that you don't recall, who did you
3 talk to? You talked to your brother about these
4 allegations; right?

5 A. I don't understand the question.

6 Q. Before you talked and gave your statement to the
7 detective, you testified that your brother is the one that
8 convinced you to give the statement; correct?

9 A. Yes.

10 Q. Okay. But that you also talked to your mother and
11 your sister about it; correct?

12 A. Yes, sir.

13 MR. ALEXANDER: One moment, Your Honor.

14 THE COURT: Yes, sir.

15 MR. ALEXANDER: Just briefly, Your Honor.

16 Q. I show you this document. Do you recognize that?

17 A. Yes, sir.

18 Q. What is it?

19 A. That's my statement.

20 Q. That's the typed statement that Detective Culbreath
21 typed up and you signed?

22 A. Yes, sir.

23 Q. All right. And nowhere in that statement do you refer
24 to a ranking system or wrestling or anything like that?

25 A. It doesn't say it.

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1 Q. It's not in there; right?

2 A. No, sir.

3 Q. Okay. And actually it's left out that -- it's not in
4 there where you told him nothing happened in the shower;
5 correct?

6 A. I don't understand your question.

7 Q. In the statement you don't say anything happened in
8 the shower. Is that correct?

9 A. Yes.

10 Q. You don't allege any -- in the written statement you
11 don't say anything happened in the shower. Is that
12 correct?

13 A. There's nothing in the statement that says anything.

14 MR. ALEXANDER: That's all the questions I have.

15 THE COURT: Any redirect?

16 MS. BARWICK: Yes, sir. The State would like to
17 introduce the victim's statement into evidence.

18 THE COURT: Any objection?

19 MR. ALEXANDER: No, Your Honor.

20 THE COURT: All right. By consent, again, the
21 statement is admitted into evidence.

22 MS. BARWICK: Thank you, Your Honor.

23 THE COURT: It will be marked as the next
24 exhibit.

25 (WHEREUPON, State Exhibit Number 4 was marked and

Younger - Redirect Examination by Ms. Barwick

1 admitted into evidence.)

2

REDIRECT EXAMINATION

3 **BY MS. BARWICK:**

4 Q. Younger I see that you have a copy of your statement
5 up there. Will you please read that to the jury?

6 A. The whole thing?

7 Q. Yes, sir.

8 A. I, Younger Brother was nine years old and living on

9 And Tyler Brown made me and Minor Friend and Older Brother

10 do stuff. Like Tyler made me take all of my clothes off

11 and stick my penis in Minor Friend's butt. And he made Minor Friend grab

12 his penis. And another time, he made me and Older Brother pull

13 our pants down and compare penis sizes. And Tyler also

14 made me take showers many times with him. And would also

15 make me and Older Brother and Minor Friend smoke marijuana with him.

16 MS. BARWICK: No further questions at this time.

17 THE COURT: All right. Thank you, sir. You may
18 step down. Any objection to this witness being excused?

19 MR. ALEXANDER: No, Your Honor.

20 THE COURT: The State may call its next witness.

21 MS. HINTON: Thank you, Your Honor. The State
22 would call Minor Friend

23 THE CLERK: Place your left hand on the bible and
24 raise your right hand.

25 Do you solemnly swear or affirm that the testimony

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1 you're about to give is the truth, the whole truth and
2 nothing but the truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: Have a seat and state your name for
5 the record, please.

6 THE WITNESS: Minor Friend

7 Minor Friend

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HINTON:

11 Q. Minor, I'm going to stand back here because the air
12 conditioner is loud so I need you to speak up; okay, so
13 they can hear you over here on the back row. All right?

14 A. Okay.

15 Q. Minor, how old are you?

16 A. Nineteen.

17 Q. Okay. When's your birthday?

18 A.

19 Q. So did you just turn nineteen?

20 A. Yes, ma'am.

21 Q. Where do you currently live?

22 A.

23 Q. And how long have you lived there?

24 A. I think two years. Here recently, I just moved back.

25 Q. Okay. And you said you just moved back. Where did

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1 you move back from?

2 A. Waynesville, North Carolina.

3 Q. And when did you move to Waynesville, North Carolina?

4 A. I had just entered middle school.

5 Q. Okay. So roughly, do you have roughly an age that you
6 were?

7 A. Thirteen, I think.

8 Q. Okay. Prior to moving to North Carolina, did you live
9 in Pickens County, also?

10 A. Yes, ma'am.

11 Q. Okay. And so would that have meant that you lived in
12 Pickens County between 2003 and 2006?

13 A. Yes, ma'am.

14 Q. Minor, what was your family life like growing up?

15 A. I had a good family. I had a lot of fun. My mom was
16 always there for me. I didn't have a stable father
17 environment, but my step-dad kind of stepped in and he was
18 the father figure that I needed.

19 Q. Where was your father?

20 A. Who knows. In and out of jail.

21 Q. Minor, do you know Older and Younger Brother

22 A. Yes, ma'am.

23 Q. How do you know them?

24 A. They are my childhood best friends.

25 Q. Do you know when you first met Older and Younger

1 A. I don't remember. But I -- my mom knew their mom and
2 she kind of sat up a play date where we got to know each
3 other. And that's when we started hanging out and getting
4 really close.

5 Q. Okay. And did you ever go to their house?

6 A. Yes, ma'am.

7 Q. And why would you go over there?

8 A. Kendra would babysit me and I would stay over there
9 with Older and Younger
Mother Father

10 Q. Okay. Do you know where they lived when you would go
11 over there?

12 A. I couldn't give you directions.

13 Q. Okay. What type of house did they live in?

14 A. A trailer.

15 Q. Do you know the street that they lived on?

16 A. No, ma'am.

17 Q. Do you know roughly how long Kendra was your
18 babysitter?

19 A. Maybe a year. I'm not really sure. So I'm just
20 guessing a year.

21 Q. Okay. How old were you around that time, do you
22 remember?

23 A. I don't remember.

24 Q. Do you remember who would be over there when you would
25 be babysat by Kendra?

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1 A. Tyler, Jessica, Older Brother and Younger Brother

2 Q. Was Jessica pregnant when you were over there?

3 A. Yes, ma'am.

4 Q. Had she had a child yet?

5 A. No, ma'am.

6 Q. So was she pregnant with her first child?

7 A. Yes.

8 Q. And when you would go over there, you said Kendra was
9 babysitting you. Would she actually be the one watching
10 you most of the time?

11 A. No.

12 Q. Who would watch you?

13 A. Jessica and Tyler.

14 Q. And who was Tyler?

15 A. Jessica's boyfriend.

16 Q. Were Jessica and Tyler there most times when you went
17 to the house?

18 A. Yes.

19 Q. What was Older Brother like as a child?

20 A. He was goofy. He was like -- me and him connected
21 faster than me and Younger Brother did because I was always
22 outgoing and he was always the one that would be right
23 there with me, annoying our parents and just being
24 outgoing.

25 Q. Okay. And what was Younger Brother like?

1 A. He was always quiet. And he was always the quiet
2 person that would never, you know, really talk unless he
3 knew you.

4 Q. Okay. Would Younger talk to you?

5 A. Yes.

6 Q. When you first started going over to Older Brother and
7 Younger house to be babysat, what was Tyler like?

8 A. Tyler was really cool. He reminded me of a big
9 brother that I always wanted. He was always, you know, the
10 one to laugh, to make me laugh, to wrestle around with us,
11 and just joke around and be awesome.

12 Q. Okay. You said y'all wrestled around?

13 A. Yes.

14 Q. Okay. Looking back on the wrestling, was there ever a
15 time when the wrestling progressed to something else?

16 A. There was like once or twice where he had brushed me,
17 my butt and my boob one time. But I didn't think nothing
18 of it. I just thought it was a mishap at the time.

19 Q. Okay. And when you would go over there, you described
20 Older Brother as outgoing. Would you ever go over there when

21 Older Brother was not outgoing?

22 A. Yes.

23 Q. Okay. Tell me a little bit about that.

24 A. Can I have some water?

25 Q. Sure.

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1 A. Thank you.

2 Q. Tell me about the times when Older was not outgoing
3 when you were over there?

4 A. There would be a couple of times that I would go over
5 there and Older Brother face would be really red or he had --
6 looked like he had just got done crying and he wouldn't
7 talk. And that was not normal if you knew him like I did.
8 It was not normal at all. And I couldn't get him to talk
9 to me and tell me what was wrong.

10 Q. What about Younger were there ever times when Younger
11 was not talkative to you?

12 A. Yeah. Every time I went over there, me and Younger
13 and Older we were always -- we were really, really,
14 really close. And Younger there would be a couple of
15 times where he wouldn't even, he wouldn't even look at me.
16 He wouldn't talk to me at all. And that was really weird.

17 Q. Back then, did you know why they were acting like
18 that?

19 A. No.

20 Q. Minor, were you ever sexually abused by the Defendant?

21 A. Yes.

22 Q. And where were you when that happened?

23 A. In the living room one time and in the bathroom.

24 Q. And when we're talking about the living room and
25 bathroom, where are we talking about?

1 A. In the living room in front of everybody, in front of
2 the TV.

3 Q. But whose living room, I guess is ---

4 A. Kendra's.

5 Q. Where you were being babysat?

6 A. Yes.

7 Q. And when did that sexual abuse start?

8 A. The second to the last time that I ever went over
9 there.

10 Q. And did it happen once or more than once?

11 A. Twice.

12 Q. Okay. Let's talk about the first incident. Who was
13 there that day?

14 A. Me, Jessica and Tyler, Older and Younger

15 Q. Tell me what happened on that first incident?

16 A. There's a time that -- there was -- Older had --

17 Tyler told Older to go to the room and I thought he was
18 in trouble. And so I just kind of sat there. Well, while

19 Older was in the room I could hear him say like, you

20 know, no. And I could hear him crying. I thought he was

21 in trouble. That's what I thought. So I -- when he came

22 out of the room, his face was really red and he looked like

23 he was crying a lot. And he just sat down. And when he

24 sat down he sat in the chair, and he wouldn't talk. He was

25 just quiet for the rest of the time that I was there.

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1 Q. Other than that, on that incident, did anything else
2 happen?

3 A. Tyler had made Younger and Older touch each other a
4 little bit. But nothing, you know, in the pants or
5 anything.

6 Q. Okay. What started this behavior, do you know?

7 A. He wanted to play truth or dare.

8 Q. Who's he?

9 A. Tyler.

10 Q. And did you agree to play truth or dare?

11 A. Yes.

12 Q. Did you know what he meant by truth or dare?

13 A. Not at the time, no.

14 Q. And when you said that Older and Younger had to
15 touch each other, was that a dare?

16 A. Yes.

17 Q. And who dared them to do that?

18 A. Tyler. He was the one making up most of the -- making
19 up all the dares.

20 Q. Okay. How did Older and Younger act when Tyler
21 dared them to touch each other?

22 A. Like they didn't want to. They were reluctant. They
23 hesitated.

24 Q. Did Tyler say anything during this time period?

25 A. He kept reassuring us that it was going to be okay.

1 That we wasn't going to be in trouble, but if we told
2 anybody, we would get in trouble.

3 Q. And when you said they were touching each other, where
4 were they touching each other?

5 A. On their private.

6 Q. And by privates, do you mean penis?

7 A. Yes.

8 Q. Over clothes or under clothes?

9 A. Over clothes.

10 Q. Still on that first day, that first incident, did
11 anything else happen that day?

12 A. No, ma'am.

13 Q. Was there another incident where y'all played truth or
14 dare?

15 A. Yes, ma'am.

16 Q. Tell me about that day?

17 A. It started off just like a normal day. Me, Older
18 and Younger was outside playing and we came in around dark,
19 around I guess, eight. I'm not sure, though. But we came
20 in and he asked if we wanted to play truth or dare. And we
21 all agreed. And he made me take off my clothes, but strip
22 down to my underwear -- or my pants and my bra.

23 Q. Who is he?

24 A. Tyler. And he -- I guess I wasn't getting my shirt
25 off fast enough. And he seemed like he was getting angry.

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1 And he walked up and like helped me take off my shirt. And
2 then he made Older Brother and Younger get up there beside me and
3 take off their clothes, down to their boxers.

4 Q. Okay. And what about Tyler, did he have his clothes
5 on?

6 A. Yes.

7 Q. And after he made y'all undress, what happened?

8 A. He made Older Brother and Tyler -- or Older Brother and Younger --
9 he made Older Brother come up to me and dry hump me. And he was
10 kissing my neck.

11 Q. Who is he?

12 A. Tyler. Sorry. Tyler was kissing my neck and he made
13 Older Brother dry hump me and then ...

14 Q. Aside from kissing your neck, did Tyler do anything
15 else while Older Brother was dry humping you?

16 A. Yes. Tyler had his hands in my hair at one point.
17 And I had my eyes closed because I was trying to not think
18 about anything. I was trying to block everything out. And
19 the only way I could think about it was closing my eyes and
20 not thinking about it at all. So I had my eyes closed.
21 And he had his hands in my hair and I know both hands were
22 in my hair, on my head. And I felt something touch my
23 face. And I know it wasn't his hands. And he -- it was
24 like he was trying to probe it into my mouth. But I kind
25 of like locked my jaws.

- 1 Q. What was he trying to probe into your mouth?
- 2 A. His penis.
- 3 Q. Okay. And how do you know it was his penis?
- 4 A. His hands were in my hair for one, both hands. And I
- 5 felt them on my head. So I know that they couldn't be his
- 6 fingers or anything. And I kind of heard his pants fall,
- 7 so that gave me another idea.
- 8 Q. Okay. Did Tyler ever touch your genitals?
- 9 A. He grabbed my boob. And then he made me and Younger
- 10 go into the bathroom.
- 11 Q. Okay. Let's talk about that. Who all went into the
- 12 bathroom with you and Younger
- 13 A. Just me, Younger and Tyler.
- 14 Q. Okay. And what happened in the bathroom?
- 15 A. I had to take off my pants and he was -- Younger
- 16 pulled his down and Younger had to stick his penis in my
- 17 butt.
- 18 Q. Did Younger actually stick his penis in your butt?
- 19 A. Half-way, sort of.
- 20 Q. Do you remember if his penis went in easy?
- 21 A. No. Well, we had lotion that was on the back of the
- 22 toilet?
- 23 Q. What did you use the lotion for?
- 24 A. Lubricant.
- 25 Q. How did you know what to do when you got into the

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1 bathroom?

2 A. Tyler was telling Older -- Younger what to do.

3 Q. Were your eyes opened or closed then?

4 A. They were closed.

5 Q. When your eyes were closed what was going through your
6 head?

7 A. I was trying to think of something happy. And the
8 only time I could think of, that I could block anything
9 out, was with my papa.

10 Q. Who's your papa?

11 A. Frank Pagnotti [phonics]. He's dead now. But I just
12 remembered me being the happiest with him.

13 Q. After that happened in the bathroom, did anything else
14 happen that day?

15 A. No.

16 Q. Other than you, Older Brother Younger and Tyler, was anyone
17 else at the house when this was going on?

18 A. Jessica.

19 Q. And where was Jessica?

20 A. Asleep on the couch.

21 Q. At any point did you see Jessica wake up during this?

22 A. No. I mean, I don't know. My eyes were closed the
23 whole entire time.

24 Q. Okay. And when you say she was asleep on the couch,
25 where was the couch? What room?

- 1 A. Living room.
- 2 Q. Were there any rules to your truth or dare?
- 3 A. Not to tell anybody.
- 4 Q. And what would happen if you told anybody?
- 5 A. He would get really mad and something bad would
- 6 happen, but I don't know what it was, because I never told.
- 7 Q. You said that this happened the last two times that
- 8 you were over there. How do you know it was the last two
- 9 times you were over there?
- 10 A. Because when I got in the car, I told my mom that I
- 11 never wanted to go back.
- 12 Q. And when did you tell her, after the first accident or
- 13 after the second?
- 14 A. The second incident.
- 15 Q. Did you ever go back after that?
- 16 A. No.
- 17 Q. And how old were you when all this happened?
- 18 A. I don't remember my exact age.
- 19 Q. Do you remember the season? Was it hot, cold?
- 20 A. I don't remember.
- 21 Q. But you said you do remember that Jessica was
- 22 pregnant?
- 23 A. Yes.
- 24 Q. Did you eventually talk to the police about this
- 25 incident?

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1 A. Yes.

2 Q. And did you come to them or did they come to you?

3 A. They came to me.

4 Q. And where did they come find you?

5 A. North Carolina.

6 Q. Minor , when all this was going on, how did it make you
7 feel?

8 A. I felt like if I was going to tell anybody that
9 everybody would judge me, that I would feel like that it
10 was my fault that all this happened. They would look at me
11 like I was this disgusting little girl. And if I told
12 anybody, I thought they would get mad at me and not the
13 other person because I didn't do anything to stop it. And
14 I don't want anybody else to go through it, what I had to
15 go through. It's just an awful feeling. It makes me --
16 still to this day, it makes me feel like I'm -- it makes me
17 feel like I'm really gross. Like, it's nothing -- I can't
18 get clean of it.

19 Q. Minor , when the police came to talk to you, how old
20 were you?

21 A. I don't remember.

22 Q. Do you know if you were in middle school or high
23 school?

24 A. I was in middle school.

25 Q. When's the last time you spoke to Older Brother and

1 Younger Brother

2 A. The day that I left. I haven't talked to them in five
3 plus years, something like that.

4 Q. Did you talk to them yesterday?

5 A. Nope.

6 Q. Have you talked to them today?

7 A. Nope.

8 Q. Minor, that's all I have. Please answer any questions
9 Mr. Alexander has.

10 MR. ALEXANDER: Could we have a short break?

11 THE COURT: Okay. Let's take a short break
12 before we being this.

13 Ladies and gentlemen, let me remind you not to discuss
14 the case while you're out and about. If you'll go back to
15 your jury room, we'll take a short break and call you back
16 in a few moments.

17 (WHEREUPON, the jury exited the open court at
18 approximately 3:53 p.m.)

19 THE COURT: All right, young lady, you may step
20 down now. Let me remind you ---

21 MS. UPTON: Where do I go?

22 THE COURT: You just go back there and sit down
23 for a moment. Don't discuss your testimony with anyone.

24 All right. Let's take about a ten minute break. I've
25 got some other lawyers waiting to do a settlement on the

1 record. So if y'all will just take about a ten minute
2 break, we'll be ready to start back.

3 (WHEREUPON, the court stood at recess for a short
4 break.)

5 THE COURT: All right. If our jury's ready, you
6 can have them come in.

7 MR. ALEXANDER: Your Honor, I do have ---

8 THE COURT: Wait just a minute.

9 MR. ALEXANDER: I do have one matter of law for
10 you, Your Honor, to consider.

11 THE COURT: Yes, sir.

12 MR. ALEXANDER: We discussed in pre-trial about
13 prior allegations, an unrelated case involving Minor Friend
14 in 2004. And I understand Your Honor's ruling excluding
15 that. But we had discussed whether or not I would be able
16 to ask a more vague questions, for lack of a better word,
17 that she -- what I would propose that I be allowed to ask,
18 something to the effect that, isn't it true you spoke with
19 Detective Culbreath in December 2004 as a complaining party
20 in an unrelated case. And just some follow-up to that.
21 And I think the State opposes that.

22 And, in addition to that, Your Honor, I would move
23 that I be allowed to get into at least some detail about
24 the nature of that. And I understand Your Honor's previous
25 ruling, but based on Ms. Upton's testimony here today --

1 let me find my notes on that. She was asked, I believe it
2 was in response to the question, the question about the
3 delay and why she didn't tell anybody about it or something
4 to that effect. She described how it made her feel,
5 disgusting and all of those adjectives she used. I didn't
6 write them all down. But I would move that that opens the
7 door for me to at least ask in some detail about those
8 prior allegations. Because per the incident report,
9 they're very similar alleged sexual acts in that incident
10 that she spoke to Detective Culbreath about six months
11 after these alleged incidences occurred. So I believe she
12 opened the door to at least get into some detail about
13 that, based on her testimony here today, Your Honor.

14 THE COURT: All right. Is the State opposed to
15 the question as posed?

16 MS. HINTON: Yes, Your Honor. The State would
17 prefer that the question be phrased that, isn't it true
18 that you had an occasion to speak with Keith Culbreath
19 about this case prior to 2009. I think that is specific
20 enough in that she had an opportunity speak to Keith
21 Culbreath. But not so broad as to allow the jury to start
22 wondering what kind of complainant she was in another case.

23 MR. ALEXANDER: Your Honor, obviously, I want to
24 establish that she actually -- not that it was just an
25 opportunity. I mean, that could be you had the opportunity

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1 to pick up the phone and report it.

2 THE COURT: That she was actually ---

3 MR. ALEXANDER: That she was actually ---

4 THE COURT: That she talked with ---

5 MR. ALEXANDER: Exactly, Your Honor.

6 THE COURT: --- Officer Culbreath on an occasion
7 in 2004.

8 MR. ALEXANDER: That she was -- and I ---

9 THE COURT: On an unrelated matter?

10 MR. ALEXANDER: An unrelated matter. That's ---

11 MS. HINTON: Judge, can we at least leave out
12 that she was the complainant.

13 THE COURT: Well, that's what I say, that ---

14 MR. ALEXANDER: Well, that's going to ---

15 THE COURT: So if you phrase the question, isn't
16 it true that you talked with Officer Culbreath in 2004, the
17 two of you talked at the law enforcement center, or
18 wherever it was, on an unrelated matter, and you had a
19 chance to share this with him at that time.

20 MR. ALEXANDER: That's fine. I put the
21 complaining party in there because they said that it could
22 be inferred she was somehow the culprit in it. And that
23 that's why I ---

24 THE COURT: Well, just say on an unrelated
25 matter. Are you both satisfied with that way?

1 MS. HINTON: That's fine with the State, Your
2 Honor.

3 THE COURT: Okay. But I don't see how this has
4 opened the door to anything that -- what she said that the
5 rape shield statute wouldn't be applicable.

6 MR. ALEXANDER: I would just want to reserve that
7 objection, obviously, that -- just on the basis --
8 obviously the line of thinking is that she didn't say that
9 it made -- she's saying it made her feel this way for these
10 things to have happened to her. Yet, right after or during
11 the time or shortly thereafter that these allegations
12 supposedly took place, she was describing virtually
13 identical acts in another matter to the police. And so I
14 believe -- my position is that it opens the door because
15 she was able to describe those acts during the same time
16 period, but wasn't able to describe the very same acts with
17 another individual. It goes directly to credibility, is my
18 position, Your Honor. Impeachable or nothing of that
19 nature. But that would be my position as to how the door
20 was opened.

21 THE COURT: When did the alleged acts take place,
22 in 2004 with Brooks or whoever this -- or was it Brooks?

23 MR. ALEXANDER: The prior incident?

24 THE COURT: Yeah.

25 MR. ALEXANDER: She spoke to the police in

1 December 2004. The allegations from that incident
2 occurred, I believe, when she was eight years old. So
3 whatever, I think she was like ten or so. Based on her
4 birth date, nine or ten I think.

5 THE COURT: When these occurred?

6 MR. ALEXANDER: When she spoke to Detective
7 Culbreath in 2004 and when these allegations supposedly
8 occurred, it was all 2004. And her birthday was whenever
9 it was. She was like nine years old. So it would have
10 been like 2003 or something, I guess, the other
11 allegations.

12 MS. BARWICK: Judge, if I could shine some light
13 to clarify this situation. And I think it's getting
14 confusing by saying this incident and that incident. We'll
15 refer to the incident at hand and the other incident. The
16 other incident happened two years before this incident that
17 we're here for happened. The prior incident, the other
18 unrelated incident, she reported that in September of 2004.
19 This incident we're here for happened around May or June of
20 2004. So about four to five months before she disclosed
21 about the prior, unrelated incident.

22 MR. ALEXANDER: I agree with those dates, Your
23 Honor. I mean, that's exactly what -- I guess ---

24 THE COURT: All right. So the first incident --
25 what was the name of the other person?

1 MR. ALEXANDER: Frederick Barr was his name.

2 THE COURT: Barr?

3 MR. ALEXANDER: Barr, Mr. Barr.

4 THE COURT: So the Barr incident happened in
5 2004?

6 MS. BARWICK: No, sir.

7 MR. ALEXANDER: No, Your Honor.

8 MS. BARWICK: 2002.

9 THE COURT: Happened then. In 2004 she spoke
10 with Officer Culbreath about the Barr incident.

11 MS. BARWICK: Right. Because she had told a
12 friend, who had told her grandmother, who then made her go
13 and tell law enforcement. So law enforcement specifically
14 asked her about Barr. They didn't ask her about any other
15 sexual incidents or experiences, so she didn't tell them.

16 THE COURT: And then in '04 is when this alleged
17 incident happened?

18 MS. BARWICK: May or June of 2004 when she was
19 ten years old.

20 THE COURT: And she talked with Officer Culbreath
21 in December of '04?

22 MR. ALEXANDER: That's correct, Your Honor.

23 MS. BARWICK: Actually, it was September 19th of
24 2004.

25 THE COURT: Okay. September of '04.

1 MR. ALEXANDER: And I mean, I don't want to
2 argue, but I was just reading the incident report, December
3 6th, 2004, interviewed victim Minor Friend who was eleven
4 years old. So, I mean, I agree with those dates other than
5 -- the incident report I see says she talked to him in
6 December of '04. It was apparently -- I believe it is
7 correct, it was reported before that. But it was reported,
8 I think, by the family member. And for whatever reason, I
9 guess they didn't talk to her until December, at least by
10 my reading of that.

11 MS. HINTON: But, Judge, regardless of the dates,
12 the State still feels that this in a clear violation of the
13 rape shield statute. And if it doesn't qualify under the
14 rape shield, it has to qualify under that Boiter test.
15 And, again, the first prong is that the allegation is
16 false. And the Defendant has provided no information about
17 it being a false allegation.

18 MR. ALEXANDER: I'm not offering it for that
19 purpose, Your Honor. I'm offering it to impeach her
20 testimony. Because she can -- and to attack her
21 credibility because she said that she didn't tell anybody
22 because it made her feel those ways. Yet, at the same --
23 virtually -- I mean, June to December, six months, she was
24 able to talk about an incident that happened, that happened
25 prior to Mr. Brown's alleged incident. In December 2004,

1 she was able to talk about -- and, I -- you know, we can go
2 over what was actually said, but they're virtually
3 identical types of allegations. Allegations of oral sex,
4 things of that nature. So ...

5 MS. HINTON: And, Judge, that's the only
6 correlation between that incident and this incident. If we
7 do that, then we have to go into, well, how much did you
8 tell him about that incident? Why didn't you fully -- I
9 mean, it shifts to a whole unrelated incident. And to
10 attack her credibility because she said it made her feel
11 gross -- I asked her how this incident made her feel. It
12 can still make her feel gross and she could have had it
13 happen to her six times before. It doesn't make it any
14 less disgusting that it happened. And I don't -- it's not
15 for the purpose of attacking her credibility. And whether
16 it's false or not, does matter.

17 I know that Mr. Alexander says he's not introducing it
18 for that purpose, but that's not what Boiter says. Boiter
19 says, it has to fall under rape shield, that it has to be
20 for sexual knowledge, origin of semen, pregnancy or
21 disease. If it doesn't fall under those, the only time
22 that you can bring it in, according to our State Supreme
23 Court, is that you have to prove that the allegations were
24 false. And then you can use it to attack the victim's
25 credibility.

1 MR. ALEXANDER: I disagree with that, Your Honor.
2 I mean, it's for impeachment purposes. That's, you know,
3 rebuttal testimony. I mean, that's the nature of that, you
4 know, when something is not otherwise admissible, you are
5 offering that to rebut a statement that they made, or
6 challenge it. And that's the purpose of our offering it.
7 I mean, I don't have a problem with saying that that first
8 incident actually happened. I'm not disputing that at all,
9 that it was false. I mean, I'm not trying that case
10 obviously. But the point of it is, that she described
11 those allegations to Detective Culbreath within a
12 reasonable time period. And she said that she said she
13 didn't tell anybody because these made her feel disgusting,
14 when she was able to describe virtually the same acts from
15 another incident at the same time.

16 THE COURT: Well, I think the problem with going
17 down that road, Mr. Alexander, is that -- I understand
18 where you're coming from, but we've got a 2004 incident and
19 she's at one age. And then another time of reporting when
20 she's at a different age. And, obviously, her feelings
21 have changed over those times. I think the question that
22 we discussed, that will allow you to check her credibility
23 as far as the opportunity to have reported this.
24 Certainly, your objection is noted on the record.

25 MR. ALEXANDER: Yes, sir. Well, can I -- I need

1 to make sure I've got it right. So, isn't it true that you
2 spoke with Detective Culbreath in December 2004 in an ---

3 THE COURT: Unrelated matter.

4 MR. ALEXANDER: --- unrelated matter.

5 THE COURT: And I don't know, was it at the law
6 enforcement center? Does anybody know that?

7 MR. ALEXANDER: I honestly don't know that. I
8 can't tell that by the incident report.

9 MS. HINTON: And, Judge, I just want to make sure
10 that ^{Minor} Friend 's clear that the Defendant -- the defense
11 attorney is not going to go into prior allegations of
12 sexual abuse, so she does not need to broach that subject.

13 THE COURT: All right. Is everybody clear on
14 that now?

15 MS. HINTON: Yes, Your Honor.

16 MR. ALEXANDER: Yes, sir.

17 THE COURT: I just believe, Mr. Alexander, the
18 rape shield statute, the intent of that, it's a powerful
19 law to protect the victims. And I'm still trying to work
20 it so that the rights of both parties are protected. And I
21 believe that will allow you adequately cross-examination
22 for this particular ancillary issue on her credibility.

23 MR. ALEXANDER: Yes, sir, Your Honor.

24 THE COURT: All right. Let's have our jury come
25 in if they're ready.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 4:33 P.M.)

3 THE COURT: Thank you very much, ladies and
4 gentlemen. We're now ready to proceed with the cross-
5 examination. Mr. Alexander.

6 MR. ALEXANDER: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. ALEXANDER:**

9 Q. Minor I'm Steven Alexander. I represent Mr. Brown in
10 this matter. I just want to kind of go back and kind of
11 start at the beginning, as far as the beginning of this
12 case, from a legal side. The first time -- your testimony
13 is the first time you were aware that, I guess, law
14 enforcement was involved is when Detective Culbreath came
15 to visit you in North Carolina?

16 A. He called and set up an appointment.

17 Q. So had he -- he contacted your mother first?

18 A. Right.

19 Q. Is that right?

20 A. Yes.

21 Q. To find -- to see if you would talk with him and he
22 said what the allegations were about?

23 A. Right.

24 Q. And do you disagree that that was around sometime in
25 May of 2009? Does that sound about right?

- 1 A. I'm confused. Do I disagree or agree?
- 2 Q. I'll rephrase it. I'm sorry. The phone call to your
3 mother, was that a couple of months before you actually met
4 with the detective?
- 5 A. No. It was -- I think it was -- I'm almost certain it
6 was really soon. We made it like the next day.
- 7 Q. Okay. All right.
- 8 A. Or maybe it was maybe a week or two later, but it
9 wasn't a couple of months.
- 10 Q. You don't remember the exact time?
- 11 A. No.
- 12 Q. Okay. But he came up to North Carolina and talked
13 with you there. Is that right?
- 14 A. Uh-huh (affirmative).
- 15 Q. And you gave him a written statement at that time?
- 16 A. Yes.
- 17 Q. Did you talk to your mom about the allegations before
18 you met with Detective Culbreath?
- 19 A. No.
- 20 Q. Did she tell you why he wanted to meet with you?
- 21 A. She told me word-for-word what he said, and I agreed
22 to meet with him.
- 23 Q. Okay. So before the meeting you knew that he wanted
24 to talk to you about allegations of sexual abuse by Damon
25 Tyler Brown?

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1 A. Right.

2 Q. All right. I just want to first kind of go over --
3 make sure I'm clear on a couple of things that you
4 testified to. You said there were two occasions where some
5 type of sexual abuse occurred. Is that correct?

6 A. Right.

7 Q. And that the first time was in a living -- took place
8 in the living room? That was the only place it took place?

9 A. Right.

10 Q. And you ---

11 A. As far as involving me, that was the only place that
12 it took place.

13 Q. Yeah. So the first incident you're saying that
14 yourself, Older Brother and Younger were there. Is that right?

15 A. Uh-huh (affirmative).

16 Q. And that Tyler was there?

17 A. Uh-huh (affirmative).

18 Q. And Jessica was at home that day?

19 A. She was there with us.

20 Q. Okay. Was she -- was that the day that you said she
21 was asleep on the couch?

22 A. No.

23 Q. No? Where was she at?

24 A. She was there, but she was sitting on the couch.

25 Q. So did she observe the sexual abuse?

1 A. I'm not really sure that she observed it. I don't
2 know. I can't, I can't answer for her.

3 Q. But she was in the living room when this happened?
4 You said that Tyler made -- let me make sure I've got it
5 right. Tyler made Younger and Older touch each other.
6 Is that right?

7 A. Right.

8 Q. Okay. And that's when you said that Tyler took
9 Older to the bedroom. Is that right?

10 A. Yes.

11 Q. Okay. And so Jessica was there and awake, not asleep
12 on the couch, but awake?

13 A. Right.

14 Q. Okay. Okay. And that incident you're saying that
15 nothing was done to you during that incident?

16 A. No. It was more the boys than me. I was just kind of
17 there.

18 Q. Did Jessica not say anything?

19 A. No.

20 Q. She just sat there?

21 A. I don't know what was going through her head. Yeah,
22 she sat there.

23 Q. I mean, what did she do? Did she react in any way
24 whatsoever?

25 A. No.

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1 Q. All right. She's sitting up on the couch?

2 A. I don't remember her exact position.

3 Q. Well, where in the living room were Older and

4 Younger standing?

5 A. I don't remember exactly. We were all in the living
6 room. I mean, I ---

7 Q. It's an open living room?

8 A. Yeah. It's a couch, a chair, TV, one or two chairs.

9 I'm not sure which one it is.

10 Q. Okay. So -- and that was some time in May of 2004?

11 Is that your testimony?

12 A. I don't remember the exact time. All I know is it was
13 -- Jessica was pregnant. It was the last time-- one of the
14 last times that I went over there.

15 Q. So it was definitely -- it was before Jessica had her
16 first child?

17 A. Uh-huh (affirmative).

18 Q. Is that right?

19 A. Yes.

20 Q. Okay. So the second incident you said you had been
21 over there, what, all day or after school or what?

22 A. All day.

23 Q. Okay. So was it during the school year or the summer?

24 A. I don't remember. I think it might have been on a
25 weekend. I don't remember, so I'm going to stick with

1 that.

2 Q. Okay. And you'd been playing outside all day?

3 A. Yes.

4 Q. And then you came in. And that's when you say that

5 there was a truth or dare game?

6 A. Yes.

7 Q. And you testified that Tyler made you and Older dry

8 hump, was your words I think, in the living room first. Is

9 that right?

10 A. Right.

11 Q. And where did that take place in the living room?

12 A. In the living room, right directly in front of the TV.

13 Q. Were you on a couch or anything?

14 A. No.

15 Q. On the floor?

16 A. Yes.

17 Q. All right.

18 A. As far as I remember, it was on the floor.

19 Q. Okay. And Jessica was present in that incident, as

20 well?

21 A. That was the second time and that was when she was

22 asleep.

23 Q. So she was asleep on the couch during that incident?

24 A. Yes.

25 Q. So after the things -- what you say he made you do

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1 with Older is when you say he took you and Younger to the
2 bathroom. Is that right?

3 A. Yes. It was all in the same instance.

4 Q. Was Kendra Durham at home during that incident?

5 A. No.

6 Q. Had you seen her at all that day?

7 A. No.

8 Q. So she -- you're certain she wasn't in the back
9 bedroom?

10 A. I'm more certain that she was, than I -- or she wasn't
11 there. I didn't see her at all, but I am certain that she
12 wasn't there. I didn't see her so -- she could have been
13 there, but I didn't see her at all.

14 Q. Okay. You didn't see her at all. If she was there,
15 she was hiding in the back bedroom somewhere?

16 A. Maybe.

17 Q. Okay. And so after that incident your mom picks you
18 up and you told her that you never wanted to go back.

19 A. Yes.

20 Q. Is that your exact words?

21 A. Yes.

22 Q. I mean, tell me how you -- did you say that
23 immediately when you got in the car or what?

24 A. My mom asked me how my day was and I said, I never
25 want to go back there. Please don't make me go back.

- 1 That's what I said.
- 2 Q. Did she ask why?
- 3 A. Well, of course.
- 4 Q. What did you tell her?
- 5 A. Nothing. I just told her I didn't want to go back.
- 6 Q. Okay. And did she just drop it or did she keep
- 7 inquiring or what?
- 8 A. I was an argumentative little girl. She couldn't
- 9 argue with me. That's how all little kids are.
- 10 Q. Well, but did she -- I guess my question is -- I
- 11 understand what you're saying. But did she attempt to get
- 12 it out of you as to why, what was going on?
- 13 A. Yeah. She said that once and I just told her -- I
- 14 mean, I just -- I guess the way I said it, she kind of just
- 15 knew that I didn't want to talk about it. But I said, mom,
- 16 I don't want to talk about it. Please don't make me go
- 17 back.
- 18 Q. Okay. So that was ---
- 19 A. The very last time I went over there.
- 20 Q. That was the last time you ever went over there?
- 21 A. The last time I seen and heard from any of them.
- 22 Q. All right. Let's talk about your statements to the
- 23 police. I'm going to show you a document and tell me if
- 24 you know what it is?
- 25 A. You want me to read it or you just want me to look at

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1 it?

2 Q. First, do you recognize it?

3 A. Yeah.

4 Q. And is that your written statement that you gave to
5 Detective Keith Culbreath?

6 A. Yes.

7 Q. And that was done on July 16th, 2009?

8 A. Yeah. Yes.

9 Q. And that's the statement that you gave him when he
10 came up to North Carolina to meet with you?

11 A. Yes.

12 Q. All right. And I want you to read, if you would, out
13 loud, starting on the third line there, that sentence where
14 it begins Tyler was drinking.

15 A. Okay.

16 Q. Read that sentence and to the five or six lines down,
17 just that complete sentence there.

18 A. Okay. Tyler was drinking alcohol and he made ^{Older}
19 and ^{Younger} undress completely naked and grope each other
20 and touch each other a lot. Jessica was there on this
21 night and she and Tyler seemed to be getting off on this
22 incident.

23 Q. Okay. Are you referring to the first time or the
24 second time?

25 A. The second time.

1 Q. So that -- you're referring there to the second
2 incident?

3 A. Yes.

4 Q. Which was the dry humping and bathroom incident. Is
5 that correct?

6 A. Right.

7 Q. Okay. And you specifically say in your written
8 statement, Jessica was there this night and she and Tyler
9 seemed to be getting off, off in quotation marks, on this
10 incident. Is that right?

11 A. Have you seen the statement that I recently wrote?

12 Q. We'll get to that. Hang on. So -- but that's what
13 you said. Okay. You put off in quotation marks. Is that
14 right?

15 A. Yes.

16 Q. What did you mean by, to be getting off on this
17 incident?

18 A. They were enjoying it. It was sick.

19 Q. So that implies that Jessica was observing this
20 incident; right?

21 A. Yeah.

22 Q. But you just testified she was asleep on the couch
23 during this incident?

24 A. Right. This happened -- if you can read -- or not
25 judging you or anything, but if you could read back where

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1 it says -- if you read it, it's a bunch of jumbled up.

2 Yeah, I missed -- made a couple of mistakes in it. But the
3 one I wrote recently is the most well-written and as much
4 as I can remember. This has mistakes, of course.

5 Q. Well, we'll get to your second statement. And you
6 refer to Jessica again further down. Is that correct?
7 About five or six lines up from the bottom? Where you
8 said, while they was getting undressed in front of me,
9 Tyler and Jessica, he kept making threats like if you don't
10 ---

11 A. Yeah. If you don't, you'll be grounded and stuff like
12 that.

13 Q. Thank you. So Jessica was still involved at that
14 point; right?

15 A. Yes. Both incidents are jumbled into this one thing.
16 They are both jumbled into this one statement. I didn't
17 specify whether this was one time or whether it was a
18 different time.

19 Q. Okay. Well, let's flip to the second page. That
20 first part you say, then the time when he made me and
21 Younger have sex, in quotation marks, he kissed my neck and
22 he grabbed my chest area. So there are you saying that
23 that was a separate time from what you were just talking
24 about or is that the same incident?

25 A. No. This is -- the part that you just read is the

1 second time.

2 Q. Okay.

3 A. And my testimony where I said that he had to put
4 lotion and we had -- he made me have anal sex.

5 Q. Okay. And on the first page you also say that you're
6 almost positive he made Older have oral sex. Did you
7 write that? Toward the bottom, about a third of the way up
8 from the bottom?

9 A. Yes.

10 Q. Now, are you saying that that happened in front of you
11 and Younger or ---

12 A. I think that happened when they was in that room.

13 Because, like I mentioned earlier, Older came out of the
14 room crying -- or he wasn't crying at the time, but his
15 face was red.

16 Q. Okay. I just wanted to clarify. So you're not saying
17 that that was -- you didn't actually see anything like that
18 almost happen?

19 A. Right.

20 Q. You're just speculating? Is that right?

21 A. Yes..

22 Q. Okay. All right. I'm going to hand you another
23 document. Is this your second statement that you were
24 referring to a while ago?

25 A. Yes.

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1 Q. Okay. And that statement you also gave to Detective
2 Culbreath. Is that correct?

3 A. Yes.

4 Q. And that was also in North Carolina?

5 A. Yes.

6 Q. And you gave that statement on August 18th, 2010;
7 correct?

8 A. Yes.

9 Q. Over a year after your first statement?

10 A. Yes.

11 Q. Okay. Did you contact Detective Culbreath and say, I
12 needed to revise your statement? How did this statement
13 come about, is my question?

14 A. He asked me to write it.

15 Q. Okay. So you're saying Detective Culbreath contacted
16 you about giving another statement?

17 A. Well, him and Peter had came up there and asked me --
18 they was trying to get the case together and they was
19 talking to me again. And Detective Culbreath asked me if I
20 would write another statement.

21 Q. Okay. That was my question, is they instigated you
22 writing this statement?

23 A. Well, they said -- I mean ...

24 Q. Okay. And is it fair to say you give -- make new
25 allegations and more details in the second statement that

1 you didn't say in the first statement?

2 A. Yes.

3 Q. For example, you -- in your second statement you
4 mention, I believe what you testified earlier, that he
5 tried to pry your mouth open for oral sex. Is that
6 correct?

7 A. Yes.

8 Q. That wasn't in your first statement; correct?

9 A. Right.

10 Q. Okay.

11 A. The more I talk about it, the more I can remember.

12 Q. Okay. And then you also say that he made you show
13 your breasts in the second statement, that you didn't say
14 in the first statement; correct?

15 A. Correct.

16 Q. You say that Older Brother and Younger Brother -- that he made
17 Older Brother and Younger Brother show their private parts. You didn't
18 say that in your first statement; did you?

19 A. No.

20 Q. And, in fact, correct me if I'm wrong, I believe you
21 testified that they touched each other through their
22 clothes previously. Is that correct?

23 A. Correct. The first time. The first incident.

24 Q. So you're saying the second incident is when he made
25 them ---

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1 A. The second incident was where I was, I was more
2 involved than anything.

3 Q. Okay. All right. And you say that they made you
4 touch one another in your second statement and you didn't
5 say that in your first statement; did you?

6 A. No.

7 Q. And in the second statement, this statement, you said,
8 as part of that same sentence, he also made us touch one
9 another and tried to make me have intercourse with Younger
10 and I ran out of the room. Is that -- are you talking
11 about the bathroom incident or is that something totally
12 different?

13 A. Something totally different. He tried -- he attempted
14 to make me do some -- and I didn't. I left.

15 Q. Okay. And that's the first time you've mentioned
16 that. Is that correct?

17 A. I wasn't asked.

18 Q. Well, the Solicitor asked you earlier what type of
19 allegations you were making. You didn't mention that even
20 then; did you?

21 A. No.

22 Q. And in the second statement, you don't say anything
23 about Jessica Whitaker; do you?

24 A. No.

25 Q. And you don't mention her being there at all; is that

1 right?

2 A. No.

3 Q. Is that because Older and Younger family found out
4 that you had named her in your first statement?

5 A. They have nothing to do with what I wrote down.

6 Q. They didn't contact you during that year and say, why
7 did you accuse our sister of being involved in these
8 allegations?

9 A. Just like the Solicitor had asked me, I have not
10 talked to nobody dealing with that family, no friends, no
11 nothing. Today is the first day I've seen them in over
12 five years. I've lost my best friends. I've not been able
13 to see them. Today is the first day that I've been able to
14 see them.

15 Q. And that's been by your choice, I would assume; right?

16 A. I mean, what could I ---

17 Q. I mean, is there something preventing you from seeing
18 them?

19 A. I moved.

20 Q. Okay. Well, I thought you said you'd been down here
21 for two years?

22 A. Two years -- recently.

23 Q. From today backwards, you've been living here for two
24 years?

25 A. Yes, around two years.

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1 Q. And during that time you haven't talked to them?

2 A. I mean, I don't know, I don't know what I could say.

3 It's still hard to look them in the eyes right now.

4 Q. Okay. And -- all right. So you testified earlier
5 that you didn't tell -- I believe this is how you
6 testified. Correct me if I'm wrong. That you didn't tell
7 anybody about these allegations because it made you feel
8 disgusting. And you used some other adjectives that I
9 don't remember off the top of my head. But that's why you
10 didn't tell anybody about it. Is that right?

11 A. Yes.

12 Q. Okay. And you're saying these things happened the
13 summer of 2004. Is that right?

14 A. I don't know.

15 Q. But if Jessica had her baby in June of 2004, it was
16 before then; right?

17 A. I guess.

18 Q. All right. Isn't it true that you spoke with
19 Detective Culbreath in December of 2004 in an unrelated
20 case?

21 A. Yes.

22 Q. An unrelated matter. Is that right?

23 A. Yes.

24 Q. And did you do that at your house or the Pickens
25 County Sheriff's Office? If you remember.

1 A. When did you say?

2 Q. In December of 2004 you talked with Detective
3 Culbreath.

4 A. Yes, but I don't think I was down here. I might have
5 been. But, yes, I did talk to him.

6 Q. Okay. You're saying you may have already moved to
7 North Carolina? Is that what you're saying?

8 A. Yeah. I was up there a pretty good bit. Two years
9 ago is when I came back down to South Carolina.

10 Q. But somewhere, whether it was at your house in North
11 Carolina or down here, you spoke with Detective Culbreath
12 about an unrelated case?

13 A. Yes.

14 Q. And that was after you're saying these allegations had
15 already happened; right?

16 A. Yes.

17 Q. You had the opportunity to tell a police officer what
18 had happened to you; correct?

19 A. Correct.

20 Q. But you chose not to do that?

21 A. Yes.

22 MR. ALEXANDER: One moment, Your Honor.

23 Q. Let me clarify one point, ^{Minor} . You're saying there
24 was only two incidences ---

25 A. That I remember.

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1 Q. --- that you remember. But we asked you about your
2 statement, I think it was the second statement, about where
3 they tried to make you do intercourse and you ran out of
4 the room?

5 A. I don't remember that's why I did ---

6 Q. Okay.

7 A. I mean, I can't tell you something I don't remember.

8 Q. That's fine. I just wanted to -- you're not saying
9 that even happened during one of the two incidences you're
10 testifying to?

11 A. It could have. I don't, I just don't remember.

12 Q. Okay. Thank you.

13 MR. ALEXANDER: That's all the questions I have,
14 Your Honor.

15 THE COURT: Any redirect?

16 MS. HINTON: Just briefly, Your Honor.

17 (WHEREUPON, State Exhibit Numbers 5 and 6 were marked
18 for identification.)

19 **REDIRECT EXAMINATION**

20 **BY MS. HINTON:**

21 Q. Minor , I'm going to show you what's been marked as
22 State's Exhibit Number 5 and 6. Are these the same
23 statements that Mr. Alexander was just talking to you
24 about?

25 A. Yes.

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1 Q. And let's start with State's Exhibit Number 5.

2 A. Okay.

3 Q. Is that the first statement you gave or the second?

4 A. The first.

5 Q. And what's the age of that ---

6 A. Fifteen.

7 Q. And is that how old you were when you gave that
8 statement?

9 A. Yes.

10 Q. And what's the date on that statement?

11 A. 7/16/2009.

12 Q. Leading up that statement were you asked specific
13 questions?

14 A. No. All he told me to do was anything that I could
15 remember at the time to write it down. And that's what I
16 did.

17 Q. All right.

18 MS. HINTON: Your Honor, at this time the State
19 would like to move State's Exhibit Number 5 into evidence
20 and publish it.

21 THE COURT: Any objection?

22 MR. ALEXANDER: No objection.

23 THE COURT: Without objection and by consent then
24 Exhibit 5 is admitted.

25 (WHEREUPON, State Exhibit Number 5 was admitted into

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1 evidence.)

2 Q. Minor , will you take that first statement you wrote,
3 State's Exhibit Number 5, and read it slowly to the jury?

4 A. I, Minor Friend about four or five years ago, while
5 visiting Older and Younger house, Tyler was drinking
6 alcohol and he made Older and Younger undress completely
7 naked and grope each other and touch each other a lot.
8 Jessica was there on this night and she and Tyler seemed to
9 be getting off on this incident. Tyler made me and Younger
10 stay in the living room while he and Older went into his
11 room, shut and locked the door. When Older emerged from
12 the room, he had tears on his face. Before he came out,
13 you could hear him faint in the back, a faint no and stop.
14 Then he, he being Tyler, made me and Younger have sex-like
15 actions. He made Younger touch me and try and stick it in
16 butt. It didn't work out too well. He, I'm almost
17 positive, made Older have oral sex and while he was
18 getting undressed in front of me and Tyler and Jessica, he
19 kept making threats like, if you don't, you'll be grounded,
20 and stuff like that. But when he did, he's like, you'll be
21 okay. It's okay. We won't be mad at you if you do it.
22 But otherwise, we will be mad, but you're okay. Then the
23 time where he had made me Younger have sex, he kissed my
24 neck and grabbed my chest area. He said it was safe and
25 fine to do all this and we were not to tell anyone. And if

1 we did, it would be bad for us. This was different from
2 the time he made Younger undress in front of us, Older as
3 well. And during this incident, he grabbed and kissed me.
4 Q. And can you take a look at State's Exhibit Number 6
5 and tell me what that is?

6 A. My second statement.

7 Q. And what is the age on that statement?

8 A. Sixteen.

9 Q. What's the date?

10 A. 8/18/2010.

11 MS. HINTON: Your Honor, at this time, the State
12 would move State's Exhibit Number 6 into evidence and ask
13 to publish it to the jury?

14 THE COURT: Any objection?

15 MR. ALEXANDER: No objection, Your Honor.

16 THE COURT: Without objection and by consent,
17 Exhibit 6 is admitted and may be published.

18 (WHEREUPON, State Exhibit Number 6 was admitted into
19 evidence.)

20 MS. HINTON: Thank you, Your Honor.

21 Q. Minor , will you please read that statement?

22 A. I'm Minor Friend When I was ten or eleven, during the
23 sick show Tyler Brown was enjoying, there was an instance
24 where he tried to pry my mouth open to suck his -- you want
25 me to read it word-for-word?

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1 Q. Yes.

2 A. --- thing. He had all of us down and was making us do
3 nasty things. He made me show my breasts and Older Brother and
4 Younger show their private parts. He also made us touch
5 one another and tried to make me have intercourse with
6 Younger and I ran out of the room. This happened at
7 Kendra's house in her living room and in the bedroom. The
8 reason I didn't come out with this before was because I was
9 embarrassed and I didn't want to be looked down upon and
10 think I was a bad person. I have pushed these memories so
11 far in the back of my mind, I just ignored it. But when I
12 finally came clean about this in the beginning, I started
13 thinking about it and remembered certain things. The more
14 I remembered, the more I could see the pictures in my mind
15 and could remember exact details and moments.

16 Q. Minor Friend, did you ever seek out officers to tell them
17 about what happened to you?

18 A. No.

19 Q. Did you ever seek anyone out to tell them what
20 happened with Tyler?

21 A. No.

22 MS. HINTON: Your Honor, that's all I have.

23 THE COURT: Thank you. You may step down.

24 MS. HINTON: Your Honor, may she be excused?

25 THE COURT: Any objection?

1 approached the bar.)

2 THE COURT: All right. For the record, we've had
3 a conference with the attorneys yesterday and gave them --
4 I'm going to give them an opportunity to be heard about
5 whether or not my ruling on the rape shield statute is
6 still viable. And the witness is still available, I
7 understand, for her to testify. I'll hear the State on
8 that. Based on our schedule, we were going to have an in-
9 camera hearing as to the qualifications and the needs for
10 the expert witness that the State proposes to call so that
11 Mr. Alexander will have a right to voir dire this
12 particular witness. So if you'd like to call your witness
13 now, Solicitor?

14 MS. BARWICK: Thank you, Your Honor. The State
15 would call Shauna Galloway-Williams to the stand.

16 THE CLERK: Place your left hand on the bible and
17 raise your right hand.

18 Do you solemnly swear or affirm that the testimony
19 you're about to give is the truth, the whole truth and
20 nothing but the truth, so help you God?

21 THE WITNESS: Yes, I do.

22 THE CLERK: Have a seat and state your name for
23 the record, please.

24 THE WITNESS: Shauna Galloway-Williams.

25 **SHAUNA GALLOWAY-WILLIAMS,**

1 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. BARWICK:**

4 Q. Ms. Williams, where are you employed?

5 A. At the Julie Valentine Center.

6 Q. What are your duties there?

7 A. I'm the Executive Director. So in addition to the
8 administrative responsibilities of managing the center, I
9 also am responsible for clinical supervision of the agency,
10 as well. And I do still provide clinical services by way
11 of providing forensic interviews and facilitating a group
12 for non-offending care givers.

13 Q. Let's talk about your educational background and
14 training. Can you explain that for the Court?

15 A. Yes. I'm a licensed professional counselor in the
16 State of South Carolina. I've held that license since
17 2004. I have a Master's Degree in counseling and a
18 Bachelor's Degree in psychology.

19 Q. Do you have any special licenses or anything like
20 that?

21 A. I am licensed as a professional counselor in the State
22 of South Carolina.

23 Q. Do you have any special training in counseling
24 sexually abused children and their families?

25 A. Most of my training and experience has been

1 specifically related to working with children who've been
2 abused or neglected or if there are allegations of abuse
3 and neglect, and their families.

4 Q. Can you tell us a little bit about that training, how
5 much of that training you have?

6 A. Yes. I've been practicing as a counselor, working
7 specifically with children and adolescents since 2001. So
8 over eleven years. Providing individual and family
9 therapy, group counseling, assessments, and forensic
10 interviews, as well as clinical supervision for others who
11 are training to be counselors and forensic interviewers. I
12 have had more than a hundred and forty hours of skills-
13 based training, specifically related to forensic
14 interviewing, which includes information and training about
15 child sexual abuse, physical abuse and talking to children
16 about those issues.

17 Q. Have you ever been qualified as an expert in
18 counseling sexually abused children and their families
19 before in court?

20 A. Yes, I have.

21 Q. How many times in Family Court?

22 A. In Family Court, more than twenty-five times.

23 Q. General Sessions Court?

24 A. In General Sessions, fifteen, sixteen times.

25 MS. BARWICK: Your Honor, at this time, the State

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1 would like to introduce Ms. Galloway-Williams as an expert
2 in counseling victims of child abuse and their families.

3 THE COURT: All right. For the purpose of this
4 hearing, I'm going to qualify her and you can certainly
5 cross- -- rather than bifurcating your cross-examination,
6 Mr. Alexander, I'll allow you to cross-examine her on all
7 the aspects of her testimony.

8 MR. ALEXANDER: Thank you.

9 THE COURT: You may proceed.

10 MS. BARWICK: Thank you, Your Honor.

11 Q. Ms. Galloway-Williams, are you being paid by the
12 solicitor's office to be here today?

13 A. No, I'm not.

14 Q. Who pays your salary?

15 A. I'm paid by the Julie Valentine Center.

16 Q. And what services does the Julie Valentine Center
17 offer?

18 A. We are a child abuse and sexual assault recovery
19 center. So we provide any services related specifically to
20 those areas. Education and prevention in the community, in
21 the schools. We provide investigative and intervention
22 services by way of forensic interviews, forensic medical
23 exams, and case management. And we also provide counseling
24 for men, women, children who've been impacted by child
25 abuse and/or sexual assault.

1 Q. Are you here today because you're under subpoena?

2 A. Yes.

3 Q. Have you ever met with or spoken to any of the three
4 victims in this case?

5 A. Not that I know of.

6 Q. The only knowledge that you have of the case, is it
7 based on the conversations you've had with the solicitor's
8 office?

9 A. That's correct.

10 Q. Let's talk about disclosure a little bit. What is
11 meant by delayed disclosure?

12 A. Delayed disclosure is basically the -- when a child
13 does not disclose abuse right away. It's pretty typical
14 that -- most children do not disclose abuse right after it
15 occurs. And we refer to delayed disclosure as just that,
16 that a child doesn't tell right after something happens.

17 Q. And you said it's not uncommon to have delayed
18 disclosure?

19 A. Right. It's actually more common that a child delays
20 disclosure.

21 Q. Do you have any statistics on that?

22 A. Well, in general, somewhere between seventy to eighty
23 percent has been identified as the, you know, general
24 statistic of how many children delay disclosure or either
25 never tell until they're adults.

1 Q. Are there any factors that go into why a child would
2 delay disclosing?

3 A. There are a number of reasons why children delay
4 disclosure. The main reason that children and adults who
5 have survived childhood sexual abuse report for not
6 disclosing right away is fear. They may fear that
7 someone's not going to believe them or that no one's going
8 to believe them. They may fear consequences that they may
9 suffer themselves or that the person who's done this to
10 them may suffer or that others they love may suffer. They
11 may have been threatened by the person who committed the
12 act on them. There are often direct and indirect threats
13 to children. The direct threats would be those that are,
14 you know, if you tell then this is going to happen to you.
15 But, also, there are those indirect threats where, you
16 know, if a child has witnessed violent behavior or domestic
17 violence or something else from this perpetrator, they may
18 imply that that could happen to them if they tell. But
19 other things that play into disclosure and whether or not a
20 child tells are related specifically to the child's
21 relationship to the perpetrator and their family member's
22 relationships to the perpetrator. Most children are abused
23 by someone that they know, they love, and they trust. And
24 this person's usually someone that's known, loved and
25 trusted by family members, friends, and many times, the

1 community. And that can weigh heavily on whether a child
2 tells or not. Sometimes children have a very close
3 relationship with the person that is abusing them. This
4 may be the one person in their life that gives them the
5 most attention or the most affection. This could be the
6 one person that they spend the most time with. And so it
7 may be very difficult for them to tell. They may also
8 realize that this is the person that is closest to other
9 members of their family. You know, if it's a primary care
10 giver in a household, many times children weigh out the
11 risk of, you know, what they might lose if they do tell.
12 So there are a number of factors that are involved.

13 Q. What about normalization, would that have an impact on
14 disclosure?

15 A. Normalization?

16 Q. Yes. Do you know what I mean by that?

17 A. Can you explain that, what you're asking?

18 Q. Yes. Do children -- I guess the better question to
19 ask is, do children always know that what is happening to
20 them is wrong?

21 A. Not necessarily. I mean, that may be another reason
22 why children don't tell. Sometimes children know that
23 what's happening is not okay. It doesn't feel normal. But
24 they may not have the words to describe it, particularly
25 with younger children. They don't have the sexual

1 knowledge or the vocabulary to describe what's happening,
2 you know, depending on how long the abuse has been
3 occurring. It may be something that is almost normal or
4 part of a child's, you know, daily life or a part of what
5 they have known growing up.

6 Q. And what is meant by the term grooming?

7 A. Grooming refers to sort of preparing a child or
8 possibly -- I guess the best way to explain it would be to
9 give examples. You know, getting a child used to or
10 normalizing some of the behaviors that may be
11 inappropriate. Sometimes grooming takes the form of, you
12 know, experimenting with ambiguous touch. You know, a pat
13 on the butt or a pinch or something like that. And then
14 moving into more -- so moving from ambiguous touch to more
15 specific touch and sort of testing the waters with a child.
16 Grooming may also involve providing a child with special
17 attention, special favors, giving a child gifts. Again,
18 that attention and affection and playfulness and those kind
19 of things can really have a strong impact on whether a
20 child discloses or not. It's really about forming that
21 trusting relationship with a child, even before the abuse
22 occurs or during the act of it happening.

23 Q. In your opinion, if a child has been groomed, would
24 that affect when they disclose?

25 A. I mean, it ties into the whole relationship dynamic.

1 You know, again, if a child is provided special attention
2 or special favors or feels very bonded and connected to the
3 person that is doing this to them, it certainly could
4 impact their disclosure and whether or not they would
5 disclose. A lot of times -- and this is really hard for
6 people to understand. A lot of times there are things
7 about the person that's doing this to the child that they
8 really do like and enjoy. It is very much like, you know,
9 all of us have a friend or a family member that we love.
10 And that friend or family member may have one thing about
11 them that we absolutely hate, we despise. And yet we still
12 love that person and we carry on that relationship with
13 them. And not to minimize the effects or the impact of
14 child sexual abuse to that, but that's really what that's
15 like. You know, the sexual abuse may be just one piece of
16 that whole relationship and that could keep a child from
17 disclosing.

18 Q. What is mean by partial disclosure?

19 A. Well, disclosure is a process. Meaning that we don't
20 generally expect that a child is going to tell every detail
21 about what has happened to them in the first interview or
22 first time that they tell someone. So a partial disclosure
23 would be a part of the disclosure. A part of what has
24 happened to them.

25 Q. And would you, in your opinion, expect the disclosure

1 to become more complete with time or less complete with
2 time?

3 A. Well, I mean, you would expect that as the -- you
4 know, with disclosure being a process, that more
5 information would probably come forth as time goes on. But
6 that also would depend on the type of questioning that's
7 asked. What type of environment the child is in, you know.
8 Is it a supportive environment? Has the disclosure been
9 believed initially? There are lots of factors that would
10 play into that, as well.

11 Q. When you said that the type of question would play
12 into the amount a child discloses, what do you mean by
13 that?

14 A. Well, you know, as an interviewer or an investigator,
15 you know, as an interviewer, we encourage and use non-
16 leading and non-suggestive questions. That's the best way
17 to get information from a child that is truly from them,
18 rather than, you know, specific leading questions.

19 Q. Okay. Would a generalized question or a specific
20 question help with a complete disclosure?

21 A. Well, you probably have to use a continuum of both.
22 You know, in an interview we try to use as many non-
23 leading, non-suggestive, open-ended questions as possible.
24 But to get some of those more specific details, sometimes
25 you do have to ask focused questions where you might use a

1 piece of the information that the child has given you to
2 get more information from them. Sometimes children don't
3 exactly know what it is that we need to know. And it also
4 depends on what role you're playing. You know, an
5 investigator with law enforcement may have a need to know
6 different information than a counselor or a mom or a
7 forensic interviewer. And so the type of question may
8 change depending on who's asking it. And a lot of times
9 children don't know what it is that -- why we're asking it
10 or what it is exactly that we need to know.

11 Q. Would counseling affect a completeness of a
12 disclosure?

13 A. Well, you would expect that with counseling and
14 support that a child would be able to share more complete,
15 detailed information about what's happened. And the type
16 of counseling that we provide at our center, that's one of
17 the things that we work on, is writing what we call trauma
18 narrative, where the child does describe what has happened
19 to them, and that exposure and re-exposure to it,
20 eventually helping them to cope and deal with what's
21 happened.

22 Q. You said cope and deal with what happened. What are
23 some coping mechanisms that children use to deal with what
24 happened?

25 A. Well, there are some that are -- coping mechanisms may

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1 be positive and negative. And, you know, some children
2 cope with it by pretending that it never happened. You
3 know, pretending on the outside that everything is okay.
4 So you often will have a child who looks like on the
5 outside everything is fine. There's no change in behavior
6 at all. Other children may cope with it by acting out,
7 really using -- expressing their feelings about what's
8 happened. You may see a lot of anger and anxiety. There
9 are a lot of different things that children will do. You
10 know, as children get older and in adulthood, we know that
11 often survivors of childhood sexual abuse or those that
12 have been impacted by trauma may cope with what's happened
13 by using substances, drugs and alcohol, to numb or to not
14 deal with what's happened.

15 Q. Do children always have the words to describe what
16 happened to them?

17 A. No. A lot of times, children don't have the language
18 or the cognitive skills to describe what's happened.
19 Depending on the age of the child, their cognitive
20 development, how old they were when it happened to them,
21 how old they are when they disclose, they may not have the
22 words that describe accurately what's happened. You know,
23 we're talking about exposing a child to something that a
24 child's really not ready to understand and may not even
25 know what's happening.

1 Q. When children who are victims of sexual abuse are
2 questioned about the sexual abuse, do they always know
3 what's relevant to disclose?

4 A. No. Like I said earlier, a lot of times they don't
5 know what it is that would be relevant to the person that's
6 asking them the questions. They may not realize that --
7 you know, a detail that would be important to an
8 investigator, they don't realize that would be important.
9 You know, the way that -- for example, a child may not
10 realize that -- where things were in the room when they
11 were being abused. They may not realize that that's
12 important. But that may be something they remember. Any
13 of those sensory details about the way something smells or
14 anything that they remember, the way something felt or
15 tasted, they may not realize how important those details
16 could be to their statement or to the information that's
17 being gathered?

18 Q. How would an abstract question versus a specific
19 question affect the disclosure?

20 A. Well, again, you know, if you're talking to a child,
21 you're generally going to use a continuum of those
22 questions. So you would start with something more abstract
23 and then use more specific questions once you had some of
24 the information available to you.

25 Q. Can you give an example?

1 A. Well, you know, the most abstract or open-ended
2 question that we use that's really one of the best
3 questions is, tell me about that. You know, once the child
4 has said something has happened to them, tell me about
5 that. And then if the child were to say, you know, so and
6 so did this to me. Then I might say, well, where did so
7 and so do this to you? Where did that happen? And that
8 would be a more specific question.

9 Q. You touched on this earlier, that a lot of times
10 children are abused by someone they are close and know. Do
11 you know why that is?

12 A. Well, I don't know why people abuse children. That's
13 a really loaded question. But why is it that when they do
14 abuse children is it somebody that they know, love and
15 trust. And it's all about that trusting relationship and
16 that access to the child at the time. You know, the more
17 that a child trusts an adult -- in general, we tell
18 children to trust adults and to do what adults tell them to
19 do. So that really opens up doors for abuse in a lot of
20 ways. But we certainly want our children to do that. But
21 then the more that a child trusts that person, the more
22 likely they are to engage in behaviors that may even be
23 uncomfortable or unwelcome or not right for them because
24 they really trust that these adults have their best
25 interests in mind.

1 Q. Let's talk about children's memories for a little bit.
2 With chronic sexual abuse, how would that affect the
3 child's memory?
4 A. With chronic sexual abuse or when a child has had
5 multiple incidents of abuse, it may be harder for them to
6 sort out each individual incident. So, you know, for a
7 child who's been sexually abused over a period of years or
8 months and had multiple incidents, they may not be able to
9 sort out each time it happened. Instead, they might be
10 able to tell about the first time it happened, the last
11 time it happened. They may be able to talk about some of
12 the things that were specific about each of the times it
13 happened. Or there may be a particular incident that stood
14 out to them. You know, maybe it took place in a different
15 setting than before. Maybe at, you know, different time of
16 day, if there was something really distinct about it. The
17 way that I tend to explain it or think about it is, you
18 know, there are some things that we do on a regular basis.
19 You know, we go to the grocery store every week. And you
20 may park in the same parking spot every week. And you may
21 go down the same aisles and pick up the same food every
22 week. And if someone asks you about January 15th, 1998,
23 and you went to the grocery store, tell me about that
24 experience. You might tell them that I parked in the same
25 space. I went down these aisles. But you might not

1 remember all the other details, who was in the store, who
2 checked you out, how much your groceries cost. It's the
3 same kind of thing with that chronic sexual abuse. You may
4 remember some of those core details and then some of those
5 things you may not. But if you go to the grocery store and
6 you do have some particular incident, someone hits your car
7 on the way out, you might remember that time more than
8 others.

9 Q. In your experience in counseling children who've been
10 sexually abused, have you ever experienced with chronic
11 sexual abuse that any of those incidents would blend
12 together?

13 A. Yeah. That's what I mean by not being able to
14 distinguish each incident. There may be -- you know, it
15 may blur those lines between incidents because it's
16 happened so frequently.

17 Q. Are children who have been sexually abused in the past
18 at a higher risk or a lower risk of being sexually abused
19 again?

20 A. Generally being the victim of one incident of abuse
21 does put you at higher risk of being abused again or being
22 victimized again. It's not always the case and that's what
23 counseling is so important and getting treatment is so
24 important. But, you know, once someone has been
25 victimized, it often changes their sense of safety and

1 security and boundaries and sometimes puts them at higher
2 risks for being abused by others again. You know, it can
3 depend on the age of the child and how they were abused and
4 lots of different things. But for some children, they --
5 going back to the normalization, it may be something that
6 has become part of, you know, what they expect adults to do
7 or expect behavior to be like between people that love each
8 other or care about each other. And so it often does set
9 up a higher risk for abuse happening again.

10 MS. BARWICK: No further questions at this time.

11 THE COURT: All right. You may cross-examine,
12 Mr. Alexander.

13 **CROSS-EXAMINATION**

14 **BY MR. ALEXANDER:**

15 Q. So I'll go back to delayed disclosure. You said
16 seventy to eighty percent delay or never tell until they're
17 adults. Is that what you said?

18 A. Yes.

19 Q. Where did those statistics come from?

20 A. There are a couple of different studies that indicate
21 that. And the reason I said seventy to eighty is that
22 there's a range. There are some that indicate, based on
23 their study sample, that, you know, seventy-three percent
24 and then it can go up to about eighty. And most of that
25 research is -- a lot of that research is done on using

1 adults who have survived childhood sexual abuse who did or
2 did not tell, and going back and asking them information
3 about that. And then some of the studies use substantiated
4 cases of child sexual abuse from different child advocacy
5 centers and gather that information that way.

6 Q. And is that study based on cases that were delayed or
7 told when they're adults that were somehow prosecuted or
8 proven or they just came forward and said, this happened to
9 me. But it's never been proven in any ---

10 A. Yeah. Now, in some of those studies it may be that
11 they're adults who their cases were not prosecuted.
12 They're just telling for the first time and they may or may
13 not have done anything with that. In some of the research,
14 there are cases that have been substantiated, either within
15 family court or criminal court, there's cases of sexual
16 abuse, document cases of sexual abuse.

17 Q. Okay. And so I guess the next question is, do you
18 have a breakdown of what percentage that is of that seventy
19 to eighty percent?

20 A. I don't right off the top of my head. And I really
21 don't know if they break it down that way in those
22 particular studies.

23 Q. So it could be a good majority of that is, there was a
24 delay, either reported later as a child or as an adult, but
25 nothing was ever done about it one way or the other. It

1 was just reported somehow. Is that right?

2 A. Yes. In some of these -- yes. In some of the
3 instances, particularly with the adults. These may be
4 adults who are disclosing and nothing may have happened.
5 You know, in some situations, you know, a statute of
6 limitations might have impacted that or there may not have
7 been any evidence. Or as an adult you don't necessarily
8 have to report, whereas with the children it's a little bit
9 different.

10 Q. All right. And as far as some of the reasons for
11 delayed disclosure, you talked about one -- specifically,
12 the consequences, threats, and then the relationship of the
13 child to the alleged perpetrator. Is that right?

14 A. Yes.

15 Q. What impact on that does it have if that relationship
16 ends, terminates in someway, where there's no further
17 contact for a number of years?

18 A. How does that impact disclosure?

19 Q. How does that impact delayed disclosure, right, if at
20 all?

21 A. It could go a couple of different ways or it could go
22 two ways, I guess. You know, sometimes when a child has
23 not had contact with the person that has abused them for a
24 period of time, they finally feel safe to tell. And so
25 sometimes once that distance has been created between the

1 person that has abused them, that's when you'll get a
2 disclosure, not get a disclosure, but a child will
3 disclose. Sometimes that lack of contact, you know, may
4 continue to lead the child to not disclose at all because
5 they feel safe and don't see any reason to tell because
6 they're no longer around that person, they're not a threat.
7 So it really could go either way. I've seen it. In my
8 experience, I've seen it happen either way.

9 Q. And so if there is -- let me back up a little bit. I
10 mean, these seventy, eighty percent of cases, I guess
11 taking the -- focusing on like child cases where they're
12 reporting later as a child or young adult, at least, do you
13 have any statistics on like how long that delay is, a year,
14 two years, five years, ten years?

15 A. Well, in one of those studies, the seventy-three
16 percent indicates that in that particular study seventy-
17 three percent of children delayed a month or longer in
18 telling.

19 Q. A month or longer?

20 A. Yeah. A month or longer. In my experience in working
21 with children and allegations of abuse and neglect, the
22 vast majority of -- and I don't know an exact statistic --
23 but most of the children that I've come into contact with
24 did not tell right after it happened. Most of the children
25 that are seen at our center, you know, it could be days,

1 weeks, months, years, after the abuse has alleged to have
2 occurred before they tell. And many of them don't tell
3 right away. And even when they do tell, it's what we would
4 consider an accidental disclosure. They didn't
5 purposefully set out to tell someone that something
6 happened. Someone just asked them a question, noticed an
7 unusual behavior, and the disclosure comes out that way.

8 Q. Somewhere in there you were talking about the words
9 children use to describe what happened. You said depending
10 on the age, they may not have the words to describe what
11 happened to them. Is that right?

12 A. Yes.

13 Q. What age -- give me an age range that you're talking
14 about, that in your opinion a child, whatever age, that
15 would lack words to describe a specific act of sexual abuse
16 involving inappropriate touching, oral sex, penetration?

17 A. Well, again, some of that is going to depend on the
18 child and the environment they're raised in, what they're
19 exposed to. But in general, you know, you wouldn't expect
20 that younger children, children that have not reached
21 puberty or have not had sex education or an understanding
22 of sexuality, most of them aren't going to have the words
23 to describe sexual behavior. And even when they do, you
24 know, in most sexual -- sex education classes or when
25 parents talk to kids about sexual behavior, a lot of times

1 you're using more clinical terms or general terms. And so
2 sometimes the things that are happening to a child when
3 they're being sexually abused don't necessarily fit into
4 those categories. And it may be harder for them to find
5 the words to describe that. You know, you would expect
6 that as a child gets older and as they have more
7 understanding of their bodies and what sexuality is, that
8 they would have a larger vocabulary to describe what's
9 happened. However, they are also describing, you know,
10 something that is a traumatic event, something that in most
11 cases was not something that they wanted to happen. And so
12 they could be challenged with finding the right words to
13 describe what it is that's happened to them.

14 Q. So even if a child of eight or ten, at that age, would
15 you say a child age eight or ten, if they were raised in a,
16 let's say, in an abusive environment, physically abusive
17 environment, or even a non-supportive family environment,
18 would they potentially lack these -- is it probable they
19 would lack the words or have words at that age, eight to
20 ten?

21 A. Well, I mean, if they had been -- if they had been
22 exposed -- I guess what I'm saying is if a child's been
23 exposed to sexual knowledge and information, you know, if
24 children have -- a lot of times our kids now are exposed to
25 music, movies and television shows that use sexual language

1 and words. And sometimes our kids use those words and have
2 no understanding of what they are. And so it does make it
3 a little bit harder to distinguish that. But would I
4 expect an eight or ten year old to be able to clearly
5 articulate what specific sexual acts were that are being
6 committed on them or someone else in the same way that you
7 or I might describe it? No.

8 Q. Okay. So as they get older if the allegations are
9 that the abuse took place when they're eight or ten, as
10 they got older, two or three years older, during that time
11 period would they be likely to gain that knowledge from the
12 normal sources; parents, school, things of that nature?

13 A. Yeah. As children get older the opportunity to
14 participate in sexual education courses and exposure to
15 this information does increase. So they may have different
16 words to describe that. When we're talking -- when we're
17 looking at children's disclosures and how they're talking
18 about sexual abuse, we look at, not just the words they're
19 using, but the context in which they're using them. How
20 they describe other things when they're talking about it.
21 All those different pieces.

22 Q. But you would agree that certainly by age fifteen,
23 prior to age fifteen, you would be -- they would have that
24 knowledge to describe those type instances?

25 A. I would assume that most fifteen-year-olds understand

1 what sex is and probably have been exposed to the concepts
2 of, you know, oral sex and intercourse and those kind of
3 things. And they may describe it differently. They may
4 use slang terms to describe that. They may use different
5 terms. And, certainly a child who's been exposed to that
6 type of behavior in an abusive setting over a period of
7 time might describe it differently than a fifteen-year-old
8 who has never been sexually abused.

9 Q. You mentioned about past sexual abuse victims being at
10 times higher risk of further abuse. Is that what you said?

11 A. Yes.

12 Q. I mean, do you have any percentages on that? I mean,
13 statistics? How do you make that -- what are you basing
14 that on?

15 A. Well, there is some research on that. I don't have a
16 statistic right now to quote. But in my training and
17 experience, there is research to support that and that's
18 what that's based on.

19 Q. Is it still all about access, trusting relationships,
20 is that a factor there?

21 A. Certainly, relationship dynamics play a huge role in
22 that, and trust. And the fact that when someone has been
23 abused their -- well, their trust in people is broken.
24 That's a huge issue that people who've been abused are
25 faced with, is being able trust and what that really means.

1 And so, yes, trust in relationships become a factor in
2 that.

3 Q. All right. I'm going to ask you a hypothetical
4 question. It's rather lengthy so let me know if you're not
5 following me.

6 A. Okay.

7 Q. I want you to assume certain facts are true. And if I
8 need to repeat anything let me know. Assume that there's a
9 child that has claimed allegations of sexual abuse by a
10 person "A" and that that occurred when the child was eight
11 years old, in 2002. Further assume that these allegations
12 were reported to law enforcement when that child was eleven
13 years old in September or December of 2004. Assume that
14 the same child then alleges, in 2009, allegations of sexual
15 abuse committed by person "B", and that those allegations
16 occurred in May or June of 2004. And then assume that the
17 child did not report these allegations against person "B"
18 in December of 2004 when the child spoke to law
19 enforcement, but waited until 2009. So that's the facts.
20 Does that make sense?

21 A. Let me make sure I understand.

22 Q. Okay.

23 A. So a child alleges sexual abuse by perpetrator "A"
24 when she's eight years in 2002.

25 Q. Correct.

1 A. These allegations were reported when she was eleven
2 years old in 2004.

3 Q. That's right.

4 A. She then alleged in 2009 sexual abuse by perpetrator
5 "B". Those allegations or those acts, I guess, occurred or
6 allegedly occurred in 2004. She did not report the acts
7 that were allegedly committed by "B" in 2004.

8 Q. Right.

9 A. But did report in 2009.

10 Q. Right.

11 A. Okay. So there are two perpetrators and two different
12 times of disclosure?

13 Q. Right.

14 A. Okay.

15 Q. So take those facts and assume that that's how they
16 were reported and all that. And since the child was
17 speaking with law enforcement regarding allegations of
18 sexual abuse in December 2004 involving person "A",
19 wouldn't it be more probable that -- let me back up a
20 second. You have to further assume that they are sexual
21 abuse allegations similar in nature. So there are similar
22 acts of sexual abuse. Since the child is speaking with law
23 enforcement about the allegations involving person "A" in
24 December 2004, wouldn't it be more probable or most
25 probable that the child would, if the child had been

1 sexually abused by person "B" prior to -- had already been
2 sexually abused by person "B" prior to her speaking to law
3 enforcement in 2004, that she would disclose that, as well,
4 when she was speaking with law enforcement?

5 A. So basically ---

6 Q. Does that make sense?

7 A. If I can ask if this is what you're asking?

8 Q. Yes?

9 A. So you're asking if a child has had multiple
10 perpetrators would you expect that they would disclose
11 about all of the perpetrators when they're being questioned
12 about one or another?

13 Q. Correct. And specifically if the incident alleged
14 with person "B" had happened just a few months prior to her
15 speaking to law enforcement regarding person "A"?

16 A. I would need a lot more information ---

17 Q. Okay. Like what?

18 A. --- to answer the hypothetical. But, again, in
19 general, disclosure is a process. So, you know, I have
20 worked with many children who've been abused by multiple
21 perpetrators who did not disclose all of those perpetrators
22 at the time that they were being question about one
23 particular perpetrator.

24 Q. Okay.

25 A. I've worked with children who, over time, once they

1 have seen that they are believed and protected, when they
2 disclose about one perpetrator, they then realize and trust
3 the adults around them and then can disclose about others
4 that have occurred. You know, it depends on the type of
5 questioning that's being asked. Sometimes it just doesn't
6 occur to a child that it would be important to share that
7 information. And I know for us as adults, it's like, well,
8 we have two abuse scenarios. That seems incredibly
9 relevant and important. In a child's mind, it may not be.
10 In a child's mind they may be so focused on what it is that
11 they're reporting at that time, that the other doesn't
12 occur to them. And so the question may just not have been
13 asked, has anybody else done this to you. And even if it
14 was, they still may not disclose that. All those factors
15 that play into why a child originally did not disclose or
16 delayed disclosure, those same factors apply to multiple
17 perpetrators. And it may be one -- there may be one or two
18 reasons why a child doesn't disclose about one. And then
19 there may be other reasons why they don't disclose about
20 the other. So, you know, a lot of things that I would want
21 to know is, you know, who were the perpetrators? What were
22 their relationship to the child? What were their
23 relationship to the other people involved? How did the
24 disclosures come about? Were they purposeful or accidental
25 when she did finally disclose? I would need a lot more

1 information. And if I were conducting a forensic
2 interview, I would hope to have all of that information
3 prior to talking to the child. And if I did -- if, I did
4 know that there were two perpetrators, then we would ask
5 about those. But if I didn't have that knowledge ahead of
6 time, then we may not.

7 Q. Would the fact that when she reported -- when the
8 child reported the first incident, the fact that she was
9 believed and that individual was charged, would that not
10 make it more likely that she would report, given what you
11 just said, report -- come out and report the alleged second
12 incident?

13 A. It could. Again, it would depend on the particular
14 circumstances surrounding her case and her and her reasons
15 for disclosing or not disclosing. You know, you would hope
16 that -- it is our hope that when we respond appropriately
17 and responsibly to a child's allegation of abuse, that they
18 do feel safe to disclose if there have been other
19 incidents. But that may not always be the case.

20 Q. Right.

21 MR. ALEXANDER: That's all the questions I have.

22 THE COURT: Any redirect?

23 MS. BARWICK: No, sir, Your Honor.

24 THE COURT: All right. Thank you. You may step
25 down Ms. Galloway Williams.

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1 All right. I'll be glad to hear from you, Mr.

2 Alexander. I'm assuming the State wishes to tender this
3 witness before the jury as an expert in the field in which
4 she has testified. You're objecting to her testimony?

5 MR. ALEXANDER: Yes, Your Honor. I have several
6 objections. One, the first being that she should not be
7 allowed to testify at all. As obviously stated, she's had
8 -- you know, she has no direct knowledge of this case,
9 other than the case file. She's not interviewed the
10 children, anything of that nature. And just the entirety
11 of her testimony, the sole purpose -- I don't know whether
12 it's the sole purpose or not. I guess, it's kind of a side
13 point, but the overall effect, the main effect of her
14 testimony would go to bolster the three alleged victims'
15 testimony. That's the main effect it would have on the
16 testimony.

17 Anything else, any other probative value of her
18 testimony is substantially outweighed by the prejudicial
19 effect, because all the jury's going to hear is, oh, well,
20 she's explaining why they delayed disclosure. That makes
21 that person more believable. That goes directly to the
22 credibility of the witness, which is in -- that's the sole
23 province of the jury. That State v. McKerley case, 397
24 S.C. 461, which we cited pre-trial, specifically states
25 that, witness credibility is the province of the jury. I

1 know Your Honor knows that.

2 I mean, that case was talking -- the facts of it were
3 a little different. It was a forensic interviewer and
4 they'd actually talked to the child and things of that
5 nature. But it's analogous because it has the same effect.
6 It's different testimony, different words the witness is
7 using, but the effect is the same. It's going directly to
8 bolster the witnesses' credibility, to make them more
9 believable, to make it believable why the delay in
10 disclosure, make it more believable in the partial
11 disclosures from their initial statements to their
12 testimony here yesterday in this trial. And so it goes
13 directly to that. I would oppose her testimony on that
14 basis. I mean, further the -- I think it's Rule 702. I'm
15 reading it from this Watson case, 389 S.C. 434, which I
16 stated in the pre-trial motions that expert testimony can
17 be used to help the jury determine a fact in issue based on
18 that expert's specialized knowledge, experience or skill.
19 And is necessary in cases in which subject falls outside
20 the realm of ordinary lay knowledge. And it goes on to
21 say, required to resolve a factual issue of scientific,
22 technical or other specialized knowledge. We don't have
23 any of that in this case, Your Honor. The State's simply
24 trying to present a reason for the delay in disclosure.
25 It's not a scientific, technical -- I mean, it's, you know,

1 they argue that it may fit under the specialized knowledge
2 category, but I would dispute that, Your Honor. I mean,
3 this is not outside the realm of ordinary lay knowledge
4 that the jury can make their own determination on based on
5 the witnesses' own testimony. They've testified already as
6 to why they delayed in disclosure, why they didn't report
7 it, why they reported it when they did. And so the jury
8 can already make that decision based on what they've heard.
9 They don't need an expert to come on the stand and help
10 them resolve why they would do that.

11 It's simply -- one, it goes to bolster their testimony
12 and comments on their credibility. But, two, it doesn't
13 fit within the test under the Watson case, which I realize
14 is a civil case, but it's commenting on the rules of
15 evidence, which would apply in criminal cases, as well,
16 that her testimony is simply not necessary. If Your Honor
17 were to allow her to testify, I would object as to the
18 wording of what she's qualified as -- I think they said,
19 correct me if I'm wrong, Ms. Barwick, counseling sexually
20 abused children or something of that nature. That implies
21 that, at least implies in some way that these alleged
22 victims have been sexually abused. And that's a
23 determination for the jury to make. I would -- I'm trying
24 to think of another way to word that.

25 MS. BARWICK: Would the Court approve, and Mr.

1 Alexander, expert in child abuse dynamics and disclosure?

2 MR. ALEXANDER: That's certainly better.

3 MS. BARWICK: The State would consent to that,
4 Judge.

5 MR. ALEXANDER: Well, obviously stating that only
6 in the event Your Honor allows her to testify. I'm not
7 conceding that point.

8 THE COURT: Mr. Alexander, how does this case
9 differ from the Weaverling case?

10 MR. ALEXANDER: I'm familiar with that case, Your
11 Honor. The State has cited here, if I could ---

12 THE COURT: I believe McKerley and Jennings, of
13 course, is where you had forensic interviewers testifying,
14 making the interview and then bolstering. As our Supreme
15 Court has said, that was beyond the line of bolstering. In
16 Weaverling, there the Court said that similar type
17 witnesses, Ms. Galloway-Williams is qualified in the field
18 and the very issues you raised that she'd never met the
19 victim -- I think you said that she had looked at the case
20 file? Is that true or not? I thought she had not looked
21 at the case file.

22 MS. BARWICK: No, sir. She didn't look at the
23 case file. She only based it on our conversation with her.

24 THE COURT: Right. So ---

25 MR. ALEXANDER: Which would obviously come from

1 the case file.

2 THE COURT: But it seems to me that Weaverling is
3 more aligned to this case than the Jennings and its
4 prodigy. I'm going to allow her to testify as an expert.
5 Your objection is noted. And she will be qualified. I
6 believe under the counsel and even Watson criteria, I think
7 that she's certainly qualified. I think the testimony is
8 relevant and will assist the trier of fact. The jurors we
9 have now, based on their qualification and the answering of
10 the questions, would not have any prior knowledge from
11 family members or otherwise as to sex abuse directly. And
12 I think she certainly has the knowledge and the skill, the
13 experience and the training, education background, to meet
14 the qualifications as an expert and I believe her testimony
15 would be a reliable factor for the jury to consider and be
16 of assistance to the trier of fact in this particular case.

17 MR. ALEXANDER: And I understand Your Honor's
18 ruling. I was just -- the State has summarized that
19 Weaverling case. And I was just reading that. I would
20 just note for the record that it seems to say the testimony
21 is relevant and helpful and to explain to the jury typical
22 behavior and patterns of adolescent victims, insight into
23 sexually abused child's often strange demeanor. I would
24 just say that that's -- that there's been no testimony
25 about that, about any child's demeanor ---

1 THE COURT: Well, I think they were talking about
2 other cases that that came from. Having read the case and
3 not just the excerpt, I believe the case is on point. And
4 certainly we have appellate courts to correct my errors if
5 -- I'm trying to do what I hope is following the law, and
6 even as I have on the other issue we're about to address on
7 the rape shield, the testimony that we heard part of
8 yesterday when I -- again, for the record, put on the --
9 talked to the attorneys about the reconsideration of not
10 allowing the -- so far, it hasn't been allowed, the
11 testimony of the prior incident that you had an opportunity
12 to examine the expert on, Mr. Alexander. And I assume you
13 would want to do the same before the jury.

14 Solicitor, I understand you wanted to be heard on
15 whether or not the rape shield was applicable?

16 MS. HINTON: Yes, Your Honor, thank you.

17 THE COURT: Yes, ma'am.

18 MS. HINTON: Obviously, the State is citing 16-3-
19 659, commonly known as the rape shield statute. Your
20 Honor, it's the State's position that the statute is very
21 clear when information such as this can come in. And that
22 Mr. Alexander, from our discussions with Your Honor in
23 chambers, wants to use it for the issue of credibility.
24 And although the State is of the opinion that the statute is
25 clear, and if the statute wanted to allow an opportunity

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1 (WHEREUPON, the jury entered the open court at
2 approximately 10:35 a.m.)

3 THE COURT: Thank you for being patient with us,
4 ladies and gentlemen. We didn't forget to set our clocks
5 back. We're an hour late from when you've been here.
6 You've been waiting patiently, but we've been taking care
7 of some legal matters. And through my neglect yesterday,
8 we didn't actually complete all the cross-examination of
9 this witness. So she's going to complete that up today and
10 we'll be ready to start back with the next witness soon.

11 So, Mr. Alexander, you can continue your cross-
12 examination of the witness.

13 MR. ALEXANDER: Thank you, Your Honor.

14 Minor Friend

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 RECROSS-EXAMINATION

17 BY MR. ALEXANDER:

18 Q. Ms. Minor I just have a couple more questions for
19 you. We had talked yesterday about the time that you spoke
20 with Detective Culbreath in December of 2004. Do you
21 remember that?

22 A. Yes.

23 Q. Okay. Now, isn't it true when you spoke with
24 Detective Culbreath in December of 2004, that you spoke
25 with him about being a victim of a sexual assault in 2002

1 by another individual, other than Damon Tyler Brown?

2 A. Yes.

3 Q. By somebody else; is that right? Is that correct?

4 A. Yes.

5 Q. And isn't it true that this conversation with
6 Detective Culbreath in 2004, it occurred after the time
7 period you're alleging that Damon Tyler Brown sexually
8 assaulted you?

9 A. Yes.

10 Q. And isn't it true that you never mentioned anything
11 regarding the allegations of sexual assault by Damon Tyler
12 Brown to him in -- until 2009?

13 A. Yes.

14 Q. All right.

15 MR. ALEXANDER: That's all I have, Your Honor.

16 THE COURT: All right. Any redirect on those
17 questions?

18 MS. HINTON: Just briefly, Judge.

19 RE-REDIRECT EXAMINATION

20 BY MS. HINTON:

21 Q. Minor, when you met with Detective Culbreath in 2004,
22 why didn't you tell him about what Tyler Brown had done to
23 you?

24 A. He didn't ask me.

25 MS. HINTON: No further questions, Judge.

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1 THE COURT: All right. Thank you. You may step
2 down. The state may call its next witness.

3 MS. BARWICK: The State would call Jessica
4 Bradshaw to the stand.

5 MR. ALEXANDER: Your Honor, may we approach while
6 this witness is coming up?

7 THE COURT: Yes, sir.

8 (WHEREUPON, Ms. Barwick, Ms. Hinton, and Mr. Alexander
9 approached the bar.)

10 THE CLERK: Place your left hand on the bible and
11 raise your right hand.

12 Do you solemnly swear or affirm that the testimony
13 you're about to give is the truth, the whole truth and
14 nothing but the truth, so help you God?

15 THE WITNESS: Yes, I do.

16 THE CLERK: Have a seat and state your name for
17 the record, please.

18 THE WITNESS: Jessica Bradshaw.

19 JESSICA BRADSAHW,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q. Ms. Bradshaw, what's your date of birth?

24 A. .

25 Q. Can you speak up a little bit loud. Not that you're

- 1 not speaking loud enough, there's just a vent back here
2 that's hard to hear over.
3 A.
4 Q. And who are Older and Younger Brother to you?
5 A. They're my brothers.
6 Q. Did you grow up with them?
7 A. Uh-huh (affirmative).
8 Q. Let's talk a little bit about your childhood. Who's
9 your mother?
10 A. Kendra Durham.
11 Q. I'm sorry?
12 A. Kendra Durham.
13 Q. Same mother of Older and Younger
14 A. Yes, ma'am.
15 Q. What was growing up like for you?
16 A. It was a very rough, abusive, neglected home.
17 Q. Well, growing up, where would you live? Many places
18 or the same places?
19 A. Many places. I was bounced around a lot.
20 Q. Who would you live with?
21 A. My grandparents and my mother and my father.
22 Q. Was your father around growing up?
23 A. No.
24 Q. Was your father different than Older and Younger
25 A. Yes, ma'am.

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1 Q. Did you have any other siblings by your mom?

2 A. Yes, I have one brother.

3 Q. Is that father different from you, Older and
4 Younger

5 A. Yes, ma'am.

6 Q. What was your relationship like with your mother
7 growing up?

8 A. It was very distant. And there really wasn't much of
9 one.

10 Q. Back when you were like fourteen, fifteen, sixteen,
11 around that age, what kinds of things would your mom do?

12 A. She was on methamphetamines and she was gone most of
13 the time. She wasn't ever home. She was always trying to
14 go get high.

15 Q. And back in 2004, would you have been sixteen?

16 A. Yes, ma'am.

17 Q. Back in 2004, who was your mom living with?

18 A. Me, my two brothers, Older and Younger and our
19 step-dad and Tyler.

20 Q. What was your step-dad like?

21 A. He was also on Methamphetamines and he was very mean
22 to all of us. Abusive. Would call us names and things
23 like that.

24 Q. When your mom and your step-dad were home, where would
25 they spend most of their time?

- 1 A. In their bedroom.
- 2 Q. Door open or shut?
- 3 A. Shut.
- 4 Q. Did you know what they were doing in that back
5 bedroom?
- 6 A. Not when I was growing up. But when I came to realize
7 what drugs were, things like that, I started to notice
8 their behaviors and things like that.
- 9 Q. Now that you're an adult, with an adult perspective on
10 it, what were they doing back there?
- 11 A. They were doing drugs.
- 12 Q. What kinds?
- 13 A. Methamphetamines.
- 14 Q. Let's talk about the home that you were living in.
15 Where was it?
- 16 A. In Central, South Carolina.
- 17 Q. Do you know the address?
- 18 A.
- 19 Q. Okay. How did you meet the Defendant?
- 20 A. I met him at a friend's party when I was -- I had just
21 turned sixteen.
- 22 Q. And how old was he?
- 23 A. Nineteen.
- 24 Q. And when you met him, when was that? Do you remember
25 the month and the year?

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- 1 A. I would say it was August of 2003.
- 2 Q. And how quickly did that relationship turn romantical?
- 3 A. Within like a week or two.
- 4 Q. Did you become pregnant with his child?
- 5 A. Yes, ma'am.
- 6 Q. And when was that?
- 7 A. I can't remember the, like, exact time that I found
- 8 out I was pregnant, but it was either August or September
- 9 of 2003.
- 10 Q. August or September of 2003? When did you give birth
- 11 to that child?
- 12 A. , 2004.
- 13 Q. You said of 2004?
- 14 A. Yes, ma'am.
- 15 Q. And what was that child's name?
- 16 A. J.B. B.
- 17 Q. Boy or girl?
- 18 A. Girl.
- 19 Q. I believe I am having some technical difficulties, but
- 20 I'm on it, so it's working. And I'm just going to write
- 21 some dates down that you're telling me so that we can keep
- 22 it straight in our heads; okay?
- 23 A. Okay.
- 24 Q. So you said that you and Tyler started dating when?
- 25 A. August 2003.

1 Q. And you found out you were pregnant with J.B. when?

2 A. Probably like -- it was either in August or September
3 2003.

4 Q. Okay. You have to excuse my chicken scratching for a
5 little bit. Did the Defendant end up moving in with you?

6 A. Yes.

7 Q. And when was that?

8 A. The beginning of 2004.

9 Q. All right. And you gave birth to J.B. on ...

10 A.

11 Q. When you and the Defendant first started dating, what
12 was your relationship like with him?

13 A. It was pretty much we just rode around and hung out
14 with friends at different places.

15 Q. Before he moved in with you, where were y'all staying?

16 A. We stayed with a friend in Mauldin for about a month
17 and a half until I told him that I thought I was pregnant
18 and he took off and went home. And I had to get my grandma
19 to come get me.

20 Q. And when you started living back with your mother with
21 the Defendant, who would watch Older and Younger

22 A. Either me or Tyler.

23 Q. In the beginning were you able to watch the
24 interactions between Older Brother Younger and Tyler?

25 A. Uh-huh (affirmative).

1 Q. And what were those interactions like?

2 A. They played video games together. They hung out, you
3 know, just like people that were bonding normally do.

4 Q. Did they seem to get along?

5 A. Yes.

6 Q. How did Older and Younger look at the Defendant?

7 A. Then?

8 Q. Then?

9 A. As a role model.

10 Q. Who's Minor Friend

11 A. She is the daughter of one of my mother's friends.

12 Q. And would she come over?

13 A. Yes.

14 Q. How come?

15 A. Her mom worked at Ingle's Deli and my mom watched her
16 while she worked.

17 Q. Who would do most of the supervision of Minor when she
18 would come over?

19 A. Me and Tyler.

20 Q. At this time period, when you're pregnant, before you
21 gave birth to J.B. what would your typical day be like?

22 A. I'd probably sleep until like noon or one and be sick
23 and eat and go back to sleep. And ---

24 Q. Did you have a lot of morning sickness?

25 A. Yeah. It was kind of all day sickness.

1 Q. What were your sleeping habits like?

2 A. They were very sporadic because I had really bad
3 heartburn and I just couldn't sleep because it was -- every
4 time I laid down, it would come up in my throat.

5 Q. Did you take anything for sleep?

6 A. I took Tylenol PM and Tums very often.

7 Q. Would you consider yourself a light sleeper or a heavy
8 sleeper?

9 A. A heavy sleeper.

10 Q. Did your mom watch Minor after the birth of your
11 child, J.B.:

12 A. No, I don't believe so.

13 Q. Did you have a second child with the Defendant?

14 A. Yes, ma'am.

15 Q. And when did you have that child?

16 A. of 2006.

17 Q. The ?

18 A. Yes, ma'am.

19 Q. And what was that child's name?

20 A. Vincent B.

21 Q. What do you call him?

22 A. D.B.

23 Q. When you were pregnant with D.B. was it the same as
24 when you were pregnant with J.B. or different, as far as
25 the sickness and the sleeping?

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1 A. Well, the sickness was the same and the sleeping was
2 the same, but I don't know, with a boy things are
3 different, different ways.

4 Q. How so?

5 A. Well, I wasn't as moody.

6 Q. So you were moody with J.B. ---

7 A. Very.

8 Q. --- and not so much with D.B.

9 A. Very.

10 Q. When you were pregnant with J.B. would you classify
11 yourself as being at home a lot or seldom or in between?

12 A. I would say that I was probably at home seventy-five
13 percent of the time. Other times, I'd be out shopping or
14 playing bingo with my grandma or spending time with my
15 friends.

16 Q. When you would be away who would look after your
17 brothers and ^{Minor} ?

18 A. Either Tyler or my mom if she was at home.

19 Q. Let's go back to your step-dad a little bit. How was
20 his relationship with your brothers?

21 A. Now?

22 Q. Back in 2004, 2005?

23 A. He was very mean. He would smack ^{Older} and ^{Younger}
24 in the back of the head and call ^{Older} a faggot and fairy
25 boy, mama's boy, poo nanny, things like that. He was very

1 rough on them. And, you know, I was too. I was mean to
2 them. I'm their big sister. It's kind of a thing for you
3 to bully your little siblings.

4 Q. Did the meanness ever turn to physical abuse?

5 A. With my step-dad?

6 Q. Yes?

7 A. Yes.

8 Q. Did the Defendant hear your step-dad call Older
9 those names?

10 A. Yes. Because he said those things every time he
11 walked in the room.

12 Q. Your step-dad did?

13 A. Yeah.

14 Q. Did the relationship the boys had with Tyler ever seem
15 to change that you could observe?

16 A. Yeah. After about three months or so, after we moved
17 in with them, he started getting in the habit of smacking
18 them on the back of the head or, you know, telling them
19 that he was going to be mean to them or something like
20 that.

21 Q. Did you see any physical abuse other than slapping on
22 the head the Defendant did towards either boy?

23 A. I didn't see anything else.

24 Q. Did you hear anything else?

25 A. Well, there was one time that I was in the living

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1 room, and I heard --

2 MR. ALEXANDER: Objection. Hearsay, Your Honor.

3 Unless it's something allegedly my client said, it would be
4 hearsay.

5 THE COURT: Well, I haven't heard whether it's a
6 statement she heard or what she heard. Is it a statement
7 or is it a sound?

8 MS. BARWICK: No, sir. Sounds.

9 THE COURT: I believe she'd be allowed to testify
10 to what sounds she hears. I'll overrule your objection.

11 MR. ALEXANDER: Thank you, Your Honor.

12 Q. What did you hear?

13 A. I heard my brother Older scream outside, after I
14 heard like a loud popping noise. And I went out there and
15 Older was crying. And I had asked him what was going on.
16 And Tyler ---

17 Q. Well, you can't say that.

18 A. Okay.

19 Q. Okay. Do you ever remember -- I'm trying to think of
20 the best way to ask this. With Younger do you -- how did
21 he feel about showers back then?

22 A. He had never taken showers. He was a bath guy. He
23 was worried about water going in his face and stuff like
24 that, so he didn't, he didn't like to take showers.

25 Q. Do you ever remember an occasion that was different

1 where Younger had taken a shower?

2 A. Yes, I do.

3 Q. Can you tell me about that?

4 A. I was asleep on the couch and I woke up to Younger
5 crying, walking down the hallway. Tyler had walked down
6 the hallway with him with his hand on his back. And I had
7 asked them why he was crying. And Younger didn't answer
8 me. He looked down at the floor. And I asked again and
9 Tyler said that he had gotten him to take a military
10 shower.

11 Q. He actually used the word military shower?

12 A. Yes, he did.

13 Q. How was your mom's relationship with Older and
14 Younger back during that 2004 to 2006 time period?

15 A. Non-existent.

16 Q. What do you mean by that?

17 A. Because whenever she was home and they were there, you
18 know, I would not even know that she had left to go
19 anywhere. And, you know, she would just leave and go out
20 the door, I wouldn't know where she was. I wouldn't know
21 where my brothers were. I mean, there was no communication
22 between us whatsoever, other than, you know, sometimes she
23 was like, hey, we're leaving. And she'd come back either,
24 you know, thirty minutes later or ten hours later.

25 Q. Okay.

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1 A. It varied daily.

2 Q. Was there any structure to your family life during
3 this time period?

4 A. No.

5 Q. You were sixteen and pregnant. Were you going to
6 school?

7 A. No.

8 Q. Did Tyler ever start calling -- using any nicknames or
9 anything for the boys?

10 A. I can't remember him calling Younger anything, but I
11 do remember him calling Older maggot one time. And then
12 I remember him calling him Maximus Older a couple of
13 other times. But I didn't really think anything of it
14 because they were into, like, transformers and things like
15 that. So I didn't really pay attention.

16 Q. Do you remember the last time Minor came to your mom's
17 house?

18 A. Which one, the one in Central?

19 Q. Right, during the babysitting. Do you remember when
20 that was?

21 A. Vaguely.

22 Q. Have you ever spoken with Minor about these incidents?

23 A. No.

24 Q. Has it come to your attention that Minor said that you
25 were around during any of these incidents?

- 1 A. Yes.
- 2 Q. Have you been charged with that?
- 3 A. Yes, ma'am.
- 4 Q. What have you been charged with?
- 5 A. Misprision to a felony.
- 6 Q. Do you know what that carries?
- 7 A. Zero to ten years.
- 8 Q. And you understand you have the right to invoke your
- 9 silence?
- 10 A. Yes.
- 11 Q. You're choosing not to do that today. Why?
- 12 A. Because I want justice for these kids. I mean, it's
- 13 not about me. I want them to have some peace in their
- 14 life. They've dealt with this for long enough.
- 15 Q. Has the State promised you anything in exchange for
- 16 your testimony?
- 17 A. No. They said that they would consider my honesty and
- 18 detailed testimony, but I was not promised anything.
- 19 Q. Okay. When did you end your relationship with the
- 20 Defendant?
- 21 A. About two weeks after our son Drake was born. So it
- 22 would be about the middle of November.
- 23 Q. Besides now, when's the last time you really had any
- 24 contact with the Defendant?
- 25 A. Christmas Day of 2006.

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1 Q. And you ended the relationship November 2012; right?

2 Or I'm sorry ---

3 A. 2006.

4 Q. 2006? See, now I'm confusing myself. Well, let's
5 talk a little bit. Did you and the Defendant ever give up
6 custody to his parents ---

7 A. Yes.

8 Q. --- of J.B.

9 A. Yes.

10 Q. And when was that?

11 A. That was December of 2006.

12 Q. How old was J.B.

13 A. She was sixteen months old when the papers were filed.
14 So it would be 2006, I think. No, '5, '5.

15 Q. '5 or '6?

16 A. '5.

17 Q. Did y'all voluntarily give up your rights to his
18 parents?

19 A. Yes.

20 Q. To Tyler's parents?

21 A. Yes, ma'am.

22 Q. When you gave birth to D.B. in October of 2006, who
23 had custody of him?

24 A. Me.

25 Q. Did you ever get custody back of J.B.

1 A. Yes, ma'am.

2 Q. And when was that?

3 A. September 7th of 2007.

4 Q. Well, that's legal custody. Did you actually get
5 possession of J.B. before September?

6 A. Yes. His dad, Larry Brown, brought her to my home in
7 Liberty about May of 2007. He said that he couldn't take
8 care of her.

9 Q. When you're saying his dad, you're talking about the
10 Defendant's dad?

11 A. Yes, ma'am.

12 Q. So that's May of 2007. Up until this September 7th --
13 on September 7th you had custody of both of your children?

14 A. Yes, ma'am.

15 Q. D.B. up until this point, has always been in your
16 custody?

17 A. Yes, ma'am.

18 Q. Okay. And did the custody change of D.B. and J.B.
19 after this point?

20 A. Yes. I gave -- well, we, me and Tyler, gave custody
21 of our children to my mother, Kendra Durham, on January
22 19th of 2010.

23 Q. What date did you say?

24 A. January 19th is when the hearing was.

25 Q. Well, why did you do that?

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1 A. Because I was going into the miliary.

2 Q. Was that -- y'all voluntarily, you and the Defendant,
3 voluntarily gave both children to your mother?

4 A. Yes, ma'am.

5 Q. Okay. Let's talk about that September 7th, 2007
6 hearing in which custody was given back to you of J.B.

7 A. Uh-huh (affirmative).

8 Q. Who was at that hearing? Who showed up?

9 A. Me and the Defendant's father, Larry Brown.

10 Q. Did the Defendant show up at that hearing?

11 A. No.

12 Q. Did he ask for custody of the children?

13 A. No.

14 Q. Did the Defendant's mom show up to that hearing?

15 A. No.

16 Q. Okay. And in January of 2010, did you and the
17 Defendant voluntarily give custody to your mother?

18 A. Yes, ma'am.

19 Q. Has the Defendant ever filed for custody of your
20 children?

21 A. No.

22 Q. Has his parents since -- since the Defendant's father
23 dropped J.B. off with you on May of 2007, have either of
24 his parents ever requested to get J.B. back?

25 A. No.

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1 Q. They've never filed any family court proceedings?

2 A. No.

3 Q. Would Tyler say anything when he would hit Older Brother

4 A. Just call him names, just like ...

5 Q. And was Tyler -- did he happen to be around Older or

6 Younger before y'all actually moved into your mom's house

7 in January of 2004?

8 A. Yes.

9 Q. What kinds of things would they do with each other?

10 A. They played football outside or played video games.

11 Q. Anything else stick out in your mind?

12 A. No.

13 MS. BARWICK: No further questions at this time.

14 THE COURT: Mr. Alexander, you may cross-examine
15 the witness.

16 MR. ALEXANDER: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 **BY MR. ALEXANDER:**

19 Q. Jessica, is it Bradshaw now?

20 A. Yes.

21 Q. When you were with Mr. Brown, you were Jessica
22 Whitaker?

23 A. Yes, sir.

24 Q. That's your maiden name, I guess?

25 A. Yes.

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1 Q. All right. So y'all lived -- you started dating Tyler
2 in August 2003, you said; right?

3 A. Yes, sir.

4 Q. All right. And shortly thereafter, y'all started
5 living together; right?

6 A. Well, that was the beginning of the next year.

7 Q. Okay. Well, would y'all -- y'all would stay with each
8 other at various peoples' houses and such?

9 A. Uh-huh (affirmative). Yes, sir.

10 Q. And, I guess, started living full-time together in
11 January 2004? 2004?

12 A. Yes.

13 Q. And then from that point forward, did you live
14 together until -- you said you all ended the relationship
15 in, I think you said November 2006. Is that right?

16 A. Yes. But he -- we broke up several times during the
17 time that we were together and he would go stay with his
18 parents or he would go stay with his friends.

19 Q. Okay. So it wasn't -- so there was periods where
20 y'all didn't live together during that time?

21 A. Yes, for a week or two.

22 Q. And when y'all were together, y'all would bounce
23 around from house to house; right?

24 A. Yes, sir.

25 Q. So y'all didn't constant -- when you were together you

1 didn't constantly live at or some other
2 residence with your mom and brothers; right?
3 A. No, not constantly.
4 Q. Okay. All right. Let's talk just a minute on this --
5 just to make sure I've got these Family Court issues down.
6 So y'all -- while y'all were still together and you and
7 Tyler gave custody of J.B. to his parents; right?
8 A. Uh-huh (affirmative). Yes, sir.
9 Q. All right. And then a year or so later, actually
10 after D.B. was born, you got custody of J.B. back?
11 A. Yes, sir. Because we had a -- when they gave his
12 parents custody, it was agreed that they would have
13 temporary and we would come back after a year's time.
14 Q. So that order was a temporary order, but it took over
15 a year to get back ---
16 A. Yes, sir.
17 Q. -- for y'all to get custody back; right?
18 A. Right.
19 Q. All right. And then -- so that was 2007. From 2007
20 to 2009, where were you living at?
21 A. In Liberty ---
22 Q. With who?
23 A. --- at 105
24 Q. Okay. With your mom and brothers?
25 A. Uh-huh (affirmative). And my grandmother.

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1 Q. Okay. And when was it that you enlisted -- did you
2 actually enlist in the military?

3 A. I went and they put me through GED classes and I took
4 my ASVAB and my physical and failed my physical for
5 cervical cancer. And they pulled my medical records and
6 they just changed their mind.

7 Q. Okay. So your plan was to go into the military, but
8 it fell through?

9 A. Yes, sir.

10 Q. For health reasons, I guess?

11 A. Yes, sir.

12 Q. Okay. But that case, it's true, you know, in
13 referring to the case where ultimately your mother got
14 custody of your two -- is it a boy and a girl?

15 A. Boy and a girl.

16 Q. Your two children. That was filed in 2009; correct?

17 A. I believe it was -- we actually went to the lawyer and
18 put a retainer down in August. But we had been talking
19 with him since like the beginning of the year.

20 Q. Okay.

21 A. So the recruiter paid for the custody switch.

22 Q. When did you first meet with the attorney?

23 A. I'd say probably the end of July or the beginning of
24 August.

25 Q. Of 2009?

1 A. Are you talking about originally met with him?

2 Q. Right?

3 A. That was in the first three months of the year.

4 Q. Okay. But you didn't hire him until August of 2009;
5 right?

6 A. Yes, sir. Because the sergeant wanted to see what my
7 ASVAB and things came back as before they put money forward
8 on the custody.

9 Q. So you would agree or wouldn't have any reason to
10 disagree that your attorney filed the case for you in
11 August, the middle of -- August 17th, 2009; right?

12 A. He did.

13 Q. Do you agree with that date?

14 A. Yes, sir.

15 Q. And that is almost exactly a week before Tyler was
16 arrested on these charges; correct?

17 A. I have no idea when he was arrested.

18 Q. You don't know when he was arrested?

19 A. No.

20 Q. Okay. You don't know how they knew to serve him while
21 he was at the law enforcement center?

22 A. Oh, with the custody papers?

23 Q. With that paperwork, yeah?

24 A. Well, I knew that he was in jail, but I didn't know
25 when he was arrested.

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1 Q. Okay. But you knew he was in jail for these
2 allegations that your brothers and Minor has testified here
3 today about?

4 A. In August, yes.

5 Q. Okay. All right. And ultimately you had a hearing in
6 January where you said you and Tyler agreed for your
7 mother, Kendra, to get custody; right?

8 A. Yes.

9 Q. Tyler didn't have much of a choice, did he?

10 A. He had all the say-so he wanted to. The judge asked
11 him.

12 Q. He's standing there in an orange jumpsuit and
13 shackles; correct?

14 A. Yes, sir. But, you know ...

15 Q. In a great position to fight for custody of his kids;
16 right?

17 A. I guess not.

18 Q. Okay. And he's in that orange jumpsuit and shackles
19 because of the charges, allegations, that your brothers and
20 Minor had made; correct?

21 A. Yes.

22 Q. Before we move on from that, is it true that prior to,
23 I guess, the early parts of 2009 and some in 2008, that
24 Tyler had started seeing the kids again, J.B. and D.B.

25 A. No. That is not true at all.

- 1 Q. When's the last time he'd seen J.B. and D.B.
- 2 A. He came by one time around D.B. first birthday to
- 3 see them. He showed up drunk. And I allowed him to see
- 4 them anyway.
- 5 Q. Okay.
- 6 A. And he didn't -- he talked to them, played with them
- 7 for about five minutes. And then he got down to why he was
- 8 really there.
- 9 Q. So you're saying that's the only time he's seen them
- 10 since y'all separated, I guess?
- 11 A. Yes, sir. Well, no.
- 12 Q. And then you said -- let's move on from that. Let's
- 13 talk about you said you've been charged with misprision of
- 14 a felony?
- 15 A. Yes, sir.
- 16 Q. And that's because ^{Minor} ~~xxxx~~ has said that you were
- 17 present during the two incidents that she alleges occurred;
- 18 is that right?
- 19 A. Yes, sir.
- 20 Q. And were you present during those two incidents?
- 21 A. I was present, but I was not awake.
- 22 Q. You're saying you were asleep during both incidents?
- 23 A. I mean, I don't know what else to tell you because if
- 24 I'd have seen it, we wouldn't be sitting here today.
- 25 Q. Okay. So you weren't -- in one incident you weren't

1 sitting up on the couch watching it. That's not true?

2 A. No.

3 Q. Okay. And another incident you weren't watching it
4 and, quote, getting off watching it?

5 A. No, sir, I was not.

6 Q. Okay. Where would you normally sleep at?

7 A. On the couch in the living room.

8 Q. Is that where you always slept?

9 A. Yes. Because there was only two bedrooms in the
10 trailer.

11 Q. So anytime you slept, you slept on the fold-out couch
12 in the living room?

13 A. Well, at one point my mom had purchased another couch
14 and it was next to the back window in the living room.

15 Q. But it was in the living room?

16 A. Uh-huh (affirmative).

17 Q. Somewhere in the living is where you always slept?

18 A. Yes, sir.

19 Q. So your testimony is if you had been awake, you would
20 have called the police and put a stop to it?

21 A. Yes, sir, I would.

22 MR. ALEXANDER: One moment, Your Honor. That's
23 all I have, Your Honor.

24 THE COURT: Any redirect?

25 MS. BARWICK: Yes, sir.

1

REDIRECT EXAMINATION2 **BY MS. BARWICK:**3 Q. Is this the final order, certified copy, dated January
4 2010, in which your mom got custody of the kids?

5 A. Yes, ma'am.

6 Q. Do you see that sticky note?

7 A. Yes, ma'am.

8 Q. Will you state that for the jury, that paragraph that
9 the sticky note marks?10 A. The agreed upon issues were decided in open court by
11 the plaintiff's attorney and acknowledged as being correct
12 by the defendants. The court questioned each party
13 regarding the agreement. There is no indication that
14 either party was forced or under any duress or coercion at
15 any time they entered into this agreement. Therefore, the
16 agreement was entered into freely and voluntarily.17 Q. And who were the plaintiffs to that? Do you know what
18 that means?

19 A. Well, I know it was me and Tyler and my mom.

20 Q. And that's who agreed to that?

21 A. Yes, ma'am.

22 MS. BARWICK: No further questions at this time.

23 THE COURT: All right. Thank you. You may step
24 down. The State may call its next witness.

25 MS. HINTON: Thank you, Your Honor. The State

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1 would call Brian Swafford to the stand.

2 THE CLERK: Place your left hand on the bible and
3 raise your right hand.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give is the truth, the whole truth and
6 nothing but the truth, so help you God?

7 THE WITNESS: Yes, I do.

8 THE CLERK: Have a seat and state your name for
9 the record, please.

10 THE WITNESS: Brian Swafford.

11 BRIAN SWAFFORD,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. HINTON:

15 Q. Detective Swafford, where are you employed?

16 A. With the Pickens County Sheriff's Office.

17 Q. And how long have you been there?

18 A. For seven years.

19 Q. What's your current title over there?

20 A. I'm a detective.

21 Q. Okay. And back in 2009, what was your occupation
22 there?

23 A. I was a deputy on the uniform road patrol.

24 Q. Were you called out to Liberty High School in 2009 in
25 reference to this case?

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1 A. Yes, ma'am, I was.

2 Q. And who called you?

3 A. Dispatch called for me to meet with a SRO at the high
4 school, Officer Ticknor.

5 Q. And for the jury, what does SRO mean?

6 A. School Resource Officer.

7 Q. And what was that call pertaining? What were the
8 allegations?

9 A. The School Resource Officer Ticknor was saying that he
10 was speaking with a student there in reference to a
11 possible CSC, criminal sexual conduct with a child.

12 Q. Okay. And when you went to the high school did you
13 speak to anyone at the high school?

14 A. Yes, ma'am. Officer Ticknor, along with Older
15

16 Q. Okay. And when you spoke to Older Brother did he
17 make disclosure of sexual abuse to you?

18 A. Yes, ma'am, he did.

19 Q. Did he say where it happened?

20 A. He did. He said it happened at in
21 Central.

22 Q. Is that in Pickens County?

23 A. That is.

24 Q. And did he say when it happened?

25 A. He gave me -- he told me it happened when he was

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1 between the ages of ten and twelve years old.

2 MR. ALEXANDER: Your Honor, I'm going to object
3 to hearsay.

4 THE COURT: Overruled.

5 Q. Did you turn this case over to anyone else, Detective
6 Swafford?

7 A. I did. I turned it over to our detective, Detective
8 Keith Culbreath.

9 Q. And is that standard procedure in case such as these?

10 A. Yes, ma'am, it is.

11 Q. That end your involvement in this case?

12 A. It did.

13 MS. HINTON: No further questions, Your Honor.

14 THE COURT: Any cross-examination?

15 MR. ALEXANDER: Briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ALEXANDER:

18 Q. Officer Ticknor was the one that took the written
19 statement from Older Brother

20 A. That's correct.

21 Q. Right?

22 A. That's correct.

23 Q. And so did you go over this statement with him or ask
24 him any more detailed questions or anything like that?

25 A. I did ask him questions. I don't know if it went any

1 -- I don't think it went in much further detail than what
2 the statement had in it.

3 Q. What kind of questions did you ask him?

4 A. I asked Older basic, you know, questions that, you
5 know, who it was that had done this to him? How he knew
6 the person that done this to him? And when it took place
7 and how many times that it took place?

8 Q. Okay. And don't tell me what he said, but he answered
9 your questions?

10 A. He did.

11 Q. And once Detective Culbreath took over, you were out
12 of the case?

13 A. That's correct.

14 Q. Okay.

15 MR. ALEXANDER: That's all I have for him.

16 THE COURT: All right. Thank you, sir. You may
17 step down.

18 MS. HINTON: Your Honor, may he be excused?

19 MR. ALEXANDER: No objection.

20 THE COURT: Without objection, he may be excused.
21 You may call your next witness, Solicitor.

22 MS. HINTON: Thank you, Your Honor. The State
23 will call Keith Culbreath to the stand.

24 THE CLERK: Place your left hand on the bible and
25 raise your right hand.

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1 Do you solemnly swear or affirm that the testimony
2 you're about to give is the truth, the whole truth and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat and state your name for
6 the record, please.

7 THE WITNESS: Keith Culbreath.

8 KEITH CULBREATH,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. HINTON:

12 Q. Mr. Culbreath, what's your current occupation?

13 A. I'm retired.

14 Q. Okay. And where are you retired from?

15 A. From the Sheriff's Office of Pickens County.

16 Q. And when you were at the Pickens County Sheriff's
17 Office, how long were you there?

18 A. I was with the Sheriff's Office eighteen years. The
19 last eight years of that I spent in the juvenile division
20 as a detective.

21 Q. So were you employed there in 2009?

22 A. Yes.

23 Q. And was that as a detective?

24 A. Yes.

25 Q. Do you mind if I still refer to you as Detective?

- 1 A. That's fine.
- 2 Q. Detective Culbreath, did you become involved in a case
3 involving the Defendant, Damon Tyler Brown?
- 4 A. Yes.
- 5 Q. And how did you become involved in this case?
- 6 A. I was assigned this case from my supervisor.
- 7 Q. Is that standard procedure?
- 8 A. Yes.
- 9 Q. Were you the lead detective on this case?
- 10 A. Yes.
- 11 Q. Did you speak with anyone as part of your
12 investigation of this case?
- 13 A. I spoke with several people, yes.
- 14 Q. Do you remember who all you spoke to?
- 15 A. Yes.
- 16 Q. And who was that?
- 17 A. I spoke with Older Brother his brother, Younger
18 Minor Friend and also to Mr. Damon Brown.
- 19 Q. And when you spoke to Older Brother did Older
20 make a disclosure of sexual abuse to you?
- 21 A. Yes, he did.
- 22 Q. Did he tell you where it happened?
- 23 A. Yes.
- 24 Q. Where was that?
- 25 A. Well, that was at the incident location at

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1 in Central.

2 Q. Did he tell you when it happened? I'm sorry. Yes,
3 when it happened?

4 A. Yes.

5 Q. And when was that?

6 A. It happened during -- on or about May of 2004.

7 Q. When you spoke to Older Brother what was his demeanor like
8 in speaking with him?

9 A. He was somewhat upset. But it appeared that he was,
10 he was kind of relieved to get it off his shoulders, I
11 think.

12 MR. ALEXANDER: Objection, Your Honor. Calls for
13 speculation.

14 THE COURT: I overrule that objection.

15 Q. Detective Culbreath, do you know the date that you
16 spoke to Older Brother

17 A. That was May the 6th of '09.

18 Q. And when you spoke to Older Brother was anyone else
19 present?

20 A. Officer Ticknor was there.

21 Q. Any other family members?

22 A. No.

23 Q. All right. You said you spoke to Younger Brother

24 A. Yes.

25 Q. When did you speak to Younger Brother

1 A. I spoke with Younger the first time, I believe that
2 was May the 12th. May the 12th.

3 Q. Okay. Of what year?

4 A. Of '09.

5 Q. And did you speak to Younger Brother one time or
6 multiple times?

7 A. I spoke to him twice.

8 Q. And when was the second time you spoke to him?

9 A. That was July the 31st.

10 Q. Of 2009?

11 A. Yes.

12 Q. When you first spoke to Younger did Younger make any
13 disclosures to you?

14 A. The first time I talked with Younger he was very upset
15 about, I think the whole situation, and would not open up
16 to me and talk with me.

17 Q. Did you offer any remedy to that?

18 A. I talked with his mother, Kendra, and advised her that
19 she probably needed to take him to get counseling. It
20 would either help him deal with what was going on or had
21 been going on with him. And that at some point that if he
22 wanted to talk to me, all she had to do was call me and
23 bring him back.

24 Q. And did Younger in fact, come back to see you?

25 A. He did.

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1 Q. And was that in July 2009?

2 A. Yes.

3 Q. And did Younger eventually make a disclosure of sexual
4 abuse to you?

5 A. Yes.

6 Q. Did he tell you where it happened?

7 A. Yes.

8 Q. Where did he say?

9 A. in Central.

10 Q. Did he tell you when it happened?

11 A. Yes.

12 Q. And when was that?

13 A. And that was during the same time period of 2004, May.

14 Q. When you met with Younger Brother the first time, who
15 was present with you when you met with him?

16 A. His mother was there, and she was there and I ask her
17 eventually to leave the room to see if he would talk with
18 me by himself.

19 Q. Okay. And the second time you met with Younger was
20 anyone present with you then?

21 A. Like I say, at first his mother was there. And then I
22 ask her to leave the room so I could talk with him by
23 himself.

24 Q. You said you were a juvenile detective?

25 A. Yes.

1 Q. Okay. When dealing with juveniles is that common to
2 have a parent around in the initial meeting?

3 A. Yes.

4 Q. And why is that?

5 A. Well, you can only imagine being ten, twelve years
6 old, meeting somebody that you've never seen in your life
7 to talk about something you don't want to talk to anybody
8 about. So if you've got the parent there, most of the time
9 they feel more comfortable or they feel safe being there.

10 MR. ALEXANDER: I object to this line of
11 answering. I think it's beyond his lay testimony to
12 testify to something of that nature.

13 THE COURT: All right. I sustain the objection
14 as to methodology.

15 MS. HINTON: Thank you, Your Honor.

16 Q. Detective Culbreath, when you met with Older
17 and Younger Brother where did you meet with
18 them?

19 A. In my -- well, Older Brother I met the first time at the
20 high school. And Younger at my office.

21 Q. And where was your office at the time?

22 A. At the Law Enforcement Center.

23 Q. Detective Culbreath, did you meet with Minor Friend

24 A. I did.

25 Q. And where did you meet with her?

1 A. At the Haywood County Sheriff's Office in North
2 Carolina.

3 Q. And did Minor Friend make any disclosure of sexual
4 abuse to you?

5 A. Yes.

6 Q. Did she tell you where it happened?

7 A. Yes.

8 Q. Where was that?

9 A. That was in Central.

10 Q. And did she tell you when it happened?

11 A. Yes, ma'am. It was during the same time period of
12 2004.

13 Q. And did you meet with Minor Friend on one occasion or more
14 than one occasion?

15 A. Twice.

16 Q. And where did you meet with her the second time?

17 A. Again, at the Haywood County Sheriff's Office.

18 Q. Okay. And why did you meet with her twice?

19 A. The first time, we talked briefly and she gave me a
20 statement that was a short statement. And I think some
21 time later she had called, and I think she'd actually
22 talked with Peter Them, who was the Solicitor at the time,
23 Assistant Solicitor. And we discussed me going back up
24 there and talking with her again because she had left some
25 things out.

1 Q. And did you say that you spoke to the Defendant in
2 this case?

3 A. Yes.

4 Q. When you spoke to him, was he under arrest at the
5 time?

6 A. No, ma'am.

7 Q. Detective Culbreath, you actually met with ^{Minor} ~~Friend~~ back
8 in December of 2004 on an unrelated sexual abuse. Is that
9 correct?

10 A. That's correct.

11 Q. When you met with her in December of 2004, do you
12 remember asking her anything about Tyler Brown?

13 A. I did not.

14 Q. When you spoke with her in December of 2004, did you
15 ask her about any other perpetrators?

16 A. Truthfully, I can't recall if I asked her about any
17 other person.

18 Q. When you met with her in 2004, what was her demeanor?

19 A. I would say fragile, not very talkative. She didn't
20 appear to be scared of me. I think the subject matter had
21 a lot to do with it.

22 Q. What about in 2009 when you met with her, what was her
23 demeanor?

24 A. I think she remembered who I was and felt more at ease
25 in talking to me.

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1 Q. Did you get a date of birth from the Defendant when --
2 as part of your investigation?

3 A. Yes, I did.

4 Q. And what is that date of birth?

5 A. /84.

6 MS. HINTON: No further questions, Your Honor.

7 THE COURT: You may cross-examine, Mr. Alexander.

8 MR. ALEXANDER: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. ALEXANDER:**

11 Q. All right. I'm going to refer to you as Detective, as
12 well, if that's okay?

13 A. That's fine.

14 Q. When was it -- I missed -- I know you said when you
15 retired, but I missed it. When did you retire?

16 A. Next month it'll be two years.

17 Q. Okay. Say 2010 some time?

18 A. Yes.

19 Q. All right. So I just want to kind of make sure I've
20 got this time line straight. So you got assigned the case
21 in the first of May 2009 after, I guess, then Deputy
22 Swafford and Officer Ticknor had met with Older Brother Is that
23 right?

24 A. Yes.

25 Q. And you're certain you went to Liberty High School and

1 met with Older Brother

2 A. Yes, sir.

3 Q. Okay. Is that the only time you have ever spoken with

4 Older in this case?

5 A. I'm sure I saw him. I'm sure he came with his mom

6 when Younger came. And I'm sure I broke -- but not about

7 the case, but I think -- I'm sure I spoke with him, you

8 know.

9 Q. Okay. But, yeah, I guess to be more specific, as to

10 the allegations in this case, you never talked to him again

11 about it?

12 A. I don't think so.

13 Q. There's certainly no other written statements out

14 there regarding that.

15 A. No, sir.

16 Q. All right. So that was May 6th, 2009. And you

17 attempted to talk to Younger on May 12th, 2009; right?

18 A. Yes.

19 Q. And he wouldn't talk with you and you suggested that

20 Ms. Kendra Durham, the mother, get Younger counseling. Is

21 that right?

22 A. Yes.

23 Q. All right. And as far as you knew, that's what was

24 going to happen when they left that day?

25 A. The counseling?

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1 Q. Right?

2 A. That was my suggestion to her, yes.

3 Q. And based on your conversation -- I'm not asking what
4 she said -- but based on your conversation, you understood
5 that that was at least going to be looked into. Is that
6 right?

7 A. Yes.

8 Q. Do you know whether or not Younger ever got any
9 counseling?

10 A. Yes, to my knowledge, his mother had told me that she
11 had carried him to, I think, it was Behavioral Health
12 Services in Pickens.

13 Q. Okay. But you don't know that for sure, whether he
14 actually went there or not?

15 A. I do not have any records from there.

16 Q. So over two months go by and you meet with him,
17 Younger again. And I'm skipping over Minor but I'll get
18 back to her. You met with Younger again July 31st, 2009.
19 Is that right?

20 A. I think that's correct.

21 Q. So over two months. Did you attempt to contact them
22 during that period of time to see if he was willing to talk
23 with you or give you a statement?

24 A. No. I had left it with her that if she could get him
25 to counseling and if he felt like he could talk with me, to

1 make contact with me and bring him back.

2 Q. Okay. I mean, you didn't even follow up with Ms.

3 Durham and say, hey, are you -- did you get him into

4 counseling? Do we need to wait? Did you do anything like

5 that?

6 A. I actually went by the house sometime thereafter that

7 to see -- actually, I think I went by there to see him and

8 Jessica. Just to see what was going on. Not to discuss

9 the case, but just kind of see what was going on.

10 Q. Okay. Now, you don't refer to that trip out to their

11 house anywhere in your incident report; do you?

12 A. No.

13 Q. Okay. So after -- well, on Younger statement, he

14 gave you a verbal statement; right?

15 A. Younger

16 Q. Younger yes?

17 A. Yes.

18 Q. And then you typed it for him?

19 A. Yes.

20 Q. And then did he read it and sign it?

21 A. I went through it as I typed it. Every line we typed,

22 I stopped and we discussed it to make sure that that was

23 correct.

24 Q. And part of his verbal statement was, according to

25 your incident report, was that he told you when he was

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1 talking about the shower, that being made to take a shower,
2 you asked him did Damon -- did Tyler ever do anything to
3 him or did Tyler make Younger do anything to Tyler. And he
4 said no to both things. Is that right? I'm sorry. That
5 was kind of a bad question?

6 A. Now, say that again. Yeah, I think you kind of -- you
7 left me somewhere there.

8 Q. He told you verbally, Younger told you verbally that
9 regarding the showers that nothing happened, basically.
10 That Tyler never did anything to him and he never did
11 anything to Tyler; right?

12 A. Would you like me to read that segment of the report?

13 Q. Well, if you can answer, just answer the question.

14 A. (No verbal response).

15 Q. You said, I then asked him if Tyler made him do
16 anything to him and he said, no. And then I asked if Tyler
17 did anything to him and he said, no.

18 A. Okay.

19 Q. That's what he told you; right?

20 A. Correct.

21 Q. But you didn't type that in his written statement, did
22 you?

23 A. (No verbal response).

24 Q. So do you have a -- there's a ---

25 A. I have a copy of it. Would you like to look at it?

1 Q. Yeah. Let's use the one that's in evidence. State's
2 Exhibit 4. Is that Younger typed statement that you
3 typed and he signed?

4 A. Yes.

5 Q. All right. And in there you don't -- you did not type
6 the part about that nothing happened in the showers. Is
7 that correct?

8 A. Are you asking me in the statement that he says
9 nothing happened?

10 Q. That's not what I'm asking. I'm asking when you
11 specifically -- when you were talking to him, it was
12 mentioned the shower incidents.

13 A. Okay.

14 Q. In your report, he answered, about whether something
15 happened in the shower, he said, no. You didn't type that
16 in the report, you left that out; correct?

17 A. That's correct. There's no -- that's not in the
18 statement part.

19 Q. Okay. Thank you. So is it fair to say -- did you
20 choose how to word that statement based on what he told
21 you?

22 A. I worded the statement as he told it to me. Would you
23 like me to publish the statement for the court?

24 Q. That's okay, Detective. It's already been published.

25 All right. So let's go back to Minor here. You met with

1 her in North Carolina. You actually met with her July

2 16th, 2009; correct?

3 A. That's correct.

4 Q. Okay. But you had contacted her mother as far back as

5 May 12th of 2009. Isn't that correct?

6 A. I don't know for sure that it was the exact date; and

7 I can explain that.

8 Q. Okay. Go ahead.

9 A. They had left South Carolina and moved to North

10 Carolina at some point. I actually went to Belton,

11 Anderson, Easley, Central, and nobody knew where they were

12 at.

13 Q. Okay.

14 A. So I went back to my evidence -- through some of my

15 contacts that I have with the Department of Social

16 Services, because I worked quite frequently with them.

17 Q. Yes, sir.

18 A. And asked them if they had any idea on how to find

19 this lady. And they did, in fact, know how to find her.

20 They contacted the Department of Social Services in North

21 Carolina and that's how I came up with the number.

22 Q. Okay.

23 A. And it took quite a while to find her.

24 Q. All right. So I guess my question is, the way your

25 report reads, it sounds like you actually made a phone call

1 to her on or about May 12th. Was it after that date?

2 A. It was probably after that date. I can't tell you the
3 exact date.

4 Q. Well, was it closer to May 12th than it was to July
5 16th, I guess?

6 A. Oh, I'm sure it was, yeah.

7 Q. Okay. Well, I won't ask you what she said. Following
8 -- you had a conversation with Tina Upton, ^{Minor} ~~Friend~~ mother;
9 correct?

10 A. Yes.

11 Q. And based on that conversation, they were going to get
12 back with you about whether ^{Minor} ~~Friend~~ would talk to you?

13 A. Well, I told her I had talked with her mother and told
14 her what -- not the entire thing, but that I needed to talk
15 with her about, you know, certain things. And it seems
16 like there was some kind of issue. She was in school at
17 the time. And I think her mother was working at the time.
18 And I kind of had to arrange all of that between them and
19 me.

20 Q. So there were some timing issues on you getting up
21 there to ---

22 A. More than anything, yeah.

23 Q. Okay. All right. So you go up there eventually and
24 she gave you a written statement; right?

25 A. Yes.

1 Q. And correct me if I'm wrong, but you said the first
2 statement she gave you was a shorter, brief statement. Is
3 that right?

4 A. Let me find it.

5 Q. Let me show you this, State's Exhibit 5. Is that --
6 you can look at your records, too, but is that her -- the
7 first statement that she gave you?

8 A. Yes.

9 Q. All right. And it's a two-page statement or, I guess,
10 one and a half pages. It's only two pages. And then in
11 that statement she said that Jessica was present during
12 these incidents. Is that correct?

13 A. I think you're correct. If you'll give me just a
14 moment to briefly look over it.

15 Q. Yes, sir. Take your time.

16 A. Yes.

17 Q. Okay. And, in fact, she says that Jessica was present
18 and watching. And she mentions Tyler, too, of course. But
19 that Jessica was there and seemed to get off on watching
20 it. Is that correct?

21 A. That's correct.

22 Q. And then she mentions Jessica a second time somewhere
23 toward the bottom of the first page, I believe. Is that
24 correct?

25 A. Yeah. She's mentioned in the -- yes.

1 Q. Okay. So did you ever talk to Jessica about that?

2 Did you follow up on it?

3 A. I went and tried to talk with Jessica, but all she
4 would say at the time was that she didn't know anything.

5 Q. Okay. So she -- all right. And when do you -- I
6 mean, obviously, it would have been after you got that
7 statement. Did you go and talk with her before you charged
8 Mr. Brown or ---

9 A. Yes.

10 Q. -- after or what?

11 A. Before.

12 Q. Okay. She's apparently been charged with misprision
13 of a felony. Do you know when she was charged with that?

14 A. I do not know exact date.

15 Q. So you didn't charge her with that?

16 A. No, I think she was directly indicted for that.

17 Q. All right. And you worked for the sheriff's office up
18 through December of 2010?

19 A. Yes.

20 Q. And so through that point in time, she had not been
21 charged with that?

22 A. Not to my knowledge.

23 Q. And you would have known about it if she was?

24 A. I did not charge her. I'll put it that way.

25 Q. But as the investigating officer on this case, you

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1 would have been involved in that; correct?

2 A. Yes. If it had been before that, yeah.

3 Q. So it's fair to say that she was not indicted until
4 after December 2010?

5 A. I think that would be safe to say that.

6 Q. And, in fact, you never even presented the magistrate
7 for an arrest warrant on Jessica; did you?

8 A. I don't think so.

9 Q. Okay. All right. So as far as -- I'll try to go
10 chronologically here. So you eventually presented an
11 arrest warrant, got a warrant and arrested Damon the end of
12 August 2009. Is that correct?

13 A. Yes.

14 Q. Okay. And then -- so after that, let's say for the
15 next year, before you went and got a second statement from
16 Minor , did you talk to any of the relevant parties in the
17 case? Any of the alleged victims, Ms. Durham ...

18 A. Before I went and talked with Minor the second time?

19 Q. Yeah, that's correct?

20 A. I'd have to look through my report, but I don't think
21 I did.

22 Q. That's okay. All right. So you testified a while ago
23 that as to the second statement that Minor gave -- let's
24 start with this. This is State's Exhibit 6. Is this -- so
25 you can review that.

1 A. Well, actually ---

2 Q. Go ahead.

3 A. Actually, I talked with Younger I think that was on
4 the 31st.

5 Q. You talked with Younger the second time on July 31st,
6 2009; right?

7 A. Okay. Yeah, that's right. And then August the 18th
8 is when I went back the second time to talk with Minor

9 Q. August 18th of 2010. Is that right?

10 A. I don't remember, to be honest with you. Oh, I may
11 have put 2010 on it, and that may be correct.

12 Q. Well, you would review the statement; correct?

13 A. Well, that's correct. And that's probably true.

14 Q. Okay. So you ---

15 A. I can't outweigh the ---

16 Q. Sure.

17 A. --- being that it -- you know, if I made a -- I don't
18 know how many times -- I'm sure other people have done it,
19 wrote a check to pay a bill and realized I put the wrong
20 year on it, you know.

21 Q. Well, you would remember if you made two trips to
22 North Carolina ---

23 A. I made two trips, yes.

24 Q. But you would remember if you made two trips inside a
25 of month of each other? Or right at a month. You did it

1 one month and you went up the very next month again. You
2 don't remember doing that; do you?

3 A. I don't recall. I'm going to say that you're probably
4 correct on the date.

5 Q. All right. And you said that the reason you went up
6 there was because Minor, you believe, contacted the
7 solicitor's office and wanted to -- hang on. That she had
8 left some things out, is I think, how you worded it.

9 A. Correct.

10 Q. So she instigated that visit and the writing of the
11 second statement. Is that correct?

12 A. I can't say that she instigated it because she had had
13 contact with Peter Them during this time. And that's why I
14 say that you're right about the date.

15 Q. Okay.

16 A. And I'm satisfied that he had made contact with her
17 more than one time to keep up with her whereabouts.

18 Q. Okay. So you went up there at the request of the
19 solicitor handling the case at that time?

20 A. I do remember that, yes.

21 Q. Okay.

22 MR. ALEXANDER: One moment, Your Honor. That's
23 all I have, Your Honor.

24 THE COURT: Any redirect of this witness?

25 MS. HINTON: No, Your Honor. May he be excused?

1 MR. ALEXANDER: No objection.

2 THE COURT: You may step down, Officer Culbreath.
3 Without objection, you may be excused.

4 Ladies and gentlemen, this might be a good time for us
5 to take a break. I want you to go back to your jury room.
6 I should have told you earlier, but you're a group that
7 picks up on things well, I'm sure. The alternate, he's
8 occupying his alternate seat. Most of you have decided to
9 occupy one seat and not move around, as you would certainly
10 have a right to do. He'll occupy that seat until such time
11 as he's called upon to be one of the jurors. I'm going to
12 appoint Mr. Locke to be the foreperson of the jury. He's
13 occupying the first seat on the front row, closest to the
14 witness stand. You may have already experienced this and
15 you might have just done it by committee, but sometimes
16 when you're back in your jury room you may have a need to
17 make a phone call, to pick up a child, to adjust the
18 thermostat, seek a cup of coffee, whatever it may be.
19 He'll be your liaison with the bailiffs, with the clerk of
20 court, other staff. That'll be his duty to sort of be the
21 spokesman for you fellow jurors that may have a need to ask
22 of the bailiffs, ask of the Court or ask of the clerk's
23 office.

24 What the foreperson's job also will be, when all of
25 the evidence is in, and I've instructed you on the law and

1 we have a -- you have a chance then to begin your
2 deliberations, the foreperson will be the one who'll
3 facilitate that deliberation, make sure everyone on the
4 jury has an input, a say-so into each individual's view of
5 the facts. And on behalf of the jury, write out the
6 verdict form that I'll provide for you at the appropriate
7 time. So he'll continue occupying that seat. The
8 alternate will occupy that seat. The rest of you, as you
9 come and go, you can certainly occupy the seats that you're
10 in now. Or if you want to take another seat, that's all
11 right, too. Let's take about a ten-minute break. And
12 we'll be ready to begin with the next testimony.

13 (WHEREUPON, the jury exited the open court at
14 approximately 11:49 A.M.)

15 THE COURT: All right. Let's take a short break.

16 (WHEREUPON, the court stood at recess for a short
17 break.)

18 THE COURT: All right. Ready to proceed?

19 MS. HINTON: Your Honor, if we may briefly just
20 move to have amended indictment number 2010-GS-39-850. On
21 the front, there's a scrivener's error that cites the
22 improper statute. The proper statute would be 16-
23 355(a)(1). And we'd ask that it be amended to reflect
24 that.

25 THE COURT: Any objection from the Defense?

1 MR. ALEXANDER: Honestly, I don't think I have a
2 good-faith argument. I think the statue's is clear. It
3 says a scrivener's error. They're allowed to do that.

4 THE COURT: I believe the back side of the
5 indictment had the correct number, Solicitor?

6 MS. HINTON: That's correct, Your Honor.

7 THE COURT: Okay. I'll grant your motion to
8 amend.

9 MS. HINTON: Thank you, Your Honor.

10 THE COURT: Any other matters?

11 MS. HINTON: No, Your Honor, not from the State.

12 MR. ALEXANDER: No, Your Honor.

13 THE COURT: Okay. Let's have our jury come in if
14 they're ready.

15 (WHEREUPON, the jury entered the open court at
16 approximately 12:13 P.M.)

17 THE COURT: Solicitor, you may call your next
18 witness.

19 MS. BARWICK: Thank you, Your Honor. The State
20 calls Shauna Galloway-Williams to the stand.

21 THE CLERK: Place your left hand on the bible and
22 raise your right hand.

23 Do you solemnly swear or affirm that the testimony
24 you're about to give is the truth, the whole truth and
25 nothing but the truth, so help you God?

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1 THE WITNESS: Yes, I do.

2 THE CLERK: Have a seat and state your name for
3 the record, please.

4 THE WITNESS: Shauna Galloway-Williams.

5 SHAUNA GALLOWAY-WILLIAMS,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. BARWICK:

9 Q. Ms. Galloway-Williams, where do you work?

10 A. I'm the Executive Director of the Julie Valentine
11 Center.

12 Q. And what do your duties entail?

13 A. As Executive Director, I'm responsible for the overall
14 administration of the agency. In addition to that, I'm
15 also responsible for the clinical oversight of all of our
16 programs and still provide direct clinical service,
17 including conducting a group for non-offending care givers
18 and forensic interviews.

19 Q. And what is the Julie Valentine Center?

20 A. The Julie Valentine Center was formerly know as the
21 Greenville Rape Crisis and Child Abuse Center. We are a
22 child abuse and sexual assault recovery center.

23 Q. Okay. And what kind of education and background do
24 you have?

25 A. I am licensed as a professional counselor in the State

1 of South Carolina. I have a Master's Degree in Counseling
2 and a Bachelor's Degree in Psychology.

3 Q. As the Director, is that the same thing as being a
4 supervisor, as well?

5 A. Yes.

6 Q. Do you have any licenses or degrees, other than what
7 you've already mentioned?

8 A. I'm licensed a professional counselor.

9 Q. Do you have any specialized training in counseling
10 children thought to be sexually abuse?

11 A. Yeah. The vast majority of my training has
12 specifically related to child abuse and sexual assault. I
13 have received over a hundred and forty hours of skills-
14 based training, specifically in the area of forensic
15 interviewing, which does address child abuse and sexual
16 assault specifically.

17 Q. And how many years have you been counseling children
18 who are victims of sexual assault?

19 A. I've been working with children, adolescents and
20 families who've been impacted by child abuse and/or sexual
21 assault, for more than eleven years.

22 Q. Have you ever been qualified as an expert in child
23 abuse dynamics and disclosure in Family Court before?

24 A. Yes.

25 Q. How many times?

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1 A. In Family Court, I've been qualified as an expert more
2 than twenty-five times.

3 Q. And what about in General Sessions Court, like the
4 Court here?

5 A. Fifteen times.

6 MS. BARWICK: Your Honor, at this time, the State
7 would like to introduce Ms. Shauna Galloway-Williams as an
8 expert in child abuse dynamics and disclosure.

9 THE COURT: All right. Subject to the objection,
10 I will qualify this witness as an expert.

11 Ladies and gentlemen, let me just explain to you
12 briefly. Normally, when a person testifies, that person
13 can testify to what they saw or felt or experienced, heard,
14 some sense that they used. But there is an exception, and
15 when we have someone who is qualified because of training
16 or education or expertise in some field, they're permitted
17 to give opinions in that field of expertise in which
18 they're qualified. And this witness, having been qualified
19 in the field of child abuse dynamics and disclosure, will
20 be allowed to give opinions and will be allowed to give the
21 basis of the opinions. Now, the fact that she's allowed,
22 as an expert, to give opinions doesn't mean you have to
23 accept that opinion. Her testimony is like other
24 testimony, it's evidence. You consider it, use it anyway
25 that you see fit.

1 All right. Solicitor, you may continue.

2 MS. BARWICK: Thank you, Your Honor.

3 Q. Ms. Galloway-Williams, were you subpoenaed to be here
4 today?

5 A. Yes.

6 Q. Are you being paid by the Solicitor's Office to be
7 here?

8 A. No.

9 Q. Who pays your salary?

10 A. The Julie Valentine Center.

11 Q. Have you ever met with Older Brother Younger
12 or Minor Friend

13 A. No, I have not.

14 Q. Okay. Have you been provided incident reports or
15 statements by any of these individuals?

16 A. No, I haven't.

17 Q. Okay. The only knowledge you have about this case, is
18 it correct, that it came from discussions with the
19 Solicitor's Office?

20 A. That's correct.

21 Q. Let's talk about disclosure a little bit. What does
22 it mean to have a delayed disclosure?

23 A. A delayed disclosure basically means a disclosure that
24 happens after the abuse has occurred; not directly after,
25 but with some delay. In most cases of child abuse we

1 expect that there will be a delayed disclosure or most
2 cases children do delay disclosure. Many until they're
3 adults.

4 Q. And do you have any statistics on the amount of people
5 or children who have been sexually abused as children, who
6 have delayed in disclosing?

7 A. Well, the research indicates somewhere between seventy
8 and eighty percent delay disclosure into adulthood.

9 Q. Okay. What are some reasons that a child might delay
10 disclosing sexual abuse?

11 A. The number one reason that is given by children or
12 adults for delaying disclosure is fear. Oftentimes
13 children fear consequences to themselves, consequences to
14 the perpetrator, the person that's done this to them. They
15 may also fear that something is going to happen to someone
16 that they love. The age of a child can impact delayed
17 disclosure. The relationship that the child has to a
18 perpetrator or the offender can impact that. A lot of
19 times children are abused by someone that they know, they
20 love and they trust. And with that, it makes it even
21 harder for them to tell that this has happened. In
22 addition to them knowing, loving and trusting this person,
23 a lot of times family members and family friends and the
24 community also know, love and trust this person. And that
25 can make it incredibly hard for a child to tell.

1 Q. I'm sorry. I didn't mean to interrupt you.

2 A. Oh, that's okay. Other reasons might be, you know,
3 for younger children or even for older children, they may
4 just not have the language or the words to describe what's
5 happened to them. Sometimes children know that's what
6 happening is wrong. They just don't know how to say
7 exactly what's happening. You know, sometimes children
8 have been threatened. Either they may have been threatened
9 or someone in their family may have been threatened.

10 Threats can be direct or indirect threats. If a child has
11 witnessed the person who's abusing them being violent or
12 doing something that they've threatened to do to someone
13 else, that indirect threat can be pretty powerful and can
14 keep a child from telling.

15 Q. Would the grooming process affect disclosure?

16 A. Sure. Grooming is really, you know, preparing a child
17 or really testing the waters for a child to be abused. A
18 lot of times when we think about grooming, we're talking
19 about, you know, giving a child gifts or special attention,
20 treating them differently, you know. And sometimes the
21 grooming or that behavior, that special attention, this may
22 be the one person that gives that to this child and no one
23 else may do that. So that, in and of itself, may keep a
24 child from telling. Grooming essentially builds that
25 trust, that relationship that the child has with the person

1 that's doing this.

2 Q. Is test touching part of the grooming process?

3 A. Test touching or, what I would call, sort of moving
4 from ambiguous touch to more specific touch. Sometimes an
5 abuser may start out with, you know, touching a child on
6 the butt or pinching them. And then sort of seeing how
7 that child's going to react. Does the child tell? Does
8 the child respond to that? And then moving into more
9 specific touches.

10 Q. Would the Defendant's or would the -- not the
11 Defendant. But would a perpetrator's normalization of
12 behavior affect disclosure?

13 A. Certainly, children who've been abused in a certain
14 way or over a certain period of time, may come to feel like
15 the behavior that they're experiencing is normal, which
16 could impact whether or not they disclose. Again, if
17 someone that you know, you love and you trust is treating
18 you very well, grooming you, giving you special attention,
19 and at the same time they're also doing things that you
20 know probably aren't necessarily okay, that can be really
21 confusing. And so the distinction between what's really
22 normal and not normal becomes very difficult for children.

23 Q. Can you tell the jury a little bit about a purposeful
24 disclosure versus an accidental disclosure?

25 A. Sure. Most children, when they do tell, the research

1 shows us that most children don't purposefully tell. That
2 means they don't sit down and make a conscious decision
3 that they're going to walk into another room and tell
4 someone what's happened. A lot of times disclosures are
5 accidental, either a behavior that a child is displaying
6 causes an adult or someone else to ask them a question.
7 The child says something that's concerning. An adult
8 notices something that's inappropriate. An event could
9 trigger a child to say something, you know. Oftentimes,
10 children aren't making an intentional plan to go and tell.
11 Most disclosures are accidental.

12 Q. Will you please explain to the jury a little bit about
13 partial disclosures?

14 A. Well, disclosure is a process. In addition to most
15 disclosures being delayed, you know, disclosure is a
16 process, meaning that we don't expect that when a child
17 does tell that they're going to tell every single detail
18 about what happened to them. We also don't expect that
19 they're going to know exactly what it is that we,
20 interviewers, family members, law enforcement, what those
21 individuals need to know. So we can expect that a child is
22 going to tell us what they think is relevant and important.
23 And they may tell us some of the details when we talk to
24 them. But over time, you would expect that you might get
25 additional details or more information. And depending on

1 the kind of questions that you ask and who's asking them,
2 you might get even more information.

3 Q. Would you expect -- well, how does removing the
4 perpetrator from the victim's life affect disclosure?

5 A. It could affect it a couple of different ways. If a
6 perpetrator is removed from a child's life, if this is
7 someone who's been harming them and now they're no longer
8 around them, it could increase the child's sense of safety
9 and security and lead the child to feel a sense of trust to
10 tell someone. So sometimes, just by removing the child
11 from the situation that's harmful, they then disclose or
12 share more information. At the same time, removing the
13 perpetrator from the child's life may, again, increase that
14 sense of safety and stability. And the child may think
15 that there's no reason to tell, that this person that's
16 harmed them is no longer a threat and they're not going to
17 be harmed anymore, and so they may not tell because they
18 don't fear that this is going to happen to them again.

19 Q. Does the delay in the disclosure process ever affect
20 the amount and the details that are actually disclosed when
21 the disclosure takes place?

22 A. Can you repeat that again?

23 Q. Yeah. Does delay in disclosure affect the
24 completeness of the disclosure?

25 A. Again, disclosure is a process. And so, you know, we

1 would expect that there is going to be -- the initial
2 report may be an incomplete account because you may not get
3 all those details and all the information. And depending
4 on whether the child -- well, whether the child has been
5 abused one time or multiple times, the information may not
6 all come out at one time. It may take multiple times to
7 talk about it.

8 Q. And how would chronic sexual abuse affect the
9 completeness of the disclosure?

10 A. Often when children are abused over a period of time
11 or chronic abuse, we would expect that it would be hard for
12 them to sort out each individual incident of abuse. If a
13 child is being abused over the course of a year or two
14 years, and it's happening multiple times during that time
15 frame, they may not be able to tell us what day, dates,
16 times, all of these things happened. They may be able to
17 tell us about the first time that it happened, the last
18 time it happened. They might be able to tell us about a
19 time when it happened in a different way. If the abuse was
20 chronic and it was happening the same way every time, then
21 if there were a time when it stood out to them, it happened
22 in a different location, a different room, a different time
23 of day. In some ways it's like asking us to report
24 something that we do on a regular basis. You know, I kind
25 of think of it like going to the grocery store. I go to

1 the grocery store pretty much the same day every week. I
2 park in the same spot. I go down the same aisles. I get
3 most of the same food every time. So if you ask me to tell
4 you about every time that I went to the grocery store for
5 the past six months, I would tell you that in general. I
6 probably couldn't tell you the exact time I went and
7 exactly what I bought and exactly how much money I spent.
8 But I might be able to tell you if there was one particular
9 time that something remarkable happened, if somebody hit my
10 car or if I knocked something over in the grocery store.
11 And that's really kind of what we're talking about with
12 remembering chronic events or chronic abuse.

13 Q. Would chronic abuse affect the victim's ability to
14 recall the sequence of different acts?

15 A. It could. And in fact, I guess if you're talking
16 about the sequence in a particular event or the sequence in
17 which ---

18 Q. Of different events?

19 A. --- the chronic events happened. You know, again, you
20 would generally expect that a child could tell you about
21 the first time and maybe the last time or any of the
22 remarkable times that it happened. They may not remember
23 exactly what order things happened in. It also really
24 depends on the age of the child. You know, younger
25 children are definitely going to have a harder time with

1 chronology, with dates and time and sequence. As children
2 get older, they're going to have a better concept of that.
3 And so delayed disclosure would definitely impact that
4 because you would want to look at the age of the child when
5 the incidents occurred, as well as the age of the child
6 when they're disclosing. They're going to remember it as
7 the child was being abused.

8 Q. Is it rare or common to get a full disclosure the
9 first time they disclose?

10 A. We generally don't expect to get all of the details
11 the first time that a child discloses.

12 Q. Would the form of the questioning of the victim affect
13 the disclosure?

14 A. Certainly. You know, there's a lot of research that's
15 done around how to talk to children and ask children
16 questions. We've learned a lot from asking children
17 questions the wrong way. So now we know that it's more
18 effective to ask children open-ended questions, non-
19 leading, non-suggestive questions. And that's why the
20 forensic interview process is structured the way that it
21 is. Asking questions of a child in a non-leading way
22 allows them to share their information. However, children
23 are children and may not always be able to give you all of
24 the details that you need. So a lot of times, in asking an
25 open-ended question, you may need to follow that up with a

1 more specific question. You know, asking a really abstract
2 question and then following it up with something more
3 specific.

4 Q. Can you give an example of that?

5 A. Sure.

6 Q. You know, one of the best open-ended questions that I
7 could think of that we use over and over and over again is,
8 tell me about that. You know, if a child discloses or says
9 something's happened to them, then the first question that
10 I'm going to ask them is, well, tell me about that. And
11 they may then tell me, well, this happened at my mom's
12 house. And I'll say, well, it happened at your mom's
13 house. What room did it happen in? So you're asking more
14 specific questions. And then building upon what they've
15 already told. You're not leading them. You're not giving
16 them information. You're just helping them to understand
17 what it is that's important for you to know. Because
18 children may not know exactly what it is that's important
19 to you. What they remember about what happened is what's
20 important to them or what's remarkable to them. That may
21 not be the same details and information that we're looking
22 for and that we're interested in.

23 Q. You touched on this a little bit before, but how does
24 a child knowing their perpetrator, trusting their
25 perpetrator, affect the abuse and the disclosure process?

1 A. It can have a very strong impact on whether that child
2 feels like they can tell or not. You know, the
3 relationship that a child has to the person that's doing
4 this to them can be very similar to -- well, depending on
5 who it is. But it can be very similar to that of a
6 friendship or a family member that we all have. We have a
7 family member. We love this person no matter what, but
8 they have this one thing that they do that we hate. We
9 just can't stand it. But do we end that friendship? Do we
10 terminate that relationship? Not usually. Most of us
11 continue that relationship. And not to minimize the sexual
12 abuse to that, but that's really what that's like. You
13 know, a lot of times children have this loving, trusting,
14 relationship with this person. They really do love them.
15 It's someone that's close to them, that's close to other
16 members of their family. And, you know, they sometimes
17 will tolerate the abuse to maintain that relationship, to
18 maintain the peace in the family. They may not feel that
19 it's even an option to tell. That relationship piece also
20 can sometimes cause children to feel even more responsible
21 for what's happening. A lot of times when children are
22 sexually abused or when they're abused, they feel some
23 responsibility for it themselves, even though they're not
24 responsible for that. And that relationship with that
25 person can enhance that or make them feel that way, too,

1 that they in some way, you know, they liked that special
2 attention and so they didn't make it stop. They didn't
3 tell and so it continued and they feel responsible. And in
4 doing that, and letting it continue, that may keep them
5 from telling even more.

6 Q. Are children who have been sexually abused in the past
7 at higher risk or lower risk of being sexually abused
8 again?

9 A. When children have been abused or been victimized or
10 experienced a trauma, they are at higher risk of being
11 abused again. And that's why treatment is so important.
12 That's why responding when children do disclose is so
13 important. When a child has been the victim of abuse,
14 their sense of trust and security, their sense of
15 relationships and boundaries is blurred and broken. And
16 that needs to be repaired. And if it's not, it does put
17 children at higher risk. They're more vulnerable to being
18 abused later on.

19 Q. One last question. Children, are they at higher risk
20 or lower risk if they don't have a good family support
21 network?

22 A. Higher risk for?

23 Q. Child sexual abuse if they do not have a good family
24 network?

25 A. Do you mean re-victimization or just in general?

1 Q. Just in general?

2 A. Sexual abuse can really happen in any family, you
3 know, whether a child is in a supportive household or one
4 that is very chaotic. The difference is the response that
5 the family has when the abuse is reported and disclosed.
6 And, you know, there is a higher likelihood that the child
7 is going to receive treatment, that the abuse is going to
8 stop, and that they're going to disclose if they are in a
9 supportive household, rather than one that is not as
10 supportive.

11 Q. And would counseling help or hinder the disclosure
12 process?

13 A. We would hope that counseling would assist with the
14 disclosure process. The type of counseling that we provide
15 at our center is trauma focused. And part of the treatment
16 involves sharing your story, a trauma narrative. So it
17 involves talking about the details of the abuse that's
18 occurred and to explore that. And that's eventually what
19 aids in healing. So we would hope that the disclosure
20 process is aided through counseling. Helps.

21 MS. BARWICK: No further questions.

22 THE COURT: Mr. Alexander.

23 MR. ALEXANDER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ALEXANDER:

1 Q. Ms. Galloway-Williams, I just have a few questions.

2 Let's start -- you were speaking about delayed disclosure
3 and some statistics, some stats. I have trouble with that
4 word so I'm just going to say stats. Some stats on that.
5 Seventy, eighty percent delay or never tell until they're
6 adults. Is that what you said?

7 A. That's correct.

8 Q. Okay. And that's based on studies and research, I
9 assume?

10 A. Yeah. There have been a number of retrospective
11 studies where researches have gone back and collected
12 information, either from adults who have reported sexual
13 abuse as adults. Or looking at indicated cases of child
14 abuse that have either gone through the system, Department
15 of Social Services or law enforcement. And so that's based
16 on a number of different retrospective studies that way.

17 Q. And when you say that they delay, that means like a
18 month or longer. Is that correct?

19 A. It could mean -- in some of the studies, they're
20 talking about forty-eight hours or longer. In some of
21 them, they're looking at a month or longer. A delay is
22 really not telling right after it happens.

23 Q. Okay. So that can mean if the child's abused on
24 Monday and they don't go and tell mom right after it
25 happens, they wait until the next day, that's a delayed

1 reporting; is that correct?

2 A. That would be a delayed report. But in most of the
3 research -- well, just to cite some studies. In one study,
4 fifty-eight percent of the children in this particular
5 study delayed their disclosure by forty-eight hours or
6 more. And of those children, fifteen percent of them
7 waited for longer than six months.

8 Q. Okay. Any stats on waiting four years or longer?

9 A. There are some. There's some that -- in one of the
10 studies, a third of the children, a third of -- five
11 hundred and twenty-four children were studied. And a third
12 of them waited more than a year to disclose. What seems to
13 have the greatest impact on delayed disclosure in all of
14 these studies is the relationship to the perpetrator,
15 whether it is a close family friend, family member. The
16 other connection that they have indicated in some of these
17 studies is the feeling of responsibility for the abuse.
18 And it tends to be that the older the child, the more
19 responsible they feel for the abuse occurring.

20 Q. Okay. And those studies don't always take into
21 account whether -- I know you mentioned that there were
22 indicated cases and such like that. It doesn't fully take
23 into account whether those allegations were actually proven
24 in a court of law or something to that effect?

25 A. It really depends on the study. The one with the five

1 hundred and twenty-four children that I just cited, those
2 were sexual abuse cases that were prosecuted in that
3 particular study. In other studies, they were cases that
4 were taken to the district attorney's office in that
5 particular area or the prosecutor's office.

6 Q. Right.

7 A. And so some of them were, actually -- you know, they
8 were at least heading towards prosecution. They may not
9 have rendered guilty verdicts.

10 Q. All right. And you were asked about -- well, you were
11 asked about purposeful versus accidental disclosure. And
12 you said the most common was an accidental disclosure. Is
13 that right?

14 A. That's correct.

15 Q. And that would be where someone finds out about it
16 inadvertently and approaches the child. Is that what that
17 means?

18 A. It could be that. It could be that, you know, that
19 the child is displaying a behavior that's concerning and
20 someone finally asks them what's going on, has something
21 happened to you, or the child makes a statement. Sometimes
22 it could be, you know, in some cases children at times have
23 gotten angry at the person that's done this or someone else
24 in the family, and sort of in a fit of rage may disclose.
25 That would be an accidental disclosure.

1 Q. And a purposeful disclosure, which you said was
2 uncommon or at least -- is that far more uncommon than the
3 accidental disclosures?

4 A. Yes.

5 Q. And that's where they just decide to report, pretty
6 much?

7 A. Yes. Where they make a conscious ---

8 Q. Decide to give a statement?

9 A. Yeah. Where they just make a conscious effort to go
10 and tell someone that it's happened and to do that with
11 purpose and intent and detail.

12 Q. All right. And so you were asked also about the
13 effect of removing the alleged perpetrator from the child's
14 life, that eventually alleges abuse. And basically you
15 said that removing more than likely increases that child's
16 sense of safety, pretty much; right?

17 A. Removing the person that's hurting them?

18 Q. Right.

19 A. Yes, it can. Yeah.

20 Q. But then it can go either way. They can still tell or
21 not tell, is pretty much the result?

22 A. That's right. It would, you know, really depend on
23 the child and the other circumstances. For some children,
24 removing that person means that there's a threat that's
25 gone and now they can safely tell what's happened. For

1 some it means that threat is gone and I don't have to think
2 about it anymore. I can just push this away and it's out
3 of my life.

4 Q. So that really doesn't tell us a whole lot. Because
5 all we know is the perpetrator has been removed and they
6 still either may tell or not tell. It still doesn't really
7 mean a whole lot?

8 A. Right. And when we're looking at children's
9 disclosures, to look at just one of those things in
10 isolation doesn't tell us a whole lot. We have to look at
11 the whole picture and all of the other issues surrounding
12 it.

13 Q. All right. You talked about partial disclosures and
14 that you expect the initial report to be incomplete. How
15 common is it for it to be inaccurate as far as, at least,
16 core details of it. If there was an inaccurate core detail
17 in an initial report that's significantly different in a
18 later report, is that generally expected? Don't you expect
19 at least the core details to be the same?

20 A. You would expect that the core details of a child's
21 disclosure would remain consistent throughout.

22 Q. They may mix up the order or a date or something, but
23 they can at least say the core details of what they're
24 saying happened?

25 A. Yes. You would expect that the core details of who

1 did this would be consistent throughout. And what I mean
2 by partial is that, you know, when a child first tells
3 whether it is to their care giver or if the first person
4 they talk to is law enforcement or if the first person they
5 talk to is a peer, they're going to tell what's important
6 to them at that time, when they finally are telling what's
7 happening, and then the person that they're telling it to
8 will ask questions subsequent to that. And for those of us
9 that work in, you know, in this field, there will be
10 certain questions that we know are important, that we're
11 looking for core and contextual details. And so we'll then
12 ask those type of questions.

13 Q. And certainly police officers, in your experience in
14 working with children in this area, police officers
15 investigate these things and ask, or at least attempt to
16 ask, some of those core questions. Do they generally try
17 to do that?

18 A. I would assume. I'm not generally with the
19 investigators when they are talking to the kids. I do get
20 copies of their supplemental statements or their incident
21 reports if I'm doing a forensic interview. So I would hope
22 that they're asking them questions and allowing the
23 children to provide them with that information.

24 Q. Okay. All right. And you testified about people that
25 -- or children that had been abused and are traumatized in

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1 some way in the past, are at higher risk to be re-abused, I
2 guess, for lack of a better word?

3 A. Yes. They're more vulnerable to being abused or
4 victimized again.

5 Q. But that doesn't mean it happens again?

6 A. Oh. Being abused does not necessarily mean that
7 you'll be abused a second time. That's why treatments and
8 the response to disclosure and the investigation and all of
9 those things are so important.

10 Q. But even in cases where there's no treatment, you
11 know, a child is abused and for, you know, whatever reason,
12 whether it's reported or not, there's no counseling,
13 there's no, you know, bad home life, you still have cases
14 -- they're not always going to be re-abused by some other
15 perpetrator; correct?

16 A. Right. Fortunately, yes. Just that being abused does
17 not necessarily mean that you will be re-victimized again.
18 But it does put you at higher risk.

19 Q. All right. Let me -- I'm going to ask you a
20 hypothetical question and I want you to assume several
21 facts to be true; okay?

22 A. Okay.

23 Q. And I'll go through these slowly. Let me know if I'm
24 not making sense as I'm telling it to you.

25 A. Okay.

1 Q. I want you to assume that you have a child that has
2 claimed or made allegations of sexual abuse by, we'll call
3 them person "A", that occurred when the child was eight
4 years old in 2002.

5 A. Okay.

6 Q. All right. And then further assume that these same
7 allegations were reported to law enforcement when the child
8 was eleven years old in December of 2004.

9 A. Okay.

10 Q. All right. Assume that the same child alleges
11 different allegations of sexual abuse by a different
12 person, person "B", and these are made in 2009. And these
13 second set of allegations are alleged to have occurred in
14 May or June of 2004. And assume that the same child did
15 not report these second allegations involving person "B"
16 when she spoke to -- when the child spoke to law
17 enforcement in December 2004. All right.

18 A. Okay.

19 Q. Does that make sense?

20 A. I think so.

21 Q. Since this child was already talking or speaking with
22 law enforcement about allegations of sexual abuse in
23 December of 2004, after she had supposedly been abused by
24 person "B" in May or June of 2004, isn't it most probable
25 that she would disclose the sexual abuse alleged by person

1 "B" at that same time?

2 A. Not necessarily.

3 Q. Okay.

4 A. And, again, this is a hypothetical. And so I don't
5 have all the information. I mean, there's certainly a lot
6 more information that I would want to know, that I think
7 would impact whether she would tell or not. You know, the
8 main thing would be, were the questions asked?

9 Q. Okay.

10 A. Has this happened with anyone else or not? It
11 certainly -- you know, she could say yes or no. But if the
12 question weren't ask at all then certainly that would be an
13 issue. I'd want to know what their relationship was
14 between the child and person "A" and the child and person
15 "B". I would want to know what the family dynamics were,
16 what was their response when the child made her first
17 disclosure? And then what was the response with the
18 second. I mean, there's just a lot of information that we
19 would have to have before ---

20 Q. Okay. Well, I'll just give you one other fact to
21 assume. If, when the child spoke to law enforcement in
22 December of 2004, if person "A" ended up being charged,
23 would that entice or motivate her to report the second
24 incident at that time?

25 A. Again, I think that I would need to know a lot more

1 information. What were the relationship dynamics? I mean,
2 for some, for one child, if the person was arrested then
3 that may be a deterrent for them to tell about the second
4 person, because they may not have wanted that person to be
5 arrested. When children disclose or when they tell, again,
6 they're talking about people that they love and that they
7 trust and that they're close to. Children don't always
8 necessarily want that person to be incarcerated. Some do.
9 So it could have a different effect.

10 Q. Now, Julie Valentine Center, that was formerly known
11 as what?

12 A. Greenville Rape Crisis and Child Abuse Center.

13 Q. And is part of your job or duties, or whatever, to
14 assist in investigations that may or may not result in
15 prosecutions?

16 A. Yes. One of the roles of the Julie Valentine Center
17 is to provide investigative services.

18 Q. And to help advocate for the children making these
19 allegations?

20 A. Yes. We definitely -- we are a nationally accredited
21 children's advocacy center. And so that means that at the
22 core of everything we do, the child is first. That does
23 not necessarily imply that we believe a child or that every
24 child that walks through our doors is sharing an actual
25 allegation of abuse.

1 Q. But regardless of that, you advocate for the children?

2 A. We do. We do advocate for children.

3 Q. And there's state statutes that cover that as to what
4 your role should be as a children's advocacy center. Are
5 you aware of any of those?

6 A. Meaning?

7 Q. Just as to work with law enforcement and prosecutorial
8 agencies regarding that?

9 A. We do belong to a multi-disciplinary team, which means
10 that we coordinate and work together with the Department of
11 Social Services, law enforcement, solicitor's office,
12 Guardian ad litem office in advocating for children and
13 investigating cases.

14 Q. In fact, on the Julie Valentine Center Board of
15 Directors you have a member of the Thirteenth Circuit
16 Solicitor's Office on your Board of Directors; correct?

17 A. I do.

18 Q. And that's the prosecuting agency in this very case?

19 A. Yes.

20 Q. We're in the Thirteenth Circuit; correct?

21 A. We are in the Thirteenth Circuit.

22 Q. Okay. And you have a member of, at least, law
23 enforcement, Greenville County Sheriff's Office, on the
24 Board; correct?

25 A. I do.

1 Q. And the Volunteer Guardian Ad Litem Program ---

2 A. I do.

3 Q. --- that represents alleged abused children in DSS
4 cases?

5 A. Yes.

6 MR. ALEXANDER: That's all the questions I have,
7 Your Honor.

8 THE COURT: Any redirect?

9 **REDIRECT EXAMINATION**

10 **BY MS. BARWICK:**

11 Q. Ms. Galloway-Williams, what's the name of that Board
12 of Director Member who works for the Thirteenth Circuit
13 Solicitor's Office?

14 A. Lucas Marchant.

15 Q. Does he work in the Pickens Office?

16 A. No.

17 Q. Is he prosecuting this case?

18 A. No.

19 MS. BARWICK: No further questions.

20 THE COURT: All right. Thank you, ma'am. You
21 may step down. Any objection to this witness being
22 excused?

23 MR. ALEXANDER: No, Your Honor.

24 THE COURT: All right. Without objection the
25 witness may be excused.

1 The State may call its next witness.

2 MS. HINTON: Your Honor, at this time, the State
3 rests.

4 THE COURT: Ladies and gentlemen, this might be a
5 good time for us to take a lunch break. I'm going to ask
6 you, if you will, to take a break. If you'll be back at
7 two-fifteen. We have a few matters we need to take care of
8 here before we break for lunch. And then we'll catch up
9 with you at two-fifteen. We'll be ready to proceed with
10 the trial.

11 I remind you again, you've heard from the State. The
12 case is not concluded, however. Don't discuss it with
13 anyone. Don't allow anyone to discuss the case with you.
14 Remember the process we're in and the commitment you've
15 made to these parties. I'm sure you will. If you'll be
16 back at two-fifteen, we'll be ready to proceed with the
17 trial at that time. Have a good lunch.

18 Everyone else, please remain seated while the jury
19 departs.

20 (WHEREUPON, the jury exited the open court at
21 approximately 12:57 P.M.)

22 THE COURT: All right. Are there any matters we
23 need to take care of before we settle the record and I have
24 a chance to talk with Mr. Brown about his rights under our
25 Constitution?

1 MS. HINTON: Not from the State, Your Honor.

2 MR. ALEXANDER: I would first renew, I guess, all
3 my previous objections and motions. Specifically, I renew
4 my motion on the -- to sever the criminal sexual conduct
5 charge. That was all made prior to the jury being sworn.
6 So I reserve that for the record. And renew my objection
7 regarding Ms. Galloway-Williams' testimony. And move for a
8 directed verdict based on the fact that the State has
9 failed to prove, even in a light most favorable to the
10 State, the elements presented regarding these charges
11 against him; specifically, the CSC charge regarding the
12 time period, the age of the child has to be under eleven
13 years old. I would move for a directed verdict on that
14 basis, Your Honor.

15 THE COURT: Would the State like to be heard?

16 MS. HINTON: Your Honor, just viewing the facts
17 in the light most favorable to the State, we feel that
18 every element of every offense has been met. If you would
19 like to hear from us further, we'd be happy to address it.

20 THE COURT: All right. I tried to weight all
21 these charges as I've heard the evidence. And as you're
22 aware, Mr. Alexander, at this stage, I must view all of the
23 evidence in the light most favorable to the State on your
24 motion.

25 MR. ALEXANDER: Yes, sir.

1 THE COURT: And I think there is sufficient
2 direct evidence and substantial circumstantial evidence to
3 allow the case to go before the jury. I certainly don't
4 think there's a non-existence of evidence as for any of the
5 charges. So I respectfully deny your motion.

6 At this time, if you would come forward with your
7 client, I'll have a brief dialogue with him and then we'll
8 be ready to break.

9 (WHEREUPON, Mr. Alexander and the Defendant approached
10 the bar.)

11 THE COURT: Mr. Brown, if you would stand by your
12 attorney there. If you would, please raise your right
13 hand. Do you swear or affirm the testimony you're about to
14 give me will be the truth, the whole truth and nothing but
15 the truth so help you God?

16 MR. BROWN: Yes, sir.

17 THE COURT: Mr. Brown, we've reached the stage in
18 the case where I need to explain to you certain rights that
19 you enjoy under our Constitution, both of South Carolina
20 and the United States. As I explain these rights to you,
21 if you don't understand anything I'm explaining to you,
22 please ask your lawyer to interrupt me and I'll be glad to
23 try to further explain it. You've probably gone over all
24 this with your attorney already. But I need to be
25 satisfied in my own mind that you understand the rights

1 him revise the verdict form so y'all can actually see all
2 the verdict forms before you argue to the jury.

3 All right. I've got the verdict forms if y'all would
4 like to review those. All right. Are the verdict forms in
5 satisfactory order?

6 MR. ALEXANDER: Yes, Your Honor.

7 THE COURT: Again, I'll let you rest on the --
8 before the jury. When they come in, I'll call upon you for
9 your defense and then will y'all be ready to do your
10 arguments then?

11 MR. ALEXANDER: I'm prepared, Your Honor, yes,
12 sir.

13 THE COURT: Okay. Let's have our jury come in if
14 they're ready.

15 (WHEREUPON, the jury entered the open court at
16 approximately 2:45 P.M.)

17 THE COURT: All right. Ladies and gentlemen,
18 we're now ready to proceed.

19 Mr. Alexander, you may present your defense.

20 MR. ALEXANDER: Thank you, Your Honor. The
21 defense rests at this time.

22 THE COURT: Mr. Foreman, ladies and gentlemen,
23 you've heard all the evidence in this case. We're now at
24 the stage of the trial where the attorneys will have a
25 chance to address you in their closing statements. I told

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1 you when we started the case that what the attorneys have
2 to say to you is not evidence. I urge you, however, to
3 listen carefully as they address you. I'm sure each of the
4 attorneys can give you some valuable insights to perhaps
5 help you in your deliberations, at least as to their view
6 of the evidence.

7 After the lawyers have had a chance to address you in
8 their closing, I'll instruct you on the law. The case will
9 then be yours to decide.

10 Solicitor, you may address the jury in your closing.

11 MS. HINTON: Your Honor, may it please the Court.
12 Mr. Alexander.

13 **CLOSING STATEMENT**

14 **BY MS. HINTON:**

15 Truth or dare, a child's game with a sick twist.
16 Dares to touch each other. Dares to touch the Defendant.
17 Dares to penetrate each other. Dares to simulate sexual
18 acts on each other. A ranking system. Military showers.

19 That was the life of Older Brother and Younger
20 for the entire time that they knew the Defendant,
21 Damon Tyler Brown. Older Brother and Younger Brother
22 come from troubled lives. They had a mother who cared more
23 about drugs than them. They had a step-father who was
24 verbally and physically abusive on a daily basis. And they
25 had a sister who was sixteen years old and pregnant and not

1 around very much. And when she was around, she was a
2 typical big sister who didn't want anything to do with her
3 little brothers. Minor Friend a girl with no father, no
4 male influence from her father. And a babysitter who,
5 instead of babysitting her, was smoking meth in her room.

6 Now, I don't get last closing, Mr. Alexander does.
7 But I want to talk about some of the Defense's theories
8 that we heard throughout the trial. And we refer to these
9 theories as red herrings, deliberate attempts to distract
10 you, the jury, from the real issues of this case.

11 First red herring. There's been a lot of talk about
12 the custody of J.B. and D.B. Those are the children of
13 Jessica Bradshaw, Whitaker at the time, now Bradshaw, and
14 the Defendant Damon Brown. Children that Minor Friend has
15 never met. You heard her testify that the last time she
16 went over there was before Jessica ever had a baby. She
17 was pregnant, but she hadn't had one at the time. Ladies
18 and gentlemen of the jury, there was never a fight for
19 custody in this case. You heard the testimony. The
20 Defendant never filed anything. He never contested
21 anything. Everything that he did was voluntary. There was
22 no fight. In May of 2007, Jessica Bradshaw had physical
23 custody of both of her children. Two years before Older
24 disclosed. In September of 2007, she had full-
25 blown legal custody, almost two years before Older

1 disclosed. That, ladies and gentlemen, is a red
2 herring. If this was all a conspiracy to allow Jessica
3 Bradshaw to have sole custody, then why wouldn't Older
4 and Younger Brother have told lies about the
5 Defendant's parents. They're the ones who had custody, not
6 the Defendant. That's not a reasonable theory.

7 Another theory. This is all a conspiracy that these
8 three kids came up with to take down Damon Tyler Brown,
9 Older and Younger only friend. That's all that they
10 had. Why would they turn on their only friend? And why
11 would Minor Friend someone who hasn't seen this family in
12 years, have the exact same story as Older and Younger
13 back when she disclosed when she was fifteen and sixteen
14 and again today when she told you on the stand? It's not a
15 reasonable theory. I'm married. I'm a newlywed. Been
16 married a few months. I couldn't get up on that stand and
17 tell you about a normal sexual experience that I had with
18 my husband. The thought of that makes me cringe. It makes
19 me sick to my stomach. Yet, they got up here and told you
20 the most embarrassing moments in their lives. All to take
21 down a man who's no longer in their lives. That's a red
22 herring.

23 Another red herring is there's been a lot of talk
24 about sequencing. Well, what happened first? What
25 happened second? Ladies and gentlemen, I'm about to go

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1 through the elements of these crimes with you. I assure
2 you that the sequence of events is not an element of the
3 crime. That is a red herring. Children who are
4 chronically abused can't get their heads around sequencing.
5 Children who are eight, ten, eleven, twelve when this abuse
6 is going on, can't remember what happened first and what
7 happened second. That's like me going to the grocery store
8 every day for years and buying milk and bread, and you
9 asking me which one the cashier rang up first each time. I
10 couldn't tell you. And that's only two items. Sequencing
11 is not the issue in this case. The issue is whether the
12 elements of these offenses have been met.

13 Another red herring from the defense attorney has been
14 Jessica's involvement in this. Jessica has been charged.
15 This is not Jessica's day in court. Jessica will be dealt
16 with. This is Tyler Brown's day in court. This is about
17 Tyler Brown. Jessica has never been charged with touching
18 these children or making these children touch each other.
19 She's been charged with being sixteen and failing to act
20 and she will be dealt with. That is not the issue in this
21 case at all. This is Tyler Brown's day in Court.

22 Now, let's talk about the truth. The truth is these
23 cases are about eyewitnesses. This is not a he said/she
24 said. Older Brother ^{Minor} ~~Friend~~ and Younger ^{Friend} ~~Friend~~ watched what the
25 Defendant did to each -- to them, to each other. They were

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1 there. They saw it. Older Brother and Younger saw it for many
2 months before Minor Friend came along. Then Minor Friend was brought
3 into the Defendant's sick, twisted game of truth or dare,
4 and she saw it too. These are eyewitnesses. It's not what
5 they heard, it's what they saw. What they participated in.

6 You will have in your jury room three statements, four
7 technically, from three different victims. As you've
8 heard, two of the statements are from Minor Friend And I want to
9 go through these statements and talk about them briefly.

10 The first statement is from Older Brother This
11 statement was made on May the 1st, 2009. He said he's
12 writing this because Damon Tyler Brown on multiple
13 occasions has raped and molested me and my little brother,
14 Younger Brother That's exactly what Older Brother told you on
15 the stand. That's exactly what Younger told you on the
16 stand. This isn't an isolated incident. This is multiple
17 rapes. It was true in 2009 and it's true today.

18 Most of the occurrences happened when I lived in
19 Central on True in 2009 and true when he
20 told you just the other day. And why does he say most of
21 the occurrences? Well, you heard his testimony. The last
22 time that Older Brother was abused was on
23 which is also in Pickens County. I was around ten years
24 old when it began. Exactly what Older Brother told you today.
25 It's true in 2009 and it's true now. Now, we get into the

1 sequencing issue. The first molestation involved me,
2 Younger and my friend, Minor Friend There was a lot made
3 of, well, that's a lie. No. Minor Friend, Younger and Older Brother
4 were molested by the Defendant. Was it a first occurrence?
5 No. But what did Older Brother tell you? Listen, I was just
6 trying to write it all down. He said, write down what
7 happened to you. Can you imagine having to write down two
8 years of your life in three pages? He, Damon, asked if we
9 wanted to play truth or dare. That's how this whole things
10 started. That's what Minor Friend told you. That's what Younger
11 told you. And that's what Older Brother told you. This game
12 became sexual very soon after we agreed to play. There's
13 been a lot of testimony about that. He dared me to touch
14 his penis and laughed when it became erect. He told you
15 that he had to touch his penis. He told you that it became
16 erect. He dared Younger to stick his penis in Minor Friend's
17 butt. That's exactly what all three of them testified to,
18 that Younger and Minor Friend were taken to the bathroom where the
19 Defendant was. They both testified that he got the lotion
20 off the back of the toilet and he used it as a lubricant
21 because he couldn't get it in. They didn't know what to do
22 so the Defendant had to tell them what to do. And what did
23 Older Brother do? He was a curious kid so he followed them to
24 the bathroom and he peeked in, just like any kid would do
25 when someone was getting to do something that he wasn't

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1 allowed to. Because remember, back then, they couldn't
2 even wrap their heads around how sick and twisted this game
3 was. This was their life. This is what had happened to
4 them for years.

5 Then he told me to dry hump ^{Minor} ~~Friend~~ That's exactly
6 what ^{Minor} ~~Friend~~ told you and that's exactly what ^{Older} ~~Brother~~ told
7 you. That in the living room, they were forced to dry hump
8 each other. Damon began to make us play often, every
9 chance he had when my mom and sister were gone or asleep.
10 That's exactly what they told you.

11 One day in the summer he asked me if I wanted to try
12 marijuana. What did ^{Older} ~~Brother~~ tell you? That he wasn't in
13 his right mind, he had smoked marijuana and that was the
14 first time with a military shower. He started drinking.
15 We walked into the hall, exactly what ^{Older} ~~Brother~~ told you. He
16 led him down the hall. He told me he wanted to show me how
17 to take a military shower. That's exactly what he called
18 it to ^{Younger} ~~Brother~~ to ^{Older} ~~Brother~~ and Jessica even heard him say,
19 I made ^{Younger} ~~Brother~~ take a military shower. That's a term that
20 they all heard him use. He led me into the bathroom where
21 he began shedding his clothes and helped me with mine.
22 That's exactly what ^{Older} ~~Brother~~ told you. When we entered the
23 shower, he turned on the water and asked if I needed my
24 back washed for me. ^{Older} ~~Brother~~ told you that the first thing
25 they did was wash the hair and back. I agreed. He started

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1 down my spine and reached around and touched me. Older Brother
2 told you that he touched him in the shower. He started
3 moving faster and I, not completely in my right state of
4 mind, just let him move. He pressed his face into the back
5 of my neck and stuck himself in my butt and started pelvic
6 thrusting. That's exactly what Older Brother told you. He
7 pulled it out and smiled in a devilish way and told me, I'm
8 doing good so far but I whimper too much. Older Brother told you
9 that his complaint was that he whimpered too much. He also
10 told you that was one of the reasons that he would get
11 demoted in the ranking system, for crying or whimpering.
12 He then pushed down my head and made me suck on it.
13 Older Brother told you that Damon Tyler Brown forced him to
14 perform oral sex on him. After he was finished, he stuck
15 mine in his mouth until I told him I was done too. We
16 rinsed off, got out of the shower, and I put my clothes on
17 and watched TV. I don't remember all of what happened
18 because I was still high from smoking marijuana.
19 He took miliary showers with me and my little brother,
20 not at the same time, which is what Older Brother told you. They
21 never took them at the same time, but they both took
22 military showers. But he never had me do anything after
23 that one. Now, why did Older Brother say that? What Older Brother
24 told you is he wanted to say enough to where someone would
25 do something. And he was too embarrassed to tell you

1 everything. And we'll talk a little bit later about Shauna
2 Galloway-Williams testimony. But I think that clears this
3 up.

4 Some nights I would wake up to him grabbing me under
5 the covers. He testified to that, too. Younger also
6 testified to seeing Tyler come in the room and get in the
7 bed with Older Brother. Sometimes I would grab his and sometimes
8 I would play with it. That's awfully embarrassing to say
9 for someone who's making this up to admit, I was kind of at
10 fault, too. I played with his, too. Older Brother also told
11 you, I watched him in the shower. That doesn't sound like
12 someone who's made it up. That sounds like someone who's
13 done a lot of embarrassing things and has some guilt and
14 shame for the things that they participated in when he was
15 ten.

16 We would often go to the woods, me, Younger and Damon
17 and he would flash us or masturbate next to us. You'll
18 have a picture in your jury room of the woods directly
19 behind the trailer where they were molested. This is the
20 wood line where all that happened. It's easy because it's
21 right there by the house. And who doesn't love to play in
22 the woods when you're a little boy.

23 He would always cry and apologize. He did the same
24 when he would hit me, but he wouldn't cry. He didn't need
25 to because we would be best buds again afterwards. Damon

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1 Brown was there friend. They didn't know any different
2 because they were kids. They trusted him and he violated
3 that trust.

4 Minor Friend and I won't go through every part of her
5 statement or of Younger but the same thing. He had me,
6 Older Brother and Younger undress. We groped each other.

7 Older Brother went into his room, shut and locked the door. I
8 heard him say, no. I heard him say, stop. What did

9 Older Brother tell you? That there were times when he would be
10 taken back there and he would say, no and stop when he
11 didn't want it to happen to him. That's exactly what Minor Friend
12 said. I heard him say that. I heard him say no. I heard
13 him say stop. I could see that he'd been crying. He had
14 tears on his face.

15 He made Younger touch me and try to stick it in, but
16 it didn't work out too well. What did Minor Friend tell you? It
17 wasn't working first so he put lube on it. I'm almost
18 positive he made Older Brother have oral sex. What did Older Brother
19 tell you? They often had oral sex. And he'd be like,
20 you're okay. It's going to be okay. The time when he made
21 me and Younger have sex, he kissed my neck and grabbed my
22 chest area. Older Brother testified that he remembered that.

23 Minor Friend testified that's what the Defendant did to her.

24 Now, in Minor Friend's statements -- and you'll have them
25 back there so you can read them in their entirety --

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1 there's talk about Jessica and what Jessica's involvement
2 is. As I told you before, whether Jessica was awake or
3 asleep is not the issue in this courtroom today. It has no
4 bearing on whether or not the Defendant did this to these
5 kids. Jessica will be dealt with. Jessica will have her
6 day in court, but it is not today.

7 I ask you to read these statements and think about
8 things that they said then and things that they're saying
9 now years later. I'd ask you to think about the fact that
10 Minor Friend moved to North Carolina in 2007 and she hasn't
11 spoken to them until she finished testifying today. You
12 might see that they're sitting in the courtroom together.
13 They were friends, close friends. She said, I lost my best
14 friends. Of course, they're happy to be back together
15 because they haven't seen each other since 2007. Yet their
16 stories are the same.

17 And where they're not the same, they're different in
18 minor details. And why is that? Because if their stories
19 were exactly the same, every single word was the same, then
20 they would have gotten together, made up a story and
21 memorized it. But they don't because they each bring their
22 on life and past experiences into what happened to them.
23 So they remember things differently. Minor told you, I
24 closed my eyes for a lot of it. And I went to a place in
25 my mind when I was happy, when I was with my Papa Frank, my

1 grandfather. That was when I was the happiest and that's
2 what helped me cope with what was going on at the time.

3 It was also a lot easier, as you might have seen, for
4 Older Brother to talk about what had happened to him. As Older Brother
5 told you, he was counseled at Behavioral Health Services.
6 That's no secret. He's been very open and honest about
7 that. And as Shauna Galloway-Williams told you, counseling
8 often helps these children cope with what's going on.

9 Younger was supposed to get counseling. That's what
10 Detective Culbreath told his mom to do. But, again, as we
11 know, Kendra Durham is not mother of the year. She never
12 took Younger to any counseling. And it's a lot harder for
13 Younger to tell you the embarrassing details of his life
14 because he hasn't dealt with it the same way that Older Brother
15 has.

16 I want to quickly go through the elements of each
17 offense. Because as I told you, that's what's important,
18 that each element of these offenses has been proven beyond
19 a reasonable doubt. And I want to start with the CSC with
20 a minor in the first degree. And that's with Older Brother MS,
21 Older Brother that's what it'll say on the indictments,
22 MS. As we said, criminal sexual conduct with a minor is
23 what we abbreviate to CSC. And there's two elements. A
24 sexual battery, a sexual battery is penetration, however
25 slight. What did Older Brother testify to? That when he was in

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1 the shower he would be penetrated, not only with the
2 Defendant's penis in his anus, but also his fingers.
3 Either one of those count as a sexual battery. The times
4 when the Defendant would slip into his room and perform
5 oral sex on him, sexual battery. That element has been
6 met. And it has to be on a person less than eleven.
7 Older Brother sat up here and told you that he was ten when that
8 happened. It happened before his eleventh birthday. That
9 element has been met.

10 However, the Judge will give you a lesser-included
11 offense of criminal sexual conduct with a minor, second
12 degree, against Older Brother. The only difference in that is
13 that the person is between eleven and fourteen years of
14 age. The last time they saw Tyler Brown was in 2006 before
15 Older Brother turned fourteen. So either way, the element has
16 been met. But I will tell you that Older Brother sat up here and
17 told you that he was ten years old at the time. That's
18 criminal sexual conduct with a minor in the first degree.

19 Lewd act on a minor. There's three counts of that,
20 one against each child, Older Brother Younger Brother
21 and Minor Friend. That requires a lewd or lascivious act.
22 Let's talk about the different ones that we've seen. Any
23 of the touching -- Older Brother testified he saw Tyler slip into
24 Younger Brother bed when Younger Brother was sleeping on the bottom bunk.
25 And he got in there and he was touching him. He could see

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1 him touching him under the covers. Well, first, as Older Brother
2 told you, he slept on the top bunk at first. That was
3 cooler. It was cooler to be older and sleep on the top
4 bunk. But the bottom bunk was bigger, more room for two
5 people, easier access. So what did the Defendant do? He
6 picked on the people who were on the bottom bunk. Neither
7 boy ever remembers him coming in for them when they were on
8 the top bunk. Why? Because that's too difficult. You
9 have to climb up there. You have to get in a twin bed.
10 The bottom bunk was bigger. So that's why he chose the
11 bottom bunk. Both saw him climb in bed with the other.
12 Both said that the Defendant had touched them. Not only
13 that, the Defendant made them touch him, which also counts
14 as a lewd or lascivious act. What did Minor Friend -- what
15 happened to her? She was groped on her breasts. That is a
16 lewd or lascivious act. All three of them had it happen to
17 them. The child must be under sixteen. They all
18 testified. Younger said he was between eight and ten when
19 this happened. Minor Friend said she was around ten. Older Brother
20 said he was ten or eleven. Each child is under the age of
21 sixteen.

22 With the intent to arouse himself or a child. He
23 would make them play with each other until they got erect
24 and then he would measure them. That touch, even so
25 slight, for his own sexual gratification is a lewd act.

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1 The fact that he would make them touch him until he became
2 aroused, Older said in his statement, he became aroused
3 and he laughed. That's for his own sexual gratification.
4 After he was groping Minor's breasts, what did he try to
5 do? What was her testimony? He tried to stick his penis
6 in her mouth. He did that for his own sexual
7 gratification. He intended to arouse himself or the
8 children, on each one. And the Defendant must be over the
9 age of fourteen. You heard Detective Culbreath testify
10 that his birthday was in 1984. You can do the math.
11 Around that time, he was well over the age of fourteen
12 during each count.

13 Last charge that the Defendant has been charged with
14 is three counts of sexual exploitation of a minor in the
15 first degree, against each child, Older Brother Younger
16 and Minor Friend This requires that he uses,
17 induces, coerces, encourages or facilitates a minor to
18 engage in sexual activity for live performance and that he
19 knows the content of that performance. This was his
20 ultimate truth or dare game. This is where everything came
21 to a head. He used them, he coerced them into doing it,
22 for ranks, to be cooler, to be his friend. He encouraged
23 them to do it. He facilitated it because he told them what
24 to do. Because why didn't they know? They were kids.
25 They had no idea how to do the things he wanted them to do.

1 He did it when Younger had to penetrate Minor Friend He did it
 2 during the dry humping incident. He did it to all three
 3 children. All three of them were minors. Again, they were
 4 between the ages of eight and eleven. They engaged in
 5 sexual activity for a live performance. He had them dry
 6 hump each other and he had Younger penetrate Minor Friend
 7 He had them touch each other. He had them touch their
 8 genitals, their privates, all three of them. And he
 9 certainly knew the content of the performance. Because,
 10 remember, this is truth or dare. These kids are doing this
 11 because Tyler Brown dared them to do it. So each one, he
 12 certainly knew the content of what they were doing.

13 I've talked for a while, but I want to talk briefly
 14 about what Shauna Galloway-Williams said because her
 15 testimony is important. Shauna Galloway-Williams has never
 16 met these children. She's never interviewed them. She
 17 doesn't know them from Adam. And that makes her testimony
 18 all the more important because she's talking about symptoms
 19 of child abuse. Every symptom she said is something that
 20 you can see in Younger and Older Brother and Minor Friend She talked
 21 about triggering events. Older Brother told you that the reason
 22 that he disclosed was because he had a conversation with
 23 someone on a bus. And that made him feel like he needed to
 24 tell somebody. The details of that conversation are not
 25 important, but that was his triggering event. That's what

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1 prompted him to make a purposeful disclosure. Shauna told
2 you, although they're not common, they happen. And a
3 purposeful disclosure is setting out to tell someone what
4 happened to you and that's what ^{Older} ~~Brother~~ did. And ^{Younger} ~~Brother~~
5 and ^{Minor} ~~Friend~~ are accidental disclosures. They didn't plan on
6 telling. They probably would have gone their whole lives
7 without telling. But Detective Culbreath came to them and
8 needed to know more information. ^{Younger} ~~Brother~~ had a really hard
9 time with that. He couldn't tell them at first, not
10 because they were making up some story and he needed to go
11 get the story from his brother, but because he had to tell
12 another man the most humiliating experiences of his life.

13 There's certainly delayed disclosure. These events
14 took place between 2004 and 2006, and they didn't tell
15 until 2009. But she talked about some really important
16 reasons for delayed disclosure. Fear. They told you the
17 Defendant was physically abusive. Their age. They don't
18 even understand. They can't grasp what's going on with
19 him. And their relationship with him. They all testified
20 that they liked him. He was a friend. He was someone that
21 they knew, they loved and they trusted. He gave them
22 special attention when no one else did. There was a house
23 full of adults who could have cared less about these kids.
24 It was them against the world. He gave them a ranking
25 system, it became cool. They got better ranks, they got to

1 do more fun things. Everything he did was to play into
2 them as children, things that kids like to do. That's his
3 motive. It's coming to them in childlike terms and things
4 that they love to do to get them to participate in his sick
5 games.

6 We talked about test touching. They all testified
7 that he wrestled with them and that he would touch them.
8 And I hope that you noticed that none of them were in the
9 room until after they had testified. So they didn't hear
10 each other say that. They got up here and told you on
11 their own that these things happened to them. Their
12 behavior became normal. Older Brother and Younger Brother grew up and
13 realized that it's not normal. So they're finally here to
14 be able to tell you about it.

15 We talked about partial disclosures. Kids don't
16 disclose everything all at once. You ask a kid a story,
17 they're not going to tell you the whole thing the first
18 time. They tell you what they think it is important. And
19 they may intentionally leave out details that are
20 embarrassing. I think we, as adults, often do that.
21 Disclosure is a process. And they're unclear on what's
22 important until they're asked.

23 There's been some talk about Minor Edward and her prior
24 sexual abuse and why she didn't tell Detective Culbreath
25 when she met with him in December of 2004. She told you,

1 he never ask. And that's exactly what Shauna said. With
2 kids, if you don't ask the right questions, they don't know
3 what to tell you. She was being asked about something that
4 was very personal and very embarrassing. The last thing
5 she probably wanted to do was to tell him something even
6 more humiliating. She talked about, again, the chronology
7 of things, how that's difficult for children, especially in
8 chronic abuse. How the relationship can make them feel
9 responsible. They talked about the guilt and the shame.
10 They participated. They got to where this was a fun game.

11 Older Brother asked if they could bring other people into the
12 game. Clearly, he didn't see anything wrong with it. And
13 what did the Defendant do? Not say, sure. This is a
14 harmless game. Bring whoever you want. He hit him.
15 Because that was their secret and he wasn't supposed to be
16 talking about it. Because talking about it was going to
17 get them in trouble and that wasn't allowed.

18 The core details in all their stories are the same.
19 And that's what Shauna said you're looking for, core
20 details. They didn't have a supportive family to disclose
21 to. They didn't have anybody. Their only friend was the
22 one who was doing these terrible things to them. So who
23 did they have to tell? No one.

24 Now, we talked earlier in the week about reasonable
25 doubt. And we stated that the burden was on the State, a

1 burden that we happily accept. A burden that I've shown
2 you we've met in every element of every crime that he's
3 been charged with. Reasonable doubt is doubt that would
4 cause a reasonable person to hesitate to act. Do not
5 confuse deliberation with hesitation. It's not the same.
6 You're supposed to go back there and talk about it. It
7 doesn't mean that you're hesitating to act. In every
8 criminal trial that's been tried in this nation, every time
9 a Defendant has been found guilty, he's been found guilty
10 beyond a reasonable doubt. It is not an unattainable
11 standard.

12 Damon Tyler Brown is guilty beyond a reasonable doubt
13 of sexual exploitation of a minor, Older Brother Younger and
14 Minor Lewd act upon a minor, Older Brother Younger and Minor .
15 And he's guilty of criminal sexual conduct with a minor in
16 the first degree against them. And I ask that you look at
17 the evidence, you think about what you heard and you return
18 the only the proper verdict in this setting and that's
19 guilty on all counts.

20 THE COURT: Ms. Hinton, if you would, I can't see
21 all the jurors.

22 MS. HINTON: I'm sorry, Judge.

23 THE COURT: If you'd just remove that, please?

24 Mr. Alexander, you may address the jury in your
25 closing.

1 MR. ALEXANDER: Thank you, Your Honor. May it
2 please the Court. Ms. Hinton, Ms. Barwick.

3 CLOSING STATEMENT

4 BY MR. ALEXANDER:

5 Ladies and gentlemen, it's been a rough couple of
6 days. As I stated in my first statement to you at the
7 beginning of this trial, these allegations, these charges
8 are not easy to hear. But Damon Tyler Brown is not guilty
9 of all seven of these charges. Three lewd acts, three
10 sexual exploitations of a minor, criminal sexual conduct.
11 He's not guilty on all of these. Why is that?

12 Let's go over -- I want to go over a few things and
13 I'll try not to rehash too much of the testimony. If I say
14 something -- I'll start with this -- going by my memory as
15 to some of their testimony and if you remember something
16 differently, certainly talk about it, work that out between
17 yourselves. So if I'm a little off on something, that may
18 happen.

19 Overall, there are simply too many inconsistencies,
20 too many problems with their testimony and their
21 statements. Their written statements versus their
22 testimony, each person's testimony compared to the other.
23 And overall, some of the common sense things that go into
24 factoring in whether these things happened or not. Whether
25 it's attainable that did that happen in that situation.

1 And I'll try to touch on some of those.

2 I'll speak briefly on this lesser included offense.

3 There will be a lesser included offense of criminal sexual
4 conduct second degree. And I agree with Ms. Hinton, the
5 only difference on that is the age. He's not guilty on
6 every -- if you happen to decide if -- for some reason you
7 believe this happened, you've got to decide how old, if he
8 was eleven-year-old or older then it's second degree. But
9 he's not guilty on any of them.

10 Ms. Galloway-Williams testimony, expert for the State,
11 never met these kids. Kids, they're nineteen, nineteen and
12 seventeen, I think now. Still, some adults. One's
13 seventeen, so ... She's just testifying as to her opinion
14 on what she says may be science. But some of these things
15 may seem to apply to this case, some don't. I agree with
16 Ms. Hinton, one thing she said, that in these type cases, I
17 certainly understand that when someone is giving a
18 statement, they're not going to say everything. They may
19 get some things wrong. And I agree with Ms. Hinton. If
20 there's minor details that are different, it certainly does
21 -- you expect that between the people. People are going to
22 remember stuff differently. But it's the core details that
23 matter. And I strongly disagree with Ms. Hinton about the
24 core details being the same between their written
25 statements, their testimony and their testimony between

1 each one of them.

2 And keep in mind when you consider Ms. Galloway's
3 testimony, that she's stated she's an advocate for the
4 child. We need these people in true abuse situations, so
5 they're necessary. But she acknowledged, in kind of a
6 back-handed way, but she acknowledged that all children
7 don't tell the truth. There's children come through her
8 center that disclose abuse, that they're lying. Use your
9 everyday experience. If you don't have children yourself,
10 you know people that have children. Children lie whether
11 they're eight or ten, fourteen or fifteen, nineteen or
12 seventeen. Children lie. They lie about disturbing
13 things. They lie about silly things. They lie about
14 disturbing things like this, the allegations being made
15 during this trial.

16 You don't need an expert to tell you about these
17 things, about why somebody may not report right away. Use
18 your common sense to figure that out for yourself. We have
19 four or five year delay here. Four or five years from when
20 they say these things happened until when they come
21 forward. Four or five years of involvement with -- they
22 want to make a big deal about how terrible their home life
23 was, and it may have been. And I'll touch on that in a
24 little bit. They weren't home 24/7. They went to school.
25 They had teachers. They had guidance counselors. They had

1 faculty. They had student resource officers. Older
2 testified about he was close with Officer Ticknor. They
3 knew these people. They had other support systems than
4 just a terrible mom and a terrible step-dad at home that
5 did drugs. It's not attainable that that's the reason for
6 the delay, that they may delay.

7 Now, Ms. Hinton talked about, her words were red
8 herrings. And we certainly did bring up some of those
9 things that she talked about. We don't think they're red
10 herrings. And I certainly -- some of them are, you know, I
11 don't think are as a big a deal as she may think they are
12 either. And I'll just kind of go through those a little
13 bit. The custody thing with Tyler and Jessica's kids,
14 J.B. and D.B. Simply, that's the facts, you know. But
15 when the case was filed and, you know, they said why they
16 filed it. But the fact is, you can't get around the fact,
17 that order may say voluntarily made, they entered this
18 agreement. He's standing there a week after he's been
19 arrested on criminal sexual conduct charges and lewd act
20 charges involving his ex-girlfriend's brothers, an orange
21 jumpsuit and shackles, he's still in jail, what's he going
22 to do? Yeah, I want to take my kids home with me. He has
23 no choice. So he may have stood there and eventually
24 agreed and they write the order up as it's voluntarily, but
25 you can use your common sense on how that agreement was

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1 reached.

2 And ^{Older}_{Brother} testified they were -- it's not a total
3 red herring because the State's own witness, Older Brother
4 acknowledged that he told his counselor at Behavioral
5 Health Services, they were worried that his mom would not
6 get custody, that Damon's parents -- or Tyler's parents
7 would get custody. He acknowledged that. There was
8 concerns there. But, you know, that's there for you to
9 consider.

10 The sequence of events, you know. That overall is not
11 the main concern here on the inconsistencies. Certainly,
12 there was -- they had -- when these events happened,
13 backwards in some cases, and they would tell it
14 differently. ^{Older}_{Brother} said something in his statement. He
15 said it different on the stand.

16 You know, but you look at those according to -- I'm
17 going to try to go through -- I tried to make a list of the
18 differences and I'll kind of get the highlights of what I
19 think is important. You may remember something different.
20 Some of these are minor and some of them major. And I'll
21 say this, some of them may be minor, but you've got to
22 consider how many minor inconsistencies there are. You
23 expect some inconsistencies. That's a given. You know, if
24 we go -- if me and you go to the football game and watch
25 the game and, you know, the winning touchdown is scored, I

1 see it one way, you see it another way. Even if you're a
2 fan of the same team, I'm going to tell the story
3 differently than you. But it's probably just going to be a
4 few minor things. We've got far too many minor
5 inconsistencies but also the core details are here. I'll
6 just skim through these.

7 Older Brother in his written statement said the first
8 molestation involved all three of them, Older Brother Younger
9 and Minor Friend That's a core detail. Who was present during
10 the abuse? You may not remember when. You may not
11 remember where. Their own expert said, you're going to
12 remember the first time. That's what she said. Chronic
13 abuse. They're alleging chronic abuse. They may get some
14 of the stuff in the middle mixed up. He's going to
15 remember the first time. He got it all wrong. He can't
16 keep it straight. In his statement he says, all three of
17 them were there. And on the stand he says, no, it happened
18 when we had a bond fire and Minor Friend wasn't there. That's a
19 core detail. So his testimony's different. He doesn't say
20 anything about the bond fire. In his statement, he didn't
21 say anything about a ranking system. In the statement, the
22 first sentence in it was -- he alleges was the dry humping
23 incident, I believe. Military showers. In the statement
24 he says he only did anything the first time. And then
25 after that, nothing happened. He testified differently.

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1 He mentioned or he testified and then Ms. Hinton touched on
2 it, that -- he tried to explain it, that he was too
3 embarrassed to tell Officer Ticknor that it happened more
4 than once. Well, that may be true to some degree, but look
5 at what he had already said. How much more difficult is it
6 to say, instead of saying it didn't happen any more than
7 that, to simply say -- it didn't take much -- and it
8 happened over and over again. That's all it takes. Two
9 little words, over and over again. Three words, excuse me.
10 So that's different. That's a core detail that he is
11 inconsistent.

12 He didn't say anything about bleeding. He testified
13 that he repeatedly was bleeding. And that as far as he
14 knows nobody saw the blood. He's ten years old. He's
15 living in a home with his older sister and his mama. Now,
16 he says his laundry would pile up. Somebody did his
17 laundry at some point. A ten-year-old is not doing his own
18 laundry. That is not -- just use your common sense on
19 that. If there was bleeding, somebody would have saw
20 something. His sister, somebody would have been able to
21 say, I saw blood. Maybe they didn't ask him about it, but
22 they would have seen something.

23 He didn't write in the statement anything about this
24 hole in the shower. I mean, that's a core detail, a major
25 event. He says it happened repeatedly. So maybe he would

1 not have mentioned every single time. He could have simply
2 said, he watched me while I was taking a shower through a
3 hole in the wall.

4 The statement didn't say anything about Younger being
5 abused in the bedroom at night. He only mentioned himself.
6 He did not mention anything in his statement about the
7 reason why he suddenly decided to disclose. He touched on
8 that. Ms. Galloway-Williams testified about the purposeful
9 disclosure. It's uncommon. You don't see that very often.
10 If it's uncommon after -- I mean, she talked about what a
11 delayed disclosure was. A day, forty-eight hours, a month,
12 that's a delayed disclosure. Four to five years is an
13 extreme delayed disclosure. And after four to five years
14 he suddenly had some conversation with somebody on a bus
15 and decides to disclose this stuff. It doesn't make any
16 sense.

17 In his statement, nothing about him and Younger being
18 made to perform oral sex on each other. And about Younger
19 touching Tyler. Details of this alleged incident in the
20 bathroom between Younger and Minor is not there. Some of
21 those, you know, whether lotion was used, may be minor
22 details. But it goes back to the point, the minor details
23 that are adding up.

24 But he didn't mention the word truth or dare at all in
25 his statement. That's a core detail. They were very clear

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1 about that all this started -- and they mentioned grooming,
2 I think, in Ms. Galloway-Williams testimony. But Older
3 said it all started with truth or dare. That's a core
4 detail, ladies and gentlemen, that is nowhere in the
5 written statement. And all of a sudden, they're all
6 testifying about it.

7 Nothing about wrestling, nicknames, reward system. In
8 his statement he said he was offered but refused to drink
9 the alcohol. But admitted smoking the marijuana. And on
10 the stand he said that he did drink the alcohol. So those
11 are some of the things that I noticed in Older Brother
12 testimony.

13 Younger testimony, we don't have as many
14 inconsistencies. And you ask yourself, why is that? Well,
15 his statement is very limited. He comes in, talks with
16 Detective Culbreath and doesn't want to talk to him. Oh,
17 go get some counseling. Help yourself remember. He comes
18 back two months later without Detective Culbreath
19 apparently -- the way I heard it anyway -- of not even
20 following up about what was going on with it. And they
21 come in all of a sudden and he gives a statement two months
22 later. It was over two months later. And Younger didn't
23 even write -- he gave a verbal statement. The detective
24 typed it up. Left out a major detail about nothing
25 happening in the shower, that he was made to take a shower

1 but nothing happened. Just conveniently left that out of
2 his written statement or typed statement, excuse me. And
3 Younger signs it. But in that you also have no truth or
4 dare, no ranking system, military showers, and he says
5 nothing happened. Period. I was made to take a shower.
6 Nothing happened. He testified obviously different about
7 that yesterday.

8 Nothing about -- anything about the bedroom or
9 anything. And another point on Younger testimony, you
10 know, a lot of his answers, at least to my questions and
11 some of the State's questions was, I don't recall or
12 something to that effect. That he couldn't remember this,
13 he couldn't remember that. And that's certainly to be
14 expected to some degree. I think he was able to testify
15 about certain things but not remember other things. And
16 not just dates and stuff. As adults, you know, you can't
17 remember exact dates or when something happened. But it
18 was other things that he was unable to testify to that he
19 should have been able to testify to if he could testify
20 about the other stuff.

21 So Minor's testimony. Now, she gave two statements.
22 And so let's look at the differences between those two
23 statements. The first one she -- well, in the second
24 statement she explains why she delayed in reporting. And
25 it may have been more of an explanation of why she was

1 giving the second statement, but it seemed to be kind of a
2 combination the way I heard it, but she didn't say any of
3 that in the first statement. In the second statement --
4 the first statement didn't mention anything about them
5 being forced to touch each other. But she did in the
6 second statement. The first statement, nothing about being
7 made to show her breasts, nothing about the attempt,
8 whether it was an attempt or it was actually successful, I
9 didn't quite get from her testimony. But either way, there
10 was nothing about that when, during this alleged sex acts
11 that he was making -- that they say he was making them
12 perform, he tried to do oral sex on her. Nothing about
13 that in the first statement. It's only in the second
14 statement. The big difference is -- and the State saying
15 it's about Jessica. They want you to think that the fact
16 that she's named in ^{Minor}_{Friend} s statement and in ^{Minor}_{Friend} s
17 testimony, she said she was there, awake, watching it.
18 And, yet, you have on this side, ^{Older}_{Brother} and ^{Younger}_{Brother}
19 saying, no, she wasn't there. ^{Older}_{Brother} specifically said
20 she was not there. I think she might have been working.
21 I'm not sure. But she wasn't there. And ^{Younger}_{Brother} said, to
22 the best of my memory, that she was not there. He didn't
23 know whether she was working or not. He doesn't recall
24 that. But she was not there. Jessica says -- she
25 testified, you heard it from her own mouth, that she never

Closing Statement by Mr. Alexander

1 saw him. That she slept a lot. She was pregnant,
2 understandably. But that she slept in the living room but
3 she definitely didn't see anything. They want you to think
4 that that's not a big deal. That's a huge deal. This
5 whole case, I told you in the beginning, comes down to
6 credibility.

7 Obviously, you have three different people saying some
8 of the same things happened. You've got to determine
9 whether they're telling the truth. Why would three
10 different people, one of who is not related to the other
11 two, say similar things that was untrue? Well, some of
12 those reasons, you know, the State's saying they're red
13 herring, they kind of touched on it, you know, potential
14 custody, a conspiracy, whatever they want to say. But you
15 don't have to decide that. You don't have to determine a
16 motive for why they would be lying. And we may never know.
17 That's the point. Of course, they're not going to get up
18 there and admit, yeah, we got together. We concocted this
19 story and this is what happened. You know, they say they
20 haven't talked to each other. To the contrary, they said
21 they were best friends. And all of a sudden they cut off
22 that contact, even though they're in -- she's in North
23 Carolina. And her mom -- and their moms were best friends.
24 That does not make sense.

25 And then you have, regarding Jessica, her first

1 statement, Minor a's -- I'm talking about Minor's first
2 statement, Jessica was there. You can read the statement
3 for yourself. Jessica was there on this night. She and
4 Tyler seemed to be getting off on this incident. She gives
5 that statement to Detective Culbreath July 16th, 2009.
6 Detective Culbreath said that he went and asked Jessica
7 about it and she said that she didn't know anything about
8 it. So they knew that Minor -- they may not have seen her
9 statement, but they knew that Minor had named Jessica and
10 said that she was there and watching it, and accused her of
11 being involved with it, getting off on watching it. If
12 that's not involvement, I don't know what is. She may not
13 have alleged that she touched them in some way, but she
14 would, at minimum, be an accessory to the sexual
15 exploitation, at a minimum.

16 So what happens? Obviously, we don't know for sure,
17 but you can connect the dots in your own minds. What could
18 have happened? Detective Culbreath goes and talks to
19 Jessica. Do you know about this? Minor's saying this.
20 Well, I don't know anything about it. All of a sudden
21 they're calling Minor saying, why are you accusing Jessica
22 of doing this? You need to fix this, fix this problem. So
23 what happens? She gives a second statement. The detective
24 said as far as he knew, Minor contacted the Solicitor and
25 said, I left some things out, I think is how he worded it.

1 And I went up there. So she gives a second statement.

2 Voila, no, Jessica. Not in there anymore.

3 So this whole thing, it comes down to credibility.

4 Like I said, you don't have to -- you know, I certainly did

5 present theories as to why they may have -- be telling

6 these things. Why they may have been true. But we don't

7 have to prove that. You don't even have to decide that.

8 You don't have to be confident enough to say, okay, this is

9 why they're lying. All you have to determine is whether

10 they're lying or not. You don't have to figure out the

11 reason why.

12 So why do you know they're lying? The core details

13 are different. I won't rehash that. I just went over

14 there. You can do that on your own. And on top of that,

15 there's too many minor inconsistencies. The delay in

16 reporting. Okay. The convenient expert testimony to try

17 to explain this delay away. Older Brother admitted that he had

18 hallucinations. He denied telling his counselor that she

19 got it wrong somehow about being able to tell real memories

20 from false ones. Sometimes she misunderstood. I think

21 this may have been about the hallucination comment. But he

22 said he did tend to over-dramatize things sometimes.

23 A few other things and I'll leave you to it. But I

24 just want to -- I don't know how to work that machine so

25 I'll just show it to you. You'll have this back up there.

Closing Statement by Mr. Alexander

1 State's Exhibit 1, the diagram of the trailer. This is a
2 common sense consideration I'll ask you to keep in mind.
3 This is the living room. This is where they say a lot of
4 the abuse took place. Jessica sleeps on the couch. You
5 know, it makes absolutely no sense that Damon Brown would
6 even attempt to commit any type of sexual abuse on three
7 children when his girlfriend and this older sister of two
8 of them is asleep in the same room. That makes no sense.
9 Now, of course, Older Brother and Younger say she was never
10 there. Minor Friend says she was awake. So there you have that.
11 But that makes no sense.

12 Then you have where the bathroom is in relation to the
13 back bedroom. And Older Brother testified in pretty good detail
14 about this incident in the bathroom, the alleged incident
15 between Younger and Minor Friend that he says he observed through
16 the crack in the door, I guess is what he said. It's right
17 next to the bedroom. And this is apparently a door. So
18 there's even, you know, gaps in the wall. It's not even a
19 solid wall. Oh, but their mother was in there with Timothy
20 Durham doing meth. Common sense, meth is not a depressant.
21 It's a stimulant. If you're smoking meth, you're awake.
22 You're not asleep in the bedroom. It heightens senses. If
23 anything, if she's smoking meth in there, she's more likely
24 to hear something that's going on. And there was some
25 testimony that he was giving all kinds of instructions. I

1 dare you to "F" her in the butt. That was an allegation
2 that they say he made.

3 As to Jessica, one last thing. They say she's charged
4 with this and she'll have her day in court. Let's look at
5 the time line, though. May of 2009 is when Older Brother makes
6 the initial statement. And Minor Friend's statement naming her is
7 made in July of 2009. Mr. Brown is arrested in August of
8 2009. When was Jessica arrested? If it's so credible, so
9 believable that she's involved in this, why was there never
10 an arrest warrant even submitted for her? We don't even
11 know the exact date when she was charged because the
12 Detective had retired in December of 2010 and up to that
13 point she'd not been charged yet. That's over a year after
14 the initial allegations came about. So what does that --
15 draw your own conclusions for that. I submit to you that
16 means they didn't believe Minor Friend's statement. Detective
17 Culbreath, all he said he did was ask Jessica about it. He
18 never even asked Older Brother or Younger Brother about it. Yet he
19 talked to Younger Brother after he talked with Minor Friend, after he got
20 her statement. Did not even ask them about it. Why? At
21 least it's not documented that he asked them. It's
22 certainly not in their statements.

23 So I'll leave you with this. And I apologize, I
24 talked a long time. This is, you know, an important case
25 for Mr. Brown. But just look at this case, take a step

Charge

1 back from it. You have these egregious charges, abuse on
2 minor children. And the nature of these charges are
3 terrible. They're disturbing. They're difficult to hear.
4 But it puts no lesser burden on the State. They have to
5 prove the exact same burden as every other case. You take
6 the evidence as it was presented. Take a step back from
7 the nature of the charges. It's difficult to do. But I'm
8 asking you to do that. And look at the evidence presented
9 and judge the credibility of these witnesses. And if you
10 do that, taking everything into consideration, the
11 witnesses are not credible. They're all tied together like
12 dominos. Minor Friend's statement is simply not credible. It
13 falls down. Older Brother statement, therefore, becomes not
14 credible and falls down with Younger statement. They're
15 tied together. And I ask you to take that all into
16 consideration. Thank you for your time and I ask you to
17 return a verdict of not guilty on all seven of these
18 charges.

19 **CHARGE**

20 **BY THE COURT:**

21 Mr. Foreman, ladies and gentlemen, my instruction to
22 you will probably take fifteen, maybe twenty minutes. I
23 don't know if you'd like to have a break, a stretch break
24 in place or if you'd like to go back just for a moment
25 before that. Or I'll be glad to go on with the charge.

Charge

1 Are you ready now for the instruction? Everybody ready?

2 Okay.

3 This is a case in which we have several indictments.

4 I told you when we began, the indictments charged Mr. Brown

5 with several offenses. There's seven different charges.

6 One is criminal sexual conduct with a minor in the first

7 degree. There's three different indictments relating to

8 lewd act upon a minor, each of the three minor children.

9 Also, three indictments for sexual exploitation of a minor

10 relating to one each for the individual victims in this

11 case.

12 Let me remind you, the fact that the Defendant has

13 been arrested and charged and indicted, that's not evidence

14 in the case. It shouldn't be considered by you as evidence

15 of guilt. It doesn't create any presumption whatsoever of

16 guilt. The indictments that we have are simply the formal

17 written instrument by which the case is brought before this

18 Court for disposition, to be determined by you, the jury.

19 I've mentioned there are several indictments,

20 different charges. Each indictment charges a separate and

21 distinct offense as to each individual. You must decide

22 each indictment separately on the evidence and the law

23 applicable to that particular indictment, uninfluenced by

24 your decision on any other indictment. In other words, the

25 Defendant can be convicted or acquitted on any or all of

Charge

1 the separate charges and you'll be asked to write a
2 separate verdict for each of the indictments that have been
3 set forth.

4 Mr. Brown has entered a plea of not guilty to each of
5 these indictments and that plea places the burden on the
6 State of South Carolina to prove his guilt. A person
7 charged with committing a criminal offense in South
8 Carolina is never required to prove himself innocent.
9 That's an important rule of law that in a criminal case, no
10 matter how serious the charges may be, the one charged will
11 always be presumed innocent of the crime for which that
12 indictment was issued, unless guilt has been established by
13 proof satisfying you of that guilt beyond a reasonable
14 doubt. Presumption of innocence doesn't end when you begin
15 your deliberations. It remains with the Defendant
16 throughout the trial until you've reached a verdict of
17 guilt based upon evidence satisfying you of that guilt.
18 beyond a reasonable doubt.

19 Often, presumption of innocence has been described as
20 a robe of righteousness that's placed about the shoulders
21 of an individual and remains with that Defendant until it's
22 been stripped from him by evidence satisfying you of his
23 guilt beyond a reasonable doubt. Presumption of innocence
24 isn't a mere legal theory. It's not just a legal phrase
25 that's tossed about. It is a substantial right to which

Charge

1 every defendant is entitled unless you, the jury, are
2 satisfied from the evidence of that Defendant's guilt
3 beyond a reasonable doubt.

4 I've used the phrase reasonable doubt. You may ask
5 yourself, what is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. Some of you may, in
8 the past, have had an opportunity to serve as a juror in a
9 civil case where you were told that it was only necessary
10 to prove a fact as more likely true than not true, such as
11 by a standard called the greater weight of the evidence or
12 the preponderance of the evidence. In criminal cases, the
13 State's proof is more powerful than that. It must be proof
14 beyond a reasonable doubt. That would be proof that leaves
15 you firmly convinced of the Defendant's guilty.

16 Now, ladies and gentlemen, there are very few things
17 in this world that we know with absolute certainty. And in
18 criminal cases, the law doesn't require proof that
19 overcomes every possible doubt. If, based upon your
20 consideration of the evidence, you are firmly convinced the
21 Defendant is guilty of the crime charged, then you must
22 find the Defendant guilty. If, on the other hand, you
23 think there's a real possibility that the Defendant is not
24 guilty, you must give the Defendant the benefit of that
25 doubt and find him not guilty. And, again, that relates to

Charge

1 each of the charges individually and separate and distinct,
2 one from another.

3 Now, I remind you that during this trial I have
4 certain duties to perform, just as you do. As the Trial
5 Judge, it's been my responsibility to preside over the
6 trial of the case, to rule on the admissibility of evidence
7 that's been offered during the course of the trial. You're
8 to consider only the competent evidence that is before you.
9 You can consider the testimony that's been presented from
10 the witness stand, the exhibits that have been made a part
11 of the record and that alone.

12 My job also is to charge you the law that's applicable
13 to the case. I'm the sole Judge of the law and it's your
14 duty as jurors to accept the law and apply that law as I
15 state it to you now. You may already have an idea of what
16 the law is in a case such as this or maybe a notion of what
17 the law ought to be in a case such as this. If you have
18 such a notion and it's not in agreement with what I now
19 tell you the law is, then you must abandon such an idea
20 because under your oath, ladies and gentlemen, you've sworn
21 to accept the law and apply the law exactly as I state it
22 to you.

23 Every case that's tried in this courtroom before a
24 jury, that jury becomes the sole, exclusive judge of the
25 facts in a case. A Trial Judge can't intimate or state or

1 comment on or make any statement whatsoever to a trial jury
2 about the facts in a case. Since you, the jury, are the
3 sole judges of the facts, you're not to infer from what
4 I've said during the progress of the trial, any rulings
5 I've made on the admissibility of evidence or otherwise,
6 anything I say to you now in the course of this instruction
7 to you, that I have an opinion about the facts in the case.
8 I don't have an opinion about the facts. Our Constitution
9 in South Carolina, the law of our State, doesn't allow a
10 Trial Judge to have an opinion about the facts. That's a
11 matter solely up for you, ladies and gentlemen, to
12 determine. And you make that determination as to the
13 effect, the value, the weight, and the truth of the
14 evidence that's been presented.

15 Now, in trials, there's normally two types of
16 evidence. There's direct evidence and circumstantial
17 evidence. Direct evidence is the testimony of a person who
18 claims to have actual knowledge of a fact, such as an
19 eyewitness. It's evidence which immediately establishes
20 the main fact to be proved. Circumstantial evidence is
21 proof of a chain of facts and circumstances that indicate
22 the existence of a fact. It's evidence which immediately
23 establishes collateral facts, from which the main fact may
24 be inferred. Circumstantial evidence then is based on
25 inference and not upon personal knowledge or observation.

Charge

1 The law makes absolutely no distinction between the weight
2 or the value to be given either direct evidence or
3 circumstantial evidence, nor is there a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence. You should weigh all of the evidence in
6 the case. And after weighing all that evidence, if you're
7 not convinced of the guilt of the Defendant beyond a
8 reasonable doubt then you must, of course, find the
9 Defendant not guilty.

10 Necessarily, you must determine the credibility of
11 witnesses who've testified in the case. Credibility simply
12 means believability. It becomes your duty as jurors to
13 analyze and evaluate the evidence and determine which
14 evidence convinces you of its truth. In determining the
15 believability of witnesses who've testified, you can
16 believe one witness over several witnesses or several
17 witnesses over one witness. In your discretion, you can
18 believe part of the testimony of a witness and you can
19 reject the remaining part of the testimony of that very
20 same witness. You can believe the testimony of a witness
21 in its entirety. In your discretion, you can reject the
22 testimony of a witness in its entirety. You can consider
23 whether any witnesses exhibited to you any interest or bias
24 or prejudice or other motive in the case. You can consider
25 the appearance and the manner of the witness while on the

1 witness stand. You can ask yourself questions such as
2 whether the witness was straightforward or hesitant in
3 answering. Was the testimony of the witness consistent or
4 inconsistent and how did the witness come to know the facts
5 to which he or she testified. Is the testimony of that
6 particular witness strengthened or weakened by other
7 testimony or other evidence? It's totally your
8 prerogative, ladies and gentlemen, to determine the
9 credibility of the witnesses.

10 Now, I stated to you and I'll repeat now that the
11 rules of evidence ordinarily do not permit a witness to
12 testify to opinions or conclusions. But there is an
13 exception for what we call expert witnesses. A witness who
14 by education and experience has become an expert in some
15 art or science or profession or a calling may state an
16 opinion as to any relevant and material matter in which the
17 witness claims to be an expert, and may also state a reason
18 for that opinion. You should consider any expert opinion
19 received in evidence in the case, and like other evidence,
20 give it the weight that you think it deserves. If you
21 decide the opinion of an expert is not based upon
22 sufficient education or experience or if you conclude the
23 reasons given in support of the opinion are not sound or
24 that the opinion is outweighed by other evidence, you can
25 disregard the opinion entirely. An expert witness

Charge

1 testimony is to be given no greater weight than that of any
2 other witness simply because that witness is an expert.
3 Furthermore, you're not required to accept an expert's
4 opinion, even though it may be uncontradicted.

5 Now, in order to establish criminal liability,
6 criminal intent is required. It must be proven by the
7 State beyond a reasonable doubt. Criminal intent is always
8 a matter that must be determined by the jury from the
9 circumstances surrounding the situation. There's no way,
10 of course, to prove intent to a mathematical certainty.
11 Medical science hasn't devised a way that we can dissect a
12 person's brain and determine what that person had in mind.
13 So the law says that criminal intent may be inferred from
14 the circumstances shown to have existed. It's not
15 necessary to establish intent by direct and positive
16 evidence, but it may be established by inference in the
17 same way as any other fact, by taking into consideration
18 the acts of the parties and all the facts and circumstances
19 of the case. Criminal intent is a mental state. It's a
20 conscious wrongdoing. It's up to you to determine what the
21 Defendant intended to do based upon the circumstances shown
22 to have existed.

23 Now, I instruct you, ladies and gentlemen, and
24 emphasize to you, the fact that the Defendant did not
25 testify is not a factor to be considered by you in any way

Charge

1 in your deliberations and in your consideration of the
2 question of the guilt or the innocence of the Defendant.
3 It must not be considered by you in any manner whatsoever.
4 A Defendant has a Constitutional right to remain silent.
5 And the assertion of this right must not be considered by
6 you in your deliberations. I repeat, under your oath,
7 you're to draw no conclusion whatsoever from the fact that
8 the Defendant in this case exercised his rights not to
9 testify. The fact that he did not testify should not even
10 be discussed by you in the jury room. The burden of proof,
11 as I've stated, is on the State of South Carolina. The
12 Defendant is not required to prove his innocence. That
13 burden remains on the State to prove guilty beyond a
14 reasonable doubt.

15 Now, in this case, the Defendant is charged with first
16 degree criminal sexual conduct with a minor. The State
17 must prove beyond a reasonable doubt that the Defendant
18 engaged in a sexual battery with the victim. A sexual
19 battery is sexual intercourse, cunnilingus, fellatio, anal
20 intercourse or any intrusion, however slight, of any part
21 of a person's body or of any object into the genital or
22 anal openings of another person's body, except when such an
23 intrusion is accomplished for medically recognized
24 treatment or diagnostic purposes.

25 The State must prove beyond a reasonable doubt that

Charge

1 the victim was less than eleven years old at the time of
2 the sexual battery. Consent or willingness or indifference
3 or ignorance on the part of the minor, if any, as to what's
4 taken place, does not in any way affect the charge of
5 criminal sexual conduct with a minor. Because one under
6 the age of fourteen cannot legally consent to sexual
7 intercourse.

8 I also will provide you on the charge sheet, there's a
9 lesser included offense to criminal sexual conduct with a
10 minor in the first degree, and that being criminal sexual
11 conduct with a minor in the second degree. If you find the
12 State has failed in its proof beyond a reasonable doubt as
13 to all the elements of criminal sexual conduct with a minor
14 in the first degree, and hasn't proven the age of the
15 minor, if you determine the child was at least eleven years
16 of age but not more than fourteen at the time of the sexual
17 battery, then if, of course, if the State has met all the
18 other elements of the crime, you may find the lesser
19 included offense of criminal sexual conduct with a minor in
20 the second degree.

21 The Defendant in this case also has charges of
22 committing a lewd act upon a minor. The State must, in
23 order to prove this charge, establish beyond a reasonable
24 doubt that the Defendant was over the age of fourteen
25 years. The State must also prove that the Defendant

Charge

1 willfully and lewdly committed or attempted to commit a
2 lewd or lascivious act on or with the body or its part of a
3 child under the age of sixteen years, with the intent to
4 arouse or appeal to or gratify the lusts, the passions, or
5 the sexual desires of either the Defendant or of the child.
6 Willfully means voluntarily and intentionally with specific
7 intent to do something the law forbids. Lewd means obscene
8 or lustful or indecent or lecherous. Lascivious means
9 tending to incite the lust, lewd, indecent, obscene, or
10 tending to deprave the morals in respect to sexual
11 relations.

12 There's also charges here of first degree sexual
13 exploitation of a minor. And an individual commits this
14 offense under South Carolina law, in the first degree
15 sexual exploitation of a minor, if knowing the character or
16 content of material or performance the individual uses or
17 employs or induces or coerces or encourages or facilitates
18 a minor to engage in or assist others to engage in sexual
19 activity for a live performance or for the purpose of
20 producing material that contain a visual representation
21 depicting this activity. Or if that individual permits a
22 minor under his custody or control to engage in sexual
23 activity for a live performance, or for the purpose of
24 producing material that contains a visual representation
25 depicting this activity.

Charge

1 Now, Mr. Foreman, ladies and gentlemen, I have verdict
2 forms. I believe they'll be self-explanatory for you. Mr.
3 Foreman, there's two possible verdicts on each of these
4 charges. If you find the State has met its burden of proof
5 beyond a reasonable doubt, then, of course, the verdict
6 would be guilty on each of the separate charges. If you
7 find the State has not met its burden of proof, your
8 verdict must be not guilty. I have a verdict form as to
9 the charges of lewd act upon a child as to each of the
10 three. The same with the sexual exploitation of a minor.
11 All three are listed there for you. You obviously need to
12 make a decision as to each one, as I've stated, separate
13 and distinct from the other. As to the criminal sexual
14 conduct with a minor in the first degree, you make a
15 finding as to whether the State has met its burden of
16 proof. If you find it hasn't, then you would address
17 whether or not it met its burden of proof as to the lesser
18 included offense of criminal sexual conduct with a minor in
19 the second degree.

20 There's no significance, obviously, in the order in
21 which the possible verdicts are listed. One has to be
22 listed before the other, either guilty or not guilty. All
23 twelve of you must agree upon a verdict. Your verdict
24 cannot be based upon sympathy or passion or prejudice or
25 emotion or any other consideration not in evidence in the

Charge

1 case.

2 Now, you're free to ask me any questions regarding the
3 law that I've explained to you now. But remember, it's
4 impermissible for me to answer any questions you may have
5 regarding the facts of the case. That's your duty as the
6 sole fact finders.

7 At this time, Mr. Foreman, ladies and gentlemen, I'm
8 going to ask you to go back to your jury room. Don't start
9 your deliberations just yet. There's a final matter of law
10 that I need to take care of with the attorneys. After
11 which, hopefully, we'll be able to give you instructions to
12 begin your deliberations, have the verdict forms and the
13 Exhibits back for you. But at this time, don't start your
14 deliberations. You may retire to your jury room.

15 (WHEREUPON, the jury exited the open court at
16 approximately 4:13 P.M.)

17 THE COURT: Any exceptions to the charge, from
18 the State?

19 MS. HINTON: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. ALEXANDER: Just the previous, I guess,
22 objection to the exclusion of the assault and battery first
23 degree charge. Other than that, no objections, Your Honor.

24 THE COURT: All right. If y'all will make sure
25 the exhibits are in order. Make sure I've got all the

Charge

1 THE JUROR: Thank you, sir.

2 THE COURT: Thank you very much.

3 All right. We'll be at ease until we hear from our
4 jury.

5 (WHEREUPON, the court stood at recess awaiting the
6 verdict of the jury.)

7 THE COURT: All right. I understand the jury has
8 reached a verdict. Are there any matters we need to take
9 care of before we receive the verdict from the jury?

10 MS. HINTON: Not from the State, Your Honor.

11 MR. ALEXANDER: Not from the Defense, Your Honor.

12 THE COURT: All right. If the jury's ready, you
13 can have them come in, sir.

14 (WHEREUPON, the jury entered the open court at
15 approximately 4:59 P.M.)

16 THE COURT: Mr. Foreman, I understand the jury
17 has reached a verdict. Is that correct?

18 THE FOREMAN: That is correct.

19 THE COURT: Is it a unanimous verdict as to all
20 of the charges?

21 THE FOREMAN: Yes, sir.

22 THE COURT: If you would, please, hand your
23 verdict form to the bailiff.

24 All right. Madam Clerk, you may publish the verdict.

25 THE CLERK: State of South Carolina versus Damon

Charge

1 Tyler Brown. We, the jury, unanimously find the Defendant,
2 Damon Tyler Brown, as to the charge of criminal sexual
3 conduct with a minor, first degree, as to MS, guilty. We,
4 the jury, unanimously find the Defendant, Damon Tyler
5 Brown, as to the charge of lewd act upon a child as to MS,
6 guilty. As to the charge of lewd act upon a child as to
7 TS, guilty. As to the charge of lewd act upon a child as
8 to TU, guilty. We, the jury, unanimously find the
9 Defendant, Damon Tyler Brown, as to the charge of sexual
10 exploitation of a minor first degree as to MS, guilty. As
11 to the charge of sexual exploitation of a minor first
12 degree as to TS, guilty. As to the charge of sexual
13 exploitation of a minor first degree as to TU, guilty.

14 Ladies and gentlemen of the jury, is this your verdict
15 and is it still your verdict? So say you all by raising
16 your right hand.

17 (WHEREUPON, all jurors' right hands were raised.)

18 THE CLERK: Thank you.

19 THE COURT: Are there any matters that we need to
20 take care of with this jury before they're discharged in
21 this case? From the State?

22 MS. HINTON: No, Your Honor.

23 THE COURT: From the Defense?

24 MR. ALEXANDER: No, Your Honor.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

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1 Mr. Foreman, I would ask if you would remain in the
2 hallway just briefly. The Clerk has some other documents
3 that she needs to have you sign. Thank you very much,
4 ladies and gentlemen. You're dismissed at this time.

5 Everyone else, please remain seated while the jury
6 departs.

7 (WHEREUPON, the jury exited the open court at
8 approximately 5:06 P.M.)

9 THE COURT: We'll wait just a moment until the
10 clerk gets back with the indictments.

11 All right. Any matters we need to take care of before
12 sentence is imposed?

13 MS. HINTON: Not from the State, Your Honor.

14 MR. ALEXANDER: Just renewing my prior directed
15 verdict motion, judgment notwithstanding the verdict at
16 this stage, on the same basis as previously stated.

17 THE COURT: Thank you, Mr. Alexander. I
18 respectfully deny your motion on the same grounds as
19 previously set forth.

20 If you'd come forward, please, with your client.

21 (WHEREUPON, Ms. Hinton, Ms. Barwick, Mr. Alexander and
22 the Defendant approached the bar.)

23 THE COURT: All right. Anything from the State
24 before I hear from Mr. Alexander and his client and anyone
25 else that wants to address me?

1 into consideration. Obviously, that didn't come out during
2 proceedings in any way, shape or form, so

3 THE COURT: Is it the State's position, Ms.
4 Hinton, that each of the exploitation cases must run
5 consecutive to each other, as well as other sentences?

6 MS. HINTON: That is the State's position, Your
7 Honor.

8 MR. ALEXANDER: And we obviously oppose that,
9 Your Honor. I mean, you know, I realize there was three
10 separate indictments. It references other sentences all
11 regarding the same individuals involved in the same -- it's
12 all the same allegations.

13 THE COURT: Well, these are never easy cases for
14 the parties, for the lawyers, certainly not for the Judge.
15 And sometimes we create our own prisons by -- even though
16 we're not behind bars, Mr. Brown, we create a prison based
17 upon the actions that we take in society. My job is to try
18 to administer justice to you, as well as to society, and
19 the victims in this case.

20 This is case 2010-GS-39-850. The sentence of the
21 Court is the Defendant be committed to the State Department
22 of Corrections for a period of one hundred seventy-six
23 months. Be given credit for his time served.

24 Case 2010-39-960, the sentence of the Court is
25 Defendant be committed to the State Department of

State of South Carolina -vs- Damon Brown (2010-GS-39-850-853 and 860, 861, 960)

480

Charge

1 Corrections for a period of one hundred twenty-eight
2 months, that to be consecutive to the previously imposed
3 sentence on indictment 850.

4 Case 2010-GS-39-852, the sentence is confinement to
5 the State Department of Corrections for a period of fifty-
6 five months. This is to be a consecutive sentence to that
7 imposed in 2010-GS-39-960.

8 Case 2010-851, 2010-853, each sentence will be fifty-
9 five months to be concurrent to case 852.

10 Cases 2010-860, case 861, the sentence is to be a one
11 hundred twenty-eight month confinement. Again, to be
12 concurrent to those previously imposed by 2010-852. Credit
13 for the time served on all the cases.

14 I wish all of you the best.

15 Court's adjourned.

16

17 [END OF REQUESTED TRANSCRIPT OF RECORD]

18

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Pickens County, South Carolina, on
10 the 26th day of November, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 March 25, 2013

16

17

18

A handwritten signature in cursive script, reading "Susan Danette Hanks", is written over a horizontal line.

19

Circuit Court Reporter

WITNESSES

Keith Culbreath

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

J489327

ACTION OF GRAND JURY

TRUE BILL

Date

NOV 20 2012

Foreperson of Grand Jury

Jim Ballenger

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0850

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012

TERM 2012

THE STATE

VS.

DAMON TYLER BROWN

Amended Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-15-0365

TRUE COPY

MB
Heather P. Williams
CLERK OF COURT
PICKENS COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

NOV 20 2012

the Grand Jurors of Pickens

County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, commit a sexual battery on M. S., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

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

Brian Hunter
SOLICITOR

WITNESSES

K. Culbreath, II

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 03-28-84

ACTION OF GRAND JURY

TRUE BILL

Date

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0851

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012 TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

Amended Indictment for

0379

SEXUAL EXPLOITATION OF A MINOR

FIRST DEGREE

VIOLATION § 16-15-0395

TRUE COPY

Handwritten signature: *Ms. [Signature]*
CLERK OF COURT
PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
SEXUAL EXPLOITATION OF A MINOR

At a Court of General Sessions, convened on

NOV 20 2012

the Grand Jurors of Pickens

County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, knowing the character or content of the material or performance, he used, employed, induced, coerced, encouraged, or facilitated a minor, M.S. or permitted a minor under his custody or control, M.S. to engage in or assist others to engage in sexual activity for a live performance. This is in violation of § 16-15-0395 of the South Carolina Code of Laws (1976) as amended.

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

Blanca Huitan
SOLICITOR

WITNESSES

K. Culbreath, II

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 03-28-84

ACTION OF GRAND JURY

TRUE BILL

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0852

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012 TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

Amended Indictment for

0379

SEXUAL EXPLOITATION OF A MINOR
FIRST DEGREE
VIOLATION § 16-15-0395

TRUE COPY

Handwritten signature: *Handwritten P. W. [unclear]*

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
SEXUAL EXPLOITATION OF A MINOR

At a Court of General Sessions, convened on
County present upon their oath:

NOV 20 2012

the Grand Jurors of Pickens

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, knowing the character or content of the material or performance, he used, employed, induced, coerced, encouraged, or facilitated a minor, T.U. or permitted a minor under his custody or control, T.U. to engage in or assist others to engage in sexual activity for a live performance. This is in violation of § 16-15-0395 of the South Carolina Code of Laws (1976) as amended.

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

Brian Huiton
SOLICITOR

WITNESSES

K. Culbreath, II

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 03-28-84

ACTION OF GRAND JURY

TRUE BILL

Date

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0853

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012 TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

Amended Indictment for

0379

SEXUAL EXPLOITATION OF A MINOR
FIRST DEGREE
VIOLATION § 16-15-0395

TRUE COPY

Handwritten signature: *Handwritten signature*
CLERK OF COURT
PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
SEXUAL EXPLOITATION OF A MINOR

At a Court of General Sessions, convened on NOV 20 2012 the Grand Jurors of Pickens

County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, knowing the character or content of the material or performance, he used, employed, induced, coerced, encouraged, or facilitated a minor, T.S. or permitted a minor under his custody or control, T.S. to engage in or assist others to engage in sexual activity for a live performance. This is in violation of § 16-15-0395 of the South Carolina Code of Laws (1976) as amended.

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

Brian Hunter
SOLICITOR

WITNESSES

Keith Culbreath

Pickens County Sheriff's Office

11/26/2009

ARREST WARRANT NUMBER

J489328

ACTION OF GRAND JURY

WE BILL

12

NOV 20 2012

person of Grand Jury

VERDICT

erson of Petit Jury

AMENDED
DOCKET NO. 2010-GS-39-0860

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012

TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

Amended Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

TRUE COPY

Ms

Handwritten signature and text, including "NOV 20 2012" and "COUNTY OF PICKENS".

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on NOV 20 2012 the Grand Jurors of Pickens

County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of T.U., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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

Brian Hunter
SOLICITOR

WITNESSES

Keith Culbreath

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

J489329

ACTION OF GRAND JURY

TRUE BILL

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0861

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012 TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

Amended Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

TRUE COPY

MS
Hendrick P. W. Williams
CLERK OF COURT
PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

NOV 20 2012

the Grand Jurors of Pickens

County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of M. S., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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

Brian Hilton
SOLICITOR

WITNESSES

Keith Culbreath

Pickens County Sheriff's Office

8/26/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 03-28-84

ACTION OF GRAND JURY

TRUE BILL

Date

NOV 20 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2010-GS-39-0960

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 20 2012 TERM 2012

THE STATE

vs.

DAMON TYLER BROWN

2468

Amended Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on **NOV 20 2012** the Grand Jurors of Pickens
County present upon their oath:

That DAMON TYLER BROWN did in Pickens County, between September, 2003 and December, 2006, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of T. S., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

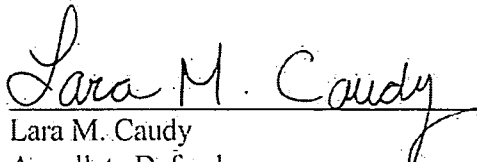
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Brian Hunter
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 31, 2014


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMON TYLER BROWN

APPELLANT

APPELLATE CASE NO. 2012-213548

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by allowing a witness to testify as an expert regarding information that was well within the realm of lay knowledge when such testimony was highly prejudicial to Appellant and improperly bolstered the minor complainants' credibility in a sexual abuse case against Appellant where the minor complainants' credibility was the critical determination in the case?

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant at the November 20, 2012 term of General Sessions for criminal sexual conduct with a minor in the first degree, three counts of lewd act upon a child, and three counts of sexual exploitation of a minor in the first degree. R. 389 – R. 402. His case was called to trial on November 26, 2012 before the Honorable G. Edward Welmaker, and a jury. Steven Alexander represented Appellant. Brandi Hinton and Jenny Barwick were the Assistant Solicitors. R. 1.

At the conclusion of the trial on November 28, 2012, the jury found Appellant guilty of all seven counts. R. 383, l. 25 – 384, l. 18. Judge Welmaker sentenced Appellant to one hundred seventy-six months for criminal sexual conduct with a minor in the first degree, one hundred twenty-eight months consecutive for one count of lewd act upon a child, fifty-five months consecutive for one count of sexual exploitation of a minor in the first degree, fifty-five months concurrent for each of the two remaining counts of sexual exploitation of a minor in the first degree, and one hundred twenty-eight months concurrent for each of the remaining two counts of lewd act upon a child. R. 386, l. 13 – 387, l. 13.

This appeal follows.

ARGUMENT

The trial court abused its discretion by allowing a witness to testify as an expert regarding information that was well within the realm of lay knowledge when such testimony was highly prejudicial to Appellant and improperly bolstered the minor complainants' credibility in a sexual abuse case against Appellant where the minor complainants' credibility was the critical determination in the case.

Relevant Facts

Older Brother, age ten to twelve, and Younger Brother, age eight to ten, alleged Appellant, age nineteen to twenty-one, who was their sister's boyfriend, sexually abused them. Appellant, Older Brother, Younger Brother, their sister, and the children's mother and step-father were living in a two bedroom mobile home in Central, South Carolina. R. 129, ll. 5-13; R. 249, l. 17-19. Their sister was sixteen and pregnant with Appellant's child when the alleged abuse began. R. 251, ll. 4-12.

The testimony revealed that their mother was neglectful and uninvolved in her children's lives, usually using methamphetamines in her bedroom and disappearing for significant periods of time. R. 48, ll. 3-7; R. 129, ll. 14-24; R. 249, ll. 6-14. Their step-father was both verbally and physically abusive and also used methamphetamines. R. 86, ll. 12-13; R. 130, l. 20 – 131, l. 21; R. 249, l. 20 – 250, l. 13. It was clear from the record that there was little to no adult supervision in the home.

Older Brother testified that the alleged abuse started just after his tenth birthday, which was September 6, 2003. R. 87, ll. 3-11. He and Appellant "became really cool friends." R. 51, ll. 4-7. They had inside jokes, made up pretend games, and wrestled. When they wrestled, Appellant "would get kind of handsy" and touch or graze areas

where it was improper. R. 51, l. 10 – 52, l. 2. Younger Brother would also wrestle with them. R. 52, ll. 3-4.

Appellant, Older Brother, and Younger Brother would also play truth or dare. The only rule to the game was that they could not tell anyone or the person who told would be blamed. R. 56, l. 22 – 57, l. 6. The first time they played Older Brother was ten and Younger Brother was eight. Older Brother claimed Appellant dared the boys to compare the size of their penises. R. 59, ll. 3-6; R. 57, ll. 7-25. After their penises became erect, Appellant used his finger to measure the length.

Older Brother testified that this improper behavior progressed to sexual intercourse. R. 59, ll. 19-20. Appellant and Older Brother began to take “military showers,” which allegedly Appellant explained to him were “very common in the Army” and involved soldiers showering very quickly and helping each other wash. R. 61, l. 11 – 62, l. 3. The first time Appellant and Older Brother took a “military shower” Older Brother was ten. R. 62, ll. 9-13. Appellant “got me to perform oral sex on him. And then proceeded to do oral sex on me.” R. 64, ll. 1-11. Older Brother alleged Appellant also anally penetrated him with Appellant’s finger and penis causing him to bleed. R. 64, l. 12 – 65, l. 25. Older Brother claimed that Appellant also took “military showers” with Younger Brother. R. 66, ll. 9-13.

The other main allegation involving sex occurred in the bedroom. Older Brother testified that Appellant would come into his bedroom at night, fondle him under the covers, and perform oral sex on him and he would perform oral sex on Appellant. R. 69, l. 24 – 70, l. 5.

Older Brother also alleged that he witnessed Appellant encourage Minor Friend, who was the ten year old daughter of his mother's friend, engage in sexual acts. Minor Friend would come over to their mobile home so that his mother could babysit her. However, his mother did not actually babysit Minor Friend. R. 75, l. 18 – 76, l. 14. Instead, Older Brother, Younger Brother, Minor Friend, and Appellant would play games including truth or dare. R. 77, ll. 10-14. Older Brother claimed that on one occasion, Appellant dared Younger Brother to anally penetrate Minor Friend in the bathroom. R. 77, l. 15 – 78, l. 10. Older Brother watched the incident through the bathroom doorway and testified that Appellant assisted Younger Brother by positioning him correctly. R. 78, l. 14 – 79, l. 11. Older Brother also claimed that Appellant dared him and Minor Friend to “dry hump each other on the couch.” Older Brother and Minor Friend laid on top of each other in their underwear and pelvic thrusts while Appellant grabbed Minor Friend's breasts and ran his hands all over the rest of her. R. 79, l. 12 – 80, l. 6.

Older Brother testified that the last time Appellant molested him was on Christmas Day when he was twelve. On this occasion, Appellant allegedly attempted to put his hand down Older Brother's pants while Older Brother was playing outside, but Older Brother refused and ran away. This day was the last time that Appellant was around Older Brother's family. R. 81, l. 9 – 82, l. 25; R. 83, ll. 10-14. Older Brother did not tell anyone what was happening to him because he was scared and embarrassed and thought he would get in trouble. R. 83, ll. 1-9.

Older Brother eventually disclosed the alleged abuse in May 2009 when he was fifteen years old, several years after he stated the alleged abuse had stopped. He testified that he realized he needed to disclose after having a conversation with a girl on the school

bus. R. 83, ll. 18-21. The contents of that conversation were excluded by the trial court. R. 32, ll. 6-18. He told the School Resource Officer (SRO) at his high school who then notified the Pickens County Sheriff's Office. R. 83, l. 15 – 84, l. 8; R. 85, l. 24 – 86, l. 7. Older Brother gave a single written statement to law enforcement. It was not as detailed as his testimony at trial. See R. 122, l. 13 – 124, l. 8.

Younger Brother corroborated most of Older Brother's testimony. He was eight when the sexual abuse started. R. 135, ll. 12-13. He testified that Appellant was his sister's boyfriend at the time and that "I was trying to make friends with him because I didn't have many friends." R. 132, l. 15 – 133, l. 4. Younger Brother stated he would wrestle with Appellant and play truth or dare. Like Older Brother, he also testified that truth or dare eventually progressed into sexual abuse and that Appellant told them not to tell anyone or whoever told would be blamed. R. 134, l. 7 – 136, l. 7. Younger Brother also allegedly took "military showers," in which Appellant would shower with him and touch his penis. R. 136, ll. 8-14; R. 137, l. 16 – 138, l. 11. Younger Brother witnessed Appellant come into the boys' bedroom at night and crawl into bed with Older Brother. R. 141, l. 2-25.

Younger Brother testified he specifically remembered a game of truth or dare when Minor Friend played with him, Appellant, and Older Brother. R. 143, l. 21 – 144, l. 1. Appellant allegedly dared him to anally penetrate Minor Friend in the bathroom and, with Appellant's assistance and guidance, he did so. R. 144, l. 7 – 145, l. 23.

Younger Brother explained he was contacted by law enforcement in May 2009 when he was in the seventh grade to give a statement after Older Brother disclosed what allegedly happened to him, but Younger Brother refused. In July 2009, Younger Brother

eventually gave a statement describing the alleged sexual abuse committed by Appellant after Older Brother convinced him it was the right thing to do. R. 146, l. 5 – 147, l. 1; R. 280, l. 1 – 281, l. 7.

Younger Brother's statement was seven sentences long and did not include a lot of detail. R. 161, ll. 4-16. He alleged in his statement that Appellant made him, Older Brother, and Minor Friend "do stuff," specifically Appellant made Younger Brother anally penetrate Minor Friend and made Older Brother and Younger Brother compare penis sizes. R. 161, ll. 9-13. His statement also stated that Appellant made him take showers with him and smoke marijuana with him. R. 161, ll. 13-15. Younger Brother's testimony at trial, on the other hand, was very detailed and specific. Younger Brother testified that he did not disclose earlier because he was embarrassed. R. 146, ll. 16-19.

Minor Friend was the last complainant to testify. She testified that Older Brother and Younger Brother were her "childhood best friends" and that she often went over to their house so that their mother could babysit her. R. 163, l. 21 – 164, l. 20. Minor Friend claimed she was sexually abused by Appellant in the living room and bathroom of the family's mobile home on two occasions. R. 167, l. 20 – 168, l. 6.

On the first occasion, Minor Friend testified Appellant told Older Brother to go into a different room. She thought Older Brother was in trouble, but she could hear him crying and telling Appellant "No." When Older Brother came out of the room, his face was red and he would not talk. R. 168, ll. 12-25. On that same occasion, Minor Friend testified that Appellant made Older Brother and Younger Brother touch each other's penis over their clothing during a game of truth or dare. R. 169, l. 1 – 170, l. 12.

On the second occasion of alleged abuse, Minor Friend claimed Appellant dared Older Brother to "dry hump me." While Older Brother was dry humping her, Appellant kissed her, touched her hair, and grabbed her "boob." Appellant also attempted to probe his penis into her mouth. R. 170, l. 13 – 172, l. 10. During that same game of truth or dare, Minor Friend alleged Appellant made Younger Brother anally penetrate Minor Friend with his penis in the bathroom. Younger Brother did so with Appellant's assistance. R. 172, l. 9 – 173, l. 2.

Minor Friend testified that after this second occasion of abuse she told her mother that she never wanted to go back. She never saw Older Brother, Younger Brother, or Appellant again. R. 174, ll. 7-16; R. 175, l. 25 – 176, l. 7. Minor Friend was eventually contacted by the police about the alleged abuse after Older Brother disclosed. R. 174, l. 24 – 175, l. 5. She gave the police two written statements taken more than a year apart. R. 188, ll. 15-16; R. 198, l. 22 - 199, l. 20. Minor Friend testified that she never told anyone about the alleged abuse before the police contacted her because she felt that it was her fault that it happened, that people would get mad at her, and because it made her feel "gross." R. 175, ll. 6-18.

Defense counsel cross-examined Minor Friend about the significant discrepancies between her two statements and her testimony at trial. R. 199, l. 24 – 202, l. 2. Minor Friend testified that the more she talked about it the more she could remember. R. 200, ll. 11. It also came to light during Minor Friend's testimony that she had talked to law enforcement in December 2004, several months after the alleged sexual abuse in this case took place, about an unrelated complaint of sexual abuse. Minor Friend failed to disclose the alleged abuse regarding Appellant at that time. She explained that she did not disclose

the alleged abuse involving Appellant in December 2004 because the officer “didn’t ask me.” R. 203, l. 18 – 204, l. 21; R. 245, l. 18 – 246, l. 24.

There was *absolutely no physical evidence* of sexual abuse presented by the state.

Expert Shauna Galloway-Williams

During the beginning of trial, the state informed the court it would seek to enter Shauna Galloway-Williams as an expert in counseling sexually abused children and their families for the purpose of explaining delayed disclosures, partial disclosures, and physical symptoms victims experience, along with how knowing someone and being close with someone could affect the disclosure process. R. 11, ll. 7-22. Defense counsel strongly objected to her testimony throughout the course of the trial. He argued pretrial:

And she may not directly comment on these witnesses’ specific testimony, but her testifying as to every single one of those things that Ms. Barwick just listed, all it’s going to do is *go directly to commenting on their credibility, to bolster their testimony that there’s a late disclosure for these reasons*. And in this case, we have a late disclosure. Five years, or four or five years late disclosure. Partial disclosures, they’ve apparently got – the testimony is going to be greatly more detailed than their written statements, which were given three years ago . . .

All of that does nothing but tell the jury, you should believe these witnesses because of these reasons. And I would further say that her testimony is not necessary. I mean, you need expert – expert testimony can be used, I believe, in the case law or I think it’s under Rule 702, to help the jury determine a fact at issue based on their specialized knowledge, experience, skill, and it’s necessary in cases where it falls outside the realm of ordinary lay knowledge. I mean, *these are not outside any lay knowledge*. It’s certainly, you know, things that is not openly discussed in public or anything or even in privacy, *but we don’t need*

an expert to help the jury determine, you know, any particular reason why there would be a delay in disclosure. They can hear the witnesses themselves and make that determination. That's for the jury to determine on their credibility.

R. 12, l. 3 – 13, l. 4 (emphasis added)

Due to defense counsel's objection, the court required the state proffer Galloway-Williams' testimony. R. 210, ll. 8-15. After she testified in camera, defense counsel again objected to her being permitted to testify. His arguments were similar to his arguments made pretrial. He had four main points: (1) Galloway-Williams had no direct knowledge of the case and did not interview the children; (2) the main purpose of her testimony is to bolster the complainants' credibility; (3) under Rule 702, SCRE, and Watson v. Ford Motor Co., 389 S.C. 434; 699 S.E.2d 169 (2010), the subject matter did not fall outside the realm of ordinary lay knowledge requiring an expert to testify; and (4) the probative value of her testimony is substantially outweighed by the prejudicial effect. R. 239, l. 5 – 241, l. 24.

The trial court determined Galloway-Williams' testimony was relevant and would assist the trier of fact, consequently ruling that she would be permitted to testify as an expert in "child abuse dynamics and disclosure." R. 243, ll. 2-16.

In the Presence of the Jury

Shauna Galloway-Williams is the executive director of the Julie Valentine Center, "a child abuse and recovery center." She testified that she is responsible for the overall administration of the agency and the clinical oversight of all their programs. She also conducts clinical services including forensic interviews and group counseling. She is a licensed professional counselor in the state of South Carolina and has a Master's Degree

in counseling and a Bachelor's Degree in psychology. R. 301, l. 9 – 302, l. 8. The vast majority of her training was specifically related to child abuse and sexual assault. She completed over one hundred and forty hours of skills-based training in the area of forensic interviewing and has been working in the field for over eleven years. R. 302, ll. 9-21.

The court qualified Galloway-Williams as an expert in “child abuse dynamics and disclosure” subject to defense counsel’s objection. R. 303, ll. 6-10.

Galloway-Williams testified that she had *never* met with Older Brother, Younger Brother, or Minor Friend and that she had *not* been provided with any of the incident reports. Her *only* knowledge about the case came from discussions with the Solicitor’s Office. R. 304, ll. 11-20.

Galloway-Williams explained to the jury that a delayed disclosure is a disclosure that does not happen directly after the abuse has occurred, but rather after some delay. R. 304, l. 21 – 305, l. 3. She testified that most child sexual abuse cases involve delayed disclosures, with research indicating somewhere *between seventy and eighty percent of children* are delayed in disclosing abuse, often not until adulthood. R. 305, ll. 4-8.

Galloway-Williams explained further that the number one reason given by children or adults for delaying disclosure is fear: fear of the perpetrator, including direct and indirect threats, and fear of the consequences of disclosing. The perpetrator may be someone who the child loves and trusts and that may make it harder for the child to disclose. R. 305, ll. 11-25. Another reason for delayed disclosure is the fact that younger children may not know what is happening to them is wrong or they may not have the language to express what has happened to them. R. 306, ll. 2-14.

Galloway-Williams explained to the jury "grooming" and "test touching."

"Grooming" is preparing a child to be abused by giving a child gifts or special attention.

It essentially helps build trust and a relationship with the child. R. 306, l. 15 – 307, l. 1.

"Test touching" is when a perpetrator moves from ambiguous touching to more specific touching. An abuser may start out by "touching a child's butt or pinching" the child to see how the child will react. R. 307, ll. 2-9.

Galloway-Williams claimed research showed that most children do not purposefully or intentionally disclose. Children do not usually make a conscious decision to tell someone what happened. Instead, most disclosures are accidental and the result of an adult noticing the child display unusual behavior or the child responding to an adult asking them questions. R. 307, l. 23 – 308, l. 11. Also, "An event could trigger a child to say something." R. 308, ll. 8-9.

Galloway-Williams next discussed partial disclosures. She explained that disclosure is a process and that one cannot expect a child to tell every single detail from the beginning because the child may not know what details interviewers, family members, or law enforcement need to know. She testified that over time, one would expect to get additional details or more information about the abuse and that it's rare to get a full disclosure the first time a child discloses. R. 312, ll. 8-11.

The expert went on further to explain that having a close and trusting relationship with the perpetrator can have a "very strong impact on whether that child feels like they can tell or not." The child usually does not want to end the relationship or friendship with the perpetrator if it is someone they love and trust. Children will sometimes "tolerate the abuse to maintain that relationship." R. 314, l. 1 – 315, l. 5.

Galloway-Williams' in-camera testimony was essentially the same as her testimony in front of the jury. See R. 210, l. 14 – 238, l. 25.

State's Closing Statement

The Assistant Solicitor thoroughly discussed Ms. Galloway-Williams' testimony throughout her closing statement *constantly* using it to explain all three complainant's behavior and bolster their testimony. For example, Older Brother purposefully disclosed after having a conversation on the bus with another girl, which was a "triggering event." Younger Brother and Minor Friend only disclosed after being questioned by law enforcement, which was an "accidental disclosure."

The solicitor explained, "There's certainly delayed disclosure. These events took place between 2004 and 2006, and they didn't tell until 2009." She reviewed the reasons stated by Galloway-Williams for delayed disclosure and indicated that many of these reasons were present among the complainants, specifically that Appellant was their friend. They loved and trusted Appellant who gave them special attention when no other adults in the home would and they likely felt fear in losing that relationship. R. 349, l. 19 – 350, l. 5.

The solicitor went on further to discuss "test touching" and how the complainants testified they would wrestle with Appellant who would touch them inappropriately. R. 350, ll. 6-14. She talked about partial disclosures and how children do not give all the details during the first disclosure which is what happened in this case as all three complainants' testimony was more detailed than their initial written statements. R. 350, ll. 15-22. "And that's exactly what Shauna said. With kids, if you don't ask the right questions, they don't know what to tell you." R. 351, ll. 1-3.

The Assistant Solicitor concluded that Appellant should be found guilty beyond a reasonable doubt on all counts. R. 352, ll. 12-19.

Discussion

Our Supreme Court recently reviewed the “distinct roles and separate responsibilities” of the jury and trial judges. The trial judge “serves as the gatekeeper” and decides what evidence is admissible under the Rules of Evidence. After the trial judge rules, the jurors “decide how much weight the evidence deserves.” Watson, 389 S.C. at 445, 699 S.E.2d at 174-175. The Court specified the following three-prong test for expert testimony:

[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions. Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. **First**, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. **Next**, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. **Finally**, the trial court must evaluate the substance of the testimony and determine whether it is reliable.

Id. at 446, 699 S.E.2d 169, 175 (internal citations omitted).

The first prong of the three-prong test in Watson was clearly not met in this case. As defense counsel argued at trial, “[T]his is not outside the realm of ordinary lay knowledge . . . the jury can make their own determination based on the witnesses’ own testimony. They’ve testified already as to why they delayed in disclosure, why they didn’t report it, why they reported it when they did. And so the jury can already make that decision based on what they’ve heard. They don’t need an expert to come on the

stand and help them resolve why they would do that.” R. 241, ll. 2-10; see also R. 240, l. 14 – 241, l. 2.

Defense counsel’s assertions at trial were correct. The complainants had thoroughly explained their actions and thoughts to the jury. No expert knowledge or opinions were required for the jury to understand or make its own determination as to why the complainant’s were delayed in disclosing and what caused them to eventually disclose. The complainants testified they were embarrassed, afraid to disclose, or blamed themselves. A juror can understand that a victim of sexual abuse may not disclose immediately because of fear, embarrassment, or an irrational desire to blame themselves. A juror can also understand that it is possible the more one discusses a past experience the more details one may provide, especially when being asked specific questions. The jury did not need expert testimony to explain this subject matter as it did not involve scientific, technical, or other specialized knowledge. See Rule 702, SCRE. Therefore, the trial judge abused his discretion by allowing Galloway-Williams to testify as an expert.

“The label of expert should be jealously guarded by the court and never loosely bandied about.” State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013). As our Supreme Court noted in Kromah, “although an expert’s testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts.” Id. This likely occurred in this case for there is a reasonable probability that the jury treated Galloway-Williams’ testimony with more significance because the court qualified her as an expert in “child abuse dynamics and disclosure.”

The *only* purpose of Galloway-Williams' testimony was to improperly bolster the complainants' testimony. The South Carolina Court of Appeals has recently held that it is improper for a witness to bolster the testimony of other witnesses. State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see also Smith v. State, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (finding a "forensic interviewer's . . . opinion testimony improperly bolstered the Victim's credibility").

In McKerley, the trial court allowed a witness to testify as an expert in "forensic interviewing and child abuse assessment." 397 S.C. at 463, 725 S.E.2d at 141. The expert had interviewed the alleged victim twice and concluded that both interviews were compelling for sexual abuse. She also determined that the victim's statements were consistent with other information she had on the case. Id. at 466, 725 S.E.2d at 142. Our Court of Appeals determined that there was no other way to interpret the language used in the expert's testimony other than to mean she believed the victim was being truthful. It further held, "In light of [the expert's] extensive inadmissible testimony bolstering the credibility of the victim . . . we cannot say the erroneous admission of [the expert's] testimony did not contribute to the jury's decision," therefore finding harmful error. Id. at 467, 725 S.E.2d at 143.

Our Supreme Court has also held that it is improper "for an expert to comment on the veracity of a child's accusations of sexual abuse." State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); see State v. Dawkins, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (finding therapist indicating he believed victim's allegations were genuine was improper); see also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App.

2000) (finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child).

In Jennings, Shauna Galloway-Williams, the *same* witness at issue in this case, interviewed the three alleged victims of sexual abuse and issued a separate report for each child that was admitted into evidence. She concluded in her reports that each child provided a compelling disclosure of abuse by the defendant and that the children provided details that were consistent with the background information received from their mother, the police report, and the other children. 394 S.C. at 476-481, 716 S.E.2d at 92-95. Our Supreme Court held that conclusions in the reports improperly vouched for the children's veracity and, thus, the trial court abused its discretion by admitting the reports into evidence. It further held the error was *not* harmless because there was no physical evidence presented at trial and, therefore, the children's credibility was the sole issue in the case. Id. at 94-95, 716 S.E.2d at 480.

It is clear from the record that the state in this case attempted to circumvent recent case law by presenting a witness who had *not met* with the complainants, but who was familiar with the case, and presumably the complainants' testimony and specific allegations, as a result of discussions with the Solicitor's Office. While Galloway-Williams did not meet with the complainants, the state still used her to *indirectly comment on the complainants' credibility* and provide greater weight to their testimony.

Galloway-Williams' testimony was very likely interpreted by the jury to express that they should believe the complainants because their behavior is typical, expected, and complies with the behavior of the majority of other victims of sexual abuse. For example, Galloway-Williams testified that between *seventy and eighty percent* of

children are delayed in disclosing abuse just like the complainants in this case. Her testimony strongly implied that because the complainants acted in the same manner as other victims of sexual abuse they must be telling the truth. Therefore, admitting her as an expert and allowing her to testify was error for “[t]he assessment of witness credibility is within the exclusive province of the jury.” State v. McKerley, 397 S.C. at 464, 725 S.E.2d at 141 (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)).

Not only was Galloway-Williams’ testimony used to bolster the complainants’ testimony, it was also highly prejudicial to Appellant and cumulative. Under Rule 403, SCRE, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence.” Because the complainants had already testified as to why they disclosed when they did and what caused them to disclose, among other details, Galloway-Williams’ testimony was merely cumulative. It was used solely by the state to reinforce and reiterate the reasoning for the complainants’ actions and behavior. See Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) (“Improper corroboration testimony that is *merely cumulative to the victim’s testimony*, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.”) (emphasis in original).

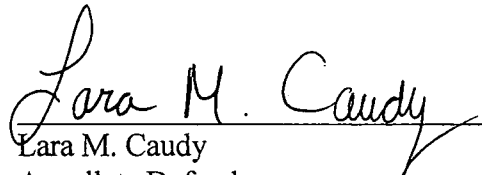
Galloway-Williams’ testimony was also prejudicial to Appellant because there was no physical evidence presented in the case and the sole issue was the credibility of the complainants. Because the complainant’s credibility was the most critical determination of this case and Galloway-Williams’ testimony was used solely to bolster their credibility, Appellant was clearly prejudiced and should be granted a new trial. See

Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 (“Because the children’s credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer’s] written reports was not harmless.”).

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed and this case remanded to the Pickens County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

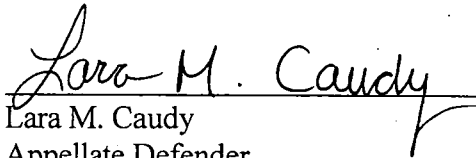
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This 20th day of February, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 20, 2014


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

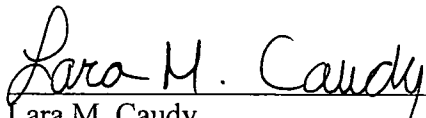
V.

DAMON T. BROWN,

APPELLANT

CERTIFICATE OF SERVICE

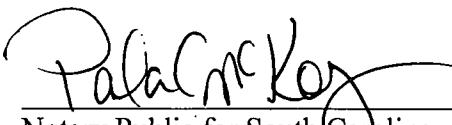
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2014.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012-213548

The State,

Respondent,

vs.

DAMON TYLER BROWN

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly allowed the State's expert witness on child abuse dynamics and delayed disclosures to testify regarding general behavioral characteristics of sex abuse victims, including multiple reasons child abuse victims delay disclosing the abuse.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On November 20, 2012, the Pickens County Grand Jury indicted Appellant Damon Tyler Brown on one count of first degree criminal sexual conduct with a minor, three counts of lewd act upon a child, and three counts of first degree sexual exploitation of a minor. The case was called for a jury trial on November 26, 2012, before the Honorable G. Edward Welmaker, Circuit Court Judge.

Prior to trial, Appellant moved to exclude the testimony of Shauna Galloway-Williams on the issue of delayed disclosure, contending her testimony would improperly bolster the victims' trial testimony. The State advised the court Ms. Galloway-Williams would be offered as an expert in counseling sexually abused children and their families, she did not interview the victims' in this case, and would only be testifying in general terms regarding the effects of sexual abuse on minor victims and the reasons for delayed or partial disclosures of the abuse. The court deferred ruling on the admissibility of Ms. Galloway-Williams' testimony until the State called her as a witness. (TT, pp. 14-18, Record on Appeal [R.], pp. 11-15).

The three minor victims were Older Brother, Younger Brother and Minor Friend.¹ During the time period the sexual abuse occurred, Appellant was involved with the sister of Older Brother and Younger Brother, and sometimes lived in their home.

Older Brother testified he was ten years old when he met Appellant, who was his sister's boyfriend. He thought Appellant was "really cool," they "played around a lot," and became "really cool friends." Their "playing around" included wrestling and the game "truth or dare," and Older Brother stated when they wrestled, Appellant would get

¹ For purposes of continuity, the State will use the same victim designations used in Appellant's brief.

"handsy," and touch him inappropriately around his "private parts." (TT., pp. 108-109; R., pp. 50-51).

Older Brother described the first time he and Younger Brother played "truth or dare" with Appellant. Older Brother was ten years old at the time, and Younger Brother was eight years old. Appellant told them they had to keep everything that happened in the game to themselves, or the one who told would be blamed for what happened. He then dared the brothers to compare the size of their penises. The boys removed their pants and underwear, and Appellant told them to play with their penises until they became erect. When their penises became erect, Appellant "measured" them by using his fingers. Appellant also showed the boys he had an erection too. (TT, pp. 110-117; R., pp. 52-59).

Older Brother described other incidents of abuse by Appellant, and testified the abuse of him and Younger Brother occurred almost daily until Older Brother was twelve. He also testified he saw Appellant abuse Minor Friend on one occasion. (TT, pp. 117-140; R., pp. 59-82).

Older Brother testified he did not report the abuse until he was fifteen. At that time, he told a school resource officer about the abuse, but did not provide a lot of details regarding Younger Brother and Minor Friend. He stated he did not provide those details because he thought Younger Brother, Minor Friend and "pretty much everybody" would hate him or be mad at him. (TT, pp. 141-144; R., pp. 83-86). On cross-examination, Appellant questioned Older Brother extensively about the delayed disclosure and lack of detail in Older Brother's first statement to police. (TT, pp. 145-177; R., pp. 87-119).

Younger Brother testified about Appellant's sexual abuse of him and Older Brother, as well as the incident involving Minor Friend. He said he did not disclose the abuse until after Older Brother disclosed it, and initially he did not tell law enforcement about what Appellant did to them because he was embarrassed. (TT, pp. 186-204; R., pp. 128-146).

Minor Friend testified about playing "truth or dare" with Appellant and the brothers when she was at the brothers' house. She saw Appellant "dare" the brothers to touch each other's penis. On one occasion, Appellant had the brothers and Minor Friend strip down to their underwear, and he made Older Brother "dry hump" Minor Friend while Appellant was fondling her, after which he made Minor Friend and Younger Brother go into the bathroom. Appellant then made Minor Friend take off her pants and instructed Younger Brother to stick his penis into her butt, which Younger Brother did after using lotion as a lubricant. (TT, pp. 225-231; R., pp. 167-173).

Minor Friend stated Appellant's only rule in the "truth or dare" game was never to tell anyone, and said if they broke the rule, Appellant would "get really mad and something bad would happen." She stated she thought if she told anyone, they would blame her for not stopping it, and they would look at her like "this disgusting little girl." (TT, pp. 232-233; R., pp. 174-175).

Minor Friend did not disclose the abuse until law enforcement came to her after Older Brother disclosed it. On cross-examination, Appellant questioned Minor Friend about the delayed disclosure, and specifically about her failure to disclose it when she talked to a detective about another sexual assault a few months after the abuse by Appellant occurred. Minor Friend stated she did not tell the detective about Appellant's

abuse because the detective did not ask her about it. (TT, pp. 245-262, 323-324; R., pp. 187-204, 245-246).

The circuit court then held an in-camera hearing regarding the admissibility of Ms. Galloway-Williams' expert testimony. After hearing the testimony, the court ruled Ms. Galloway-Williams was qualified as an expert in child abuse dynamics and disclosure, and her testimony was relevant and would assist the jury. The court noted that based on their responses during jury qualification, the seated jurors "would not have any prior knowledge from family members or otherwise as to sex abuse directly." (TT, pp. 277-311; R., p. 210-244).

Ms. Galloway-Williams subsequently testified before the jury that she is the Executive Director for the Julie Valentine Center, which is a child abuse and sexual assault recovery center. She is a licensed professional counselor in South Carolina, with a Bachelor's Degree in Psychology and a Master's Degree in Counseling. As of the date of trial, she had received over 140 hours of specialized training related to child abuse and sexual assault, and had worked for eleven years with children, adolescents and families impacted by child abuse and/or sexual assault. (TT, pp. 379-381; R., pp. 301-303).

After the court qualified her as an expert in child abuse dynamics and disclosure, Ms. Galloway-Williams testified she had never met with or interviewed the victims in this case, or reviewed any incident reports or statements associated with the case. The only knowledge she had of the case was from discussions with the Solicitor's Office. (TT, pp. 381-382; R., pp. 303-304).

Ms. Galloway-Williams stated research indicates between 70% and 80% of abused children delay disclosing the abuse into adulthood. She testified some of the

reasons children delay disclosing are: fear of consequences to themselves, the perpetrator or someone the child loves; the child's age; the child's relationship to the perpetrator; a lack of vocabulary to describe what happened to them; threats by the perpetrator; grooming by the perpetrator; and the perpetrator's normalization of the abusive conduct. (TT, pp. 382-385, 395-397; R., pp. 304-307, 317-319).

She further testified most disclosures happen accidentally, and disclosure is a process that results in disclosure of more details over time. When children suffer chronic abuse, it is difficult for them to sort out individual incidents, and they may not be able to tell what days, dates and times the incidents happened, or the order in which they occurred. (TT, pp. 385-393, 397-400; R., pp. 307-315, 319-322).

In the State's closing argument, the solicitor stressed that Ms. Galloway-Williams never met or interviewed the victims, and testified about symptoms of child abuse. The solicitor then related the symptoms, including delayed disclosure, to the individual victims in this case. (TT, pp. 433-437; R., pp. 348-352). In his closing argument, Appellant indicated Ms. Galloway-Williams was "just testifying as to her opinion on what she says may be science, and "some of these things may seem to apply to this case, some don't." (TT, p. 439; R., p. 354).

The jury convicted Appellant on all counts, and the circuit sentenced him to a total of 359 months incarceration. (TT, pp. 469-470, 479-480; R., pp. 383-384, 386-387).

ARGUMENT

The circuit court properly allowed the State's expert witness on child abuse dynamics and disclosures to testify regarding general behavioral characteristics of sex abuse victims, including multiple reasons child abuse victims delay disclosing the abuse.

Appellant asserts the circuit court erred in allowing Ms. Galloway-Williams' expert testimony regarding child abuse dynamics and delayed disclosure for two reasons.² First, he contends the substance of Ms. Galloway-Williams' testimony was not proper for expert testimony because it was not outside the realm of ordinary knowledge, and based on the victims' testimony, the jurors could make their own determinations regarding why the victims delayed disclosing Appellant's abuse. Second, he contends the sole purpose of Ms. Galloway-Williams' testimony was to bolster the victims' testimony. As support for these assertions, Appellant relies on inapplicable case law, while ignoring case law directly on point.

A. Standard of Review

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court, and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice, which occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 495 (2013). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. State v. White, 382 S.C. 265, 676 S.E.2d 684, 686 (2009).

²Appellant does not challenge Ms. Galloway-Williams' qualification to testify as an expert on child abuse dynamics and disclosure. His challenges go only to whether her expert testimony was admissible.

B. Necessity of Expert Testimony

Expert testimony concerning common behavioral characteristics of sexual assault victims, and the range of responses to sexual assault encountered by experts, is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct.App.1999). It assists the jury in understanding some of the aspects of victims' behavior, and provides insight into a sexually abused child's often strange demeanor. *Id.* See also State v. Lujan, 192 Ariz. 448, 967 P.2d 123 (1998) (when facts of case raise questions of credibility or accuracy that might not be explained by experiences common to jurors—like reactions of child victims of sexual abuse—expert testimony on general behavioral characteristics of such victims should be admitted).

Contrary to Appellant's assertions, the behavioral characteristics of child sex abuse victims is not a subject familiar to the common juror. As noted by the circuit court, based on the information provided during jury qualifications, the seated jurors "would not have any prior knowledge from family members or otherwise as to sex abuse directly." (TT, p. 310; R., p. 243).

During qualifications, the court asked if any member of the jury panel or their family members had been accused, arrested or convicted of an offense of child sex abuse, or had been the victim of such an offense. Six members of the panel indicated they had a connection with such offenses, and the court excused three panel members who stated it would affect their ability to be fair and impartial. Of the remaining three panel members, only two were called as potential jurors, and Appellant struck both of them. (TT, pp. 56-

64, 71-72; R., pp. 16-24, 29-30). Consequently, in part due to Appellant's jury strikes, none of the seated jurors had any experience, direct or indirect, with child sex abuse.

In the absence of experience dealing with child sex abuse, it is unreasonable to think the common juror would have sufficient knowledge regarding the impact of sex abuse on children and their behavior to have even a basic understanding of how abused children may respond to the abuse and/or the perpetrator. Therefore, an expert with specialized training and experience dealing with child sex abuse victims, such as Ms. Galloway-Williams, can assist the jury in understanding victims' behavior, particularly a delay in disclosing the abuse. See State v. White, 361 S.C. 407, 605 S.E.2d 540, 544 (2004) (expert testimony and behavioral evidence may be more crucial when the victims are children, whose inexperience and impressionability often render them unable to effectively articulate events giving rise to criminal sexual behavior).

In addition to South Carolina, numerous jurisdictions considering this issue found behavioral traits testimony is appropriate testimony for an expert. See Keri v. State, 347 S.E.2d 236, 238 (Ga. App. 1986) (finding expert testimony assisted jury in understanding why sexually abused children are secretive, why they were frightened, why they act out and become disciplinary problems, and why the children could not give specific dates for the acts they say were committed by the defendant); State v. Reser, 767 P.2d 1277, 1282 (Kan. 1989) ("There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury."); State v. Tonn, 441 N.W.2d 403, 405 (Iowa Ct. App. 1989) (expert testimony on characteristics of abused children was admissible because it could help the jury understand the delayed reporting symptom that

existed in sexually abused children); State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993) (“There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS³ identifies or describes behavioral traits commonly found in child-abuse victims.”); State v. Cardany, 646 A.2d 291 (Conn. App. Ct. 1994) (expert testimony on delayed disclosure was admissible in the prosecution’s case-in-chief, because it explains to the jury why a minor sex abuse victim might delay reporting incidents of abuse); State v. Carpenter, 556 S.E.2d 316 (N.C. Ct. App. 2001) (the nature of child sexual abuse places lay jurors at a disadvantage, expert testimony regarding the fact that delayed and incomplete disclosure is not unusual in cases of child abuse was appropriate, and the expert witness “was adequately qualified in the area of child sex abuse evaluations and interviews based on her extensive experience, training, and education, which included interviewing two thousand children in her career); Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. Ct. App. 2003) (expert testimony on delayed disclosure is admissible, and informs the jury that a victim’s failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused); McCoy v. State, 629 S.E.2d 493, 494 (Ga. Ct. App. 2006) (expert testimony about child sexual abuse syndrome, including testimony about delayed disclosure, was admissible); Kilby v. Commonwealth, 663 S.E.2d 540 (Va. Ct. App. 2008) (no error in admitting expert in “forensic interviewing, child sex abuse disclosure by children of sexual assault and recantation,” to provide expert testimony on delayed disclosure); State v. Perry, 218 P.3d 95 (Or. 2009) (expert testimony on the phenomenon of delayed disclosure by victims of

³ Child Sexual Abuse Accommodation Syndrome

child sexual abuse was admissible); State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011) (expert testified very broadly about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame, and she was qualified to do so based on her own practice and experience). *See also* John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) ("Psychological research demonstrates that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome." [footnotes omitted]). Thus, acceptance of such testimony is well established and wide spread.

Appellant relies on Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), and State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), as support for his contention Ms. Galloway-Williams' testimony was unnecessary, and improper bolstered the victims' testimony. Those cases involved forensic interviewers who had interviewed the victims, and their testimony in some way indicated they believed the victims' allegations of sex abuse. Therefore, those cases are factually and legally inapplicable to the instant case.

Similarly, Appellant's reliance on State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989), and State v. Dempsey,

340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), is misplaced. In Jennings, the South Carolina Supreme Court held the report prepared by a forensic interviewer (Ms. Galloway-Williams) regarding her interviews of the victims was inadmissible hearsay, and impermissibly vouched for the victims' credibility by concluding the victims "provided a 'compelling disclosure of abuse.'" 716 S.E.2d at 94. Both Dawkins and Dempsey involved testimony from therapists who were actually treating the victims, and their testimony clearly indicated they believed the victims were telling the truth. Dawkins, 377 S.E.2d at 302 (therapist testified his impression was that victim's symptoms were genuine); Dempsey, 532 S.E.2d at 308-310 (therapist testified children alleging sexual abuse were truthful 95% to 99% of the time, and he concluded victim was reliable).

In this case, Ms. Galloway-Williams was not testifying as a forensic interviewer, she never interviewed the victims, did not prepare a report, and did not express any opinion or belief regarding the credibility of victims' allegations in general, or these victims in particular.⁴ Therefore, the analysis and holdings in Jennings, Dawkins and Dempsey do not apply to this case.

While citing and relying on the cases discussed above, however, Appellant inexplicably makes absolutely no reference to several cases directly on point with the issue in this case: State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859, 863 (1993) ("both 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

⁴Her testimony regarding the percentage of sex abuse victims who delay disclosing the abuse merely referenced the results of various studies, and she did not express any opinion regarding application of those percentages to this case. (TT, pp. 382-383, 395-397; R., pp. 304-305, 317-319).

prejudicial effect”); Weaverling, 523 S.E.2d at 794 (citing Schumpert) (same); White, 605 S.E.2d at 544 (same). The failure to even mention Weaverling is particularly interesting because the circuit court specifically relied on Weaverling in ruling Ms. Galloway-Williams’ testimony was admissible.

Indeed, Weaverling is both factually and legally on point with the instant case. At issue in Weaverling was the admissibility of testimony from an expert in the field of sexual abuse victims. The defendant contended the testimony was irrelevant, and the prejudicial effect outweighed the probative value. 523 S.E.2d at 794.

As in this case, the expert in Weaverling did not meet or interview the victim, and her knowledge of the case was limited to discussions with the solicitor. Further, again as in this case, the expert did not testify specifically regarding the victim or the facts of the case. *Id.*

In holding the expert testimony was properly admitted, the South Carolina Court of Appeals found the testimony simply explained the effect of molestation on a person’s subsequent conduct. The Court further found such testimony is relevant, it helps the jury understand some aspects of victims’ behavior, and provides insight into a sexually abused child’s often strange demeanor. *Id.*

The South Carolina Supreme Court subsequently re-affirmed the admissibility of expert testimony and behavioral evidence in White. The victim in White was an adult, and the Court held behavioral evidence is relevant regardless of the victim’s age. The Court then noted expert testimony “may be more crucial” when children are victims, because their inexperience and impressionability often render them unable to effectively relay incidents of criminal sexual behavior. 605 S.E.2d at 544.

Ms. Galloway-Williams' testimony in this case is the type of expert testimony approved in Schumpert, Weaverling and White. Her testimony was relevant, and assisted the jury in understanding the evidence and determining a fact in issue. See Rule 702, SCRE (expert with specialized knowledge may testify if it will assist the trier of fact to understand the evidence or determine a fact in issue). Therefore, the circuit court properly exercised its discretion in allowing her testimony.

C. Bolstering

Appellant's contention Ms. Galloway-Williams' testimony was the State's attempt to circumvent case law by using her to indirectly comment on the victims' credibility is patently meritless. As discussed in depth above, Ms. Galloway-Williams' testimony was exactly the type of expert testimony contemplated and approved in Schumpert, Weaverling and White. Thus, the State complied with prevailing law rather than attempting to circumvent it.

"Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror." State v. Taylor, 404 S.C. 506, 745 S.E.2d 124, 128 (Ct.App. 2013) (*quoting State v. Douglas*, 367 S.C. 498, 626 S.E.2d 59 [Ct.App.2006], *rev'd in part on other grounds*, 380 S.C. 499, 671 S.E.2d 606 [2009]). Generally, bolstering is prohibited to prevent a witness from testifying whether another witness is credible, which is exclusively within the province of the jury. *Id.*

Appellant contends the jury "very likely interpreted" Ms. Galloway-Williams' testimony as expressing her belief the jury should believe the victims. This contention is

nothing more than rank speculation, with no support in the record. At no point did Ms. Galloway-Williams relate her testimony to the victims' allegations. Rather, she testified in very general terms regarding various reasons sex abuse victims delay disclosing the abuse, and how the disclosure process generally progresses.

Further, Appellant's claims that Ms. Galloway-Williams' testimony was "cumulative," and "used solely to bolster [the victims'] credibility," are specious. The testimony at issue involved general behavioral characteristics of sex abuse victims, and Ms. Galloway-Williams never related any of the characteristics to the victims in this case, or their testimony. It is undisputed Ms. Galloway-Williams did not talk to the victims at any time, and there is no evidence she even knew the substance of the victims' trial testimony. Thus, her testimony could not be "cumulative" to the victims' testimony.

The mere fact Ms. Galloway-Williams' testimony may have provided insight and context for the jury regarding the behavior of sex abuse victims and delayed disclosure in general, does not make it improper bolstering, even if some of her testimony ultimately corroborated parts of the victims' testimony. In fact, in his closing argument, Appellant's counsel told the jury some parts of Ms. Galloway-Williams' testimony "may seem to apply to this case, **some don't.**" (TT, p. 439; R., p. 354) (emphasis added).

Such is the nature of all expert testimony - parts of it tend to corroborate evidence submitted by the party offering the expert, including the party's own testimony, and in that regard, it could always be considered cumulative and bolstering to a certain extent. If corroboration becomes the equivalent of improper bolstering, however, expert testimony will virtually never be admissible in any case.

Ms. Galloway-Williams's testimony was not cumulative, and she did not, and could not, bolster the substance of the victims' testimony. The circuit court properly allowed her expert testimony regarding general behavioral characteristics of sex abuse victims and delayed disclosure, and its ruling should be affirmed.

CONCLUSION

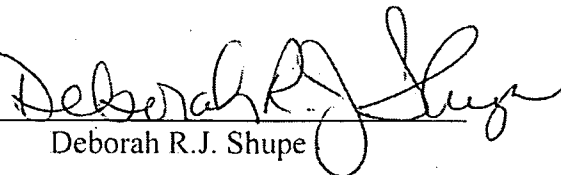
Based on the foregoing reasons, Respondent respectfully submits Appellant's convictions should be affirmed.

Respectfully submitted,

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February 20, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012-213548

The State,

Respondent,

vs.

Damon T. Brown,

Appellant.

CERTIFICATE OF COUNSEL

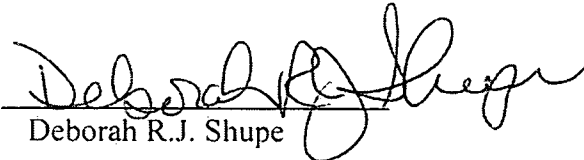
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and other Sensitive Information in Appellate Court Filings."

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Appeal from Pickens County
Honorable G. Edward Welmaker, Circuit Court Judge
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The State,

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Damon T. Brown,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 20th day of February .


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

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V.

DAMON TYLER BROWN

APPELLANT

APPELLATE CASE NO. 2012-213548

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ARGUMENT IN REPLY

The state's reliance on State v. Weaverling is misplaced following our Supreme Court's rulings in Kromah and Jennings and such testimony that bolsters that of the child witness is not admissible in this state.

Our Supreme Court made clear in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) that testimony from a forensic interviewer that bolsters the child's testimony is not admissible. The Court strongly held that *almost always the only purpose* of a forensic interviewer's testimony was to *bolster* the testimony of the child which is impermissible. Merely changing the name of the expert from a "forensic interviewer" to an expert in "child abuse dynamics and disclosure" does not change the Supreme Court's underlying holding about the inadmissibility of such testimony.

In fact, it is insulting to the Court to make such a thinly veiled attempt to circumvent the Supreme Court's unambiguous holding in Kromah. Galloway-Williams testified that *most* child sexual abuse cases involve delayed disclosures, specifically *between seventy and eighty percent of children* are delayed in disclosing abuse. R. 305, ll. 4-8. (emphasis added). *All* of her testimony from grooming to test touching to partial disclosures, in context, was *specifically meant for the facts of this case* and strongly implied that because the complainants acted in the same manner as other victims of sexual abuse they must be telling the truth. Evidence that bolsters a child's testimony with the use of such "statistics" and generalizations goes against long standing precedent *in this state* which holds such bolstering testimony is not admissible.

Additionally, the state relies heavily on State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999), which, as noted by the state, was relied on by the trial court in

admitting Galloway-Williams' testimony. See Brief of Respondent at 13-14. Weaverling is no longer good law after our Supreme Court's holding in Kromah and State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) and this Court's holding in State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), to the extent that it permits the state to apprise the expert of the details of the complainants' allegations and testimony, which would be the same information the expert would have received if she had interviewed the actual complainants, and use that information to vouch for the complainant's credibility.

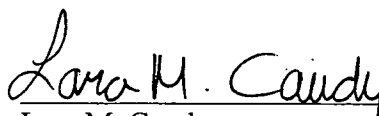
Again, not only was Galloway-Williams' testimony used to bolster the complainants' testimony, it was also highly prejudicial to Appellant. Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Galloway-Williams' testimony was prejudicial to Appellant because there was no physical evidence presented in the case and the sole issue was the credibility of the complainants. Because the complainants' credibility was the most critical determination of this case and Galloway-Williams' testimony was used solely to bolster their credibility, Appellant was clearly prejudiced and should be granted a new trial. See Jennings, 394 S.C. at 480, 716 S.E.2d at 94-95 ("Because the children's credibility was the most critical determination of this case, we find the admissibility of the [forensic interviewer's] written reports was not harmless.").

Therefore, the court erred in permitting Galloway-Williams to testify.

CONCLUSION

By reason of the foregoing argument, and the argument in Appellant's Initial Brief, Appellant's convictions should be reversed and this case remanded to the Pickens County Court of General Sessions for new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT.

This 20th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

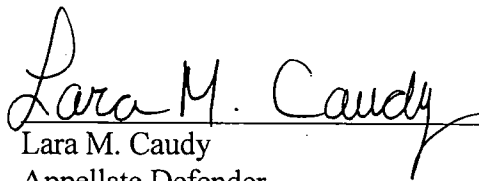
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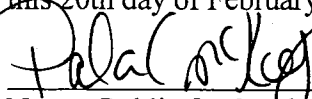
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2014.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.