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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Calhoun County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 2015-UP-228 (S.C. Ct. App. filed 5/6/2015)
10-GS-09-0069-0070

THE STATE,

RESPONDENT,

V.

JOHN EDWARD HAYNES,

PETITIONER

APPELLATE CASE NO. 2013-000468

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

John Edward Haynes, Appellant.

Appellate Case No. 2013-000468

Appeal From Calhoun County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2015-UP-228
Submitted April 1, 2015 – Filed May 6, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blitch, Jr., both of
Columbia; and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Cope*, 405 S.C. 317, 343, 748 S.E.2d 194, 208 (2013)

("Generally, the admission of expert testimony is a matter within the sound discretion of the trial court." (internal quotation marks omitted)); *id.* at 343-44, 748 S.E.2d at 208 ("Thus, we will not reverse the trial court's decision to admit or exclude expert testimony absent a prejudicial abuse of discretion."); *State v. Burton*, 302 S.C. 494, 499, 397 S.E.2d 90, 92 (1990) (recognizing an expert may give an opinion based on a hypothetical question, but the hypothetical question "should be based upon facts supported by the record"); *State v. Vaughn*, 268 S.C. 119, 125, 232 S.E.2d 328, 330 (1977) ("[V]oluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific."); *State v. Santiago*, 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct. App. 2006) ("[T]he diminished capacity defense is not recognized in South Carolina.").

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JOHN EDWARD HAYNES,

APPELLANT

APPELLATE CASE NO. 2013-000468

Appeal from Calhoun County

Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 2015-UP-228

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, the Court's opinion errs and does not address crucial portions of appellant's arguments.

First, the Court did not address appellant's argument that Dr. Salas should have been allowed to testify as an informational expert. The Court cited State v. Burton, 302 S.C. 494, 499, 397 S.E.2d 90, 92 (1990) for the proposition that experts may testify based on hypothetical questions, but that the questions must be based on facts in the record. In Burton, the pathologist was prevented from giving an opinion on the cause of death based on facts not in the record. Id. Contrast this with the cases cited by appellant, which allow an expert to simply provide information

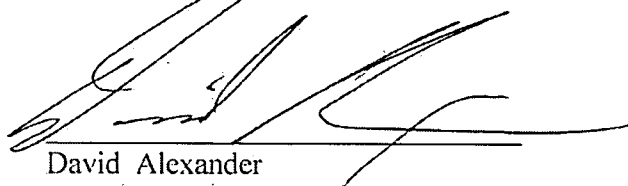
to assist the trier of fact. Jenkins v. Few, 391 S.C. 209, 220, 705 S.E.2d 457, 463 (Ct. App. 2010). Kilby v. Commonwealth, 663 S.E.2d 540, 547 (Va. Ct. App. 2008) (holding testimony regarding the general subject of delayed disclosure was admissible expert testimony). Indeed, this Court has previously ruled in child sex cases that experts who testify generally about subjects like delayed disclosure without examining the complainant or offering any opinions about the complainant are allowed. State v. Brown, 411 S.C. 332, 768 S.E.2d 246 (Ct. App. 2015). Without Dr. Salas' testimony, the jury had no information about automatism and the solicitor was free to argue that appellant's defense was "ludicrous." R. 199, ll. 1 – 4. Precisely because automatism is outside most people's common sense and general life experience is why the defense needed Dr. Salas to testify and explain that males can perform sexually while they are unconscious.

Furthermore, expert testimony about automatism was warranted because it was the complainant who claimed she had sex with appellant while he was unaware of what was happening. Two witnesses testified that complainant told them she had sex with appellant while he was unaware of what was happening. R. 113, l. 20 – 114, l. 5. R. 126, l. 5 – 127, l. 20. Respectfully, the Court's conclusion that Dr. Salas' testimony was not based on facts in the record is erroneous.

Finally, the Court misapprehended appellant's argument concerning intent. While the Court is correct that diminished capacity is not a defense, appellant's defense was no capacity. Intent is an element of the crime. If appellant was unconscious, then he could not have the requisite intent. Finding otherwise would make this a strict liability offense and negate the State's burden to prove intent beyond a reasonable doubt.

Excluding Dr. Salas' testimony regarding automatism deprived appellant of the opportunity to present a complete defense. The issue of intent was for the jury, and without expert testimony about automatism, the jury could not render a reliable verdict. The Court should re-examine these errors in its opinion, grant rehearing, and reverse.

Respectfully submitted,



David Alexander
Appellate Defender

This 20th day of May, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

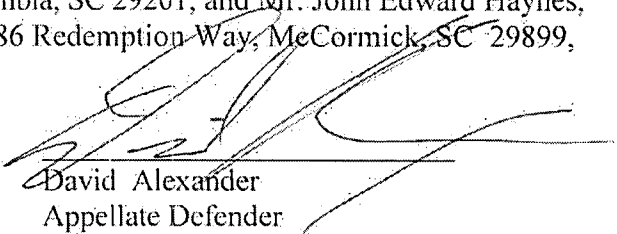
JOHN EDWARD HAYNES,

APPELLANT

APPELLATE CASE NO. 2013-000468

CERTIFICATE OF SERVICE

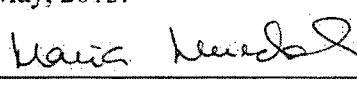
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. John Edward Haynes, #354464, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 20th day of May, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of May, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

5

7

The South Carolina Court of Appeals

The State, Respondent,

v.

John Edward Haynes, Appellant.

Appellate Case No. 2013-000468

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.

JUN 23 2015

Paul D. Berman

J.

John E. Haynes

J.

John S. Besten

J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
William M. Blich, Jr., Esquire
David Michael Pascoe, Jr., Esquire
The Honorable Diane Schafer Goodstein

FILED

June 22, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CALHOUN COUNTY

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN EDWARD HAYNES,

APPELLANT

APPELLATE CASE NO. 2013-000468

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2010-GS-09-00069

COUNTY OF CALHOUN

2010-GS-09-00070

STATE OF SOUTH CAROLINA,

-vs-

JOHN EDWARD HAYNES,

Defendant.

February 25-28, 2013

B E F O R E:

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Henry P. Young
Court Reporter

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February 25-26, 2013

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1 THE COURT: Good morning, ladies and
2 gentlemen. At this time I am going to call on Mr.
3 Stacey, I'm going to ask him to please swear you in
4 as the jury in this case.

5 Mr. Stacey.

6 THE CLERK: Thank you, Your Honor, if it
7 please the Court.

8 (Jury Sworn).

9 THE CLERK: Thank you. Be seated.

10 THE COURT: Now, ladies and gentlemen, before
11 we begin this trial I want to tell you that this
12 trial probably will be different from what you
13 might expect. Many people do not have the chance
14 to attend actual court sessions as you are now
15 doing and may think from watching television or
16 reading books or perhaps movies that trials are
17 always full of high drama, intense action and
18 riveting circumstances and then there is a break
19 for a commercial. Well, all of these things are
20 true at times. Of course a trial is not for
21 entertainment. It is, some people say this, a
22 fundamental part of our democracy, a search for the
23 truth and an effort to be sure that justice is done
24 between the parties at the bar.

25 Searching for the truth and making sure that

1 justice is done is often slow, deliberate and
2 repetitive, the absolute opposite of what you may
3 have seen on television or movies or read in books.

4 Ladies and gentlemen, this courtroom is a
5 place of honor dedicated to the protection and the
6 preservation of all citizens' rights through what
7 many have called and I submit to you the greatest
8 system of justice that people have ever created.

9 Ladies and gentlemen, these attorneys who are
10 appearing before you are advocates for the parties
11 they represent but first and foremost they are
12 officers of the court and they are sworn to uphold
13 the integrity and the fairness of our judicial
14 system and they will help you in your search for
15 the truth. You should expect them to be
16 professional, competent and ethical in the
17 representation of their client's interest.
18 Remember that you now have taken an oath to try
19 this case and to reach a fair and just verdict and
20 you are also expected, and I know you will be, to
21 be professional, reasonable and ethical.

22 Ladies and gentlemen, I want to thank you for
23 accepting this most important responsibility of
24 jury service and for your contribution to our
25 system of justice. It is no small thing to be a

1 juror, it is critical, it is essential to our
2 democracy and to our life.

3 Ladies and gentlemen, as you now know, the
4 case that we are about to try is the State of South
5 Carolina versus Mr. John Edward Haynes. Ladies and
6 gentlemen, I may from time to time refer to him as
7 the defendant.

8 What I will now say to you is intended to
9 serve as an introduction to the trial of this case.
10 These remarks are not a charge on the law in this
11 case, these remarks are intended to serve as
12 introduction. I will instruct you regarding the
13 law applicable to this case. Once you have heard
14 all the evidence, the arguments of counsel, I will
15 then instruct you on the law applicable to this
16 case and then you will deliberate. The reason that
17 I am making these preliminary remarks to you is
18 because I want you to have a road map, I want you
19 to know what is happening at every stage of the
20 trial.

21 Ladies and gentlemen, the defendant in this
22 case, Mr. Haynes, has been accused of criminal
23 sexual conduct with a minor in the second degree
24 and incest, and he has pled not guilty to each of
25 those indictments. The State therefore has the

1 burden of proving each of the elements of each of
2 these charges beyond a reasonable doubt.

3 Ladies and gentlemen, it will be your duty to
4 determine whether or not the State has met its
5 burden. You will make your determination as to
6 each of these indictments independently and you
7 will consider them separately. Your purpose as
8 jurors is to find and to determine the facts.

9 Under our system of justice you are the only,
10 the sole judges of the facts in this case. If at
11 anytime, ladies and gentlemen, I do anything
12 regarding the facts, if I make a gesture or if I
13 say something and you think that that is a comment
14 on or a gesture with regard to the facts I ask you
15 in advance please disregard that because I have no
16 opinion regarding these facts. The law doesn't
17 allow me to have an opinion, I don't have an
18 opinion. It might have been too much lunch or
19 something but I can assure you that I will make no
20 comment intentionally with regard to the facts. If
21 it looks like I did please disregard it because I
22 have no opinion regarding these facts. I know that
23 that is a matter solely for you to determine.

24 You are to determine the facts from the
25 testimony that you are going to hear, the sworn

1 testimony that you're going to hear and from other
2 evidence which will be introduced into court and of
3 course from any inferences which you feel may
4 properly be drawn from the evidence. Again, the
5 evidence in this case will be from sworn testimony
6 and from exhibits which are admitted into evidence.

7 It is especially important that you perform
8 your duty of determining the facts diligently and
9 conscientiously because, you see, under our system
10 of justice there is ordinarily no way to correct an
11 erroneous determination by a trial jury.
12 Determinations of facts by a trial jury are facts
13 for all time.

14 On the other hand and with equal inferences,
15 the same law that makes you the judges of the facts
16 makes me the judge of the law. The law as given to
17 you by the Court is the only law that you may
18 consider. You must accept and you must follow the
19 law even though you may disagree with it. Now,
20 maybe that would be a wonderful topic of
21 conversation for you to take up with your
22 legislature at some later day but for our system to
23 work correctly you must accept and apply the law
24 exactly as I give it to you.

25 Now, the way that your task will work is that

1 you will find the facts as you find them to be from
2 the evidence presented in this trial and then once
3 you have found the facts as you have found them to
4 be you will take the law as I give it to you and
5 you will apply it to those facts and that is how
6 you will reach your verdict, which will be a true
7 and just verdict under the oath that you just took
8 as jurors.

9 Now, until I advise you to begin your
10 deliberations you must not discuss this case with
11 anyone, including your fellow jurors, your friends
12 or family members or anyone involved in this case.
13 After the case is submitted to you, and I promise
14 you there will be no question in your mind when
15 that time comes, you must discuss it only in the
16 jury room with your fellow jurors.

17 The attorneys and the parties in this case
18 have been advised that they are not to talk to you
19 at all so if you see anyone involved in the case
20 and they don't even say hello they are not being
21 unfriendly, they are simply following my
22 instructions.

23 Ladies and gentlemen, it is critical, it is
24 important that you keep an open mind and that you
25 not decide any issue in this case until all the

1 evidence has been presented, the parties have made
2 their closing arguments and I have instructed you
3 regarding the law applicable in this case.

4 It is your solemn responsibility to determine
5 whether Mr. Haynes is guilty or not guilty and your
6 verdict must be based solely on the evidence that
7 is presented to you in this trial and on the law as
8 I instruct you at the close of trial.

9 Now, in just a moment the State will have an
10 opportunity to present what is called an opening
11 statement to you in which one of the attorneys for
12 the State will have an opportunity to discuss with
13 you what they believe the issues are in this case.
14 Once the State has had an opportunity to make their
15 opening statement, likewise Mr. Haynes through his
16 lawyers will have an opportunity to make an opening
17 statement as well and likewise to discuss with you
18 what they believe the issues are in this case.

19 Now, ladies and gentlemen, the opening
20 statements are not true arguments. Those arguments
21 will come at the conclusion of the case and I want
22 to tell you this. I want to tell you that what the
23 attorneys say is important and I urge you to give
24 them your undivided attention but, ladies and
25 gentlemen, please keep in mind that what the

1 attorneys say is not evidence. The evidence comes
2 from the witnesses in the case and from the
3 exhibits which are admitted into evidence.

4 Now, ladies and gentlemen, once the opening
5 statements are finished then each side will have an
6 opportunity to present evidence to you and that
7 evidence will take or may take many forms. There
8 will be sworn testimony, it may be photographs or
9 documents and the like. Irrespectively of what the
10 evidence is, I urge you to give the evidence in
11 this case, the testimony in this case your
12 undivided attention.

13 Now, ladies and gentlemen, in deciding what
14 the true facts are in this case you must decide
15 whether or not the testimony of the witness and
16 witnesses is believable. It will be my
17 responsibility to rule as a matter of law as to
18 whether certain testimony or evidence is admissible
19 at all or not but once evidence is admitted,
20 whether witness testimony is admitted, whether or
21 not you believe it, the weight you give to it is a
22 matter solely for you to determine.

23 In deciding whether to believe witnesses you
24 have the right to consider any interest or bias or
25 prejudice of any witness, the opportunity for the

1 witness to have seen the matters and things about
2 which the witness may testify and the way the
3 witness acts on the witness stand. You have the
4 right to consider anything that is in the record
5 that will help you evaluate the testimony of the
6 witnesses. That means that it is your duty to pay
7 close attention to these witnesses, observe them,
8 listen to them and pay close attention to the
9 attorneys and the Court. Please do not let your
10 thoughts wander but give the strictest attention to
11 these matters so that at the conclusion of all the
12 testimony, after the argument of counsel and the
13 charge on the law by the Court you will then be in
14 a position to determine what the true facts are and
15 to apply the law to those facts and thus render a
16 true and just verdict.

17 Now, ladies and gentlemen, I want to go over
18 with you another process that no doubt you will
19 experience, because I want you to understand what
20 is going on. Ladies and gentlemen, you are
21 learning that a trial is a structured activity and
22 as in sports or business or any other structured
23 activity there are certain rules that both sides
24 must obey when presenting evidence and these rules
25 have a definite purpose. Their purpose is to

1 ensure that the information that you receive is the
2 most trustworthy and reliable information that is
3 available.

4 Now, these rules have a name. They are
5 called the rules of evidence. Imagine that. Now,
6 ladies and gentlemen, under our rules of evidence
7 there is a procedure and there is a duty for
8 counsel to call a possible violation of the rules
9 of evidence to my attention. The way that our
10 rules allow them to do that is by saying objection.

11 Now, ladies and gentlemen, because that is
12 the only means that our rules give these attorneys
13 to raise those possible matters, possible
14 violations of the rules to my attention, you must
15 not hold an attorney's objection against him or her
16 and their client nor should you conclude from my
17 ruling on the objection that I favor one side or
18 the other, because I can assure you I do not. This
19 is simply the means that our rules give them to
20 raise a possible violation of the rules and they
21 have a duty to do that.

22 Now, ladies and gentlemen, I want to talk to
23 you about the way that I'm going to handle
24 objections so you will understand what is going on
25 and why. Sometimes the lawyers will stand and they

1 will say objection and they will give me a word or
2 two, they will say, for example, objection,
3 hearsay. And from that I will know that their
4 objection, that they are objecting and their ground
5 for the objection and I will be able to rule on the
6 matter. If I say that the objection is sustained
7 that means that that piece of evidence or testimony
8 that is being offered cannot be received or
9 received in that fashion. If I say that the
10 objection is overruled that means there isn't a
11 violation of the rules of evidence and that bit of
12 testimony or evidence may be received.

13 Now, sometimes I may need to have counsel
14 approach and there may come a time when I will need
15 to ask you to step to your jury room, so I want you
16 to understand exactly what is happening. If I need
17 to ask counsel to approach it is because I need to
18 hear just a few words from them to help me be able
19 to rule on that matter. If I ask you to step to
20 the jury room it is because I need to hear a little
21 bit more and I wouldn't want my conversations with
22 the attorneys to be construed as being a comment on
23 the facts, so the reason I ask the lawyers to
24 approach or that I will need to ask you to step to
25 your jury room, which will be minimal, I will

1 assure you, as it possibly can be, is just to allow
2 me the ability to make my determination and have a
3 bit of conversation and give me a little bit of
4 time to basically do that work I must do. It is
5 certainly not these folks trying to keep anything
6 from you, it is just to let me do the work I need
7 to do to make my ruling.

8 Now, ladies and gentlemen, oftentimes,
9 rightfully so, jurors want to know about the taking
10 of notes. I want to talk about that with you
11 because I'm going to ask you not to take notes,
12 understanding there are people in this world who
13 are note takers and I'm one of them. Sometimes it
14 helps me be able to listen to take a note or two.
15 Well, let me tell you why I'm going to ask you to
16 refrain from taking notes. The criticism of taking
17 notes is that it is so important that you observe
18 the witnesses when they testify, that there is a
19 real concern that a juror can miss something as it
20 is coming from the witness stand because they are
21 taking a note.

22 Other concerns about taking notes is that if
23 one juror has a note and another juror doesn't have
24 a note during the deliberations that there can be
25 an undue amount of influence placed upon the note.

1 Now, let me just tell you, after fifteen
2 years here is where I have come to as a policy
3 matter. When trials are expected to be of a
4 relatively short duration, and I am informed that
5 this matter is expected to be a relatively short
6 duration, I ask jurors just listen attentively,
7 observe the witness and not take notes and just
8 trust their memory. When trials are going to be a
9 longer duration, then I have, we may have elaborate
10 notes and, you know, we provide paper and pen and
11 pad and all of that and we go through all that.

12 Now, I have commented on the anticipated
13 duration of this trial. I want you to know that
14 this trial is of the utmost importance, it is of
15 the utmost importance to the State, Mr. Haynes and
16 to our system. The only reason that I mentioned
17 the anticipated duration is that I didn't want you
18 to be concerned about my instruction not to take
19 notes and I wanted you to understand fully why.

20 Now, ladies and gentlemen, in order that I
21 preserve everyone's rights I'm going to ask of
22 these parties if they have any objection or
23 addition to my preliminary comments to you.

24 From the State?

25 MS. FORD: No objection from the State.

1 THE COURT: From the defense?

2 MR. WISE: No, Your Honor. Thank you.

3 THE COURT: Ladies and gentlemen, at this
4 time I ask that you please draw close as we listen
5 to the opening statements of these attorneys.

6 On behalf of the State?

7 MR. BELL: Thank you, Your Honor. If it
8 please the Court.

9 Ladies and gentlemen of the jury, incest and
10 criminal sexual conduct with a minor in the second
11 degree, those are the crimes that the State has
12 charged the defendant John Haynes with in this
13 case. The State charged this because of conduct
14 that occurred several years ago with his
15 stepdaughter Minor who is in the
16 courtroom and who will testify.

17 We believe that somewhere in the early part
18 of January, 2008, probably other times earlier but
19 the time that we can prove, one of which was in the
20 early part of January of 2008 he had sexual
21 intercourse with Minor who was fifteen
22 years of age at the time. We can prove this
23 because on , 2008, E.W. was
24 born some nine months later, and then again in the
25 later part of January of 2009 through until about

1 the 1st of March, 2009, when Minor was sixteen
2 they had sexual intercourse again. They may have
3 had other times but we can prove this particular
4 time, again because in the latter party of ,
5 2009, J.W. was born.

6 Once these children had been born to Minor
7 they got to wondering who the father was
8 and then upon the investigation it went towards
9 John Haynes, the stepfather, the husband of
10 Minor 's mother Gail Haynes.

11 And after he was arrested and charged with
12 these crimes the State took DNA samples from Mr.
13 Haynes, from E.W. , from J.W. ,
14 from Minor and they were tested and it
15 was found that he was the father of those two
16 children and that is why we're here, ladies and
17 gentlemen. We're here to uphold our laws and that
18 is my duty.

19 My name is Harrison Bell, as you have heard,
20 and along with Sarah Ford we represent the State of
21 South Carolina, we're Solicitors, we're prosecutors
22 and it is our duty to prove and to bring people to
23 court and prove the crimes that have been charged
24 against them. We represent the State of South
25 Carolina, we represent Calhoun County and that is

1 why we're here today.

2 And as you have heard from Her Honor Judge
3 Goodstein it is our duty and it is our requirement
4 under the law that we have the burden of proving
5 criminal charges against defendants who have been
6 charged. They have nothing to prove, he has
7 nothing to prove, he sits there innocent and he
8 sits there innocent until we prove to you that he
9 is guilty of the crimes charged. That is a
10 fundamental concept in our criminal law in South
11 Carolina and in these United States and we must
12 prove each element of each crime beyond all
13 reasonable doubt in order to convict. You will be
14 charged that later on in the trial as Her Honor
15 Judge Goodstein told you, and as I said, that is
16 the fundamental concept of criminal law in these
17 United States.

18 Now, what is a reasonable doubt? Well, what
19 I will tell you is the State does not have the
20 burden of proving a person guilty beyond all doubt
21 or beyond, you may have heard in some old shows a
22 shadow of a doubt. It is reasonable doubt. We
23 don't have to prove a person 100 percent guilty.
24 It is a substantial doubt. We've got to prove,
25 there is a term, if you have a firm conviction they

1 are guilty of the crimes charged, and that is the
2 kind of standard that you will hear about as to
3 what a reasonable doubt is.

4 You know, as I stated to you, he has been
5 charged with two crimes. He has been charged with
6 the crime of incest and the crime of criminal
7 sexual conduct with a minor in the second degree,
8 and there are elements on each of those crimes and
9 I want to go over them with you a moment.

10 First of all with incest, this is the law,
11 Code Section 16-15-20, it states that any person
12 who shall have carnal intercourse with each other
13 within the following degrees of relationship, to
14 wit, and it talks about a man with various
15 relations of his and then a woman. What we're
16 concerned with in this particular case is a man
17 with his wife's daughter, or stepdaughter, and that
18 is in the statute in Section One there, and as I
19 stated, Minor was his wife's daughter.

20 And the other crime -- and we must prove
21 that, we must prove there was carnal intercourse,
22 we must prove there was sexual intercourse with his
23 wife's daughter, that is what we have to prove,
24 those elements beyond, each element beyond all
25 reasonable doubt.

1 And he has also been charged with criminal
2 sexual conduct with a minor in the second degree,
3 which is South Carolina Code 16-3-655. Now, there
4 are two sections with this. It says a person is
5 guilty of criminal sexual conduct with a minor in
6 the second degree if, and there is Section One
7 which we're really not concerned with in this case,
8 Section Two is what we're concerned with. The
9 actor engages in sexual battery, we say sexual
10 intercourse, which is sexual battery in South
11 Carolina, with a victim who is at least fourteen
12 years of age but who is less than sixteen, as we
13 stated on one occasion that we can prove and there
14 were other occasions but the one we can prove is
15 that she was fifteen years of age and that he is
16 older than the victim, that he is in a position of
17 familial or custodial care of the victim such as a
18 parent, and those are the elements that we must
19 prove in this case for criminal sexual conduct with
20 a minor in the second degree.

21 Now, ladies and gentlemen, as you have heard,
22 the State, we use various forms of evidence to
23 prove these charges. One of which you will always
24 know is testimony from this witness stand. You get
25 to listen to people called by the State to come up

1 and testify about what happened and what they know
2 about this particular case. Some of it may be kind
3 of boring, it may be a police officer who touched a
4 particular piece of evidence, that should be quick,
5 but it is boring, it is what the State has to do
6 because we have to prove the case.

7 And what you have to do, ladies and
8 gentlemen, as you heard, is when these witnesses
9 get up there you must determine their credibility,
10 you must check out their credibility, their
11 believability, are they lying or are they not
12 lying, are they telling the truth. That is your
13 job and you are probably wondering how do you do
14 that. Well, I wish I could tell you how to do that
15 but I can't, nobody can. All I can suggest to you
16 ladies and gentlemen you do like you do every day
17 in your life with your family, with friends or even
18 with strangers. When somebody comes up and talks
19 to you you listen to them, you watch them, you look
20 at their expressions and you determine whether
21 somebody is telling you the truth or not in your
22 everyday life, whether it's believable or not, and
23 that is all I can ask or anybody in this courtroom
24 can ask of you is how to do it. You haven't
25 checked your common sense or your everyday lives at

1 the door, you bring it in here with you, with your
2 experiences, and you can use those experiences to
3 help you out to determine credibility of witnesses.

4 We will also present some exhibits or
5 physical evidence, we call it, too. You get to
6 take those as well and as Her Honor told you, you
7 take the testimony that you have heard, the
8 believable testimony that you have heard, you take
9 any exhibits that have been offered and you take
10 them back in your jury room and you take the law
11 that she charges you and you put it together and
12 you deliberate and you come up with a verdict, a
13 word which simply means to speak the truth. That
14 is all we're after here, ladies and gentlemen, is
15 the truth.

16 Now, the only thing that I can ask of you,
17 that we can ask of you is to listen carefully. As
18 stated, this is an important day in court for both
19 parties, for the State of South Carolina here to
20 uphold the law, for Minor who was victimized by
21 her stepfather. It is also important for him
22 because his liberty is at stake in this trial and
23 all we ask is that you listen carefully and
24 consider all the evidence carefully.

25 I believe, ladies and gentlemen, in the end

1 that the State of South Carolina will present you
2 with more than enough evidence to find John Haynes
3 guilty of incest and guilty of criminal sexual
4 conduct in the second degree with a minor.

5 Thank you.

6 THE COURT: Thank you so much, Mr. Bell.

7 Mr. Mellard.

8 MR. MELLARD: I tend to be one of these get
9 to the point kind of persons so I'm just going to
10 go ahead and get to the point. Mr. Haynes is not
11 guilty, all right? The State has to prove two
12 things to you. First of all they have to prove the
13 act, that is all the stuff you saw on the chart
14 here, they have to prove that he did a voluntary
15 act, that is the first thing.

16 The second thing they have to prove is what
17 is called criminal intent, that he intended to do
18 what they are saying he did. So, two things, they
19 have to prove the act and they have to prove
20 intent.

21 Now, a couple days ago we were out to lunch
22 and one of the attorneys in my office was telling
23 me about her mom and apparently when she was a
24 little kid she was sitting at the kitchen table
25 early in the morning and her mom came in from the

1 bedroom, went to the cupboard, got out a box of
2 cereal, came and put it on the kitchen table, went
3 to the refrigerator, got out some milk, put it on
4 the table, then she opened up the box of cereal,
5 poured it on the floor, opened up the milk, poured
6 it on the floor, turned around, went back to the
7 bedroom, didn't see her for two more hours. All
8 right. When she came out she didn't remember
9 pouring that stuff on the floor, she had no intent
10 to pour that cereal on the floor. Now, that is
11 kind of easy to figure out what happened there
12 because she was obviously sleep walking.

13 Now, what you all have got to figure out here
14 is what happened here and as you have heard, that's
15 from the witness stand, so I won't go into all that
16 kind of stuff about what you have heard from the
17 Judge and what you have heard from the Solicitor.
18 But the important thing to note is that John Haynes
19 is not guilty. The testimony is going to show that
20 he did not do a voluntary act and the testimony is
21 going to show that he had no criminal intent. Mr.
22 Haynes is not guilty and I'm confident when this
23 trial is over you're going to return a verdict not
24 guilty.

25 THE COURT: Thank you, Mr. Mellard.

1 All right, call your first witness, please.

2 MS. FORD: Thank you, Your Honor. If it

3 please the Court, the State calls Minor .

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1 Minor , after being first duly sworn,
2 testified as follows:

3 THE CLERK; Please state your full name for
4 the record.

5 THE WITNESS: Minor .

6 THE CLERK: Thank you so much.

7 THE COURT: What I'm going to ask you to do
8 is state your full name for the record again.

9 THE WITNESS: Minor .

10 THE COURT: Pull that a little closer. The
11 acoustics in this courtroom are interesting. Would
12 you try that one more time?

13 THE WITNESS: Minor .

14 THE COURT: Very well. Now, ladies and
15 gentlemen, if you have difficulty hearing her raise
16 your hand or signal, if something is shown to you
17 at some point and you have difficulty seeing,
18 because I want you to be able to see and hear
19 everything, so if you have trouble hearing, if you
20 have trouble seeing, please just raise your hand.

21 And, Minor , see that young lady way
22 on the end of our jury box?

23 THE WITNESS: Uh-huh (Affirmative).

24 THE COURT: I need you to have enough volume
25 with the microphone so she can hear you.

1 THE WITNESS: Okay.

2 THE COURT: Thank you so much. Your witness,
3 Miss Ford.

4 MS. FORD: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. FORD:

6 Q Good morning, Minor .

7 A Good morning.

8 Q How old are you?

9 A Twenty.

10 Q When was your date of birth?

11 A .

12 Q And what do you do?

13 A I go to school at OCT and I work part time.

14 THE COURT: I'm having trouble hearing.

15 Bring it a little bit closer. Say that again.

16 Q Try that again, what do you do?

17 A I go to school at OCT and I work part time at
18 the landfill.

19 Q What are your future plans, what do you want
20 to do when you finish school?

21 A Become a cosmetologist.

22 Q Where do you live?

23 A Road, Fort Motte.

24 Q Is that here in Calhoun County?

25 A Yes, ma'am.

- 1 Q Who do you live with?
- 2 A My mom, my two kids and my stepbrother.
- 3 Q And how old are your children?
- 4 A Four and three.
- 5 Q What are their names?
- 6 A E.W. and J.W.
- 7 Q Did anyone else used to live with you?
- 8 A Yes, ma'am.
- 9 Q Who?
- 10 A John Haynes.
- 11 Q Who was John Haynes to you?
- 12 A My stepfather.
- 13 Q Okay. How long had you known him?
- 14 A Since I was a baby.
- 15 Q So, you have known him --
- 16 A All my life.
- 17 Q All your life?
- 18 A Uh-huh.
- 19 THE COURT: Is that yes?
- 20 A Yes.
- 21 THE COURT: The only reason that I stopped
- 22 you is because when you say uh-huh or huh-uh, I
- 23 know Miss Ford probably knows what you mean but I
- 24 need our record to be clear.
- 25 THE WITNESS: Okay.

1 THE COURT: Thank you.

2 BY MS. FORD:

3 Q Did you think of John Haynes as a father?

4 A Yes, ma'am.

5 Q Did your relationship ever change with him?

6 A Yes, ma'am.

7 Q From a father to something else?

8 A Yes, ma'am.

9 Q When was that?

10 A When the sexual conduct started.

11 Q Okay. How old were you when that started?

12 A Thirteen.

13 Q Well, what happened, what would he do?

14 A Well, it all started when I used to take

15 baths and he would take one with me and I didn't

16 feel comfortable about it.

17 Q Let me stop you, Minor . You said he would

18 take baths with you. What do you mean?

19 A He would get in it with me and try to show me

20 how to wash but, you know, I already know how to do

21 that, so I felt uncomfortable about the situation

22 and I told my mother about it and she confronted

23 him and she told my family members about it and

24 they got on him about that and he had to stop.

25 Q How old were you when he would get in the

- 1 bath with you?
- 2 A I was like twelve or thirteen at the time.
- 3 Q Okay. After you told your mother did John
- 4 Haynes stop getting in the baths with you, showing
- 5 you how to wash?
- 6 A Yes, ma'am.
- 7 Q Okay. Did he ever touch you ever again?
- 8 A Yes, ma'am.
- 9 Q What did he do?
- 10 A He would touch my privates.
- 11 Q Do you mean your breasts?
- 12 A Yes, ma'am.
- 13 Q Your genitals?
- 14 A Yes, ma'am.
- 15 Q Did he ever force you to have sexual
- 16 intercourse?
- 17 A Yes, ma'am.
- 18 Q When did this happen?
- 19 A It started when I was fifteen, yes, fifteen.
- 20 Q Okay. Where would this happen?
- 21 A At home.
- 22 Q Okay, where was your home, what is the
- 23 address of your home?
- 24 A Road.
- 25 Q That's in Fort Motte?

1 A Yes, ma'am.

2 Q And you said that happened at home. Was
3 anyone else home when that happened?

4 A No, ma'am.

5 Q Okay. What did you say to John Haynes when
6 he would do this?

7 A I told him I knew it wasn't right because he
8 was married to my mother and I was only young and
9 he was supposed to be my father and I felt very
10 uncomfortable with it.

11 Q Did he ever say anything to you or threaten
12 you in any way?

13 A Yes, ma'am.

14 Q Tell me about that.

15 A Well, when I said, you know, I would let my
16 mother know about it he would tell me they wasn't
17 going to believe me at all and, you know, I used to
18 watch TV and I would see that happen on TV so I
19 started to believe him and it would turn into he
20 would start hitting me and stuff and he just made
21 it truthful to me that they wasn't going to believe
22 me at all.

23 Q Okay. How long did he molest you and assault
24 you, Minor ?

25 A It was for two years, three years.

1 Q Okay. How old were you when you first became
2 pregnant?

3 A Fifteen.

4 Q When was your baby born, E.W. ?

5 A , 2008.

6 Q Okay. And how old were you when you gave
7 birth to E.W. ?

8 A Fifteen.

9 Q After you had E.W. did John Haynes bother
10 you anymore?

11 A It stopped for a little while, then he
12 started up again.

13 Q When you say he started up again, what do you
14 mean?

15 A He started having sexual conduct with me
16 again.

17 Q You say sexual conduct, do you mean sexual
18 intercourse?

19 A Intercourse, yes, ma'am.

20 Q Touching your breasts and genitals?

21 A Yes, ma'am.

22 Q And engaging in sexual intercourse?

23 A Yes, ma'am.

24 Q And you became pregnant again?

25 A Yes, ma'am.

1 Q How old were you when you got pregnant again?
2 A Sixteen.
3 Q And when did you have J.W. , your second
4 baby?
5 A , 2009.
6 Q And how old were you when he was born?
7 A Seventeen.
8 Q Minor , who is the father of your two
9 children?
10 A John Haynes.
11 MS. FORD: May I approach the witness, Your
12 Honor?
13 THE COURT: You may.
14 Q You have two children, correct, E.W. and
15 J.W. ?
16 A Yes, ma'am.
17 Q Can you take a look at this? Can you tell me
18 what that is?
19 A My kids.
20 Q Okay. And what are their names?
21 A E.W. and J.W.
22 Q And does this picture fairly and accurately
23 depict what your children E.W. and J.W.
24 look like?
25 A Yes, ma'am.

1 MS. FORD: Your Honor, at this time the State
2 would move what has been marked State's Exhibit 1
3 into evidence and publish it to the jury.

4 THE COURT: Please show it to defense
5 counsel.

6 MR. WISE: We object to relevance.

7 THE COURT: Counsel, let me see you.

8 (Unrecorded bench conference).

9 THE COURT: That will be State's Exhibit
10 Number --

11 MS. FORD: State's Exhibit Number 1, Your
12 Honor.

13 THE COURT: Number 1 is in evidence. Note
14 the exception of the defense.

15 MS. FORD: Yes, Your Honor.

16 (Photograph marked and received in evidence
17 as State's Exhibit Number 1).

18 THE COURT: Now, ladies and gentlemen, let me
19 tell you about viewing the exhibits. It is
20 perfectly fine for counsel to publish the exhibit.
21 I want you to know, though, that all the exhibits
22 will be with you in your jury room for your
23 deliberations and the only reason I mention this is
24 because I don't want you to allow the viewing of
25 the exhibit to keep you from being able to listen

1 to the testimony. I just want you to be confident
2 you will have those with you.

3 MS. FORD: Thank you, Your Honor.

4 BY MS. FORD:

5 Q Minor , at that time when you became
6 pregnant with E.W. and later J.W. , had you ever
7 had sex with anyone else?

8 A No, ma'am.

9 MR. WISE: Your Honor, relevance.

10 THE COURT: Overruled.

11 BY MS. FORD:

12 Q You had not had sex with anyone else?

13 A No, ma'am.

14 Q Did you ultimately tell anyone about what was
15 happening to you?

16 A No, ma'am.

17 Q Okay. Why not?

18 A Because, as I said before, he said my mother
19 wouldn't believe me and the most threat he could
20 ever do was tell me that he would murder me and my
21 kids and my family also if I would tell anyone.

22 Q When he would threaten you did he just use
23 words?

24 A No, ma'am.

25 Q What would he do?

1 A At one time I thought -- you know, he would
2 go in the back room and he had a shotgun and he
3 brought it into my room to show me that he wasn't
4 playing at all.

5 Q And you believed him?

6 A Yes, ma'am.

7 Q And that is why you didn't tell?

8 A Yes, ma'am.

9 Q When you were first asked about who was the
10 father of your two children did you say John Haynes
11 when you were asked?

12 A No ma'am.

13 Q Why not?

14 A Because I was trying to save my baby girl and
15 my family and myself.

16 Q Who did you say was the father?

17 A Deondre Goodwine.

18 Q Was that the truth?

19 A No, ma'am.

20 Q Why did you say Deondre Goodwine?

21 A Every day after school we would hang out all
22 the time and people in the neighborhood and also at
23 school would think we were going together because
24 we was attached to each other all the time and so
25 to me he was an easy target so I could keep my

1 family and myself safe.

2 Q And that is why you said Deondre Goodwine?

3 A Yes, ma'am.

4 Q But ultimately -- was that the truth?

5 A No, ma'am.

6 Q Ultimately who was the father of your

7 children?

8 A John Haynes.

9 Q Your stepfather John Haynes?

10 A Yes.

11 MS. FORD: Beg the Court's indulgence, Your

12 Honor.

13 THE COURT: All right.

14 Q Minor , where was your home? You said all

15 this happened --

16 A At the house.

17 Q And you said it was on Bethany Road?

18 A Uh-huh (Affirmative)..

19 Q What county was that in?

20 A Calhoun County.

21 Q Thank you. Do you see John Haynes in the

22 courtroom?

23 A Yes, ma'am.

24 Q Can you point him out for the jury?

25 MS. FORD: Your Honor, let the record reflect

1 that the victim Minor pointed out the
2 defendant John Haynes.

3 THE COURT: Very well.

4 MS. FORD: No further questions, Your Honor.

5 THE COURT: All right.

6 Cross-examination.

7 MR. WISE: Might I inquire?

8 THE COURT: Yes.

9 CROSS EXAMINATION BY MR. WISE:

10 Q Minor , good morning.

11 A Good morning.

12 Q Would you like some water?

13 A I have some.

14 Q Minor , what you have said today is very
15 different from the things you said in the past,
16 isn't it?

17 A I'm not understanding what you're saying.

18 Q You're not understanding what I'm saying?

19 Okay. Do you know who Eula Clark is?

20 A Yes.

21 Q Who is she?

22 A She was at DSS in St. Matthews.

23 Q How do you know her?

24 A Because she came to the house to test John
25 Haynes.

1 Q She did other things, didn't she?

2 A Yes.

3 Q What else did she do?

4 A She took me to Columbia to see a therapist.

5 Q She spent a lot of time with you, didn't she?

6 A Yes, sir.

7 Q You spoke to her?

8 A Yes, sir.

9 Q She made a report of the things you said to

10 her?

11 A Yes.

12 Q She made a lot of reports about the things

13 that you said to her?

14 A Yes.

15 Q Very good. Now, the things that you're

16 saying today are a lot different than the things

17 you told Mis Clark, aren't they?

18 A I don't remember.

19 Q You don't remember, okay. Let's start with

20 this. Do you remember telling Miss Clark you

21 wanted to have a baby, do you remember telling her

22 that?

23 A No, sir.

24 Q You don't remember telling her that?

25 A No, sir.

1 Q All right. Do you remember telling her that
2 all of your friends had babies and you wanted one
3 also?

4 A No, sir.

5 Q Okay... Do you remember telling her about a
6 young man named Grandon?

7 A No.

8 Q You didn't mention Grandon at all?

9 A No.

10 Q Do you remember telling her that Grandon
11 wouldn't give you a baby?

12 MS. FORD: Objection, Your Honor, relevance.

13 MR. WISE: Your Honor, the issue in this case
14 is --

15 (Unrecorded bench conference).

16 THE COURT: Ladies and gentlemen, it's a good
17 time for our morning break, too. I'm going to ask
18 you to step to your jury room. During the time you
19 are outside our presence please do not discuss this
20 matter or allow anyone to discuss it with you.
21 We'll use this as our morning break, we'll probably
22 be about 20 to 25 minutes. That gives you a good
23 time to take a break. I don't know that we have
24 any smokers but if we to let them go outside and
25 smoke.

1 If you will, step to your jury room with your
2 bailiff.

3 (Jury excused from the courtroom).

4 MR. BELL: Your Honor, if I may, I just
5 wanted to point out I noted the jury took State's
6 Exhibit 1 back there to the jury room.

7 THE COURT: All right. Here is what I just
8 wanted to be certain of. Well, I think probably
9 I'm going to ask, since we are -- hold on. Let me,
10 what I want to do is I want to see, since the other
11 witness is not here who would be testifying with
12 regard to statements and they are not under oath,
13 tell me what you have.

14 MR. WISE: These are all the statements we
15 have, this is the DSS file, what I'm going to hand
16 up to the Court, what I was going to present to the
17 witness to cross-examine her.

18 THE COURT: Okay. Who took these notes?

19 MR. WISE: The case manager in her situation
20 would be Eula Clark. Your Honor, this is the
21 documents I wanted to examine the witness about, I
22 will hand them up now, one is the psychological
23 evaluation.

24 THE COURT: Okay. Has Miss Ford seen that
25 one?

1 MR. WISE: I'm giving her copies of that now.
2 That is the psychological evaluation and the
3 forensic interview.

4 THE COURT: Okay, all right. Now, Mr. Wise,
5 tell me how you intend to use the statements and
6 from what source, because obviously there are
7 statements in some of the information you handed me
8 that probably are in the neighborhood of fourth
9 layer hearsay, so I need to know how you're going
10 to go about it.

11 MR. WISE: Some of these statements, I guess
12 we can go through each one, kind of deal with how I
13 intend to -- let me back up. The first thing I
14 want to do is ask Minor if she said them.
15 Obviously if she said them, then that is the end of
16 it, I can move on from there. If she denies it,
17 then I think because the statements are relevant to
18 the issue in this trial, then I can prove them by
19 extrensic evidence. Some of these statements --

20 THE COURT: What would be the extrensic
21 evidence that you would intend to prove them by?

22 MR. WISE: Eula Clark would be one, Marc
23 Carari would be -- actually those are the two, Eula
24 Clark and Marc Carari would be the people I would
25 call in who would say, "Minor said thus

1 and so to me."

2 THE COURT: Who is Carari.

3 MR. WISE: Carari is the individual who did
4 the psychological evaluation.

5 THE COURT: Okay.

6 MR. WISE: Those would be, if I were going to
7 call witnesses related to this issue those would be
8 the two I intended to call.

9 THE COURT: Okay. All right. Yes?

10 MS. FORD: Your Honor, these reports that Mr.
11 Wise is attempting to use are hearsay. If he
12 wishes to call those individuals during his case
13 then he can certainly do that. Minor has
14 answered she doesn't recall that, she doesn't
15 remember that.

16 Additionally, Your Honor, a lot of it,
17 especially with the DSS paperwork, it says
18 reportedly this, reportedly that, it doesn't state
19 from whom it was reported, it doesn't necessarily
20 indicate it was from Minor. It just stays
21 reportedly.

22 Additionally, Your Honor, I believe the
23 defense has opened the door for the State to
24 certainly go into the issues that they, during
25 their pretrial motions they wanted to avoid,

1 certainly we can go into the issues that there was
2 another DNA test that was done, the DNA came back
3 conclusive that John Haynes is the father and DSS
4 indicated John Haynes as a sexual abuser of Minor
5 , that was their result. I certainly think
6 at this point, because they have opened the door,
7 we can get into that at this point.

8 MR. WISE: May I address the last point, Your
9 Honor?

10 THE COURT: Let me do the first one, then
11 we'll do the second one. All right, I think that
12 the rule, there are two rules that come into
13 effect. One is Rule 801(D)(1)(A) and (B). (C)(2)
14 is what it is, admission by a party. So I think
15 that, concerning did she make a statement, and I
16 just want to be clear with you, if you, if you call
17 in your case for purposes of extrinsic evidence the
18 DSS caseworker, then the door is open beyond simply
19 if the statement was made because obviously once
20 you have the inconsistent statement under 801(2)
21 you can have consistent statements brought in as
22 well to refute.

23 And with regard to the psychological
24 evaluation and the fact statements were made, I
25 just want to be sure that it is either, as I read

1 the psychological evaluation, this particular
2 evaluator has an opinion about those statements and
3 what is really going on and so I'm not going to
4 allow just the statement to blindly come out. I
5 want you to be apprised of that, I don't want you
6 to be surprised because I think if he testifies to
7 that statement, then he is also going to talk about
8 what he thinks about it.

9 But I don't believe that I can keep you from
10 asking, "Did you make this statement?" If she says
11 no, then you're into the extrensic evidence but
12 further than that, I think that door is opened, I
13 think the door is opened already for the State to
14 call the DSS worker and ask her, "What do you know
15 about it, what did you think was going on, based on
16 your investigation what happened, what were the
17 other statements that were made," so I think the
18 door is opened as far as the DSS worker.

19 MR. WISE: Dealing with that second issue,
20 and I guess I want to address something I think the
21 State is arguing. As I understand the rule of
22 completeness, certainly if I called the DSS worker
23 and say did Minor tell you thus and such, and she
24 said yes and she said this and that, but I don't
25 think they are entitled to everything that happened

1 between Minor and the DSS worker. I think they
2 are entitled to have the other side of that
3 statement only because it was referenced, gets into
4 the DNA test was done in Family Court or any issue
5 unrelated to giving the jury a complete picture of
6 what Minor was saying at the time she made that
7 statement. I think that is it, I think the rule of
8 completeness says they can give a jury a complete
9 picture but it is just not a free for all and not
10 everything that has ever happened with DSS in
11 Family Court.

12 THE COURT: Okay, I got it. I'm not prepared
13 to rule on that issue simply because Judge Wylie's
14 order specifically speaks to that. There is a
15 specific court order that limits it but it just, it
16 limits, I think it limits the admission, I'm going
17 to have to go back and look at that, and I don't
18 know if the door is opened to the DNA testing
19 because of the statement of the DSS worker, I don't
20 know that, I'm going to have to go back and look at
21 Judge Wylie's order. Clearly the admissions in
22 Family Court, those are excluded by virtue of Judge
23 Wylie's order.

24 MR. WISE: Your Honor, I was referring to
25 Rule 106 when I was arguing.

1 THE COURT: Yes, I agree with you on that.
2 Let me ask you this question. Is the DSS worker
3 under subpoena?

4 MR. WISE: I subpoenaed her, Your Honor.

5 THE COURT: Okay. Do not release her from
6 the subpoena unless you let the State know.

7 MR. WISE: I will.

8 THE COURT: And the reason for that is the
9 State, in the pretrial motions the State was
10 relying on, I gather, her not being called. If you
11 put her under subpoena, now her testimony very well
12 may become relevant, I don't want them to suffer
13 from their reliance on representations from you.
14 Do not release her from subpoena. You actually
15 obtained service on the DSS worker?

16 MR. WISE: We have. The way I have
17 structured it, I didn't know how this was going to
18 go. I subpoenaed everybody for 2:00 o'clock, I
19 would let them know if I needed them, if I didn't I
20 wouldn't.

21 THE COURT: In other words, you got service
22 on her?

23 MR. WISE: Yes, I did.

24 THE COURT: All right. We will all take a
25 very short break, I don't want the jury to be

1 waiting. I don't know about you all but I need a
2 comfort break.

3 You can have one, too. However, while you're
4 on the stand you can't talk to anybody about your
5 testimony and can't anybody speak to you about your
6 testimony, but you can go take a break.

7 (Recessed at 11:55 a.m.).

8 (Resumed at 12:14 p.m.).

9 THE COURT: All right, anything before we
10 bring the jury out.

11 MS. FORD: No, sir.

12 MR. WISE: Your Honor, I handed up two
13 documents, I didn't know if the court wanted to
14 retain them or not.

15 THE COURT: No.

16 There you go, get situated and get that
17 microphone back.

18 All right, let's have the jury.

19 (The jury returned to the courtroom).

20 All right, ladies and gentlemen, we will
21 continue with the State's case and the
22 cross-examination.

23 Mr. Wise.

24 MR. WISE: Thank you.

25 BY MR. WISE:

1 Q Minor , I'm just going to back up so we can
2 get started again. The question I asked you was do
3 you remember speaking, do you remember telling Eula
4 Clark that you wanted to have a baby, that all your
5 friends had babies and that you wanted one also?

6 A No, I don't.

7 Q You don't remember telling her that?

8 A No, sir.

9 Q Okay. Do you remember telling her that your
10 boyfriend Grandon would not give you a baby because
11 he did not want a baby?

12 A No.

13 Q You don't remember telling her that?

14 A No.

15 Q Now, Minor , I have Miss Clark's
16 reports, would looking at them help refresh your
17 recollection about whether or not you said those
18 things?

19 A Yes, I could do that.

20 Q Okay. Now, Minor , those reports have
21 tabs on them.

22 MS. FORD: Your Honor, objection. These
23 reports are hearsay and to have the witness
24 actually look over the report of someone else's
25 recollection of an alleged conversation --

1 THE COURT: He can show her the Manhattan
2 phone book and see if it refreshes her
3 recollection.

4 MS. FORD: Thank you, Your Honor.

5 THE COURT: If it does refresh her
6 recollection, so be it, but it either will or
7 won't.

8 MR. WISE: Okay.

9 BY MR. WISE:

10 Q Now, Minor , what I have handed you
11 have tabs on the right side, those tabs have
12 numbers, I'm going to refer to those numbers as we
13 go through this, okay?

14 THE COURT: No, she gets to look at the
15 document in its entirety and she will tell you if
16 it refreshes her recollection.

17 MR. WISE: Okay.

18 THE COURT: Otherwise that would be quodding
19 from a document that would not be in evidence. If
20 she just wants to look over it --

21 MR. WISE: Okay.

22 THE COURT: And the question is, of course
23 does that document refresh your recollection.

24 BY MR. WISE:

25 Q Okay. Having reviewed that document,

1 Minor , do you remember on May the 20th of 2010
2 saying to Mis Clark that you wanted a baby, all
3 your friends had babies, you wanted one also, that
4 Grandon would not give you a baby?

5 A No, sir.

6 Q Now, you testified that you told Mis Clark
7 that Deondre was the father of E.W. ?

8 A Yes.

9 Q Do you remember telling Miss Clark that a
10 person named Marcus House could be the father of
11 E.W. ?

12 A Yes.

13 Q Did you tell her that?

14 A Yes.

15 Q Okay, very good. Do you remember telling
16 Miss Clark that you were in love with your
17 stepfather?

18 A No, sir.

19 Q You never remember telling her that?

20 A No, sir.

21 Q Reviewing that document, anything in that
22 document refresh your recollection?

23 A No, sir.

24 Q Okay. You don't remember on May 25th of
25 2010 --

1 MS. FORD: Objection.

2 THE COURT: Sustained.

3 Q Do you remember telling her you went in on
4 him because you were in love with him?

5 A No, sir.

6 Q You don't remember that? Do you remember
7 telling her that you had sex with him because you
8 loved him and you wanted to have a baby?

9 A No, sir.

10 Q Do you remember telling her that if John
11 Haynes was the father it's nobody else's business?

12 A No, sir.

13 Q Okay. Do you remember having an evaluation
14 by a doctor named Dr. Harari?

15 A Yes.

16 Q Do you remember telling him you loved John
17 Haynes and you wanted to have his children?

18 A No, sir.

19 Q Do you remember telling Miss Clark that you,
20 or that John Haynes did not have any sexual contact
21 with you?

22 A No, sir.

23 Q You don't remember telling her that?

24 A No, sir.

25 Q Okay. And do you remember telling her, or do

1 you remember saying, do you remember saying that
2 you have two children as a result of a consensual
3 sexual relationship with your boyfriend?

4 A I don't remember that.

5 Q You don't remember that, okay. Now I want to
6 talk about some other things for a minute. Do you
7 remember telling Miss Clark that your step-dad is
8 in jail for nothing, that he did not do anything to
9 you and that you approached him, do you remember
10 telling her that?

11 A No, sir.

12 Q Okay. Do you remember telling her that your
13 step-dad did not know or do anything because he was
14 drunk?

15 A No, sir.

16 Q You don't remember telling her that?

17 A No.

18 Q Okay. Do you remember telling her that Mr.
19 Haynes drinks a lot, he has an alcohol problem and
20 he needs help?

21 A Yes, ma'am -- yes, sir.

22 Q You do remember telling her that?

23 A Uh-huh (Affirmative).

24 Q All right. In talking about the sexual
25 things, do you remember telling Dr. Harari that you

1 seduced John when he was under the influence of
2 alcohol, to have sex with him?

3 A No, sir.

4 Q Do you remember telling her that John was
5 entirely unaware that he was having sex?

6 A No, sir.

7 Q Do you remember saying that you took
8 advantage of him when he was intoxicated?

9 A No, sir.

10 Q Do you remember telling Miss Clark that he
11 did not know or do anything because he was drunk?

12 A No, sir.

13 Q All right. Now, do you remember admitting
14 that you had lied about some of the things that you
15 have said?

16 A No, sir.

17 Q Okay. Do you remember telling Miss Clark
18 that you said that John raped you because you felt
19 that's what everyone wanted to hear?

20 A No, sir.

21 Q Okay. Do you remember telling Dr. Harari
22 that you made the initial allegation of sexual
23 abuse by John because you felt you would be in
24 trouble if you admitted you seduced your
25 stepfather?

1 A No.

2 Q You don't remember anything of that?

3 A No.

4 Q Okay.

5 MR. WISE: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 Q Minor , I have asked you some questions
9 about a statement made to Dr. Harari, would you
10 like to review his report? Would that help refresh
11 your recollection about what you may have said to
12 him?

13 A I can do that.

14 Q Minor , what I will do, I will ask you to
15 look at this forensic interview also.

16 A Okay.

17 Q Just let me know when you're done.

18 Minor , looking at that psychological
19 evaluation, does that refresh your recollection
20 about whether or not you ever said to Dr. Harari
21 you loved Mr. Haynes and wanted to have his
22 children?

23 A No.

24 Q And looking at that evaluation, does that
25 refresh your recollection about saying you seduced

1 John when he was under the influence of alcohol?

2 A No.

3 Q All right. I want to talk a little bit about
4 your fear of Mr. Haynes. Do you recall telling
5 Miss Clark that you were not fearful of your
6 step-dad, did you ever tell her that?

7 A No.

8 Q You don't remember saying that to her?

9 A No.

10 Q All right. Do you remember telling Miss
11 Clark you wanted to get him, John, out of jail so
12 you and he can go to a picnic together?

13 A No.

14 Q A picnic at Fort Motte?

15 A No.

16 Q You don't remember saying that?

17 A No.

18 Q You wanted him out of jail, you went the year
19 before, you wanted to go this year?

20 A No.

21 Q You wanted him out for your birthday?

22 A No.

23 MS. FORD: Objection, Your Honor, asked and
24 answered.

25 THE COURT: The second question had not been

1 asked, she said no. She responded.

2 Q Minor , I want to talk a little bit about
3 John's drinking. You would agree, I think, that he
4 drinks on a daily basis, correct?

5 A Yes.

6 Q Okay. And as a matter of fact you said that
7 the only problem you have with your step-dad is his
8 drinking?

9 A Yes.

10 Q Minor there came a time when John was no
11 longer living in the house with you, correct?

12 A Yes.

13 Q Do you remember when that was?

14 A After the DNA, when they came to the house
15 and took the DNA.

16 Q Would that have been around December, 2009?

17 A Yes.

18 Q Okay. So, after December, 2009, he was one
19 place, you were someplace else?

20 A Yes.

21 Q Okay, all right. Minor , did you ever tell
22 your mother about going in on John?

23 A I don't understand.

24 Q Did you ever tell your mother that you went
25 in and had sex with your step-dad when he was

1 sleeping and drunk?

2 A No.

3 Q Did you ever tell anyone at school about any
4 of this?

5 A No.

6 Q Nobody?

7 A No.

8 Q Anybody at church?

9 A No.

10 Q Any friends?

11 A No, sir.

12 Q Okay. Any relative at all?

13 A No, sir.

14 Q You never told anyone the things that you're
15 telling us today?

16 A No, sir.

17 Q Okay. Minor on direct examination you
18 said that you thought Deondre Goodwine -- is that
19 his name, am I saying his name right?

20 A Yes.

21 Q He would be, I think the word you used was an
22 easy target?

23 A Yes.

24 Q When you used the word easy target to refer
25 to Deondre Goodwine what did you mean by that?

1 A Everyone knew, thought it was Deondre, so
2 they assumed that he was the father, so I just let
3 them think that.

4 Q And you were prepared to have him be the
5 father of your child?

6 A Yes.

7 Q Recognizing all that involved, that he would
8 be the father, have to pay child support, all the
9 obligations, you were ready to do that to Deondre?

10 A Well, I wasn't going for him on child
11 support, it was my choice to put him on child
12 support or not.

13 Q But as far as you were concerned you were
14 willing to let the whole world think that Deondre
15 was the father because you said it would be better
16 for you?

17 A Yes.

18 Q Okay. And you said that to Miss Clark, that
19 Deondre is the father?

20 A Yes.

21 Q And you said that to her because you wanted
22 her to do something with that information, right?

23 A Yes.

24 Q You wanted her to take him to court and have
25 him adjudicated the father?

- 1 A Huh-uh (negative).
- 2 Q You have to answer.
- 3 A Say that again.
- 4 Q You wanted her to take action with that
- 5 information?
- 6 A Yes.
- 7 Q You wanted her to take him to court and have
- 8 him to be found to be the father?
- 9 A Yes.
- 10 Q Okay, all right. So, even though that was a
- 11 lie, you were willing to lie to Miss Clark to get
- 12 her to do something to Deondre Goodwine?
- 13 A Well, it wasn't all by lying, it was all
- 14 about keeping my family safe.
- 15 Q Okay. So, you wanted Miss Clark to do
- 16 something and you told her something to make her do
- 17 what you wanted her to do?
- 18 A Yes.
- 19 Q Even though you knew that thing was a lie?
- 20 A Yes.
- 21 Q You were trying to manipulate Miss Clark,
- 22 weren't you?
- 23 A No.
- 24 Q Okay. But you told her something that wasn't
- 25 true to get her to do something?

1 A I told her to benefit me, I didn't try to
2 manipulate her or nothing like that, I just told
3 her what I wanted, you know, that Deondre was the
4 father.

5 Q You lied to get something you wanted?

6 A (No response).

7 Q You have to answer.

8 A I didn't -- yes.

9 Q Okay. When you came up with this plan to lie
10 about Deondre and then tell Miss Clark to get her
11 to take him to Family Court and all that involved
12 did you come up with this on your own?

13 A Yes.

14 Q Did anybody help you with that?

15 A No.

16 Q You came up with that all on your own?

17 A Yes.

18 Q Okay. Minor , just a last few things. You
19 love your kids, right?

20 A Yes.

21 Q And you want to be a good mother?

22 A Yes.

23 Q You are a good mother, aren't you?

24 A Yes.

25 Q Okay. And you want your children to know

1. that you love them?

2 A Yes.

3 Q And you want to protect your children?

4 A Yes.

5 Q You don't want them to suffer any physical
6 harm or any emotional harm?

7 A No.

8 Q All right. And you would not do anything,
9 nothing that would cause them any emotional harm,
10 would you?

11 A No.

12 MR. WISE: May I have one moment?

13 THE COURT: Yes.

14 MR. WISE: Minor , thank you.

15 THE COURT: Redirect?

16 MS. FORD: Just briefly, Your Honor.

17 THE COURT: All right.

18 REDIRECT EXAMINATION BY MS. FORD:

19 Q Minor , when Mr. Wise was asking you some
20 questions he asked you about Marcus House?

21 A Yes.

22 Q Who is Marcus House?

23 A No one.

24 Q When you say no one, what do you mean by
25 that?

- 1 A When the test came back for Deondre Goodwine
2 it proved he wasn't the father. In order for me
3 not to expose him I had to come up with a name to
4 save me and my family so that is the name I came up
5 with.
- 6 Q So, Marcus House was a made up name?
- 7 A Yes, ma'am.
- 8 Q And did you make up Marcus House all on your
9 own?
- 10 A Yes, ma'am.
- 11 Q Okay. Minor , did you seduce John Haynes?
- 12 A No, ma'am.
- 13 Q Did you go in on him to have sex with him
14 because you wanted to?
- 15 A No, ma'am.
- 16 Q Did John Haynes molest you?
- 17 A Yes, ma'am.
- 18 Q Did he force you to have sexual intercourse
19 with him?
- 20 A Yes, ma'am.
- 21 Q Did he impregnate you?
- 22 A Yes, ma'am.
- 23 Q Twice?
- 24 A Yes, ma'am.
- 25 Q If you had said something to take away the

1 blame from John Haynes when all this happened
2 several years ago why would you have done that?

3 MR. WISE: Objection, Your Honor. I'm not
4 sure there is a foundation. She hasn't said, she
5 hasn't said anything, speculative.

6 THE COURT: On the ground of speculation,
7 sustained.

8 MR. WISE: Thank you.

9 BY MS. FORD:

10 Q Did John Haynes threaten you, Minor ?

11 A Yes, ma'am.

12 Q Is that why you may have said some of the
13 things you said?

14 A Ask me --

15 MR. WISE: Objection. Could counsel rephrase
16 the question?

17 THE COURT: Sustained.

18 Q Minor , were you scared of John Haynes?

19 A Yes, ma'am.

20 Q Why were you scared of him?

21 A Because if I didn't do what he said I would
22 get abused or get a gun pointed at me.

23 Q Did he do those things to you?

24 A Yes, ma'am.

25 Q And you were scared of him, right?

1 A Yes, ma'am.

2 MS. FORD: No further questions, Your Honor.

3 THE COURT: All right, recross?

4 MR. WISE: Very brief.

5 THE COURT: All right.

6 RECROSS EXAMINATION BY MR. WISE:

7 Q Minor , you said you made up the name Marcus

8 House?

9 A Yes.

10 Q Why, why would you do that?

11 A Because Deondre Goodwine was found not the

12 father so if I would have told it was John Haynes,

13 in my mind, you know, I wouldn't have a life and my

14 family wouldn't have a life, I had to come up with

15 a name quick to save me and my family and my kids.

16 Q You gave this name to who, who did you tell

17 it was Marcus House?

18 A Well, first I told my mother, then that is

19 when she told Miss Clark.

20 Q Did you tell your mother you were lying?

21 A No, sir.

22 Q So, you looked your mother in the eye and

23 lied to her?

24 A Well, when I told her a name she kind of

25 believed me but I didn't want to call it as a lie

1 because I'm trying to save my family.

2 Q So you lied to accomplish something you
3 thought you needed to accomplish?

4 A Yes.

5 Q Okay. And who else did you tell this lie to?
6 You told your mother. Who else?

7 A My grandmother.

8 Q You told your grandmother that same lie?

9 A Yes.

10 Q Who else?

11 A That was it.

12 Q Did you tell Miss Clark this lie?

13 A Uh-huh (Affirmative).

14 Q Okay. What did you think Miss Clark was
15 going to do with this lie?

16 A Well, first they had to find him.

17 Q All right. So you thought she would go
18 looking for somebody named Marcus House?

19 A Yes.

20 Q To make sure I got this, you were going to
21 send Miss Clark on a mission to find somebody you
22 made up?

23 A Yes.

24 Q You don't think that's wrong?

25 A At this time, yes, but at the time, no,

1 because I'm trying to save the people I love and if
2 I didn't go with it then something would happen.

3 Q When did you make up this lie?

4 A After Deondre was found out not the father.

5 Q About what month was that?

6 A I can't remember.

7 Q It was after John was out of the house,
8 wasn't it?

9 A He was, it was beginning, they was in the
10 process of getting him out of the house.

11 Q Did you ever tell anybody you made that up?

12 A Yes, after everything was found out.

13 Q So, when Miss Clark comes in she's going to
14 say you straightened this lie out?

15 A Yes.

16 MS. FORD: Objection.

17 MR. WISE: That's all.

18 THE COURT: All right.

19 (Witness excused).

20 THE COURT: Call your next witness, please.

21 MS. FORD: The State calls Gail Haynes.

22

23

24

25

1 GAIL HAYNES, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please have a seat. State your
4 full name for the record, please.

5 THE WITNESS: Gail Veronica Williams Haynes.

6 THE CLERK: Thank you, ma'am.

7 THE COURT: Move that microphone closer to
8 you.

9 DIRECT EXAMINATION BY MS. FORD:

10 Q Good afternoon, Miss Haynes. Where do you
11 live?

12 A Fort Motte.

13 Q Here in Calhoun County?

14 A Yes.

15 Q Are you married?

16 A Yes.

17 Q To whom?

18 A John Haynes.

19 Q Is John Haynes in the courtroom?

20 A Yes, ma'am.

21 Q Can you point him out?

22 A Over there.

23 Q When did you get married to him?

24 A December the 27th, 1997.

25 Q Where did you get married?

1 A At my church in New Bethany.

2 MS. FORD: May I approach the witness, Your

3 Honor?

4 THE COURT: You may.

5 Q Do you recognize this?

6 A Yes, ma'am.

7 Q What is that?

8 A My marriage license.

9 Q What are the names on that marriage license?

10 A John Edward Haynes and Gail Veronica

11 Williams.

12 Q Does it have Mr. Haynes' date of birth on

13 there?

14 A Yes.

15 Q What is it?

16 A --

17 MR. WISE: Objection, Your Honor. This is

18 hearsay.

19 THE COURT: All right. In other words,

20 you're concerned about the document being published

21 and it's not in evidence?

22 MR. WISE: Yes.

23 THE COURT: Very well

24 MR. WISE: The document was prepared by

25 somebody else.

1 THE COURT: Well, it may or may not be a self
2 authenticating document at this point.

3 MR. WISE: Yes.

4 BY MS. FORD:

5 Q What is the date on that document?

6 A December 10th, '97. And there is another
7 date on here, December 9th. I mean, what date are
8 you looking for?

9 Q The date it was issued, Miss Haynes.

10 A 7th day of December, '97?

11 Q Yes, ma'am.

12 MS. FORD: Your Honor, the State would move
13 to place the marriage license into evidence as
14 State's Exhibit 2.

15 THE COURT: All right. Show it to counsel,
16 please.

17 MR. WISE: I do have an objection. May we
18 approach?

19 THE COURT: Sure.

20 (Unrecorded bench conference).

21 THE COURT: Very well. The document is a
22 self authenticating document, it comes in under
23 803, 9 and 12, it is a certified copy, a self
24 authenticating document because it is a document
25 that is required to be kept under the Code and

1 therefore it is admitted over the objection, over
2 the objection of defense. Rule 902 speaks to self
3 authenticating documents.

4 MS. FORD: Thank you, Your Honor.

5 (Marriage license marked and received in
6 evidence as State's Exhibit Number 2).

7 BY MS. FORD:

8 Q Miss Haynes, after you were married you lived
9 together with John Haynes?

10 A Yes.

11 Q Who lived with you?

12 THE COURT: You have to speak up. You and I
13 both have to speak up, they can't hear either one
14 of us. Ask that question again.

15 MS. FORD: Sure.

16 Q After you were married did you live with John
17 Haynes?

18 A Yes.

19 Q Who lived with you?

20 A Me, John and my daughter Minor .

21 Q Okay. What is your daughter Minor 's date
22 of birth?

23 A

24 Q Do you have any grandchildren?

25 A Yes.

1 Q When did your daughter first become pregnant?
2 A In '08.
3 Q 2008?
4 A Yes, ma'am.
5 Q How old was she?
6 A Fifteen.
7 Q Okay. And do you know how old she was when
8 she had her baby?
9 A Fifteen.
10 Q Okay. And her other child, when did she get
11 pregnant with her son?
12 A 2010.
13 Q Okay. Would that have been 2009 or 2010? I
14 don't want to confuse you with too many dates, Miss
15 Haynes.
16 A Well, I know she had them -- '09, I'm sorry.
17 Q That's okay, take your time. And how old was
18 she then?
19 A Almost seventeen.
20 Q During the time when Minor became pregnant
21 did you work?
22 A Yes.
23 Q Where did you work?
24 A Welman Plastics right here in St. Matthews.
25 Q Did you work a particular shift?

1 A Yes, ma'am, third.

2 Q Third, and what is third shift, what times

3 did you work on third shift?

4 A 11:00 p.m. at night until 7:20 the next

5 morning.

6 Q So, you worked while everyone else was

7 asleep?

8 A Yes.

9 Q And when you were working where was Minor ?

10 A Home with John.

11 Q Your husband John, her stepfather?

12 A Yes.

13 Q And he was to be caring for her?

14 A Yes.

15 Q Were you aware of any problems between John

16 Haynes and Minor at the time?

17 A No.

18 MS. FORD: Beg the Court's indulgence.

19 THE COURT: All right.

20 MS. FORD: No further questions, Your Honor.

21 THE COURT: Very well.

22 Cross-examination.

23 CROSS EXAMINATION BY MR. WISE:

24 Q Miss Haynes, how are you this afternoon?

25 A Fine.

1 THE COURT: Do you need some water, a cup of
2 water?

3 THE WITNESS: Yes.

4 THE COURT: You can go ahead.

5 BY MR. WISE:

6 Q Miss Haynes, John was also working, isn't
7 that correct?

8 A Yes.

9 Q Where was he working?

10 A At a lumber company in Camden.

11 Q Did he work anyplace else?

12 A Yes. He worked at Welman Plastics in St.
13 Matthews also.

14 Q Was he also working at a tire company of some
15 sort?

16 A St. Matthews Tires.

17 Q What did he do at St. Matthews Tires?

18 A Changed tires.

19 Q Full-time job?

20 A Yes.

21 Q Tough job, he came home tired when he came
22 home, wasn't he?

23 A I guess.

24 Q All right. And John likes to drink, he
25 drinks every day, doesn't he?

- 1 A Yes.
- 2 Q He drinks a lot, doesn't he?
- 3 A Yes.
- 4 Q Okay. And he has been known to come home
5 after a hard day's work and have some beers, go to
6 sleep?
- 7 A Yes. Not go to sleep, I'm not going to agree
8 with that.
- 9 Q So, he would come home from a hard day's work
10 and have some beers?
- 11 A Uh-huh (Affirmative).
- 12 Q You didn't know him to just pass out from the
13 beers and being tired?
- 14 A No, not from the beers.
- 15 Q Okay. I think Miss Ford asked you this
16 question. You had no idea what was going on
17 between Minor and John?
- 18 A No, I didn't.
- 19 Q Okay. Did there come a time when you
20 confronted Minor about whether or not there was
21 something going on between her and John?
- 22 A Yes.
- 23 Q Okay. She denied it, didn't she?
- 24 A Yes.
- 25 Q Looked you right in the eye and said no?

1 A Yes.

2 Q Okay. You didn't notice any difference in
3 her personality?

4 A I mean, I just figured it was teenagers, they
5 have their back and forth little confrontations,
6 whatever.

7 Q As far as you could tell everything was
8 normal in your house?

9 A Yes.

10 Q Minor was as she always had been, subject
11 to that little teenage stuff?

12 A Excuse me?

13 Q Minor was, her personality was as it pretty
14 much always had been?

15 A Well, she got a little what I would say a
16 little more attitude with herself but I couldn't
17 figure out what was the problem.

18 Q Okay. It came a point when John moved out of
19 the house, right?

20 A Uh-huh (Affirmative).

21 Q And --

22 THE COURT: Is that yes?

23 A Yes. I'm sorry.

24 Q I'm sorry. And he moved out, he agreed to
25 move out, he said, "I'm leaving," and he moved out?

1 A Well, it was either him or the kids, it was
2 an option and --

3 Q And he left?

4 A Yes.

5 Q All right. Did you ever talk to John, after
6 he moved out, about anything going on with him and
7 Minor ?

8 A Yes.

9 Q Okay. Miss Haynes, let me ask you a couple
10 last few questions. Did Minor ever tell you that
11 she had sex with John when he was not aware of it,
12 did she ever tell you that story?

13 A No.

14 Q She never said that to you?

15 A I mean, no, she never said that. She never
16 said she had sex with him when he was passed out?

17 Q Yes.

18 A No.

19 Q Okay. Did you ever have a conversation with
20 John about taking baths with Minor ?

21 A Now, as she was a little girl he took a bath
22 with her but as she got bigger, no, no baths.

23 Q Okay. All right. Did Minor ever complain
24 about John hitting her?

25 A Yes.

1 Q When was that?

2 A They had some type of altercation, like I
3 said, I was working and when I got home I found out
4 about it, they had some altercations and she said
5 he hit her in her face.

6 Q Okay. Behind some altercation they had?

7 A I mean, I wasn't there so I don't know, I can
8 only take what they told me.

9 Q Sure. Did Minor ever tell you about
10 somebody named Marcus House?

11 A Yes, she did.

12 Q What did she say about Marcus House?

13 A She said, when I found out she was pregnant
14 and I asked her who was the baby's father and she
15 said Marcus House.

16 Q Okay. And you believed her?

17 A Yes.

18 Q Okay. Did you ever meet Marcus House?

19 A No.

20 Q Did you ever ask anyone about Marcus House?

21 A Yes, I did.

22 Q Okay. Did she ever tell you she just made it
23 up?

24 A After all of this, yes.

25 Q So, when she said it to you, you looked in

1 her eye and you said you believed her?

2 A Yes.

3 Q Even though she was lying to you?

4 A Yes.

5 Q You couldn't tell, she said it --

6 MS. FORD: Objection, Your Honor.

7 THE COURT: Let me hear the question. Don't

8 answer until I rule on it.

9 MR. WISE: I will rephrase the question.

10 BY MR. WISE:

11 Q When she looked in your eye and told you that

12 lie you couldn't tell she was lying?

13 THE COURT: Any objection to that?

14 MS. FORD: Yes, Your Honor.

15 THE COURT: All right.

16 (Unrecorded bench conference).

17 MR. WISE: May I have one moment, Your Honor?

18 THE COURT: Sure.

19 MR. WISE: Thank you.

20 THE COURT: All right.

21 Any redirect?

22 MS. FORD: No redirect, Your Honor.

23 THE COURT: Very well. You may come down.

24 (Witness excused).

25 THE COURT: It's 1:00 o'clock, all right,

1 THE WITNESS: Thank you.

2 THE COURT: Cross-examination?

3 MR. MELLARD: Hold-on one second, Your Honor.

4 THE COURT: All right.

5 MR. MELLARD: No questions.

6 THE COURT: All right, thank you. May this
7 witness be excused?

8 MR. BELL: Certainly, Your Honor. As stated
9 before, we would like he be allowed to remain in
10 the courtroom.

11 THE COURT: All right, the witness is
12 excused.

13 (Witness excused).

14 THE COURT: Call your next witness.

15 MR. BELL: The State will call Amanda Webb.

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1 AMANDA WEBB, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Amanda Webb.

6 THE CLERK: Have a seat. Pull that mike to
7 you.

8 THE WITNESS: Okay.

9 THE CLERK: Speak loudly and clearly into the
10 microphone.

11 DIRECT EXAMINATION BY MR. BELL:

12 Q Would you state your name, please, for the
13 record?

14 A Amanda Webb.

15 Q And where are you employed, Miss Webb?

16 A I'm in the forensic DNA case work department
17 at SLED.

18 Q Okay. And what is your job title?

19 A I'm a DNA analyst, I work criminal cases from
20 all over the State of South Carolina.

21 Q Could you please tell the jury your
22 educational background?

23 A I have a Bachelor of Science in forensic
24 chemistry and I also have a Master's of Science in
25 forensic chemistry, both from Marshall University.

1 Q Okay. And what instruction have you received
2 or what educational background do you have with
3 regard to DNA?

4 A Getting my forensic chemistry, my Bachelor of
5 Science in forensic chemistry, I had multiple
6 biology, genetics, statistics, course work along
7 those lines, and those are required for, there is a
8 national guideline of courses you have to have to
9 become a forensic DNA analyst and I have completed
10 all of those.

11 And then also when I went on to get my
12 Master's in forensics I took more extensive DNA
13 courses.

14 Q And did you have any training with SLED or
15 any other law enforcement in particular toward DNA?

16 A Yes, I did. Once I completed my college
17 courses I was hired on at SLED and then I was
18 trained under another court qualified analyst for
19 approximately a year and a half and I had to take
20 all sorts of tests and complete the tests before I
21 was allowed to do independent work, and still I
22 have to take a test every, twice a year to make
23 sure I'm still doing my work the way that I'm
24 supposed to and get the correct answers, and then
25 also everything that I do is reviewed by two other

1 analysts in the department, so each case that I do
2 is reviewed by two other analysts as well.

3 Q And how long have you been working as an
4 analyst I guess on your own, for lack of a better
5 term?

6 A Sure. That would be approximately three and
7 a half, four years.

8 Q Okay. And have you ever been qualified as an
9 expert in forensic DNA analysis in the state courts
10 of South Carolina or the federal court?

11 A Yes, I have.

12 Q Approximately how many times, the best you
13 remember?

14 A About a dozen.

15 Q And let me ask you this other question. Your
16 laboratory, is your lab laboratory certified?

17 A Yes, it is. It is a class A lab credited.
18 What that means is other forensic scientists from
19 outside of even the State of South Carolina come
20 into our lab and perform an audit to make sure that
21 we're doing things according to national
22 guidelines.

23 MR. BELL: Your Honor, we offer Miss Webb as
24 an expert in the area of forensic DNA analysis.

25 THE COURT: Any voir dire?

1 MR. MELLARD: No.

2 THE COURT: Any objection?

3 MR. MELLARD: No, ma'am.

4 THE COURT: Very well. Ladies and gentlemen,
5 let me explain to you what has just occurred.
6 Under our rules of evidence ordinarily witnesses
7 are not allowed to testify regarding their opinions
8 or the reasons for those opinions. There is an
9 exception and that is when by virtue of someone's
10 knowledge or training or experience or education or
11 profession they have become an expert in a
12 particular field, art or science, and when those
13 facts are laid out, if you will, and the person
14 that is offered as an expert, and if they are so
15 qualified as an expert, then those witnesses may
16 testify regarding their opinions within their
17 expertise and the reasons for those opinions.

18 When I give you the concluding instructions I
19 will instruct you further regarding expert opinions
20 but for now I'm telling you that expert opinion
21 testimony is given for the purpose of helping you
22 understand the evidence and not for the purpose of
23 controlling your judgment.

24 You may proceed.

25 MR. BELL: Thank you, Your Honor.

1 BY MR. BELL:

2 Q First off, Miss Webb, generally I just have a
3 question. What is DNA?

4 A DNA is a chemical found in every cell of the
5 body, it is passed down, you get half your DNA from
6 your mom and half your DNA from your dad. That is
7 why you can see some sort of similar characteristic
8 sometimes, it is passed down from your parents.

9 In forensic DNA I look at 16 different
10 locations on the DNA strand and I can compare these
11 locations to one another and in criminal cases what
12 we get is evidence, we get evidence items and then
13 DNA from a known suspect and/or a known victim.
14 And so I can compare any DNA profile developed from
15 an evidence item back to someone that I know DNA
16 has been collected from so I can compare it to a
17 victim or a suspect and I can say whether or not
18 that person is, it matches or it doesn't match that
19 person.

20 Q Okay. And why is it that DNA, you can match
21 people using DNA?

22 A Yes. DNA is unique to each individual except
23 in the case of identical twins.

24 Q And how do you do that? I mean, how do you,
25 generally how do you go about doing that? You said

1 you compare sixteen sites?

2 A Yes.

3 Q How do you get the DNA or how do you do that?

4 A Sure. Generally how we get the evidence is
5 swabs or cuttings from clothing or material. In
6 this case it was swabs. These were all swabs from
7 a person, so it was a swab from the inside of the
8 cheek, from the people in this case, and so then
9 what I do is I cut the cotton tip of the swab and I
10 add some more agents to that and the agents will,
11 there is some instrumentation that is automated and
12 it will separate out the DNA from any other
13 proteins or other unwanted things that can also be
14 found in the cells.

15 So, you separate and isolate DNA and then you
16 can, then the next step is to quantify the DNA,
17 basically see how much DNA you have to work with.
18 And then I can amplify the DNA. That is how, it is
19 sort of like making multiple copies of the DNA,
20 just over and over, that is how I can work with
21 such a small amount and be able to get the profile.

22 Once those copies are made it is separated
23 through another instrument and then my results end
24 up just being numbers and it is just basically a
25 number comparison, if the same number is there, and

1 if the same number is there on the evidence item
2 that is there for the victim or the suspect, then
3 it is a match. If the number is not there, then it
4 is not a match.

5 Q And you said you're looking at 16 sites.

6 What is important about these sites?

7 A Well, these sites, actually the whole strand
8 of DNA in the human body, most of it is exactly
9 alike between people but the areas that we target
10 in forensics is a small portion that is unique to
11 each individual except for identical twins, so it
12 is these particular locations that makes it unique
13 to a certain individual and these locations were
14 picked also because they have the most fairness
15 between them, meaning that it would be less likely
16 to find the same individual with the same DNA
17 profile at these particular regions.

18 Q Let's go a little more specific into this
19 case. I want to show you what is in front of you
20 what has been marked State's 3, 4, 5 and 6 for
21 identification. First have you seen those items?

22 A Yes, sir, I have.

23 Q You were asked to test these four items,
24 State's 3, 4, 5 and 6. Is that correct?

25 A Yes, that's correct.

1 Q How did you come to have these items at SLED?

2 A The items were brought to the laboratory and
3 then submitted to the evidence log-in or evidence
4 control department and what they do is they just
5 make sure all the items are listed on our computer
6 system and then they take the items, they would
7 have been brought in in just a manila envelope, and
8 then in the evidence log-in, it is completely
9 sealed when it comes to them, and then the evidence
10 log-in employees will put the manila envelope
11 inside one of these pouches and the pouch is heat
12 sealed and whoever submits the evidence initials
13 and dates when it was submitted and that way when
14 it comes to me I know that no one has opened the
15 pouch, the plastic pouch that it is in, and in this
16 particular case it was submitted to Doris
17 Yarborough.

18 MR. MELLARD: Objection, Your Honor, hearsay.

19 MR. BELL: I think she can testify as to the
20 people that touched it, that had possession of it
21 in the agency.

22 THE COURT: Well, she can certainly testify
23 she can recognize it. I think you need to lay a
24 foundation.

25 MR. MELLARD: Okay.

1 BY MR. BELL:

2 Q Let me ask you this, Miss Webb. How were
3 these items 3, 4, 5 and 6 when you received them?

4 A They were inside these heat sealed pouches,
5 they are individually labeled with a case number
6 and item number, it has been initialed and dated by
7 the agency employee and other than that the pouch
8 was intact.

9 Q Okay. Nobody had opened it before you
10 received them?

11 A That's correct.

12 Q Nobody had opened State's 3, 4, 5 or 6?

13 A Correct.

14 Q Nothing was done with those items until you
15 received them?

16 A Yes, that's correct.

17 Q Nobody went in and pulled the swabs out or
18 anything until you received them?

19 A That is correct.

20 Q So, you were the first person to touch the
21 swabs in SLED, is that correct?

22 A Right, I was the first and only person
23 actually to open the pouch and touch the swabs and
24 do anything with those.

25 Q And State's 3, 4, 5 and 6 had not been

1 tampered with in any way you could tell?

2 A That's correct.

3 MR. BELL: Your Honor, we offer State's 3, 4,
4 5 and 6 into evidence at this time.

5 MR. MELLARD: We object, Your Honor.

6 THE COURT: All right. Approach.

7 (Unrecorded bench conference).

8 THE COURT: All right. There has been an
9 objection, the objection is to the chain of
10 custody. One is a renewal of a pretrial matter.
11 On that basis, I would allow the admissibility with
12 regard to that.

13 With regard to the other ground that was
14 stated, it has to do with the chain of custody, I
15 would overrule the objection and allow it.

16 You may proceed.

17 MR. BELL: Thank you.

18 (Swabs were marked and received in evidence
19 as State's Exhibits 3, 4, 5 and 6).

20 BY MR. BELL:

21 Q Now, Miss Webb, we're talking about State's
22 3, 4, 5 and 6, you were asked to examine those
23 items?

24 A Yes, I was.

25 Q I think you were asked to compare State's 3

1 against -- well, State's 5 and 6 I believe are the
2 two children, E.W. and J.W. , correct me if I'm
3 wrong.

4 A Yes, sir, that's correct.

5 Q And you also had a sample from the mother, is
6 that correct, Minor ?

7 A Yes, I do.

8 Q Okay. And what were your findings based on
9 your DNA analysis?

10 A I will start with State's Exhibit 5, which is
11 concerning the child E.W. . And after my
12 DNA analysis, I found that the DNA profile
13 developed from E.W. is consistent with
14 being the biological offspring of Minor
15 and John Haynes. Basically what that means is the
16 DNA profile developed from E.W. , it
17 appears to be the child of Minor and
18 John Haynes, and then I have to do a statistical
19 calculation because there is a match, and the
20 statistical calculation is just to help put weight
21 on the evidence, and my statistics for that says
22 it's proximately 380,000 times more likely to see
23 these genetic results if John Haynes is the true
24 biological father than if a random man is the
25 father.

1 And then also with the genetic results
2 obtained, greater than 99.99 percent of randomly
3 tested men would be excluded as the potential
4 father.

5 Q So, in other words, it's a 99.99 percent
6 certainty that John Haynes is the father of the
7 child E.W. ? Is that a correct statement?

8 A It's -- well, greater than 99.99 percent. If
9 you were to test everyone at random, 99.99 percent
10 of the time they would not match and they would not
11 be the father. And it is 380,000 times more likely
12 that John Haynes is the father than a man picked at
13 random out of the population.

14 Q Okay. And what about, I think State's 6 in
15 regards to J.W. ?

16 A Yes. For J.W. , the DNA profile
17 developed from J.W. is consistent with
18 being the biological offspring of Minor
19 and John Haynes. So, again the DNA corresponds, it
20 matches up that J.W. could be the child
21 of Minor and John Haynes and it is
22 approximately 1.1 million times greater to see
23 these results if John Haynes is the true father
24 than if a random man was the father, and again with
25 these genetic results obtained, greater tahn 99.99

1 percent of randomly tested men would be excluded as
2 the father.

3 Q And based on, based on these results can you
4 give an opinion beyond all scientific certainty who
5 the father of these children were?

6 A Well, in my opinion after doing multiple
7 paternity cases I would say it is a very strong
8 likelihood that John Haynes is the father of both
9 of the children.

10 Q On your statistics, are you ever going to
11 give 100 percent?

12 A No.

13 Q Why?

14 A There is always other factors that have to be
15 considered when doing statistical calculations. It
16 would be impossible to have a 100 percent simply
17 because the calculation deals with frequency you
18 can find DNA in random people in the population, so
19 it has to take into consideration every other
20 person's DNA profile and it would never discount
21 the fact of a very low likelihood that someone
22 could come up with that but again I think it is
23 very strong support with this 99.99 percent that
24 anyone at random would be tested would be excluded.

25 MR. BELL: Thank you, Miss Webb. Please

1 answer questions the defense has.

2 THE COURT: All right.

3 CROSS EXAMINATION BY MR. MELLARD:

4 Q You stated earlier that only identical twins
5 have identical DNA?

6 A Yes, that's correct.

7 Q Okay. That is true when a hundred percent of
8 the DNA is analyzed?

9 A When the locations that I look at with my
10 testing is analyzed.

11 Q Okay. Now, in a forensic situation you said
12 only 16 low side are analyzed?

13 A Yes, that's correct.

14 Q And these low side, they represent less than
15 one percent of the total amount of cell DNA?

16 A I believe that's right.

17 Q Okay. Now, you talked about -- let me ask
18 this. There are two sub-specialties in genetics,
19 is my understanding. There is molecular genetics
20 and population genetics, is that correct?

21 A There could be more sub-specialties in
22 genetics, I'm not certain.

23 Q Let's talk about molecular genetics. What
24 that does, it incorporates the actual laboratory
25 work leading to the generation of a DNA profile?

1 A Yes.

2 Q Okay. And once DNA profiles have been done
3 for all the individuals involved in a paternity
4 case, then the statistical analysis is done as to
5 the probability of a particular person being the
6 father?

7 A Yes, that's correct.

8 Q Okay. And the need for population genetics
9 demonstrates why unless you analyze 100 percent of
10 the DNA you can never be 100 percent certain a
11 particular individual matches an evidentiary
12 sample?

13 A No, that is not correct. We do not analyze
14 100 percent of a person's DNA. As I said before, a
15 large part of everyone's DNA would really match but
16 there is a small portion on the DNA strand that is
17 unique to each individual except for identical
18 twins and that is the portion that I look at, so we
19 don't test 100 percent of DNA.

20 Q Okay. Now, you provided us with a list of
21 lab inscriptions. Are you aware of that?

22 A I'm aware of what I provided you. I don't
23 know about what is called an inscription,
24 unrecoverable, intended transfer lock, or transfer
25 log.

1 Q That would be basically unrecoverable
2 intended transfer, that would be lab errors?

3 A Well, it is possible that it is
4 contamination.

5 Q So, there have been contaminations at the
6 SLED laboratory?

7 A Yes, there has been contamination that has
8 occurred. We have many practices and protocols in
9 place to prevent this and that is why we do, every
10 time someone writes a report and performs any
11 analysis on any item there is the two separate
12 reviews and also we have all of the staff's DNA
13 profiles on hand because, you know, unfortunately
14 we're human and err sometimes, and especially when
15 you're working with an item you can take many
16 precautions, gloves, safety glasses, mask, and
17 sometimes you will still find maybe a staff member
18 have DNA that shows up in some of the items but we
19 always have checks for that. It is a requirement,
20 it is something we do every time we run evidence,
21 just to check it against staff profiles, check it
22 against any other case profiles that I might have
23 ran at that same time and then if we find a
24 contaminant that can't be reported out in the case
25 we make note of that and try to track down from

1 what particular process it could have happened and
2 then move forward and try to develop a profile from
3 any item that might have some swab left and report
4 out the new profile. We don't report out any
5 contaminated profiles.

6 Q Let me ask you this. In science the best way
7 to have confidence in your final product is to
8 repeat the experiment and obtain the same results.
9 Correct?

10 A Yes, that's correct.

11 Q Okay. Were you asked to repeat the DNA
12 analysis in the case?

13 A No. It is SLED protocol we don't repeat our
14 analysis.

15 MR. MELLARD: Thank you. That's all the
16 questions I have.

17 MR. BELL: Your Honor, can she have an
18 opportunity to answer? He cut her off.

19 THE COURT: Yes, she may complete her answer.

20 THE WITNESS: The SLED protocol, we don't
21 repeat our analysis. As you can imagine, the
22 laboratory gets numerous cases throughout the state
23 and it wouldn't really be efficient. And also,
24 like I said, our protocols have many checks and
25 balances in place to make sure that our work is

1 good quality, and again nothing is reported out
2 that hasn't had those checks and it won't be
3 reported out if there is an issue with the item.

4 BY MR. MELLARD:

5 Q Just so we're clear, did you repeat the DNA
6 analysis in the case?

7 A I didn't repeat it.

8 MR. MELLARD: All right.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION BY MR. BELL:

11 Q You're not required to repeat it, are you?

12 A No, we're not.

13 Q Your work was reviewed, is that correct, in
14 this particular case?

15 A That's correct. I reviewed it myself and
16 also two other DNA analysts reviewed my work.

17 Q Any contamination reported in this case?

18 A Not in this case, no.

19 MR. BELL: Thank you.

20 THE COURT: Recross?

21 MR. MELLARD: No questions.

22 THE COURT: Is this witness free to leave?

23 MR. BELL: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. MELLARD: No objection.

1 THE COURT: You may be excused.

2 (Witness excused).

3 MS. FORD: May we have one moment, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MS. FORD: Your Honor, the State would rest
7 at this point.

8 THE COURT: Very well. Ladies and gentlemen,
9 you have heard the witnesses and seen the evidence
10 you will from the State in their case in chief.
11 There are matters I must take up outside your
12 presence, so I'm going to ask you to step to your
13 jury room, to not discuss this matter or allow
14 anyone to discuss it with you. We'll see you
15 shortly. Thank you.

16 (Jury excused from the courtroom).

17 THE COURT: All right. Are there any
18 motions?

19 MR. MELLARD: Yes, ma'am. At this time we
20 move for a directed verdict.

21 THE COURT: All right.

22 MR. MELLARD: Addressing the first
23 indictment, the incest indictment. It is our
24 position that the State has failed to show that the
25 defendant had knowing, knowingly had sexual

1 intercourse with a person, with his wife's
2 daughter. It is our opinion the State has failed
3 to meet that burden and a directed verdict should
4 be graned in this case as to the incest.

5 As to the criminal sexual conduct with a
6 minor, again it is our position that the State has
7 failed to show that the defendant knowingly engaged
8 in sexual battery with a person between the ages of
9 14 and 16. Hold on one second. So, it is our
10 position that they failed to show he knowingly
11 engaged in a sexual battery, Your Honor, and based
12 on that they failed to meet the elements of
13 criminal sexual conduct and we would ask the Court
14 to direct a verdict.

15 THE COURT: Thank you so much. Of course as
16 you know it is not my responsibility to weigh the
17 evidence but it is my responsibility to ascertain
18 whether or not there is evidence on each and every
19 element of each of the two offenses, and I find
20 that there is evidence on each of the elements,
21 each and both of the charges. We have the marriage
22 license which establishes the marriage, we have the
23 testimony of Miss Haynes they were married and
24 Minor is his stepdaughter, and that, that
25 combined with the testimony of the alleged victim

1 in this case, that there was, that she was
2 subjected to forceful sexual intercourse with the
3 defendant on numerous occasions beginning when I
4 believe she said she was 13 years old and which
5 continued and produced two children. There is
6 evidence for each element of the incest and
7 criminal sexual conduct with a minor second degree.
8 The victim gave her birth date, and given that she,
9 both her birth dates were testified to as well as
10 her age when these sexual contacts, sexual battery
11 began. That satisfies the elements. I find there
12 is evidence on each element of each of the two
13 offenses and of course it is not for me to weigh
14 that, that is the jury to weigh, and I would
15 therefore respectfully deny your motion and note
16 your exception.

17 Now, does the defendant intend to call
18 witnesses?

19 MR. WISE: We do, Your Honor.

20 THE COURT: All right. And do you wish for
21 me to examine Mr. Haynes now or later with regard
22 to his right to testify?

23 MR. WISE: I think now would be fine, Your
24 Honor.

25 THE COURT: Okay. Very well, Mr. Haynes, if

1 you would please stand and raise your right hand
2 for me.

3 JOHN EDWARD HAYNES, after being first duly sworn,
4 stated as follows:

5 THE COURT: All right, sir, please tell me
6 your name.

7 THE DEFENDANT: John Edward Haynes.

8 THE COURT: You may put down your hand. Mr.
9 Haynes, at this time I'm going to explain to you
10 certain of your rights. If you do not understand
11 anything that I say I want you to let me know. If
12 you want me to explain anything, also please let me
13 know. There are many ways to explain any one
14 thing.

15 Do you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Now, Mr. Haynes, we have now
18 reached the stage of the trial where you may take
19 the stand. You have the right and protection given
20 to you by the Fifth Amendment of the Constitution
21 of the United States and of the State of the South
22 Carolina which states in part that no person shall
23 be compelled in a criminal case to testify against
24 themselves. This means that you cannot be required
25 to testify in this case. You have the right to

1 testify on your own behalf, however no one can make
2 you testify. This is a personal right and no one
3 can waive this right except you.

4 If you decide to testify you will be subject
5 to the same rules that govern other witnesses and
6 you may be examined and cross-examined on any
7 relevant issue in this case. In addition, if you
8 have any convictions involving a false statement or
9 for crimes punishable by imprisonment for more than
10 one year and this court determines that the
11 probative value of admitting this evidence
12 outweighs its prejudicial effect to you the
13 Solicitor will be able to introduce your record to
14 attack your credibility but only to attack your
15 credibility. I would give the jury a limiting
16 instruction that even if you have a record, excuse
17 me, even if that would be admissible it would only
18 be admissible for the purpose of attacking your
19 credibility.

20 If you decide to testify this decision on
21 your part must be freely, voluntarily and
22 intelligently made with knowledge of the
23 protections given to you by the Fifth Amendment and
24 the consequences of your decision to testify. If
25 you decide not to testify I will instruct the

1 jurors they cannot give the fact you did not
2 testify any consideration whatsoever and that there
3 is to be absolutely no prejudice to you because you
4 did not testify.

5 The decision whether to testify or not to
6 testify is left entirely up to you. Now, I
7 encourage you, I hope you are continuing to talk to
8 your attorneys, to talk to your family and friends,
9 people who you have faith and trust in but you must
10 know that the final decision whether you want to
11 testify or not testify is left entirely up to you.
12 That is your decision.

13 Do you understand what I have explained to
14 you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you have any questions about
17 what I just explained to you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. Now, have you
20 discussed with your, I don't want to know what you
21 have discussed but have you discussed with your
22 lawyers whether you should or should not testify?
23 I don't want to know about the decision but did you
24 all talk?

25 THE DEFENDANT: Yes, we did.

1 THE COURT: Now, here is what I want you to
2 know. Two things. Number one, I don't know what
3 the order of your witnesses might be but if you all
4 want to take a break before Mr. Haynes makes up his
5 mind whether he is going to testify or not and have
6 one more opportunity to speak to you all, just let
7 me know, because I don't want to rush you. In
8 other words, that decision is his to make and if he
9 needs to consult with you further I certainly will
10 give you that opportunity.

11 I would ask at this point would Mr. Haynes be
12 your next witness or would somebody else?

13 MR. WISE: Somebody else would be our next
14 witness.

15 THE COURT: Very well. Again, if we need to
16 take a break let me know that.

17 MR. WISE: Thank you, Your Honor.

18 THE COURT: Thank you.

19 All right, are you all ready to go?

20 MR. WISE: Your Honor, could we have a very
21 brief break?

22 THE COURT: Yes, you can.

23 MR. BELL: Your Honor --

24 THE COURT: We can all take a very brief
25 comfort break.

1 MR. BELL: I would also ask, one of their
2 witnesses I would object to and I think we would
3 need to do something outside the presence of the
4 jury, just kind of a heads up.

5 THE COURT: Okay. Is that the next witness?

6 MR. WISE: It would not be the next witness.

7 THE COURT: So, great, why don't you all go
8 take a very quick comfort break. You just let us
9 know if you need to take a comfort break, too,
10 everybody, we'll take five minutes and come on
11 back.

12 MR. WISE: One more item. One of the
13 witnesses is going to be Eula Clark. The Court
14 ordered, we asked the Court to sequester the
15 witnesses. Gail Haynes has been in the courtroom
16 while we did the police officers. However, there
17 is a chance that I may call Gail Haynes in my case.

18 THE COURT: Okay.

19 MR. WISE: So, what I would ask the Court,
20 even though she's been in for purposes of listening
21 to the police, when we start our case I would like
22 her to remain outside.

23 THE COURT: Okay. Miss Haynes gets to take
24 her comfort break early.

25 Thank you, Miss Haynes.

1 THE COURT: All right, we'll take our break,
2 about five minutes, you all.

3 (Recessed at 3:28 p.m.).

4 (Resumed at 3:33 p.m.).

5 THE COURT: Is the State ready?

6 MS. FORD: We are..

7 THE COURT: Is the defense ready?

8 MR. WISE: Yes, Your Honor.

9 THE COURT: Very well, let's have the jury.

10 (The jury returned to the courtroom).

11 THE COURT: All right, ladies and gentlemen,
12 as I mentioned before you went back in your jury
13 room, you have heard from the State. Now we turn
14 to the defense.

15 MR. WISE: Thank you, Your Honor. At this
16 point we call Dr. Marc Harari.

17 THE COURT: Very well.

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1 DR. MARC HARARI, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: My name is Dr. Marc, M-a-r-c,
6 Harari, H-a-r-a-r-i.

7 THE COURT: Your witness, Mr. Wise.

8 MR. WISE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Dr. Harari, good afternoon.

11 A Good afternoon.

12 Q I appreciate your patience.

13 Dr. Harari, what kind of doctor are you?

14 A I'm a psychologist.

15 Q And what do psychologists do?

16 A Psychologists do a number of things. I have
17 a private practice in Columbia, South Carolina, I
18 do psychological evaluations on children ranging as
19 young as five years old to elderly, and also
20 psychological testing, usually encompasses an
21 interview with an individual, several personality
22 or cognitive tests, then I make conclusions and
23 recommendations based on my findings.

24 Q Dr. Harari, what is a psychological
25 evaluation, what does that mean?

1 A I get referrals from physicians, from
2 agencies to assess someone's mental health and
3 functioning capacity, to see, depending on the
4 referrals, make recommendations to help facilitate
5 treatment.

6 Q So, somebody would come to you by referral
7 and the people, the organization making the
8 referral would give you information that they
9 wanted you to consider?

10 A Yes.

11 Q Okay, very good. Do you get referrals from
12 the Calhoun County Department of Social Services?

13 A I have, yes.

14 Q Okay. And I want to call your attention to
15 June 1st of 2010?

16 A Yes.

17 Q You were practicing at that time?

18 A Yes.

19 Q Did you get a referral prior to that from the
20 Calhoun County Department of Social Services to do
21 a psychological evaluation of Minor ?

22 A Yes, I did.

23 Q And what was involved in that evaluation,
24 what did you do?

25 A Okay. In the evaluation of Minor

1 I was, I had what what is called collateral
2 information from Miss Eula Clark. She has --

3 Q Dr. Harari, you cannot testify to what you
4 were told. You can just say you had information.

5 A Well, okay.

6 Q Okay.

7 A So, what I'm saying -- what was your question
8 again, sir?

9 Q When you met with Minor --

10 A Yes.

11 Q I will rephrase the question. You met with
12 Minor . Did you give her any tests?

13 A Yes.

14 Q Did you speak to her?

15 A Yes.

16 Q Ask her questions?

17 A Yes.

18 Q Okay. What kind of tests did you give her?

19 A I gave her eight different tests, some
20 pertaining to parenting, some pertaining to her
21 mental health functioning, some pertaining to her
22 personality functioning and some pertaining to her
23 intellectual abilities.

24 Q Very good. Just to be clear, was she
25 referred by Eula Clark at the Calhoun County --

1 A Yes.

2 Q Very good. Now, in the process of speaking
3 to her I assume you keep track of the things she
4 says to you?

5 A Yes.

6 Q Okay, all right. And how many times did you
7 meet with Minor ?

8 A One time on June 1st, 2010.

9 Q Okay. Is that normal, one visit for an
10 evaluation?

11 A Yes.

12 Q Very good. All right, I call your attention
13 to June 1st of 2010. When you met with Minor did
14 you and she talk about the issue of potential
15 sexual abuse?

16 A Yes. I asked her, one of the questions I ask
17 typically in an interview to the client, if they
18 have ever been the victim of trauma, physical abuse
19 or sexual abuse.

20 Q During the course of your interview with
21 Minor did she say she, that she seduced John
22 Haynes when he was under the influence of alcohol,
23 to have sex with him?

24 A Yes, she said she seduced her stepfather when
25 he was under the influence of alcohol, to have sex

1 with her, she believed her stepfather was entirely
2 unaware that he had sexual relations.

3 Q Did she add that she took advantage of Mr.
4 Haynes because he was intoxicated?

5 A Yes.

6 Q Okay. Did she say to you during this
7 interview that she made the initial allegation of
8 sexual abuse by her step-father because she thought
9 she would be in trouble if she admitted that she
10 seduced her stepfather?

11 A Yes.

12 Q Okay.

13 MR. WISE: Let me just have one moment.

14 THE COURT: Yes.

15 Q Doctor, did she, in speaking with her, did
16 she say to you that she loved her stepfather and
17 that she wanted to have his children at that time,
18 that she wanted to have his children?

19 A Yes.

20 MR. MELLARD: Doctor, thank you. Answer any
21 questions the State has.

22 THE COURT: Cross-examination.

23 MS. FORD: Thank you, Your Honor.

24 CROSS EXAMINATION BY MS. FORD:

25 Q Good afternoon, Dr. Harari.

1 A Good afternoon.

2 Q Dr. Harari, in your experience how many cases
3 have you dealt with with victims of childhood
4 sexual abuse?

5 A I have been doing psychological testing
6 since, as far as professionally on my own since
7 2005, with the Department of Juvenile Justice since
8 2000, easily estimate in the hundreds.

9 Q Numerous?

10 A Yes.

11 Q You're experienced in this area?

12 A Yes, I have had a lot of familiarity with
13 sexual abuse victims.

14 Q Are you familiar with child victims of sexual
15 abuse recanting their initial statement?

16 A Yes.

17 Q Can you explain that?

18 A Recantation means when they first admit
19 something, when they first admit to being abused,
20 then they later recant it, meaning they take it
21 back and and say, "No, I wasn't, I was not abused."

22 Q Can you explain some family dynamics that
23 might go into a child recanting a statement after
24 they have already made a statement?

25 MR. WISE: Objection, Your Honor. Two

1 grounds. One, relevance. And two, I think there
2 is a lack of foundation and I guess it would be
3 speculative as to this situation.

4 THE COURT: Approach.

5 (Unrecorded bench conference).

6 BY MS. FORD:

7 Q Dr. Harari, do family dynamics have anything
8 to do with a child recanting?

9 A In some cases, yes.

10 Q Let's take a look at this particular case,
11 Dr. Harari. I know you received some additional
12 information from other sources. Correct?

13 A Yes.

14 Q And after receiving that information and
15 interviewing Minor what was your
16 diagnosis of her and I guess your conclusion
17 regarding your interview?

18 A From the accumualtion of information I
19 received my diagnosis was she was sexually abused.

20 Q Can you expand on that, Doctor?

21 A One of the things I assessed for Minor was
22 her credibility regarding how realistic she was
23 being with me in terms of her presentation, you
24 know, the facts of what her story was, and on the
25 psychological inventory there are many tests within

1 that that assess validity, meaning is the person
2 exaggerating symptoms or is a person minimizing
3 symptoms, engaging in unrealistic response pattern.
4 Minor was, based on her surveys, was giving
5 a very unrealistic response pattern, being very
6 protective, very defensive. Based on the facts of
7 the case and her IQ which was in the borderline
8 range, to concoct such, it didn't seem reasonable
9 or possible for her to concoct such an action to be
10 forced upon her.

11 Q So, in other words, Doctor, for Minor
12 to have concocted this seduction of her
13 stepfather John Haynes is impossible to you?

14 A Very far, extremely farfetched.

15 Q Thank you, Doctor. What did Minor believe,
16 through your interview what did you learn as to, if
17 she took responsibility for seducing her
18 step-father, what did she think was going to
19 happen?

20 A Well, she never revealed anything to me about
21 that personally. That was more from the collateral
22 I received from Miss Clark stating that it was her
23 impression she was trying to --

24 MR. WISE: Objection, hearsay.

25 THE COURT: You have to lay a foundation.

1 MS. FORD: Yes, Your Honor. Beg the Court's
2 indulgence just one moment.

3 BY MS. FORD:

4 Q Doctor, do you believe, you stated that
5 Minor was protective?

6 A Yes.

7 Q Protective of John Haynes?

8 A I believe so, yes.

9 Q Why do you think that is?

10 A Again, it appeared her motive was to, so he
11 would not be in any trouble with the criminal
12 justice system.

13 Q Even if that wasn't necessarily true,
14 correct?

15 A Yes.

16 MS. FORD: Beg the Court's indulgence, Your
17 Honor.

18 THE COURT: All right.

19 Q Just to make sure I understand, Doctor, it
20 was your diagnosis following your evaluation of

21 Minor that she was a victim of childhood
22 sexual abuse, correct?

23 A Yes.

24 Q And that she was minimizing what happened to
25 her?

1 A Yes.

2 Q In an effort to protect John Haynes?

3 A Yes.

4 Q And that based on the tests that you gave
5 her, including her IQ test, that her explanation
6 was highly unlikely?

7 A Yes.

8 MS. FORD: No further questions, Your Honor.

9 THE COURT: All right, redirect?

10 REDIRECT EXAMINATION BY MR. WISE:

11 Q Dr. Harari, you gave her, Miss Ford asked you
12 about the diagnosis?

13 A Yes.

14 Q And asked you about two tests you gave her?

15 A Yes.

16 Q One other thing you found out about her from
17 the tests that you gave her is that her personality
18 profile suggested an inflated sense of self worth,
19 is that right?

20 A Yes.

21 Q She has a tendency to seek attention and
22 stimulation in her environment?

23 A Correct.

24 Q That people like Minor usually engage in
25 seductive, immature exhibitions and self

1 gratification and self dramatizing behavior?

2 A Yes.

3 Q You also said about people like Minor , they
4 have an assumption that the rules of society do not
5 apply to them?

6 A Correct.

7 MR. WISE: Thank you.

8 THE COURT: Re-cross?

9 MS. FORD: Beg the Court's indulgence, Your
10 Honor.

11 Nothing further, Your Honor.

12 THE COURT: All right. Is this witness free
13 to leave?

14 MR. WISE: He is, Your Honor.

15 THE COURT: Any objection?

16 MS. FORD: No objection.

17 (Witness excused).

18 THE COURT: All right, call your next
19 witness.

20 MR. WISE: Thank you, Your Honor. We call
21 Eula Clark.

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1 EULA CLARK, after being first duly sworn, testified
2 as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Eula Mae Clark.

6 THE CLERK: Have a seat. Pull the microphone
7 close to you. Thank you.

8 THE COURT: Your witness.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Miss Clark, how are you?

11 A I'm fine, thank you.

12 Q Very good. Miss Clark, will you tell the
13 ladies and gentlemen of the jury what it is that
14 you do?

15 A I work for Calhoun County Department of
16 Social Services, child protective service
17 specialist in their child protective services.

18 THE COURT: Move the microphone just a little
19 closer. I'm having a little trouble hearing.

20 Q How long have you been doing that?

21 A I have been working with DSS for eighteen
22 years.

23 Q Eighteen years?

24 A Yes.

25 Q Okay. And day to day what do you do, what is

1 your job?

2 A Well, I am a CPS assessment worker, I do what
3 we call assessments. When a report comes in I go
4 out on the report and I do all the leg work as far
5 as contacting and making referrals for the
6 assessment.

7 Q As part of your job do you interact with
8 children who come within the realm of DSS?

9 A Yes.

10 Q Okay. Would they call you a case manager?

11 A Social worker, caseworker, that's right.

12 Q All right. And as part of your
13 responsibility do you keep track of the things that
14 you do?

15 A Yes.

16 Q Do you do reports and notes?

17 A Yes.

18 Q Okay. You would do the case dictation, is
19 that what you folks call it?

20 A Yes, dictations.

21 Q Dictations are when something happens you go
22 back and you write it down?

23 A Yes, I put it in the system.

24 Q You put it in the system? Why do you do
25 that?

1 A That is to keep a record of everything that
2 we do and have a case file.

3 Q Because you might forget something?

4 A Yes.

5 Q Okay. Now, Miss Clark, I want to talk to you
6 about Minor . Do you know Minor ?

7 A Yes.

8 Q How do you know Minor ?

9 A We received a report, that was in November of
10 '99 and that is when I met Minor and her family.

11 Q Okay. And you were her caseworker, social
12 worker?

13 A Yes.

14 Q Okay. And did you remain her caseworker,
15 social worker as long as the case in DSS was
16 pending?

17 A Yes..

18 Q And when did the case finally close?

19 A The case closed, let me see, the case was
20 closed on 5/16/2011.

21 Q Of 2011?

22 A Yes.

23 Q So, close to two years you were involved with
24 Minor ?

25 A Yes.

1 Q How often would you see Minor during that
2 time?

3 A On a monthly basis.

4 Q On a monthly basis?

5 A Yes.

6 Q When you would see Minor what kind of
7 things would you do?

8 A We talked about the case, her and the
9 children's safety and wellbeing.

10 Q So, she would talk to you about things and
11 you would write those things down?

12 A Yes.

13 Q Okay. And you would make those dictations by
14 dates, action dates, I think you call them?

15 A Yes.

16 Q Okay, very good. All right, I want to ask
17 about a couple things. Did there come a time when
18 Minor said to you -- do you have your records
19 with you now?

20 A Yes.

21 Q I can give you that if you want but did there
22 come a time when Minor said to you that she
23 wanted to have a baby, that all of her friends had
24 babies and she wanted one also?

25 A Yes.

1 Q Okay. Did there come a time when she said to
2 you her boyfriend Grandon would not give her a
3 baby, he did not want a baby?

4 A Yes.

5 Q Okay. All right. Did there come a time when
6 she said to you, talking about her relationship
7 with John Haynes, that she said to you that she
8 went in on him because she was in love with him?

9 A She did.

10 Q Okay, all right. But that she didn't have
11 those feelings anymore?

12 A Yes.

13 Q Okay. Did she say to you that she had sex
14 with John because she loved him and wanted to have
15 a baby, did she say that to you?

16 A Yes, as far as I can recall.

17 Q Okay. Did she say to you that if John was
18 the father of her children it was no one else's
19 business?

20 A She did say that, I think, in the interview.

21 Q There was times when she said to you that
22 John was not the father of the children. Correct?

23 A Yes.

24 Q Okay. Actually there were times she denied
25 that he was the father?

1 A Yes.

2 Q Okay. She actually made that denial on more
3 than one occasion?

4 A Yes.

5 Q Okay. Now, in talking about how it came that
6 she was pregnant with John's child, did she say to
7 you that her step-dad was in jail for nothing that
8 she did, he did not do anything to her, that she
9 approached him?

10 A She did say that.

11 Q Okay. Did she say to you on this topic that
12 her step-dad did not know or do anything because he
13 was drunk?

14 A Yes.

15 Q Okay. All right. In talking about whether
16 or not he knew what was going on when children were
17 being conceived, did she say to you that he did not
18 know or do anything, he did not know or do anything
19 because he was drunk?

20 A She didn't say that. She approached him,
21 that he did not know what was going on.

22 Q He didn't know what was going on?

23 A Yes.

24 Q All right. Let me ask you a question. Can
25 you look at your notes from May the 20th of 2010?

1 A Yes.

2 Q Do you have them in front of you?

3 A Yes.

4 Q And I want you to look, do you see the line
5 that starts with the word drunk, just go down the
6 lines?

7 A I don't --

8 MR. WISE: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 Q Miss Clark, I'm just going to show you, do
12 you see that section that I just pointed to that is
13 highlighted?

14 A Yes.

15 Q Okay. And what she said to you was she
16 approached him and he did not know or do anything
17 because he was drunk. That is what she said to
18 you?

19 A She approached him, he did not know or do
20 anything because he was drunk.

21 Q Okay, all right. Now, in talking about why
22 she said something different about John, did she
23 say to you that she said he raped her because she
24 felt that is what everyone wanted to hear?

25 A She did say that.

1 Q Okay. And on more than one occasion she said
2 to you that she is not afraid of John Haynes?

3 A She did say that.

4 Q As a matter of fact there came a time when
5 she said some things to you to get him out of jail
6 so the two of them could go to a picnic together?

7 A I'm not sure about the picnic but I know she
8 wanted, she said some things about she, she said
9 she felt this would have gotten him out of jail.

10 Q The reason she wanted him out of jail was
11 because they wanted to go to a picnic. I will call
12 your attention to September 29th of 2010.

13 MR. WISE: May I approach the witness again?

14 THE COURT: You may.

15 Q If I may highlight that one sentence, she
16 wanted him to go on a picnic on her birthday. And
17 her birthday was five or six months later, correct?

18 A Her birthday is 10/6/92.

19 Q And in discussing that picnic apparently she
20 said they went to the picnic together the year
21 before and she wanted to do it again?

22 A I can't recall.

23 Q Do you have that piece of paper I just gave
24 you?

25 A Yes.

1 Q Look at the next sentence.

2 A "Went to the picnic together last year."

3 Q Okay. Now, Miss Clark, all these statements

4 that Minor made about what she did to John, were

5 you ever involved in a meeting where she told her

6 mother these things?

7 A I was not.

8 Q Okay.

9 A They were spoke about but I was not.

10 Q You don't know if she ever had that meeting

11 or not?

12 A I don't.

13 MR. WISE: Let me have one moment.

14 THE COURT: You may.

15 MR. WISE: Miss Clark, give me just one

16 second.

17 BY MR. WISE:

18 Q Miss Clark, just a little background about

19 this. When you first became involved with Minor ,

20 with this family, you didn't become involved with

21 them with anything related to this issue we're

22 talking about today?

23 A Our report came in due to the fact there was

24 a call about concerns about a mom and a seventeen

25 year old who had two children and they felt the two

1 children were fathered by her step-dad.

2 Q So, when you got a call, this wasn't the
3 reason that Mr. Haynes --

4 A This was the reason for the report.

5 Q It wasn't related to the mom having some kind
6 of problem with drugs?

7 A It was reported the seventeen year old
8 daughter who has two children and the mother's
9 husband reportedly may be the father of the two
10 children.

11 Q When you did your initial interview with
12 Minor she told you John was not the father?

13 A That's correct.

14 Q She told you Deondre was the father?

15 A That's correct.

16 Q When she told you that she looked you in the
17 eye and said Deondre is the father, that is what
18 she said, and as a result of that you went out and
19 you tested Deondre, the first thing you did?

20 A Yes.

21 Q Because you believed what she said?

22 A We had to start someplace and in speaking
23 with the child enforcement specialist, he said
24 start with Deondre. If Deondre was ruled out then
25 we would go for the step-father.

1 Q Minor looked you in the eye, she told you
2 that and she lied to you?

3 A Yes.

4 Q Okay. There came a point when Mr. Haynes
5 left the house. Correct?

6 A Yes, that is correct.

7 Q He moved out on his own, left the house?

8 A We asked he leave the home.

9 Q And he did?

10 A Yes.

11 Q And as late as July of 2010 Minor had not
12 told her mother anything about what was going on
13 with her and Mr. Haynes?

14 MS. FORD: Objection, Your Honor, that's
15 speculation, she has no firsthand knowledge of what
16 Minor may or may not have told her mother at
17 anytime.

18 THE COURT: Yes, sir, do you wish to be
19 heard?

20 MR. WISE: I'll withdraw the question.

21 THE COURT: Very well.

22 BY MR. WISE:

23 Q But Minor did tell you that she was fearful
24 of telling her mother about what she had done?

25 A She did.

1 Q Okay.. Did there come a time, Miss Clark,
2 when you told her that, when she tried to tell you
3 what was going on with her and John, she told you
4 that, you told her that a judge would not believe
5 what she said? Did you tell her that?

6 A I'm trying to find it. I remember something
7 to that effect.

8 Q All right. I call your attention back to May
9 20, 2010.

10 MR. WISE: May I approach the witness again,
11 Your Honor?

12 THE COURT: You may.

13 THE WITNESS: What date was that?

14 MR. WISE: Hold on one second.

15 BY MR. WISE:

16 Q Do you see that line?

17 A Yes, I did.

18 Q Okay. And your statement is you did not
19 believe a judge was going to believe her about what
20 happened?

21 A She wanted to change her story.

22 Q She wanted to change her story, you said the
23 judge is not going to believe that?

24 A Yes. She said she approached him and he did
25 not know anything what was going on.

1 Q Okay.

2 MR. WISE: May I have that back?

3 Miss Clark, thank you.

4 THE COURT: Cross-examination?

5 MS. FORD: Thank you, Your Honor.

6 CROSS EXAMINATION BY MS. FORD:

7 Q Good afternoon, Miss Clark.

8 A Good afternoon.

9 Q You got involved in this case to investigate
10 whether John Haynes was the father of Minor
11 ' two children, correct?

12 A That's correct.

13 Q You investigated that, right?

14 A Yes.

15 Q Ultimately you determined that John Haynes
16 was the father of not one but both of her children?

17 A That's correct.

18 Q You mentioned initially Minor
19 denied that there was any sort of sexual contact
20 between her and Mr. Haynes, correct?

21 A That is correct.

22 Q And then she later said, "I came onto him"?

23 A Yes.

24 Q Right?

25 A Yes.

1 Q But you didn't believe her, did you?

2 A I did not.

3 Q We're talking about a fourteen, fifteen year
4 old, sixteen year old child here, right?

5 A Yes.

6 Q And through your investigation you required
7 Mr. Haynes to leave the home to protect Minor

8 ?

9 A That's correct.

10 Q Or Minor . You noted in your notes
11 that you believed Minor lied to protect
12 John Haynes, is that right?

13 A Yes.

14 Q And in fact Dr. Harari indicated to you and
15 you agreed that Minor was minimizing --

16 MR. WISE: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. WISE: Thank you.

19 THE COURT: Approach.

20 MS. FORD: Yes.

21 (Unrecorded bench conference).

22 BY MS. FORD:

23 Q Miss Clark, was one of the reasons you didn't
24 believe Minor , because DSS had a DNA test done to
25 establish paternity?

1 A That is correct, that is what I told about
2 her dad not, the judge not believing her because of
3 the fact we already had the DNA test done and --

4 MR. WISE: Objection, Your Honor. I think
5 she can testify what was done but the results would
6 be hearsay.

7 THE COURT: In terms of what the Court may or
8 may not do, yes, I agree.

9 Q There was a test that was conducted, correct?

10 A Correct.

11 Q And based on that test as well as your
12 investigation was paternity established in this
13 case?

14 MR. WISE: Objection.

15 Q In your DSS case.

16 MR. WISE: I think that would be hearsay as
17 to the result of the test. She can say there was a
18 test.

19 THE COURT: What?

20 MR. WISE: I think she can testify that a
21 test was done.

22 MS. FORD: I'm asking about the findings of
23 the case, is that the result of that.

24 THE COURT: A result of the DNA test?

25 MS. FORD: Yes, Your Honor.

1 THE COURT: Was there a test done?

2 MS. FORD: Yes. Your Honor, if I could be
3 heard further?

4 (Unrecorded bench conference).

5 BY MS. FORD:

6 Q Let me ask you that question again, Miss
7 Clark. A DNA test was given to -- let me rephrase
8 it. A DNA swab was taken from John Haynes as well
9 as the two children, Minor s two children?

10 A Correct.

11 Q Is that correct?

12 A Yes.

13 Q And ultimately a DNA analysis was done with
14 DSS, correct?

15 A Yes.

16 Q What were the results of that DNA analysis?
17 Are you aware of that?

18 A I have a copy of it. It was 99.99 percent
19 probable that Mr. John Haynes was the biological
20 father of E.W. and J.W.

21 Q Thank you, Miss Clark. So, based on that,
22 you did not believe what Minor was telling you
23 about how it happened, correct?

24 A That's correct.

25 MS. FORD: Beg the Court's indulgence, Your

1 Honor.

2 THE COURT: All right.

3 Q Miss Clark, did Minor ever tell you that

4 she heard that people who molest children get raped

5 and beaten in prison?

6 A Yes, she did.

7 Q Did she tell you that she was concerned that

8 might happen to her step-father?

9 A She did.

10 Q This was when she was denying that he knew

11 about anything. Correct?

12 A Correct.

13 Q That she was saying that she seduced him?

14 A Yes.

15 Q Correct?

16 A Correct.

17 Q And that she was concerned about him being

18 raped and beaten in prison?

19 A Yes.

20 MS. FORD: Beg the Court's indulgence, Your

21 Honor.

22 Q Just a few more questions, Miss Clark.

23 Initially Minor said that Deondre Goodwine was

24 the father of her children?

25 A Yes.

1 Q But he was excluded, correct?

2 A Yes.

3 Q Then she said Marcus House?

4 A Yes.

5 Q But you found out he didn't exist, correct?

6 A We couldn't locate him.

7 Q Then she said she seduced her step-father,
8 that it wasn't his fault, correct?

9 A Correct.

10 Q But ultimately it was determined that he's
11 the father of her two children, is that correct?

12 A That is correct.

13 MS. FORD: No further questions, Your Honor.

14 THE COURT: All right. Mr. Wise.

15 MR. WISE: Thank you, Your Honor, very
16 briefly.

17 REDIRECT EXAMINATION BY MR. WISE:

18 Q So, you think Minor is protective of John
19 Haynes?

20 A Yes.

21 Q Because she loves him?

22 A Yes.

23 Q And that is even after all this she loves
24 him?

25 A Yes, that is what she says.

1 Q That's what she says. Now, Minor told you
2 that, I think Miss Ford says, Deondre Goodwine was
3 the father, then you did the DNA test and it was as
4 a result of those tests that you knew Minor was
5 lying to you. Correct?

6 A Yes.

7 Q You couldn't tell she was a liar until you
8 did scientific testing to figure it out?

9 A I guess that is the truth.

10 Q Okay. You talked about Marcus House. You
11 said you couldn't locate him?

12 A We never had an address or number for him.

13 Q Never had an address or number. You are
14 still looking for him?

15 A No, we're not.

16 Q Why not?

17 A Because our case has been closed.

18 Q If your case was open would you still look
19 for him?

20 A If we had contact information we would have.

21 Q How much effort did you put into finding
22 Marcus House.

23 MS. FORD: Objection, Your Honor, relevance.

24 MR. WISE: Your Honor, could we approach the
25 side?

1 THE COURT: Sure.

2 (Unrecorded bench conference).

3 THE COURT: Ladies and gentlemen, step to
4 your jury room, do not discuss this matter or allow
5 anyone to discuss it with you, there is a matter I
6 must take up outside your presence.

7 (Jury excused from the courtroom).

8 THE COURT: Okay.

9 MR. WISE: Your Honor, if I can address the
10 issue we had at the side bar?

11 THE COURT: Sure.

12 MR. WISE: The issue of whether or not, where
13 I'm going, she never told her that there was a
14 Marcus House. Now, the victim Minor testified
15 there was no Marcus House and I think it goes to
16 her credibility, that even though she made it up,
17 she's never corrected it and it goes to the
18 victim's credibility, and I think that is all it
19 goes to, she said something, that she lied and she
20 just, no matter what happened, never corrected it.

21 MS. FORD: Your Honor, did two paternity
22 tests not correct that?

23 THE COURT: Here is my concern. We are not
24 going there because your question to this witness
25 was, "Why did you stop looking for Marcus House,"

1 and she said, "Because our case is closed." She
2 did, this witness did you a grand favor because
3 what she didn't say was that there was a court
4 order, stipulation that he had sexually abused this
5 child, he did you a favor, she has told you this
6 case is closed, you know Judge Wylie said that
7 stipulation is not to be used against your client
8 and you are treading in dangerous water. We are
9 not going down Marcus House, you're not going to
10 put this witness in a position where she would
11 otherwise testify that to which she cannot testify
12 to.

13 MR. WISE: That was not my intention.

14 THE COURT: It doesn't matter, oh, no, no,
15 sir, this case, because you put her in a position
16 to testify to that which she cannot testify to, the
17 case is ended, he stipulated he would be found to
18 have sexually abused this child and that cannot be
19 testified to, this witness has done a masterful
20 job, masterful job, this is not your first rodeo, a
21 masterful job in honoring Judge Wylie's order.
22 You're not going to push her there.

23 I'm going to tell the jury to disregard the
24 entire questioning about Marcus House, okay? Am I
25 clear about that? Yes.

1 Okay, bring my jury back.

2 MR. LUGINBILL: Judge, if I can real quickly,
3 he's getting into what other people may have said,
4 I thought that is where he was going. She also
5 cannot reveal who the initial reporter was or any
6 other subsequent conversations she may have had
7 with that individual, so I would ask both counsel
8 to steer clear of that. There is a statute
9 directly on that, that has to remain confidential.

10 THE COURT: Okay.

11 (The jury returned to the courtroom).

12 THE COURT: All right, ladies and gentlemen,
13 there was a line of questioning about Mr. House
14 just before you all left the courtroom. I have
15 made a determination that that line of questioning
16 needs to be excluded and disavowed from your mind.

17 Therefore, Mr. Wise, you may proceed.

18 MR. WISE: No more questions.

19 THE COURT: Very well. Miss Ford?

20 MS. FORD: Nothing, Your Honor.

21 THE COURT: And is this witness free to
22 leave?

23 MR. WISE: She is.

24 THE COURT: Very well. Thank you.

25 (Witness excused).

1 THE COURT: All right, Mr. Wise?

2 MR. WISE: My next witness would be Dr.
3 Salas, I think Mr. Bell had an issue about that
4 matter.

5 THE COURT: All right, Bailiff.

6 Exercise, exercise, you're getting skinnier
7 by the minute in this case. There is another
8 matter I must take up outside your presence. As a
9 matter of fact, hold on a minute. Let me tell you
10 what I am going to do. What I'm going to do is if
11 it looks like it is going to be really any length
12 I'm going to let you all go for the day but let me
13 see what we're dealing with. As I said, there is a
14 matter I understand I must deal with outside your
15 presence but, again, if it is going to go for a
16 little bit I'm going to let you all go on and
17 exercise, exercise, please step to your jury room,
18 do not discuss this matter or allow anyone to
19 discuss it with you.

20 (Jury excused from the courtroom).

21 MR. WISE: Before Mr. Bell begins, I had
22 moved to sequester Gail Williams, the mother of
23 Minor she has been outside, I'm not going to
24 call her, I have no objection to her being in the
25 courtroom with her daughter.

1 THE COURT: Okay.

2 MR. BELL: Your Honor, my undersanding is
3 the next witness will be Amanda Salas who is a
4 psychiatrist and I'm kind of doing a little
5 guesswork here but what I have been related is that
6 she would be called to testify about something
7 called sleep sex or sex somnia and the State would
8 object to her testimony on numerous grounds.

9 First and foremost, relevance. And two
10 phases of relevance. Number one, there has been no
11 testimony that he had sex with this girl while he
12 was asleep. The only thing that even comes close
13 to that is she took advantage of him while he was
14 passed out from drinking which I don't think
15 qualifies as sleep sex, so I think as to relevance
16 in this case it would have no relevance.

17 Number two, more specifically is I have not,
18 the State has not been provided with any tests or
19 anything to show that she has tested Mr. Haynes to
20 see if he has sex somnia, I think is the term they
21 like to use for sleep sex, I mean, to say that he
22 is a person that does this activity regularly, on
23 relevance. I mean, I think there is two prongs of
24 relevance that we would object to. If the Court
25 happens to find it's relevant, then we would object

1 under Rule 702 as to reliability or the science
2 behind it under State versus White, State versus
3 Council, State versus Jones and furthermore if the
4 Court finds it's reliable we would object she is
5 not an expert to testify about this particular
6 science.

7 So, we have kind of a four or five prong
8 objection to this testimony.

9 THE COURT: All right. Very well. I think
10 I'm going to get my jury out and send them home, I
11 think that is what I need to do.

12 (The jury returned to the courtroom).

13 THE COURT: Exercise, exercise, you're
14 getting skinny.

15 Well, I have determined that I'm not going to
16 be able to be short so I'm going to send you home.
17 Ladies and gentlemen, I do need to give you some
18 instructions because a couple things that I did
19 want to talk about. The first thing that I wanted
20 to talk about is that whether you know it or not
21 the curiosity is going to be heightened and I
22 wanted to remind you you cannot discuss this matter
23 or allow anyone to discuss it with you but
24 remember, put it on the judge, don't you take any
25 upset with the heightened curiosity, remember, put

1 it on the judge, tell them the judge told you not
2 to talk about it. So, I wanted to share that with
3 you.

4 Now, you're my night worker, you're my night
5 worker, both of you are my night worker. Now, did
6 you have any resistance with your understanding,
7 that you have an understanding?

8 JUROR: No.

9 THE COURT: No understanding? Mediocre
10 understanding? Okay, you can't go to work tonight
11 either, so if the understanding gets less, again
12 Judge Goodstein is going to be happy to call in the
13 morning, just bring me a name and number for both
14 of you, I will intercede on your behalf because I
15 do need you to rest because as you know, you all
16 have been riveted all day, you have done exactly
17 what I have asked you to do and that is to give to
18 these proceedings your undivided attention and that
19 is tiring and you need your rest.

20 So, again, bring me the name and number and I
21 will be happy to call.

22 So, ladies and gentlemen, when you go home
23 interest is going to be heightened. You can't
24 discuss this matter or allow anyone to discuss it
25 with you. I'm quite confident you noticed this

1 morning that there was a camera present in the
2 courtroom, so you now know there more likely than
3 not will be some sort of publicity about this
4 particular matter, therefore you must be on guard
5 not to listen to anything or read anything about
6 this matter, and that would be the radio, the
7 television or the newspaper or the internet. You
8 must receive all the information from which you
9 will make up your mind here in court while court is
10 in session.

11 Please do not do any sort of investigation.
12 If there were terms you did not understand please
13 don't go to the internet, it is so tempting but
14 don't, you would be receiving information outside
15 of court and you must receive all of the
16 information with which you will make up your mind
17 in court while court is in session.

18 And I will see you in the morning at 9:30.
19 Thank you so much.

20 (The jury was excused from the courtroom).

21 THE COURT: Okay. Now, Mr. Wise?

22 MR. WISE: Thank you, Your Honor.

23 THE COURT: Yes.

24 MR. WISE: Addressing the issues raised, let
25 me start with this. The defense isn't sex somnia

1 or something along this line. This is an issue
2 scientifically speaking, conscious or unconscious,
3 science says this. A person can do things and not
4 be aware of it, very simple. It is comparable to
5 someone sleep walking but it is different. It is a
6 defense that is recognized in many jurisdictions
7 but that is the nature of the defense.

8 Now, what makes that defense relative in this
9 case is there have been consistent statements,
10 different statements saying that she approached
11 him, that he did not, he did not know or do
12 anything, that he was entirely unaware that he was
13 having sex, that she took advantage of him, that he
14 did not know or do anything.

15 So, I submit to the Court the issue that the
16 jury has to resolve at this time, can a person
17 engage in an act of sexual intercourse and not know
18 it and conceive two children and not know it, and
19 the science that Dr. Salas is going to testify to
20 is yes, that can happen, so that is what makes it
21 relevant.

22 Now, she hasn't performed any tests on Mr.
23 Haynes but she is going to talk about the science
24 based on her research, she's going to lay out what
25 it means and what the publications state and

1 hopefully explain to the jury what this automatism,
2 unconscious issue, how it works. Whether or not it
3 is reliable I would submit is for the Court after
4 she testifies to what research she has done, she
5 will do that.

6 I'm trying to remember what the fourth issue
7 was.

8 THE COURT: Relevance and science.

9 MR. WISE: I think it is relevant. There is
10 science on it, she will lay that out.

11 THE COURT: What about diminished capacity,
12 in other words, why is it nothing more than an
13 allegation of diminished capacity because he was
14 drinking?

15 MR. WISE: Totally different, Your Honor, and
16 the difference is this. The diminished capacity,
17 and I understand the Court's concern, somebody can
18 drink, their inhibitions go down and they are doing
19 things they might not otherwise do. We have
20 discussed that, she will deal with that, but this
21 is an issue where a person is completely totally
22 unconscious, they are not doing anything, they are
23 not saying anything, they don't know what they're
24 doing.

25 THE COURT: Let me ask you this question. Is

1 this witness someone who would be prepared to
2 explain, is it someone who is an expert in the
3 physiology, because on the one hand we are not
4 talking about the date rape drug and you have a
5 young woman who is unconscious and is raped and has
6 no consciousness at all. We are talking about a
7 man who must perform and there is more than one
8 activity that has to occur. First and foremost he
9 must have an erection and he must maintain that
10 erection to the point of ejaculation, so the
11 question gets to be is this witness not only
12 someone that can talk about that people can
13 actually do things while they are unconscious, is
14 she an expert in the field of sexual physiology, if
15 you will, because you have to be able to put, you
16 have to tie it up. You are telling me she has the
17 ability to do that as well?

18 MR. WISE: Yes. Specifically I'm going to
19 ask her can a person who is unconscious obtain an
20 erection, can a person keep that erection, would
21 the fact they obtain the erection wake them up, can
22 they ejaculate in this unconscious state, would
23 their ejaculating wake them up, and she's prepared
24 to deal with that. Now, she's here today,
25 obviously she will have to come back tomorrow but

1 if the Court would like to take a brief proffer of
2 her.

3 THE COURT: We'll do that.

4 MR. BELL: Your Honor, I would still object.
5 He is talking about, it is the same thing, it
6 requires the subject to do something appropriately,
7 not be the receptor, I can't even pronounce it, but
8 it is sleep walking, it is part of the whole thing,
9 sleep walking, sexomnia, it requires them to be
10 affirmatively doing something, even if it is just
11 rolling over and groping the partner in bed, this
12 isn't lay back, and what the evidence in this case
13 is about is that, you know, she jumped on him while
14 he was unconscious, where he had no knowledge,
15 didn't do anything, was just there.

16 THE COURT: Right. And irrespective, she's
17 entitled to do the proffer.

18 MR. BELL: I understand.

19 THE COURT: I understand exactly where you're
20 coming from. There has to be a proffer. Okay?
21 So, I'll hear the proffer.

22 MR. WISE: Amanda Salas.

23 THE COURT: I ask you to please be mindful,
24 Counsel, of science, even if there is science, she
25 has to be able to give an opinion with regard to

1 this case.

2 MR. WISE: Your Honor, her opinion is going
3 to be really science.

4 THE COURT: She has to be able to relate it
5 to this one, ask her the hypothetical.

6 MR. WISE: All right.

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1 DR. AMANDA SALAS, after being first duly sworn,
2 testified as follows:

3 THE COURT: Thank you. State your full name
4 for the record. Pull that microphone to you,
5 please.

6 THE WITNESS: Dr. Amanda Salas, S-a-l-a-s.

7 THE COURT: Your witness.

8 MR. WISE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Dr. Salas, what is your occupation?

11 A I'm a psychiatrist.

12 Q Okay. And describe to the Court what that
13 entails.

14 A It is very broad. It deals with
15 understanding the emotional components of how
16 people process life, the behaviors that they would
17 demonstrate, in the context they understand
18 themselves so they can function well in society.
19 It also deals with the diagnoses that come about
20 when someone has a problem such as a mood disorder,
21 anxiety disorder, problems with schizophrenia. It
22 is very broad but it deals basically with emotions
23 and the relation of how people think and behave and
24 how all that influences them.

25 Q Describe your educational background to the

1 Court.

2 A Beginning with medical school, I finished
3 that in 2003, then I went into residency at Medical
4 College of Georgia where I did a residency program
5 in general psychiatry, and then I went to a child,
6 adolescent child psychiatry fellowship, finished
7 that in 2008, worked for one year and then did a
8 one year fellowship in forensic psychiatry,
9 finishing that in 2010.

10 Q How long have you practiced psychiatry?

11 A As a psychiatrist, since 2003.

12 Q 2003. And are you licensed to practice
13 psychiatry?

14 A Yes, I am licensed to practice psychiatry in
15 South Carolina and Georgia.

16 Q Are you certified by any Boards in
17 psychiatry?

18 A Yes, I am.

19 Q What Board?

20 A I am Board certified in general psychiatry,
21 child adolescent psychiatry as well at forensic
22 psychiatry.

23 Q Do you have any teaching experience?

24 A I do.

25 Q Would you relate that to the court, please?

1 A I'm on adjunct clinical faculty with A. T.
2 Still University which is a program out in Arizona.
3 I also work with students affiliated with the
4 University of South Carolina Beaufort and at
5 present I have a student of licensed professional
6 counselors who is working with me to learn how to
7 perform counseling.

8 Q Have you received any honors or awards in
9 psychiatry?

10 A Yes, I have. Beginning with my intern year I
11 received the E. J. McCravy outstanding intern
12 award. I have had a national award when I was in
13 my child Fellowship and selectd to serve as a child
14 private Fellow, and that means that I had the
15 responsibility of assisting other Board certified
16 nationally recognized psychiatrists in developing
17 test questions that help Fellows in training
18 determine where they are in their educational
19 progress in child psychiatry. I think it is an
20 honor that I was nominated to the Governor's
21 Commission, to be on the board of mental health
22 that oversees South Carolina Deparment of Mental
23 Health but I was not selected for that.

24 Q Have you published any papers, scientific
25 articles?

1 A Yes, I have.

2 Q Name a few.

3 A Under supervision I published in
4 schizophrenia, that overlaps, bipolar disorder and
5 schizophrenia as well.

6 Q Have you ever testified in the Court of
7 General Sessions?

8 A Yes, I have.

9 Q Have you been qualified as an expert?

10 A Yes, I have.

11 Q Doctor, are you familiar with the term
12 automatism?

13 A Yes, I am.

14 Q What does that term mean?

15 A The term automatism relates to involuntary
16 behavior that occurs in a state of unconsciousness.
17 It is basically when you engage in something that
18 you could do when you're awake but you're not fully
19 awake, not fully conscious and you're engaging in a
20 complicated behavior.

21 Q What is the difference between automatism and
22 unconsciousness?

23 A They kind of relate. Unconsciousness is a
24 state of where you are in your level of awareness
25 of what is going on around you, a higher order of

1 thinking. When you are conscious you are in
2 control of interpreting what is going on in your
3 environment, directng how you can impact your
4 environment, positive or negative. When you're
5 unconscious you don't have the higher order level
6 of awareness to be able to have that direct impact.
7 Automatism is occurring in a state of
8 unconciouness.

9 Q Have you conducted research into the area of
10 automatism or unconsciousness?

11 A Yes, I have.

12 Q What type research have you conducted?

13 A I did a literature review in terms of
14 understanding some of the issues pertaining to
15 automatism. And the facts of this case unique to
16 what I discussed with you about the details of what
17 was going on with this case in particular, that
18 prompted me to go and do a literature review
19 through ProMed.

20 Q Now let's talk a little bit about what
21 automatism and unconsciousness is. Can a person
22 engage in any movement or activities while in an
23 unconscious state?

24 A Can they engage in activities while they're
25 unconscious?

1 Q Yes, can they do that when they're
2 unconscious?

3 A Yes, you can move and do activities when you
4 are unconscious.

5 Q Would those movements be considered
6 voluntary?

7 A They are not considered voluntary when
8 they're unconscious, no.

9 Q A person who is engaging in some movement or
10 activity when they are unconscious, are they aware
11 that they are engaging in this movement or
12 activity?

13 A When a person is unconscious they don't have
14 the higher order of thinking that allows them to be
15 aware of what they're doing.

16 Q So, they would not be aware?

17 A They would not be aware of what they're
18 doing.

19 Q Okay. I want to talk about the connection of
20 automatism and unconsciousness and sexual
21 performace.

22 A Okay.

23 MR. BELL: I would object, Your Honor. She
24 stated no background in urology or the medical side
25 of male physiology.

1 MR. WISE: Judge, I don't think she needs to
2 be a physiologist to talk about what the research
3 says about whether a person can do things when they
4 are automatus. I don't think you need a doctor
5 come in and say the reason a person walks when they
6 are unconscious is hard to do where they must flex
7 their legs. She can testify what the mind does and
8 what the body does in that state, in a state of
9 unconsciousness, that is what she's testifying to.

10 THE COURT: You haven't qualified her as an
11 expert yet.

12 MR. WISE: Okay, all right. I would move to
13 qualify her as an expert in the field of
14 psychiatry.

15 THE COURT: Okay.

16 MR. BELL: I would object. I mean, she says
17 the only research she did in autontism was what she
18 did in preparation of this cars.

19 THE COURT: In PubMed.

20 MR. BELL: PubMed, that's correct. There is
21 no independent research or she has had any other
22 contact with automatism.

23 THE COURT: She is a psychiatrist, she is an
24 expert in the field of psychiatry. Now, I don't
25 know that she is an expert in the field of

1 automatism.

2 MR. WISE: Your Honor, I would submit to the
3 Court that that would be an issue for the jury.
4 They are free to evaluate whether or not --

5 THE COURT: Oh, I'm a gatekeeper when it
6 comes to whether or not somebody has sufficient
7 expertise and can testify to the jury.

8 MR. WISE: She's indicated that she's done
9 the research.

10 THE COURT: She went to PubMed. No one asked
11 her anything else she did but go to PubMed.

12 MR. WISE: Well, maybe, let me just lay it
13 out.

14 BY MR. WISE:

15 Q What is PubMed, what does that mean?

16 A PubMed is the humongus database that is held
17 by, regularly by the government, that is
18 essentially, I don't like to use the word, it is
19 the authoratative database where you would go and
20 do research and it has the ability to look through
21 thousands and thousands of different articles and
22 journals to search for key words that you would
23 then screen by getting abstracts back and determine
24 the relevance. So, for instance, when I have done
25 my research in schizophrenia and bypolar I would go

1 and do PubMed literature review and that would
2 allow us access to searching thousands of articles
3 that we otherwise wouldn't have had access and
4 ability to find but it is something that you can
5 access on line but it is not the same thing as
6 doing a Google search or Bing search because it
7 actually is a scientific database.

8 Q Did you read articles related to automatism
9 for purposes of appearing in court today?

10 A I read a lot of the abstracts that I found.
11 The articles were not accessible because you have
12 to have many different expenses in order to get all
13 the different articles that are published in a
14 variety of different journals, so I did not choose
15 to pull and charge the bill for 25, 35, 50 dollars
16 per article in order to get information that
17 ultimately was not, it is not relevant in terms of
18 showing that the research for automatism of the
19 nature I was looking for, that it wasn't
20 substantiated in that database. There has been
21 some conflicting reports, there have been a lot of
22 things that you would normally go and do a search,
23 like if you go to search for schizophrenia you get
24 thousands of articles back, if you go and search
25 for sexual response you get thousands of articles,

1 but when you start linking together the components
2 I was looking at as to the questions that were
3 posed to me in this particular case you get about
4 40 articles that didn't answer the specific
5 question. There was information that was held that
6 was factual information, that we learned in medical
7 school that pertained to a sexual response and the
8 impact of substances on it. It is information that
9 you interpret with a medical background, not
10 necessarily because I'm a psychiatrist or any other
11 type of physician.

12 Q How many articles did you see on this
13 subject, automatism and unconsciousness?

14 A Automatism and unconsciousness?

15 Q Or unconsciousness, the issue we're dealing
16 with in this case?

17 A There were probably, depending on how you
18 phrase the words and make it come together, you
19 could get around 40 different articles. But again
20 not all of them were relevant in terms of being
21 able to address specific things that we were
22 looking at in terms of the thoughts that I had when
23 I reviewed case material and was presented with
24 information, because the research isn't done to
25 investigate something that had already been

1 established in terms of what someone's sexual
2 response was and the impact substances have on
3 sexual response.

4 Q Can you just rephrase that last part again
5 about research not having been done?

6 A There is a sexual response, there is a lot of
7 information that outlines exactly what a sexual
8 response is. There is a lot of information that we
9 study in psychiatry pertaining to the impact of
10 different substances on different behaviors and
11 functions and there is published data relating to
12 the use of alcohol on sexual response but in terms
13 of if you narrow down your search to say sexual
14 response and alcoholism and erection and something,
15 you don't get information that pertains to the
16 physiologic response because the information that
17 is being looked at in terms of the psychological
18 factors that allows someone to achieve an erection
19 or not and how strong that response is. So, the
20 factual basis is accepted across the field so it is
21 not being looked at. We don't look at something
22 that we know to be true, such as when we know that
23 the sky is blue, we quit questioning that until it
24 changes color again.

25 Q This is not an issue of a physiological

1 response?

2 A It is an issue of a physiological response in
3 the context of the use of a substance, because a
4 substance impacts the physiological response.

5 Q And what about, for lack of a better term,
6 the psychological response?

7 A There is information and data that has been
8 published in terms of what might turn someone on in
9 relation to being under the influence of
10 substances, whether they are disinhibited or
11 experiencing what we call alcoholic myopia, which
12 triggers, increases the sexual response or not, but
13 the physiological response occurs, so we're not
14 doing research to figure out do you drink alcohol
15 and have a physiological response of an erection,
16 because that is accepted, as you drink alcohol you
17 can have an erection.

18 Q So, the physiological part of this science is
19 well established?

20 A Yes, that has been.

21 Q Okay, very good. Now, in your search,
22 understanding that the physiological part of it has
23 been established, have you looked at the
24 information that is available about being able to
25 achieve an erection and not be conscious?

1 A Can you have an erection and not be
2 conscious, yes.

3 Q And explain to the Court, based on the
4 science, how that occurs.

5 A When you are not conscious your
6 parasympathetic nervous system takes over, which is
7 essentially where your body is at rest. It usually
8 happens after you have had your meal, you're
9 digesting food, you are not fearful, you're not
10 frightened, you are in a state of relaxation for
11 the most part. And the parasympathetic system is the
12 system that takes over when you are in a state of
13 unconsciousness unless you have been on a substance
14 that would move you into sympathetic responses.

15 When you are in a sympathetic response that
16 is the physiological nervous system component that
17 allows for an erection to occur. You do not have
18 the erection occur when you are under a sympathetic
19 response, you have to have parasympathetic response
20 present in order to have an erection and it is a
21 parasympathetic nervous system that is activated in a
22 state of unconsciousness and altered by being reved
23 up by any accelerant that would move you over into
24 a sympathetic response.

25 Q So, would a person be aware of a

1 parasympathetic response?

2 A No. Everyone in this courtroom is having a
3 balance of their parapatetic and their sympathetic
4 response in terms of how their heart is beating,
5 how their pace of breathing is going, their level
6 of nervousness or lack thereof, how relaxed they
7 are or lack thereof, but you're not trying to think
8 about is this my parapatetic system balancing my
9 pulse to my sympathetic system for how I'm
10 breathing and it is a balance ratio, and sometimes
11 in medical school we were taught the bear in the
12 woods, when you're out in the woods and you
13 encounter a bear, most people would be frightened
14 by that and get the fight or flight response
15 because the sympathetic system takes over. That is
16 the complete oposite of where somebody would be,
17 say, when they are sleeping and they are in a
18 parasympathetic state outside of realm, which is a
19 dream state, which is not relevant.

20 Q If a man were basically, basically the --

21 MR. BELL: Your Honor, first of all we've got
22 to get her to be an expert on something before he
23 starts asking hypotheticals and I still object,
24 she's not an expert in whatever we're trying to
25 talk about.

1 MR. WISE: Your Honor, I think she is
2 certainly qualified as an expert in psychiatry and
3 I think her research allows her to talk about what
4 the science is regarding what the automatism
5 parasympathetic response is.

6 THE COURT: So you would move she be
7 qualified as an expert in the field of psychiatry?

8 MR. WISE: Yes.

9 THE COURT: With a subspecialty in the field
10 of automatism?

11 MR. WISE: Automatism.

12 THE COURT: Yes.

13 MR. WISE: Yes.

14 THE COURT: Very well.

15 MR. BELL: Your Honor --

16 THE COURT: Voir dire?

17 BY MR. BELL:

18 Q Dr. Salas, what research other than looking
19 on PubMed have you done with automatism?

20 A For automatism?

21 Q Have you done any independent research
22 yourself?

23 A I'm not a researcher and so I don't go and
24 research, for instance, depression, so in terms of
25 whether I even have an interest to go and research

1 automatism, I don't but what I can tell you is that
2 it is something that we learn when we are on a
3 neurology rotation as well as when we do
4 psychiatry. Most of the times when I talk about
5 automatism it is a field of psychiatry relates to
6 someone who is asleep and we would consider it
7 something like when you're sleep walking, you get
8 hungry, except you don't know you're hungry, you
9 probably aren't hungry, you go and make a sandwich,
10 that process of sleep walking and making the
11 sandwich is an automatic behavior that fits
12 automatism.

13 Q My question is, I mean, you don't have any
14 specialized training in automatism?

15 A I'm not an automatism researcher and I don't
16 have anything that says that that is all I have
17 studied but part of what we learn is identifying
18 automatic behaviors.

19 Q I understand that but in order to be an
20 expert you have to have some specialized knowledge,
21 correct?

22 A Yes.

23 Q And you don't have specialized knowledge for
24 automatism, you have a general knowledge of
25 automatism, correct?

1 A I have specialized knowledge in terms of
2 having a medical degree that allows me to know that
3 automatism exists and how to identify it but in
4 terms of would you want to come to me if you were
5 wanting to have somebody treated specifically for
6 automatism, no, because I don't promote myself as
7 somebody who studies automatism.

8 Q But I believe you have specialized knowledge,
9 I see, in child psychology, psychiatry?

10 A Psychiatry.

11 Q You have specialized knowledge, I think you
12 did a paper on schizophrenia, is that correct, you
13 haven't done anything like that on automatism?

14 A No, sir, I haven't done any of the papers
15 that have been written on autontotism.

16 Q I mean, all you did to prepare for this was
17 to research it in PubMed?

18 A I researched it in PubMed. I researched
19 automatism and unconsciousness, which is something
20 we deal with in psychiatry and the difference
21 between unconsciousness and automatism is when you
22 link the behavior to the unconscious state.

23 Q And automatism is the person doing something
24 I would say proactively, I mean like they initiate
25 the behavior, they go up and, I mean, unconsciously

1 but they go walk and go fix a sandwich or go do
2 this, go do that unconsciously while they're in a
3 sleep state, is that correct?

4 A It is in an unconscious state that someone is
5 having a behavior. Automatism, maybe this is part
6 of the confusion, it is a word that you use in
7 medicine, whether you're a neurologist, an
8 internist, family practice, pediatrician,
9 psychiatrist, I wouldn't even know where to go and
10 find someone who is a doctor of automatism because
11 that is not a field. It is a word and a term that
12 you use relative to the nature of your specialty
13 and what you do.

14 Q Let me ask you this. Is it kin to
15 parasomnias?

16 A Parasomnia?

17 Q Yes.

18 A It's related to parasomnia in terms of would
19 you engage in an unconscious behavior when you're
20 having a sleep disturbance.

21 Q Let me ask you this. Have you dealt with any
22 patient or anybody with automatism?

23 A When I was doing my neurology rotation, yes,
24 because most often you will find that automatism is
25 outside of sleep walking, found in the most serious

1 stage if someone has, in that time period shortly
2 after seizures you would have somebody who has
3 bizzare behavior.

4 MR. BELL: Thank you, Your Honor, nothing
5 further.

6 THE COURT: Okay.

7 MR. BELL: I still object. I don't think she
8 has a specialized training or knowledge in order to
9 help define a fact on this particular subject in
10 this case.

11 THE COURT: Very well. Do you wish to make a
12 proffer?

13 MR. WISE: Yes, Your Honor. I certainly
14 understand the State's position.

15 MR. BELL: First, I will tell you, I will go
16 back to relevance, I don't see where all this is
17 relevant, still don't.

18 MR. WISE: Your Honor, I think the
19 fundamental issue in this case, I understand what
20 the State's concern is, and that is whether or not
21 this is relevant because there is no indication
22 that John did anything but I think the science is
23 that you can be, in this case, laid out, lay down
24 and your body can do things, in this case you can
25 get an erection and you can ejaculate and you don't

1 know you're doing it and your body is not
2 controlling it. So, that is why it becomes
3 relevant in the case. This is not a function of
4 somebody who is sleep walking, walks over to
5 Minor , this is a situation where somebody,
6 Minor can come to John and do this to him and he
7 not know about it.

8 Now, as to her expertise, I think this issue
9 about whether or not something like that can
10 happen, that a person can have this physiological
11 response, this parasympathetic activity and not
12 know about it and it just is something that
13 happens, it is certainly relevant to this case and
14 that relevancy is the nature of this case, that
15 that is what happened here. The reason we come
16 forward with all this is because of Minor 's
17 statement about his not knowing what he was doing,
18 him not knowing what was going on. That is what
19 makes this relevant. Her knowledge is, I submit,
20 superior to the jurors' knowledge. Is she the
21 world expert, no, but certainly she has the ability
22 to provide some information and knowledge to the
23 jury that would help them in understanding the
24 issue that we are presenting here, which is how
25 this thing could have happened.

1 MR. BELL: And I still haven't heard anything
2 that says she's, that she's testified to that says
3 what he wants her to testify, that she can testify
4 to.

5 MR. WISE: She can testify, I think, and if I
6 didn't, if I can ask a thousand more questions but
7 I think what she -- let me just ask these
8 questions. Apparently I didn't.

9 THE COURT: Okay.

10 BY MR. WISE:

11 Q Okay, Dr. Salas, can a man achieve an
12 erection in an unconscious state?

13 A Yes.

14 Q Okay. If he achieves an erection in an
15 unconscious state will that wake him up?

16 A No, not necessarily.

17 Q If a man achieves an erection in an
18 unconscious state would that be a voluntary action?

19 A No. It is being achieved in an unconscious
20 state, so the erection at that point in time would
21 not be voluntary.

22 Q Would a man in an unconscious state be aware
23 of what he's doing?

24 A No, a man in an unconscious state is not
25 aware of what he is doing.

1 Q Can a man in an unconscious state engage in
2 an act of sexual intercourse?

3 A Yes.

4 Q Would he be aware he is engaging in an act of
5 sexual intercourse?

6 A When he is unconscious, no.

7 Q Okay. Once he gains the erection in an
8 unconscious state how long would it last? Does it
9 stay, does it go away?

10 A I can't testify to how long it would last but
11 --

12 Q Can he control it?

13 A No, it is not under the control of the
14 unconscious person.

15 Q Okay. All right. Can a man in an
16 unconscious state ejaculate?

17 A Yes.

18 Q Okay. Would the fact that he ejaculated,
19 would that wake him up?

20 A No. There is no link between ejaculation and
21 moving from unconsciousness to consciousness or
22 vice versa.

23 Q So, a man in an unconscious state can be made
24 erect, can engage in the act of sexual intercourse
25 and ejaculate and not know it ever happened?

1 A Yes, that is possible.

2 Q Okay. How could that happen, how could all
3 that happen and he not know it?

4 A The nature of being unconscious prevents your
5 knowledge of it happening and you can still have an
6 erection, physiologically it's possible to have an
7 erection while you're unconscious. It is also
8 possible to ejaculate while you're unconscious. It
9 is more likely to remain unconscious if you have a
10 substance such as alcohol on board that would keep
11 you in a state of unconsciousness.

12 Q And that would happen without John exercising
13 any intentional control over his body?

14 A It would happen in an involuntary state when
15 a person is unconscious.

16 Q Okay. And can a woman become pregnant from
17 intercourse that occurs in this manner?

18 A In terms of there is an unconscious man who
19 has an erection, who ejaculates, if he ejaculates
20 in close proximity to where the egg and the sperm
21 would unite, yes.

22 Q Can a woman place her vagina over his penis
23 for purposes of sexual intercourse?

24 A Yes, that could happen.

25 Q Okay, all right. Now, just a couple things.

1 You have never interviewed John?

2 A No.

3 Q You don't know anything about him?

4 A No.

5 Q All right. You have no opinion about whether
6 or not -- I withdraw that.

7 MR. WISE: That's what we have, Your Honor.

8 THE COURT: That's the key question. Okay.

9 All right. That's your proffer?

10 MR. WISE: Yes.

11 THE COURT: I gather because you didn't go to
12 the next step, that this witness is not prepared to
13 testify that most probably within a reasonable
14 degree of medical certainty that, that being more
15 likely than not that this defendant on these
16 occasions suffered from automatism, yet achieved an
17 erection and ejaculated, making this child
18 pregnant?

19 MR. WISE: That's correct.

20 THE COURT: She's not prepared to testify to
21 that?

22 MR. WISE: No.

23 THE COURT: Okay. So, what she's prepared to
24 testify, there is this thing called automatism and
25 it can happen?

1 MR. WISE: It can happen and the issue
2 related to sexual performance and those issues.

3 THE COURT: Okay.

4 MR. WISE: How it happened and what causes
5 it.

6 THE COURT: Okay. And she doesn't have any
7 information about how much alcohol and how drunk he
8 was and how passed out he was or any of that?

9 MR. WISE: No, she doesn't.

10 THE COURT: Okay.

11 MR. WISE: If I may, are you done with this
12 witness?

13 THE COURT: Yes, we are.

14 MR. WISE: All right.

15 THE COURT: You can step down, Dr. Salas.
16 Thank you so much.

17 THE WITNESS: May I be excused?

18 THE COURT: Yes, you may. Thank you for
19 being here.

20 (Witness excused).

21 MR. WISE: Your Honor, the issue in this case
22 I think at this point is obvious and that is that
23 this occurred without John knowing anything about
24 it.

25 THE COURT: No, that is not what she

1 testified.

2 MR. WISE: No, no --

3 THE COURT: If this jury wishes to speculate,
4 there is no way for the jury to do that. You see,
5 we have just spent a fair amount of time, she's the
6 doctor and she's talked about where this condition
7 can occur. She doesn't know whether he had it or
8 not. And she can't testify most probably within a
9 reasonable degree of medical certainty he was in
10 this state, based on hypothetical or otherwise.
11 So, then what you have done is you have taken a
12 very, assuming that she's an expert, okay, I'm
13 going to back up there, but assuming that she's see
14 an expert, okay, in this field, she can't testify
15 about anything with regard to the defendant.

16 MR. WISE: That's correct.

17 THE COURT: Which means all she could do is
18 invite the jury to speculate, okay? This is not
19 the kind of issue, this is not the kind of
20 condition that these jurors could ever know without
21 there being expert testimony, without the judge
22 inviting them, without just inviting them to
23 speculate.

24 Aside from the other issues that -- well, I'm
25 getting ahead, diminished capacity, there is no

1 such defense in South Carolina and it seems to me
2 that what she basically is saying is that if you
3 get real drunk you diminish your capacity and you
4 can diminish your capacity to such an extent that
5 you can have sex and not know it. And you're a
6 man.

7 Now, I'm inviting, if I was to allow her to
8 testify all I would be doing would be allowing this
9 jury to speculate and that is inappropriate. This
10 would be a highly technical, this is a medical
11 condition, a medical psychological, physiological
12 condition that this jury could not possibly make a
13 determination without expert testimony, so that is
14 assuming she is an expert.

15 Now, let me tell you what doesn't make her an
16 expert in this area of automatism. What doesn't
17 make her an expert is that she read 40 articles,
18 not articles, she didn't buy those, she read the
19 summaries which are called --

20 MS. FORD: Abstracts.

21 THE COURT: -- abstracts, which are
22 summaries. It is like, she didn't even read the
23 articles, she read the summaries, she read the,
24 what she got free on line without having to buy the
25 article. Some of them didn't apply and she was

1 real clear about that, some of them didn't even
2 apply, nobody asked how many did, but the maximum
3 number was 40. And I understand she was, she did
4 her residency in neurology at some point in her
5 career and came across this particular topic. That
6 doesn't make her an expert, and so it would be
7 inappropriate for me to let her talk about this
8 thing and then ask the jury how about speculating.
9 That would not be appropriate.

10 Now, I don't know that I even, even assuming
11 that she is an expert, all I am doing is inviting
12 this jury to speculate. She doesn't know anything
13 about this gentleman. I assume she could testify
14 from a hypothetical so it would be admissible for
15 that reason, I understand, but I don't think she is
16 an expert in this particular field, State versus
17 Jones, and I don't believe by virtue of the fact
18 that she was, that she had some information during
19 her neurology residency and that she has read a
20 maximum of 40 abstracts, which some of them did not
21 involve automatism, makes her an expert and I would
22 not allow her to testify as an expert before this
23 jury on the issue of automatism, really for two
24 reasons.

25 Number one, I don't think she's an expert but

1 even if she was an expert, she doesn't have any
2 information with regard to the defendant and she
3 can't testify most probably within a reasonable
4 degree of medical certainty anything with regard to
5 him. And that just, that invites the jury to
6 speculate.

7 MR. WISE: Might I add just one thing?

8 THE COURT: Yes.

9 MR. WISE: Your Honor, the only, well,
10 obviously if the Court is going to determine she's
11 not an expert, then that puts an end to it, but I
12 think the information is relevant because it
13 relates specifically to what has been going on in
14 this case. I understand the Court's concern and I
15 certainly understand the Court's concern about
16 speculation.

17 THE COURT: Yes.

18 MR. WISE: But there has been enough laid out
19 here to raise this issue and I think lay people
20 without some additional information can't solve it.

21 THE COURT: I agree, I absolutely think
22 you're correct and I think that they would have to
23 have appropriate expert testimony regarding, what
24 is it, automatism?

25 MR. WISE: Automatism.

1 THE COURT: And have to then take the next
2 step to relate it to this defendant. I think you
3 would have to have someone who would be able to
4 say, with regards to their exposure and their
5 knowledge and expertise, vis-a-vis automatism, and
6 they can say, "I have interviewed him, this is the
7 information, I have looked at his medical record,
8 he is alcoholic, he drinks 45 beers a day, that
9 puts him over a period of fifteen years where he
10 has dranked this amount of alcohol and it ain't
11 going to really make him black out, it is going to
12 make him semi black out, and because he is semi
13 blacked out he will know that, he might have some
14 acknowledgement that he is having sex but he
15 wouldn't have a clue with whom it would be but he
16 would not be so drunk that he would not be able to
17 have an erection and an orgasm, wouldn't even know,
18 wouldn't care who it might be and it happens to him
19 every day of his life." That is the kind of
20 testimony that this jury would have to have.

21 MR. WISE: On a related issue, I'm going to
22 submit to the Court a charge on automatism and
23 consciousness, if the Court would like. I assume
24 Mr. Bell is going to object and we can take a
25 couple minutes to talk about that now, I can give

1 the Court the authority I have in support of it.

2 THE COURT: Is it South Carolina law?

3 Probably not.

4 MR. WISE: In an odd way there is, I found
5 one reference to this condition in a dissenting
6 opinion.

7 THE COURT: I would be interested. Well,
8 unfortunately the state of the law currently in
9 South Carolina is diminished capacity is not a
10 defense. That is going to be --

11 MR. WISE: Will, Your Honor, let me --

12 THE COURT: We must be reaching the light at
13 the end.

14 MR. WISE: I'm sorry?

15 THE COURT: We must be reaching the end, you
16 don't have any more witnesses?

17 MR. WISE: No.

18 THE COURT: Okay.

19 MR. WISE: The issue of automatism, Your
20 Honor, is a defense that is used in situations
21 where otherwise criminal conduct of an individual
22 is a result of an involuntary, completely beyond
23 the individual's knowledge and control. That is
24 what we have been talking about.

25 THE COURT: Yes.

1 MR. WISE: I submit to the Court especially
2 in this case due process should allow Mr. Haynes to
3 assert that as a defense. Now, the defense has
4 been raised, Your Honor, in a number of
5 jurisdictions, North Carolina.

6 THE COURT: Yes.

7 MR. WISE: Let me have one moment.

8 THE COURT: Sure.

9 MR. WISE: I think what I will do at this
10 point, I have a significant amount of authority.

11 THE COURT: We're going to have an
12 opportunity to go over the charge. Don't worry
13 about giving me that right this minute, we're going
14 to have time to go over the charge.

15 MR. WISE: What I will do --

16 THE COURT: We're going to have a charge
17 conference.

18 MR. WISE: I will hand it up just so the
19 Court can at least look at it.

20 THE COURT: Sure, all right.

21 MR. WISE: The total charge and the authority
22 that I cite. May I approach the bench?

23 THE COURT: Absolutely.

24 MR. WISE: Hopefully --

25 THE COURT: We'll go over it, absolutely.

1 proceeding. Just in a few moments you're going to
2 be hearing from Mr. Wise on behalf of the defendant
3 Mr. Haynes in his closing argument and then you're
4 going to hear from Miss Ford in her closing
5 argument on behalf of the State. Once these
6 arguments are finished we're going to have a very
7 short break, but I will explain to you when we
8 reach that point and then you are going to, at that
9 point then I'm going to give you the charge or the
10 instruction on the law, there will be another very
11 short break that I'm going to explain to you at
12 that point, then you're going to receive this case
13 for your deliberations.

14 Ladies and gentlemen, at this time I ask that
15 you please draw close as you listen to the closing
16 arguments of counsel.

17 Mr. Wise.

18 MR. WISE: Thank you, Your Honor, if it
19 please the Court.

20 THE COURT: Yes, sir.

21 MR. WISE: Obviously the issue in this case
22 is not a sexual relationship between John Haynes
23 and Minor . Mr. Mellerd and I have been
24 practicing together for a little while now and
25 other people have said things about us but one of

1 the things they have never said about us is that we
2 were stupid. We came into this court knowing there
3 was a sexual relationship but why we're here is
4 because, as Mr. Mellard said in his opening, the
5 issue in this case is that the State has to prove
6 an act and they have to prove intent. That is why
7 we're here.

8 The problem is that they can't prove that
9 John did anything, the State cannot prove that John
10 intended to do anything. On the facts of this case
11 as they were laid out from that witness stand they
12 simply can't.

13 Minor has said what has happened here. She
14 has told you about how those children were
15 conceived. It is not my argument, this is not some
16 theory. You have heard the words that she has
17 talked about in this situation, and what has she
18 told you? She said she wanted a baby, all her
19 friends had babies, she wanted one also. Her
20 friend Grandon would not give her a baby, she tried
21 with Deondre, and then she decided on John. She
22 had sex with him because she loved him and wanted
23 to have his baby. Her words, not my words. She
24 said if John is the father it's no one's business.
25 John, this is what Minor said, John did not know

1 anything, he did not do anything because he was
2 drunk. That is what she said. What she said, John
3 was entirely unaware he was having sex. Her words,
4 she took advantage of John when he was intoxicated.

5 That's not the first time this has happened,
6 it is just like what happened in the Old Testament
7 with Lott and his daughter, what happened here.
8 She then lied, Minor said she then lied and said
9 John raped her because it is what everyone wanted
10 to hear and that she thought she would be in
11 trouble if she admitted she seduced her
12 step-father.

13 That's what she said because that's what
14 happened. Who would say such a thing, who would
15 make up that story if it weren't true? How could
16 something like this happen? Here is what we know.
17 John works, he works hard, he comes home, he
18 drinks, he goes to sleep, passes out, whatever the
19 word you want to call it, but there comes a point
20 when he is out and that's when Minor takes
21 advantage of him.

22 I submit to you she didn't think she was
23 going to be found out. She did this and assumed no
24 one would know, including John, because as she said
25 it was no one's business, but the interesting thing

1 about this case is she was almost right. Remember
2 when E.W. was born nobody knew, nobody asked, she
3 accomplished what she wanted to accomplish. She
4 has two beautiful babies. Everyone had babies, she
5 wanted a baby and now she has a baby.

6 John did not do anything wrong. How do we
7 know that? Because there is no indication at any
8 point from any witness in this trial, any witness,
9 that he has ever remotely indicated any knowledge
10 of this. DSS testified, Gail testified, no one
11 ever said he knew anything about what was going on.

12 Minor said things that were not true. Now,
13 the State might say to you that she lied because
14 she was afraid of John. I understand that but that
15 just doesn't make sense. How do we know? Because
16 in December, the middle of December, 2009, John was
17 out of the house and thereafter she had no reason
18 to fear him but in spite of that, in spite of the
19 fact he was one place and she was another she
20 continued to say John was not the father.
21 Obviously at that point John posed no threat to
22 her, so her fear of John would not cause her to
23 make up something.

24 So, her reason, she was afraid of him, that
25 is why she made up this story about what she did to

1 him just doesn't make sense. The State might say
2 that she made up this story because she was trying
3 to protect John, trying to save him or help him.
4 That doesn't make any sense when you look at the
5 evidence. To accept her story wholehearted about
6 what she testified to happened here, you have to
7 believe that she was a victim of an attack by John
8 but then made up all this stuff to save him, to
9 help him, she was trying to help the man she said
10 attacked her. Indeed, that she tried to get him
11 out of jail so the two of them could go to a picnic
12 together.

13 Now, that's incredible. Certainly if what
14 she said John did was true she would not want to
15 take him to a picnic. She can't be deathly afraid
16 of John because he threatened to kill her and then
17 lied to get him out of jail so they can go have
18 sex. She wanted to attend that picnic and she
19 wanted to attend that picnic with him because she
20 was not afraid of him and in fact she was still in
21 love with him and I think that's what Miss Clark
22 told you.

23 There is an interesting part about this case
24 and that is the fact there is no corroboration, and
25 I don't mean about the children, we know they have

1 two children, that's obvious, but with the force
2 and the threat that Minor said she endured, even
3 after John was away and out of the house Minor
4 never told anyone, she never mentioned this to
5 anybody, she never told her mother, her friend,
6 cousin, classmate, no one, and I submit she would
7 have told someone if it were true. What is the
8 likelihood that such a thing can happen and she did
9 not mention it? The reason she never told anybody
10 is because she knew what she had done and she was
11 not going to reveal it. She knew what happened
12 here.

13 So, the question, the thing I have thought
14 about is why would she make this up, why would this
15 happen? And it occurred to me this. Minor, I
16 don't doubt for a minute Minor is a good parent,
17 she has two kids, two children, she wants to
18 protect them from physical harm, from emotional
19 harm, she said that, but the only way she can
20 protect them from emotional harm is to maintain the
21 position she was the victim. She can't go through
22 life saying she did this, she can't because she
23 cannot at some point in the future look those
24 children in the eye and say this is how you got
25 here, this is what I did, I love you but this is

1 what happened. She can't do that. It is better
2 for her as a loving parent and better for those
3 children that she go through life as the victim and
4 not the victimizer.

5 Now, the problem I think is going to be
6 whether or not you believe Minor could do
7 something like this, does she have the ability to
8 do this? There are some things you can't get away
9 from about Minor and this is just how the case
10 developed. Minor has the ability to look you
11 right in the eye and lie to you. She does it and
12 no one can tell, she has done it consistently and I
13 submit that she did it here when I asked her if she
14 remembered saying that she had sex with her
15 step-father and she could not remember. Now, you
16 can say, "I would never say something like that,"
17 you can say lots of things but the thing you cannot
18 forget is whether or not you ever said that. You
19 know whether or not you ever said you had sex with
20 your step-father. Most people would say, "I never
21 said that, I would never say that." Remember, she
22 looked her mother right in the eye and lied to her,
23 she looked her grandmother in the eye and lied to
24 her, she looked Eula Clark in the eye and lied to
25 her and no one could tell. And not just little

1 white lies, little inconsequential lies, but lies
2 to manipulate. No matter what the consequence was,
3 she was willing to let Miss Clark go looking for
4 somebody named Marcus House, just a name she made
5 up. All the effort, all the work didn't matter.

6 She was willing to let Deondre be declared
7 the father of E.W. even though she knew he wasn't,
8 she was willing to do that to him. Why was she
9 willing to do that to him? Because he was, in her
10 words, an easy target, and you know who also was an
11 easy target? John Haynes is an easy target, and
12 you're easy targets. You can't get away from the
13 fact that Minor says things to get what she
14 wants. She has told you that. And in evaluating
15 her words and her acts you have to remember that.
16 Even though she is young, she has that ability, I
17 understand it is difficult to accept, it is
18 difficult to accept a young woman would do such a
19 thing but the thing we know is that she is, she's
20 capable of that.

21 As Dr. Harari said, adolescents like Minor
22 like attention and stimulation and they engage in
23 behavior that is immature, exhibitionistic, self
24 dramatizing and probably most significant for this
25 case seductive. But the thing I think that Dr.

1 Harari said that described Minor to a T is this.
2 She has an arrogant assumption that the rules of
3 society do not apply to her, rules like having sex
4 with your step-father when he is not aware of it.

5 An interesting thing about JMinor and I
6 think you have to consider in evaluating this is, I
7 asked her mother if she noticed any difference, she
8 said no. How could a girl, a young lady, whatever
9 happened, do all this and her mother not notice
10 anything about it? She never let on, never
11 changed. I submit to you she has a lot more
12 control than we might think. She was able to hide
13 her actions and to control her emotions related to
14 those actions.

15 Now, I'm not trying to be mean spirited
16 toward Minor but you have to evaluate these
17 things in looking at this case. There are just
18 some things about her that there is just no doubt,
19 not because I say so, but the others said so. And
20 then there is the one little thing that troubles me
21 about this and that is the time when she comes to
22 Miss Clark and tries to lay it all out. She tells
23 her, Miss Clark tells her that no one is going
24 to believe her, so she is now caught, she can't get
25 away and here we are.

1 This is a bad situation, it is time to put an
2 end to it. We all agree that something happened
3 that should not have happened, no doubt about that,
4 we're not fighting about that, but it was not
5 John's fault. We can't correct what happened, you
6 can't correct what happened by punishing John, by
7 convicting John, especially when Minor has laid
8 out the truth of what happened for you, she's laid
9 it out. It is time to find John not guilty and let
10 John and Minor go on and try to deal with this
11 situation as best they can.

12 Thank you.

13 THE COURT: Miss Ford.

14 MS. FORD: Thank you, Your Honor, if it
15 please the Court.

16 Home is the place where our kids grow up,
17 where they should be protected, secure, safe. For
18 Minor home wasn't that place, home was
19 the place where one of the people who are supposed
20 to protect her, keep her safe from harm and danger,
21 is the one that was actually committing that harm,
22 was the person who molested her for years, would
23 get in the bathtub with her to show her how to
24 wash. Eventually moving on to raping her and
25 impregnating her not once, but twice. And that

1 person was John Haynes.

2 Ladies and gentlemen, John Haynes is charged
3 on two different indictments and Mr. Bell laid this
4 out for you during his opening but I want to go
5 back over it. He is charged with incest. And
6 incest, under South Carolina law, is any person who
7 shall have carnal intercourse, sexual intercourse,
8 with each other within the following degrees of
9 relationship. A man, and it lists a number of
10 relationships. Here we're concerned with his
11 wife's daughter. So, it is illegal for a man to
12 have sexual intercourse with his wife's daughter.

13 What testimony did you hear? Gail Haynes
14 testified that she married John Haynes in 1997 here
15 in Calhoun County, her daughter Minor testified
16 on a number of occasions that John Haynes forced
17 her to have sexual intercourse. But do we just
18 have their testimony? No. We have E.W.
19 and J.W.

20 Amanda Webb from SLED testified that John
21 Haynes is the father of these two children. In
22 fact Miss Eula Clark testified that DSS did their
23 own DNA analysis and they also found, 99.99 percent
24 certainty, that John Haynes is the father of E.W.
25 and J.W. Ladies and

1 gentlemen, based on the evidence that was presented
2 to you it is the State's position that John Haynes
3 is guilty of incest.

4 But John Haynes is also charged with criminal
5 sexual conduct with a minor in the second degree.
6 And the law lays out that a person is guilty of
7 criminal sexual conduct with a minor in the second
8 degree, the first part deals with a victim between
9 fourteen and eleven years of age, that doesn't
10 apply here. But we look to subsection two, that if
11 the actor engages in a sexual battery with a victim
12 who is at least fourteen years of age but less than
13 sixteen years of age and the actor, the actor in
14 this situation is a person accused of criminal
15 sexual conduct, being John Haynes, and the actor is
16 in a position of familial, custodial or official
17 authority to coerce the victim to submit or is
18 older than the victim. The statute goes on dealing
19 with individuals who are charged with this, if they
20 are eighteen years of age or younger, and that
21 doesn't apply. So we're only focused right here.

22 Let's look at the testimony. What did you
23 hear from the witness stand? Minor
24 testified that she was about fourteen years old
25 when John Haynes began forcing her to have sexual

1 intercourse with him. She was impregnated at
2 fifteen, had her first baby E.W. when she was
3 fifteen years old. John Haynes was her
4 step-father, married to her mother. Certainly a
5 person of familial authority over her, she had
6 known him all her life, she said, thought of him as
7 her father. She thought of that man as her father,
8 yet he forced her to have sexual intercourse on at
9 least two occasions that we can prove.

10 Ladies and gentlemen, Mr. Bell stated during
11 his opening that the burden of proof in this case
12 is not beyond any doubt but it is beyond a
13 reasonable doubt. I submit to you that it is not
14 your job as jurors to look for reasonable doubt.
15 We ask that you take the testimony as it has been
16 presented to you to make your determination and,
17 ladies and gentlemen, I submit to you that the
18 State has overcome the burden, overcome the burden
19 of proof and proven that Mr. Haynes is guilty of
20 criminal sexual conduct with a minor in the second
21 degree.

22 Now, Mr. Wise just came up here and he says,
23 you know, he and Mr. Mellard aren't stupid, they
24 knew there were two children, and I agree, they're
25 not stupid men, we have known there are two

1 children and the father of those children is John
2 Haynes, couldn't really argue with that. So, what
3 have they done? They have placed the blame on
4 everyone except where it belongs, which is on the
5 shoulders of John Haynes. They spent all day
6 yesterday and this morning calling Minor
7 a liar. They called her a liar. The defense wants
8 you to believe that everything was Minor
9 ' fault, she wanted a baby, she wanted to
10 have sex with John Haynes who she testified she
11 thought of as her father. They want you to believe
12 she seduced him when he was drinking alcohol. They
13 want you to believe that John Haynes was entirely
14 unaware that he was having sex with his daughter,
15 entirely unaware, that Minor became
16 pregnant with John Haynes' child not once but twice
17 without him even knowing it. They call her a liar
18 but they want you to believe what she said about
19 her seducing him, everything else is a lie except
20 that one part that takes the blame away from where
21 it belonged, which is on their client, which is on
22 John Haynes.

23 Judge Goodstein in her opening remarks
24 reminded you all to bring your common sense and
25 your life experience with you to your job this week

1 as jurors. I submit to you ladies and gentlemen by
2 applying common sense and your general life
3 experience what the defense is proposing is
4 ludicrous.

5 Dr. Harari testified during his evaluation
6 with Minor that she claimed that she seduced her
7 step-father. But what else did Dr. Harari testify
8 to? He testified that he didn't believe her. He
9 testified that based on the tests he gave her
10 during that evaluation he found Minor to be
11 minimizing what happened, to be protecting John
12 Haynes, and he further stated that with her IQ
13 level he didn't believe she was capable of coming
14 up with a plan, formulating a plan to seduce her
15 step-father and ultimately becoming pregnant by him
16 twice by her design. Dr. Harari testified despite
17 what the defense wants you to believe that Minor
18 said, that she seduced him, despite her saying that
19 to Dr. Harari, he didn't believe her and he
20 diagnosed her as a child victim of sexual abuse.
21 It punches holes in the assertion they want you to
22 believe that Minor isn't the victim but
23 the real victim is John Haynes?

24 Miss Clark from DSS testified that Minor
25 originally told her that the father of her children

1 was Deondre Goodwine. It wasn't really a stretch
2 because they were friends, people assumed. But
3 ultimately through the DSS investigation he was
4 excluded as the father. Then Minor needed a
5 name, Marcus House, a made up name, trying to keep
6 DSS from honing in on who really was at fault, John
7 Haynes.

8 But ultimately DSS tested John Haynes and
9 paternity was established with 99.99 percent
10 certainty according to Miss Clark's testimony, that
11 he fathered Minor's children. Then Minor,
12 according to what Miss Clark testified to, changed
13 again and said it was her fault, she came on to
14 John Haynes, she seduced him. But what did Miss
15 Clark testify to? She didn't believe her. Miss
16 Clark also testified that Minor was worried, she
17 was concerned about what happens to people in jail
18 who molest and hurt children, she heard that they
19 get hurt in jail, they get beaten in jail.

20 Ladies and gentlemen, I submit that Minor
21 was doing everything she could to protect
22 John Haynes, she was willing to lie, she was
23 willing to blame everyone else, including herself,
24 but John Haynes. Why? She testified that she was
25 scared of him. She testified that he threatened

1 her. You heard that he slapped her, he hit her in
2 her face, but then Minor testified he said, "No
3 one is going to believe you and if you tell what
4 happened," he said he was going to kill her and her
5 family, and repeatedly yesterday Minor said, "I
6 did what I had to do to protect my family, to
7 protect myself and my family." John Haynes went so
8 far as to show Minor the gun he would
9 use if she told the truth, that John Haynes had
10 molested her, raped her repeatedly, impregnated her
11 twice, he was going to hurt her or her kids, her
12 family.

13 And Mr. Wise stated by December, 2009, he was
14 out of the house, he wasn't a threat. Ladies and
15 gentlemen, you don't need to live with someone to
16 kill them, to hurt them, to shoot them with a gun.
17 To say that should have taken away the fear that
18 Minor had that this man would kill her
19 if she told the truth about what happened, I submit
20 that it makes no difference.

21 Let's also remember that we're talking about
22 a young girl who had just had her second baby by
23 the man she considered to be her father, a man who
24 Minor testified, in fact her mother Gail Haynes
25 testified would take baths with her when she was

1 twelve or thirteen years old, a man who molested
2 Minor for years, touching her breasts, her
3 genitals. John Haynes' intent was clear, he was
4 groping her, a man who ultimately forced himself on
5 Minor , forcing her to have sexual
6 intercourse, impregnating her twice.

7 Ladies and gentlemen, John Haynes is not the
8 innocent victim in this case, he is not the
9 innocent victim of Minor ' seduction that
10 the defense wants you to believe. This man
11 violated Minor repeatedly in her home
12 where she should have been safe and protected, by
13 the very person who was supposed to protect her.

14 Ladies and gentlemen, the evidence presented,
15 the evidence you heard proves that John Haynes
16 committed the crimes with which he is charged and
17 when you go to the jury room to deliberate I ask
18 you to consider all the evidence and I ask that you
19 hold John Haynes responsible for what he did, hold
20 him responsible for what he did and find him guilty
21 of incest and criminal sexual conduct with a minor
22 in the second degree.

23 Thank you.

24 THE COURT: Thank you, Miss Ford. That first
25 break I was talking about, let's stand up, that's

1 it.

2 Ladies and gentlemen, why I do that, I need
3 you to pay attention to me, so I want the oxygen to
4 move.

5 If there is anyone who needs to take a
6 comfort break raise their hand because I'm going to
7 need your undivided attention for probably about, I
8 don't know, 20, 25 minutes. Anybody? Don't be
9 shy. Very well. We'll move around a minute and
10 when you're ready to be seated be seated.

11 Ladies and gentlemen of our jury you have
12 heard the evidence and the arguments of both sides.
13 It is now my duty to explain to you the law which
14 is applicable to this case.

15 Ladies and gentlemen, in this case there are
16 two indictments. One of the indictments charges
17 the defendant who is Mr. John Edward Haynes with
18 the offense of criminal sexual conduct with a minor
19 in the second degree. The other indictment charges
20 the defendant Mr. John Edward Haynes with incest.

21 Ladies and gentlemen, I remind you the fact
22 that the defendant was arrested, charged and
23 indicted in this case is not evidence in this case
24 and cannot be considered by you as evidence of
25 guilt in this case nor does it create any

1 presumption or inference of guilt.

2 Ladies and gentlemen, these indictments are
3 simply the formal written instruments which contain
4 the charges made against the defendant. These
5 indictments are the formal documents by which this
6 case is brought into this Court.

7 Each indictment charges a separate and
8 distinct offense. You must decide each indictment
9 separately on the evidence and the law applicable
10 to it, uninfluenced by your decision as to any
11 other indictment. The defendant may be convicted
12 or acquitted on any or all of the offenses charged.
13 You will be asked to write a separate verdict of
14 guilty or not guilty for each indictment.

15 Ladies and gentlemen, indictment
16 2010-GS-09-70 alleges in part that in Calhoun
17 County, South Carolina on or about January the 1st,
18 2008, that the defendant John Edward Haynes did
19 engage in a sexual battery upon a minor who was at
20 least fourteen years of age but less than sixteen
21 years of age and the defendant was more than two
22 years older than the victim and in a position of
23 familial, custodial or official authority to coerce
24 the victim and that the defendant did have sexual
25 intercourse with the victim Minor , this

1 offense in violation of Section 16-3-655 of the
2 South Carolina Code of Laws as amended.

3 Ladies and gentlemen, indictment
4 2010-GS-09-069, alleges that in Calhoun County,
5 South Carolina on or about January the 1st, 2008,
6 through March the 1st, 2009, defendant John Edward
7 Haynes did engage in incest in that the defendant
8 did have sexual intercourse with his wife's
9 daughter Minor , this offense in
10 violation of Section 16-50-20 of the South Carolina
11 Code of Laws as amended.

12 Now, ladies and gentlemen, the defendant in
13 this case has pled not guilty to each of these two
14 indictments. That plea places the burden on the
15 State to prove the defendant guilty. A person
16 charged with committing a crime in South Carolina,
17 a criminal offense, is never required to prove
18 himself innocent. But a pause here. It's
19 something if you can't read your own handwriting,
20 but the incest statute, just to be clear with you,
21 is 16-15-20. We will go over that in just a little
22 bit.

23 Ladies and gentlemen, I charge you that it is
24 an important rule of the law that the defendant in
25 a criminal trial, no matter what the seriousness of

1 the charge or the charges may be, will always be
2 presumed to be innocent of the crime for which the
3 indictment or the indictments were issued unless
4 guilt has been proven by evidence satisfying you of
5 that guilt beyond a reasonable doubt. This
6 presumption of innocence does not end when you
7 begin your deliberations but it accompanies the
8 defendant throughout the trial until you should
9 reach a verdict of guilt based on evidence
10 satisfying you of that guilt beyond a reasonable
11 doubt.

12 Presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 defendant which remains with him until it has been
15 stripped from him by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt. The
17 presumption of innocence is not a mere legal
18 theory, it is not just a legal phrase. It is a
19 substantial right to which every defendant is
20 entitled unless you the jury are satisfied from the
21 evidence of the defendant's guilt beyond a
22 reasonable doubt.

23 What, then, is reasonable doubt in the law?
24 A reasonable doubt is the kind of doubt that would
25 cause a reasonable person to hesitate to act. The

1 State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may
3 have served as jurors in civil cases where you were
4 told that it is only necessary to prove that a fact
5 is more likely true than not true, such as by the
6 greater weight or the preponderance of the
7 evidence. In criminal cases the State's proof must
8 be more powerful than that, it must be beyond a
9 reasonable doubt. Proof beyond a reasonable doubt
10 is proof that leaves you firmly convinced of the
11 defendant's guilt.

12 There are very few things that we know in
13 this world with absolute certainty and in criminal
14 cases the law does not require proof that overcomes
15 every possible doubt. If based on your
16 consideration of the evidence you are firmly
17 convinced that the defendant is guilty of the crime
18 or the crimes charged you must find the defendant
19 guilty. If on the other hand you think there is a
20 real possibility that the defendant is not guilty
21 you must give the defendant the benefit of the
22 doubt and find him not guilty. Of course again you
23 do this analysis for each indictment separately and
24 independently one from the other.

25 Ladies and gentlemen, I remind you that

1 during this trial you and I have certain duties to
2 perform. As the trial judge it is my
3 responsibility to preside over the trial of this
4 case and I also have the duty to rule on the
5 admissibility of the evidence which has been
6 offered during the trial. You are to consider only
7 the competent evidence before you. If there was
8 any testimony ordered stricken from the record in
9 this case during this trial you must disregard that
10 testimony or that evidence. You are to consider
11 only the testimony which has been presented from
12 this witness stand and any exhibits which have been
13 made a part of the record in this case.

14 Ladies and gentlemen, I have the additional
15 duty to charge you regarding the law applicable to
16 this case. As the presiding Judge I am the sole
17 judge of the law in the case and it is your duty as
18 jurors to accept and apply the law as I now state
19 it to you. If you already have any ideas as to
20 what the law is or what it should be and it does
21 not agree with what I tell you the law is you must
22 by your oath abandon your preconceived idea because
23 you are sworn to accept and apply the law exactly
24 as I state it to you.

25 Now, in every case tried in this court before

1 a jury the jury becomes the sole, the exclusive,
2 the only finders of fact in a case. A trial judge
3 cannot intimate, state, comment on or make any
4 statement to a trial jury about the facts in a
5 case. You are not to infer from what I may have
6 said during the progress of this trial in ruling on
7 the admissibility of evidence or otherwise or
8 anything that I say now during the course of this
9 instruction to you that I have any opinion
10 regarding the facts in this case. The law does not
11 allow me to have an opinion about the facts in this
12 case. I have no opinion regarding the facts in
13 this case. This is a matter solely for you the
14 jury to determine. As jurors it is your duty to
15 determine the effect, the value, the weight and the
16 truth of the evidence presented during this trial.

17 Now, ladies and gentlemen, there generally
18 are two types of evidence presented during a trial.
19 One is called direct evidence and the other
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact, such as an eyewitness. It is
23 evidence which immediately establishes the main
24 fact to be proved. Circumstantial evidence is
25 proof of a chain of facts and circumstances

1 indicating the existence of a fact. It is evidence
2 which immediately establishes collateral facts from
3 which the main fact may be inferred.
4 Circumstantial evidence is based on inference and
5 not on personal knowledge or observation.

6 Let me give you an example. It's February,
7 let's pretend like it's cold outside, real cold
8 outside and let's pretend that snow is forecast and
9 let's further pretend that we walk outside and lo
10 and behold we get hit smack in the face with snow.
11 We are truly an eyewitness to the fact that it is
12 snowing, that is direct evidence.

13 Now let me shift on you a little bit. We'll
14 still let it be February, we'll still pretend it is
15 very cold outside and we'll further pretend that
16 snow is forecast but let's put it in the nighttime
17 and we will look outside just before we go to bed
18 and all we see is our poor old crunchy brown grass.
19 We go to sleep, awake in the next morning and lo
20 and behold snow covers everything.

21 Here is what we know. Here is what we can
22 testify to. Here are the collateral facts. It is
23 February, it is cold outside, when we went to bed
24 last night snow was forecast but all we saw was
25 brown crunchy grass but yet when we awake this

1 morning snow covered everything. Those are the
2 collateral facts, those are the facts that we know.
3 But through inference we also know the fact that it
4 snowed last night, we didn't see it snow last night
5 but we know it snowed last night because of the
6 collateral facts that we do know and through
7 inference we know that it snowed last night,
8 although we didn't see it snow. That is
9 circumstantial evidence.

10 The law makes absolutely no distinction
11 between the weight or value to be given to either
12 direct or circumstantial evidence nor is a greater
13 degree of certainty required of circumstantial
14 evidence than of direct evidence. You should weigh
15 all of the evidence in the case and after weighing
16 all the evidence if you're not convinced of the
17 guilt of the defendant beyond a reasonable doubt
18 you must find the defendant not guilty. Once
19 again, you do this analysis for each indictment.

20 Now, necessarily you must determine the
21 credibility of the witnesses who have testified in
22 this case. Okay, what does credibility mean?
23 Well, credibility, simply it means believability.
24 It becomes your duty as jurors to analyze and to
25 evaluate the evidence and determine which evidence

1 convinces you of its truth. In determining the
2 believability of witnesses who have testified in
3 this case, and I am going to go over these
4 examples, this is not an exhaustive list and you
5 didn't check your common sense at the courthouse
6 door, these are simply examples.

7 In determining the believability of witnesses
8 who have testified in this case you may believe one
9 witness over several witnesses or several witnesses
10 over one witness, you can believe part of the
11 testimony of a witness and reject the remaining
12 part of the testimony of that same witness. You
13 may believe the testimony of a witness in its
14 entirety or you can reject the testimony of a
15 witness in its entirety. You may consider whether
16 any witness has exhibited to you any interest or
17 bias or prejudice or other motive in this case and
18 you may consider the appearance and the manner of
19 the witness while on the witness stand.

20 Now, ladies and gentlemen, during the course
21 of this trial you have heard testimony of a witness
22 deemed to be an expert witness. Our rules of
23 evidence ordinarily do not permit witnesses to
24 testify regarding their opinions or conclusions.
25 There is of course an exception to this rule and

1 that is for witnesses who are expert witnesses. An
2 expert witness is a witness who by virtue of their
3 education, experience, profession have become an
4 expert in some art or science or their profession
5 or calling and these individuals, these witnesses
6 may state their opinions as to relevant material
7 matter in which the witness claims to be an expert
8 and those witnesses, those expert witnesses may
9 also state the reasons for their opinion.

10 Ladies and gentlemen, you should consider any
11 expert opinion received in evidence in this case
12 and like any other evidence you give it the weight
13 you think it deserves. If you decide that the
14 opinion of an expert witness is not based on
15 sufficient education and experience or if you
16 conclude that the reasons given in support of the
17 opinion are not sound or that the opinion is
18 outweighed by other evidence you may disregard the
19 opinion in its entirety. An expert witness'
20 testimony is to be given no greater weight than
21 that of other witnesses simply because the witness
22 is an expert. And further, you are not required to
23 accept an expert's opinion even though it is not
24 contradicted.

25 Now, ladies and gentlemen, I instruct you and

1 I emphasize that the fact that the defendant in
2 this case, that the fact that Mr. Haynes did not
3 testify is not, is not a factor to be considered by
4 you in any way in your deliberations and in your
5 consideration on the question of whether the
6 defendant is guilty or not guilty. In fact, the
7 fact that Mr. Haynes did not testify must not be
8 considered by you in any manner whatsoever.

9 Ladies and gentlemen, a defendant has the
10 constitutional right to remain silent and the
11 assertion of this right must not be considered by
12 you in your deliberations. I repeat, under your
13 oath you are to draw no conclusion whatsoever from
14 the fact that the defendant in this case did not
15 testify. The fact that this defendant did not
16 testify, ladies and gentlemen, should not even be
17 discussed in your jury room. The burden of proof,
18 as I have stated it to you, is and remains on the
19 State. The defendant is not required to prove
20 himself not guilty. The burden of proof is and
21 remains on the State to prove guilt beyond a
22 reasonable doubt.

23 Now, ladies and gentlemen, in order to
24 establish criminal liability criminal intent is
25 required. For example, the mental state required

1 to be proven by the State for a particular crime
2 might be purpose, intent, knowledge, recklessness,
3 criminal negligence, for example. Criminal intent
4 must be proved by the State beyond a reasonable
5 doubt. Criminal intent is always a matter that
6 must be determined by the jury from the
7 circumstances surrounding the situation because,
8 you see, there is no way to prove intent to a
9 mathematical certainty, there is no way that
10 medical science can dissect a person's brain and
11 determine what the person had in mind, so the law
12 says that criminal intent may be inferred from the
13 circumstances shown to have existed. This is how
14 you make a determination of whether or not the
15 intent, the element requiring intent was proven.
16 It is not necessary to establish intent by
17 direct and positive evidence but intent may be
18 established by inference in the same way as any
19 other fact, by taking into consideration the acts
20 of the parties and all the facts and circumstances
21 of the case.

22 Criminal intent is a mental state, a
23 conscious wrongdoing. It is up to you to determine
24 what the defendant intended to do based on the
25 circumstances shown to have existed. Criminal

1 intent can arise from action or failure to act, it
2 can arise from circumstances considered by the law
3 to be the equivalent of criminal intent.

4 Ladies and gentlemen, the intent, the
5 specific intent, we will talk about when I give you
6 the definition of the offense.

7 Now, ladies and gentlemen, there has been
8 evidence presented that one or more witnesses may
9 have made prior statements which are not consistent
10 with the witness' present testimony. You may use
11 this evidence to decide whether to believe the
12 witness or witnesses. You may also use evidence of
13 the earlier contradictory statements to determine
14 the truth of those statements. It is up to you to
15 decide whether to believe the earlier statements or
16 the testimony given at trial. If a witness has
17 shown to knowingly testify untruthfully concerning
18 any material matter you may consider this in
19 determining whether to trust the witness' testimony
20 as to other matters. You may reject all the
21 testimony of that witness or give all or part of
22 the testimony the weight that you think it
23 deserves.

24 Now we're going to talk about these two
25 offenses and the elements. Ladies and gentlemen,

1 the first offense that we're going to talk about is
2 second degree criminal sexual conduct with a minor
3 and that Code Section and then we're going to talk
4 about the offense of incest in that section.

5 Now, ladies and gentlemen, Section 16-3-655
6 under the Code of Laws is where we find under our
7 Code of Laws the second degree criminal sexual
8 conduct with a minor offense. And the defendant,
9 Mr. Haynes, is charged with second degree criminal
10 sexual conduct with a minor. The State must prove
11 beyond a reasonable doubt that the defendant
12 engaged in a sexual battery with the victim.

13 Now, what is a sexual battery? A sexual
14 battery is sexual intercourse, cunnilingus,
15 falacio, anal intercourse or any intrusion, however
16 slight, of any part of a person's body or of any
17 object into the genital or anal openings of another
18 person's body except when the intrusion is
19 accomplished for medically recognized treatment or
20 diagnostic purposes.

21 The State must then prove beyond a reasonable
22 doubt that the victim was less than sixteen years
23 of old but at least fourteen years old and that the
24 defendant was either in a position of familial,
25 custodial or official authority to coerce the

1 victim to submit or that the defendant was older
2 than the victim.

3 Now, ladies and gentlemen, incest is found at
4 section 16-15-20 of our Code of Laws, and the
5 defendant is charged with incest. The State must
6 prove beyond a reasonable doubt that the defendant
7 had sexual intercourse with certain types of
8 relatives in order to prove incest. These
9 relatives include the defendant's mother,
10 grandmother, daughter, granddaughter, stepmother,
11 sister, grandfather's wife, son's wife, grandson's
12 wife, wife's mother, wife's grandmother, wife's
13 daughter, wife's granddaughter, brother's daughter,
14 sister's daughter, father's sister or mother's
15 sister.

16 Ladies and gentlemen, I further charge you
17 that South Carolina does not recognize a doctrine
18 which is called diminished capacity as a defense to
19 negate the specific intent required of the offense
20 to which a defendant is charged. I further charge
21 you that under South Carolina law voluntary
22 intoxication does not relieve an individual from
23 criminal responsibility and is generally not a
24 valid defense in South Carolina.

25 Now, ladies and gentlemen, we're now going to

1 go over the verdict form. There are two things I
2 want to tell you before I do that. The first thing
3 I want to tell you is that there are two
4 indictments and there are two, there are two
5 determinations for you to make with regard to this
6 verdict form and we'll go over that in just a
7 moment, and there are two possible verdicts for
8 each of these two indictments, not guilty or
9 guilty.

10 Now, I have put these two possible verdicts
11 on this piece of paper we're going to go over in a
12 minute. I want you to know I could have just as
13 easily reversed it but one is first and one is
14 second. I just say that because I don't want you
15 to think there is any hidden meaning in the order
16 in which these possible verdicts are placed on
17 paper. That is a disclaimer, if you will.

18 Ladies and gentlemen, you know if you are
19 going to put two things on paper one has to be
20 first and one has to be second, so please do not
21 take any hidden meaning from the order in which
22 these possible verdicts have been placed on paper.

23 Now, the other matter that I want to speak
24 with you about is that I want to tell you that your
25 verdict must be unanimous, and that means that your

1 verdict must be the verdict of each and every one
2 of you. This must be the verdict of all twelve of
3 you. This is not majority rule and this is not
4 dictatroskip, this is not the verdict of any one of
5 you or the majority, this verdict must be
6 unanimous, it must be the verdict of each and every
7 one of you.

8 Now, that should be a hint to my alternates
9 Mr. Williams and Mr. Rucker. I want you all to
10 stay with me when my jury leaves on this next
11 occasion because we still have twelve people, you
12 are still our alternates, stay with me on this next
13 occasion.

14 Now, ladies and gentlemen, I'm going to go
15 over the verdict form with you, I'm going to try to
16 do it up here, obviously you are going to have this
17 with you. This is the verdict form. This is
18 called the caption, this first part, and it is
19 simply the caption, meaning the title of the case.
20 It is State of South Carolina versus John Edward
21 Haynes, just the title of the case, and these are
22 the indictment numbers, I read those indictment
23 numbers actually to you.

24 Now, here is what this next line says. It
25 says please circle the appropriate verdict below

1 and follow the accompanying instructions carefully.
2 Number one says, as to the charge of incest we the
3 jury unanimously, you see my children think I'm a
4 nag, you all are learning why, unanimously find the
5 defendant, and there are two possible verdicts and
6 I put two possible verdicts on this piece of paper
7 and again you will take no hidden meaning from the
8 order in which they are placed on paper. One is
9 guilty, one is not guilty. Irrespective of what
10 the unanimous verdict of this jury is, madam
11 presiding juror, you will circle that verdict so
12 there is no question that is what the unanimous
13 verdict of the jury is with regard to number one,
14 which is the charge of incest or indictment for
15 incest.

16 Number two states, as to the charge of
17 criminal sexual conduct with a minor second degree
18 we the jury, again, unanimously find the defendant,
19 and again the possible verdicts, one is not guilty,
20 one is guilty. Take no hidden meaning from the
21 order in which these have been placed on paper and
22 irrespective of which is the unanimous verdict of
23 this jury, just circle it so there is no question
24 but what is the unanimous verdict of the jury.

25 Now, once the jury has completed its

1 deliberations and you filled out your verdict form
2 and you will date it. For your reference purposes
3 today is February the 28th, my daughter's birthday,
4 2013, and you will sign herewith as the presiding
5 juror, and you know who you are, I'm sure.

6 Now, a few additional instructions I want to
7 give to you. In just a moment I'm going to be
8 asking you to step to your jury room with this
9 instruction. Do not discuss this matter or allow
10 anyone to discuss it with you. At this point you
11 are saying, "Hold up, you said this is the point at
12 which we were supposed to start our deliberation,
13 what are you talking about?" I'm going to tell you
14 what we're talking about. On this next occasion
15 when you step to your jury room I'm going to turn
16 to these lawyers and I'm going to ask them two
17 questions, have I given this jury all the law that
18 they may need for their deliberations and have I
19 stated it correctly, and these lawyers will help me
20 know the answer to those questions. And sometimes,
21 sometimes I fail to give a jury all the law that
22 they may need for their deliberations and I need to
23 bring them back out and give them an additional
24 part of the law. Now, in the event that I need to
25 bring you back out for that reason I ask you in

1 advance please do not consider that instruction
2 with any emphasis.

3 Now, sometimes I need to bring jurors back
4 out because goodness knows it is unintended but
5 sometimes something just comes out wrong and I need
6 to actually correct my error and I ask you in
7 advance in the event that I need to bring you back
8 out because I have stated something incorrectly and
9 I need to correct myself, I'm going to ask you to
10 please allow me to correct my error in your mind, I
11 ask it in advance.

12 Now, ladies and gentlemen, I want you to know
13 that this is my chance to get this right, to give
14 you all the law you may need for your deliberation
15 and state it for you correctly and the lawyers help
16 me assure that I have done what I am supposed to
17 do.

18 Now, in the event that I do not need to bring
19 you back out here is what will happen. You will be
20 brought the exhibits, the verdict form and an
21 instruction to begin your deliberations. Now, you
22 know, Mr. Lacey and Miss Paulette and I have been
23 doing this a long time and they do a wonderful job
24 and they say when to begin your deliberations, so
25 let me just tell you, you won't have the exhibits

1 and the verdict form unless it is time to begin
2 your deliberation, so when you have your verdict
3 form and you have your exhibits then you will begin
4 your deliberations.

5 Now, there are a couple other matters I will
6 mention to you. All twelve of you have to be
7 together for you to deliberate. So, in the event
8 somebody needs to take a comfort break just stop
9 your deliberations and take your comfort break. I
10 don't know that we have any smokers but if you do
11 and that person needs to smoke stop your
12 deliberations, let our bailiff know and that person
13 can be escorted so he can go out in this kind of
14 chilly breeze and smoke your weed and then we'll
15 return to the jury room and then when all twelve of
16 you are together again you may recommence your
17 deliberation. Just remember if you need to take a
18 comfort break stop your deliberation, take your
19 comfort break and then reconvene your deliberations
20 once you are together again.

21 Now, the last thought that I'm going to leave
22 you with is this. The word verdict comes from the
23 Latin phrase verdicto, which means to speak the
24 truth, to speak the truth, which is now your task.
25 Step to your jury room, do not discuss this matter

1 or allow anyone to discuss it with you and we will
2 be with you very shortly.

3 (The jury was excused from the courtroom).

4 THE COURT: All right, Mr. Rucker and Mr.
5 Williams, this is what I'm going to ask you to do
6 for me. I'm going to ask you to give me fifteen
7 minutes once the jury has begun its deliberations,
8 for this reason. I think should something happen
9 to one of our jurors during those early minutes of
10 the deliberation, and believe it or not it is rare
11 but occasionally that will happen, I think that I
12 can stop the deliberations, seat one of you, begin
13 the deliberations anew and save the trial, so you
14 have given me so much of your time, I'm going to
15 ask you for fifteen more minutes once the jury has
16 begun its deliberations, so we will take you and
17 put you in another area away from the jury but you
18 all are welcome to watch a watch and we'll watch
19 it, too, I don't want to keep you any longer than I
20 must.

21 Thank you and if you will go with my bailiff
22 they will take you to the conference room over
23 there. Wonderful.

24 (The Alternate jurors were excused from the
25 courtroom).

1 JUROR: Yes.

2 THE COURT: If you will pass it to the
3 bailiff, he will pass it to me.

4 Very well. I find that the verdict is in due
5 form. If you will publish it for us, please, sir.

6 THE CLERK: State of South Carolina versus
7 John Edward Haynes, indictment number
8 2010-GS-09-0069 and indictment number
9 2010-GS-09-0070. As to the charge of incest, we
10 the jury unanimously find the defendant guilty.

11 As to Count Two, the charge of criminal
12 sexual conduct with a minor second degree, we the
13 jury unanimously find the defendant guilty.

14 And is this your verdict?

15 JUROR: Yes, it is.

16 THE COURT: Let me just say that I believe it
17 is signed as of today's date and it has the
18 presiding juror's signature on the verdict form as
19 I have reviewed it.

20 Ladies and gentlemen, if this was your
21 verdict in your jury room and continues to be your
22 verdict please indicate by raising your right hand.

23 Let me observe for the record all the jurors
24 have their right hand raised. Anything from the
25 State before we dismiss our jury?

1 you have given to us and that of course is your
2 dire and precious time and for every single
3 solitary person, on behalf of all of us involved
4 with the judicial system I want to thank you. It
5 is no small thing you have done to give so much of
6 your time and we're all so very grateful. It has
7 been an honor to work with you this past week. If
8 our paths ever cross again I will be honored.

9 You can please retire, please have some
10 lunch, I will be in in a little bit in case you all
11 have any questions. You have given us so much of
12 your time I'm delighted to give you some of mine.
13 People sometimes want to know, well, what happens
14 next. I want you of course to have your lunch, we
15 will go forward with sentencing at this point, it
16 is completely up to you, jurors sometimes want to
17 know what happened and want to observe, you are
18 welcome to observe or not, that again is completely
19 up to you. If you are ready to go get you some
20 lunch, or if you were to remain you're welcome to
21 stay right where you are. I thank you and I now
22 turn you back over to yourselves. Thank you so
23 much.

24 (Jury excused from the courtroom).

25 THE COURT: All right. Anything before

1 sentencing?

2 MR. WISE: Yes, Your Honor.

3 THE COURT: All right.

4 MR. WISE: Thank you, Your Honor. At this
5 point I would ask the Court to consider a motion
6 for new trial for Mr. Haynes. I have several
7 grounds in support for the Court to consider. The
8 first relates to the issue of the constitutionality
9 of the incest statute. The second relates to the
10 Court's declining to submit the charge of
11 diminished consciousness to the jury. The third
12 relates to the exclusion of the expert on the issue
13 of automatism or unconsciousness, so we would ask
14 the Court to consider that to allow those to be
15 presented.

16 THE COURT: Thank you so much, Mr. Wise, I
17 appreciate that. I would decline to grant the
18 motion for a new trial for the reasons that were
19 stated during the trial and stated with more
20 particularity during the course of the trial and
21 make reference to my rulings during the course of
22 the trial for the basis of my denial, and I
23 respectfully note your exception.

24 All right. I'm going to proceed now with
25 sentencing and, Miss Ford, Mr. Bell, whichever one

1 of you has it, if you would please share with me
2 any record that Mr. Haynes has I would like to get
3 that.

4 MS. FORD: Yes, Your Honor. Mr. Haynes has a
5 conviction for discharging a firearm in the city
6 limits from 1994, he has a stalking conviction from
7 1997, as well as a malicious injury to property
8 conviction also from 1997.

9 THE COURT: And of course I have heard from
10 the victim during her testimony but I'm happy to
11 hear from the victim or anyone on behalf of the
12 victim.

13 MS. FORD: I just spoke with Minor ,
14 she did not wish to address Your Honor but just
15 asked me to convey that she would ask for the
16 maximum sentence in this case, Your Honor.

17 THE COURT: Mr. Wise?

18 MR. WISE: Your Honor, a couple things we
19 would like to bring to the Court's attention. The
20 Court has now heard Mr. Haynes' background. If the
21 Court would note, he has no prior conviction for
22 any sexually related offenses. He has no crimes of
23 violence in his background, no crimes involving any
24 type of assaultive behavior except a misdemeanor.
25 I am told he has no crime, aside from the

1 discharging the firearm, involving pointing,
2 presenting a firearm, those kind of offenses. The
3 stalking charge and malicious injury to personal
4 property charge and discharging a firearm charge
5 all date back to the 1990's, the most recent one
6 was '97, so that is a pretty significant amount of
7 time since then.

8 THE COURT: Sixteen plus years.

9 MR. WISE: During that time I call to the
10 Court's attention the fact Mr. Haynes has been
11 working, at the time he was arrested he was
12 working, he was born in South Carolina and lived
13 most of his life here, his whole life he has lived
14 here, all except five years. He has family in the
15 courtroom, his mother is here, so he does have
16 significant family support in the courtroom. I
17 would ask that you take all that into consideration
18 in sentencing.

19 THE COURT: Assuredly.

20 If any family member would like to say
21 anything I will hear them now.

22 MR. WISE: May I have a moment, Your Honor?

23 THE COURT: Indeed, of course.

24 MR. WISE: Your Honor, Mr. Haynes' mother
25 would like to speak, Miss Cecelia Haynes.

1 THE COURT: Ceceilia Haynes. Yes, ma'am, hi,
2 Miss Haynes.

3 THE WITNESS: All right.

4 THE COURT: When you're ready.

5 THE WITNESS: I'm Cecelia Haynes and I'm John
6 Haynes' mother and I have known him ever since he
7 was out of my womb and I have known Minor from
8 the time she had the baby up until now. I know he
9 doesn't rape nobody or tackle nobody, because I
10 remember that I was at the house one night and she
11 must have skipped school and Minor e's mother, me
12 and John done told Minor about I don't know what
13 boy it is cutting class if you do but I'm saying if
14 that kid, the one that DSS say that she couldn't
15 find, that is Minor e's kids' father. My son is
16 not the father, I know that. That is all I got to
17 say, it is not my son, I know that.

18 MR. WISE: That's all we have.

19 THE COURT: Okay. All right. I have written
20 the sentence and I am prepared to sentence the
21 defendant at this time. Once I have sentenced the
22 defendant, then I did want to just mention a couple
23 things to the victim in this case.

24 With regard to Mr. Haynes, with regard to
25 2010-GS-9-70, which is criminal sexual conduct with

1 a minor in the second degree, I want to note for
2 the record this offense is a violent offense.
3 Under the terms of the statute there are
4 circumstances where it is not to be considered most
5 serious. I want to do the opposite, I am going to
6 make findings to be assured it is considered most
7 serious and I am making a specific finding that the
8 sexual intercourse was not consensual, this was
9 nonconsensual sexual intercourse, so it would be a
10 most serious offense.

11 And, Mr. Haynes, I'm going to commit you to
12 the State Department of Corrections for a period of
13 twenty years. You are to be given credit for the
14 time that you have served.

15 I also make a specific finding in accordance
16 with the statutory provisions of the State that you
17 will be placed on the sex offender registry. This
18 is a sexually violent offense and most serious and
19 it is my recommendation that you be placed on
20 electronic monitoring when you're released from the
21 South Carolina Department of Corrections. And you
22 will be placed on the central registry for child
23 abuse and neglect.

24 With regard to 2010-GS-9-69, which is the
25 indictment for incest, the sentence of this court

1 is you will be confined to the South Carolina
2 Department of Corrections for a period of ten
3 years, provided that upon the service of five years
4 and probation for five years the sentence will be
5 satisfied. This sentence will run consecutive to
6 the sentence that I have just imposed, the five
7 your sentence.

8 With regard to the probationary part of this
9 sentence, I want you to successfully complete a sex
10 offender treatment program. There is to be no
11 contact with minor children until the sex offender
12 treatment has been successfully completed and there
13 is to be no contact either directly or indirectly
14 with the victim in this case.

15 This of course also is an offense for which
16 the sex offender registry is appropriate and this
17 is also a sexually violent offense. Probation will
18 begin, Mr. Haynes, when you have been released from
19 the South Carolina Department of Corrections, and
20 you will be placed on the central registry for
21 child abuse and neglect. You are to be given
22 credit for time that you have served.

23 And that concludes the sentence.

24 Now, with regard to Minor
25 Minor , I'm going to speak to you for a moment,

1 come up here. I want to compliment you and I have
2 a couple things to say to you and I want to say
3 them to you. I want you to know that I weep for
4 that little girl and I weep for that little girl
5 that was abused and I want you to know that I get
6 what you have been through and I feel for that
7 little girl. I admire you because somehow in your
8 heart you have put aside this tragic, horrific
9 treatment that you have suffered and have brought
10 love to those two little children. I don't know
11 what to say about that but that you have put your
12 own suffering to the side and found it in your
13 heart to give love. What an amazing woman you are.
14 That cannot be easy. I urge you to seek treatment,
15 to be gentle with yourself, to help yourself heal
16 because what horrible, horrible experiences you
17 have been through and just as Miss Ford eloquently
18 argued, these things happened to you in your home
19 where a little girl is supposed to be safe, and for
20 that I am so sorry.

21 And I want you to know that I think you have
22 terrific strength. I know that to come to this
23 court and to testify and to stand tall and strong
24 wasn't easy and I want you to know that I think you
25 are extraordinary and I wish you joy, I wish you

1 peace, I wish you continued bravery. I'm proud of
2 you for going back to school, I think you are a
3 marvelous example for your children, I think you
4 are a marvelous example for all women. I urge you
5 whatever path you take, whether it is going to be
6 cosmetology or whatever your future holds, I hope
7 it is sweet, I hope it is dear, because you deserve
8 only good things. I wish you well with your
9 children. Thank you for being an example for all
10 of us.

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome. All right, that
13 concludes this case.

14 MR. WISE: May we approach the bench for just
15 one moment?

16 (Unrecorded bench conference).

17 (Hearing Concluded).

18

19

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21

22

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24

25

WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M360353

Arrested: April 8, 2010

ACTION OF GRAND JURY

TRUE BILL

Bobby J. Haynes
Foreperson of Grand Jury
Date: May 14, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-0000-0000

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

John Edward Haynes

Indictment for

INCEST

SC Code: 16-15-20

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2010 MAY 14 A 10:55
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

FILED

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

ATTEST TRUE COPY

Kim J. Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

INDICTMENT
2010GS09-0069

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of
Calhoun County present upon their oath:

INCEST

That in Calhoun County, South Carolina, on or about January 1, 2008, the
Defendant, John Edward Haynes, did engage in incest in that the defendant did
have sexual intercourse with his wife's daughter Minor . This offense
is in violation of Section 16-3-655 of the South Carolina Code of Laws, as
amended.

March 1, 2008

B-20
1657

ATTEST TRUE COPY
Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

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

Karen Fryar
Karen Fryar, Solicitor

PAGE 04/14

CALHOUN COUNTY CLERK

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02/28/2013 15:37

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WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M360354

Arrested: April 9, 2010

ACTION OF GRAND JURY

TRUE BILL

Bobby J. Shumard
Foreperson of Grand Jury
Date: May 14, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS09-0070

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

John Edward Haynes

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR - SECOND DEGREE

SC Code: 16-3-655(3)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

FILED
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KENNETH HASTY
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CALHOUN COUNTY
SOUTH CAROLINA

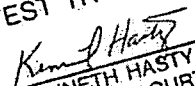
STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

INDICTMENT
2010GS09-0070

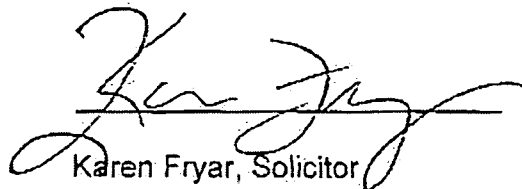
At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of Calhoun County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR – SECOND DEGREE

That in Calhoun County, South Carolina, on or about January 1, 2008, the Defendant, John Edward Haynes, did engage in a sexual battery upon a minor who was at least fourteen (14) years of age but less than sixteen (16) years of age and the defendant was more than two years older than the victim and/or in a position of familial, custodial, or official authority to coerce the victim, in that the defendant did have sexual intercourse with the victim, Minor . This offense is in violation of Section 16-3-655 of the South Carolina Code of Laws, as amended.

ATTEST TRUE COPY

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

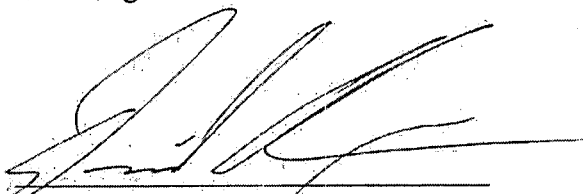
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Karen Fryar, 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 10th, 2014


David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR APPELLANT

RECEIVED

JUL 22 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

S.C. Supreme Court

Appeal from Calhoun County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN EDWARD HAYNES,

APPELLANT.

APPELLATE CASE NO. 2013-000468

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in excluding a psychiatrist as an expert witness on the subject of automatism and sexual performance where the complainant told her psychologist and a DSS worker that she had sex with appellant while he was drunk and unaware of what happened?

STATEMENT OF THE CASE

On May 17, 2010, a Calhoun County grand jury indicted appellant for incest and second degree criminal sexual conduct with a minor between the ages of fourteen and sixteen. R. 236. On February 25, 2013, appellant was tried before the Honorable Diane S. Goodstein and a jury. R. 1. Sarah A. Ford and Benjamin Harrison Bell, Jr. represented the State. R. 1. Mark Wise and Robert Douglas Mellard represented appellant. R. 1. The jury convicted appellant. R. 226, ll. 6 – 15. Judge Goodstein sentenced appellant to consecutive terms of twenty years' imprisonment for criminal sexual conduct and ten years' imprisonment suspended upon the service of five years' imprisonment and five years' probation for incest. R. 232, l. 11 – 233, l. 7. After timely filing and service of the notice of appeal, this appeal follows.

ARGUMENT

The trial court erred in excluding a psychiatrist as an expert witness on the subject of automatism and sexual performance where the complainant told her psychologist and a DSS worker that she had sex with appellant while he was drunk and unaware of what happened.

Relevant Facts

Complainant was fifteen when she gave birth to her first child and seventeen when she gave birth to her second. R. 34, ll. 1 – 8. R. 35, ll. 1 – 7. Appellant John Haynes (“Haynes”) is complainant’s stepfather. R. 30, ll. 11 – 12. The State’s DNA expert testified that the chances that Haynes was the father of these two children were 99.9%. R. 93, l. 8 – 95, l. 24.

At trial, complainant claimed that Haynes began sexually abusing her when she was approximately twelve or thirteen, eventually forcing her to have intercourse and impregnating her. R. 31, l. 11 – 35, l. 10. After complainant denied or said she did not remember making multiple statements regarding Haynes to a psychologist and to a DSS worker, Haynes called both of these witnesses in his case. R. 51, l. 1 – 60, l. 2.

Dr. Marc Harari (“Harari”) performed a psychological evaluation of complainant. R. 111, ll. 19 – 22. Harari testified that complainant told him that she had sex with Haynes when he was drunk and “entirely unaware that he had sexual relations.” R. 113, l. 20 – 114, l. 5. She told Harari that she loved her stepfather and wanted to have his children. R. 114, ll. 15 – 19.

The DSS worker, Eula Clark (“Clark”) testified that complainant told her all of her friends were having babies and she wanted a baby, too. R. 124, ll. 21 – 25. She said

she loved Haynes and had sex with him because she wanted a baby. R. 125, ll. 5 – 16. Complainant also told Clark that Haynes did nothing wrong and did not know what happened because Haynes was drunk and unaware of what was happening. R. 126, l. 5 – 127, l. 20. Complainant told Clark that she only claimed Haynes raped her because she thought that was what everybody wanted to hear. R. 127, ll. 21 – 25. Clark told her a judge would not believe her story and complainant then claimed Haynes raped her. R. 132, ll. 1 – 25.

Following the testimony of these two witnesses, the defense called a psychiatrist, Dr. Amanda Salas. R. 143, ll. 2 – 4. The defense intended to offer Dr. Salas to educate the jury on whether it is possible to have sex and remain totally unconscious. R. 147, l. 24 – 152, l. 5. The State objected on relevance and that Dr. Salas had not performed any tests on Haynes to determine whether he had what the solicitor termed “sex somnia.” R. 144, l. 17 – 346, l. 8. Judge Goodstein told the defense to proffer Dr. Salas’s testimony and then she would rule. R. 151, l. 3 – 152, l. 6.

Dr. Salas was board certified in general psychiatry, child adolescent psychiatry, and forensic psychiatry. R. 154, ll. 20 – 22. She had previously been qualified to testify in court as an expert witness. R. 156, ll. 6 – 10. She explained that “the term automatism relates to involuntary behavior that occurs in a state of unconsciousness.” R. 156, ll. 14 – 20. She researched medical literature on automatism. R. 157, ll. 9 – 19. She testified that people can engage in activities while they are unconscious and have no awareness of what they are doing. R. 157, l. 20 – 359, l. 18. When defense counsel asked about automatism and sexual performance, the State objected on the grounds that Dr. Salas had “no background in urology or the medical side of male physiology. R. 158, ll. 19 – 25.

After discussion, the court agreed that Dr. Salas was an expert in psychiatry, but did not “know that she is an expert in the field of automatism.” R. 159, l. 23 – 160, l. 1. Defense counsel asked Dr. Salas further questions about her knowledge of automatism. R. 160, l. 10 – 167, l. 5. She researched automatism in PubMed, a scientific database. R. 160, l. 15 – 162, l. 11. She read the abstracts of articles she found concerning automatism and said that any physician, not just a psychiatrist, would have the knowledge to interpret them. R. 161, l. 8 – 162, l. 11. She explained that males can have erections while unconscious. R. 164, l. 21 – 166, l. 19. She explained the “parasympathetic nervous system” and that erections can occur while unconscious and are controlled by this part of the nervous system. R. 164, l. 21 – 166, l. 19. The State again objected that Dr. Salas was not an expert in this area. R. 166, ll. 21 – 25. Defense counsel then moved to have Dr. Salas qualified as an expert in psychiatry and automatism and the court allowed voir dire. R. 167, ll. 1 – 16.

On voir dire, Dr. Salas testified that she learned about automatism in medical school and during both neurology and psychiatry rotations. R. 168, ll. 1 – 12. She admitted she was not an automatism researcher, but when the State asked her if she had only a “generalized knowledge” of automatism, she replied that she had “specialized knowledge in terms of having a medical degree that allows me to know that automatism exists and how to identify it.” R. 168, l. 13 – 169, l. 7. She agreed that she did not promote herself as “somebody who studies automatism” and that she had not written any papers on automatism. R. 169, ll. 11 – 17. She had treated patients who exhibited automatism. R. 170, l. 21 – 171, l. 3. At this point, the State concluded its voir dire and argued Dr. Salas did not have “specialized training or knowledge in order to help define a

fact on this particular subject in this case” and also objected that her testimony was irrelevant. R. 171, ll. 7 – 17.

Defense counsel argued her testimony was relevant because of complainant’s testimony that she had sex with Haynes while he was drunk and unaware of what was happening. R. 171, l. 18 – 172, l. 18. Defense counsel argued that Dr. Salas’s knowledge was “superior to the jurors’ knowledge” and that she could educate them about whether what the complainant said happened was possible. R. 172, ll. 19 – 25. He then proffered Dr. Salas’s testimony that an unconscious man can have an erection, ejaculate, impregnate a woman, and never awaken. R. 173, l. 11 – 176, l. 3.

The trial judge then questioned defense counsel about whether Dr. Salas would offer an opinion as to whether Haynes suffered from automatism and could have impregnated complainant while unconscious. R. 176, ll. 11 – 22. Defense counsel stated she would not offer such an opinion. R. 176, ll. 11 – 22. Judge Goodstein asked, “So, what she’s prepared to testify, there is this thing called automatism and it can happen?” R. 176, ll. 23 – 25. Trial counsel agreed, while relating Dr. Salas’s opinions to sexual performance. R. 177, ll. 1 – 5. The trial judge also asked whether Dr. Salas had any information about how much alcohol Haynes consumed, and defense counsel said she did not. R. 177, ll. 4 – 9.

Judge Goodstein then ruled she would not allow Dr. Salas’s testimony and would not qualify her as an expert. R. 178, l. 3 – 182, l. 20. The trial judge concluded that the psychiatrist’s testimony could only “invite the jury to speculate” because she had not examined Haynes and could not testify whether Haynes had automatism. R. 178, l. 3 – 179, l. 14. Judge Goodstein noted that diminished capacity is not a defense. R. 178, l. 24

– 179, l. 6. The court debated whether Dr. Salas was not an expert because she only read “summaries” of forty articles. R. 179, l. 15 – 180, l. 9. Defense counsel argued that Dr. Salas’s information was admissible because the information she had was relevant and “lay people without some additional information can’t solve it.” R. 181, ll. 9 – 20. While the trial judge agreed that the jury needed “appropriate expert testimony regarding . . . automatism,” the court ultimately concluded that because Dr. Salas could not “take the next step to relate [automatism] to this defendant,” her testimony was inadmissible. R. 181, l. 21 – 182, l. 20.

Discussion

The trial court erred in two respects. First, the court erred in finding that Dr. Salas was not qualified. Second, the court erred in finding that even if qualified, Dr. Salas’s testimony was inadmissible because she could not testify that Haynes suffered from automatism. The exclusion of Dr. Salas’s testimony left Haynes without scientific testimony that explained that what complainant told her psychologist and the DSS worker was possible and stripped Haynes of his defense.

Finding that Dr. Salas was not qualified because she was not a specialist in automatism was error. “To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252-54, 487 S.E.2d 596, 598 (1997) (internal quotations omitted). A doctor’s limited exposure to a particular field only affects the weight of her testimony, not its admissibility. McGee v. Bruce Hosp. Sys., 321 S.C. 340, 344-45, 468 S.E.2d 633, 636

(1996). “A physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved.” Daves v. Cleary, 355 S.C. 216, 228, 584 S.E.2d 423, 429 (Ct. App. 2003). In McGee, an emergency room physician was held competent to testify about the standard of care of a surgeon. McGee at 345, 468 S.E.2d at 636. In Daves, a cardiologist was held competent to testify about emergency medicine. Daves at 228, 584 S.E.2d at 429.

Dr. Salas, a psychiatrist, was a medical doctor. She was board certified in three different fields of psychiatry. She testified that the mechanics of automatism were basic medicine “learned in medical school” that she could interpret because of her medical training. R. 162, ll. 5 – 11. The fact that automatism was not her specific field of study related only to the weight of her testimony, not its admissibility. While the trial court and solicitor disparaged Dr. Salas’s research into automatism, this, again, was an issue of weight, not admissibility. Dr. Salas had more information than an average juror about automatism and refusing to allow her testimony on this basis was error.

The trial court also erred in refusing to allow Dr. Salas to testify because she had not examined Haynes and would not offer an opinion on whether he was capable of automatism or whether automatism occurred in this case. As long as their testimony is relevant and will assist the jury, experts are allowed to give opinions and information about a factual issue regardless of whether they have an opinion about whether a particular factual circumstance happened in the case being tried. A good example of this principle is provided by Jenkins v. Few, 391 S.C. 209, 220, 705 S.E.2d 457, 463 (Ct. App. 2010). In Jenkins, a business rival placed sugar in the plaintiff’s gas tank. Id. An automobile mechanic was qualified as an expert witness about the effect of sugar on an

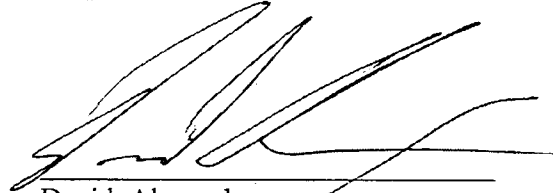
automobile engine. Id. This Court held that his testimony was admissible even though nothing in the opinion indicates he would testify that the damage to the plaintiff's engine was caused by sugar. Id.

These experts provided information to the jury about an issue that was not within their common knowledge and was admissible even though they did not testify that a specific matter had occurred in the case. See Kilby v. Commonwealth, 663 S.E.2d 540, 547 (Va. Ct. App. 2008) (holding testimony regarding the general subject of delayed disclosure was admissible expert testimony). By excluding Dr. Salas's testimony the trial court accomplished the exact opposite of what it intended—it forced the jury to speculate whether someone could have sex while unconscious. Dr. Salas's testimony was crucial to provide the scientific knowledge to the jury that automatism exists and is well-known to doctors. Had she testified, it would have lent support to the defense's theory. Haynes's defense arose from the complainant's own version of what happened and was not speculative. Without Dr. Salas's testimony, Haynes was left without an expert and more than a reasonable doubt exists that this error prejudiced his defense. The solicitor was free to argue in closing that "applying common sense and your general life experience what the defense is proposing is ludicrous." R. 199, ll. 1 – 4. Precisely because automatism is outside most people's common sense and general life experience is why the defense needed Dr. Salas to testify. For these reasons, this case must be reversed and remanded for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse Haynes' convictions and remand the case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

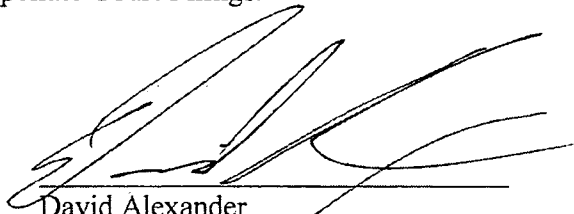
ATTORNEY FOR APPELLANT

This 18th day of December, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 18th, 2014



David Alexander
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

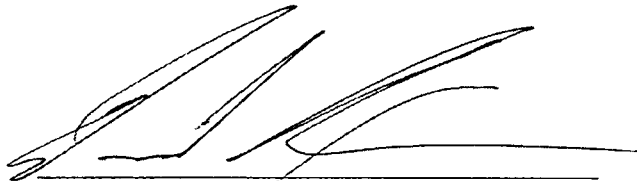
V.

JOHN EDWARD HAYNES,

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 William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.



SCCID

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December 12, 2014

William M. Blitch, Jr., Esquire
Assistant Attorney General
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Re: The State v. John Edward Haynes

Dear William:

Enclosed are two copies of the Initial Brief of Appellant and Designation of Matter in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

David Alexander
Appellate Defender

DAA/mpm

Enclosure

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JUL 22 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

S.C. Supreme Court

Appeal from Calhoun County
Honorable Diane S. Goodstein, Circuit Court Judge
Appellate Case Tracking No. 2013-000468

The State,

Respondent,

vs.

John Edward Haynes,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in refusing to allow testimony regarding automatism when the only evidence presented indicated Appellant became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court did not err in refusing to allow testimony regarding automatism when the only evidence presented indicated Appellant became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.**

Appellant contends the trial court erred in excluding his proposed expert witness's testimony regarding automatism and sexual performance. First, the only evidence presented indicated he became voluntarily intoxicated and even those jurisdictions that allow evidence of automatism distinguish it from voluntary intoxication. Further, his argument is merely an attempt to claim diminished capacity, which is not allowed in South Carolina and like voluntary intoxication cannot serve as a defense.

South Carolina does not recognize a defense of diminished capacity. See Gill v. State, 346 S.C. 209, 220, 552 S.E.2d 26, 32 (2001); see also, State v. Tennant, 394 S.C. 5, 11 n.2, 714 S.E.2d 297, 300 n.2 (2011) (noting South Carolina does not recognize a diminished capacity defense). Further, this Court has found it is not error to exclude expert testimony when the sole purpose of that testimony is to attempt to argue a version of diminished capacity. See State v. Santiago, 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct. App. 2006). In Santiago, the defendant claimed his Asperger's disorder prevented him from being able to form the requisite mental state to commit a murder. This Court found the trial court properly refused the testimony when it was to establish he was guilty of at most a lesser included offense because of his diminished capacity. Id. at 162-163; 634 S.E.2d at 28 (citing Gill, 346 S.C. at 220, 552 S.E.2d at 32).

Additionally, South Carolina does not allow voluntary intoxication to serve as a defense. In State v. Vaughn, the South Carolina Supreme Court explained:

We adopt the rule that voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific. Reason requires that a man who voluntarily renders himself intoxicated be no less responsible for his acts while in such condition. To grant immunity for crimes committed while the perpetrator is in such a voluntary state would not only mean that many offenders would go unpunished but would also transgress the principle of personal accountability which is the bedrock of all law.

State v. Vaughn, 268 S.C. 119, 125-126, 232 S.E.2d 328, 330-331 (1977) (declining to allow voluntary intoxication to serve as a defense to burglary, housebreaking, and assault with intent to ravish); see also, State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993) ("Furthermore, voluntary intoxication does not relieve an individual from criminal responsibility.").¹

South Carolina has not had opportunity to directly consider whether to accept a defense of automatism. Further, the defense appears to be an attempt to skirt the rule that diminished capacity is not a defense in South Carolina. However, even those jurisdictions that have accepted automatism as a defense distinguish its application when the basis for the alleged automatic behavior is voluntary intoxication.

In North Carolina, the Supreme Court has clearly adopted a distinction between automatism and voluntary intoxication:

"The rule in this jurisdiction is that where a person commits an act without being conscious thereof, the act is not a criminal act even though it would be a crime if it had been committed by a person who was conscious." However,

¹ The trial court properly charged the jury neither voluntary intoxication nor diminished capacity is not a defense. (T.427; R. 218).

unconsciousness as a result of voluntary ingestion of alcohol or drugs will not warrant the instruction requested here by defendant.

State v. Fisher, 445 S.E.2d 866, 877 (N.C. 1994)(internal citations omitted). The North Carolina Supreme Court subsequently explicated: “The defenses of voluntary intoxication and automatism are **fundamentally inconsistent**, and this Court has stated that ‘unconsciousness as a result of voluntary ingestion of alcohol or drugs will not warrant the instruction [for automatism] requested here by defendant.’” State v. Morganherring, 517 S.E.2d 622, 641 (N.C. 1999) (emphasis added) (quoting Fisher); see also, Polston v. State, 685 P.2d 1, 9 (Wyo. 1984) (“Where unconsciousness results primarily from self-induced intoxication, the defense of automatism is not available”).

The Indiana Court of Appeals provided an excellent explanation of the distinction between automatism and voluntary intoxication in Schlatter v. State, 891 N.E.2d 1139 (Ind. App. 2008). Further, the facts of the case considered in Indiana are amazingly analogous to the charges at issue in this case—a father became highly intoxicated, had sex with his daughter, and claimed to know nothing of the occurrence. The Court explained the defense of automatism was not available to the defendant because he “acted voluntarily in becoming intoxicated,” and “he cannot now claim that his actions which resulted from his intoxication were involuntary, and because he cannot claim that his actions were involuntary, the automatism defense is unavailable to him.” Schlatter, 891 N.E.2d at 1143.

Appellant’s attempt to offer a defense of automatism is unavailing because, even under his version of the evidence, the only evidence presented showed he became voluntarily intoxicated prior to engaging in sexual intercourse with his step-daughter.

Specifically, Dr. Harari testified the minor victim told him she “seduced her step-father when he was under the influence of alcohol.” (T.314; R. 113).² Further, Ms. Clark, a DSS case worker, testified the child told her she approached her step-father when he was drunk. (T.327-328; R.126-127).³ The testimony, of course, is directly refuted by the child’s own testimony. She explained Appellant began getting into the bath or shower with her when she was twelve or thirteen and only stopped after being told to by family members. (T.208-209; R. 31-32). Further, she testified he touched her breasts and genitals and then had sexual intercourse with her when she was fifteen.⁴ (T.209-211; R. 32-34). He again had sexual intercourse with her and she gave birth to a second child roughly a year later. (T.211-212; R. 34-35).⁵

Appellant never presented any evidence indicating he was forced to drink or became involuntarily intoxicated. Even during his cross-examination of the minor victim, the only testimony presented established Appellant “has an alcohol problem and needs help.” (T.232; R. 55). The only argument ever presented to the jury was Appellant was too drunk to know what he was doing. As a result, Appellant’s own evidence merely established a claim of voluntary intoxication, which is not a proper defense in South Carolina. As a result, the testimony by his proposed expert was properly excluded as irrelevant and only capable of causing confusion and speculation by the jury.

² Dr. Harari later explained the story of the child seducing her step-father was “extremely farfetched” and was her being “protective, very defensive.” (T.318; R. 117). He fully explained it was his belief she had been sexually abused and was minimizing what happened to her to try and protect Appellant. (T.319-320; R. 118-119).

³ Like Dr. Harari, Ms. Clark did not believe the minor victim’s story of seducing the step-father and also believed she was being protective of him. (T.334-335; 338; R. 133-134).

⁴ There is no dispute the sexual intercourse occurred because the child became pregnant and gave birth to a baby whose DNA matched Appellant. (T.294-295; R. 93-94).

⁵ Again there is no possible dispute Appellant had sexual intercourse with the child because the DNA of the child born again matched his DNA. (T.295-296; R. 94-95).

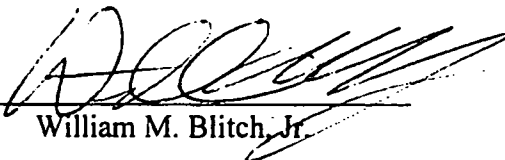
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
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ATTORNEYS FOR RESPONDENT

December 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun County
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vs.

John Edward Haynes,

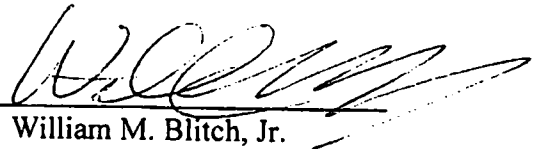
Appellant.

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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ATTORNEYS FOR RESPONDENT

December 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun County
Honorable Diane S. Goodstein, Circuit Court Judge
Appellate Case Tracking No. 2013-000468

The State,

Respondent,

vs.

John Edward Haynes,

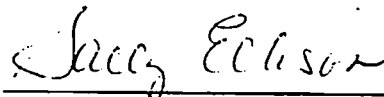
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 29th day of December, 2014.



SALLY ELLISON
Legal Assistant

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