

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
J.C. Nicholson, Jr., Circuit Court Judge

S.C. Supreme Court

Opinion No. 2015-UP-262 (S.C. Ct. App. Filed May 20, 2015)

Appellate Case No: 2013-000694

THE STATE

PETITIONER,

v.

ERICK ARROYO

RESPONDENT.

APPENDIX
Volume 2 of 3

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Michelle Amaya - Recross-examination by Mr. Savage

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1 I know you don't do this kind of stuff. Can you try to
2 recommend to her -- like give her a few names of people
3 she might be able to call. And that ---

4 THE COURT: What's the time frame of all of
5 this?

6 MS. GORDON: That's been, I don't know, maybe a
7 year ago or so.

8 THE COURT: Okay.

9 MS. GORDON: And I don't know if she -- I think
10 he gave her some names and that she hired one of the
11 people that he gave her of the name that he gave her. I
12 don't know the name. I think it was a woman because I
13 think she contacted me to make sure that there was a
14 pending action. But that's the limited contact I've had
15 with the -- I think it was a lady. I think it was a
16 young lawyer. Maybe like right out of law school.

17 THE COURT: Okay. Mr. Savage, I don't know if
18 that answers your question or not.

19 MR. SAVAGE: I'm satisfied.

20 THE COURT: Okay. Okay.

21 MR. SAVAGE: Thank you, Your Honor.

22 THE COURT: Anything else before we bring the
23 jury?

24 MR. SAVAGE: Well, we have that *Jackson v.*
25 *Denno*, and you said we'd probably stop. I'm not sure.

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Michelle Amaya - Recross-examination by Mr. Savage

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1 The first witness is not Joyce Arroyo. It's the
2 detective. There's a statement that she's going to
3 testify, I presume, about it. If she's not, then I ---

4 MS. GORDON: I've instructed her not to --
5 we're not going into any statement that he made. She's
6 not going to testify.

7 THE COURT: You're talking about the massage
8 oil?

9 MS. GORDON: No. The police officer. The
10 Defendant made some statements, mostly some self-serving
11 statements, in the car ride to the police station, and
12 we're not going ---

13 THE COURT: Well, who's your first witness?

14 MS. GORDON: Michelle Bacon, Detective Michelle
15 Bacon.

16 THE COURT: Oh, Michelle Bacon is first? Then
17 you're going with Joyce, the mother, and Minor2 , the
18 daughter?

19 MS. GORDON: Yes. Well, Minor2 will not be
20 testifying unless they open the door.

21 THE COURT: Okay. Well, I'm sure Mr. Savage
22 will be walking that tight rope.

23 All right. Anything else?

24 MR. SAVAGE: I appreciate your confidence,
25 Judge.

1 THE COURT: Huh?

2 MR. SAVAGE: I appreciate your confidence. I
3 wish I had ---

4 THE COURT: Well, I hope you can read my facial
5 expressions. Okay?

6 MR. SAVAGE: The color is what's important.

7 THE COURT: All right. Bring us the jury,
8 please.

9 (WHEREUPON, the jury entered the open court at
10 approximately 10:43 a.m.)

11 THE BAILIFF: All seated, Your Honor.

12 THE COURT: Okay. Thank you so very much.
13 Is it Ms. Thompson?

14 THE JUROR: Yes.

15 THE COURT: Are you feeling okay now?

16 THE JUROR: Yes, sir.

17 THE COURT: No pain? You're okay?

18 THE JUROR: I'm okay.

19 THE COURT: Okay. Thank you very much.

20 Call your next witness, please.

21 MS. GORDON: The State calls detective Michele
22 Bacon.

23 MICHELE BACON,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

State v. Erick Arroyo 2010-GS-10-00522, 00529
Michelle Bacon - Direct Examination by Ms. Gordon

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- 1 BY MS. GORDON:
- 2 Q. Good morning, Detective Bacon?
- 3 A. Good morning.
- 4 Q. Can you tell the jury where you're employed?
- 5 A. The Mount Pleasant Police Department.
- 6 Q. And how long have you been there?
- 7 A. Approximately eleven years.
- 8 Q. What's your position?
- 9 A. I'm currently a detective in the criminal
- 10 investigations bureau.
- 11 Q. And were you a detective back in September of 2009?
- 12 A. Yes, I was.
- 13 Q. Did you get occasion to be assigned to a case
- 14 regarding suspect Erick Arroyo?
- 15 A. Yes. I was the on-call investigator on the night of
- 16 September 20th, 2009. The on-duty supervisor had
- 17 contacted me, Corporal Driggers, and advised me of what
- 18 the victim's mother, Melina Arroyo, had reported.
- 19 Q. What time approximately did you get that call?
- 20 A. Approximately eleven-thirty p.m.
- 21 Q. And that night your instructions were to have them
- 22 go home and you'd contact them in the morning; is that
- 23 correct?
- 24 A. Correct. I advised Corporal Driggers to have the
- 25 initial reporting officer, Officer Hochreiter to complete

1 an initial report and then I would be in contact with Ms.
2 Arroyo the following morning.

3 Q. That following morning, what did you do to begin
4 your investigation?

5 A. I contacted Melina Arroyo. I advised her who I was
6 and that I was the investigator assigned the case. I
7 advised her not to question her daughter about what
8 happened and that I would be scheduling interviews for
9 all three of her children, beginning with Minor1, at the
10 Lowcountry Children's Center, which is our local child
11 advocacy center here in Charleston.

12 Q. You stated you were going to schedule an interview.
13 Why wouldn't you just interview the children yourself?

14 A. Well, generally, we allow minors to be interviewed
15 at the Lowcountry Children's Center where they have staff
16 specifically trained on how to interview children.

17 Q. How old was Minor1 when this report was made?

18 A. Thirteen.

19 Q. Did you determine a location where the assault had
20 occurred?

21 A. Yes, at her uncle's residence, Bend
22 in Mount Pleasant.

23 Q. And is that in Charleston County?

24 A. Yes.

25 Q. Did you ever meet Minor1?

STATE OF SOUTH CAROLINA

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THE STATE,

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APPELLATE CASE NO. 2013-000694

RECORD ON APPEAL

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Michelle Bacon - Direct Examination by Ms. Gordon

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- 1 A. I did briefly at the Lowcountry Children's Center.
2 I don't have too much contact with the victims because
3 I'm sort of the coordinator for the investigation, just
4 ensuring that she gets interviewed, ensuring that she
5 gets her medical examination, et cetera.
6 Q. Where were you when you did meet her?
7 A. At the Lowcountry Children's Center.
8 Q. Okay. And that was for her interview?
9 A. Yes.
10 Q. Did you participate in the interview?
11 A. No.
12 Q. Do you remember who did the interview?
13 A. Dr. Don Elsey.
14 Q. And were you able to observe the interview?
15 A. Yes. I watched the interview on a monitor in a
16 separate room.
17 Q. During the interview, did she disclose that sexual
18 assault had occurred?
19 A. Yes, she did.
20 Q. Did she say how long it had been going on?
21 A. She stated it began from the time that she was
22 twelve turning thirteen to two days ago when her mother
23 had reported it.
24 Q. Other than the interview, the forensic interviews at
25 Lowcountry Children's Center, did you coordinate any

1 medical exam or anything for Minor 1?

2 A. Yes. That day that she was interviewed at the
3 Lowcountry Children's Center, a medical examination was
4 performed. Not that day, but it was scheduled to be
5 performed.

6 Q. So that was schedule with Dr. Amaya?

7 A. Correct.

8 Q. Based on your investigation, the interview of the
9 child -- and did you take a statement from anybody else?

10 A. I did. I interviewed -- on the same day that Minor 1
11 was interviewed at the Lowcountry Children's Center, I
12 met with Melina Arroyo at the Mount Pleasant Police
13 Department and obtained her full statement. And
14 additionally, the other two children were interviewed as
15 well at the Lowcountry Children's Center, Minor 1's younger
16 siblings, A. and G.

17 Q. Had A. and G., had they observed any of
18 these sexual assaults?

19 A. No. And to clarify A. was interviewed that day
20 as well and G. was interviewed at a later day.

21 Q. Based on your investigation at that point, what did
22 you do?

23 A. I obtained two warrants, one for criminal sexual
24 conduct with a minor second degree, and the other warrant
25 for a lewd act upon a child.

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1 Q. During the interview did you learn that there may be
2 some other eyewitness. Not your interview of Melina but
3 of your interview -- watching the interview of Minor1, did
4 she disclose that there might actually be an eyewitness?

5 A. Yes, she did.

6 Q. And who did she disclose that that might be?

7 A. Her aunt, Joyce Arroyo, which is the Defendant's
8 wife, who he was currently separated from.

9 Q. And was that regarding the garage incident?

10 A. Yes.

11 Q. Did you contact Joyce?

12 A. I did.

13 Q. When did you contact her?

14 A. I contacted her on September 23rd, 2009.

15 Q. So this was after he was arrested?

16 A. Yes.

17 Q. And did she live in Mount Pleasant at the time?

18 A. No. She was living in Texas at the time.

19 Q. Tell me about your contact with her. What was the
20 purpose of contacting her?

21 A. I contacted her because Minor1 indicated that she was
22 a witness, that she had witnessed an incident occurring
23 in the garage. So I called her to ask her questions
24 regarding that incident.

25 Q. Now, you can't say what Joyce said. But was she

1 also able to give you information about an incident in
2 the garage?

3 A. Yes.

4 Q. When you contacted Joyce, did she know that her
5 husband had been arrested?

6 A. No.

7 Q. Detective Bacon, when you got that call on the night
8 of September 20th -- that was a Sunday night, is that
9 right?

10 A. Correct.

11 Q. At around eleven-thirty. Why didn't you go out that
12 night?

13 A. Because there was nothing that I could actually do
14 that evening. Typically, whenever we receive calls of
15 this nature where children are victims of crime, our
16 primary concern, our primary goal, is to ensure that the
17 child is safe. So in cases like this, if -- you know,
18 she were to have lived with the Defendant, we certainly
19 would have had to come out, call D.S.S. They would have
20 had to come out, do a safety plan and so on and so forth.
21 And that was not the case. In this incident she did not
22 live with the Defendant. She lived with her mother, so
23 she was safe that night. She was in her mother's care.

24 You know, in terms of interviewing Minor 1, as I
25 mentioned earlier, she has to be interviewed at the

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1 Lowcountry Children's Center where they have staff
2 specifically trained on how to interview children. I'm
3 not trained to interview a child. And that is our
4 protocol to send victims, child victims, to the
5 Lowcountry Children's Center to be interviewed.

6 You know, additionally, with the medical
7 examination, she -- Minor1 disclosed touching on the
8 breast that night. So she did not meet the criteria to
9 undergo an acute forensic exam, acute meaning less than
10 seventy-two hours. So if you were to report a rape to
11 the police or to the hospital, if it occurred within
12 seventy-two hours, they could perform, medical staff at
13 the hospital, a rape examination. In this case, as I
14 said, she reported touching of the breast. So you know,
15 we certainly were not going to have a thirteen-year-
16 undergo an invasive rape examination when that is what
17 she reports.

18 In terms of the residence, you know, Defendant's
19 have rights. We certainly can't just barge into his home
20 and, you know -- and try, you know, to take a diagram of
21 the living room. You know, we would have to have a
22 search warrant to enter the home. And in order for us to
23 get a search warrant, we would need probable cause.

24 Q. Probable cause of what?

25 A. Probable cause -- you know, me as the investigator,

1 I would have to reasonably believe that evidence of the
2 crime is inside that home at that particular time. And
3 it's very specific in search warrants. We would have to
4 -- you know, we would have to list where the residence
5 was, like describe the residence. We would have to list
6 specifically what we're looking for in terms of evidence
7 of the crime, so a description of the property sought.
8 I'm looking for this. And then the last part of the
9 search warrant is actually putting in my belief. This is
10 what, based on the facts and circumstances of the case, I
11 believe that I can find evidence of this crime in this
12 place at this particular time.

13 Q. And what evidence would you have been looking for on
14 that night?

15 A. Again, the crime that was reported was touching of
16 the breast. So there would really be nothing for us to
17 look for at the residence. So in terms of that night,
18 there was really nothing that I could have actually done.
19 It began the next day. This was eleven-thirty at night
20 on a Sunday evening. You know, the Lowcountry Children's
21 Center was closed, so there was nothing that I could have
22 done that night.

23 Q. Would you expect to find D.N.A. evidence from a
24 touching of the breast?

25 A. No.

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1 Q. If you had gone into the house and found the
2 Defendant's D.N.A. on a couch, would that have moved the
3 ball for you?

4 A. No. The Defendant lived -- that was his home, his
5 house, his couch. If we would have found the Defendant's
6 own semen on his own couch, that would not have moved the
7 ball forward.

8 Q. What if you had found Minor1's D.N.A. somewhere on
9 the couch?

10 A. Same concept. You know, she prior -- she lived at
11 the home prior to that incident, and she frequented the
12 home on a consistent, regular basis. So if her bodily
13 fluids were on the couch or anywhere in the residence,
14 that would not have moved the ball forward either.

15 Q. Thank you, Detective Bacon. You can answer any
16 questions Mr. Savage has for you.

17 THE COURT: Cross-examination, please, sir?

18 MR. SAVAGE: Thank you, Your Honor. May it
19 please the Court.

20 CROSS-EXAMINATION

21 BY MR. SAVAGE:

22 Q. Detective, you've been sitting in the courtroom just
23 like the jurors have been all this week?

24 A. Yes, sir.

25 Q. So you're aware of the testimony of other witnesses?

1 A. Yes, sir.

2 Q. And you're aware of the testimony of the doctor
3 about the need to have an acute examination within
4 seventy-two hours. She testified to that?

5 A. Yes, sir.

6 Q. And you say that you would -- you would not subject
7 somebody to the trauma of a gynecological examination
8 unless there was some evidence of improper touching,
9 improper conduct?

10 A. If there was penetration, if the victim had
11 disclosed some sort of penetration or oral sex or, you
12 know, licking, biting, things of that nature.

13 Q. And what you've told the jury is that on September
14 22nd, Tuesday, it was your decision and the decision of
15 the people who you instructed to interview Minor1 that an
16 examination was not necessary; is that correct?

17 A. No. Her medical examination was scheduled that day
18 and they scheduled it out in November.

19 Q. Some sixty days later?

20 A. That is, unfortunately, not uncommon. It's just ---

21 Q. The question was whether it was done within the
22 seventy-two hours. The second question was, could it
23 have been done within the seventy-two hours? Third, did
24 you determine that it would be done sixty days later?

25 MS. GORDON: Objection. Compound and complex

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1 question.

2 Q. Three separate questions. One, was she examined
3 within seventy-two hours?

4 A. No, because she did not meet the criteria to undergo
5 an acute forensic exam.

6 Q. The answer is no?

7 A. No.

8 Q. Could she have been examined within the seventy-two
9 hours?

10 A. For an acute?

11 Q. Could the child have been examined at the Lowcountry
12 Children's Center or at the Medical University within
13 seventy-two hours? Could she have?

14 A. No, because, again, she did not meet the criteria.

15 Q. I'm not asking you about the ---

16 THE COURT: Mr. Savage, let me interrupt. She
17 has the right to explain her answer. Please don't
18 interrupt her. Okay?

19 Q. The question is not about procedures at the
20 Lowcountry Children's Center. The question is could she
21 have been examined by Dr. Amaya or any of the other
22 physicians within seventy-two hours? Not why she wasn't.
23 I'm just asking could she have been?

24 A. I don't know their schedule at the Lowcountry
25 Children's Center. It's a very difficult question to

1 answer because they have to -- they have to ensure that
2 they have staff available to do the medical for the
3 child.

4 Q. Supposing the child had been shot, would you have
5 brought the child to be examined within seventy-two
6 hours?

7 A. Shot?

8 Q. Yeah. What if she was in a car wreck? What if she
9 was, you know, shot, she fell down, she broke her leg?

10 A. I would imagine ---

11 Q. Was a doctor available then if she had some
12 significant bodily injury? Would a medical ---

13 A. Oh, sure.

14 Q. --- physician have been available?

15 A. I would have imagined that she would have been
16 transported by an ambulance.

17 Q. And would have been examined by a doctor?

18 A. Yes.

19 Q. Now, the decision was made by you and the Lowcountry
20 Children's Center to have the examination sixty days
21 later?

22 A. No, no, not by me. When we schedule examinations
23 for children, a lot of the times they can't -- I called
24 the Lowcountry Children's Center on that Monday to
25 schedule her forensic interview. And then once we got to

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1 the Lowcountry Children's Center, the medical is
2 scheduled. It's almost like an automatic thing. And so
3 what they will do is just schedule it the next available
4 date. So if she doesn't fall under the acute forensic
5 examination, then they will just schedule it to whatever
6 date is available. And that was in November. I didn't
7 say schedule it in November. I just said the next
8 available date that you had, and it was November.

9 Q. The reason, the explanation as I understand when the
10 Judge cautioned me, was that because the criteria wasn't
11 met at that time?

12 A. Correct.

13 Q. And you have testified in response to the
14 Prosecutor's question that you would not expose a child
15 to that type of examination without a reason to do it?

16 A. Correct.

17 Q. You're sure?

18 A. Yes.

19 Q. Well, let me give you an example. Tell the jury who
20 was present on September 20th, 2009, in the living room
21 where the alleged misconduct took place in addition to
22 the child and her mother and Mr. Arroyo?

23 A. The two children, A. and G. , they were
24 asleep on the floor.

25 Q. And tell the jury how old the two children were?

1 A. Six and seven.

2 Q. And how old was the female child?

3 A. A. was seven, G. was six.

4 Q. And would you exercise the same concern for a six-
5 year-old or a seven-year-old as you would for a twelve-
6 or thirteen-year-old in terms of, let's say, a
7 gynecological examination and the trauma that may cause a
8 child?

9 A. Can you repeat the question?

10 Q. Would you be concerned in the same way that you've
11 testified you would be concerned with the accusing child
12 not to experience or have a child experience the trauma
13 of a gynecological examination?

14 A. Again, if they didn't meet the criteria to undergo
15 an acute forensic exam, we would not call out the sexual
16 assault nurse examiner.

17 Q. I'm not limiting it to acute or whatever the other
18 word is. I'm talking about a gynecological exam.

19 A. Okay.

20 Q. My understanding of your testimony is that it wasn't
21 done to the reporting child on September 22nd because
22 there was not enough information gathered at that point
23 that it was necessary?

24 A. Correct.

25 Q. Was there any information on September 22nd that the

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1 six-year-old female child was in any way inappropriately
2 touched by ---

3 MS. GORDON: Objection, Your Honor. May we
4 approach?

5 THE COURT: What's your legal objection and
6 I'll allow you to approach. Just tell me your legal
7 objection.

8 MS. GORDON: Improper impeachment. We need to
9 approach.

10 THE COURT: All right. Come on.

11 (WHEREUPON, a bench conference was held off the
12 record.)

13 Q. The question was before the bench conference about
14 the six-year-old. Did the six-year-old ever report to
15 you or anyone else involved in the investigation, medical
16 or otherwise, any hint of impropriety on the part of any
17 adult regarding sexual allegations?

18 A. No.

19 MS. GORDON: Your Honor, you'll note my
20 previous objection.

21 THE COURT: That's fine. For the record,
22 overruled.

23 Q. Did A. , at your direction and the people at the
24 Lowcountry Children's Center at age six, despite any
25 allegation of improper conduct on the part of the child,

1 her mother or anyone else, submit at your direction to a
2 gynecological examination?

3 A. No.

4 Q. Now, Detective Bacon, you're the head of this
5 investigation right now?

6 A. Yes, sir.

7 Q. And you've been in court all week?

8 A. Yes, sir.

9 Q. And you're aware -- you had full access to all the
10 reports about this investigation. Not about the prior
11 hospitalizations or anything else, but about this
12 investigation?

13 A. Yes, sir.

14 MR. SAVAGE: May I approach, Your Honor.

15 THE COURT: Yes, sir.

16 Q. You work regularly with Dr. Amaya and you work
17 regularly with Don Elsey? You work regularly with people
18 who investigate child abuse?

19 A. Yes, sir.

20 Q. And you're in charge, correct?

21 A. Yes. I'm the lead investigator.

22 Q. Would you take a look through these documents and
23 tell me what they are?

24 A. It appears to be A. a's ---

25 Q. Who is A. ?

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- 1 A. A. is Minor 1's younger sibling.
- 2 Q. Is that the six-year-old we were just talking about?
- 3 A. Yes.
- 4 Q. And when are those documents dated?
- 5 A. I'm sorry?
- 6 Q. What date do those documents reflect?
- 7 A. November 17th, 2009. I'm sorry.
- 8 Q. Are those documents part of a result of your
- 9 investigation as to the allegations of misconduct by Mr.
- 10 Arroyo?
- 11 A. Can you repeat the question?
- 12 Q. Yes. Are the documents in front of you now that
- 13 you're reviewing part of the investigation of the
- 14 allegations of misconduct that you have brought against
- 15 Mr. Arroyo?
- 16 A. I did not request A. to be physically examined.
- 17 However, I will say that it is protocol typically because
- 18 she also was in the house. So I think out of the
- 19 abundance of caution, that they had ordered this medical
- 20 examination.
- 21 Q. The question is -- please listen to the question and
- 22 be responsive to the question.
- 23 A. Yes, sir.
- 24 Q. Are those documents in front of you part of the
- 25 investigation into the alleged misconduct of Mr. Arroyo?

1 A. I ---

2 Q. You hate to say, yes, they are, but that's the
3 truth. That's part of the investigation.

4 THE COURT: Mr. Savage, ask the question and
5 let her answer it.

6 A. Not necessarily.

7 THE COURT: Detective Bacon ---

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay, he's going to ask you
10 questions, okay? You can say yes or no, I don't
11 understand or please repeat it, okay, or I don't know.
12 And then you can give an explanation. Otherwise, he's
13 going to keep asking the same question because you need
14 to be responsive. If he asks you about first base on a
15 baseball field, don't start talking about third base,
16 okay?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Yes, no, I don't know, or I don't
19 understand, okay?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: And then you can respond.

22 Mr. Savage, if she's not being responsive, call it
23 to my attention and I'll deal with it, please, sir.

24 MR. SAVAGE: I appreciate that.

25 THE COURT: Please proceed.

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1 MR. SAVAGE: Thank you, Your Honor. May I
2 approach the witness?

3 THE COURT: Yes, sir.

4 Q. May I see those documents for a moment?

5 A. I'm sorry?

6 Q. May I see them for a moment?

7 (WHEREUPON, the witness handed documents to
8 counsel.)

9 Q. Thank you. Now, Detective Bacon, if you would refer
10 to the documents in front of you and look at the right-
11 hand lower portion of the paper and see if they are
12 stamped.

13 A. Yes.

14 Q. Does that stamp indicate that those documents came
15 from the Solicitor's office?

16 A. Yes.

17 Q. And do those stamps indicate that those documents
18 are part of the file, the investigation that you headed
19 up, into the alleged criminal misconduct of Mr. Arroyo?

20 A. Yes.

21 Q. And do those documents reflect that A. , despite
22 no evidence, no complaints, was examined gynecologically
23 by Dr. Amaya, including an intrusive gynecological
24 examination of a six-year-old?

25 A. I did not request that examination.

1 MR. SAVAGE: Judge?

2 Q. The question was, was she examined?

3 A. Yes.

4 Q. And she was examined in concert with your
5 investigation?

6 A. Yes.

7 Q. And the documents themselves are part of the
8 criminal file, correct?

9 A. Correct.

10 Q. May I have them, please? You were in the courtroom
11 yesterday when you saw various diagrams pertinent to the
12 examination of females by a physician?

13 A. Yes.

14 Q. I'm showing you what is marked as Rule 5 ---

15 MS. GORDON: Objection, Your Honor.. Publishing
16 to the jury without admitting.

17 THE COURT: I'm sorry. What?

18 MS. GORDON: Publishing evidence to the jury
19 before admission.

20 THE COURT: Let me see the document, please,
21 sir, so I can -- let me see it for just a second. Let me
22 see what it is.

23 Solicitor, do you want to step up here for a second?

24 (WHEREUPON, a bench conference was held off the
25 record.)

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1 Q. Detective Bacon, prior to our consultation with the
2 Court, I was asking you whether these documents are a
3 part of your investigative file?

4 A. Did I have it in my file?

5 Q. I didn't ask you if they were in your file. I'm
6 asking if it was part of your investigation file?

7 A. (No verbal response)

8 Q. Let me start and try to make it as quick as I can.

9 A. Okay.

10 Q. Did you choose on September 22nd to turn over the
11 interrogation aspect of the case to the Lowcountry
12 Children's Center?

13 A. Well, I certainly wouldn't call it an interrogation.
14 The interview?

15 Q. On September 22nd of 2009, did you ask the
16 Lowcountry Children's Center to assist you ...

17 A. Yes.

18 Q. ... in part of your criminal investigation about the
19 alleged criminal activity of Mr. Arroyo?

20 A. Yes.

21 Q. And pursuant to that request, did Lowcountry
22 Children's Center interview the children?

23 A. Yes.

24 Q. As part of that investigation, did they take
25 physical examinations of both female children?

1 A. Yes.

2 Q. And was there any difference between A. 's
3 medical examination and the examination of Minor 1 ?

4 MS. GORDON: Objection, Your Honor. Lack of
5 knowledge.

6 THE COURT: Overruled. Go ahead.

7 Q. The document that you have before you that on the
8 bottom is referenced with this case number ---

9 MS. GORDON: Your Honor, I would renew my
10 objection, publishing evidence to the jury without
11 admitting.

12 THE COURT: Well, let me hear his question
13 first. He may just be using it for demonstrative
14 purposes. Overruled at this point in time. You may
15 renew it. Let me see what his question is.

16 Q. Is there any difference in the examination of A.
17 than the examination of Minor 1 other than age?

18 THE COURT: All right. Do you have an
19 objection?

20 MS. GORDON: Yes, Your Honor.

21 THE COURT: What is your legal objection?

22 MS. GORDON: My objection is that he is
23 publishing evidence to the jury. He's putting it up
24 there without admitting it. He's trying to put evidence
25 in without actually putting it in.

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1 THE COURT: Well, that's not the Court's
2 objection. The Court's objection is I don't think she's
3 qualified to compare the test.

4 MS. GORDON: Well, that was my previous
5 objection on lack of knowledge.

6 THE COURT: She's not qualified to say that's
7 the same test or different test. Okay?

8 MR. SAVAGE: I trust the jurors' judgement.

9 THE COURT: Okay.

10 MR. SAVAGE: So I'd ask this to be introduced
11 into evidence at this time.

12 THE COURT: Do you have any objections to the
13 document?

14 MS. GORDON: (No verbal response)

15 THE COURT: That will be Defense number what,
16 Mr. Savage?

17 MADAM COURT REPORTER: 3.

18 MR. SAVAGE: 3, Your Honor.

19 (WHEREUPON, Defendant's Exhibit Number 3 was marked
20 for identification only.)

21 THE COURT: Defendant's Number 3. Any
22 objection to the document?

23 MS. GORDON: My previous objection regarding
24 where he is going with this evidence.

25 THE COURT: That's not my question. My

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1 question, do you have an objection to Defendant's Exhibit

2 Number 3?

3 MS. GORDON: No objection.

4 THE COURT: All right. Admitted without
5 objection.

6 (WHEREUPON, Defendant's Exhibit Number 3 was
7 admitted into evidence.)

8 Q. Were there any criminal charges arising out of any
9 alleged misconduct by anyone involving the six-year-old
10 child, A. ?

11 A. No.

12 Q. Now, Detective, I'm not sure that the jury knows how
13 long you've been with the Mount Pleasant Police
14 Department. You've been there a good while, ten or
15 twelve years?

16 A. Eleven years.

17 Q. Eleven years. And during the course of your career,
18 you were a patrol officer?

19 A. Yes, sir.

20 Q. And after that you were promoted to a detective
21 position?

22 A. Yes.

23 Q. When I say promotion, a transfer.

24 A. Assigned.

25 Q. Assigned. Same rank?

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- 1 A. Yes.
- 2 Q. And what rank are you now?
- 3 A. Detective.
- 4 Q. But in terms of rank, corporal, sergeant, that sort
- 5 of stuff?
- 6 A. Patrol first class.
- 7 Q. So the night that this occurred, September 20th,
- 8 your rank at that time was less than Corporal Driggers?
- 9 A. Yes.
- 10 Q. So he would have been over you?
- 11 A. Yes.
- 12 Q. And the deputy who testified earlier this week would
- 13 have been the same rank in terms of authority and
- 14 responsibility?
- 15 A. Yes.
- 16 Q. Now, prior to September 20th -- and I have your
- 17 records if you would like to review them, what type of
- 18 training did you have with respect to investing sexual
- 19 abuse cases?
- 20 A. That would be really hard to say.
- 21 MR. SAVAGE: May I approach, Your Honor?
- 22 THE COURT: Yes, sir.
- 23 Q. Are you familiar with that document?
- 24 A. (No verbal response)
- 25 Q. Is it a certified copy of your training records

1 prior to September 20th, 2009?

2 A. Yes, it appears to be.

3 Q. Would you tell us what courses that you took in your
4 training that advised you of the protocols to follow in a
5 sexual abuse case?

6 A. Let's see. Detective level one -- I don't recall.
7 That was a week-long training in Columbia. I would
8 imagine that they went over child sex abuse cases.

9 Q. Well, is your imagination correct or were those
10 courses limited to general investigative techniques?

11 A. I would probably agree with that, general
12 investigative techniques. .

13 Q. And would it include concept of crime scene
14 management, evidence preservation, collection and
15 packaging?

16 A. Yes.

17 Q. That course suite?

18 A. Probably.

19 Q. And is there a separate course for sexual assault
20 which provides information about sexual assaults,
21 statistics, characteristics of offenders, sexual
22 deviations, substances commonly used on sexual assault
23 victims, guidelines for the sex offender registry, victim
24 dynamics, how to interview the victim of a sexual assault
25 as well as review of statutes relating to sexual

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1 offenses?

2 A. In basic detective?

3 Q. Is there a separate training course for detectives
4 or investigators involved in the investigation of sexual
5 assaults?

6 A. Yes. There are so many training courses out there.

7 Q. Have you taken any?

8 A. Yes.

9 Q. For sexual assault?

10 A. Yes.

11 Q. Would you indicate on your record the training
12 courses that you have taken of the so many that are
13 available to enhance your ability prior to September 20,
14 2009?

15 A. It doesn't seem to reflect all the training courses
16 that I've had. This is from the South Carolina Criminal
17 Justice Academy. It gets a little complicated in
18 training that we receive. We receive all sorts of
19 training. Some we can get credits for at the South
20 Carolina Criminal Justice Academy. Other trainings, you
21 know, we don't get credit per se. So, you know, I have
22 all of my certificates that I've provided our training
23 office. Just sporadically, in my time as an
24 investigator, I've taken so many courses, it's just --
25 it's really hard to keep up.

1 Q. But you agree that to be a police officer in South
2 Carolina you have to be certified?

3 A. Yes, sir.

4 Q. And the governing body of the certification is the
5 Criminal Justice Academy?

6 A. Yes, sir.

7 Q. And that's your official certified records from the
8 Criminal Justice Academy?

9 A. It appears to be. I've actually never seen this
10 before, but it appears to be.

11 Q. Now, the course that you took on basic detective
12 techniques and these other courses that you may have
13 taken, did they tell you how important it was to collect
14 evidence?

15 A. Yes.

16 Q. Did they tell you how important it is to collect
17 evidence so that we can scientifically be certain of
18 human frailties, observations, that sort of thing?

19 A. Yes.

20 Q. The night of September 20th, did you direct Corporal
21 Driggers or the other officer that was involved to take
22 into custody the clothing of, not Mr. Arroyo, but of the
23 child?

24 A. No.

25 Q. Did you hear the testimony earlier of Dr. Steenkamp

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1 from Boston that children don't always tell the first go
2 around the details, the extensive details, of the abuse?

3 A. Yes.

4 Q. Were you aware of that on September 20th?

5 A. I don't recall.

6 Q. Well, you are a sex investigator. You are a child
7 sex investigator. You've heard this theory proposed by
8 Dr. Steenkamp that children don't fully disclose on the
9 first interview. Did you know that September 20th?

10 A. I can't answer that question. I'm sorry. I just
11 don't recall if I knew that at that particular time.

12 Q. Well, let's assume that you did.

13 A. Okay.

14 Q. Because at that point you had been a law enforcement
15 officer for nine years.

16 MS. GORDON: Objection, Your Honor.

17 THE COURT: Yes, ma'am?

18 MS. GORDON: This -- lack of knowledge.

19 THE COURT: Can you let him ask a question and
20 then I'll listen to the objection, please, ma'am?

21 MS. GORDON: Yes, Your Honor.

22 THE COURT: Mr. Savage, if you'll ask the
23 question, please.

24 Q. Assuming that you had that knowledge September 20th,
25 would it have been proper that night to collect evidence?

1 THE COURT: Okay. Hold on a second, Detective
2 Bacon.

3 Do you have a legal objection to that question?

4 MS. GORDON: No objection, Your Honor.

5 THE COURT: All right.

6 Would you please answer, Detective Bacon?

7 THE WITNESS: Yes, Your Honor.

8 A. We collect evidence that we deem would have
9 evidentiary value to the case.

10 Q. So the answer is yes, no?

11 A. To collect evidence in general or collect her
12 clothing? I'm sorry.

13 Q. Specifically, on September 20th, 2009, the reporting
14 party was at the police station?

15 A. Correct.

16 Q. Did you ask for the police officers there or if you
17 came out of your home that night, to collect the
18 clothing?

19 A. No, because typically we will collect the clothing
20 if there's any sort of, you know, perhaps semen or
21 something like that. If she were to have undergone a
22 rape kit, typically they will take the clothing, perhaps
23 her underwear or shorts that she was wearing and submit
24 it along with the rape kit.

25 Q. But there are other reasons besides D.N.A. to take

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1 clothing. For example, if somebody reported that they
2 had jeans on, and they reported that their zipper was
3 open and they reported that somebody inserted their hand
4 and their finger in a particular part of their anatomy
5 which is clothed, would it be or would it not be
6 important for you to know whether or not those jeans were
7 tight, if they were loose, or where they were? Would it
8 be important to you if you knew that the child reported
9 that the perpetrator had his pants down, his penis out,
10 to see whether there was any body fluids on his clothing?
11 Would you look for that kind of thing?

12 A. Yes. Again, in this particular case, Minor 1
13 disclosed touching of the breast. So that's ---

14 Q. But you understood or maybe you didn't understand
15 that this theory of children is that they don't report
16 right away. So as soon as that red flag goes up, you
17 conduct an intensive examination, correct?

18 A. Correct.

19 Q. And police actually investigate. Law enforcement,
20 the good guys of which you're one, also investigate to
21 ensure that justice is not misapplied for innocent
22 people. You don't just look for evidence to prove
23 somebody's guilty. You look for evidence to determine
24 the facts in the situation of what happened?

25 A. Yes.

1 Q. That wasn't done in this case, was it?

2 A. Again, the underlying crime that she reported that
3 night was touching of the breast. I received no
4 information that there was any semen involved or that it
5 was force where he ripped off her shirt to touch her
6 breast. So at that time, no, we did not see it necessary
7 to take her clothing.

8 Q. The more expansive question that I asked was, was
9 there any attempt by law enforcement to ensure that
10 justice would be done by looking for signs of
11 believability and credibility in your investigation? Let
12 me give you an example. At some later date you were
13 advised that there was an incident in a garage. Did you
14 question the child or did anybody question the child as
15 to what type of clothing she was wearing?

16 A. No.

17 Q. Did anybody question the child whether she was
18 standing or sitting?

19 A. Her disclosure came out during her forensic
20 interview with the ---

21 Q. That's not what I asked.

22 A. I don't recall.

23 Q. Let me ask you again. Are you -- you've been
24 sitting here?

25 A. Yes, sir.

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1 Q. Are you the head of this investigation?

2 A. Yes, sir.

3 Q. Are you the one that ensures that quality law
4 enforcement work is necessary before a case comes to
5 trial?

6 A. Yes, sir.

7 Q. Did you or did anybody at your direction ask the
8 question at the time you alleged this misconduct in the
9 garage what you were wearing?

10 A. No. I don't believe so, no.

11 Q. Did you or anyone at your direction ask about the
12 misconduct in the garage, what the Defendant was wearing?

13 A. No.

14 Q. Did you or anybody at your direction go to the
15 house, knock on the door, ask for permission to come in
16 or go to a magistrate and obtain a search warrant so you
17 could go and look at the garage to see whether it was
18 physically impossible for what has been reported to you
19 to take place?

20 A. No.

21 Q. Did you see the inside of that room other than
22 what's been shown to you in the trial today, this week,
23 by Defense in terms of what that garage looked like?

24 A. No.

25 Q. Did you know that the witness who reported the

1 misconduct has said the lights weren't on?

2 A. I would have to refer to my notes.

3 Q. Please refer.

4 A. Okay. Yes, she stated that she found Erick and
5 Minor 1 in the dark.

6 Q. Were you in court the other day when the child
7 testified that the lights were on?

8 A. I don't recall what she said.

9 Q. Would it have been important as the head of the
10 investigation to do that basic research about whether it
11 would be possible visually to see something in the
12 complete dark as it was reported by the witness when you
13 took a statement?

14 A. I'm sorry. In terms of what?

15 Q. I'll move on. Did you consider the fact that the
16 reporting child said she was standing up when her uncle
17 tried to insert his penis into her vagina?

18 A. Did I what?

19 Q. Did you receive information that the child reported
20 she was in a standing position in that garage at the time
21 her uncle tried to insert his penis into her vagina?

22 A. Can I refer to my notes, please?

23 Q. Whatever you need to do.

24 A. Okay. Because I'm going off the information I
25 received at the time during her disclosure to Dr. Elsey

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1 at the Lowcountry Children's Center. Okay. The
2 information that she disclosed at the Lowcountry
3 Children's Center during her forensic interview was that
4 one time her uncle was trying to take off her pants in
5 the garage and she didn't let him. And she said Erick's
6 wife asked her later if she was okay and asked what the
7 uncle was doing. So ---

8 Q. So you were aware of that?

9 A. No, not -- it's not uncommon. Minor1, when she was
10 on the stand, gave more specific details of what happened
11 that night. But the information I received at the time
12 was what I just said.

13 Q. Again, you are the law enforcement officer in charge
14 of this investigation, correct?

15 A. Correct.

16 Q. You've been sitting in the courtroom all this week?

17 A. Correct.

18 Q. Do you have a continuing obligation to ensure that
19 this Court hears truthful information?

20 A. Yes.

21 Q. When you were aware that the child said she was
22 standing up at the time her uncle tried to insert his
23 penis in her vagina, did that concern you?

24 A. When I was sitting in the courtroom or -- because I
25 didn't know ---

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1 Q. At eleven thirty-seven on July 12th, are you
2 concerned about that?

3 A. Yes.

4 Q. And what have you done to effect your investigation
5 to ensure that the truth comes out at this trial?

6 A. I don't ---

7 Q. Nothing. You haven't done a thing at all. Never
8 went to the house ---

9 MS. GORDON: Your Honor, the Defendant's
10 testifying -- I mean, the defense attorney's testifying.
11 He's not asking a question.

12 THE COURT: I'm sorry. What was your
13 objection?

14 MS. GORDON: The attorney's testifying and not
15 asking a question.

16 THE COURT: Mr. Savage, ask questions, please.

17 Q. Have you ever been to the house?

18 A. Yes.

19 Q. Have you been inside the house?

20 A. Yes.

21 Q. Have you looked at the couch? Have you looked in
22 the garage?

23 A. No.

24 Q. Have you taken photographs of them? Have you done
25 any forensic examination?

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- 1 A. No. As I stated earlier, we would need probable
2 cause. We would need a search warrant.
- 3 Q. You went to the house and arrested him, right, in
4 the house?
- 5 A. Right.
- 6 Q. You were there?
- 7 A. Right.
- 8 Q. Did you look around? You knew you had the right to
9 go around the house when you arrest somebody?
- 10 A. To look for evidence, we would need a search
11 warrant. We would need probable cause.
- 12 Q. Did you have probable cause to arrest him?
- 13 A. Yes, I did.
- 14 Q. And he was arrested in the house?
- 15 A. Yes.
- 16 Q. How can you say you didn't have probable cause?
- 17 A. To search the home?
- 18 Q. Yes? You had enough to arrest him in his home.
- 19 A. No. It's a different standard. As I stated ---
- 20 Q. Is he currently indicted? Has he been indicted?
- 21 A. Yes.
- 22 Q. Does it take probable cause to indict? Have you
23 gone back and asked for a search warrant to go in the
24 house to collect, to see, to observe whether the things
25 that were reported by the witnesses could possibly be

1 accurate?

2 A. (No verbal response)

3 Q. Not D.N.A., not fingerprints. Looking at the
4 physical location of where the allegations are reported
5 to have happened. Have you done that?

6 A. No.

7 Q. Did you hear in court the other day for the first
8 time that this child reported there was somebody in the
9 house called R. at the time of one of the
10 misconducts?

11 A. No, I didn't know that at the time of the
12 investigation.

13 Q. Did you hear that this week ---

14 A. Yes, I did.

15 Q. --- in this courtroom that there was somebody named
16 R. involved?

17 A. Yes.

18 Q. Have you interviewed him?

19 A. No.

20 Q. Was he sitting right here in the courtroom?

21 A. I don't know who that is.

22 Q. And that's the person that this child reported was a
23 witness?

24 A. It's not uncommon for, you know, during the victim's
25 course of therapy for more details to come out later that

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1 the initial investigating officer is not privy to or is
2 not aware of rather.

3 Q. That's not the question. The question is do you
4 have a continuing duty to ensure that justice is met in
5 this courtroom?

6 A. (No verbal response)

7 Q. Why are you sitting in the courtroom if that's not
8 what your job is? Do you have that duty?

9 A. Yes.

10 Q. Do you have that duty to Mr. Arroyo just as much as
11 you do to Ms. Gordon?

12 A. Yes.

13 Q. And in this courtroom on Tuesday the child for the
14 first time said there was a witness called R. Did
15 you interview him? Have you attempted to interview him?
16 Have you attempted to question the child ---

17 MS. GORDON: Objection, Your Honor. Misstating
18 evidence.

19 THE COURT: I'm sorry. What?

20 MS. GORDON: Misstating evidence. Referring to
21 R. as a witness.

22 Q. Did you hear the name R. mentioned as being in
23 the home of Mr. Arroyo, at the time this child alleges
24 that she was inappropriately touched by Mr. Arroyo?

25 A. I believe so, yes.

1 Q. Is that the first time you've heard that?

2 A. Yes.

3 Q. And following that testimony, have you taken any
4 steps to ensure the accuracy, the credibility, the
5 truthfulness of that statement?

6 A. To be quite frank, Mr. Savage, I'm unfamiliar with,
7 you know, the court -- the case is going on right now as
8 we speak. So if that were necessary to do, I would
9 imagine that, you know, I would have been advised to go
10 ahead and do that or something of that nature. But you
11 know, there's a lot of rules when it comes to -- there's
12 things that I can't say on the stand. And I -- it's --
13 that's something that I was unaware that I could do
14 during the trial.

15 Q. Frankly, you're unaware that you can't ever talk to
16 a witness?

17 A. During the trial?

18 Q. After the trial. Supposing he's convicted by
19 mistake.

20 MS. GORDON: Your Honor, objection. Misstating
21 evidence. May we approach?

22 THE COURT: Yes, ma'am.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 Q. I'll try to be a little bit clearer with my

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1 question. When is the last affirmative act that you took
2 to investigate the facts and the details of this case?

3 A. October 15th, 2009.

4 MR. SAVAGE: May I see the indictments, please?

5 THE COURT: What do you want to see?

6 MR. SAVAGE: The indictment. Specifically the
7 indictment that was ...

8 THE COURT: Which indictment do you want to
9 look at?

10 MR. SAVAGE: 2011. May I approach the witness?

11 THE COURT: Yes, sir.

12 Q. Do you ever appear before the Grand Jury?

13 A. Yes, sir.

14 Q. Did you appear before the Grand Jury in this case?

15 A. I don't recall.

16 Q. Is the name of the witness typically listed on the
17 Grand Jury indictment?

18 A. Yes.

19 Q. Would you publish to the jury what this indictment
20 represents, what charge?

21 A. Criminal sexual conduct with a minor second degree.

22 Q. And who is the witness that appeared?

23 A. It says, Mount Pleasant Police Department, so I
24 don't know.

25 Q. You don't know?

1 A. No.

2 Q. You're in charge of the case?

3 A. How Grand Jury works is a detective from the
4 criminal investigations bureau will present to the Grand
5 Jury all of the detectives' cases. So it could have been
6 any detective in the office at the time, not necessarily
7 the case agent. It's a common practice. It could have
8 been -- it could have been me.

9 Q. Well, Detective Bacon ---

10 A. It could have been -- I mean, this happened a long
11 time ago.

12 Q. --- who were the witnesses on the other two
13 indictments?

14 A. Myself, Michelle Bacon.

15 Q. And what was the last time you say you took any
16 affirmative action in this case in terms of
17 investigation, October 15th, 2009?

18 A. Yes.

19 Q. Tell the jurors when the third indictment went to
20 the Grand Jury.

21 A. (No verbal response)

22 Q. July of 2011?

23 A. Uh-huh (affirmative).

24 Q. Twenty months after your last investigative detail
25 in this case; is that correct?

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1 A. Correct.

2 Q. Thank you, Detective Bacon.

3 THE COURT: Any redirect?

4 MS. GORDON: Court's indulgence. Nothing, Your
5 Honor.

6 THE COURT: Okay. You may step down, Detective
7 Bacon. Thank you very much.

8 All right. Solicitor, who's your next witness?

9 MS. GORDON: Your Honor, the next witness is
10 Ms. Joyce Salese Arroyo.

11 THE COURT: Okay. Let me see the attorneys up
12 here just a second.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. Ladies and gentlemen --
16 Mr. Foreman, ladies and gentlemen of the jury, on the
17 next witness I'm going to have to listen to some
18 testimony. And we've been in the courtroom now for about
19 an hour and twenty minutes. As you well know, I try to
20 take a break about every hour and a half. So leave your
21 note pad, and I'm going to let you take your break. And
22 I'm going to listen to this testimony and make a
23 decision, and then we're going to take a break.

24 So leave your note pads in the chairs. Please don't
25 discuss the case amongst yourselves. If you need

1 anything, let the bailiffs know. And follow the bailiff
2 to the jury room.

3 (WHEREUPON, the jury exited the open court at
4 approximately 11:48 a.m.)

5 THE COURT: All right. Who is the next
6 witness, Joyce Arroyo?

7 MS. GORDON: Yes, Your Honor. Your Honor, I
8 have an additional ---

9 THE COURT: What am I supposed to listen to now
10 in-camera? I'm sorry. It's slipped my mind.

11 MS. GORDON: Regarding her statement to the
12 police that she found some massage oil in the couch and
13 his response to it, that don't let Minor1 know about it.
14 Your Honor, we're not offering it for whether or not
15 Minor1 testified regarding the massage oil, but his
16 response and it's guilty knowledge that something was
17 going on that he didn't want -- just why he would involve
18 Minor1 in that.

19 The second thing though, Your Honor, is that I want
20 to put on the record that I believe that Mr. Savage has
21 opened the door to the testimony regarding Mr. Arroyo's
22 prior, the prior allegation of sexual assault by another
23 person, by going into whether A. disclosed any sexual
24 abuse. And he specifically asked, did any criminal
25 charges -- did A. disclose any criminal wrongdoing by

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1 anybody in that house by saying that she was in that
2 house and that she was interviewed and that she got a
3 gynecological exam and that no criminal charges stemmed
4 from that, insinuating to this jury that Mr. Arroyo had
5 never done any -- has not done this to anybody else.

6 THE COURT: Well, first things first. Let's
7 deal with this statement first. Bring the witness in,
8 let me listen to it and make a decision, and I'll listen
9 to you later on the argument whether he's opened the door
10 or not.

11 MS. GORDON: Thank you, Your Honor.

12 JOYCE ARROYO,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 IN-CAMERA EXAMINATION

15 BY MS. GORDON:

16 Q. Ms. Arroyo, I'm just going to ask you a few
17 questions right now outside the presence of the jury
18 regarding the incident where you found some massage oil
19 in the couch at your home.

20 A. Yes, I remember that.

21 Q. Can you tell the Judge what you recall about that?

22 A. I had come from work and I was looking for the
23 remote in the sofa, and I found a bottle of massage oil
24 inside the sofa.

25 Q. And was Mr. Arroyo in the room when you found it?

1 A. No. No one was at home, but ---

2 Q. How did he come to learn that you had found the
3 massage oil?

4 A. At that same moment when I was staring at it, he
5 happened to walk through the front door.

6 Q. And did you say anything to him about it?

7 A. I held it up to him, and I asked him what was that
8 doing in the sofa.

9 Q. And what was his response?

10 A. He turned very pale, and his response shocked me
11 because he said, don't tell Minor! that you found that.

12 MS. GORDON: Your Honor. That's the extent of
13 the testimony. Oh, I'm sorry. Court's indulgence.

14 Q. Do you recall the time -- the date and time when you
15 found that?

16 A. Not exactly. I remember I was working still.

17 Q. Was it prior to the incident in the garage or after
18 the incident?

19 A. It was before.

20 MS. GORDON: That's all, Your Honor.

21 THE COURT: Well, let me just ask one question.
22 Where did you find it?

23 THE WITNESS: It was inside the -- between the
24 cushions in the sofa.

25 THE COURT: It was in-between the cushions in

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1 the sofa. It wasn't lying on top of the sofa?

2 THE WITNESS: No.

3 THE COURT: It was shoved down in the cushions?

4 THE WITNESS: It was inside the cushions. I
5 was looking for the remote.

6 THE COURT: Okay. All right. Any cross-
7 examination on that statement or just argument?

8 MR. SAVAGE: Just argument, Your Honor.

9 THE COURT: Okay. All right. Thank you very
10 much.

11 I'll be glad to hear you, Solicitor, since you're
12 offering it.

13 I'm sorry. It's your objection to exclude it in-
14 camera. I'm sorry. It's your motion. Excuse me.

15 MR. SAVAGE: Yes, the objection's twofold.
16 One, it's not relevant. There's been no testimony about
17 any use of massage oils or anything else in the alleged
18 misconduct. The inference being because there was
19 testimony that massage oil was used on one or more
20 occasions. There's been no testimony from the child.
21 There's been no testimony from any of the people who have
22 interviewed her over the period of a year or more that
23 massage oil was used. So it's not relevant. But if this
24 Court were to find it was relevant, it's highly
25 prejudicial, far greater for prejudice than it is for the

1 probative value.

2 THE COURT: Well, if it's not relevant, how can
3 it be prejudicial?

4 MR. SAVAGE: I'm just saying -- two grounds.

5 THE COURT: Okay.

6 MR. SAVAGE: One is the relevance. I believe
7 you should deny the testimony on the grounds of
8 relevance. If Your Honor does find it relevant, which I
9 would not agree with ...

10 THE COURT: Okay.

11 MR. SAVAGE: ... then we would object under 403
12 that the probative is not weighed as much as the
13 prejudice. The inference -- and it's only an inference
14 -- is that this guy used massage oil in sexual
15 misconduct. There's no evidence of that.

16 THE COURT: Well, what would be your
17 connotation from the fact that he makes a statement,
18 don't tell Minor1 that you found that? I mean, what's the
19 connotation of that?

20 MR. SAVAGE: It's not a connotation. It's an
21 inference that he ---

22 THE COURT: Okay. Well, what inference would
23 that infer?

24 MR. SAVAGE: The inference would be -- and
25 that's what prejudice -- is that it would have something

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1 to do with the alleged misconduct. It could have been
2 very well the use of massage oil in some innocent affair,
3 that her feet could have been rubbed, her hands could
4 have been rubbed. There's no evidence that this massage
5 oil was used for an immoral or an unlawful purpose.

6 THE COURT: Well, at that time -- and correct
7 me if I'm wrong because y'all know the time line better
8 than I do -- we were talking about an illegal touching,
9 i.e., the breast. This was before the vaginal
10 penetration came about. Is that correct or incorrect,
11 time wise?

12 MR. SAVAGE: Well ---

13 MS. GORDON: It's before the disclosure.

14 THE COURT: Disclosure of ---

15 MS. GORDON: Right. The child hasn't told
16 anybody at this point.

17 THE COURT: All right. It's before that was
18 disclosed; is that correct?

19 MS. GORDON: But if he wants to cross-examine
20 her on why she would think something, I think, again,
21 he's going -- opening the door ---

22 THE COURT: You keep hammering this opening the
23 door. That motion's not before the Court right now,
24 okay?

25 MS. GORDON: I just ---

1 THE COURT: Go ahead.

2 MR. SAVAGE: There's nothing in this record
3 about the use of a massage oil in the criminal conduct,
4 nothing. And if the Court allows this irrelevant
5 evidence to come in, it's highly prejudicial because the
6 inference is that that massage oil, although there's no
7 testimony about it, was used to further the criminal
8 complaint. And there's no testimony from police, from
9 L.C.C., from the medical examiner or from most
10 importantly the child victim, that massage oil was used
11 ever in the misconduct. And as I think everybody knows,
12 that massage oil can be used for a variety of non-
13 criminal conduct.

14 THE COURT: Anything else?

15 MR. SAVAGE: It's the inferential prejudice
16 that it creates. Thank you, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Savage.
18 Solicitor?

19 MS. GORDON: Your Honor, the State ---

20 THE COURT: First of all, has there been any
21 testimony at all about massage oil?

22 MS. GORDON: What the ---

23 THE COURT: Other than now?

24 MS. GORDON: --- victim testifies to is that he
25 was rubbing her back, that he went into the front, that

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1 he rubbed her on her front part on the couch. Now, she
2 may not know whether or not he used massage oil. But
3 it's his statement, that says, don't let Minor1 know about
4 it, that is an admission by him that there might be
5 something for her to know. And it's an admission by a
6 party opponent, and she has disclosed that stuff happened
7 on that couch. Whether or not she knew he'd used massage
8 oil or not is irrelevant in his statement to her about
9 don't let Minor1 know about it, that you found it.

10 THE COURT: Okay. All right. Mr. Savage ...

11 I'm sorry. Is that all you have, Solicitor?

12 MS. GORDON: Yes, Your Honor.

13 THE COURT: All right. Mr. Savage, anything
14 you want to reply in rebuttal, or have you said it all?

15 MR. SAVAGE: We've made our point.

16 THE COURT: Pardon?

17 MR. SAVAGE: We've made our point.

18 THE COURT: Okay. All right. Thank you very
19 much. I'm going to take a short recess, as we planned,
20 and I'll let you know my ruling before we bring the jury
21 back. Thank y'all very much. We'll take about a ten or
22 fifteen minute recess.

23 Ma'am, you may step down during the break. Please
24 don't discuss the case with anyone.

25 (WHEREUPON, court stood at recess for a short

1 break.)

2 THE COURT: I'm going to allow the statement.
3 Based upon what I heard and listened to the arguments,
4 I'm going to allow the statement.

5 MS. GORDON: Thank you, Your Honor.

6 THE COURT: Is there anything else before we
7 bring the jury in?

8 MS. GORDON: The Defense asked me about the
9 travel and all the travel authorization. My victim
10 advocate did have in her file the forms that show per
11 diem in the amount of twenty-five dollars per day and
12 then that we provided a place for them to stay in town
13 and provided their air fare.

14 THE COURT: All right.

15 Mr. Savage, do you want that information, or what do
16 you want?

17 MR. SAVAGE: Yes, sir.

18 THE COURT: I'm sorry?

19 MR. SAVAGE: Yes, sir, I would like to see it.

20 THE COURT: Okay. Fine.

21 MS. GORDON: I think that's improper
22 impeachment that they're provided travel. They weren't
23 paid -- it would imply that they were paid for their
24 testimony or paid to come here.

25 MR. SAVAGE: Nobody asked the question.

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1 THE COURT: Well, it depends on how you ask the
2 question.

3 MS. GORDON: I'm just ---

4 THE COURT: I mean, you can bring it out
5 yourself, if you want to, on direct. I mean, I'm not --
6 y'all do what you want to do. I'm not going to tell you
7 how to try your cases. Okay?

8 All right. Anything else before we bring the jury?

9 MR. SAVAGE: Judge, this appears to only be for
10 this week. But I'd like to know if there have been other
11 trips that have been paid for for this witness.

12 THE COURT: I have no idea.

13 MS. GORDON: Your Honor, they were -- we've
14 been ready for trial once before and actually got into
15 the courtroom. And I would assume there would be a
16 similar document for that week. I just don't provide --
17 you know, I don't arrange the travel. My victim advocate
18 couldn't be here today.

19 THE COURT: Well, let me put that to bed. I'll
20 allow you to go on with this trial, but not one in
21 preparation when there was no testimony taken at the
22 other trial. Okay?

23 MR. SAVAGE: Fine.

24 THE COURT: Now, if you want me to go and get
25 it ---

1 MS. GORDON: And I can ---

2 THE COURT: --- just for your edification to
3 look at it, I'll be happy to try to get it produced.

4 MR. SAVAGE: Judge, we filed a motion some year
5 ago or more asking for this information, including the
6 information regarding assistance in providing an
7 attorney, which we think is pretty important, as you will
8 hear during the course of the cross-examination.

9 When was that motion filed?

10 MR. RODE: September, I believe.

11 MR. SAVAGE: September of 2011. The motion ---

12 THE COURT: Okay. When?

13 MR. SAVAGE: September of last year, wasn't it?

14 MR. RODE: Yeah.

15 MR. SAVAGE: I want to verify that, Judge.

16 THE COURT: Okay.

17 MR. SAVAGE: Over a year ago. July 5th of last
18 year. The motion is entitled -- excuse me. Judge, I
19 stand in correction and I apologize. This motion was
20 filed just on July of this year.

21 THE COURT: Okay.

22 MR. SAVAGE: July 5th of 2012.

23 THE COURT: Okay. Well, what's your point?

24 MR. SAVAGE: Okay. That there's been plenty of
25 notice that the Solicitor could get it ready and

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1 available and we're entitled to see it before we cross-
2 examine the witness. Judge, let's move on. I can recall
3 her if it's a problem.

4 THE COURT: I mean, it's -- what is it?
5 Today's the 12th. So it's ---

6 MR. SAVAGE: A week.

7 THE COURT: --- a week. And you've got it now.
8 Anything else you want?

9 MR. SAVAGE: I'm not sure I have it all, but
10 I'm ready. I'll recall her if it becomes an issue.

11 THE COURT: Okay. All right.

12 Bring us the jury, please.

13 MR. SAVAGE: Actually, it was September of last
14 year. Not a week ago.

15 THE COURT: Oh, it was? Okay.

16 MR. SAVAGE: September 19th of 2011.

17 THE COURT: Okay. Thank you very much.

18 MR. SAVAGE: Compensation and reimbursement
19 paid or provided to any witness including all expenses
20 and mileage travel log and any agreement offering
21 compensation, advice of counsel or other benefits.

22 THE COURT: Solicitor, if you could hand me
23 your requests to charge, I'd appreciate it if you could
24 get them passed up. Mr. Savage has passed his up.

25 MS. GORDON: Thank you, Your Honor. I'll do

1 that over lunch.

2 THE COURT: Ma'am, you can come around and have
3 a seat on the witness stand.

4 Mr. Clerk, if you would re-swear the witness when
5 the jury comes in, please, sir.

6 THE CLERK: Yes, sir.

7 (WHEREUPON, the jury entered the open court at
8 approximately 12:17 p.m.)

9 THE COURT: If you'd call your next witness,
10 please.

11 MS. GORDON: The State calls Joyce Salese
12 Arroyo.

13 **JOYCE SALESE ARROYO,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. GORDON:

17 Q. Good morning, Joyce. How are you?

18 A. I'm well, thank you.

19 Q. Ms. Arroyo, can you tell the jury where you
20 currently live?

21 A. I live in Bryan, Texas, where I grew up.

22 Q. And are you currently married?

23 A. I am.

24 Q. And who is your husband?

25 A. Erick Arroyo.

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- 1 Q. When did the two of you get married?
- 2 A. We were married in College Station, Texas, in 1981.
- 3 Q. And do you have children together?
- 4 A. We have three daughters.
- 5 Q. At some point in your marriage the two of you moved
- 6 to Mount Pleasant, South Carolina. What brought you
- 7 here?
- 8 A. Navy orders.
- 9 Q. Do you remember when you came to Mount Pleasant?
- 10 A. It was in 1991.
- 11 Q. Where in Mount Pleasant did you live?
- 12 A. In Sweet Grass. We had a house built there.
- 13 Q. And you said Sweet Grass Subdivision?
- 14 A. That was a subdivision.
- 15 Q. Do you know Minorl ?
- 16 A. Yes, I do.
- 17 Q. How do you know her?
- 18 A. She is the daughter of Melina Arroyo. That's my
- 19 husband's stepsister.
- 20 Q. What was your husband's relationship with Melina
- 21 like before they -- before they moved into your house?
- 22 A. They had a good relationship.
- 23 Q. How would you describe their relationship, like
- 24 regular brother and sister or ...
- 25 A. I've always felt that it was more than that, but she

1 looked at him almost like a father.

2 Q. Is he a good bit older than she is?

3 A. Yes, he is.

4 Q. And at some point after, Melina and her children
5 moved to Mount Pleasant; is that right?

6 A. Yes, they did.

7 Q. And at some point they moved into the home with you
8 and your husband?

9 A. Yes, they did.

10 Q. Do you remember when that was? I know it's been a
11 while, but ...

12 A. I remember she came for the holidays. It was
13 Thanksgiving. It might have been about two thousand and
14 -- I'd say either 2007, 2008.

15 Q. When Melina moved in, who lived in the house with
16 you?

17 A. It was Erick and I. We lived there. And Ja. was
18 in college. She would come home for visits.

19 Q. And what about your other two children? Were they
20 already grown and out?

21 A. They were already grown.

22 Q. What was the Defendant's relationship with Minor 1
23 when they moved into your house?

24 A. I felt that it was just normal. You know, he was
25 her uncle and they were his nieces, nephews.

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- 1 Q. At some point did you think that started to change?
- 2 A. Yes.
- 3 Q. Okay. Tell me what you noticed about the way he
- 4 treated Minor1 versus the way he treated the other
- 5 children?
- 6 A. I felt that he paid more attention to her than he
- 7 should have, and I warned him about not being alone with
- 8 her, that it would look bad.
- 9 Q. What was your relationship with his sister Melina?
- 10 A. We didn't have a close relationship.
- 11 Q. While Melina and Minor1 were living with you, you
- 12 said at some point you started thinking he was paying
- 13 more attention. Can you give the jury like examples of
- 14 how you thought he was paying too much attention to her
- 15 or staying alone with her?
- 16 A. Well, he bought her clothes. And like, for example,
- 17 for our daughters I was always having to argue with him
- 18 about, you know, needing to buy them clothes and shoes
- 19 and things like that. And he just, you know, openly
- 20 would go out and buy her not just, you know, one or two
- 21 -- you know, one dress, he would buy her two and three
- 22 dresses and buy her things. And he always wanted to go
- 23 to all of her sporting events. And I just felt that, you
- 24 know, it was a little more attention to her than I
- 25 thought was normal.

1 Q. While they were living with you, did you ever find
2 anything in that house that made you suspicious about
3 their relationship?

4 A. That's when I started noticing that he was spending
5 more time with her was -- I had never thought of it
6 before. But one day I had come home from work, and I was
7 in the living room. And I was searching for the remote
8 inside the cushions of the sofa because I couldn't find
9 the remote. And I felt something and I thought it was
10 the remote. And when I pulled it out, it was a bottle of
11 massage oil.

12 Q. Was Erick in the room when you found it?

13 A. No one was at home. And as soon as I pulled it out,
14 I looked at it. And I knew I hadn't put it there. And
15 Erick and I hadn't been using it on the sofa. So I was
16 thinking, you know, why is this here? And at that exact
17 moment, he walked in the front door.

18 Q. Did you ask him about it?

19 A. I asked him what this is doing in the sofa?

20 Q. And what was his response?

21 A. He turned very pale, and he said, don't tell Minor I
22 that you found that.

23 Q. Do you remember a date of when that was?

24 A. No, not exactly.

25 Q. And after that, did you just let it go, or what did

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1 you do?

2 A. Well, I was shocked at his response. And I asked
3 him. I said, what does Minor1 have to do with this? And
4 he like kind of gathered his senses at that point, and he
5 said, nothing. He said, I don't know what it's doing
6 there.

7 Q. After that event at some later time, did you observe
8 anything else inappropriate between the two of them?

9 A. I was going to start a job. The next day was going
10 to be my first day at work, and I had gone to bed early
11 because I had to be up early the next day. And I
12 remembered that I needed to do something on the computer,
13 and so I got out of bed. I had already been in bed for a
14 while, but I was nervous about starting my new job. And
15 then I went downstairs. And at this point it was quite
16 late. And I came downstairs and all the lights were on,
17 the television was on. And he wasn't in the living room.
18 So I looked -- I thought, well, maybe he's walking the
19 dog. And so I looked out in the front yard and I didn't
20 see him, and I looked in the back yard and I didn't see
21 him. So I thought, well, maybe he's in the garage doing
22 laundry. And when I opened up the garage door, the light
23 was not on and he was in there with Minor1.

24 Q. If the light wasn't on, how could you see?

25 A. The light from the kitchen door when it opened up

1 shined light into the garage.

2 Q. And tell this jury what you saw in the garage when
3 you opened the door.

4 A. When I opened the door, they were standing together
5 face-to-face. And when I opened the door and I saw that
6 it was -- that he was in there with her, I asked him -- I
7 said, what's going on. And at that point, there was a
8 refrigerator/freezer, and then next to it is a full-sized
9 freezer. And then there's a washer and dryer against the
10 back wall. So he had to step a couple of steps away from
11 where they were at, and he had to -- and he walked
12 towards the freezer and he opened the freezer at that
13 point.

14 Q. And what did Minor 1 do?

15 A. Minor 1 was standing in front of the refrigerator/
16 freezer, and she opened -- she opened up the refrigerator
17 door also at that point.

18 Q. And what could you see at that point?

19 A. Her hand was on the refrigerator door handle. And I
20 could see her through the crack of the refrigerator door,
21 and she zipped up her pants.

22 Q. Did Erick say anything?

23 A. He was standing in front of the freezer, and he was
24 saying, oh, what kind of ice cream do you want?

25 Q. What was your response?

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1 A. I kept repeating to him, what's going on. And then
2 I asked him why is Minor1 zipping up her pants? And he
3 said that he didn't know why.

4 Q. What did you do after you observed that incident in
5 the garage? Where did Minor1 go?

6 A. I told Minor1 to go to her room, that it was really
7 late. And I kept asking Erick the same thing. Why --
8 why are you doing this? You know, why are you here in
9 the garage with her at this time of night?

10 Q. What was his response?

11 A. He said that nothing was going on and that he was
12 tutoring her. And I told him that I didn't know that he
13 was -- you know, when did all of this start with the
14 tutoring? And that it was really late and that -- I told
15 him that this wasn't the first time that I had caught him
16 in the middle of the night with a child and that it
17 doesn't look good and that I'm not going to put up with
18 it and that I wanted him to leave.

19 Q. And what was his response to that?

20 A. He started crying, and he said that it was -- that
21 he shouldn't have been -- put himself in that position.
22 And I kept telling him that I wanted him to leave. And
23 he said that -- he started telling me that I have a dirty
24 mind, that there was nothing going on and ---

25 Q. Did you tell him you were going to tell anybody?

1 A. I told him that I was going to tell his sister and
2 that I wanted -- again, I kept telling him that I wanted
3 him to leave the house.

4 Q. Did you tell anybody else about what you saw?

5 A. I told our daughters that I had caught him in the
6 garage with Minor1 and that I didn't want him to be alone
7 with her.

8 Q. Did you ever actually get to tell Melina about what
9 you saw?

10 A. No, I didn't because she called me up and she said,
11 don't waste your breath calling me and telling me your
12 lies.

13 MR. SAVAGE: Object to the hearsay, Your Honor.
14 Objection to what a third party said as hearsay.

15 THE COURT: I'll sustain that objection.

16 Q. Don't tell me what she said but just whether or not
17 you were able to ever relay that information to her.
18 Were you ever able to relay any information about what
19 you saw in the garage to Melina?

20 A. No, because he had got to her before I did.

21 Q. After that garage incident, what did you do? I
22 mean, after realizing he had gotten to Melina, did you
23 leave?

24 A. I stayed there for a while. He kept -- he insisted
25 that we would work on the marriage and that -- you know,

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1 to keep the family together. But things were very
2 strained, and he kept telling me -- well, he had told me
3 not to tell anybody because no one would believe me
4 because of who he was.

5 Q. At some point, did you go to visit your oldest
6 daughter in Texas?

7 A. Yes. I went back home to Texas, and I wanted some
8 time to think because things were so bad there at the
9 house. Him and I didn't talk, and the girls didn't talk
10 to me. And my mom was sick in Texas, and I went to go
11 visit her. And I found -- there I told her -- my family
12 what had happened, and they believed me. They weren't --
13 you know, it was the opposite of the reaction that I was
14 getting from him where he -- you know, he was treating me
15 so badly and telling me I was crazy, and the girls were
16 really mad at me. And so it felt better to be at home
17 and not be treated -- mistreated the way that they were.

18 Q. When you went back to Texas to visit with your mom
19 and your daughter, at some point did you decide I'm going
20 to go back and see if we can give this another try?

21 A. Yes.

22 Q. Tell me about that thought process and what
23 happened.

24 A. Well, he had been calling me and telling me, you
25 know, to come home and we would work on the marriage.

1 And so, you know, he kept telling me that, you know, I
2 had made a mistake and, you know, that nothing was going
3 on between him and Minor1. And so it was very hard for me
4 because of his past record with me.

5 MS. GORDON: Your Honor, may we approach
6 briefly?

7 THE COURT: Pardon?

8 MS. GORDON: May we approach?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: Mr. Foreman, ladies and gentlemen
13 of the jury, can y'all step out to the jury room? And
14 please don't discuss the case among yourselves.

15 (Whereupon the jury exited the open court at
16 approximately 12:37 p.m.)

17 THE WITNESS: Did I say something wrong?

18 THE COURT: No, ma'am. I don't know what past
19 record you're going to, but I had ruled earlier that the
20 prior alleged abuse against Minor2 is not going
21 to come into evidence, and I'm going to make sure you're
22 not going to testify to that. Is that correct? You're
23 not going to mention that, any prior alleged sexual abuse
24 by your husband against anyone else. Do you understand?

25 THE WITNESS: I wanted him to -- I want him to

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1 know that these -- the incidences were so similar, and he
2 had told me ---

3 THE COURT: What incident were you talking
4 about?

5 THE WITNESS: Where I had come down the stairs
6 and caught him in the middle of the night with a twelve-
7 year-old daughter.

8 THE COURT: With who?

9 THE WITNESS: With my daughter.

10 THE COURT: Okay. That's the first I heard
11 about this.

12 Where are we, Solicitor? I thought you were talking
13 about the prior alleged sexual abuse by Joyce.

14 MS. GORDON: That's the same daughter.

15 THE COURT: That's the same daughter?

16 MS. GORDON: Yes. So I have instructed her not
17 to ---

18 THE COURT: And that was twenty-something years
19 ago, right?

20 THE WITNESS: Yes, sir.

21 THE COURT: We're not going into that,
22 understand?

23 THE WITNESS: But because of his -- because the
24 instances were so similar, it was very hard for me to
25 believe him this second time. And he was doing the same

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1 thing, telling me that, you know, that nothing was going
2 on, that I just have a dirty mind.

3 THE COURT: Well, I understand. And I
4 sympathize with you, and I'm sorry it happened. I'm
5 sorry you're in this, but we're not going into that
6 incident with your daughter. Okay? Now ---

7 MS. GORDON: I'm not going to ask about it.

8 THE COURT: Mr. Savage, if you go into it in
9 cross and you ask the questions, she can answer them.

10 MR. SAVAGE: She's on direct and she's been
11 warned. The State's been warned.

12 THE COURT: I know she's on direct. And I'm
13 telling her not to go into it on direct. But I'm telling
14 you, if you ask her the question ---

15 MR. SAVAGE: But she's already gone into it.
16 It's not a matter of going into it. She's already said
17 -- she said that in light of his prior record. You heard
18 the intent with that statement. At this time, the
19 Defense moves for a mistrial based on the tainted
20 evidence that this witness, after being repeatedly
21 instructed by the Prosecutor not to go into it, ignored
22 those instructions.

23 THE WITNESS: I had never been instructed.

24 THE COURT: Ma'am, please don't ---

25 MR. SAVAGE: She still argues with the

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1 Prosecutor and the Court the intent that she had in
2 making those statements. It's highly prejudicial, and we
3 would move at this time for a mistrial based on that
4 testimony.

5 THE COURT: I think all she said was the prior
6 record. Is that correct?

7 MS. GORDON: I believe her statement was, was
8 his prior record with me. If we could have that read
9 back, I think that ---

10 MR. SAVAGE: I would agree to that.

11 THE COURT: I'm sorry. What, Mr. Savage?

12 MR. SAVAGE: I would agree to that and I
13 respect the ---

14 THE COURT: She said the prior record with me.
15 Is that correct?

16 MR. SAVAGE: Yes. And I agree that what Ms.
17 Gordon did was absolutely appropriate. She stopped her.
18 But the fact is that record is ---

19 THE COURT: I understand. I understand your
20 argument. I'm not sure where she was going. I
21 appreciate you stopping her. Okay?

22 But as far as a mistrial's concerned, that motion is
23 denied. Okay?

24 MR. SAVAGE: Yes, sir.

25 THE COURT: But thank you very much for making

1 it. I appreciate your diligence on behalf of your
2 client. Do you understand we're not going into that?

3 THE WITNESS: Yes, sir.

4 THE COURT: Any question in your mind?

5 THE WITNESS: No, sir.

6 THE COURT: Okay. All right.

7 Solicitor, are there any instructions is you want to
8 give to her before we bring the jury back?

9 MS. GORDON: Well, I mean, I don't want to --
10 you know, with witnesses when you tell them they can't
11 say stuff and you ask a question. I just want to make
12 sure she understands that I'm not asking you about the
13 incident with Minor2 , just that what did you decide.

14 THE COURT: All right. Let me do this. Until
15 she gets back on track, I'm going to let you lead her
16 some.

17 MS. GORDON: Okay.

18 THE COURT: I'm going to let you lead her
19 through this for a while ---

20 MS. GORDON: Okay.

21 THE COURT: --- until she gets back on track so
22 you don't have to ask these open-end questions. Do you
23 understand?

24 MS. GORDON: Very good, Your Honor. Thank you.

25 THE COURT: Now, Mr. Savage?

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1 MR. SAVAGE: Yes, sir.

2 THE COURT: I will be happy to tell the jury to
3 disregard the statement, prior record with me, if you
4 want me to do that.

5 MR. SAVAGE: I do.

6 THE COURT: Okay. I will be happy to.

7 MR. SAVAGE: Your Honor, in addition to that,
8 she said, the second time I've caught him at night. I
9 believe that was her testimony that would also be
10 reflective of prior incidents. The Court has ---

11 THE COURT: I'm sorry.

12 MR. SAVAGE: I believe that she has also
13 testified that this is the second time ---

14 THE COURT: I think that was a long time ago.
15 That wasn't this particular time when she stopped her.

16 MR. SAVAGE: Correct. But ---

17 THE COURT: I understand. But there wasn't any
18 objection made at that time. Okay?

19 MR. SAVAGE: I'm just bringing the Court's
20 attention.

21 THE COURT: I understand. I heard it, but that
22 was a while back.

23 MR. SAVAGE: Yes, sir.

24 THE COURT: And I was sitting here listening,
25 okay? I didn't know where we were headed. What are you

1 asking the Court to do?

2 MR. SAVAGE: Exactly what the Court's doing.
3 I'm not complaining when I say that. I'm just saying
4 that this is not the first time actually she's done it.
5 It's sort of vague. But now that we know the intent of
6 the statement, I think that changes the ball game. She
7 said she intended to do that so she could explain her
8 mind set in discussing this with her husband.

9 THE COURT: Well, I'm going to allow the
10 Solicitor to lead her through this, okay, so there's no
11 misunderstanding.

12 And Ms. Arroyo, I don't mean to be harsh with you.
13 But I'm very serious that you're not going into this at
14 this time. Do you understand?

15 THE WITNESS: Well, it --

16 THE COURT: The prior incident with your
17 daughter and your husband. Do you understand?

18 THE WITNESS: It's part of -- it's part of my
19 mind set. It's part of my --

20 THE COURT: I understand.

21 THE WITNESS: It was part of my decision on
22 what -- when I had to do ---

23 THE COURT: Well, we see how that develops on
24 cross-examination. Okay? That was part of your decision
25 on leaving. I understand. But we're not going into it

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1 at this time. Do you understand?

2 THE WITNESS: Yes, sir.

3 THE COURT: Is there any question in your mind?

4 And I don't mean to threaten you, but ---

5 THE WITNESS: It's hard to separate the two
6 because they were very similar.

7 THE COURT: Well, do you want me to take a
8 break and let you talk to the Solicitor about your
9 testimony so we can clarify it a little better? Because
10 I don't mean to threaten you, but you're not going to
11 like the consequences if you do. And I'd have to declare
12 a mistrial in this case. Do you understand? You will
13 not be going back to Texas right away. Do you
14 understand?

15 THE WITNESS: Yes, I understand.

16 THE COURT: Okay. Now, what I'm going to do is
17 take a break. And I'm going to let the Solicitor take
18 you in that conference room and go over your testimony so
19 we can make sure this doesn't happen because I don't want
20 to do anything to you. I want this trial to proceed. Do
21 you understand?

22 THE WITNESS: Yes.

23 THE COURT: All right. Thank you very much.

24 Solicitor, take her in the conference room. We'll
25 take a break.

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1 MS. GORDON: Thank you, Your Honor.

2 THE COURT: Solicitor, how much time do you
3 think you'll need?

4 MS. GORDON: I don't think I need more than ten
5 minutes.

6 THE COURT: All right. We'll take a ten-minute
7 break.

8 (WHEREUPON, court stood at recess for a short break
9 during which a bench conference was held off the
10 record.)

11 THE COURT: All right. For the record, the
12 conference at the bench was concerning Ms. Arroyo's, I
13 believe, two divorces. One divorce that was filed in a
14 Texas action and a second divorce here in South Carolina.
15 And previously I have disallowed a statement concerning
16 the Defendant's alleged abuse against Ms. Arroyo's
17 daughter some twenty years ago prior to this incident.
18 And Mr. Savage, do you want to put on the record what
19 you're planning to do concerning those divorces?

20 MR. SAVAGE: Your Honor, the intent of the
21 cross-examination that we intended to conduct for purpose
22 of testing her credibility before the jury is that in the
23 State of Texas, there was a filing on November 20th of
24 2010 in the Judicial Circuit of Brazos County, Texas, a
25 petition for divorce in the matter of the marriage of

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1 Joyce Salese Arroyo and Erick Alberto Arroyo. In that
2 filing, the petitioner, Joyce Arroyo, stated in paragraph
3 eight her grounds for the divorce. In that the marriage
4 has become insupportable because of discord or conflict
5 of personalities between the petitioner and the
6 respondent that destroys the legitimate ends of the
7 marriage relationship and prevents any reasonable
8 expectation of reconciliation. The respondent is guilty
9 of cruel treatment toward the petitioner of the nature
10 that renders further living together insupportable.
11 Respondent has left Petitioner with the intention of
12 abandonment and has remained away for at least one year.
13 Subsequent to that filing is a series of emails between
14 Joyce Arroyo and Erick Arroyo. And in summary of those
15 emails, she -- and voice mail messages left on the voice
16 mail recordings, this is going to be the worst thing that
17 you could have done for your case because I will make
18 everything and blow it up. I will make everything and
19 blow it up so badly over there in South Carolina that you
20 are going to wish that you had never, never crossed paths
21 with me. And the context of that is, you've got your
22 jurisdiction over there in South Carolina at least
23 temporarily because I will appeal because I have the
24 right to fight you here in Texas. But if you want to
25 fight there in South Carolina, this is going to be the

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1 worst thing that you could have done for your case
2 because I will make everything and blow it up so badly
3 over there in South Carolina that you're going to wish
4 you had never, never crossed paths with me. And that's
5 an exemplar of several emails with a similar context of
6 her motive in coming before this Court and testifying as
7 she has today. We believe that, as she did in January of
8 this year when the State called the case, she failed to
9 appear. That's why the State continued this case, as I
10 understand it, in January.

11 THE COURT: Well, that doesn't have anything to
12 do with this issue.

13 MS. GORDON: I do want to correct that.

14 THE COURT: Hold on a second. I'll listen to
15 you before I rule, okay?

16 All right. What's the second divorce?

17 MR. SAVAGE: Oh, that's it.

18 THE COURT: I thought there was a subsequent
19 divorce?

20 MR. SAVAGE: Well, the subsequent divorce in
21 South Carolina. In the South Carolina divorce we were
22 going limit the pleadings to this paragraph nine, Family
23 Court docket DR-10-3628. The year is 2011. In paragraph
24 nine she states, upon information and belief, plaintiff
25 has occasion to witness the defendant engage in

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1 inappropriate sexual contact with his twelve-year-old
2 niece in April of 2009, and then mentions the criminal
3 cases. We were not going to go into anything further
4 than the paragraph nine.

5 THE COURT: Okay.

6 MR. SAVAGE: The interesting thing about that
7 pleading then is that it's dismissed by Jocelyn Cate, the
8 Family Court Judge, because the witness -- petitioner in
9 the family court case, the witness today -- wouldn't file
10 an affidavit in support of those allegations, nor would
11 she produce an affidavit from anyone else to support
12 those allegations. So Judge Cate ---

13 THE WITNESS: That's not true, Your Honor.

14 THE COURT: Ma'am, please be quiet, okay? He's
15 not talking to you. Let me say something. I'm trying to
16 listen to him. I want to hear what you have to say and
17 what he has to say. I can't listen to both of you. This
18 lady can't take you both down. You understand?

19 THE WITNESS: Okay.

20 THE COURT: And you're not involved in this
21 legal discussion, okay?

22 THE WITNESS: Yes, sir.

23 THE COURT: Please proceed.

24 MR. SAVAGE: The order of Judge Cate, which was
25 a temporary order following a hearing on November 7th of

1 last year, it is noted that the plaintiff did not submit
2 her own affidavit or any other person's affidavit in
3 support of the relief requested in her temporary relief
4 motion other than the affidavit of her counsel. Facts
5 state upon information and belief by her counsel and her
6 affidavit were not otherwise supported by proper
7 affidavits or other submissions and are not evidence.
8 Therefore, they were not considered by this court in
9 making the rulings. So I think these court documents
10 support that her veracity is somewhat questionable and
11 her failure to stand by the allegations that she made in
12 a court of law.

13 THE COURT: Okay. Thank you very much.

14 Solicitor, you wanted to say something to me.

15 MS. GORDON: I just did want to correct the
16 record when he said -- when he has stated that he
17 believes her unwillingness to come in January was the
18 reason that the two witnesses that we did have available.
19 And that's just incorrect, his information, for the
20 record. The witnesses that were unavailable were Melina
21 and Minor 1. And they stated that they had -- they
22 moved to Nebraska in January, so they were in the middle
23 of moving for a new job and could not get back for a
24 January trial date because that was right at the time of
25 their move.

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1 With regards to those questions, what it sounds like
2 he's trying to argue to the jury is that she came up with
3 these allegations after the filing by saying, I'm going
4 to come to South Carolina and blow it up. But the
5 statement was given to the police over a year prior to
6 that. So I don't know how that would be relevant to her
7 veracity because she had already given the statement a
8 year prior. The fact that she was willing to just get a
9 one-year separation and he contested it and so then she
10 had to file in South Carolina is irrelevant to her
11 veracity.

12 THE COURT: All right. Look, let me say this.
13 I have previously ruled out, on the Defendant's motion
14 under *Lyle*, prior bad acts, i.e. allegations of sexual
15 abuse by another child that was in the home that occurred
16 some twenty years prior to this. The Court has ruled
17 that that's not admissible.

18 Now, Mr. Savage, the Court also has an obligation
19 under the rules not to allow misleading evidence to be
20 submitted to the jury. My difficulty in allowing you to
21 go into the divorces is I have pretty much put the hammer
22 on this lady and told her I was going to put her in jail
23 if she testifies to it. So I control that. It's not
24 fair to her, and it's not fair to the jury to allow you
25 to insinuate things about the divorce and not give a full

1 picture.

2 Now, let me make myself very clear. It's up to you.
3 If you want to go into that divorce concerning her
4 veracity and those affidavits, then I'm going to let her
5 testify to what she found twenty years ago and let the
6 fur fly. That's your decision. I'm telling you now what
7 the Court is going to allow. I'm going to allow it to
8 come in in fairness to this lady and the jury so they can
9 get a complete picture as to why this marriage separated,
10 and ultimately the parties are going through a divorce.
11 Because you just want to put partial in. And the Court's
12 making her sit on another portion, and that's not fair
13 and that's giving misleading information to this jury.
14 Do you understand? It's your decision.

15 MR. SAVAGE: Yes, Your Honor. And I will
16 conduct my cross-examination with objection politely to
17 the Court. I understand your ruling and I will abide by
18 the ruling. But for that ruling, we would go into cross-
19 examination on the documents that I've previously
20 referenced. I'd like to make those documents a part of
21 the court record.

22 THE COURT: That's fine. You're welcome to do
23 that. Now, do you want to proffer any testimony? You're
24 welcome to proffer any testimony pursuant to those
25 documents.

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1 MR. SAVAGE: I really don't think it's
2 necessary, Judge, because I think the Judge -- Your Honor
3 has the concept that I'm trying to -- I believe it has to
4 do with citing some other form, that we have covered the
5 grounds. As I say, it was my intent to cross-examine,
6 but for the Court's ruling, this witness about her
7 divorce pleadings and about the emails that she sent,
8 which we believe were threatening. The Court may
9 interpret them differently.

10 THE COURT: Well, I think they're probably
11 threatening, but they're threatening for a reason. She
12 wanted to bring out the abuse on both children.

13 MR. SAVAGE: And what I also want to point out,
14 Judge, to make sure it's clear, there's nothing in the
15 pleadings about the prior 1990 misconduct. There's no
16 mention of that at all. And it's specific just to the
17 current misconduct. In the family court proceedings in
18 Charleston County, the allegations do not include any
19 misconduct from the State of Washington as we've heard
20 about in 1990 that the Court has ruled upon.

21 THE COURT: Okay. You may mark those as Court
22 exhibits whatever the next number is.

23 Jo, what's the next number?

24 MADAM COURT REPORTER: 12.

25 MR. SAVAGE: Can we do them as a package,

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1 Judge?

2 THE COURT: Yes, sir, that's fine.

3 What?

4 MADAM COURT REPORTER: 12.

5 THE COURT: All right. Court's Exhibit Number
6 12.

7 (WHEREUPON, Court's Exhibit Number 12 was marked for
8 identification only.)

9 THE COURT: All right. It is now -- we've
10 taken longer than I thought we were going to take. It's
11 now one o'clock, so we'll take a lunch break. And I'll
12 send the jury to lunch, and we'll be back at two-thirty
13 and will proceed at that time.

14 MS. GORDON: Thank you, Your Honor.

15 THE COURT: Do you need to talk to this witness
16 during the lunch break?

17 MS. GORDON: Your Honor, I would just like to
18 make sure -- because you know that legal rulings in here
19 are not necessarily understood by lay persons.

20 THE COURT: I understand. I will allow you to
21 talk with her during the lunch break. But make sure
22 she's online with the right testimony because I really
23 don't want to take any action against this lady.

24 MS. GORDON: I understand, Your Honor. And I
25 just want to make sure that I'm not doing anything

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1 inappropriate, that I won't ask her anything.

2 THE COURT: No. I'm going to allow you to talk
3 with her during lunch. Okay?

4 MS. GORDON: Thank you.

5 THE COURT: All right. We'll recess until two-
6 thirty.

7 MS. GORDON: Thank you, Your Honor.

8 (WHEREUPON, court stood at recess for a lunch
9 break.)

10 *** END OF VOLUME II ***

1 JULY 12, 2012 P.M.

2 (WHEREUPON, court convened with all parties present,
3 and the following proceedings were had beginning at
4 approximately 2:30 p.m.)

5 THE COURT: Where's our witness? If you'll
6 come around, please, ma'am.

7 Is there anything else before we bring the jury?

8 MS. GORDON: Nothing from the State, Your
9 Honor.

10 THE COURT: Anything from the Defendant?

11 MR. SAVAGE: Your Honor, my understanding of
12 your instructions is that I'm to stay away completely
13 from the ---

14 THE COURT: My instructions to you was this.
15 If you want to go into it, that's fine. I'm not
16 prohibiting you from going into it. But if you do go
17 into it, I'm going to let this lady fully explain why she
18 separated. And that will include the prior allegations
19 of sexual abuse by the daughter or half-daughter. That's
20 what my instructions are to you, and it's up to you. I'm
21 not prohibiting you from going into the divorces.

22 MR. SAVAGE: But if I go in in any limited form
23 ---

24 THE COURT: Of the divorce.

25 MR. SAVAGE: --- of the divorce.

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1 THE COURT: On why they got the divorce, other
2 than there's a divorce pending. As to why they separated
3 and why they got a divorce, I'm going to let her explain,
4 fully explain why. And that's my instructions to you.

5 MR. SAVAGE: But as I understand the Court now,
6 I can ask her if she's in a divorce proceeding?

7 THE COURT: Right. Yeah.

8 MR. SAVAGE: Without going into detail?

9 THE COURT: Yeah. Right. Yeah, you can do
10 that. I'm not going to go into details and allow you to
11 make some insinuations without her being able to tell the
12 full story.

13 MR. SAVAGE: Respectfully, I take exception,
14 but I understand the Court's order.

15 THE COURT: I understand. But I want you to
16 understand I'm not prohibiting you. If you decide you
17 want to do it, that's fine. Have at it. I'm just
18 letting you know what the consequences are going to be
19 from the Court's perspective.

20 MR. SAVAGE: Yes, sir.

21 THE COURT: Okay.

22 Are you ready to proceed?

23 MS. GORDON: We are, Your Honor.

24 THE COURT: Bring us the jury, please.

25 (WHEREUPON, the jury entered the open court at

1 approximately 2:34 p.m.)

2 THE COURT: Solicitor, you may proceed.

3 MS. GORDON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 CONTINUED BY MS. GORDON:

6 Q. Ms. Arroyo, before we broke -- I just want to get
7 back so we can remember where we are -- where we were in
8 the testimony. You had explained that you had caught
9 your husband in the garage with Minor1 and that you had
10 confronted him about it there. Did you ever speak to
11 Minor1 about it?

12 A. That night I went to her room, and I asked her if
13 she was okay. And she said, yes. She was visibly
14 shaken. And I asked her if anything was going on between
15 her and Erick, and she denied it. She said, no. And I
16 told her that I loved her, that I'm not mad at her, that
17 it's not her fault, and that if she needs me, that I can
18 help her.

19 Q. And then at some point after that, you said you
20 finally went to -- you went to Texas to visit with your
21 daughter and your mother? And then while you were in
22 Texas, did you decide that you were going to give it one
23 more shot -- or you were going to give him an opportunity
24 work on the marriage?

25 A. Yes.

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1 Q. Did you then come back to South Carolina?

2 A. I did. I did come back to South Carolina.

3 Q. And did you speak with your husband about what it
4 would take for him for you to stay?

5 A. I told him that if he took a lie detector test ---

6 MR. SAVAGE: Objection, Your Honor.

7 THE COURT: I'll sustain the objection. Go
8 ahead.

9 Q. Did you ask him ---

10 THE COURT: Don't talk about a lie detector
11 test, okay? Go ahead. Please proceed. Disregard that
12 comment about a lie detector test. That information, lie
13 detector, is not admissible in the courts of this state.

14 Please proceed.

15 Q. Did you ask him -- did you tell him if he would do
16 certain things that you would stay?

17 A. Yes, I did.

18 Q. Did he agree to do those things?

19 A. He did not.

20 Q. At that point, did you leave for good?

21 A. That's correct.

22 Q. Where did you go when you left for good?

23 A. Back home to Texas to be with my mom and my sisters.

24 Q. After that, did you keep in touch with Melina?

25 A. No.

1 Q. Did you keep in touch with Minor1 ?

2 A. No.

3 Q. When did you find out -- and let me be clear. Did
4 you ever talk to Melina about what you -- did you ever
5 actually tell her what you saw in the garage?

6 A. No, I did not.

7 Q. After that night, did you ever talk to Minor1 about
8 it again?

9 A. No, I did not.

10 Q. When did you find out your husband had been arrested
11 for the -- for molesting Minor1 ?

12 A. I received a phone call in Texas from a police
13 officer with the Mount Pleasant Police Department telling
14 me that -- they said they were calling to inform me that
15 my husband has been arrested for criminal sexual conduct
16 with a minor against Minor1

17 Q. And before that, you did not know he had been
18 arrested?

19 A. I did not.

20 Q. Did you know why the police officer was calling you?

21 A. I figured she was calling to just let me know and
22 wanted to question me about that incident in the garage.

23 Q. Did she, at that point, know about the incident in
24 the garage?

25 A. Yes, she did.

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1 Q. And did she ask you about that?

2 A. Yes, she did.

3 Q. And did you give her the details about what you
4 observed in the garage?

5 A. Yes, I did. I gave her my statement.

6 Q. Did you also give her the details about what you
7 found in the couch?

8 A. Yes, I did.

9 Q. At some point after Erick was arrested, you wrote a
10 letter on his behalf asking the judge to grant him a
11 bond. Why would you do that if you knew -- knowing what
12 you knew about what happened in the garage?

13 A. My daughters wanted him -- did not want him in jail,
14 and they asked for letters written on his behalf. And I
15 did it.

16 Q. In that letter, did you say it didn't happen?

17 A. No.

18 Q. What -- were you just asking that he be given a
19 bond?

20 A. I don't recall.

21 Q. How do you feel about coming here to testify today?

22 A. It's been very difficult on my daughters, and I knew
23 that the -- what they were going to hear. No child
24 should ever have to hear about their parent.

25 MS. GORDON: Court's indulgence.

1 Nothing further at this time, Ms. Arroyo. If you'll
2 answer any questions Mr. Savage has for you.

3 THE COURT: Cross-examination?

4 MR. SAVAGE: I beg the Court's indulgence.

5 CROSS-EXAMINATION

6 BY MR. SAVAGE:

7 Q. Good afternoon, Ms. Arroyo.

8 A. Good afternoon.

9 Q. I'm Andy Savage. I represent your husband. Good
10 afternoon.

11 A. I said good afternoon also.

12 Q. Okay. We've never met before?

13 A. Never.

14 Q. And I understand since your husband's arrest, you
15 have moved back to South Carolina from Texas?

16 A. Yes.

17 Q. I understand you own a home -- you own a home in
18 Mount Pleasant?

19 A. I don't own a home.

20 Q. Do you have a home in Mount Pleasant?

21 A. Yes, I do.

22 Q. Do you have access to that home?

23 A. No, I do not.

24 Q. If you chose to have access to that home, could you
25 go to that home?

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- 1 A. No.
- 2 Q. Ms. Arroyo, now, I'm asking you about your marital
3 home. You told the jury that you're married to Erick
4 Arroyo. That's your home, is it not?
- 5 A. No.
- 6 Q. It's not? Why is that?
- 7 A. Because that's where I found him with his niece.
- 8 Q. Which has affected you quite a bit. That was some
9 two years ago or however long ago it was. You actually
10 lived in that home for quite some time after that; isn't
11 that correct?
- 12 A. A short time.
- 13 Q. Well, you lived in that home after that, and it's
14 still your home?
- 15 A. I don't consider that to be my home.
- 16 Q. Legally, that's your home?
- 17 A. If you say so.
- 18 Q. No. I'm not testifying. I'm asking the questions.
19 My role is to ask. Your role is to answer.
- 20 A. I did answer.
- 21 Q. And is your answer that you legally own the home in
22 which you have described today? Do you or do you not?
- 23 A. I'm not sure about that.
- 24 Q. You told the jury that you're married to Mr. Arroyo?
- 25 A. Yes.

1 Q. The truth is, you filed for divorce?

2 A. Yes.

3 Q. And the truth is that you filed for divorce and
4 asked for the home?

5 A. I did not ask for the home.

6 Q. You want the proceeds from the sale of the home?

7 A. If the judge awards that.

8 Q. So when you came back to South Carolina after the
9 divorce, before this turn back, did you go to the Mount
10 Pleasant Police Department and say, come with me to my
11 home. I want to show you where this misconduct took
12 place? Did you do that?

13 A. I'm sorry. Could you repeat the question?

14 Q. Have you been back to South Carolina since you moved
15 to Texas?

16 A. Yes, I have.

17 Q. And when you came back the last time or the time
18 before, whenever you came back, did you go in the Mount
19 Pleasant Police Department and say, let me take you to my
20 home where I observed this misconduct and show you the
21 physical layout so you can understand how I could see in
22 the dark?

23 A. I was never asked that.

24 Q. That's not what I asked you. Did you, Ms. Arroyo,
25 go to the police department and say, I want to explain

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- 1 the facts and circumstances of what I told you? Come to
2 my home so I can show you.
- 3 A. No, I didn't ask to do that.
- 4 Q. Did you ever go over with the police or the
5 Solicitor -- I assume that you've met with the Solicitor
6 and her staff, all these investigators in here in the
7 courtroom, the people from her office, about your
8 testimony? Have you done that? Have you met with people
9 to review your testimony?
- 10 A. Yes.
- 11 Q. And did you lay out a diagram for them or describe
12 the physical location where you said you saw this
13 misconduct?
- 14 A. Yes.
- 15 Q. And do you have that diagram?
- 16 A. No.
- 17 Q. Do they have that diagram?
- 18 A. I don't know.
- 19 Q. Did you make a diagram?
- 20 A. No.
- 21 Q. So there is no diagram?
- 22 A. (No verbal response)
- 23 Q. Now, tell the jury, if you would, when you walk from
24 your kitchen into the garage, does the door open into the
25 garage, or does the door open towards the kitchen?

1 A. It opens into the garage.

2 Q. So it opens, you move forward?

3 A. If I recall correctly, yes.

4 Q. Well, this is the scene of the crime that you have
5 described.

6 MR. SAVAGE: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 Q. Do you recognize that area of your home?

9 A. Yes, I do.

10 Q. And does the garage door open in or out?

11 A. It looks like it opens in.

12 Q. And do you recall whether it does or not?

13 A. I don't recall.

14 Q. Do you recall whether when you saw this alleged
15 misconduct whether the lights were on or not?

16 A. The lights were not on.

17 Q. They were not on. Was there any artificial light in
18 the garage when you opened the door?

19 A. The light from the kitchen when the door opened.

20 Q. The door that you were standing in?

21 A. That's correct.

22 Q. And in the interior garage, is there any window or
23 any other source of natural or artificial light?

24 A. No.

25 Q. Were the lights on in the kitchen?

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- 1 A. Yes.
- 2 Q. So that when you opened this dark door, the light
- 3 from the kitchen spread out?
- 4 A. That's correct.
- 5 Q. Now, how far away from you were these two people
- 6 standing?
- 7 A. A couple of steps.
- 8 Q. And what position were they in? Were they standing,
- 9 sitting, sitting on a box, sitting on a chair, sitting on
- 10 the washing machine?
- 11 A. They were standing facing each other.
- 12 Q. And did your husband have his clothes on?
- 13 A. Yes, he did.
- 14 Q. Did he have them unbuttoned in any way or any
- 15 fashion?
- 16 A. No, he did not.
- 17 Q. You're sure of that?
- 18 A. Yes.
- 19 Q. Did his niece have her clothes on?
- 20 A. Yes, she did.
- 21 Q. And what was she wearing?
- 22 A. Jeans and a shirt.
- 23 Q. And tell me about the type of jeans she was wearing.
- 24 A. They were zippered jeans.
- 25 Q. Zipper on the side or zipper in the front?

1 A. In the front.

2 Q. Were they baggy jeans, overalls or were they tight
3 jeans?

4 A. They were regular jeans.

5 Q. Well, describe them.

6 A. Just regular blue jeans that teenagers wear.

7 Q. And were they tight or were they not tight?

8 A. They were normal jeans.

9 Q. What would you have to do to take those jeans off?

10 A. You'd have to unzip them in the front.

11 Q. And would they slide off, or would you have to pull
12 them down?

13 A. I have no idea. I would imagine you'd have to tug
14 on them and pull them down.

15 Q. Did you say tug on them and pull them down?

16 A. I would think so. That's normal for jeans.

17 Q. The garage that you're talking about, was it empty?

18 A. No.

19 Q. What was in the garage?

20 A. All Mr. Arroyo's things.

21 Q. Mr. Arroyo's things?

22 MR. SAVAGE: May I approach?

23 Q. Is this what the garage looked like back at the time
24 you were describing it?

25 A. Yes.

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- 1 Q. Is this a fair and accurate description?
- 2 A. Yes.
- 3 Q. There's a picture behind you. Is that the same
- 4 picture that you said described it?
- 5 A. Yes.
- 6 Q. I see at the top of the picture is an artificial
- 7 light. Is that correct? One of those bulbs that you
- 8 save lots of money?
- 9 A. What do you mean by artificial?
- 10 Q. In other words, not natural light, the sunshine, the
- 11 moonshine. But an artificial source of illumination or
- 12 electric bulb.
- 13 A. It comes on if the garage door opens.
- 14 Q. Does that mean the garage door from the kitchen or,
- 15 does that mean the garage door that would be on the other
- 16 side of that, Mr. Arroyo's material? You can look at it.
- 17 A. The garage door that opens so that cars could enter.
- 18 Q. So is it your testimony then that there's no light
- 19 switch to turn the lights on?
- 20 A. There is a light switch.
- 21 Q. And where is the light switch on that picture?
- 22 A. It's against that wall.
- 23 Q. It's within arms reach when you open the door?
- 24 A. That's correct.
- 25 Q. On the right-hand side?

1 A. That's correct.

2 Q. Did you turn the light on?

3 A. No, I did not.

4 Q. You never turned the light on in the garage to see
5 what was going on that troubled you?

6 A. Not that I recall.

7 Q. Now, in the garage you have testified that there was
8 a refrigerator, a freezer, and some -- a washing machine,
9 drying machine?

10 A. That's correct.

11 Q. And that when you noticed your husband, he was
12 standing in front of the freezer?

13 A. No. He was standing in front of the refrigerator.

14 Q. And is the freezer the first item in or the second
15 item in?

16 A. It's the second.

17 Q. And did you testify that the door to the freezer was
18 open and that provided the light in which you were able
19 to see?

20 A. No.

21 Q. Tell us what you saw, what light was on.

22 A. There was no light on. When I opened the door from
23 the kitchen into the garage, there was no light on. He
24 stepped over -- this is the refrigerator. They were
25 standing in front of that refrigerator. And the freezer

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1 -- the freezer's on the other side of that refrigerator.
2 He had to step away from her and walk towards that
3 freezer. At that time, he opened the freezer and started
4 talking about what did she want for dessert.

5 Q. So the light that you saw him with was not from the
6 freezer or the refrigerator; it was from the kitchen?

7 A. That's correct.

8 Q. The light from the kitchen, when you opened the
9 garage door, could you see around the refrigerator?

10 A. I stepped into the -- I stepped one step down and --
11 no. I stood in the doorway, and he -- I couldn't really
12 see him because he was -- he was shielded by the door of
13 the freezer.

14 Q. Well, that's what I was asking. You couldn't
15 possibly see anybody in the garage from the position you
16 were. It's physically impossible?

17 A. No, sir.

18 Q. Because the refrigerator blocks the view as it is in
19 that photograph, from anybody who is in front of the
20 freezer.

21 A. That's not true.

22 Q. Did you step into the garage to see them?

23 A. No. He stepped a couple of steps down. But the one
24 that I could see was Minor 1.

25 Q. So you couldn't see him. You could only see Minor 1?

1 A. I saw him when I first opened the door.

2 Q. In the dark, around the corner?

3 A. No, sir. It wasn't dark because there was light
4 coming in from the kitchen.

5 Q. The ---

6 A. I saw him take two steps over towards the freezer
7 and open the freezer door.

8 Q. Did you ever walk through this with the police to
9 show them how you viewed him to show that it was
10 physically possible to see what you said you saw? Have
11 you gone with the Solicitor over to the house to say,
12 this is where I was standing and this is where he was
13 standing, turn the lights off and see whether or not it
14 was possible to do what you said?

15 A. No. I know what I saw.

16 (WHEREUPON, Defendant's Exhibit Number 4 was marked
17 for identification only.)

18 Q. The Prosecutor asked you about a letter in which you
19 endorsed your husband following his arrest. Was that
20 before your divorce?

21 THE WITNESS: Your Honor?

22 Q. Did you write a letter, Dear Sir or Madam, that the
23 Prosecutor asked you about? Not what I'm asking about,
24 but that the Prosecutor asked you about on October 19th of
25 2009? Do you understand the question I'm asking you?

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1 A. I understand the question. I want to know if the
2 Judge wants me to answer that.

3 THE COURT: Yes, ma'am.

4 Q. This is the same ---

5 MS. GORDON: Your Honor, we may need to
6 approach.

7 THE COURT: I'm sorry. What?

8 MS. GORDON: We may need to approach.

9 THE COURT: Okay.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: All right. Mr. Savage, just show
13 her the letter, and you can ask her whatever questions
14 you want to ask her about the letter.

15 Q. Ms. Arroyo, did the Prosecutor ask you about a
16 letter that you wrote on your husband's behalf?

17 A. The Prosecutor?

18 Q. Ms. Gordon. Right here, thirteen minutes ago, did
19 she ask you about a letter you had written?

20 A. Oh, at that time, yes.

21 Q. And did you understand her question?

22 A. Yes.

23 Q. And did you understand the letter she was
24 referencing?

25 A. Yes.

1 MR. SAVAGE: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir.

4 A. Yes.

5 Q. You recognize this document as being the letter that
6 the Prosecutor asked you about?

7 A. Yes.

8 Q. And this is what you were referring to in answering
9 her question?

10 A. Yes.

11 Q. And you signed this letter with your signature on
12 October 19th of 2009?

13 A. Yes, I did.

14 MS. GORDON: Your Honor, may we approach for
15 one more issue? I just want to make sure we're ---

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 THE COURT: Mr. Foreman, ladies and gentlemen
20 of the jury, please go to your jury room and don't
21 discuss the case amongst yourselves.

22 (WHEREUPON, the jury exited the open court at
23 approximately 3:02 p.m.)

24 THE COURT: All right. I read the letter. And
25 in paragraph two there's a conversation about the

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1 separation. Is that correct, Mr. Savage?

2 MR. SAVAGE: Paragraph two reads, my husband
3 and I are separated now. We have problems between us
4 with my husband's sister, Melina Arroyo, who fled to
5 South Carolina from Florida, threatening to commit
6 suicide due to an abusive relationship with a man she
7 left, the husband of her two children.

8 THE COURT: Okay.

9 MR. SAVAGE: This is the letter that the State
10 introduced testimony about. Rules of evidence 106 ---

11 THE COURT: All right. You can go into it, but
12 I'm not going to restrict what her answer is going to be.
13 Okay? I don't know what her answer's going to be about
14 the separation.

15 MR. SAVAGE: The letter states ---

16 THE COURT: I'm not going to prevent you from
17 going into the letter, but I don't know what the lady's
18 going to say about the separation. But I'm going to let
19 her say whatever she wants to say about the separation if
20 you go into that portion. I mean, that's all I can tell
21 you.

22 MR. SAVAGE: Rule 106 entitles me to go into
23 detail about a writing in which the State introduced
24 testimony.

25 THE COURT: I understand that.

1 MR. SAVAGE: And in accordance with that rule,
2 I am entitled then to ask her about the full statement
3 which the Solicitor left the jury with the impression was
4 that it was done under duress or some other reason. In
5 that letter, paragraph two makes no mention of the 404(b)
6 material that the Court has already ruled on.

7 THE COURT: I understand that. And I'm going
8 to let you go into it. I'm not -- I'm agreeing with you.
9 I'm not restricting you from going into it.

10 MR. SAVAGE: So she is still restricted from
11 speaking about something that's ancillary to this letter
12 that's the subject of the 404(b).

13 THE COURT: If you ask her if that's what's in
14 the letter and she says, yes, that's what's in the
15 letter, that's as far as you need to go. Now, if you go
16 further than that, I'm going to let her testify to what
17 she wants to testify to. Do you understand?

18 MR. SAVAGE: Yes, sir.

19 THE COURT: I think you're entitled to ask her
20 about the letter.

21 MR. SAVAGE: Should we do a dry run?

22 THE COURT: Is this in the letter? And if she
23 says, yes, that's the end of it. If she says, no, then
24 you can show her the letter and read it to the jury. If
25 we go further than that, we're going further than that.

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1 Do you understand?

2 MR. SAVAGE: Can I do a dry run?

3 THE COURT: Pardon? Yeah, let's do a dry run.

4 Are we on the same wavelength? I'm not restricting you
5 from going into it.

6 MR. SAVAGE: I've got you.

7 IN-CAMERA EXAMINATION

8 BY MR. SAVAGE:

9 Q. Ms. Arroyo, what I wanted to do is direct your
10 attention to the letter that you have previously said
11 that you recognize as being your letter, your words that
12 you wrote on October 19th of 2009; is that correct?

13 A. That's correct.

14 Q. And in this letter you wrote about your husband.
15 You've been married for twenty-nine years. Is that
16 correct?

17 A. At that point we had been.

18 Q. And that you've been in Mount Pleasant because of
19 his Naval obligations. That's why you moved here.

20 A. That's correct.

21 Q. And that you are a notary public in the State of
22 South Carolina.

23 A. Yes, I am.

24 Q. And that you attended college part-time and you were
25 a substitute teacher in Texas.

1 A. That's correct.

2 Q. And you said that you and your husband were
3 separated at that time. That would be in October of
4 2009?

5 A. Yes.

6 Q. And the reason for the separation was due to
7 problems between us with my husband's sister, Melina
8 Arroyo. Is that what you wrote?

9 A. I did write that.

10 Q. And did you further say that Maria Melina Arroyo
11 fled to South Carolina from Florida, threatening to
12 commit suicide due to an abusive relationship with a man
13 she had left the husband for of her two children?

14 A. Yes.

15 Q. Did you write that?

16 A. Yes.

17 Q. Did you ask the court to find in favor of your
18 husband ---

19 THE COURT: I don't think we need to -- I don't
20 have any problem with the rest of the letter. That's
21 fine. If that's where we're going, I have no problem
22 with that. Now, is there anything else in the letter we
23 need to address?

24 MR. SAVAGE: No. But that doesn't open the
25 door to the 404 ---

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1 THE COURT: I agree with you. I said if you go
2 further than that, that's what I'm saying. Now, you've
3 had your dry run, and I agree with your dry run.

4 MR. SAVAGE: I'm going to do it the exact same
5 way.

6 THE COURT: Are we ready to bring the jury
7 back? I approve your dry run, if that's what you're
8 asking.

9 MR. SAVAGE: Yes, sir.

10 THE COURT: I mean, yes, I think you're
11 entitled to ask her questions about the letter, but I'm
12 just not going to go past the letter -- do you understand
13 -- on paragraph two?

14 MR. SAVAGE: And neither is she entitled to go
15 past ---

16 THE COURT: That's exactly right.

17 MR. SAVAGE: Thank you.

18 THE COURT: Anything else before we bring the
19 jury? Is there anything else that's going to come up
20 that I need to address while we have the jury out
21 concerning this witness and the cross? Because I would
22 sure like to do it now rather than bringing the jury in
23 and out. Because I have no earthly idea where you're
24 going.

25 MS. GORDON: And I didn't either, Your Honor.

1 And I did ---

2 THE COURT: I understand. I understand.

3 MS. GORDON: I just had instructed the witness
4 that if she thought something -- if the question required
5 an answer that included information that I had told her
6 she wasn't allowed to testify about, that she should ask
7 Your Honor, and that would cue me that I needed to ---

8 THE COURT: That you needed to stand up. Okay.

9 MS. GORDON: That was kind of how we agreed
10 that I would ---

11 THE COURT: That's fine. That's fine. Is
12 there anything else that we need to discuss while the
13 jury's out?

14 MS. GORDON: Nothing from the State.

15 THE COURT: Mr. Savage, can you think of
16 anything?

17 MR. SAVAGE: I'm sure I will after they get
18 back in here, Judge.

19 THE COURT: Okay.

20 MR. SAVAGE: We're good.

21 THE COURT: Pardon me?

22 MR. SAVAGE: We're good.

23 THE COURT: All right. Bring the jury, please.

24 (WHEREUPON, the jury entered the open court at
25 approximately 3:10 p.m.)

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1 CROSS-EXAMINATION

2 CONTINUED BY MR. SAVAGE:

3 Q. Ms. Arroyo, different subject just for a moment. Is
4 your background of Mexican heritage?

5 A. Yes, it is.

6 Q. Are your daughters of Mexican heritage?

7 A. Part Mexican-American and part Puerto Rican.

8 Q. Okay. And has your husband ever discriminated
9 against them because they're Mexican?

10 A. (No verbal response)

11 Q. Well, there was some testimony in court this week
12 that he discriminated against Mexicans. So are his
13 daughters Mexican?

14 A. I don't understand the question.

15 Q. Well, it's hard because you don't have the context
16 of the information. But are your daughters Mexican
17 heritage?

18 A. Yes.

19 Q. Thank you. I'm going to go back to where we were.
20 Do you remember the letter that we were talking about
21 that has been marked as Defendant's Exhibit Number 4
22 that's in evidence.

23 MS. GORDON: That's fine. No objection, your

24 Honor.

25 Q. And this is the letter that the Prosecutor, I

1 believe, was asking you about. Do you agree with that?

2 A. Yes.

3 Q. And do you -- would you like a copy of it, or would
4 you be fine viewing it from the display?

5 A. I wrote the letter. I know what it says.

6 Q. Does it say that your name is Joyce Arroyo and that
7 you were married to Erick Arroyo for twenty-nine years as
8 of the date of the letter?

9 A. That is correct.

10 Q. Does it say, we have four daughters and have lived
11 in Mount Pleasant since 1992 because your husband was
12 transferred there as a part of his Naval service?

13 A. Yes.

14 Q. Does it say that you were a notary public in the
15 State of South Carolina?

16 A. Yes.

17 Q. And that you attended college part-time and you
18 substitute taught school, I guess, in the state of Texas?

19 A. Yes.

20 Q. Your husband was a Naval Officer; is that correct?

21 A. Yes.

22 Q. Got a Bronze Star in Afghanistan, was well
23 respected?

24 A. Yes.

25 Q. And you talked about that. You said, although you

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1 were separated due to problems between us, correct?

2 A. Yes.

3 Q. At this time you were separated? And that due to
4 those -- that was due to problems between us, us being
5 you and Erick, I guess?

6 A. Yes.

7 Q. ... with my husband's sister, Melina, who fled to
8 South Carolina from Florida threatening to commit suicide
9 due to an abusive relationship with a man she left, the
10 husband of her two children?

11 A. Yes.

12 Q. You said that Erick is a well-respected retired
13 Naval officer. It was always your dream to retire in
14 Mount Pleasant after twenty years of service to his
15 country, and it saddened you that that dream would not
16 come true due to a person that we took into our home and
17 cared for even when others warned us against it.

18 A. Yes.

19 Q. You said that, I pray that this court will find in
20 favor of my husband for his service to his country. Is
21 that correct?

22 A. I wrote that.

23 Q. ... for the father that he is to our daughters. Is
24 that correct?

25 A. It's in the letter.

1 Q. ... for his character and willingness to help family
2 members. And then you thank the court for its time and
3 consideration of your heart-felt plea of which you wrote
4 willingly, and you submitted that the statements are true
5 and of your own accord. And you provided your contact
6 information.

7 A. That's correct.

8 Q. And this was October 19th of 2009?

9 THE COURT: What number is that, Mr. Savage?

10 MADAM COURT REPORTER: 4.

11 THE COURT: 4, Defendant's Number 4?

12 MR. SAVAGE: Defendant's 4.

13 THE COURT: Are you offering it into evidence?

14 MR. SAVAGE: Yes, sir. And I believe the State
15 would not object.

16 MS. GORDON: No objection, Your Honor.

17 THE COURT: All right. Defendant's Number 4 is
18 entered without objection. I'm sorry. That's
19 Defendant's Number 4. Did I say State? Defendant's
20 Number 4.

21 (WHEREUPON, Defendant's Exhibit Number 4 was
22 admitted into evidence.)

23 Q. Thank you, Ms. Arroyo.

24 THE COURT: Any redirect?

25 MS. GORDON: Nothing, Your Honor.

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1 THE COURT: You may step down. Thank you very
2 much.

3 MS. GORDON: Your Honor, I believe the Defense
4 has a motion regarding the next witness.

5 THE COURT: Who's your next witness?

6 MS. GORDON: Dr. Don Elsey.

7 THE COURT: Can y'all discuss it up at the
8 bench, or have we got to put it on the record?

9 MS. GORDON: Mr. Savage informed me that he
10 would like to have this done in-camera, Your Honor.

11 THE COURT: Okay.

12 MR. SAVAGE: It's actually not my choice.
13 That's what the Supreme Court says, that it's got to be
14 done that way.

15 THE COURT: All right. Ladies and gentlemen of
16 the jury, please go to the jury room. Leave your
17 notepads in the chair, and please don't discuss the case
18 amongst yourselves.

19 (WHEREUPON, the jury exited the open court at
20 approximately 3:17 p.m.)

21 THE COURT: Solicitor, is Mr. Elsey in the
22 courtroom?

23 MS. GORDON: I'm sorry about that, Your Honor.
24 He's on the way.

25 THE COURT: Is he here?

1 MS. GORDON: He's here.

2 THE COURT: Well, bring him in. What is he --
3 D.N.L.C.C.?

4 MS. GORDON: Yes, he's at -- it's D.N.L.C.C.,
5 Dee Norton Lowcountry Children's Center.

6 THE COURT: I'm sorry, what?

7 MS. GORDON: That's the Dee Norton Lowcountry
8 Children's Center.

9 THE COURT: Dean Norton?

10 MS. GORDON: Dee Norton, D-E-E,

11 THE COURT: Lowcountry what?

12 MS. GORDON: Children's Center.

13 THE CLERK: Raise your right hand, please.

14 THE COURT: We don't need his testimony yet.

15 Let's see if we're going to need it.

16 All right. First of all, let me find out what the
17 Defense's objection is, why we're having this hearing.

18 Mr. Savage?

19 MR. SAVAGE: Your Honor, we filed a motion in
20 limine on September of last year, a motion ---

21 THE COURT: You can sit in the witness stand.
22 Just have seat on the witness stand.

23 MR. SAVAGE: First of all, I know the doctor.
24 This is not an issue about his expertise.

25 THE COURT: Okay. It's not an issue about his

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1 qualifications?

2 MR. SAVAGE: No. We're going to agree to his
3 qualifications. I've known him for many years. The
4 question that we have that we challenge is not the
5 quality of his testimony but the nature of the testimony.
6 And I'm not sure what he's going to testify to, so I'm
7 projecting.

8 THE COURT: Well, if you're not sure, how am I
9 supposed to know?

10 MR. SAVAGE: Well, I'm making an assumption
11 that maybe I shouldn't make. I assume he's going to ---

12 THE COURT: Well, why don't we find out what
13 he's going to testify to first, and then I'll listen to
14 you. Okay?

15 Solicitor, why are you calling this witness?

16 MS. GORDON: Dr. Elsey is a -- he's a forensic
17 interviewer at the Lowcountry Children's Center. He's a
18 -- correct me if I'm wrong, Dr. Elsey -- a licensed
19 clinical psychologist -- licensed clinical counselor.

20 DR. ELSEY: Professional counselor.

21 MS. GORDON: Professional counselor. He is
22 going to testify that he did interview Minor1, going
23 through time and place regarding the allegation. But
24 then he will also talk about some information that we've
25 kind of heard reference to in the trial, but explain what

1 that is, which is delayed disclosure and grooming and why
2 children don't tell.

3 THE COURT: All right. He's not going into any
4 issue that in his opinion he thinks she's telling the
5 truth because of all of that, is he?

6 MS. GORDON: Not at all, Your Honor. He's just
7 going to explain what that means. What is a delayed
8 disclosure. What is a tentative disclosure, which means
9 when they tell a little bit but don't tell everything.
10 What that means and what the research says about it.

11 THE COURT: Okay.

12 All right. Mr. Savage?

13 MR. SAVAGE: Your Honor, we challenge his
14 testimony on a number of bases, not the least of which is
15 403.

16 THE COURT: Now, she said that they weren't
17 going into the truthfulness of the issue. They said they
18 were going to go into the issue of how children react
19 generally to -- I'll assume they'll go into how children
20 generally react to sex abuse by adults and go into this
21 particular case. I assume that's what they're going to
22 do.

23 MR. SAVAGE: And we have more than one grounds
24 to object to that information. The first ground ---

25 THE COURT: Okay. I'll be glad to hear you.

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1 Glad to hear you.

2 MR. SAVAGE: The first ground, Your Honor, is
3 Rule 403. A part of Rule 403 that you don't usually
4 hear, but it's the last five words of that rule. That
5 rule says, needless presentation of cumulative evidence
6 over defense counsel's objection. Both Dr. Maria
7 Steenkamp have provided -- starting with Dr. Maria
8 Steenkamp, she provided information regarding the effects
9 of this child under what she called post-traumatic stress
10 syndrome. So there is expert witness testimony, over
11 objection, already in the record regarding the effects of
12 the child abuse.

13 THE COURT: Let me say this about cumulative.
14 Okay? If it gets cumulative and you make your objection,
15 I will sustain it. I don't think there's any way at this
16 time to say what he's going to say is cumulative until I
17 hear what the questions are.

18 MR. SAVAGE: I'm basing it on what the State
19 has proposed the testimony ---

20 THE COURT: All right. Go ahead.

21 MR. SAVAGE: So one area would be the
22 cumulative testimony of Dr. Steenkamp. The second area
23 would be the cumulative testimony of Dr. Mia Amaya who
24 testified as to delayed response, as did Dr. Steenkamp,
25 and also testified as to the reasons why children do not

1 disclose initially the total concept of sexual abuse.
2 We've had two experts who've already testified to what
3 this doctor is proposed to testify by the State. So we
4 believe that under Rule 403, it's cumulative. And the
5 cumulative nature itself is what the harm is. There's --
6 if this was the a ground, we might not have that. But
7 then if you look closely at the most recent cases,
8 including Judge Few's decision in *McCurley* -- and I know
9 Your Honor's familiar with it because you used some
10 language of it in asking me about it. That -- first of
11 all, as I understand it, is the State moved for a
12 rehearing. That rehearing was denied last month. And as
13 of July 20th their right to seek Cert on that opinion
14 expired. So it's the 10th ---

15 THE COURT: 12th.

16 MR. SAVAGE: --- and no Cert has been sought
17 yet, but I could not vouch to the Court that they're not
18 going to do that. But in Judge Few's opinion, he goes
19 back to Judge Pleicone's dissent and quotes from that and
20 finds that the testimony was prejudicial to the defense.
21 And I'm quoting now from Judge Pleicone's dissents. The
22 role of the trial court as the gatekeeper in determining,
23 among other things, whether the expert testimony consist
24 of scientific and technical ---

25 THE COURT: What's the name of the case

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1 involved, Mr. Savage?

2 MR. SAVAGE: There are two cases, Judge. And I
3 have a copy for you.

4 THE COURT: That's the one that they put the
5 testimony in the trial, right? And then they responded
6 to the truthfulness. They said based on that they
7 believed the child was telling the truth. Is that
8 correct? Is that the case you're referring to? *State v.*
9 *McCurley*.

10 MR. SAVAGE: Yes. And it goes on in West Note
11 466 all the different types of testimony that become
12 prejudicial to the defense. And so for those reasons
13 contained in *McCurley*, which quotes from Judge Pleicone's
14 dissent in *Jennings* or *Douglas* -- in Judge Pleicone's
15 majority opinion in *Jennings*. Now, what the testimony
16 was found to be by Judge Few was in this particular case
17 none of this testimony has any relevance except insofar
18 as it informs the jury that Smith, Dr. Elsey's colleague,
19 believes the story told by the victim. And he quotes, as
20 Justice Pleicone explained, there is no other way you can
21 interpret the language used in Smith's testimony other
22 than to mean that she believed the victim.

23 THE COURT: Well, I've already told the State
24 they're not going to go where this case went. They're
25 not going to -- I'm not going to allow him to bring the

1 conclusion that based upon his findings with this child,
2 he's going to -- in that case they concluded -- he
3 testified that he thought the child was telling the
4 truth. I'm not going to let him do that.

5 MR. SAVAGE: I believe in this case it's a
6 little different because there was an inference, not a
7 direct ---

8 THE COURT: I don't think so. If you read the
9 case at the very end it says, finally response to the
10 question asking her to explain. They said the compelling
11 findings are the things that we look at. We talk about
12 looking early in terms of how the exposure comes about
13 and the interview with me, whether it's detailed, does it
14 have consistency, does it have a sensory level of detail
15 that the child typically wouldn't have or only would have
16 if something had happened to them. I'm not going to
17 allow that. Okay? That's what the case was about.
18 That's why they did what they did, in my opinion. Okay?
19 And I agree with the case. I wasn't going to argue with
20 you. I agree with you. It's improper, and it's not
21 going to happen here.

22 MR. SAVAGE: And the extent of his proposed
23 testimony has already been covered by two experts,
24 predominantly over objection, Dr. Steenkamp as well as
25 Dr. Amaya.

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1 THE COURT: Okay.

2 MR. SAVAGE: There's no difference in what they
3 have testified to and what this witness proposes to
4 testify to.

5 THE COURT: All right. Are those your two
6 objections?

7 MR. SAVAGE: Yes, sir.

8 THE COURT: Okay. All right. Mr. Savage, I
9 don't know what he's going to say. The only thing I can
10 tell you is I will listen to the testimony. If I think
11 it gets to be redundant and you make the objection, I
12 will rule on it. Repetitive or cumulative or however you
13 want to refer to it because 403 does cover cumulative.

14 MR. SAVAGE: Yes, sir.

15 THE COURT: It also covers cumulative,
16 repeating or asking the same questions on cross. Okay?

17 MR. SAVAGE: Yes, sir.

18 MS. GORDON: I'll remember that, Judge.

19 THE COURT: That applies to both sides. We're
20 not ever going to get through with this case if y'all
21 don't keep trying to get in the last word against each
22 other. That's neither here nor there. That's the joys
23 of being litigants, right?

24 All right. Is there anything else before we bring
25 the jury?

1 MS. GORDON: Nothing from the State, Your
2 Honor.

3 THE COURT: Let me hear you briefly on what is
4 going to be new material from this witness because I
5 agree with Mr. Savage that I don't want to sit here and
6 listen to something cumulative, and I don't think the
7 jury does.

8 MS. GORDON: I understand, Your Honor. The
9 difference is like, we've heard these words like
10 grooming, but nobody's explained exactly what that means.
11 And we've heard the term delayed disclosure, but we
12 haven't heard what that means. And is there research to
13 support it? Just -- that's where we're going. And we
14 certainly haven't heard anything about what is considered
15 a tentative disclosure or accidental disclosure. And
16 that's where we're going.

17 THE COURT: All right. Well, just keep it new
18 material, okay?

19 MS. GORDON: Yes, Your Honor.

20 THE COURT: Because if you don't, I'm inclined
21 to sustain his objection.

22 At this point in time, Mr. Savage, I will take it
23 under advisement. Okay?

24 MR. SAVAGE: Thank you, Your Honor. In light
25 of everything -- you always say I need to get the last

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1 word. If the grooming comes in, then we have the
2 problems of the relevance of the massage oil. Remember
3 we objected to that on the grounds ---

4 THE COURT: The massage oil?

5 MR. SAVAGE: Because there's been no -- I
6 assume the inference was that was part of the grooming
7 process, but there's been no testimony.

8 THE COURT: I thought they were just massaging
9 sore muscles.

10 MR. SAVAGE: Well, some use olive oil.

11 THE COURT: I mean, isn't that one of the
12 indications of massage oil?

13 MR. SAVAGE: Well, the inference was that it
14 was found ---

15 THE COURT: When they go the spa, they use it,
16 don't they?

17 MR. SAVAGE: Yes, sir.

18 THE COURT: Okay.

19 MR. SAVAGE: But if there's going to be
20 testimony about grooming, I want to make it clear that I
21 have an objection to bringing anything in about this
22 massage oil because it's not part of the record.

23 MS. GORDON: I'm not asking him about massage
24 oil.

25 THE COURT: Okay. All right.

1 MS. GORDON: He's going to talk about grooming
2 and, you know, just what types of things would be
3 considered grooming is my understanding from our previous
4 conversations. But I didn't ask him anything specific
5 about would massage oil being grooming.

6 THE COURT: Anything else before we bring the
7 jury in?

8 MS. GORDON: Nothing, Your Honor.

9 THE COURT: Thank y'all very much.
10 Mr. Savage, is there anything from your side?

11 MR. SAVAGE: No, thank you, Judge. I
12 appreciate it.

13 THE COURT: Bring us the jury, please.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:31 p.m.)

16 THE COURT: You may call your next witness,
17 please.

18 MS. GORDON: The State calls Dr. Don Elsey.

19 THE COURT: Mr. Clerk, if you will swear the
20 witness, please, sir.

21 (WHEREUPON, the witness was duly sworn.)

22 THE COURT: Okay. I understand that the
23 Defense does not have any objection to Dr. Elsey's
24 qualifications; is that correct?

25 MR. SAVAGE: We'll qualify him.

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1 THE COURT: All right. Solicitor, I still
2 understand you need to introduce him to the jury as far
3 as his qualifications.

4 MS. GORDON: We'll do it in a limited fashion.

5 THE COURT: And please feel free to do that,
6 okay?

7 MS. GORDON: Thank you, Your Honor.

8 DON ELSEY,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. GORDON:

12 Q. Good afternoon, Dr. Elsey.

13 A. Good afternoon.

14 Q. Can you tell the jury where you're employed?

15 A. I am the Clinical Director of the Dee Norton
16 Lowcountry Children's Center in Charleston.

17 Q. And what is -- do you hold any licenses?

18 A. I'm a licensed professional counselor and a licensed
19 professional counselor supervisor.

20 Q. And what is your highest level of education?

21 A. I have a doctorate in childhood development.

22 Q. How long have you been the clinical director?

23 A. Fifteen years.

24 Q. In your time at what was commonly referred to as
25 L.C.C., how many children would you estimate you've

1 interviewed?

2 A. A little over five thousand.

3 Q. And do you also treat children in therapy?

4 A. Yes, ma'am.

5 Q. Have you testified as an expert in a court before?

6 A. I have.

7 Q. Do you know how many times?

8 A. About a hundred and twenty-five.

9 MS. GORDON: Your Honor, at this time, we would
10 admit Dr. Elsey in the area of abuse and forensic
11 interviewing. In the field of child abuse and forensic
12 interviewing.

13 THE COURT: The Court so finds without
14 objection.

15 Q. Dr. Elsey, as a part of your professional duties at
16 the Lowcountry Children's Center, did you complete a
17 forensic interview on a child by the name of Minor 1

18 ?

19 A. Yes, ma'am.

20 Q. And do you recall when you saw her?

21 A. September the 29th, 2009.

22 Q. Was it the ---

23 A. 22nd.

24 Q. 22nd? And during that interview, did she make a
25 disclosure of child sexual abuse?

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- 1 A. Yes, ma'am.
- 2 Q. Now, you can't say exactly what she said. But did
3 she tell you when it had happened?
- 4 A. Yes, she did.
- 5 Q. When did she say it happened?
- 6 A. Approximately the past year.
- 7 Q. And did she say one time or numerous times over the
8 past year?
- 9 A. More than one time.
- 10 Q. And did she say where primarily it had happened?
- 11 A. She did.
- 12 Q. And where did she say it happened?
- 13 A. In the -- can I say whose house it was if she said
14 that to me?
- 15 Q. Yes. Where?
- 16 A. In her uncle's house.
- 17 Q. This jury's heard this term, I think, by someone.
18 But can you explain what the process of disclosure is or
19 what delayed disclosure is?
- 20 MR. SAVAGE: Rule 403 objection.
- 21 THE COURT: Overruled.
- 22 A. Okay.
- 23 Q. Go ahead, Dr. Elsey. You can answer.
- 24 A. Generally, when a child has been abused, they don't
25 tell right away. We wish they did so we could protect

1 them and protect others, but they don't for many
2 different reasons. Kids can give a tentative disclosure
3 sometimes, which means they may say a little something or
4 display something that makes people ask them questions.
5 And even then they can give the tentative, give a little
6 information. If that information is received well, then
7 more information may come forward. If the information
8 they give is met with, we don't believe you or they go to
9 foster care the next day, it can often can make the child
10 shut down. If a child has been -- if the child does not
11 choose to tell, there can be an accidental disclosure.
12 For example, the person who hurt the child may tell or a
13 witness may have seen something. Another child may have
14 come forward. So the child was not necessarily prepared
15 to tell that information. If a child does tell and is
16 felt safe and supported, then they give additional
17 information about what they've experienced.
18 Q. You talked about an accidental disclosure when the
19 child's not ready to disclose. How does having an
20 accidental disclosure affect a child's willingness to
21 give all the details?
22 A. Well, it's important to realize how difficult it is
23 to talk about sexual abuse. It's extremely hard for kids
24 to talk about. It's hard for us adults to talk about.
25 If a child's not prepared to talk about that, they may

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1 not be -- they may say, you know, it didn't happen to me,
2 deny it. And there's research to back up that children
3 deny initially if they're not prepared to tell. When I
4 say prepared, they may have the information about it.
5 They may feel supported. They may realize that maybe it
6 wasn't my fault. Maybe the fact that I didn't tell for
7 years doesn't mean it was my fault for not telling. So
8 getting some education can be helpful. Lots of other
9 reasons, particularly feeling supported can help kids
10 tell more later.

11 Q. In your clinical experience, is it uncommon after an
12 initial disclosure for a child to give additional details
13 at a later date?

14 A. It's not uncommon at all for reasons I've already
15 given if they feel supported, feel protected. Part of
16 the treatment for children who've had abuse is helping
17 them learn coping skills, relaxation, breathing
18 techniques. And that can help a child feel more
19 comfortable to give more information.

20 Q. Does the relationship of the offender to the child
21 affect the child's willingness to disclose? For example,
22 whether it's a family member or a stranger.

23 A. Well, in my line of work, it's rarely a stranger.
24 Of those over five thousand cases, it's been a stranger
25 twice. The research is pretty clear to back that up.

1 It's rarely a stranger. So it's difficult for children
2 to tell on many different levels. Younger children may
3 tell not even realizing what they're saying. An older
4 child may tell when they get information, as I said
5 earlier, that it wasn't their fault or that this wasn't
6 okay what happened to them.

7 Q. Can you explain to the jury what grooming is and how
8 it affects whether a child will tell?

9 A. Okay. Grooming is preparing a child for ---

10 THE COURT: I'll sustain the objection. I'm
11 sorry. I overrule the objection, Mr. Savage. Okay. I
12 assume you have one? I assume you have an objection.

13 MR. SAVAGE: I have an objection.

14 THE COURT: Overruled. Go ahead.

15 Q. I'm sorry, Dr. Elsey. Can you explain what grooming
16 is?

17 A. Grooming is -- in the world of child abuse, it's
18 preparing the child for more things to happen. They may
19 be gaining their trust. They may be feeling like the
20 child is colluded with what's happening and they're part
21 of it, they say it's okay, too, what's happening, for
22 them to happen. It's -- grooming in and of itself can be
23 abuse sometime, leading to more -- depending on what
24 happens in the end, it can lead to more types of abusive
25 behaviors. It doesn't have to be abusive though. I

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1 mean, spending special time with a child is not a bad
2 thing unless it leads to an inappropriate relationship.

3 Q. How would you classify Minor 1's disclosure?

4 A. I would say it was accidental.

5 Q. And was it also delayed?

6 A. It was definitely delayed.

7 Q. Would having P.T.S.D. have an effect on a child's
8 willingness to disclose or her ability to disclose all
9 the details?

10 MR. SAVAGE: 403 once again.

11 THE COURT: Overruled.

12 A. Yes. Post-traumatic stress disorder, one of the
13 primary, the three attributes of it is to avoid. Avoid
14 talking about it, avoid the feelings about it, avoid the
15 situation, avoid the topic. And that certainly is a --
16 it's a survival skill for kids. I don't want to say it's
17 a negative thing. It's a way to survive. But it
18 certainly can make a child not want to talk about it.

19 Q. Thank you, Dr. Elsey. I don't have anything
20 further. Please answer any questions Mr. Savage may
21 have.

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. SAVAGE:

25 Q. Good afternoon, sir.

1 A. Good afternoon.

2 Q. It's good to see you again, Dr. Elsey. And Dr.

3 Elsey, the Lowcountry Children's Center has been here for
4 about the length of time you've been with them?

5 A. About twenty years. About five years longer than I
6 have been there.

7 Q. And the world has changed in terms of -- you said
8 the reticence of people to talk about child abuse. It's
9 actually dinner table conversation now; is that correct?

10 A. It seems like in the last year it's definitely
11 increased. Front page of the newspaper quite often.

12 Q. Because of the number of sensational cases, if you
13 will, both locally and nationally involving these
14 situations?

15 A. I would agree with that.

16 Q. Criminal cases, specifically in Charleston and
17 Pennsylvania?

18 A. Yes, sir, I would agree with that.

19 Q. Also, the lawsuits that -- going back to some of the
20 other ones, Boy Scouts of America, the Catholic Church,
21 it has become more -- people are less hesitant to discuss
22 what was once a secret experience?

23 A. I don't know if that's the reason why it's become
24 more talked about quite possibly. I don't know. I'm not
25 familiar with that research.

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1 Q. And well, you're affiliated -- I think it's separate
2 -- but D.2.L., Darkness to Light, that's now a national
3 program that started out in Charleston?

4 A. Yes, sir.

5 Q. And at some point in time, there was an affiliation
6 between the Dee Norton Low County Children's Center and
7 Darkness to Light?

8 A. It started off as an outreach for prevention in our
9 program, and then it became its own organization and grew
10 exponentially.

11 Q. And the Charleston County School System has adopted
12 Darkness to Light as one of their goals for primary
13 school kids?

14 A. Yes, sir.

15 Q. And in that program of Darkness to Light, the
16 methodology is to explain to teachers, to educators, to
17 staff at schools, parents and children at the school, as
18 well as the children themselves, the impermissible
19 touching?

20 A. Yes, sir.

21 Q. And how to recognize it?

22 A. Yes, sir.

23 Q. Now, when you looked into this case with the subject
24 of this case, Minor 1 , what experience did the
25 child have in terms of an educational experience in the

1 Charleston County School System of improper touching,
2 Darkness to Light?

3 A. I don't know.

4 Q. Pardon me?

5 A. I don't know.

6 Q. Well, what experience did her teachers in school, in
7 the Charleston County School District, have in terms of
8 recognition of children in their classrooms who had
9 experienced sexual abuse?

10 A. I don't know what her particular teachers had.

11 Q. Was there any report that you're aware from the
12 school system regarding these manifestations of sexual
13 abuse that were reported by teachers, assistant teachers,
14 vice principals, principals, guidance counselors,
15 coaches, anyone regarding this individual?

16 A. When you say manifestations, what do you mean by
17 that?

18 Q. I am referring to the Darkness to Light educational
19 program of what to look for, whatever that is.

20 A. Well, unfortunately despite the training in Darkness
21 to Light, which I certainly think is a good thing, kids
22 still get abused. And I say that as a professional as
23 well as a parent. I have children myself in Charleston
24 County Schools. And they certainly know, based on my
25 job, about child abuse. But they're not here with me

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1 now. They're in the world. So kids still get abused.

2 Despite our efforts to prevent that, they still get

3 abused.

4 Q. Okay. That's exactly my point, Doctor. And I

5 appreciate it. The question really I asked was -- and I

6 believe you answered it in the affirmative -- that the

7 Charleston County School District has adopted those

8 programs so that responsible adults can look for signs of

9 sexual abuse?

10 A. So they can certainly be aware of those signs.

11 Q. And certainly, God knows they're not as talented and

12 educated as a Dr. Steenkamp. Do you know Dr. Steenkamp?

13 A. No, sir.

14 Q. Do you know what her relationship to this case is?

15 A. No, sir.

16 Q. Dr. Mia Amaya?

17 A. I do know her.

18 Q. And certainly they don't have her educational

19 background and abilities. And, of course, they don't

20 have your in-depth training and whatnot about sexual

21 abuse. But you have testified that there were signs that

22 you saw, as Dr. Steenkamp had testified, of things to

23 look for.

24 A. Signs about child abuse, things to look for? Yes.

25 Yes, sir.

1 Q. And as far as you know, was anything ever reported
2 by the adults who had been trained in Darkness to Light
3 or any other child abuse prevention program in this case?

4 A. No, sir.

5 Q. Did you ever write a report that you base your
6 testimony on today about the observations that you made?

7 A. Yes, sir.

8 Q. And do you have that report with you?

9 A. I have a copy of it, yes, sir.

10 Q. May I see it, please?

11 A. (Witness complied)

12 Q. And that report would have been the confidential
13 information that, I guess -- did you interview the child
14 that resulted in this report?

15 A. Yes, sir.

16 Q. And did you interview the mother that resulted in
17 this report?

18 A. Yes, sir.

19 Q. And was this report done at the request of Detective
20 Bacon at the Mount Pleasant Police Department?

21 A. Well, the request to see the child was done by
22 Detective Bacon. The report's part of our daily work
23 when we see a child.

24 Q. But you were acting at the direction or at the
25 request, I should say, of the Mount Pleasant Police

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1 Department?

2 A. Yes, sir.

3 Q. In the investigation, if you will -- and if I'm
4 using the wrong term -- maybe interview is better. But
5 in the processes that you used, was it to identify
6 whether or not this child had experienced abuse?

7 A. Yes, sir.

8 Q. In determining that, would you try to determine who
9 the perpetrator was of the child abuse?

10 A. Yes, sir.

11 Q. And that information then that you would take in
12 your interview, the police would participate in?

13 A. Yes, sir.

14 Q. And they would give you information and suggest
15 questioning to lead to a criminal arrest or conviction of
16 the perpetrator?

17 A. Or not, depending on what the outcome is, yes.

18 Q. And without being disrespectful, and in fact being
19 very respectful to you -- I know your credentials -- the
20 role of the Lowcountry Children's Center was to assist
21 the police in identifying criminal conduct?

22 A. If there was any, yes.

23 Q. And in the identification of criminal conduct,
24 you're not involved in those things we hear about, you
25 know, D.N.A., crime scene investigations, all of that

1 stuff. What your role is is to interview alleged victims
2 about the conduct?

3 A. Yes, sir, you're right.

4 Q. But part of that is also to have your resources used
5 to engage in scientific hardcore evidence to verify the
6 credibility and believability of the child?

7 A. Well, the credibility and believability is usually
8 left up to the court to decide. We certainly do ask
9 questions. Can the child really know what tell the truth
10 means? Can they give us accurate information about
11 things we do know? Where they go to school, who lives in
12 their house, those type of things.

13 Q. And your role in that is to determine, as I think
14 you have testified, is that you look for certain signals
15 from the child to see whether or not child abuse has
16 occurred?

17 A. I don't think I've testified today concerning
18 signals you look for.

19 Q. Do you know the history of this child?

20 A. Somewhat, yes, sir.

21 Q. Did you know the child was subject to a D.S.S.
22 investigation in Florida?

23 MS. GORDON: Objection, Your Honor, cumulative.

24 MR. SAVAGE: I don't think this witness ---

25 THE COURT: Overruled.

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1 Q. Did anyone ever ask you before whether or not you
2 were aware of a D.S.S. investigation in Florida?

3 A. Not today, certainly.

4 Q. I mean anytime. All these investigators, these
5 folks back here, have they ever asked you if you were
6 aware of the D.S.S. investigation in Florida?

7 A. No, sir.

8 Q. Were you aware that the child was removed from the
9 home?

10 A. Not that I recall, no, sir.

11 Q. Were you aware that the child was subject to a
12 year's worth of outpatient treatment at the Medical
13 University of South Carolina two years before this
14 happened?

15 A. Not that I recall, no, sir.

16 Q. Do you recall asking whether this child had observed
17 pornography on a computer two years before this happened?

18 A. Normally in the course of our interview we ask about
19 have there been previous exposure to any kind of
20 pornographic or adult material.

21 Q. And who would you ask?

22 A. We would ask the child that.

23 Q. Would you ask the mother?

24 A. Yes.

25 Q. And when you asked the mother about the exposure of

1 this child to these incidents, such as ones that were
2 described in the misconduct by the uncle, the reason you
3 asked whether she was exposed to pornography is to know
4 whether the child would have inappropriate age knowledge
5 of sexual activity?

6 A. That would be one of the reasons, yes, sir.

7 Q. And in fact you asked that, correct?

8 A. Yes, sir.

9 Q. In the report that you have. And the mother and
10 child denied that they had ever had any exposure other
11 than with Uncle Erick to sexual activity?

12 A. I would -- certainly the child did. I would have to
13 look back and see what the mother told me. I don't
14 recall.

15 Q. Would you mind, because I think it's important to
16 the jury to know the source of information about sexual
17 activity?

18 MS. GORDON: Your Honor, is he referring to the
19 report?

20 THE COURT: I don't know what he's referring
21 to.

22 Q. I'm referring to whatever documentation you might
23 have about the course of your interview with the child
24 and the mother.

25 A. Correct. In the report that I have, I do not have

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1 any information that she gave me about that.

2 Q. But you recall asking that?

3 A. Certainly to the child, I do.

4 Q. And is there a reason you do that?

5 A. To see if there's been any other type of trauma in
6 this child's life, to see any type of other exposure to
7 sexual behavior or information this child may have had.

8 Q. Now -- and you don't recall the answers that you
9 were given?

10 A. By the mother?

11 Q. Or by the child?

12 A. By the child, I do.

13 Q. And what was that?

14 A. She denied anything else beyond what we talked about
15 with the uncle.

16 Q. One of the reasons, if not the reason, just not
17 because the child was exposed to that, but in terms of
18 ascertaining the truth, a child of that age wouldn't
19 normally know about sexual acts, oral sex, intercourse,
20 that sort of thing. I don't know. Would they know it at
21 that age?

22 A. Thirteen-year-olds, yes, they do.

23 Q. Would they know about the possibility or
24 impossibility of having clothes on and engaging in full
25 intercourse standing up?

1 A. In my experience, yes, they do know about those
2 things.

3 Q. In your experience is possible with a fifty-year-
4 old-man and a thirteen- or twelve-year-old child to stand
5 up and have sex?

6 A. Absolutely, yes, sir.

7 Q. With both feet on the ground?

8 A. Absolutely, yes, sir.

9 Q. As part of your investigation or your looking into a
10 situation, do you engage in the services of medical
11 doctors?

12 A. Do I engage in the services?

13 Q. Uh-huh (affirmative).

14 A. I'm not sure I understand your question.

15 Q. Well, as part of -- you're the supervisor down
16 there, right, at the L.C.C.?

17 A. Clinical director, yes, sir.

18 Q. So you have the overall say-so of what's done and
19 what's not done with respect to children?

20 A. In the clinical part. We have a whole separate
21 medical section, which is where Dr. Amaya is.

22 Q. Well, do you oversee that certain children are
23 examined and certain children aren't?

24 A. That's a medical decision.

25 Q. Well, why do they examine children medically?

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1 A. To make sure their body's healthy, to make sure
2 there's no disease, to make sure that the child doesn't
3 have any misperceptions about that. Sometimes they find
4 evidence of abuse. But unfortunately, that's rare. I
5 shouldn't say unfortunately. It's good children don't
6 have that. But based on my experience working in this
7 field through the research, it's rare that they find
8 medical evidence. But there's a lot of other empowerment
9 such as making the child feel like they're healthy,
10 they're not pregnant, those type of things.

11 Q. But a medical examination is to look for hard
12 science evidence, tearing, bruising, abrasion, or other
13 signs of recent sexual trauma?

14 MS. GORDON: Objection, Your Honor, beyond the
15 scope of his expertise.

16 THE COURT: Overruled. If he knows, he knows.
17 If he doesn't, he doesn't.

18 A. Well, again, I'm not a medical doctor, so I really
19 can't answer that question with any justification.

20 Q. You've had fifteen years of work at the Lowcountry
21 Children's Center?

22 A. Yes, sir.

23 Q. And you're aware of the processes and procedures at
24 the Lowcountry Children's Center?

25 A. Yes, sir.

1 Q. And you're aware of the purposes and the processes
2 and procedures there?

3 A. Yes, sir.

4 Q. And you know, do you not, that hard science is what
5 comes from the physical examination of a child?

6 A. I know that it certainly can.

7 Q. And that's why you do it?

8 A. That's one of the reasons you do it.

9 Q. Because if a negative finding, physical finding, was
10 an indicator of child abuse, then there would be no
11 purpose to do those examinations. Isn't that correct?

12 A. Well, again, of course, that's not. That's just
13 logical that it's not that. But the things I mentioned
14 earlier are what's best for the child, to know their
15 body's healthy, to know there's no disease, to know
16 there's no pregnancy, to know that they can have children
17 one day. That's what the value of the medical exams
18 appear to be to me based on my attending many interviews
19 around that.

20 MR. SAVAGE: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 Q. Are you, in your field of study, aware of the
23 psychological definition of victimization?

24 A. Yes, sir.

25 Q. Are you aware in your position of Munchausen? Is it

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1 Munchausen syndrome by proxy?

2 A. Munchausen. Munchausen.

3 Q. Is Munchausen symptom? Is that what you're calling
4 it? Is it a Munchausen symptom by proxy or whatever?

5 A. Syndrome.

6 Q. Okay.

7 THE COURT: Well, will you spell that for the
8 court reporter, please, if you would?

9 THE WITNESS: I'll attempt to. I've been sworn
10 to tell the truth. I'm not sure I'll be able to get
11 every letter right.

12 THE COURT: Just do the best you can.

13 THE WITNESS: M-U-N-C-H-A-U-S-E-N.

14 THE COURT: Thank you very much.

15 You may proceed, Mr. Savage.

16 Q. And what is Munchausen syndrome by proxy?

17 A. That's a diagnosis given when a child is injured by
18 a care giver because that care giver wants the sympathy
19 and wants support.

20 Q. And if a mother was dysfunctional?

21 A. Yes, sir.

22 Q. And the mother was gratified by the attention that
23 either she or her child got, as you said earlier,
24 surrounding the child, comforting the child, providing a
25 safe environment, whatever that entails, but emotionally

1 to secure the child, that's why it's done, correct? And
2 to give sympathy to the mother so that the mother then
3 becomes a hero in her mind because she's protecting the
4 child?

5 A. That is the definition of Munchausen, yes, sir.

6 Q. And that's real. I mean, that's not make-believe.

7 That's the same as post-traumatic stress syndrome.

8 That's the same as all these other psychological
9 definitions of behavior?

10 A. It is definitely a diagnosis given, yes, sir.

11 Q. And that's not something, Munchausen by proxy or

12 whatever it is, is not something that happens at one

13 event. It's something that goes across the years of

14 child and in effect that is actually child abuse by the

15 person who's looking for that comfort victimization?

16 A. Yes, sir.

17 Q. Because there are some personality characteristics

18 that love, enjoy the thrill of the attention of being a

19 victim?

20 A. Yes, sir.

21 Q. And those people are often found to have preexisting

22 mental health issues?

23 A. Absolutely, yes, sir.

24 Q. That require treatment for years and years?

25 A. Yes, sir.

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1 Q. Take medication?

2 A. Some, yes, sir.

3 Q. Dr. Elsey, thank you very much for your testimony.

4 A. Thank you.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MS. GORDON:

8 Q. Dr. Elsey, when Mr. Savage referred to a report that
9 you would have made when you interviewed Minor1 ...

10 MS. GORDON: May I approach the court reporter,
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. GORDON: I apologize.

14 (WHEREUPON, State's Exhibit Number 9 was marked for
15 identification only.

16 Q. Dr. Elsey, I am showing you what is State's Exhibit
17 9. Do you recognize that?

18 A. Yes, ma'am.

19 Q. Is that the report that you prepared regarding the
20 interview that you had with Minor1 ?

21 A. It is.

22 Q. Is it a fair and accurate representation?

23 A. Yes, ma'am.

24 MS. GORDON: Your Honor, the State moves
25 State's Exhibit 9 into evidence.

1 THE COURT: Any objection?

2 MR. SAVAGE: Is that the same thing that Dr.
3 Elsey was testifying from?

4 MS. GORDON: This is the same one he testified
5 about regarding ---

6 MR. SAVAGE: I don't have any objection.

7 THE COURT: All right. State's Exhibit Number
8 9 admitted without objection.

9 (WHEREUPON, State's Exhibit Number 9 was admitted
10 into evidence.)

11 Q. Dr. Elsey, Mr. Savage also asked you about some of
12 the things that you interviewed Minor 1 about and the
13 details of that. And I think some of that you said you
14 -- you may not remember every single word that she said
15 or that you said in that interview. Was that interview
16 recorded?

17 A. Yes, ma'am, it was.

18 MS. GORDON: Your Honor, may I approach the
19 court reporter?

20 THE COURT: Yes, ma'am.

21 MR. SAVAGE: Your Honor, I'm not sure what the
22 following questions are going to be, but there's a
23 statute that governs this.

24 THE COURT: I'm sorry. What? I don't know
25 what the questions are going to be either.

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1 MR. SAVAGE: I don't want to interrupt Ms.
2 Gordon.

3 THE COURT: What's your legal objection?

4 MR. SAVAGE: I don't know because I don't know
5 what she's ---

6 THE COURT: Well, let's see what happens and
7 then I'll listen to you.

8 MR. SAVAGE: I want to prevent Ms. ---

9 THE COURT: I understand what you want to
10 prevent.

11 MR. SAVAGE: There's a statute involved.

12 THE COURT: Y'all come up here for a minute.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. Ladies and gentlemen of
16 the jury, please don't discuss the case amongst
17 yourselves. Leave your notepads and go to the jury room.

18 (WHEREUPON, the jury exited the open court at
19 approximately 4:05 p.m.)

20 THE COURT: Is this an oral video or ---

21 MS. GORDON: It's a videotaped recording ---

22 THE COURT: Just a sound video or oral?

23 MS. GORDON: No. It's video, video and audio.

24 THE COURT: Video and oral, okay. All right.

25 Mr. Savage ...

1 Off the record. Jo, off the record a second.

2 (Off record discussion)

3 THE COURT: Let's take about a five-minute
4 break.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 THE COURT: All right. Let's go back on the
8 record. To sort of summarize, the Solicitor now would
9 like to put in the video recording of the, I guess, the
10 examination made by -- it's getting late in the day.

11 MR. SAVAGE: Don Elsey.

12 THE COURT: ... by Mr. Don Elsey of the child
13 whenever it occurred. I don't remember the date of when
14 it occurred.

15 MS. GORDON: The interview was September.

16 THE COURT: On January 22nd, 2009. Now, I
17 guess, Mr. Savage, it's your objection. What is your
18 objection under, I guess, Rule 106?

19 MR. SAVAGE: Your Honor ---

20 THE COURT: Completeness of -- you partially
21 examined him about this statement, and now she wants to
22 go into other portions of the statement under 106. I
23 assume that's correct. Is that correct?

24 MS. GORDON: That's correct.

25 MR. SAVAGE: Judge, Dr. Elsey, I asked him if

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1 he had a record that he made of his -- did he have a
2 report that he made that refreshed his memory for his
3 testimony today of this interview of the child at the
4 Lowcountry Children's Center. He said, yes. And I said,
5 Dr. Elsey, do you have that with you? He said, yes. I
6 then ---

7 THE COURT: You said the report, wasn't it?

8 MR. SAVAGE: Yes.

9 THE COURT: A report.

10 MR. SAVAGE: So then I asked him if I could see
11 a copy of it, compared it to the information I had and
12 returned it to him. I asked him questions about
13 pornography and whether he had asked the mother of the
14 child about pornography. He indicated independently of
15 looking at that report or referring to that report that
16 he had. He indicated that he did not recall asking the
17 mother, and he was quite convincing in his memory that he
18 asked the child and she denied it. That's what I asked.
19 I knew from having had the video transcribed that he had
20 done that. The purpose of the cross-examination was to
21 see, Your Honor, if he recalled whether the child had
22 knowledge of sexual activity from viewing pornography
23 that would give her that basic knowledge of the described
24 events. And interestingly, he said, yes. But also that
25 a thirteen-year-old would know all of that. So that sort

1 of took the wind out of my sails, the knowledge basis of
2 the child.

3 I then went on to talk about other things. And we
4 get to redirect examination, and the Prosecutor tries to
5 question the witness about a video recording. Rule 801
6 is the general prohibitor of prior consistent statements.
7 They're not his statements; they're the child's
8 statements. And there's a prohibition. The only
9 exception to that prohibition is the South Carolina
10 Statute § 17-23-175 that provides circumstances in which
11 a video recording, despite 801, could be introduced. And
12 what I meant to say to the Court, if I didn't say it
13 properly, is that the exceptions to 801 are not in this
14 case because that video recording -- then if the child is
15 a certain age ---

16 THE COURT: I believe it's twelve and under,
17 isn't it?

18 MR. SAVAGE: --- which this child is not.

19 THE COURT: Right.

20 MR. SAVAGE: So the cross-examination has
21 nothing to do with the video. It has to do with the
22 questions that Dr. Elsey asked and whether, for purposes
23 of evaluating the child's knowledge about sexual
24 activity, he asked a question of pornography. That
25 becomes important because the mother in previous

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1 testimony has been pointed out to say that this child was
2 exposed to pornography.

3 THE COURT: Thank you, sir.

4 Ms. Solicitor, are you wanting to offer the entire
5 transcript or the video, or what are you offering and
6 why? What are you trying to do and why?

7 MS. GORDON: I'm offering the video because
8 under the rule of completeness, Mr. Savage not only asked
9 about the report, but in addition to that, he asked about
10 did you ask about if this child had services with D.S.S.
11 in Florida? Did you ask if this child had gone to see a
12 psychiatrist? Did you ask about how this child would
13 know about having sex standing up? Could this child and
14 a fifty-year-old man have sex standing up? I can't even
15 -- I can't verbatim give you all of the questions that he
16 asked this witness. But he went into specific detail,
17 specific questions regarding the disclosure that the
18 child made regarding the incident in the garage. And
19 under that rule, if you refer to what would have been the
20 interview, which is recorded -- and we have it available
21 -- and under the rule of completeness, it would be
22 admissible.

23 MR. SAVAGE: Judge, I never mentioned the
24 video. I never mentioned that ever. I talked about the
25 report that Dr. Elsey had and what he asked. I never

1 talked about an interview with the child, any video.

2 Nothing.

3 THE COURT: All right. Well, other than 106,
4 why do you think it should be admissible, Solicitor?
5 Obviously, it's hearsay.

6 MS. GORDON: I agree. I think it's admissible
7 ---

8 THE COURT: I mean, obviously it's hearsay. So
9 do you think it could come under just under 106 for
10 clarity of -- I mean, basically § 106 ---

11 MR. SAVAGE: There's been no ---

12 THE COURT: § 106 says when a writing or
13 recorded statement or part thereof is introduced by a
14 party, an adverse party may require the introduction at
15 that time of any other part and any other writing or
16 recorded statement, which all in fairness to be
17 considered contemporaneously with the subject writing or
18 recorded statement or part thereof introduced by a party.

19 MS. GORDON: Your Honor, I think ---

20 THE COURT: Now, the only thing that -- I don't
21 remember him mentioning a video. He may have. But if he
22 did, it slipped me by because I didn't anticipate this
23 coming. Okay?

24 MS. GORDON: I think it would also be
25 admissible under § 801(d)(1)(B), a recording of the

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1 statement consistent with the testimony offered to rebut
2 an express or implied charge against the declarant of
3 recent fabrication or improper influence or motive. He
4 indicated on cross-examination -- and we can recall Minor 1
5 for that purpose, if necessary. But his cross-
6 examination of this witness was whether or not her mother
7 influenced her to give a statement regarding sexual
8 abuse, suggesting that the mother has Munchausen syndrome
9 by proxy.

10 MR. SAVAGE: I just got lost in the swamp.

11 THE COURT: Well, hold on just a second, okay?
12 You said § 801(d)(B). Is that what you said?

13 MS. GORDON: (d)(1)(B).

14 THE COURT: (d) or (b)?

15 MS. GORDON: It's § 801(d)(1)(b). There are so
16 many sub-sections.

17 THE COURT: Consistent with declarant's
18 testimony and is offered to rebut an expressed or implied
19 charge against the declarant recent fabrication or
20 improper influence or motive, provided, however, the
21 State must submit it was made before the alleged
22 fabrication before the alleged improper influence or
23 motive arose. Now, how does -- he was trying to say that
24 it's the mother ---

25 MS. GORDON: Correct.

1 THE COURT: --- that was influencing, not the
2 child. The video's of the child not the mother, I
3 assume. I haven't looked at it.

4 MS. GORDON: Correct. But the child's ---

5 MS. GORDON: It says consistent with
6 declarant's testimony.

7 MS. GORDON: Right. And we could recall Minor 1
8 for that purpose because what he's alleging is that that
9 declarant, Minor 1, was influenced by improper -- was
10 influenced by improper motive by her mother.

11 THE COURT: Right. So why would that under §
12 801(d)(1)(B) allow you to put the entire thing in?

13 MS. GORDON: I think it would with Minor 1's
14 testimony -- if Minor 1 is recalled to testify based on the
15 cross-examination that her mother suddenly has Munchausen
16 syndrome by proxy, which Mr. Savage said he wouldn't ask
17 questions unless he had some documentation to back that
18 up. And I believe he's asked that, and there is no such
19 documentation.

20 THE COURT: Well, I assume you would clear that
21 -- I was expecting that to occur on redirect but we
22 haven't gotten to that point yet, I assume. I don't
23 know. I mean, related writings or statements. In
24 looking at this statement, I don't know what's in it.
25 But we're talking about ---

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1 MS. GORDON: I can just ---

2 THE COURT: --- fifty-six pages. I'm just very
3 reluctant to put a video in that covers fifty-six pages
4 and we're talking about one particular -- and I agree, he
5 said pornography, D.S.S. removed, outpatient, observed
6 pornography, asked the mother and also how did he
7 determine the credibility of the child.

8 MS. GORDON: But what he ---

9 THE COURT: He went into all of that.

10 MS. GORDON: The report that Mr. Savage is
11 referring to, all that is is a summary of that interview.

12 THE COURT: Right.

13 MS. GORDON: Then the interview is the complete
14 statement.

15 THE COURT: Let me see the report.

16 MS. GORDON: Your Honor, I also have one issue
17 that I just need to bring to the Court's attention
18 regarding this report that Mr. Savage referred to. There
19 is information in there about the prior sex abuse that
20 ...

21 THE COURT: I mean, why can't you do what you
22 want to do by using the report rather than offering the
23 entire fifty-six pages? I'm just -- unless I sit here
24 and read it and digest it all, I'm just not going to
25 allow fifty-six pages to go in verbatim without at least

1 looking at it.

2 MS. GORDON: Well, I mean, I can suggest just
3 entering the video, and if the jury wants to watch it,
4 they can watch it.

5 THE COURT: No, I'm not going there. Okay?
6 That's not going to happen. You've got to get by me
7 first. Okay?

8 MS. GORDON: Well, the video is about thirty
9 ---

10 THE COURT: Before anything gets to that jury.
11 Okay?

12 MS. GORDON: It's about thirty minutes.

13 THE COURT: Okay.

14 MS. GORDON: Of video.

15 THE COURT: Nice try, but, no, that's not going
16 to happen.

17 MS. GORDON: Okay.

18 (Laughter)

19 THE COURT: I will do this. I will take this
20 -- I've got a transcribed copy of it prepared by Mr.
21 Savage's court reporter. I will take that home tonight
22 and read it. I'm not going to allow it in until I read
23 it. I don't know what's in it. Now, I have no objection
24 with her cross-examining -- redirecting him on the
25 report. Okay?

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1 MR. SAVAGE: Yes, sir. Now, the report needs
2 to be redacted to that information.

3 THE COURT: I'm not going to put the report
4 into evidence. I'm just going to let her ask the
5 questions. She's got enough sense not to ask questions
6 about that.

7 MS. GORDON: It's already in evidence. The
8 report's in evidence.

9 THE COURT: Why did you put that in there? You
10 didn't know it was in there, or you just weren't
11 thinking?

12 MR. SAVAGE: I wasn't thinking, and ---

13 THE COURT: Well, we'll redact it then.

14 MR. SAVAGE: --- the Court has already ruled
15 that that evidence is appropriate.

16 THE COURT: We'll redact it. Okay?

17 All right. Anything else?

18 MS. GORDON: That's all, Your Honor.

19 THE COURT: Now, you said there was something
20 else.

21 MS. GORDON: That was it. I just brought to
22 the Court's attention that there was information in the
23 report.

24 THE COURT: All right. How about getting your
25 hands on that report so you can -- let's get it redacted

1 before it goes back to the jury room.

2 MS. GORDON: Thank you, Your Honor.

3 THE COURT: All right. Mr. Savage, anything
4 else?

5 MR. SAVAGE: No, sir. The Court hasn't ruled,
6 so I guess you will rule in the morning?

7 THE COURT: Yes, I'll decide on the video in
8 the morning. I'm just not going to -- I'm not going to
9 agree to put fifty-six pages of video in until I at least
10 review it. And I'd rather review it in writing rather
11 than have to sit there and listen and watch it. I think
12 you understand my inclination at this point in time.

13 MR. SAVAGE: Yes, I do.

14 THE COURT: Is there anything in this about the
15 prior sexual allegations?

16 MS. GORDON: No. No, Your Honor.

17 THE COURT: In this video? I mean in this
18 statement?

19 MR. SAVAGE: The only thing that's in there --
20 and I think I pointed out the page where Dr. Elsey
21 interviewed about pornography and went into specific
22 sexual acts. I didn't reference the video or that
23 transcript because the State doesn't even know that
24 transcript exists.

25 THE COURT: I understand. It's all called

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1 ambush.

2 MR. SAVAGE: It's called preparation.

3 THE COURT: It's called trying criminal cases
4 by ambush, both sides.

5 MR. SAVAGE: It's called preparation.

6 THE COURT: I don't know why y'all don't go
7 ahead and approve those rules that they're trying to
8 propose and do it right and have preconferences. I think
9 it would really speed up the trial process.

10 MR. SAVAGE: Judge, if somebody here ---

11 THE COURT: It would make the trial process a
12 whole lot easier.

13 MR. SAVAGE: She's gone. The woman from the
14 Supreme Court ought to be listening to this. Really.

15 THE COURT: She's with the Senate.

16 MR. SAVAGE: Well, whoever she's with. I mean,
17 we need those rules.

18 THE COURT: Well, I thought maybe the ---
19 Off the -- go off the record.

20 (Off record discussion)

21 THE COURT: That doesn't have anything to do
22 with this. Anything we need to take up while the jury's
23 out?

24 MS. GORDON: Nothing from the State, Your
25 Honor.

1 MR. SAVAGE: No, sir.

2 THE COURT: All right. Bring the jury, please.

3 (WHEREUPON, the jury entered the open court at
4 approximately 4:32 p.m.)

5 THE COURT: All right. Solicitor, please --
6 oh, hold on just a second. I'm sorry.

7 Solicitor, you may proceed on redirect.

8 MS. GORDON: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 CONTINUED BY MS. GORDON:

11 Q. Dr. Elsey, on cross-examination, Mr. Savage asked
12 you about the signs of sexual abuse and why hadn't
13 somebody reported this if we all know the signs. How is
14 it that a child can function as a good student and people
15 see her as a good kid and not see the signs of sexual
16 abuse?

17 A. Because quite often there are no signs in sexual
18 abuse because kids -- as I mentioned earlier, it's hard
19 to talk about this stuff. They don't want somebody
20 asking questions about it. They want to just -- life is
21 normal, quote, unquote. There can be some signs. It can
22 range from zero. It can range from children who become
23 depressed or have other mental health issues. It can
24 range from some acting-out behaviors. But having a child
25 who does not show any signs is not uncommon in my work.

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1 Q. Even if they do show signs, are the signs so
2 specific that you would automatically know it's sexual
3 abuse?

4 A. Well, they certainly can be of a sexual nature, for
5 example, especially younger children. But until you find
6 out what those are about, you can't assume they mean
7 anything.

8 Q. What about the possibility of seeing pornography?

9 A. In what context?

10 Q. Is that considered a sign?

11 A. A sign of sexual abuse?

12 Q. If someone -- if a child watches pornography, would
13 that be ---

14 A. It would depend on the context. If some adult
15 introduced that to them, if it's part of the grooming
16 process that we mentioned earlier. But if a child
17 happens upon it or even is interested in it, it doesn't
18 mean sexual abuse in and of itself.

19 Q. So you just -- it's your testimony that the signs --
20 you just -- it could go either way?

21 A. Signs are important. But we've had many, many, many
22 cases where a parent will say, I don't think this
23 happened because my child has no signs, and there are no
24 signs.

25 Q. Dr. Elsey, Mr. Savage -- I want to refer back to the

1 summary. How would you describe this document? What I'm
2 referring to is State's Exhibit 9. I think you called it
3 a CAFTA?

4 A. Child and Family Trauma Assessment is what it is.
5 It's a report that's generated after we interview a child
6 and speak with the family.

7 Q. Is it fair to say this is sort of a summary of your
8 interview?

9 A. It is a summary, yes, ma'am.

10 Q. And in the interview, in your summary, did Minor 1
11 disclose an incident on the couch at her uncle's house?

12 A. Yes, ma'am.

13 Q. Did she also disclose an incident in the garage?

14 A. Yes, ma'am.

15 Q. Did she disclose digital penetration?

16 A. Yes, ma'am.

17 Q. Did she disclose -- and I'm saying those words. She
18 gave more details than that?

19 A. Yes, ma'am.

20 Q. And this is a summary of what she said?

21 A. That's correct.

22 Q. Thank you, Dr. Elsey. Nothing further.

23 MS. GORDON: Oh, excuse me. The Court's
24 indulgence.

25 THE COURT: Yes, ma'am.

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1 Q. Dr. Elsey, was there any evidence of Munchausen
2 syndrome by proxy in this case?

3 A. No. Again, that is an adult diagnosis. I did not
4 diagnose the mom. The diagnosis that the child would
5 have is called pediatric condition falsification, which
6 is a confusing term. But it's when a child has been the
7 victim of that. And I did not see any signs of that in
8 this case in my interview with her.

9 Q. Thank you, Doctor.

10 THE COURT: Any recross?

11 MR. SAVAGE: (No verbal response)

12 THE COURT: No?

13 You may step down. Thank you very much.

14 Any objection to Mr. Elsey being excused?

15 MR. SAVAGE: None by the Defense, Your Honor.

16 THE COURT: Any by the State?

17 MS. GORDON: None by the State, Your Honor.

18 THE COURT: All right. Thank you very much.

19 Have a safe trip.

20 MS. GORDON: Your Honor, the State rests
21 subject to your ruling.

22 THE COURT: Okay. Let me see the attorneys up
23 here for just a second since the State has rested.

24 Now, ladies and gentlemen, when the State rests,
25 what that means is -- I'm sorry. Let me turn this

1 microphone on. What that means is the State, at this
2 time, is not going to offer any further testimony or call
3 any more witnesses or offer any more evidence at this
4 time. I have to take up certain motions, legal motions,
5 so I'm going to ask you to go to the jury room. Leave
6 your note pads in your seats.

7 (WHEREUPON, the jury exited the open court at
8 approximately 4:37 p.m.)

9 THE COURT: Can I ask the two of y'all to come
10 up here for just a second, please? I want y'all to get
11 some more exercise today.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: All right. Solicitor, are there
15 any motions from the State?

16 MS. GORDON: None from the State, Your Honor.

17 THE COURT: Any from the Defendant?

18 MR. SAVAGE: Your Honor, I will be very brief
19 on our motions because it would not be appropriate just
20 to make motions for the sake of the court reporter
21 earning more money. I'm not going to ask for a directed
22 verdict. And the reason I'm not going to ask for a
23 directed verdict is there is testimony in the record that
24 the jury could accept to find my Defendant guilty of the
25 three offenses.

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1 I would, however, move at this time for the Court's
2 reconsideration of our motion for mistrial. The basis
3 for that motion was a witness testifying -- that is Dr.
4 Amaya -- that she would have only done a certain
5 procedure if she thought the child was lying, words to
6 those effect.

7 THE COURT: Okay. Thank you very much.

8 MR. SAVAGE: Or Steenkamp. And, Judge, at that
9 time, we moved to strike. The Judge denied that, did not
10 support my motion. I think the case law under *Watson*
11 would say then that I really didn't have to move for a
12 mistrial at that point, but I believe I did, which was
13 denied. I resume that motion for a mistrial.

14 I also move at this time to strike the entire
15 testimony of Dr. Elsey on the grounds that it's a 403
16 violation, and also that his testimony inferred that the
17 child was telling the truth, even though he didn't say it
18 explicitly.

19 I'd also move to strike the testimony of Dr.
20 Steenkamp inasmuch as she's not qualified as an expert.
21 I take respectful exception to the Judge's ruling on her
22 status as an expert.

23 And then, in addition to that, move to strike on the
24 basis of relevancy.

25 THE COURT: On the basis of what?

1 MR. SAVAGE: Relevancy.

2 THE COURT: Okay. All right. Thank you very
3 much. All those motions are denied.

4 MR. SAVAGE: Including the one for not asking
5 for directed verdict?

6 THE COURT: Yeah, that's denied. Let me hear
7 you. No, that's fine.

8 Mr. Erick Arroyo, if you would please stand, please,
9 sir, and raise your right hand?

10 (WHEREUPON, the Defendant was duly sworn.)

11 THE COURT: All right. I'm going to ask you
12 certain questions concerning your right to testify and
13 your right to remain silent, okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, during this process if you
16 have any questions you would like to discuss with your
17 attorney, please tell me. And I'll be glad to stop and
18 you can discuss the question with your attorney that I
19 asked you. If you want to ask the Court any questions,
20 I'll be glad to try to answer it. Okay? My purpose in
21 asking you this about your right to remain silent is not
22 for you to talk about this particular case or do any
23 incrimination of yourself, and I'm not going to ask you
24 any questions about this case. Do you understand?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: All right. In a criminal case no
2 one can be compelled to be a witness against himself
3 under the Fifth Amendment rights to remain silent. Do
4 you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, that is a personal privilege
7 that you have. It's your privilege. It's your decision
8 and only your decision to determine whether you want to
9 testify or not testify. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. No one can compel you
12 to testify. Understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: No one can compel you not to
15 testify. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, you have the right, as I said,
18 to testify or not to testify. If you elect not to
19 testify, your failure to testify cannot be used against
20 the State [sic] as an inference to guilt. And your
21 failure to testify cannot be considered by the jury in
22 its deliberations, and I will so instruct the jury. You
23 understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you elect to testify, then you

1 waive your privilege to the Fifth Amendment. In other
2 words, when you take the witness stand, you are a
3 witness. If the question's appropriate under the rules
4 of evidence and rules of court, you have to answer the
5 questions. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It's not like what you see on
8 television. They take the Fifth for one question and
9 answer the next question. If you take the stand, you
10 answer the questions. If you invoke the Fifth Amendment
11 Right to remain silent, you don't take the stand. Do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. If you take the stand,
15 you'll be subject to cross-examination as you have been
16 sitting in the courtroom listening to cross-examination
17 now for approximate three days. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Your decision must be
20 freely, voluntarily and intelligently given. Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So I'm going to ask you some
24 questions about your voluntariness and your
25 understanding. Have you had conversations with your

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1 attorney?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you understood the
4 conversations with your attorney about your right to
5 testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And has your attorney advised you
8 whether you should testify or not testify?

9 THE DEFENDANT: Both.

10 THE COURT: Pardon?

11 THE DEFENDANT: He's advised me of both.

12 THE COURT: But has he advised you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The only thing I can tell you is
15 you should seriously consider any advice that he may have
16 given you. I'm not going to ask you what the advice is
17 because I don't want to know. But you should seriously
18 consider any advice that he has given you concerning your
19 right to remain silent or your right to testify.
20 However, the final decision rest with you. Do you
21 understand?

22 THE DEFENDANT: Absolutely, sir.

23 THE COURT: Has anybody forced you to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody threatened you to

1 testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody forced you not to
4 testify?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody threatened you if you
7 do testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you need to discuss it with your
10 attorney any further, or would you like to discuss it?
11 You don't have to give me a decision this afternoon. I
12 would be happy to allow you to discuss it further with
13 your attorney tonight and give me a decision tomorrow.
14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you want to do that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Do you have any
19 questions about what I have explained to you?

20 THE DEFENDANT: None at all.

21 THE COURT: Do you understand what I have
22 explained to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you would like to discuss it
25 further with your attorney?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'm going to --
3 tomorrow I will ask you the final question being, do you
4 wish to testify, in the morning. I will give you the
5 opportunity tonight to discuss it further with your
6 attorney. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I would ask you to have an open
9 conversation with him and listen to what he has to say
10 and then make your decision. Okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I want thank you. You may sit
13 down. Thank you so very much.

14 Okay. Mr. Savage, if there's anything you would
15 like to ask your client about his right to testify this
16 afternoon or in the morning, I will give you an
17 opportunity to do that.

18 MR. SAVAGE: Judge, I just would say to the
19 Court, and I think Mr. Arroyo would acknowledge, that a
20 conversation concerning a plea or a trial has been going
21 on now for two years.

22 THE DEFENDANT: Yes, sir.

23 MR. SAVAGE: And I have given the benefit of my
24 experience in terms of what I believe would happen at a
25 trial. Is that correct?

1 THE DEFENDANT: Yes, sir.

2 MR. SAVAGE: And what I believe what the
3 advantages of a plea agreement would be. It's his
4 decision and his decision alone that he wanted this
5 trial.

6 Is that correct?

7 THE DEFENDANT: Yes, sir.

8 MR. SAVAGE: Not necessarily consistent with
9 the advice that he has been provided. I have, for two
10 years, discussed at some point in time he's going to have
11 to make a decision regarding whether he should testify or
12 not.

13 And we have had two dozen or more conversations
14 about testifying?

15 THE DEFENDANT: Yes, sir.

16 MR. SAVAGE: And the same about providing
17 third-party testimony from witnesses that we would call.
18 I have given him the benefit of my experience and advice
19 regarding those matters.

20 THE COURT: And I forgot one thing I want to
21 tell you, Mr. Arroyo. Okay? I have excluded some right
22 damaging testimony against you, okay, by someone else.
23 Some allegations, okay? Now, your attorney will probably
24 explain to you about opening the door. But I want you to
25 understand that if you do testify and you open the door,

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1 I'm sure that testimony will be coming in. And I want
2 you to understand that. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And opening the door is sort of a
5 nebulous term, and it can go a lot of different ways.
6 Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So discuss that with your attorney.
9 If you have any questions of the Court tomorrow, I'll be
10 glad to try to answer them for you. I'm not going to get
11 into the facts. That's not my purpose. My purpose is to
12 try to get you to understand your right to remain silent
13 or to testify. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. I didn't mean to interrupt
16 you, Mr. Savage, but I forgot to ask him or tell him
17 that. Okay?

18 MR. SAVAGE: Your Honor, I appreciate your
19 innumerable courtesies, as Mr. Arroyo would say the same.

20 THE DEFENDANT: Absolutely, sir.

21 MR. SAVAGE: And I appreciate your patience
22 with the Defense. And we have no further things, I don't
23 think, that we need to discuss.

24 Do we, Erick?

25 THE DEFENDANT: Not right now, sir.

1 THE COURT: Okay. Thank you very much.

2 Anything from the State?

3 MS. GORDON: Nothing from the State, Your
4 Honor. With the Court's permission, I will, with regard
5 to State's Exhibit 9.

6 THE COURT: Please take that with you and
7 redact it tonight, please.

8 MS. GORDON: I think that I have it in a
9 computer, you know, a scanned version and I think they
10 can black it out the best that way and reprint it and we
11 can substitute the ---

12 THE COURT: And if you can't, just use the old
13 fashion way, put some paper on it and run a copy on a
14 copy machine.

15 MS. GORDON: I tried marking it, but I feel
16 like you can still see it.

17 THE COURT: Just cover it up with a piece of
18 paper, the old fashion way. Or a magic marker, either
19 one.

20 MS. GORDON: I tried magic marker and that
21 didn't work.

22 THE COURT: That didn't work?

23 MS. GORDON: So that's why I thought we might
24 try that.

25 THE COURT: Okay. Thank you.

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1 All right. Anything else, Mr. Savage, before we
2 adjourn?

3 MR. SAVAGE: I'm out of ---

4 THE COURT: Could I ask one question for
5 information purposes only? How many witnesses do you
6 anticipate? Do you think we can finish tomorrow? Do
7 y'all want to have an informal charge conference this
8 afternoon to save time tomorrow?

9 MR. SAVAGE: Judge, I'll do whatever you want.
10 I would tell the Court that if the Court would feel
11 comfortable in this case, we argue and charge and go to
12 the jury well in advance of the closing time tomorrow.

13 THE COURT: Well, I'm not trying to push you.
14 I mean, if we have to come back Monday to finish this
15 trial, so be it. I'm not -- I don't want to cut short
16 anything you want to do on offering witnesses. I'm not
17 going to come back Saturday, but we'll come back Monday
18 and finish it.

19 MR. SAVAGE: Well, I can't get my wife to come
20 ---

21 THE COURT: Well, your wife will be gone, I'm
22 sure.

23 MR. SAVAGE: But in seriousness, I have
24 discussed endlessly with Mr. Arroyo my recommendation to
25 him, which has not been fully vetted yet. But I have had

1 the conversations that it's my recommendation and I get
2 to call, my choice -- not his choice -- on witnesses,
3 other than Mr. Arroyo. He understands that. That is why
4 I say to the Court I'm very confident that this case will
5 go to the jury tomorrow well in advance of five o'clock.

6 THE COURT: Okay. All right. We'll go off the
7 record, adjourn until nine-thirty in the morning.

8 (WHEREUPON, the jurors were dismissed for the day
9 off the record and court stood at recess for the
10 day.)

11 July 13, 2012

12 (WHEREUPON, court convened with all parties present
13 and the following proceedings were had commencing at
14 approximately 9:45 a.m.)

15 THE COURT: All right. Let's go on the record,
16 if we could, please.

17 All right. Mr. Arroyo, if you'll please stand.
18 Now, I swore you yesterday and gave you your Fifth
19 Amendment rights to remain silent, and I told you I would
20 give you an opportunity last night to discuss it with
21 your attorney. Do you have any questions concerning your
22 right to testify?

23 MR. ARROYO: No, Your Honor.

24 THE COURT: Mr. Savage, do you have anything to
25 say concerning his right to testify after your

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1 discussions with him? I assume y'all talked last night.

2 MR. SAVAGE: We discussed this during the
3 recess of last evening with several family members, with
4 parents, sisters, brothers, cousins, daughters. That
5 discussion continued by my client. I had communication
6 during the course of the evening and into the night and
7 resumed at eight-thirty this morning at my office. So I
8 believe -- I'm fully satisfied that Mr. Arroyo has made
9 an independent decision regarding his rights to testify,
10 knowing the charge that Your Honor would apply.

11 THE COURT: Are you satisfied there's been no
12 pressure, that it's freely and voluntarily given?

13 MR. SAVAGE: I am absolutely satisfied of that.
14 I believe that Mr. Arroyo will take the stand.

15 THE COURT: All right. Mr. Arroyo, has your
16 decision been freely and voluntarily entered into?

17 MR. ARROYO: Absolutely, Your Honor.

18 THE COURT: And did you understand the
19 discussions that you had with your attorney last night
20 and this morning?

21 MR. ARROYO: I did, Your Honor.

22 THE COURT: All right. Do you wish to testify?

23 MR. ARROYO: I do, Your Honor.

24 THE COURT: Okay. That's fine. All right.

25 That is resolved. You may have a seat.

1 All right.

2 MR. SAVAGE: Your Honor?

3 THE COURT: I'm sorry.

4 MR. SAVAGE: I have two matters I'd like to ---

5 THE COURT: Well, I want to see both of you.

6 And the bring the changes up that you were talking about
7 on the charge because I'm going to try to get that moving
8 while we're going through the testimony so I'll have it
9 ready, please, sir. I've been talking to your associate
10 earlier. Okay? I've been talking to your associate
11 earlier off the record for an informal charge conference.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: Let's go on the record.

15 MR. SAVAGE: Okay.

16 THE COURT: Yes, sir? We're on the record.

17 MR. SAVAGE: Judge, yesterday counsel for the
18 Defendant failed to object to exhibit number 9 offered by
19 the State. Counsel for the Defendant cannot give you an
20 explanation for that. I don't know what I was thinking
21 or not thinking. But that's exactly the argument that
22 we've continuously made, that that type of evidence
23 should not come in. My non-objection at that time to the
24 introduction of that evidence was clearly erroneous and
25 clearly would be reversed on a post-conviction hearing.

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1 THE COURT: So you want to reconsider your --
2 you want to object now?

3 MR. SAVAGE: Yes.

4 THE COURT: I'll allow you to do that. What's
5 your objection? Now, I believe that's the one that I
6 said had to be redacted.

7 MR. SAVAGE: Yes, sir.

8 THE COURT: Has it been redacted?

9 MS. GORDON: It has been, Your Honor.

10 MR. SAVAGE: It has in part. But if the Court
11 would take a look at it, there are a number of different
12 things in that report that reflect on the veracity of the
13 child. And this is precisely -- we've argued the
14 *Jennings* case to Your Honor. This is precisely the
15 report and the type of evidence that we have objected to
16 uniformly except for the lack of attention or whatever
17 caused me to allow this to slip by me yesterday
18 afternoon.

19 Now, this document has not been published to the
20 jury. That's State's Exhibit Number 9. So we believe in
21 the interest of justice, not just the interest of my
22 client, but judicial expediency, that clearly, if this
23 goes in, I'm going to be PCR'ed, and clearly it's going
24 to be reversed. The Court has ruled ---

25 THE COURT: Well, I'm allowing you to make your

1 objection, and I'll rule on the objection. Now, I don't
2 have any problem if we need to redact some more material
3 in the evidence if y'all want to look at it from a
4 redaction standpoint rather than exclude the entire
5 document. If y'all want to spend just a couple of
6 minutes looking at it for possibly redacting some
7 information. I haven't read the document itself, so I
8 don't know if there's anything that needs to be redacted
9 or not.

10 MS. GORDON: Your Honor, our motion to admit
11 this evidence is under 106 because Mr. Savage
12 specifically asked about ---

13 THE COURT: I understand why you did it, but
14 that doesn't necessarily mean it all should be -- should
15 go in.

16 MS. GORDON: I believe under 106 it does. I
17 believe that it should all go in.

18 THE COURT: Well, if it's improper evidence to
19 be presented to the jury, I still would not allow it in
20 even under 106. Okay? I mean, 106 doesn't give you
21 permission to put in evidence that wouldn't be admissible
22 otherwise. That's what I'm saying. Okay?

23 MS. GORDON: Right. But it is admissible
24 because he started asking specific questions about that
25 interview, the process of that interview and specifically

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1 going over ---

2 THE COURT: Well, let me say again to both of
3 you, look at it and see if we can solve it with redacting
4 some statements. Okay? Otherwise, I'll sit here and
5 look at it and read it and make a determination on his
6 motion. Okay?

7 MS. GORDON: Thank you, Your Honor.

8 THE COURT: To either exclude it or not exclude
9 it. And I'll listen to your arguments before I'll rule.
10 But just spend a few minutes and see if we can redact
11 some of it to solve the problem. If we can't, we can't
12 which is fine. That's what they pay me for, to make
13 decisions, right or wrong.

14 MR. SAVAGE: Yes, sir. We can do this while we
15 continue the case.

16 THE COURT: Yeah. Yeah, we can do that. I
17 mean, I'll rule on it at some point in time before the
18 jury sees it. I'm just offering the opportunity for
19 y'all to redact something that you're opposed to if the
20 State agrees.

21 MR. SAVAGE: I just don't want to delay --
22 we're ready to move forward. I know it's Friday, ten-
23 thirty, and I made an obligation to this Court. I intend
24 to abide by that.

25 THE COURT: All right. Are you ready? Is

1 there anything else we need to take up before we bring
2 the jury?

3 MR. SAVAGE: There's one more thing, Judge.
4 Prior to the initiation of the trial, we challenged
5 indictment number 2011-GS-10-4790. The challenge, as the
6 Court will remember, is that the witness for that
7 indictment is not listed on the face of the indictment.
8 That, in and of itself, is not sufficient to quash the
9 indictment. However, there was testimony yesterday by
10 the Mount Pleasant Police Department that their
11 investigation ended on October 15th, 2009, and that there
12 was no further investigation. That testimony came from
13 the chief investigator which leads us to conclude the
14 only possible conclusion is that the Solicitor's office,
15 in their investigation, provided that information to the
16 Grand Jury. The chief investigating officer said
17 specifically she testified to the Grand Jury on the
18 earlier two indictments and that she did not testify on
19 the third one.

20 THE COURT: But I think she said she couldn't
21 remember if she testified as to this indictment. And
22 generally what happens, as you well know, one detective
23 covers the whole department at the Grand Jury process.
24 And she said she didn't know who did or what did, but she
25 couldn't remember one way or the other. She didn't say

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1 she did or she didn't, if I remember the testimony
2 concerning that issue. But go ahead with your argument.

3 MR. SAVAGE: And once we've challenged that, we
4 believe they have an affirmative duty to show that the
5 jurisdiction is proper, that there was proper testimony
6 that it was not part of the Solicitor's staff that
7 presented that information.

8 THE COURT: Okay.

9 MR. SAVAGE: We've challenged them on that. We
10 take the position, based on the testimony, that it must
11 have been somebody from the Solicitor's staff because the
12 chief investigating officer had no knowledge.

13 THE COURT: Well, I just -- I understand your
14 conclusion from the testimony. I will accept your
15 version of it. Anything else?

16 MR. SAVAGE: No. We're ready to proceed, Your
17 Honor.

18 THE COURT: All right. Solicitor, anything you
19 want to put on concerning the indictment and the Grand
20 Jury process of 2011-GS-10-04790?

21 MS. GORDON: No, Your Honor. I think your
22 recollection of the testimony is correct.

23 THE COURT: The motion is denied. Anything
24 else?

25 MR. SAVAGE: The Defense is ready to proceed,

1 Your Honor.

2 THE COURT: Okay.

3 Anything from the State?

4 MS. GORDON: Nothing, Your Honor.

5 THE COURT: Will you bring us -- hold on just a
6 second. Do y'all want to take a very short break. Okay?
7 Because once they get the jury in here, I want to try to
8 leave them for at least an hour and a half. Okay?

9 MR. SAVAGE: Five minutes?

10 THE COURT: Let's take about a five-minute
11 break. Okay?

12 (WHEREUPON, court stood at recess for a short
13 break.)

14 THE COURT: Will you bring us the jury, please?

15 MR. SAVAGE: Judge, before we do that, just one
16 second. If the State ---

17 THE COURT: Hold on just one second. I'm
18 sorry.

19 MR. SAVAGE: The State has requested for me to
20 review whether or not we introduced a photograph of the
21 garage. I've checked with the court reporter. I don't
22 believe we have.

23 THE COURT: Well, you can introduce it in your
24 case.

25 MR. SAVAGE: I don't intend to.

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1 THE COURT: Pardon?

2 MR. SAVAGE: I don't intend to.

3 THE COURT: Okay. That's fine.

4 MR. SAVAGE: And I don't think the State is
5 entitled to take my photograph and adopt it as theirs.
6 So on cross-examination, we are under no obligation to
7 provide them copies of our file. And I would object to
8 them attempting to introduce anything from our file.

9 THE COURT: I think it's been marked for
10 identification, and the court reporter should have it.

11 MR. SAVAGE: No, sir.

12 MS. GORDON: That was my recollection. She
13 does not have it. But I would ask then to be provided
14 ---

15 THE COURT: Has it been marked for
16 identification?

17 MADAM COURT REPORTER: I don't have it.

18 THE COURT: Okay.

19 MS. GORDON: If it's been used for the ---

20 THE COURT: Well, hold on just a second. Look
21 at your notes and see if it's been marked for
22 identification only. I mean, if it has, it should be in
23 your possession. If it hasn't, it hasn't.

24 MADAM COURT REPORTER: I don't have it in my
25 notes.

1 THE COURT: You don't have it?

2 MADAM COURT REPORTER: Uh-uh (negative).

3 THE COURT: Okay. It's not marked for
4 identification, so it hasn't been offered. I'll just
5 have to deal with it when it comes up during the trial.
6 I'm not sure what you're asking me to do at this point in
7 time. I'm not going to say I'm not going to order you to
8 produce it. It depends on what the testimony is and
9 whether it's appropriate or not. Okay? If it'd already
10 been marked for identification, it should be in her
11 possession, and it's access to anybody in the courtroom.
12 I'm not going to -- what are you asking me to do?

13 MR. SAVAGE: Not allow the State to use my work
14 product for their purposes.

15 THE COURT: Well, I'll just have to deal with
16 that. It depends upon the testimony that I hear. Okay?
17 And I will deal with that at the appropriate time.

18 MR. SAVAGE: Thank you.

19 THE COURT: All right. Anything else?

20 MR. SAVAGE: Not from the Defendant.

21 THE COURT: Anything from the State?

22 MS. GORDON: Nothing from the State, Your
23 Honor.

24 THE COURT: All right. Bring us the jury,
25 please.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 10:49 a.m.)

3 THE COURT: All right. Mr. Savage, if you'll
4 call your first witness.

5 MR. SAVAGE: Good morning, Judge. This lady is
6 a 607 witness, Amanda Faulkner.

7 **AMANDA FAULKNER,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. SAVAGE:

11 Q. Good morning, Ms. Faulkner.

12 A. Good morning.

13 Q. You have been in the court all this week. And in
14 what capacity have you been in court this week?

15 A. Well, I'm an investigator for the Prosecutor's
16 office, so I've been helping with witnesses getting into
17 court and out.

18 Q. And as part of your role in investigations, are you
19 a sworn officer?

20 A. Yes.

21 Q. And that oath that you take is in part to provide
22 honest, good complete documentation upon matters for the
23 court; is that correct?

24 A. Do I what?

25 Q. Do you take an oath of office?

1 A. Yes. As an officer, yes.

2 Q. And does that oath include protecting the rights of
3 all individuals under the Constitution?

4 A. I don't know what you mean by protecting all rights
5 of ---

6 Q. When I ask you a question ---

7 THE COURT: Mr. Savage, don't interrupt her.
8 Let her finish and then ask her a question. Okay?

9 A. I don't understand what you're asking.

10 THE COURT: All right. Ask the question. I'm
11 sorry. I didn't mean to interrupt. But go ahead and ask
12 the questions.

13 And Ms. Faulkner, try to be as responsive as you
14 can. Okay?

15 THE WITNESS: Sure.

16 THE COURT: Okay. Please proceed.

17 Q. Ms. Faulkner, are you an investigator for the
18 Solicitor?

19 A. Yes.

20 Q. And how long have you been in that capacity?

21 A. Seven years.

22 Q. And as part of that investigative status, you
23 investigate for the Solicitor matters that come before
24 the court?

25 A. Yes.

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- 1 Q. And you take an oath of office?
- 2 A. As a police officer, yes.
- 3 Q. Okay. And do you act today under that oath?
- 4 A. Yes.
- 5 Q. And is that oath including protecting the rights of
- 6 all individuals?
- 7 A. I really don't know how to answer that.
- 8 Q. Really? I mean ---
- 9 A. Do I protect all individuals as a law enforcement
- 10 officer? Yes.
- 11 Q. And part of that is to provide complete, unbiased,
- 12 truthful information for a jury's consideration?
- 13 A. Right.
- 14 Q. The State has provided some photographs. And I'm
- 15 referring specifically to State's Exhibit 4. Are you
- 16 familiar with that photograph?
- 17 A. Yes.
- 18 Q. And when was that photograph taken?
- 19 A. Oh, I'm not sure of the date.
- 20 Q. Did you take the photograph?
- 21 A. I did.
- 22 Q. Was it taken in 2012?
- 23 A. Yes.
- 24 Q. Was it taken in the month of July of 2012?
- 25 A. It could have been, yes. June or July.

1 Q. And when did you first make that photograph
2 available to the Defendant through his attorney?

3 A. Oh, I don't know when it would have gotten to you.

4 Q. Well, actually, you know that it wasn't produced
5 until this trial had started; isn't that correct?

6 A. Oh, I'm not sure. I'm not sure what the date was of
7 it. But then I don't know when our Prosecutor hands it
8 over to you.

9 Q. Do you have any reason to believe that that
10 photograph was provided to anyone outside of your office
11 before Tuesday of this week?

12 A. I don't know when it was provided. I know that it
13 was taken at the end of June or July. I'm not quite sure
14 of the date. I don't know when it got handed over to
15 you.

16 Q. What was the purpose of that photograph when you
17 took it?

18 A. To show where Minor 1 described outside of Sam's Club
19 where something had happened to her.

20 Q. And how did you know what area to take the
21 photograph of?

22 A. From speaking to Minor 1.

23 Q. And did you speak to her in June or July of this
24 year?

25 A. I've spoken to her a couple of times. I'm not sure

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- 1 when we received this information.
- 2 Q. When you took this photograph, was she with you?
- 3 A. No.
- 4 Q. Did you have her on the cell phone as you took that
- 5 photograph?
- 6 A. No. She had told us that it happened near the back
- 7 of the Sam's parking lot, so we took several pictures of
- 8 the back of the parking lot.
- 9 Q. And when you took the pictures, you were speculating
- 10 or guessing where she meant?
- 11 A. Well, it's the back, so ... That's the back of the
- 12 parking lot.
- 13 Q. The question is were you speculating at the time you
- 14 took the photograph where the event she claims to have
- 15 taken place may have taken place?
- 16 A. I wasn't speculating. I had an area that she said
- 17 where it happened at, so I went and took pictures of that
- 18 area.
- 19 Q. How long have you been an investigator in your
- 20 career?
- 21 A. An investigator for the Solicitor's Office, seven
- 22 years.
- 23 Q. And what did you do before that?
- 24 A. I was a probation and parole officer.
- 25 Q. So how long have you been an agent of the State in

1 any capacity?

2 A. As a law enforcement officer, almost twelve years.

3 Q. Did you go over this photograph with Minor1 after you
4 took it?

5 A. I think we did.

6 Q. Before she testified?

7 A. Tuesday?

8 Q. Yes.

9 A. Not on Tuesday.

10 Q. Did you show her any other photographs of the area?

11 A. I think that we had a couple photographs of the
12 Sam's Club area that we showed her pictures of.

13 Q. What time of day and what day of the week was this
14 photograph taken?

15 A. I'm not for sure what day of the week it was, but I
16 think it was around ten or eleven a.m.

17 Q. And was that consistent with the time of year, time
18 of day, day of the week of the information that had been
19 provided to you?

20 A. We don't know if she was able to say what day of the
21 week it was. I don't think she knew that. But I think
22 she said it was during the day, if I'm correct, in her
23 testimony.

24 Q. So you, Ms. Faulkner, were the one who exclusively
25 determined when and where to take this photograph?

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1 A. I took the photograph based on Minor 1 telling me
2 that's where it occurred.

3 Q. The question that I asked is that you, Investigator
4 Faulkner, determined the time and location of the
5 photograph?

6 A. No, I didn't determine the location. Minor 1
7 determined the location.

8 Q. Did you determine the time?

9 A. I went out around ten or eleven.

10 Q. Did you determine the day of the week?

11 A. That it happened or that I went and took the
12 picture?

13 Q. That you took the picture?

14 A. Yeah, I chose what day to go out there and take the
15 picture.

16 Q. Do you remember what day of the week it was?

17 A. I can't remember what exact day of the week it was.
18 It was a Monday through Friday.

19 Q. You have notes, I assume, when you do
20 investigations?

21 A. Uh-huh (affirmative).

22 Q. Do you have notes of that?

23 A. I would have had notes that I was going out to take
24 pictures. I would have had it on my calendar at work
25 showing where I was.

1 MR. SAVAGE: May I approach?

2 THE COURT: Yes, sir.

3 Q. Ms. Faulkner, well, how about educating the jury on
4 the type of documentation to authenticate documents that
5 you're trained in investigations. For instance, where
6 are your initials on that photograph?

7 A. I don't have my initials on this photograph.

8 Q. Where is the date in which you took the photograph
9 on that photograph?

10 A. There aren't any dates on this.

11 Q. How would you even know that that's your photograph?

12 A. Because I took this photograph.

13 Q. Well, how do you know?

14 A. Because I was there when I took the photograph.

15 Q. Well, did you mark it in any way or ---

16 A. Oh, is it marked? No, it's not marked.

17 Q. How can you tell that's Sam's Club parking lot? How
18 would the jury be able to look at that and tell that
19 that's Sam's Club parking lot?

20 A. Because I took the picture at the Sam's Club parking
21 lot.

22 Q. Was the jury with you?

23 A. No.

24 Q. All right. So how does the jury, once it has to
25 make a decision, how do they know that's Sam's Club

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1 parking lot?

2 A. I was in and out of the courtroom when Minor 1
3 testified. So I don't know if she specifically pointed
4 to this picture and was able to identify it.

5 Q. Are you familiar with Google Earth?

6 A. Somewhat.

7 Q. And tell the jury what Google Earth is.

8 A. I think on Google Earth you can put in an address,
9 and it will show up like an aerial photo perhaps of it.

10 Q. And what would be the advantage of an aerial photo
11 over the photos you took?

12 A. I guess for the aerial photo you could show the
13 whole entire area.

14 Q. Would the jury then be able to see the locations in
15 more precise terms where these activities allegedly
16 occurred?

17 A. Well, they'd be able to see a broader picture of the
18 whole thing. And I think we were being more specific
19 when we said the back of the parking lot. So that's why
20 we took the picture of the back of the parking lot.

21 Q. And in the photograph you took of the back of the
22 parking lot, how many vehicles were in that photograph?

23 A. In this one?

24 Q. Yes, in State's 4. We can show it to the jury or I
25 can put it back on ---

1 A. In this photo, there aren't any vehicles.

2 Q. Is this the photograph in which you took at your
3 choosing on the time and date and location to show to the
4 jury?

5 A. Yeah, that looks like my photo.

6 Q. Is there any connection between you and Google
7 Earth?

8 A. Is there an connection between me and Google Earth?

9 Q. Yes.

10 A. No.

11 Q. Is there a connection between, as far as you know,
12 the Solicitor's office and Google Earth?

13 A. A connection? I don't think so.

14 Q. In other words, you chose the date and time and
15 place of this photograph. Did anybody in law
16 enforcement, the Solicitor's office influence Google
17 Earth when and where they would take the photograph?

18 A. I don't know if anyone influenced Google Earth.

19 Q. Could Mr. Arroyo or his defense counselor or anybody
20 on his side determine from Google Earth when and where to
21 take the photograph?

22 A. Can they go on Google Earth? Is that what you're
23 asking?

24 Q. Can anyone other than Google Earth itself and the
25 status of the satellite that takes the pictures -- can

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1 that be influenced by anybody who's a litigant in this
2 case?

3 A. Oh, I have no idea.

4 Q. Really?

5 A. Can anyone go on Google Earth and change it?

6 Q. No. Can anyone instruct Google Earth when and where
7 and how to take a photograph?

8 A. I think you can just go on Google Earth ---

9 Q. And accept what they've already taken?

10 A. Right.

11 Q. Now, did you do that in this case? Did you
12 establish an independent photograph of the area in
13 question?

14 A. Did I go on Google Earth? Is that what you're
15 asking me?

16 Q. Yes.

17 A. No, I did not use Google Earth.

18 Q. Is that available in your office?

19 A. Yes.

20 Q. Does Google Earth take repeated photographs of the
21 same location?

22 A. I don't know that much about Google Earth. So I
23 don't -- I'm just not sure.

24 Q. Do you recognize this photograph?

25 MS. GORDON: Objection, Your Honor,

1 authentication.

2 MR. SAVAGE: The question was, do you recognize
3 this photograph.

4 THE COURT: As far as the objection, it's
5 overruled. He just asked does she recognize it.

6 A. I mean, I've never seen it before. I think that ---

7 Q. Tell the jury whether or not this photograph, if you
8 know, represents Sam's Club parking lot in total in North
9 Charleston?

10 A. I have no idea.

11 Q. Well, take ---

12 A. I don't know. I don't know if that's Sam's Club.

13 Q. Take your time and evaluate the photograph.

14 THE COURT: Mr. Savage, she said she didn't
15 know.

16 MR. SAVAGE: Well, I'm going to give her time
17 so that she can look at the photograph -- she hasn't seen
18 it before -- and see if she can identify anything in that
19 photograph.

20 A. I see Mall Drive and 26, but I don't know what that
21 building is.

22 Q. Where is Sam's Club located?

23 A. Oh, I see over here it says 4900 Centre Point Drive,
24 North Charleston.

25 Q. Now, show us, if you can on that map so the jury can

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1 see, the area in the parking lot that you are describing.

2 A. I don't know where Sam's Club is. Is this Sam's
3 Club?

4 Q. I don't know. I have to ask you the questions.

5 Well, to make it easier than that. Just show us an area
6 in the parking lot that's not full of vehicles. Front?
7 Back? Side?

8 A. I don't know if that's -- if that's supposed to be
9 representing vehicles. I'm sorry. I don't know what I'm
10 looking at.

11 Q. Okay. That's fair.

12 A. If you can make it closer.

13 Q. Is there anything in particular you'd like to see
14 close up?

15 A. No.

16 Q. So the question that I had asked earlier was that
17 when you provide evidence for a jury to analyze, do you
18 look for independent verification of the facts that you
19 present to them?

20 A. Do I show all the facts?

21 Q. I'm not trying to confuse you about this photograph.
22 I'm just asking you a question. Do you try to explore
23 independent facts to let the jury make its determination?

24 A. Yes.

25 Q. And did you attempt in any way to get an aerial

1 photograph, either that you took or a G.I.S. map or
2 anything, so that we could see with some accuracy where
3 this alleged event took place?

4 A. Did I get an aerial photo? No, I didn't. And I
5 wouldn't have.

6 Q. What was the vehicle in which this alleged activity
7 took place?

8 A. Well, I'd have to go back to my notes.

9 Q. Did you ever photograph that vehicle?

10 A. No.

11 Q. Did you ever ask for that vehicle to be examined for
12 any type of forensic evidence about the misconduct?

13 A. No. The time frame that I was looking at it was
14 pretty far out.

15 Q. For instance, if there was bodily fluids in that
16 vehicle, they can be preserved for years, can they not?

17 A. Yes.

18 Q. And you knew that at the time these allegations
19 arose?

20 A. Uh-huh (affirmative).

21 Q. Did you ask for a description of the vehicle and
22 attempt to examine the vehicle?

23 A. No. Oh, I got a description of the vehicle. I just
24 don't remember it right now.

25 Q. Did you ever go back to verify that the description

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1 of the vehicle that you were provided ever matched a
2 vehicle that was owned or in the possession of the
3 Defendant?

4 A. Did I ever check on his vehicles? Is that what you
5 just asked?

6 Q. Were you told of a vehicle?

7 A. Yes.

8 Q. Did you ever take that description and see whether
9 or not a vehicle of that description matched any vehicle
10 that the Defendant had in his possession, either through
11 ownership or somebody provided to him?

12 A. I think that it was confirmed through other family
13 members.

14 Q. Again, you're thinking?

15 A. Well, I don't have my notes in front of me. But if
16 I recall correctly, that I had some other family members
17 confirm the truck.

18 Q. Did you ever verify it?

19 A. Through the family members.

20 Q. To the best of your recollection?

21 A. Correct.

22 Q. Were you aware that the child made certain
23 complaints about the penis of the Defendant?

24 A. Complaints about the penis?

25 Q. Yes.

1 A. No.

2 Q. You were not aware that the charges before the Court
3 today involved penile ---

4 A. Oh, yes, I'm aware of that.

5 Q. --- penetration?

6 A. Yes.

7 Q. And are you aware that the young child who made
8 these allegations was gynecologically examined?

9 A. She had a medical, yes.

10 Q. And you were aware that there was no evidence
11 arising from that consistent with her allegations?

12 A. Yes. That's usually how it is.

13 Q. Repeated penile ---

14 MS. GORDON: Objection, Your Honor. Leading.

15 MR. SAVAGE: 602, as I mentioned before.

16 THE COURT: I understand. I'll allow you to
17 lead.

18 Q. Repeated penile and digital penetration.

19 A. Yes.

20 Q. No evidence consistent with that?

21 A. No medical evidence.

22 Q. Correct.

23 A. Right.

24 MR. SAVAGE: Mr. Arroyo, stand up.

25 (WHEREUPON, the Defendant stood.)

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- 1 Q. Has anybody ever asked him about his penis?
- 2 A. I don't think I'm allowed to talk to him.
- 3 Q. Did anybody ever ask permission to talk to him?
- 4 A. I didn't.
- 5 Q. Or ask him for permission to know about his penis?
- 6 A. Can you just ask me one question first?
- 7 Q. Yes.
- 8 A. Okay.
- 9 Q. Did you take over the investigation of this case?
- 10 A. Once the case is in my office, then I work with that
- 11 police agency, and we work together.
- 12 Q. And you know that the police agency did nothing
- 13 after October 15th, 2009?
- 14 A. Well, I don't know what the date.
- 15 Q. You were in court yesterday, weren't you?
- 16 A. Well, as soon as I get the case, I work together
- 17 with -- like Detective Bacon and I will still continue to
- 18 work together.
- 19 Q. You're aware that Detective Bacon said she didn't do
- 20 anything October 15th?
- 21 A. I've been in and out of the courtroom, but I do
- 22 recall that.
- 23 Q. The question I asked ---
- 24 A. Uh-huh (affirmative).
- 25 Q. --- once you took over the case with the help of

1 these prosecutors -- in fact, all these people back here
2 are prosecutors. There are senior prosecutors ---

3 MS. GORDON: Your Honor, misstating evidence.

4 THE COURT: Mr. Savage, ask questions, please,
5 sir, if you would, please.

6 Q. Ms. Shealy, stand up.

7 MR. SAVAGE: Everybody that works with the
8 Solicitor's office, please stand up.

9 MS. GORDON: Objection, Your Honor.

10 THE COURT: I'll sustain the objection. Just
11 ask questions.

12 Q. Did any of these people -- y'all worked with them,
13 correct?

14 A. On this case I worked with Elizabeth Gordon and
15 Marian Askins.

16 Q. Did you discuss with them, these two prosecutors,
17 that you would like to know more about the penis of Mr.
18 Arroyo?

19 A. No. I wouldn't ask that.

20 Q. You wouldn't ask that? Well, what about the medical
21 records of Mr. Arroyo? Were you aware that he was in the
22 Navy and was discharged from a career in the Navy and
23 that he was a Naval flight officer and that he was an
24 engineer, a medal-winning combat veteran?

25 A. I'm aware of that.

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1 Q. Were you aware of that?

2 A. I was aware that he was in the Navy and an engineer.

3 Q. Did you ever look at his medical records or ask to
4 look at his medical records to see whether or not there
5 was any evidence in there that ---

6 THE COURT: Mr. Arroyo, please have a seat.

7 (WHEREUPON, the Defendant resumed his seat.)

8 Q. --- his medical condition?

9 A. Did I see his medical records?

10 Q. Did you ever do anything to confirm his medical
11 condition?

12 A. I don't know about his medical condition.

13 Q. Did you interview Minor 1?

14 A. Yes.

15 Q. Did you interview his wife?

16 A. Yes.

17 Q. Did they, either one of them, describe to you with
18 any detail abnormalities about his penis?

19 A. No.

20 Q. Did you ask that question?

21 A. If he had any abnormalities?

22 Q. Something that would give you reason to conclude
23 that only somebody who saw his penis could describe the
24 particularities of his penis?

25 A. Yeah, we asked if there was any sort of thing that

1 would make it different or ...

2 Q. You did ask that?

3 A. Well, I think that we asked. I can't -- I don't
4 remember the exact words. But nothing -- if there was
5 anything in particular about it.

6 Q. But that would be something that you would ask so
7 that you could verify the believability, the credibility,
8 the truthfulness of this child. Isn't that fair to say?

9 A. Yes, you could.

10 Q. Did anybody ever describe anything abnormal about
11 the anatomy of his penis?

12 A. No, I don't remember anything like that.

13 Q. Did anyone ever describe anything abnormal about the
14 pigmentation of his penis?

15 A. No, I don't remember that.

16 Q. Would that be something that you would expect a
17 witness to tell you who has repeatedly seen the penis,
18 who has repeatedly touched the penis or has repeatedly
19 observed the penis?

20 A. I don't know if Minor1 would be able to say that.

21 Q. Would you expect someone to be able to recognize an
22 abnormality about the penis?

23 A. An adult.

24 Q. An adult who saw a penis out next to the couch or
25 wherever it might have been.

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1 A. Perhaps.

2 MR. SAVAGE: Your witness.

3 MS. GORDON: Thank you.

4 CROSS-EXAMINATION

5 BY MS. GORDON:

6 Q. Ms. Faulkner, you're aware you're prohibited from
7 talking to the Defendant, correct?

8 MR. SAVAGE: That is absolutely untrue. And we
9 object to that, Your Honor. She knows that's not true.

10 THE COURT: I'm sorry. What was -- come here.
11 Come up here.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: Ask your question, please,
15 Solicitor.

16 Q. Ms. Faulkner, are you aware that you're not allowed
17 just to go out and speak to the Defendant on your own,
18 correct?

19 THE COURT: All right. Hold on a second.
20 Do you have an objection?

21 MR. SAVAGE: And that's the objection which is
22 just a flat out misstatement of the law. The Defendant
23 can always voluntarily respond to the questions. The
24 attorney representing the Defendant can respond to the
25 questions.

1 THE COURT: All right. What's your legal
2 objection to the question?

3 MR. SAVAGE: Misleading question.

4 THE COURT: Overruled.

5 Q. Ms. Faulkner, are you aware that you cannot just go
6 out and talk to the Defendant when you want to?

7 A. Correct.

8 Q. And are you aware that you can't just call up a
9 doctor and ask for a defendant's medical records?

10 A. No, I definitely can't do that.

11 Q. Would you -- let me back up. When you took these
12 pictures of Sam's Club, were you basing where you took
13 your pictures based on information given to you by Minor 1?

14 A. Correct.

15 Q. And then did you confirm with Minor 1 if those were
16 the right -- if that was the right area?

17 A. Right.

18 Q. And give her an opportunity to say yes or no or
19 direct you into another area?

20 A. Right, in the pictures.

21 Q. Would you expect a child who hasn't had a lot of
22 sexual experiences except with her abuser ---

23 MR. SAVAGE: Objection to the form of the
24 question.

25 THE COURT: Overruled. Go ahead.

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1 Q. --- to be able to give details about if one penis
2 looked different or something specific about a penis?

3 A. No, she couldn't.

4 Q. Did you ask her things like, is it or was it erect
5 or hard?

6 A. Yes.

7 Q. And was she able to tell you that?

8 A. Yes.

9 MS. GORDON: Nothing further.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY MR. SAVAGE:

13 Q. Ms. Faulkner, you're really not telling this jury
14 that you and the Solicitor don't have the power to get
15 medical records, are you?

16 A. To what?

17 Q. Get medical records?

18 A. On a Defendant?

19 Q. Yes.

20 A. I can't just call the doctor's office and say, can I
21 have so and so -- his ---

22 Q. Did you ever see this -- you know who this fellow
23 is, right? Judge Nicholson?

24 A. Yes.

25 Q. How long has he been in Charleston?

1 A. (No verbal response)

2 Q. Did you ever ask him to sign an order, as we did
3 this week, to get medical records?

4 A. I haven't.

5 Q. You didn't try?

6 A. No, I haven't.

7 Q. So you're telling the jury you can't get them?

8 Judge Nicholson's been here for years. Did you ever ask
9 him?

10 A. To get medical records?

11 Q. To get Arroyo's medical records?

12 A. No. I can't just call the doctors and ask for his
13 medical records.

14 Q. I didn't say call the doctor; I said call the judge.
15 Judge Nicholson, one of the fine judges that are in this
16 courthouse. Did you ask any of them?

17 A. No.

18 THE COURT: Any recross?

19 MS. GORDON: Just ---

20 RECCROSS EXAMINATION

21 BY MS. GORDON:

22 Q. Ms. Faulkner, are you aware that in order to get a
23 defendant's medical records you would have to have a
24 reason, an articulable knowledge and reason to believe
25 there's something in there relevant to this case?

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1 A. Right.

2 THE COURT: You may step down. Thank you very
3 much.

4 Mr. Savage, if you'll call your next witness,
5 please, sir?

6 MR. SAVAGE: The Defense calls Erick Arroyo.

7 **ERICK ALBERTO ARROYO,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. SAVAGE:

11 Q. Your middle name's Alberto?

12 A. That is correct, sir.

13 Q. Your date of birth is ?

14 A. Yes, sir.

15 Q. Are you the same Erick Alberto Arroyo who has been
16 charged in indictment 2010-GS-10-529?

17 A. Yes, sir.

18 Q. 2010-GS-10-522?

19 A. Yes, sir.

20 Q. 2011-GS-10-4079?

21 A. Yes, sir.

22 Q. Are you familiar with these charges?

23 A. Yes, sir.

24 Q. Mr. Arroyo, did you in Charleston County or at any
25 other location between July 1st, 2008, and September

1 22nd, 2009, or any other time period engage in a sexual
2 battery upon Minor 1 , to wit, penile penetration?

3 A. I did not.

4 Q. Mr. Arroyo, did you in Charleston County or any
5 other location between July 1st, 2008, and September
6 22nd, 2009, engage in sexual battery upon Minor 1
7 to wit, digital penetration?

8 A. I did not.

9 Q. Mr. Arroyo, did you in Charleston County or any
10 other location between July 1st, 2008, and September
11 22nd, 2009, willfully, lewdly, or without willfulness and
12 without lewdness commit or attempt to commit a lewd or
13 lascivious act upon the body or any member thereof of a
14 child named Minor 1 ?

15 A. I did not.

16 Q. You've been in court this week?

17 A. Yes, I have.

18 Q. Has your family been in court with you?

19 A. Yes, they are.

20 Q. Your mom and dad?

21 A. My mother and father.

22 Q. From Puerto Rico?

23 A. Absolutely.

24 Q. Other family members including your two daughters?

25 A. That's correct.

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1 Q. Are you the same Erick Arroyo we've heard about with
2 the Navy career?

3 A. That is correct.

4 Q. Are you the same Erick Arroyo who lives over in
5 Mount Pleasant?

6 A. That is correct.

7 Q. And that you came to Mount Pleasant as a result of
8 your Navy career?

9 A. That is correct.

10 Q. Are you currently in a divorce proceeding?

11 A. Yes, I am.

12 Q. Has it been inflamed?

13 A. Very much so, for three years.

14 Q. Were you raised in Puerto Rico?

15 A. Yes, I was.

16 Q. Did your parents request medical intervention,
17 surgery, when you were seventeen ---

18 MS. GORDON: Objection, Your Honor. Leading.

19 THE COURT: I'll sustain the objection. Don't
20 lead the witness.

21 Q. Did your parents, when you were a child in Puerto
22 Rico, request medical intervention for you?

23 A. Yes, they did.

24 Q. Was that done with the intent to improve your
25 health?

- 1 A. Yes, it was.
- 2 Q. Did it engage -- did it include surgery?
- 3 A. Yes, it did.
- 4 Q. Whose choice was that?
- 5 A. Well, it was my choice but the doctors recommended
- 6 it as the optimal -- the cure.
- 7 Q. And were your parents involved in that decision?
- 8 A. Yes, they were.
- 9 Q. Did it include surgery on your penis?
- 10 A. Yes, it did.
- 11 Q. Is that all documented in your medical records?
- 12 A. Yes, sir, it is.
- 13 Q. Including your Naval medical records?
- 14 A. Yes, sir. All scars are.
- 15 Q. As a child -- as a teenager, I think, you were a
- 16 fully developed male at the time you had that surgery?
- 17 A. Yes, I was.
- 18 Q. Did it create any controversy in your circle of
- 19 friends?
- 20 A. It was one of those things that was embarrassing.
- 21 But, yes, especially throughout my Navy career, boot camp
- 22 and all, because you normally share camp showers.
- 23 Q. So that people who saw your penis in the showers
- 24 would make fun of you?
- 25 A. Yes, they did.

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- 1 Q. Are you familiar with other male penises?
- 2 A. Yes, sir, I am.
- 3 Q. Through the same opportunity?
- 4 A. Yes, sir.
- 5 Q. Is there anything unusual about your penis?
- 6 A. Yes, sir, there is.
- 7 Q. Is there anything unusual about the pigmentation,
- 8 the color of your penis?
- 9 A. Yes, sir.
- 10 Q. Tell the members of the jury what that is and
- 11 whether it's clearly visible or whether, you know, how
- 12 somebody who saw your penis would react and observe and
- 13 how people have reacted and observed your penis in its
- 14 unexcited form?
- 15 A. Excited or unexcited form?
- 16 Q. Unexcited.
- 17 A. Unexcited form, it's discolored. Basically it's
- 18 darkened throughout the tip and with scars surrounding
- 19 the head.
- 20 Q. Are these scars consistent with what a typical -- my
- 21 mind went blank right now -- a typical circumcision would
- 22 be?
- 23 A. No.
- 24 Q. How old were you when you were circumcised?
- 25 A. Approximately sixteen.

1 Q. As a result of that surgery, did it give lasting,
2 permanent scarring that would distinguish your penis from
3 others?

4 A. Yes. You can thoroughly see the stitches.

5 Q. Is your penis -- now, I know this is embarrassing.
6 But is it speckled? Would that be a fair word?

7 A. It's speckled, mottled.

8 Q. By that you mean blotches and different colors all
9 over your shaft and the head of your penis?

10 A. That is correct.

11 MR. SAVAGE: I'm sure the Prosecutor has some
12 questions.

13 THE COURT: Cross-examination?

14 MS. GORDON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. GORDON:

17 Q. Good morning, Mr. Arroyo. We're still in the
18 morning. Good morning.

19 A. Good morning.

20 Q. Now, you come from a pretty close-knit family,
21 correct?

22 A. Very much so.

23 Q. Your family's important to you?

24 A. Yes, it is.

25 Q. And you said that all these people are here for you?

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- 1 A. Yes, they are.
- 2 Q. And they're your family?
- 3 A. Yes, they are.
- 4 Q. And you have three daughters of your own?
- 5 A. That's correct.
- 6 Q. And a stepdaughter?
- 7 A. That is correct.
- 8 Q. And you taught your daughters to respect their
- 9 father?
- 10 A. They learned that on themselves.
- 11 Q. And you're the head of the family?
- 12 A. That is correct.
- 13 Q. And you're Melina's family too?
- 14 A. Not anymore.
- 15 Q. She's your sister?
- 16 A. No proof of that.
- 17 Q. You used to have a good relationship with her?
- 18 A. It was always very dubious.
- 19 Q. To the point that you let her move into the house
- 20 with you?
- 21 A. At her request.
- 22 Q. With her children?
- 23 A. At her request.
- 24 Q. And let's talk about Minor 1 then. Certainly, you
- 25 love Minor 1 ?

1 A. As I do the rest of my family.

2 Q. And you told people that you loved her like she was
3 your own daughter?

4 A. That is correct.

5 Q. And Minor! was -- she was a good kid?

6 A. Troubled, but good kid.

7 Q. She got good grades in school?

8 A. Yes, she did.

9 Q. She didn't get in trouble in school?

10 A. That is not correct.

11 Q. She -- have you viewed her academic records?

12 A. Yes, I have. I have also spoken with her.

13 Q. When she lived with you, she was in the seventh
14 grade; is that correct?

15 A. I believe so.

16 Q. And then would you be familiar that her performance
17 level was considered exemplary?

18 A. That is correct. That was academic.

19 Q. I'm sorry?

20 THE COURT: Mr. Arroyo, you may answer the
21 question ---

22 THE WITNESS: Yes, sir.

23 THE COURT: --- yes or no, I don't know, I
24 don't understand. And you can give an explanation.

25 Okay?

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1 THE WITNESS: Yes, sir.

2 THE COURT: But quit volunteering information,
3 please, sir, if you would.

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. If it's an explanation to
6 your answer, that's fine. I have no problem. Okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Please proceed.

9 MS. GORDON: Thank you.

10 Q. Are you aware that there is not a single
11 disciplinary record or report in her academic records?

12 A. No, I'm not.

13 Q. And that her teachers described her as a delightful
14 child?

15 A. No, I'm not.

16 Q. Minor 1 played soccer?

17 A. Yes, she did.

18 Q. And you took her to some of those soccer games?

19 A. At the request of her mother.

20 Q. And you spent a lot of time with her?

21 A. At the request of her mother.

22 Q. To the point that you loved her like your own
23 daughter?

24 A. Like I did the rest of my family.

25 Q. And you were -- you helped Minor 1 with her homework?

1 A. Yes, I did.

2 Q. Now, let's talk about the night that Joyce found you
3 in the garage with Minor1. It was late at night, correct?

4 A. It wasn't that late.

5 Q. And when you walk in that garage -- you've got a lot
6 of junk?

7 A. Thirty years.

8 Q. But you've also got a refrigerator out there?

9 A. Yes, I do.

10 Q. And a freezer?

11 A. Yes, I do.

12 Q. And your washer?

13 A. Yes, I do.

14 Q. And the dryer?

15 A. Among many other things.

16 Q. And that's where you do your laundry?

17 A. Yes, it is.

18 Q. And you didn't have any trouble walking out into
19 that garage that night?

20 A. No. I always turn the lights on whenever I do.

21 Q. So you think the lights were on?

22 A. You can't walk into my garage without the lights
23 being on.

24 Q. So when Joyce found you, you think the lights were
25 on?

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- 1 A. I don't think. I know.
- 2 Q. The lights were on. So then she wouldn't have had
- 3 any trouble seeing what was going on in there?
- 4 A. If the lights were on, that's correct.
- 5 Q. And after Joyce found you in the garage, she told
- 6 you she knew what you were doing with Minor1 ?
- 7 A. She told me what she allegedly saw.
- 8 Q. And you told her that nobody would ever believe her?
- 9 A. No, I did not.
- 10 Q. And you know that she went to Minor1 that night?
- 11 A. Yes, I did.
- 12 Q. And you know that Joyce threatened to tell Melina
- 13 what she saw?
- 14 A. I don't recall that.
- 15 Q. Do you remember -- you, do you remember you calling
- 16 Melina and telling her that Joyce might call her and say
- 17 this?
- 18 A. About six or seven months later.
- 19 Q. And you were afraid that Joyce was going to call
- 20 Melina and tell her what she saw in the garage?
- 21 A. No, I was not.
- 22 Q. But you called her anyway and said, I think Joyce is
- 23 going to say I'm molesting Minor1 ?
- 24 A. Melina actually asked the question.
- 25 Q. So Melina came up with this on her own. Is that

1 your testimony?

2 A. My daughters actually informed her before I did.

3 Q. Your daughters informed Melina that your wife
4 thought that you were molesting Minor1? Is that your
5 testimony?

6 A. That is correct.

7 Q. So your daughters thought that you were molesting
8 Minor1?

9 A. No, they did not.

10 Q. Let's talk about the night -- let's get this
11 straight. There is no doubt that Joyce caught you in the
12 garage with Minor1?

13 A. Joyce saw me in the garage with Minor1.

14 Q. And that after that you argued with her?

15 A. I did not.

16 Q. She argued with you?

17 A. We weren't arguing.

18 Q. Y'all had a discussion about what she saw in the
19 garage?

20 A. What she allegedly saw.

21 Q. And that she believed you were molesting Minor1?

22 A. That's not correct.

23 Q. And she threatened to tell Melina?

24 A. That's not correct.

25 Q. Do you remember the night that Melina came over with

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- 1 the children ---
- 2 A. Yes, I do.
- 3 Q. --- on September the 20th of 2009?
- 4 A. Yes, I do.
- 5 Q. They came over for dinner; is that correct?
- 6 A. At her request.
- 7 Q. And you cooked though; isn't that right?
- 8 A. I usually cook for myself. Since I was by myself
- 9 without her, I usually did all the cooking in the house.
- 10 Q. And you cooked steak and chicken; is that right?
- 11 A. No. I usually stick with one meat.
- 12 Q. So do you remember if it was steak?
- 13 A. I made steak, and I made rice and beans.
- 14 Q. And when Melina got there, you gave her a drink?
- 15 A. At her request.
- 16 Q. And I think she had another drink with dinner?
- 17 A. And she always did whenever she came over to the
- 18 house.
- 19 Q. And that night you watched football?
- 20 A. Yes, I did.
- 21 Q. And you knew that Melina took a medication for her
- 22 bipolar as well?
- 23 A. She rarely took the medication.
- 24 Q. On this night Minor a's on the couch with you; is that
- 25 correct?

1 A. Yes.

2 Q. And Melina was on the love seat?

3 A. That's correct.

4 Q. And at first, A. was on the sofa with you?

5 A. When we were eating dinner.

6 Q. And then you asked Minor1 to put A. down on the
7 floor with her brother?

8 A. That's incorrect.

9 Q. A. ended up on the floor with her brother?

10 A. Yes, she did, right at our feet.

11 Q. And Melina fell asleep on the love seat?

12 A. I do not know if she fell asleep or not. I was
13 watching the football game.

14 Q. When Melina woke up, she was in a hurry to leave?

15 A. No, she wasn't.

16 Q. She wasn't?

17 A. No.

18 Q. So it took her a little while to get out?

19 A. I believe so.

20 Q. And you didn't argue with her that night?

21 A. Absolutely not. In fact, I actually kissed her and
22 the kids on their cheeks as they left, as I walked her
23 out.

24 Q. And you haven't argued with Melina since then?

25 A. I haven't spoken to Melina since then other than

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1 that time when she set me up where I would be arrested.

2 Q. When she left after a lovely dinner with her brother
3 and watching football, she left that night and has never
4 spoken to you again?

5 A. Other than, like I said, when she set me up to be
6 arrested.

7 Q. She never spoke to you again?

8 A. After that, she never did other than the night that
9 she -- or the day she set me up.

10 Q. When she -- if you'll answer this question. You
11 said absolutely nothing -- no arguments ensued between
12 you and Melina the night of September 20th of 2009?

13 A. That is correct.

14 Q. And that when she left that night, that is the last
15 time she ever spoke to you?

16 A. I already clarified that question. She called me
17 the night -- the day that I was arrested to set me up to
18 be arrested.

19 Q. She called you on September 22nd of 2009?

20 A. That is correct.

21 Q. And are you aware that her ...

22 MS. GORDON: Withdrawn, Your Honor.

23 Court's indulgence. Court's indulgence.

24 THE COURT: Yes, ma'am.

25 Q. Mr. Arroyo, the night that you were arrested or the

1 day -- was it day or night?

2 MR. SAVAGE: Objection.

3 THE COURT: What's your legal objection?

4 MR. SAVAGE: I know Ms. Gordon knows when ---

5 THE COURT: I haven't heard the question yet.

6 But what's the -- come up. Y'all come up here.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 Q. Now, Mr. Arroyo, the day that you were arrested ,you
10 told Detective Bacon that, in fact, you had called Melina
11 to tell her that Joyce was blackmailing you and that
12 Joyce was accusing you of molesting Minor1 ?

13 A. That is correct. And I believe I also clarified
14 that that was after my daughters had already told her.

15 Q. Would you like to review the statement?

16 A. I know what I said.

17 Q. And if that's not in the statement, you're saying
18 that's incorrect?

19 A. I know what I said.

20 Q. That you stated to Detective Bacon you acknowledged
21 that you called Melina to tell her that Joyce was
22 accusing you of molesting Minor1 ?

23 A. I believe I already stated that.

24 Q. I want to clarify one more thing. The divorce
25 action that is pending now, that wasn't initiated until

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1 the end of 2010; is that correct?

2 A. I don't have the documents here in front of me.

3 Q. So if the documents stated that, do you contest
4 that, that they were initiated in 2010?

5 A. If that's what the documents state, then that's
6 correct. However, when she left we were trying to
7 reconcile our marriage for a few months, and I was doing
8 everything possible to bring her back.

9 Q. She asked you to do some things? Joyce did?

10 A. And she's always tried to.

11 Q. And you wouldn't do what she ask you to do in order
12 for her to come back?

13 A. At the time I was trying to reconcile my marriage
14 and stuff based on trust.

15 Q. And she doesn't trust you?

16 A. Nor did I her.

17 Q. Do you remember telling Joyce and Melina that Minor 1
18 was going to make someone a beautiful wife?

19 A. No, I do not.

20 Q. The surgery that you're talking about that you had
21 when you were sixteen, that's just a circumcision
22 surgery?

23 A. Yes. Very uncommon once you're a teenager. Usually
24 you have it -- especially in the Spanish customs, you
25 usually have it when you're a newborn.

1 Q. And in fact, Mr. Arroyo, you did, in fact, own a
2 Ford F-150?

3 A. A red F-150. That is correct.

4 Q. And you sold that right after your arrest? Shortly
5 thereafter?

6 A. That is incorrect.

7 Q. When did you sell it?

8 A. The red F-150 was actually given to Joyce probably
9 about a year and a half ago.

10 MS. GORDON: The Court's indulgence.

11 Q. In addition to that red one, you owned a white one?

12 A. That is incorrect.

13 Q. Who owns the white one?

14 A. I never owned a white F-150.

15 Q. Who drove the white F-150?

16 A. I never owned a white F-150.

17 Q. Are you telling this jury you have never had a Ford
18 F-150 that you've driven that you've been behind the
19 wheel of?

20 A. I had a 1999 F-150, red.

21 Q. And the white F-150 was a King Ranch?

22 A. Correct.

23 Q. And you've never driven a white F-150 ever in your
24 life?

25 A. Back in 19 -- excuse me. In early 2000, I had a

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- 1 white F-150 that belonged to the company I worked for.
- 2 Q. Would there have been one at your house?
- 3 A. No.
- 4 Q. And with two seats in the front?
- 5 A. I think all cars have at least two seats in the
- 6 front.
- 7 Q. And two seats in the back?
- 8 A. No.
- 9 Q. Did you go to Sam's Club with Minor1 ?
- 10 A. And her children -- not her children, but her
- 11 sisters and brother.
- 12 Q. And you had a Sam's Club membership?
- 13 A. And also a Costco one.
- 14 Q. And you took Minor1 to Sam's Club?
- 15 A. And A. and G. .
- 16 Q. And one additional thing I want to talk about. Do
- 17 you remember the day that Joyce found the massage oil in
- 18 the couch?
- 19 A. I do.
- 20 Q. And your response was, don't let Minor1 know you
- 21 found that?
- 22 A. That is not true.
- 23 Q. Joyce was mad at you about that?
- 24 A. No, she wasn't.
- 25 Q. She wanted to know why Minor1 would have anything to

1 do with it?

2 A. I have no idea if she even said that.

3 Q. Was it an F-250?

4 A. I had a white F-250.

5 Q. So you drove a white F-250?

6 A. That is correct.

7 Q. And it was a dual cab with back seat?

8 A. That is correct.

9 MS. GORDON: Thank you. I have nothing
10 further.

11 THE COURT: Any redirect?

12 MR. SAVAGE: (No verbal response)

13 THE COURT: You may step down. Thank you very
14 much.

15 Call your next witness, please, sir.

16 MR. SAVAGE: The Defense rests, Your Honor.

17 THE COURT: Okay.

18 All right. Ladies and gentlemen of the jury, I'm
19 going to ask you to go to the jury room. And I've got to
20 hear some motions at this time. And I will either get
21 you back or we'll take a lunch break. It depends on what
22 transpires, and I'm not sure yet what's going to
23 transpire.

24 So please go to the jury room. Don't discuss the
25 case amongst yourselves.

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1 (WHEREUPON, the jury exited the open court at
2 approximately 11:51 a.m.)

3 THE COURT: All right. Any motions?

4 Everybody, please be quiet and have a seat. Court's
5 still in session.

6 MS. GORDON: Nothing from the State, Your
7 Honor.

8 THE COURT: Any motions from the Defendant?

9 MR. SAVAGE: Your Honor, at this time we'd just
10 renew the motions.

11 THE COURT: You renew your previous motions?
12 All right. For the records, those motions are denied.

13 Now, Solicitor, do you need a few minutes to make a
14 determination whether you're going to offer any reply
15 testimony, or do you know that now?

16 MS. GORDON: Give me two minutes.

17 THE COURT: I'm not trying to rush your
18 decision. I'll give you time to make that decision.

19 MS. GORDON: Yeah, I would like to ---

20 THE COURT: How much time do you need?

21 MS. GORDON: No more than five minutes, Your
22 Honor.

23 THE COURT: Pardon?

24 MS. GORDON: Five minutes.

25 THE COURT: All right. We'll take -- how about

1 ten minutes?

2 MS. GORDON: Okay.

3 THE COURT: We'll try to take a ten-minute
4 break.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 THE COURT: Solicitor, are you going to offer
8 any testimony in reply?

9 MS. GORDON: I'm seriously considering it.

10 THE COURT: Okay. So you haven't made up your
11 mind yet?

12 MS. GORDON: Yes, Your Honor, we'll just call
13 one witness.

14 THE COURT: You're going to offer testimony?

15 MS. GORDON: Yes, Your Honor.

16 THE COURT: Reply testimony?

17 MS. GORDON: Yes, Your Honor.

18 THE COURT: Okay. What ---

19 MS. GORDON: For the very limited purpose, just
20 one witness. It's Joyce Arroyo.

21 THE COURT: You're going to offer who?

22 MS. GORDON: Joyce Arroyo.

23 THE COURT: Okay. For what? I mean, I'm
24 sorry. Let me get my -- okay. That's the wife?

25 MS. GORDON: That's the wife, with regards to

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1 the penis.

2 THE COURT: With regards to what?

3 MS. GORDON: How the penis looks.

4 THE COURT: Oh, okay. All right.

5 Yes, sir?

6 MR. SAVAGE: I think the jury needs to see it.

7 I'm serious about that. If she's going to put in

8 testimony which is not truthful ---

9 THE COURT: I don't know what she's going to
10 say yet.

11 MR. SAVAGE: I have seen the penis. I'm glad I
12 don't have it. It's speckled. It's mutilated. It's
13 scarred. The penis is torn on the top. It's got
14 different pigmentation all over it. It is unlike
15 anything I've ever seen. Tom (phonic) has seen it as
16 well.

17 UNKNOWN MALE: Yes, Your Honor.

18 THE COURT: Well, I don't know what she's going
19 to say. Okay? We'll address that issue before -- after
20 she testifies. Okay?

21 MR. SAVAGE: Will the Court allow if she's
22 going to testify contrary to what he said, the production
23 of the penis?

24 THE COURT: I'm sorry. What?

25 MR. SAVAGE: If she testifies inconsistent with

1 what I know to be the truth, will the Court allow the
2 display of the penis?

3 THE COURT: Solicitor, what's your position on
4 that?

5 MS. GORDON: Your Honor, my understanding is
6 her testimony will be that when -- that she didn't --
7 that it's not to the extent that what they're claiming,
8 like you would just automatically know it. She's not
9 going to say that he didn't get circumcised as an adult
10 or have a scar, but that it's not like it ---

11 THE COURT: Well, every circumcision has a
12 scar.

13 MR. SAVAGE: The driving end of this is the
14 speckled -- it looks like a robin's egg. It's speckled.
15 It does not look like a normal penis.

16 THE COURT: Well, Solicitor, you didn't answer
17 my question. He says -- I guess he wants the man to drop
18 his pants and show his penis to the jury.

19 Is that correct? Is that what you're proposing?

20 MS. GORDON: Your Honor, my position ---

21 THE COURT: Well, let me see what he's
22 proposing first.

23 MR. SAVAGE: That's exactly what I intend to do
24 unless the Court prevents that. I intend to have him
25 strip his clothes in front of the jury and graphically

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1 show his penis like he showed me this morning.

2 THE COURT: Well, let me -- one difficulty I
3 have is procedurally. Okay? You've rested. Now she's
4 going to reply. At that point in time, the case is over.
5 And I'm not -- I don't know of -- I guess there's such a
6 thing as re-redirect.

7 MR. SAVAGE: It's a fancy word.

8 MS. GORDON: Surrebuttal.

9 THE COURT: There's a fancy word for it. What?

10 MR. SAVAGE: Surrebuttal.

11 THE COURT: Surrebuttal. There's such a thing
12 which is strictly in the discretion of the Court, and
13 it's very seldom invoked. Now, my difficulty is this.
14 We're sort of on a -- I know you raised the issue to the
15 jury about the child not being able to identify it and
16 the police not doing a good job by looking, having an
17 examination of his penis. And that's going to be your
18 argument to the jury. But it's sort of -- it's almost a
19 collateral -- I don't want to say a collateral issue.
20 But it's almost a collateral issue.

21 MR. SAVAGE: Judge, we respectfully disagree.
22 This is the weapon of the crime, same as if it was an
23 armed robbery with a handgun. A handgun would be
24 described.

25 THE COURT: Well, yeah, only on one indictment

1 where there was penile penetration.

2 MR. SAVAGE: If you want to dismiss that
3 indictment, that'll be fine with us.

4 THE COURT: Only on one indictment. It didn't
5 affect the issue, I assume, in the night in question, the
6 fondling.

7 MR. SAVAGE: Except that his testimony that he
8 had his pants down and his penis was out.

9 THE COURT: Well, let's do this. Let's listen
10 to her testimony. And you call it -- what's the
11 technical word for it?

12 MR. SAVAGE: Surrebuttal.

13 THE COURT: Surrebuttal. And I'll make a
14 decision on the surrebuttal or not make the decision on
15 the surrebuttal. Okay?

16 MS. GORDON: Your Honor, the State's position
17 would be they had the opportunity -- this is not a new
18 issue we're bringing up obviously in reply.

19 THE COURT: I know, but ---

20 MS. GORDON: They could have brought that in if
21 they ---

22 THE COURT: I understand. But if I allow
23 surrebuttal, then he -- and it's in the Court's
24 discretion to allow it or not allow it. Okay?

25 MS. GORDON: Yes, sir.

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1 THE COURT: I mean, it's available within the
2 rules of procedure. I don't know if I'm going to do yet.
3 I'm going to listen to the testimony and make a decision.
4 Okay?

5 MS. GORDON: Thank you, Your Honor.

6 THE COURT: Okay. Let me see -- on something
7 separate that the Court is concerned about, let me see
8 the attorneys up here.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 THE COURT: All right. Is there anything from
12 the State before we bring the jury?

13 MS. GORDON: Nothing, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. SAVAGE: The Defense is ready.

16 THE COURT: Bring us the jury, please.

17 (WHEREUPON, the jury entered the open court at
18 approximately 12:35 p.m.)

19 THE COURT: I understand the State has some
20 reply testimony; is that correct?

21 MS. GORDON: That's correct, Your Honor.

22 THE COURT: All right. Will you call your
23 reply witness?

24 MS. GORDON: The State recalls Joyce Arroyo.
25 Your Honor, is she still under oath, or would you like

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1 her re-sworn?

2 THE COURT: Yeah, I'd -- re-swear the witness,
3 if you would, please. Where is the Clerk? We don't have
4 a clerk.

5 Ma'am, would you put your left hand on the bible,
6 raise your right, please?

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: Thank you very much. You may have
9 a seat. Please state your last name and spell your last
10 name, please, ma'am.

11 THE WITNESS: A-R-R-O-Y-O.

12 THE COURT: Okay.

13 Solicitor?

14 JOYCE ARROYO,

15 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. GORDON:

18 Q. Ms. Arroyo, you testified earlier in the week that
19 you were married to Erick Arroyo?

20 A. That is correct.

21 Q. And you guys got married, I think you said, in 1981
22 or '82?

23 A. That's correct.

24 Q. During the marriage, I suspect you have had occasion
25 to see your husband's penis?

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1 A. Yes, I have.

2 Q. Can you please describe for the jury whether or not
3 Mr. Arroyo's penis is deformed? How would you describe
4 it?

5 A. A normal penis. I mean, he does have some faint
6 scarring, a surgery that he had when he -- he was born at
7 home. And he had a circumcision, but I mean, it's
8 nothing grotesque or anything of that nature.

9 Q. Did you immediately notice the scars when you first
10 starting having sexual relations with Mr. Arroyo?

11 A. No, I did not.

12 Q. And then there's also some testimony that he has --
13 his penis is discolored. How would you describe the
14 discoloration?

15 A. It does have some faint discoloration, but it's
16 nothing, you know -- it's nothing to be afraid of or it's
17 nothing, you know, grotesque.

18 Q. Were you ever aware that people made fun of his
19 penis?

20 A. He never mentioned that.

21 Q. And where is the discoloration? Is it immediately
22 noticeable?

23 A. No, it's not.

24 Q. Thank you. I have nothing further.

25 THE COURT: Cross-examination?

1

CROSS-EXAMINATION

2 BY MR. SAVAGE:

3 Q. Ms. Arroyo, I assume that you've seen his penis and
4 that you recall what you saw?

5 A. Yes, I ---

6 Q. Tell this jury whether or not it's speckled and
7 that it has different -- stark differences in color?

8 A. It is -- does have faint ---

9 Q. I didn't say faint. I said stark ---

10 A. No, that's not ---

11 Q. --- differences in color on the head of the penis

12 ---

13 A. No.

14 Q. --- and scarring on the shaft?

15 A. No. I mean, it does have -- if you look real close,
16 you know, you can see where -- but the ---

17 Q. If I was standing here, fifteen feet away from you

18 ---

19 THE COURT: Mr. Savage, let her finish her
20 answer, please, before you ask her another question.

21 Please finish your answer.

22 A. If you look really, really close, you can see it.

23 But, I mean, you would have to be really close to it.

24 Q. If he stood in front of the jury as I am now, which
25 he is willing to do ---

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1 A. Okay.

2 Q. --- to display his penis so that they can judge the
3 color of the penis, could they see it from this distance?

4 A. Not if it's not erect.

5 Q. When you have sex, oral or vaginal, is a man's penis
6 erect?

7 A. Yes.

8 Q. If he was standing in front of this jury whether he
9 was erect or not erect, would the jury be able to see the
10 speckled pigmentation on his penis?

11 A. No.

12 Q In your opinion?

13 A. In my opinion, no, unless he's done something to it
14 since then.

15 Q. What could he do to change the color of his penis?

16 A. I have no idea.

17 Q. What colors are his penis?

18 A. The normal color of a penis.

19 Q. What is normal?

20 A. It is -- I have not been with him since 2009. But I
21 mean, it was a normal penis.

22 Q. Is it uniform in color?

23 A. I don't believe anybody's is uniform in color. But,
24 I mean, it's ...

25 Q. Do you know the difference between what I would say

1 was the shaft and the head of the penis?

2 A. Yes.

3 Q. Is the penis head uniform in its pigmentation?

4 A. It has some discoloration. Not very much.

5 Q. Well, I don't know what that means, not very much.

6 A. It's faint. I mean, if you look at it, it looks

7 like it has freckles. It's not anything hideous. It's

8 ---

9 Q. I'm not asking you about something that would scare

10 somebody. I'm asking you if it's noticeable, different,

11 I suggest, with all respect to your first husband?

12 A. It -- it's a normal penis. It's not ---

13 Q. If husband number one was standing here and husband

14 number two was standing here, and the jury observed them,

15 would there be a difference?

16 A. I would believe every -- I would think that every

17 man's penis is a little bit different.

18 Q. In terms of color of the penis?

19 A. Yeah, if they're different colors.

20 Q. And in your husband number two's case, is it

21 multiple colors of the penis?

22 A. Very faint.

23 Q. Yes or no?

24 A. Yes, it's different colors.

25 MR. SAVAGE: That's all I have of this witness,

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1 Your Honor.

2 THE COURT: Any redirect?

3 MS. GORDON: Nothing, Your Honor.

4 THE COURT: You may step down. Thank you very
5 much.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Do you have any additional reply
8 testimony?

9 MS. GORDON: The State rests, Your Honor.

10 THE COURT: Okay. Thank you so very much.

11 Mr. Foreman, ladies and gentlemen of the jury, I
12 have to take up some additional motions at this time.
13 Please go to the jury room. Please don't discuss the
14 case. Leave your notepads in the chairs.

15 (WHEREUPON, the jury exited the open court at
16 approximately 12:45 p.m.)

17 THE COURT: All right. Mr. Savage, I
18 understand you would renew your previous motions at the
19 end of the State's case and at the end of your case; is
20 that correct?

21 MR. SAVAGE: A couple of things, Your Honor.

22 THE COURT: Let me cover the motions first,
23 your previous motions. I assume you're renewing them at
24 this time?

25 MR. SAVAGE: Yes. But prior to that motion, we

1 ask for the Court to exercise its discretion in
2 retrieving in toto State's Exhibit -- I believe it was 4.
3 THE COURT: Okay.
4 MS. GORDON: 9.
5 MR. SAVAGE: 9, I'm sorry.
6 THE COURT: Okay. 9? That's the statement?
7 MR. SAVAGE: And the reason for that is because
8 the statement in toto is not really possible to redact to
9 exclude those things that would be in violation of the
10 Jennings decision all through the report of those things
11 that would support the credibility and believability of
12 the young child. In addition to that, it contains a full
13 page of information on a subject that's not part of this
14 action. So page four is on a separate person, not this
15 -- the child who's bringing this action. Page three of
16 four in total would be in violation of Jennings. Page
17 two, about ninety percent of it, ninety-five percent of
18 it, would be a violation of Jennings, and page one is the
19 only one that could be appropriately redacted.
20 Your Honor, our argument would be that Your Honor
21 has discretion in accordance with case law to remove this
22 document which was inadvertently by mistake, my error, my
23 malpractice error, in allowing it to get into evidence.
24 The harm can be stopped at this time by you exercising
25 your discretion. It's clearly in violation in State

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1 versus Jennings. It's in violation of our argument
2 throughout this whole case in terms of testimony and
3 evidence provided by expert witnesses. We would
4 encourage the Court to exercise its discretion so that
5 the error is not harmless and make that decision that it
6 is harmful.

7 And two, that it's inevitable that this case will be
8 reversed either on appeal or on a post-conviction relief
9 due to my missing my responsibility ---

10 THE COURT: Well, at this point, you haven't
11 missed it because I've allowed you, at this point in
12 time, to ask the Court to remove it. So it's no error on
13 this -- you have corrected that previous error.

14 MR. SAVAGE: Thank you.

15 THE COURT: Okay. I'm allowing you to ask the
16 Court to remove it even though it's already been admitted
17 without objection. So that mistake is corrected in this
18 Court's opinion.

19 MR. SAVAGE: Thank you.

20 THE COURT: First of all, let me see it. I
21 don't know what it says. Y'all admitted it without
22 objection. I never looked at it. Let me see it.

23 And then I'll listen to your argument, Solicitor.
24 Just give me a chance to read it.

25 MS. GORDON: That's fine. I was just saying he

1 should have my copy that I've redacted.

2 THE COURT: Okay. Is this the redacted copy?

3 MS. GORDON: No, that's the original from
4 yesterday.

5 THE COURT: Okay. This is the original. Just
6 give me a chance to review it. And I'll listen to your
7 argument, Solicitor, and I'll listen to your rebuttal,
8 Mr. Savage, and I'll make a decision. This is the report
9 that was put in with Mr. Elsey, right?

10 MS. GORDON: That's correct, Your Honor.

11 THE COURT: With the Dee -- okay, the Dee
12 Norton Lowcountry Children's Center. Okay.

13 (WHEREUPON, the Court reviewed State's Exhibit
14 Number 9.)

15 THE COURT: All right. I have reviewed it.
16 Solicitor, I'll be glad to hear your argument concerning
17 the admission of State's Exhibit Number 9.

18 MS. GORDON: Thank you, Your Honor. The State
19 would argue that it is admissible under Rule 106,
20 obviously, but also regarding it is a statement that the
21 Defendant went into with Mr. Elsey in detail about what
22 happened in that room, what happened in that interview,
23 what the victim said in that interview room, what he
24 asked her in that interview room, and went into detail
25 after detail about the questions that he asked, his

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1 recollection of what she said. And that would be his
2 reported recollection of that event.

3 After the Defendant asked about it, the State would
4 be allowed to put that into evidence as his reported
5 recollection. And most of the information that's in
6 there, the Defense has asked about throughout this trial.
7 So there is no -- there's nothing new except for that
8 information regarding the 404(b) evidence, which we agree
9 to take out. A lot of that information in there has been
10 elicited by the Defendant already.

11 THE COURT: Mr. Savage, anything you have
12 briefly in rebuttal, or have you said what you want to
13 say?

14 MR. SAVAGE: No, Your Honor. I think a clear
15 reading of the cases we've cited, particularly the
16 *Jennings* case, that even if 106 -- which we don't concede
17 -- even if 106 permitted the remainder of relating
18 writings and statements to be introduced, clearly that
19 doesn't trump the Supreme Court's decision that these
20 hearsay statements from the interviews with the minor
21 victims which are, we believe, inadmissible hearsay,
22 would be allowed in. Particularly the *Jennings* case -- I
23 know I've cited that before. But we have provided the
24 Court with a series of increasingly limited Supreme
25 Court, Court of Appeals decisions regarding the use of

1 expert witnesses in these cases. I was inadvertent and
2 asleep at the switch when this came up. But that report
3 is full of the things that we objected to in writing and
4 in our oral arguments with the Court. We have caught
5 that before the jury has been exposed to that document.
6 We believe the Court has discretion, and it is
7 appropriate exercise that discretion in removing that
8 from the jury's consideration.

9 MS. GORDON: Your Honor, we would additionally
10 add that under 801 that it's a prior consistent statement
11 after the Defendant has argued that the child gave
12 inconsistent statements, which is also our argument for
13 the video.

14 THE COURT: I'm sorry. What?

15 MS. GORDON: Which was also our argument -- is
16 also our argument for the video that you were going to, I
17 think, take under advisement yesterday.

18 THE COURT: Well, for the record, I'm not
19 allowing the videotape in. Okay?

20 MS. GORDON: Okay. Thank you, Your Honor.

21 THE COURT: I'll sustain that objection.

22 THE COURT: All right. Number one, the last
23 page of the report apparently is concerning A.
24 Alvarez. That's not going in. Okay?

25 MS. GORDON: Your Honor, I have no objection to

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1 that. The Defense is the one that ---

2 THE COURT: I understand that. But I'm taking
3 that out. Okay?

4 MS. GORDON: Okay.

5 THE COURT: I'm going to take out the questions
6 and the interview that are related to the truthfulness of
7 the child in the interviewer's opinion. Okay? Now, I
8 have put X's on that. And if you will redact it
9 accordingly, other than how the Court is redacting it,
10 I'm going to allow it into evidence.

11 Now, if you will come up here, I will show both of
12 you what I have X'd out and listen if y'all have any
13 suggestions of anything else that I need to X out
14 concerning their opinion as to the child's truthfulness.
15 I'm just not going to let that go in.

16 MR. SAVAGE: Can I take this back?

17 THE COURT: Yeah. I mean, take a look at it.
18 And if you have anything else specifically you think
19 should be redacted, I will listen to you. I don't have a
20 copy. That's the only copy I have. If you'll just give
21 me the original. You've got a copy, right, Mr. Savage?

22 MADAM COURT REPORTER: I've got an extra copy.

23 THE COURT: Hand me the extra copy.

24 MR. SAVAGE: So what I'm trying to do is look
25 at your redaction and ---

1 THE COURT: Let me mark the redaction on this
2 one and let me keep the original for now. All right. On
3 page 4 is what I have redacted. I have taken off the
4 entire last page about A. , okay, Alvarez. Here, Mr.
5 Savage. Here is that copy, and I've got the original
6 which has been marked as State's Exhibit 9. I will give
7 you an opportunity to look at that and make any arguments
8 on what else you think should be redacted, although I'm
9 denying your motion to exclude the exhibit altogether
10 based upon the testimony and arguments of counsel. But I
11 will consider anything else that you think should be
12 redacted.

13 Solicitor, you need to listen.

14 MS. GORDON: I'm sorry.

15 THE COURT: If you've got a copy of it. Do you
16 have a copy of it?

17 MS. GORDON: I do not. I've given all my
18 copies up.

19 THE COURT: Okay.

20 MS. GORDON: But if I can just look on with
21 him.

22 MR. SAVAGE: Sure.

23 Judge, in keeping with what I've done this week,
24 let's go backwards. I'll start on page three of four.
25 And I would ask the Court to reconsider the following

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1 terms. Was the child free to correct the interview?

2 THE COURT: I'm just trying to find out where

3 ---

4 MR. SAVAGE: That's on the top of page three of
5 four. I'm not sure that that question was answered.

6 THE COURT: I don't think -- apparently, I
7 don't have the same page number you have.

8 MR. SAVAGE: I'm looking at twenty-two in terms
9 of the Bates stamp from the Solicitor's office.

10 THE COURT: Okay. I'm on twenty-one. You're
11 looking at twenty-two. Okay. I'm with you now. Was the
12 child free to correct interview? It says -- it was not
13 answered apparently.

14 MR. SAVAGE: Correct.

15 THE COURT: Right.

16 MR. SAVAGE: Did the child present as being
17 able to understand rules of the interviewer and follow
18 behavioral directions? We believe that would be a
19 commentary on believability of the child.

20 THE COURT: Okay. All right. You -- so you
21 want that redacted?

22 MR. SAVAGE: Yes, sir.

23 THE COURT: All right.

24 MR. SAVAGE: She voiced understanding. Did the
25 child present as being able to order events sequentially?

1 Again, that's a commentary on believability. This is
2 under the portion, she voiced understanding.

3 THE COURT: Right. I understand. I'm with
4 you.

5 MR. SAVAGE: We believe that should be struck.
6 If the -- and I see that you've struck through, and I'm
7 going to, in details. If the child made a disclosure,
8 did the child demonstrate the alleged abuse with a
9 drawing? We believe that should be struck.

10 THE COURT: Okay. All right. Anything else?

11 MR. SAVAGE: Where it stated, she pointed to
12 areas of the drawing, we believe that should be struck.

13 THE COURT: Okay.

14 MR. SAVAGE: We do not object to her name. We
15 do not object to the offender's name. We do not object
16 to the relationship. I am concerned about the sexual
17 abuse, but I'm not overly concerned about that if I could
18 tell the Court my -- how I view that. The typology of
19 maltreatment because that really doesn't comment more
20 than what the accusation has, so I'm really not concerned
21 with that. I am very concerned with professional opinion
22 regarding information elicited from the assessment in
23 which it says, there was a disclosure of abuse on the
24 basis of his professional opinion. The next paragraph in
25 full we would ask to be redacted in that that that gives

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1 the reasons why he provided the professional opinion of
2 disclosure of abuse.

3 THE COURT: Okay.

4 Solicitor?

5 MS. GORDON: Your Honor, of note ---

6 THE COURT: Okay. So we want to go back to the
7 top of the page. I think that's where he started.

8 MS. GORDON: Was the child free to correct the
9 interview? There's not an answer there, so I'm not sure
10 why ---

11 THE COURT: Did the child present as being able
12 to understand rules of interviewer and follow behavior
13 directives. It says, yes.

14 MS. GORDON: I'm sorry. I'm not ---

15 THE COURT: Out beside it, it says, yes.

16 MS. GORDON: I think I'm on a different page
17 than you.

18 THE COURT: And it describes, she voiced
19 understanding. It's got an answer to the right, and then
20 he has comment. And the next one, did the child present
21 as being able to order events sequentially? Yes.

22 MS. GORDON: Yes. Your Honor's already
23 indicated that you were striking that as well.

24 THE COURT: Right. I'm striking that.

25 MS. GORDON: And the only other thing that I

1 think that Mr. Savage has referred to, that she was able
2 -- that she used a drawing and she pointed to areas on
3 the drawing. I don't think that comments on her
4 credibility or believability, although I do think Mr.
5 Savage went into the issue of credibility on cross-
6 examination and opened the door to that. With regards to
7 the paragraph below, that information was submitted to
8 the jury. The expert witness was asked, did she disclose
9 digital penetration? Did she disclose penile
10 penetration? Did she disclose something that happened in
11 the living room? Did she disclose that it happened in
12 other locations? Did she disclose whether it had
13 happened more than one time or over a period of time? So
14 all of that information is already elicited and has been
15 in front of the jury.

16 THE COURT: Okay. Based upon arguments, I'm
17 going to go ahead and also strike -- I was originally
18 just going to strike two. I'm going to strike, did the
19 child present as being able to order events sequentially?
20 Yes, she could sequence many events. I'm striking that.
21 That's been requested. And those three questions, I
22 think, goes possibly towards the truth. Maybe you could
23 determine that. And I will strike those and redact the
24 document to that effect. Okay?

25 Now, before it goes to the jury, get me a redacted

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1 copy. Here's the original.

2 MR. SAVAGE: We've got more, Judge. I don't
3 mean to test the ---

4 THE COURT: I'm denying your motion on the rest
5 of them.

6 MR. SAVAGE: Can I quote from case law?
7 Improper corroboration testimony that is merely
8 cumulative -- which is the argument of counsel -- to the
9 victim's testimony cannot be harmless because it is
10 precisely this cumulative effect which enhances the
11 devastating impact of the improper corroboration. That's
12 a quote direct from *State versus Jennings*. Judge, we
13 didn't get to page two of the report that ---

14 MS. GORDON: Which is Bates stamped twenty-one,
15 Your Honor.

16 MS. GORDON: All right. Twenty-one. Okay.

17 MR. SAVAGE: The Court has redacted, mom has
18 now remembered that the alleged offender's oldest step-
19 daughter had accused him of sexual abuse. That is the
20 extent of the Court's redaction.

21 THE COURT: That's correct.

22 MR. SAVAGE: The next sentence says, also mom's
23 older adopted sister hates the alleged offender and will
24 not let him around her children in Puerto Rico. Alleged
25 offender's wife has left him many times in their

1 marriage. She left again a few months ago and told mom
2 -- and it goes on through. We believe that that whole
3 portion of that paragraph should be struck.

4 THE COURT: All right. I'll strike that next
5 paragraph. Also, mom's older adopted sister hates the
6 alleged offender and will not let him around her children
7 in Puerto Rico. I'm going to take that out. I think
8 that's in relation to the prior sexual allegations. All
9 right. What else?

10 MR. SAVAGE: The question, did the child
11 present as an accurate reporter regarding the verifiable
12 information, that is an obvious comment on the
13 truthfulness as is, was the child able to respond to
14 trauma-specific questions. Were there internal
15 limitations of the child's ability to respond? Did the
16 child present as being impacted by external factors? Did
17 the child present as suggestible? Again, that's a
18 commentary on the ---

19 THE COURT: Well, I'll take that out. Did the
20 child present as suggestible? I'll take that out.

21 MS. GORDON: Your Honor, I will argue that the
22 Defendant asked whether -- asked the witness whether or
23 not this child had -- this was suggested.

24 THE COURT: I understand. That's the reason
25 I'm allowing some of this in. It wasn't in your case-in-

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1 chief. It was in reply based on his cross-examination.

2 He opened the door on a lot of it.

3 MS. GORDON: Yeah.

4 THE COURT: And that's the reason I'm letting
5 it in. But some of it, I think, goes to the truth or
6 veracity of the opinion of the examiner, and I think that
7 violates the *State versus McCurley*. And I'm not going to
8 allow it in regardless. Okay?

9 MS. GORDON: And I just want to point, he
10 opened the door to credibility as well.

11 THE COURT: I understand that.

12 MS. GORDON: Okay.

13 THE COURT: Okay? I understand your argument.

14 MS. GORDON: Thank you, Your Honor.

15 THE COURT: I'm accepting it in part and
16 rejecting it in part. Okay?

17 MS. GORDON: Thank you, Your Honor.

18 THE COURT: All right. Anything else you want
19 to put on the record concerning this?

20 MR. SAVAGE: Well, the introduction really
21 wasn't about credibility of the witness at that time. It
22 was Dr. Elsey, not Minorl

23 THE COURT: I understand. It was on cross, and
24 she did it in reply.

25 MR. SAVAGE: My concern is *State versus Dawkins*

1 where an interviewer's hearsay testimony impermissibly
2 corroborated the victim's testimony because the outcome
3 of the case hinged on the victim's credibility regarding
4 the identification of the perpetrator. That's where the
5 post-conviction relief was granted.

6 THE COURT: Mr. Savage, I fully understand your
7 objection. I appreciate it and I want to thank you for
8 your objection. However, your objection, other than what
9 I've redacted, is overruled. Now, is there anything else
10 on this document?

11 And Solicitor, before it goes to the jury, I want to
12 get somebody to ---

13 MS. GORDON: Your Honor, I'll send it back to
14 my legal assistant. And I think the copy that you have
15 may have that one portion that was redacted?

16 THE COURT: Right.

17 MS. GORDON: It will look just like that, but I
18 can use this one.

19 THE COURT: Okay. Can you use that one?

20 MS. GORDON: Yes, because I've got this one
21 marked with what needs to be redacted.

22 THE COURT: Okay. That's fine.

23 MS. GORDON: I'm currently holding what has
24 been entered as State's Exhibit 9. I will take that and
25 have it appropriately redacted it and replaced.

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1 THE COURT: All right. I understand.

2 Mr. Savage, any other motions or -- you said you had
3 a couple of motions. What else do you have?

4 MR. SAVAGE: The other thing I was going to
5 take the opportunity to take the photograph, as the Court
6 said you would allow me to do.

7 THE COURT: I wanted you to do that before you
8 did the cross. I mean, I thought I made that real clear
9 so you could use it in cross. And I assumed -- you said,
10 let me see how it goes in cross. And you didn't ask to
11 do it. All that occurred up at the bench. And for
12 clarification, I gave the Defense counsel the opportunity
13 to take photographs and use those photographs in cross-
14 examination of Joyce Arroyo. And the response was that
15 he would see how it went in cross. And I assumed, since
16 you sat down and had no further questions, you didn't
17 want to take photographs. Now you want to take
18 photographs and recall her? Okay. I'm just asking what
19 are you asking the Court to do?

20 MR. SAVAGE: I didn't want to do that in front
21 of the jury. I don't know how those photographs are
22 going to come out. I would like to at least attempt that
23 if the Court would allow me to. If the Court does not
24 allow me to, we are prepared to move forward with our
25 closing argument.

1 THE COURT: All right. I'm going to move
2 forward with the closing arguments. Okay?

3 All right. Anything else? Anything else?

4 MR. SAVAGE: Your Honor, of course -- and
5 again, not to be disrespectful to the Court. But we
6 would take exception to the Court's ruling which would
7 disallow us to present the anatomy of the Defendant or a
8 photograph for the purpose of the jury to evaluate
9 whether or not the discoloration of the ---

10 THE COURT: Come here for a second, please,
11 sir.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: All right. Mr. Savage, anything
15 else?

16 MR. SAVAGE: No, Your Honor. I think we've
17 properly documented the record, and I appreciate the
18 Court's concern.

19 THE COURT: Okay. Thank you very much. All
20 right. Let me go off the record.

21 (Off record discussion)

22 THE COURT: All right. I'm going to tell the
23 jury that lunch is coming and we're going to recess until
24 two o'clock. So everybody be back at two o'clock.
25 That's forty-five minutes. At that time, we'll have

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1 closing arguments. We'll recess until two o'clock.

2 MS. GORDON: Thank you, Your Honor.

3 (WHEREUPON, court stood at recess for a lunch
4 break.)

5 THE COURT: All right. The jury didn't get
6 their lunch until about a quarter till. And they have
7 just finished, so we're ready to proceed.

8 All right. Are y'all ready for closing arguments?

9 MR. SAVAGE: Judge, I'm still concerned about
10 the redactions.

11 THE COURT: Well, I haven't seen the final
12 version of it. I can deal with that before we send it
13 back to the jury after closing arguments and the charge.
14 Before I allow it to go back to the jury, we can discuss
15 that. I haven't seen the final version.

16 Solicitor, do you have it?

17 MS. GORDON: I do, Your Honor. I think we
18 provided Mr. Savage a copy. I don't know for sure if we
19 had a third copy. This was the working copy that we
20 marked from the podium.

21 THE COURT: Where's the one we're going to send
22 to the jury?

23 MS. GORDON: This is the one for the jury.

24 THE COURT: All right. That's the one I want
25 to look at. Okay? I can deal with that before we send

1 it back with the jury. Okay? Before I send it back to
2 the jury, we can deal with that ---

3 MR. SAVAGE: I think that's appropriate, Judge.

4 THE COURT: --- after the closing arguments and
5 the charge.

6 All right. Is the State ready for closing
7 arguments?

8 MS. GORDON: The State's ready. Your Honor ---

9 THE COURT: Is the Defense ready?

10 MR. SAVAGE: Yes, we are.

11 THE COURT: The State does have one issue to
12 bring up. And that is the State has moved in limine to
13 -- asking that the Defendant -- Defense not be allowed,
14 number one, to comment on the Defendant's willingness to
15 show his penis to this jury. The Court has already ruled
16 on that, and that would be improper argument. And
17 second, in light of his argument in opening statements
18 that the Defendant could be sentenced to life in prison,
19 we would ask in limine that he not be allowed to refer to
20 sentencing because that is outside the purview of the
21 jury.

22 THE COURT: I think we've already covered the
23 question about time. The Defendant has agreed he's not
24 going to talk about the time. And you want to do what,
25 now, about what?

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1 MS. GORDON: In his cross-examination of Joyce,
2 the Defense question was -- and he somehow -- the answer
3 says that -- and he's willing to drop trou (phonic) right
4 here in front of all these jurors. If he showed these
5 jurors and he's willing to do that and drop trou and show
6 these jurors his penis, that would be improper. The
7 Court's already ruled that you're not going to allow
8 that, and that would be improper argument.

9 THE COURT: I don't know if he's going to argue
10 that.

11 MS. GORDON: Well, he went into it with the
12 witness, and that's why I bring it up.

13 THE COURT: I understand.

14 Mr. Savage, are you planning on saying that?

15 MR. SAVAGE: Something similar.

16 THE COURT: Pardon?

17 MR. SAVAGE: Something similar. If I say
18 something wrong, I'm sure the Prosecutor will object.

19 THE COURT: Well, I understand. But I hate to
20 interrupt -- I hate to sustain objections during closing
21 arguments. And if the Court has ruled, I'm not going to
22 allow him to drop his evidence, it's like you commenting
23 on evidence I have disallowed. It's the same thing. So
24 I'm going to instruct you not to say that -- I don't know
25 what you're going to say.

1 You don't want him to say that the State won't let
2 him drop his pants?

3 MS. GORDON: I don't want him to ---

4 THE COURT: I don't care if you tell the jury
5 ---

6 MS. GORDON: -- the Defense indicate ---

7 THE COURT: I don't care if you tell the jury
8 that the Court's ruled that he's not going to allow him
9 to stand in the courtroom and drop his drawers. If you
10 want to say that, fine. But put it on me, not the State.
11 Okay? Because I made that decision, not the State.

12 MR. SAVAGE: Except that ---

13 THE COURT: And if you want to say that, that's
14 fine. Okay?

15 MR. SAVAGE: I'll do the best I can.

16 Judge, I did want to go back. And thank you for
17 reminding me. Because it is the burden of the State.
18 And when we talked about the Defendant's -- the Court's
19 charge on the Defendant not to testify, at the end of
20 your charge, you have the burden is on the State. We
21 didn't redact that, did we?

22 THE COURT: Do what, now?

23 MR. SAVAGE: In looking at the proposed charges
24 by the Court, what we eliminated towards the end of the
25 charge ---

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1 THE COURT: On what, now?

2 MR. SAVAGE: May I approach so I can just show
3 you?

4 THE COURT: Yes, sir. That would be easier.
5 Please do.

6 MR. SAVAGE: Remember we were talking about the
7 Defendant's failure to testify, and it was no longer
8 necessary to do that. But at the end of that, the burden
9 is on the State, I believe, should stay in.

10 THE COURT: Let me see what you're talking
11 about. I'm not going to -- that's not even in the
12 charge, the Defendant's failure to testify. That's not
13 even ---

14 MR. SAVAGE: No, no, no. I agree with you at
15 the bottom, the burden is on the State.

16 THE COURT: Okay.

17 MS. GORDON: I think if he's already said that,
18 there's no reason to say it again. As I told you
19 already, the burden is on the State.

20 THE COURT: I mean, I think I have -- let me
21 see. Let me make sure I've got it in there.

22 MS. GORDON: It should be under reasonable
23 doubt.

24 THE COURT: I think it's under presumption of
25 innocence. I mean, I tell them under the theory of

1 presumption of innocence. I mean, I thought I put it
2 under presumption of innocence, the burden is on the
3 State and remains on the State. Under presumption of
4 innocence. What else do you want? Look at the
5 presumption of innocence charge. Okay? It's right at
6 the very beginning. I mean, that's where I tell them
7 about the presumption on the State.

8 MR. SAVAGE: Judge, I don't see it in any
9 place.

10 THE COURT: Well, Mr. Savage, come here. I'll
11 show it to you.

12 MR. SAVAGE: Okay.

13 THE COURT: Read the presumption of innocence.
14 Just read it. You got it? Here, read it. That's what
15 I'm going to read right there. All right? We'll swap.

16 MR. SAVAGE: That's a different deal.

17 THE COURT: I don't know what that is.

18 MR. SAVAGE: Okay.

19 THE COURT: That's where I put it.

20 MS. GORDON: Does that answer ---

21 MR. SAVAGE: It's just not in the copy I have.

22 THE COURT: Okay. Well, apparently you don't
23 have a complete copy.

24 Anything else before we bring the jury?

25 MS. GORDON: Nothing from the State, Your

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1 Honor.

2 THE COURT: All right. Bring us the jury,
3 please.

4 (WHEREUPON, the jury entered the open court at
5 approximately 2:40 p.m.)

6 THE BAILIFF: The jury is present, Your Honor.

7 THE COURT: Thank you very much.

8 Solicitor?

9 MS. GORDON: The State waives opening.

10 THE COURT: Okay.

11 MR. SAVAGE: Request that the State open and
12 close, Your Honor.

13 THE COURT: Okay.

14 Solicitor? Solicitor, if you need some time -- I
15 know you ...

16 MS. GORDON: I apologize.

17 THE COURT: I assume you weren't going to make
18 an opening.

19 MS. GORDON: I was not going to. I was going
20 to close in full, but there's no problem, Your Honor.
21 Just give me one second.

22 THE COURT: Just take your time. And when
23 you're ready, please proceed. Okay?

24 MS. GORDON: Thank you, Your Honor.

25 CLOSING ARGUMENT

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1 BY MS. GORDON:

2 Good afternoon, ladies and gentlemen. I know that
3 it has been a long week for you. You've heard a lot of
4 testimony. Some of it hard to hear. A lot of it of a
5 nature that you're probably not accustomed to hearing
6 spoken about in an open forum, but nonetheless important.

7 I just want to thank you for your time. And I'm
8 just going to open first on the law of the state and what
9 you are expected to rule on today.

10 The State has charged the Defendant with criminal
11 sexual conduct with a minor in the second degree and lewd
12 act on a minor. And I just want to go over with you what
13 those elements are.

14 The first is criminal sexual conduct with a minor in
15 the second degree. The Judge will instruct you that we
16 have to -- the State has to prove that the Defendant
17 committed a sexual battery. And that means an intrusion,
18 that he put some thing inside the body of Minor 1
19 inside her vagina. He used his finger, and he used his
20 penis.

21 The Judge will instruct you that it also has to
22 prove that the victim was less than sixteen years of age.
23 Minor a was born on . And this happened
24 between July 1st of 2008 and September 22nd of 2009. And
25 that's when Minor 1 was between the ages of twelve and

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1 thirteen.

2 The second charge is lewd act upon a minor. And the
3 Judge will charge you that we have to prove, number one,
4 that Erick Arroyo was over the age of fourteen. He was
5 born on . You've heard numerous times that he
6 was approximately fifty years old or so at the time. And
7 this occurred when he was fifty or fifty-one between July
8 2008 and September of 2009 to a child who was under the
9 age of sixteen. And again, Minor I was between the ages of
10 twelve and thirteen. And also that a lewd or lascivious
11 act was committed upon her body. That means in layman's
12 terms an inappropriate sexual touching. It's not a word
13 that we use in common everyday language on the street,
14 but that's what a lewd or lascivious act means. And to
15 appeal to his lust or sexual desires. And that means
16 that what he did was of a sexual nature and that the
17 reason he would do this would be for a sexual purpose.

18 With that, I will leave you. You will hear from the
19 Defense. And then you'll hear back from me just
20 regarding the testimony and what that testimony means
21 today.

22 I thank you again for your patience, and I look
23 forward to talking to you again.

24 THE COURT: Mr. Savage?

25 MR. SAVAGE: May it please the Court.

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1 Ms. Gordon.

2 May I move this, Your Honor? Judge?

3 THE COURT: Pardon?

4 MR. SAVAGE: May I ---

5 THE COURT: Yeah, please.

6 CLOSING ARGUMENT

7 BY MR. SAVAGE:

8 Mr. Foreman, ladies and gentlemen of the jury, thank
9 you. I want to join the Prosecutor in thanking you for
10 your attention this week. I've watched you like you've
11 watched us. I know how seriously you've taken your oath
12 to look into this matter.

13 The rules of court are a lot different than what we
14 do in our normal life. The method in which we converse
15 in court between the Solicitor and the witnesses, the
16 Defense attorney and the witnesses. But the reaction
17 that we have when the Judge rules is different than when
18 you sit down and have a cup of coffee and talk among
19 yourselves or you talk to your friends. This is
20 reasonable doubt.

21 Part of that reason -- it's not exclusively the
22 reason -- is because of the seriousness of what we have
23 here today. Those of you that have had experience in a
24 courtroom before, you may have known -- I'm sure what the
25 judge has told you in the past experience is that there

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1 are different levels of proof, and there are different
2 levels of responsibility.

3 Now, it's interesting that the State gave you their
4 version of the law. That's what this display was, the
5 State's version of the law as they're required to do.

6 The Judge is going to tell you about the law. And
7 it's the Judge's interpretation of the law that counts.
8 If Judge Nicholson -- and God knows I don't want to
9 accuse him. But certainly if he makes a mistake, there's
10 another remedy, and there are people up in Columbia that
11 will review what Judge Nicholson says about the law. And
12 if he's wrong, they'll tell him.

13 No one's ever going to review what you decide. What
14 you decide is it. It's final.

15 MS. GORDON: Objection, Your Honor.

16 THE COURT: What's -- overruled. Go ahead.

17 CLOSING ARGUMENT

18 CONTINUED BY MR. SAVAGE:

19 What you decide, the decision that you individually
20 make, when you combine that collectively with the eleven
21 other jurors who will be back in the jury room, no one
22 can ever question your decision. And that's why the
23 seriousness of the case is so important. What the State
24 has failed to do is to tell you what the law in total is.

25 There is a presumption in the law, as I believe the

1 Judge will tell you -- again, listen to what Judge
2 Nicholson says. He's going to say that anybody that
3 comes into this courtroom charged by the power of the
4 State -- the power of the State means the Solicitor,
5 their investigators, the police department and all the
6 other resources that they have to convict somebody -- has
7 the burden of proof. It's important to remember this.
8 The law in South Carolina, which the State again has
9 failed to tell you, is that the State exclusively has the
10 burden of proof. What does that mean? They must come
11 forward with the evidence sufficient to take away the
12 innocence, the presumed innocence, of Mr. Erick Arroyo.

13 I believe the Judge is going to tell you that ...

14 Stand up, Mr. Arroyo.

15 (WHEREUPON, the Defendant stood)

16 CLOSING ARGUMENT

17 CONTINUED BY MR. SAVAGE:

18 That if you can imagine -- I believe the Judge will
19 tell you this, not just me -- that he is clothed with
20 this cape similar to a robe of righteousness. It's a
21 presumption of innocence. As he stands here now and as
22 you go back to the jury room, he's protected by that
23 cape. He is presumed innocent. And each one of you
24 individually and collectively must presume that he is
25 innocent. I believe Judge Nicholson will tell you that.

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1 Judge Nicholson, I believe, will also tell you that
2 Erick Arroyo does not need to do anything, nothing, to
3 convince you that he's not guilty of the charges. I
4 believe Judge Nicholson will tell you that the
5 prosecutors in this case exclusively on their back, on
6 their burden, must show you to a degree which I believe
7 Judge Nicholson will say beyond a reasonable doubt. Not
8 that I think he's guilty. Not that -- this is a child
9 abuse case. We can't take any chances having predators
10 around. I think he's guilty.

11 Judge Nicholson, I believe, will tell you that you
12 must find that the evidence is so sufficient, so strong,
13 that it's beyond a reasonable doubt. Beyond a reasonable
14 doubt. Remember those words. Judge Nicholson will tell
15 you about that.

16 So what does beyond a reasonable doubt mean? We
17 talked Tuesday about the commonality that you all share.
18 And that's life's experience, how you see life and what
19 the important decisions are in life. Important decisions
20 in life I would not attribute to tonight -- it's a Friday
21 night -- going to a movie. Which movie should we go to?
22 I don't really want to go to that one. I'll go to this
23 one.

24 That's not the kind of doubt we're talking about.
25 The kind of doubt we're talking about is that doubt which

1 would cause you to hesitate in more important things in
2 life. Not a TV show. Maybe buying a car. Do I want a
3 Buick, or do I want a Chevrolet? There's probably more
4 important stuff. Maybe buying a house. Maybe taking a
5 job. Maybe choosing a career path. Maybe choosing a
6 spouse. The important, very basic, sensitive, inherently
7 important decisions that you make in your life. That's
8 what today is all about. An inherently important
9 decision.

10 So on the scales of justice, if you can imagine,
11 your decision has to be, oh, not this much. It has to be
12 this much. And anything less than that, I believe that
13 Judge Nicholson will tell you that if it's not beyond a
14 reasonable doubt, you must -- not should, not could --
15 but you must find Erick Arroyo not guilty.

16 Why is that? Why is the burden so great? It's
17 because we're not discussing money here. We're not
18 discussing social status here. We're discussing
19 literally -- we're discussing an outcome of a decision
20 that you make where the remedy is to go home or go to
21 prison.

22 Now, Judge Nicholson will also tell you that that's
23 his decision. He's the only one that can say what an
24 appropriate sentence would be if the Defendant was to be
25 found guilty. But it's certainly something that you can

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1 consider in terms of the seriousness of the decision.
2 You should never ignore the impact of what your decision
3 will do and how it will affect this community and
4 specifically how it will affect Erick Arroyo.

5 Now, in this case, in order for you to decide under
6 those burdens -- that is the law of the case that the
7 Judge will advise you on. Under those burdens, how do we
8 arrive at feeling comfortable in decisions? What do we
9 as a community, members of the Charleston community,
10 require in order for us to have the tools to make this
11 very serious decision?

12 We have law enforcement. Did we hear from law
13 enforcement in this case? Did we hear from Detective
14 Bacon? Did we hear from the arresting officer that
15 night? Is that the type of investigation -- no, we're
16 not entitled to perfect investigations. We're not
17 entitled to perfect trials. But is it the type of
18 research and evaluation of facts that make you settle, or
19 does it create, I sure wouldn't want to be accused of
20 that given this lack of investigation?

21 Now, Detective Bacon, as she testified, it's nothing
22 personal. Think about it in terms of your neighbors and
23 your friends and your family and your colleagues at work.
24 A report was made on September 20th. It was late at
25 night. She was on call. She was on duty. She was being

1 paid for being on call or on duty that night. Did she so
2 much as leave home? Did she so much as interview anybody
3 who was present then and there when this criminal
4 activity allegedly took place? Did she go to the house
5 and knock on the door? Did she go to the magistrate and
6 knock on the door and ask for a search warrant? Did she
7 do anything, any affirmative step, anything for forty-
8 eight hours? Nothing.

9 Now, this isn't Piggly Wiggly stealing a banana,
10 taking an apple out of the grocery store. This is, as
11 the State has told you, one of the most serious offenses
12 with the most serious of consequences that anybody could
13 face. Forget about prison. How about the stigma of
14 being called a child molester at the age of fifty-three
15 after having received a medal for serving in the United
16 States Navy in Afghanistan, to have this attack on you?

17 Where did the mother go that night? Did she go to
18 the hospital? Did she go to the Medical University? No.
19 She went to her boyfriend's house, the guy she later had
20 arrested. Who tucked the child into bed that night? The
21 boyfriend who she later had arrested. Is that the kind
22 of behavior you would expect from a loving mother?

23 Let's talk about this mother because that's where
24 the whole case originated. We talked about Monday we see
25 things through the prism of life of the life experiences

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1 you have had. All of you have had different experiences
2 in life. And you will use those experiences when you get
3 back to the jury room to discuss and evaluate what you
4 observed in the courtroom. Not the theatrics that went
5 on in the back end of the courtroom, but the witnesses'
6 testimony. It's important how they looked, how they
7 reacted, how they answered questions. The questions they
8 wanted to avoid, that they didn't want to answer where I
9 had to repeatedly ask the questions over and over again
10 because they didn't want to provide the answer. So let's
11 look at this mother. There's nothing wrong, nothing that
12 this mother can be accused of but being born out of
13 wedlock. That's not the issue. But it does create that
14 psychological prism of life.

15 And then when she is sexually abused at age
16 thirteen, that's another mile marker in her life. Then
17 she learns that somebody else in her family was sexually
18 abused. Then she goes through a history of violence,
19 alcohol abuse, mental health depraved behavior for years,
20 the different boyfriends, police involvement. The
21 Department of Social Services come and take the children
22 away. All these experiences in life create a mind set
23 for how you observe future events. And that's what we
24 have.

25 A young child, an innocent child. What did she have

1 in her tender years that would promote observations.
2 Certainly she can't be held accountable. She's a child.
3 Yet, if you look at the environment in which this child
4 was raised, get a grasp of how she views life, alcoholic
5 parents, mental health deprived parents,
6 hospitalizations, police involvement, boyfriend after
7 boyfriend, being lugged around from place to place. The
8 child is not responsible for that. The adults are.

9 Joyce Arroyo. How does she come to court today?
10 What is her prism of life? Relatives of these family
11 members, mother of the children who recalls what she has
12 said, how she has acted. Children, brothers and sisters,
13 mother, father don't speak to her anymore. Who knows
14 Erick Arroyo better than the mother, father, daughter,
15 son-in-law, daughter, son-in-law, nephews, cousin, aunt
16 and uncle? Who knows him better? Who knows these people
17 better than the intimate family members? If this Erick
18 Arroyo was a child molester, then why would they be
19 sitting with him today? I got off track.

20 In making this decision, you would expect, I would
21 hope, substantial evidence. Again, how does that
22 evidence arise? It arises from the witness stand.

23 Detective Bacon, she's the one in charge. No search
24 warrant. No photograph. No return to the house to see
25 the layout of the living room. No comprehension. An

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1 idea. No concern. No need to observe the closeness
2 between the parties. No need to go back and talk to the
3 children who are sitting right here. Never been
4 interviewed.

5 MS. GORDON: Objection, Your Honor. Misstating
6 evidence.

7 CLOSING ARGUMENT

8 CONTINUED BY MR. SAVAGE:

9 Never interviewing the children on their
10 observations that night, the six-year-old and seven-year-
11 old. Nothing. No one since September 20th, 2009 --
12 coming up on three years -- has gone in that house, the
13 house owned by Joyce Arroyo, to look at the location
14 where the activities allegedly occurred. No one.

15 When you look through the evidence -- I may have
16 missed something -- look for a picture or even a diagram
17 of the garage so that you can judge whether or not
18 somebody could see inside the garage, what the condition
19 of the garage was, whether there was lighting in the
20 garage or whether there was not lighting in the garage.

21 Look at the evidence that has been provided to you
22 about the alleged location of Sam's Club parking lot
23 where you can't be told what day of the week it was taken
24 or what day it was taken. But all you've got to do is go
25 on a Google machine and punch up Google Earth who has --

1 Google Earth has no interest in trying to skew the
2 evidence to try to make you think based on their
3 investigation that this whole area has unparked cars. Do
4 you really think that Google Earth would manipulate the
5 evidence to show how all the cars that were parked at two
6 o'clock in the afternoon on a weekday in those parking
7 lots at Sam's Club? And oh, by the way, as you look at
8 that, tell me how you, based on your knowledge and
9 experience in life, can even tell what parking lot that
10 is.

11 And tell me, do you want to rely on a law
12 enforcement investigation that admittedly ended on the
13 15th of October 2009, particularly when a third charge
14 emanated from the Prosecutor in July of 2011, some twenty
15 months later? What is it -- what investigation is this
16 that created this further charge? Was it evidence or was
17 it annoyance because Erick Arroyo did not fold under the
18 pressure of the threats of incarceration and he stayed
19 firmly in the position that this was a false charge? Why
20 else after twenty months would there be a felony
21 indictment when the State can't even tell you who
22 appeared before the Grand Jury? What is the purpose of
23 that indictment, to seek the truth or to leverage
24 somebody who wouldn't fold under the pressure of the
25 State?

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1 Again, keep in mind that the State is the one that
2 has the burden of proving the case. Please keep in mind
3 my discussion with you on Tuesday. What do we want?
4 What do we accept? What is the burden of proof that we
5 as a community want? I think you will agree, I hope you
6 would agree, I'm asking you to agree with me that the law
7 enforcement investigation is not the type of
8 investigation that you would feel comfortable with if
9 this was one of your loved ones involved. Either way, to
10 protect the victim or to prosecute the innocent, either
11 way it doesn't matter. Would you expect something more
12 substantial than that?

13 How about these experts? Dr. Amaya, a good-hearted
14 person no doubt, good at what she does, interested in
15 children. Did she have a balanced look at this, or was
16 it presented to her that this child was the victim of
17 child abuse?

18 Hard science. What is hard science? Hard science
19 is when the decision, the evaluation of evidence, is not
20 done by a human with their scientific principles.

21 The State, under its burden of proof, thought that
22 you would buy into this. It's got nothing to do with
23 this case. You heard the testimony. Nothing to do with
24 this case.

25 Is there a diagram about this case? Yes. Did you

1 see it? No. Are there photographs about this case?
2 Yes. Did they bring them to court? No. Doesn't that
3 make you want to know why we didn't see the real stuff
4 about this case? I'll tell you why. Because if you
5 observed the demeanor of the witnesses, you remember they
6 just didn't want to answer the questions. Why don't they
7 want to answer them? Because it doesn't further the
8 cause of putting Erick Arroyo in the penitentiary.
9 That's why.
10 No evidence, zero evidence, of any untoward
11 insertion of a finger, a vibrator, penis or anything.
12 Nothing. Yet, they have the nerve to testify that that's
13 consistent with child abuse. So if you are harmed, God
14 forbid, with abrasions and contusions and tears of the
15 hymen or destruction of the hymen, that's consistent with
16 child abuse. I can agree to that. But no contusion, no
17 abrasion, no tear, nothing that's consistent in the same
18 way as that. Does that make sense to you, especially
19 when we started out with a lewd act, touching of the
20 breast and we wound up with repeated, repeated, repeated,
21 repeated, repeated penile penetrations? I might be able
22 to accept the fact that some lesser degree of a pattern
23 of contusions of the vagina might not reveal some type of
24 evidence. But really, in this case, with the number of
25 penetrations?

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1 Dr. Steenkamp, a very capable, very educated young
2 -- loved her accent -- witness. I suppose the State
3 asked Dr. Steenkamp to fly down from Boston to be with
4 you on Wednesday because she was going to tell you about
5 the psychological damage that this child has suffered as
6 a result of these alleged criminal acts. Why did she say
7 that this child suffered from post-traumatic stress
8 syndrome when the exact same stressors and manifestations
9 of that diagnosis existed three years before this? The
10 State didn't even know -- the State being this person and
11 the investigators -- that this child had been
12 hospitalized for mental health issues three years before
13 in the same hospital. Didn't know that this child was
14 taking S.S.R.I.s.

15 MS. GORDON: Objection, Your Honor. Misstating
16 evidence.

17 THE COURT: Pardon? What's your legal
18 objection?

19 MS. GORDON: Misstating evidence as to what I
20 knew.

21 MR. SAVAGE: Excuse me. I'll change it.

22 CLOSING ARGUMENT

23 CONTINUED BY MR. SAVAGE:

24 The investigators that brought this case into
25 criminal court for the purpose of putting Mr. Arroyo in

1 prison did not know, never have reviewed, never had seen
2 the evidence of this child's prior mental health problems
3 that were taken care of at the Medical University. Did
4 not know that the mother had abandoned the treatment for
5 this child two years before. That she failed to attend
6 the treatment sessions and failed to make accommodations
7 for the child's health for the post-traumatic stress
8 syndrom that suffered from at the time.

9 Never looked at school records. It's interesting
10 just today, this morning, you heard that this child
11 excelled academically at school during all this time of
12 trauma and distress. You heard that from the Prosecutor.
13 In total contradiction to the impression left by Dr.
14 Steenkamp that this child was dysfunctional during this
15 time. What was that all about?

16 And then you heard from Dr. Elsey, an expert, who
17 testified among other things that an adult male and a
18 young preteen, barely a teen, female child could have
19 vaginal intercourse standing up with both of their feet
20 solidly on the ground with the child's zipper closed. An
21 expert in life's experience. You make the judgement.

22 Let's go into the real issues here. What were the
23 real issues? The real issues are -- I'm not sure whether
24 it was mineral oil or massage oil. Excuse me. Massage
25 oil. And it was supposedly found in the couch. When you

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1 heard that massage oil, did it register with you that
2 somebody was trying to link that massage oil with
3 misconduct? Did you sort of get that impression that's
4 what they were trying to do? Where did that come from?
5 The child never said that there was any massage oil. No
6 one, no one said that there was any massage oil until the
7 disgruntled fighting for divorce and economic gain of the
8 spouse came in and said it. No one else had said that.
9 So I don't know how that's even relevant to the charge of
10 misconduct. The fact that you would have massage oil ...

11 By the way, did you see massage oil? Did you see
12 any testimony about it from the experts, from the
13 doctors, from everybody who had asked about was any
14 lubricant used? Don't you think they would ask whether
15 or not this child screamed out in pain upon an adult
16 male's penis intrusion without some sense of lubricant?
17 Did they ever ask her if he had a condom on? Ever asked
18 her what type of oil or lubricant could have allowed this
19 penetration without excruciating pain? There's no
20 evidence of that at all. None.

21 Sam's Club. Allegedly the scene of a crime. Sam's
22 Club. A photograph taken last week or a few weeks ago.
23 The charge is almost three years old. A photograph taken
24 last week intentionally of an empty lot. With life
25 experience, would you know it would be full? All you

1 have to do was press this computer, this one right here.
2 All they had to do was press a button on that computer to
3 show you Sam's Club. All they had to do on this computer
4 right here is contact Sam's Club and say, do you have
5 they surveillance photographs, because they know they do.
6 Do you think if this was an armed robbery they wouldn't
7 take those photographs? Just as you've seen on the six-
8 o'clock news, the surveillance photographs. You don't
9 think that they can do the same thing?

10 Again, the burden of proof is not on Erick Arroyo;
11 the burden of proof is on the State of South Carolina.
12 They gave up this investigation three years ago.

13 And the issue about the car. Didn't even know the
14 difference in the type of vehicle that was alleged to
15 have been there. So when Arroyo was asked, did you own
16 whatever he was asked, a 250, 350, 150, whatever it was
17 -- and the record is there -- he denied it. When they
18 asked the proper question with the proper description, he
19 admitted it. That's sloppiness. That's an accurate,
20 honest, under-oath answer to a direct question with
21 specificity. They should at least know what the
22 description of the car was.

23 What about the garage? Hmmm. We have no pictures
24 of the garage. No diagram of the garage. No visit to
25 the garage by anyone. A God-awful sloppy messy garage.

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1 What does the child say? That's wrong. We were standing
2 up. He had his pants halfway down. He was closer to the
3 door than I was.

4 What does the angry wife say? The lights were off.
5 She was able to see what was going on through a crack in
6 the freezer. Do you all have freezers and refrigerators
7 at home? Stand back ten feet in your kitchens at home,
8 open the door and look through the crack. And what do
9 you see? Stand in a brightly lit room and look into the
10 dark and tell me what you can see. Tell me if you can
11 see around a ninety-degree turn. Tell me if you can see
12 through the body of your spouse so that you can witness
13 somebody standing behind them. Is that possible?

14 Do you expect from your law enforcement or from your
15 prosecutors if you or your loved ones or people you know,
16 your neighbors, your colleagues at work -- would you
17 expect for somebody to go see the garage so that you can
18 make a judgement based on fact, not on I think so or I
19 speculate or the prism of life in which people or
20 witnesses view things? Was it real, or did you want it
21 to be real for other motives?

22 Even the angry wife, she said, the jeans, if you
23 unzip them, they wouldn't fall on the floor. You'd have
24 to tug and pull them down. But where are the jeans?
25 Where is the clothing? Where's the massage oil? Where's

1 a photograph of the F-250 or 350 or whatever it is?
2 Where's a photograph of the couch? Where's a photograph
3 of the garage? Is that too much to ask for? In the day
4 of iPhones and little cameras and all sorts of other
5 things, how much trouble would it be to go out and
6 document felonious crime scenes?

7 The couch. What's the evidence of the couch on
8 September 20th? This is when it all began. This is a
9 diagram of the den. Has anybody provided you with any
10 measurements of the living room so that you could know
11 what this diagram means in terms of relationship? And I
12 don't mean to intrude on the space of the jury, but I
13 want to give you an example. Were you this close, or
14 were you this close? Was your head this way? Was your
15 head that way? What are the distances and what type of
16 sounds were being heard over the television? All the
17 type of questions that you with your life's experience
18 would want answered about the conditions existing in that
19 living room at that time. Not the least of which is at
20 least to talk to everybody who was in this room.

21 Now, you know that A. , the young child's sister
22 who was in there, you know that A. was given a
23 gynecological exam. How intrusive is that for a child
24 her age? Yet they didn't ask her, were you there that
25 night?

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1 MS. GORDON: Objection, Your Honor. Misstating
2 evidence.

3 THE COURT: Pardon?

4 MS. GORDON: Misstating evidence.

5 CLOSING ARGUMENT

6 CONTINUED BY MR. SAVAGE:

7 If I say anything that -- what I'm saying to you is
8 not evidence. What I'm saying to you are the questions
9 that are raised in my mind that I want to communicate
10 with you in hopes that you would raise the same
11 questions. So if I say anything different from what you
12 remember from the witness stand, then certainly trust
13 your own memory and not my interpretation.

14 But the question that I have that I would like you
15 to consider is why did they give a gynecological exam to
16 a child at these tender years when you've heard that they
17 don't do that just to be doing it. Why didn't they ask
18 her, where were you sitting? What did you see? What did
19 you hear? Because when the State talks to its own
20 witnesses who are the mother and the child, what are the
21 stories that they tell you? And what are the
22 inconsistencies in that story? And are they so
23 inconsistent so somebody would say that the shirt was
24 blue, but they didn't say it was dark blue. Or they said
25 there was an arrest record with your name on it, but it

1 wasn't your arrest record. Or they said you were wearing
2 jeans or grey pants or whatever. No, not minor
3 inconsistencies.

4 Again, Ms. Gordon, if I misstated, I apologize. I
5 want the jury to recollect what exactly was said.

6 But as I recall, the mother, when God Almighty woke
7 her up that night and she intuitively inside of her knew
8 something was going on, not that she was on the phone
9 with her boyfriend at that time who she spent the night
10 with or that she had had fifteen or twenty conversations
11 with that day whose name she couldn't even remember when
12 she testified here, she said she saw her daughter laying
13 flat on the couch on her back. She said she saw her
14 brother laying on the couch flat on his stomach.

15 Specifically, his feet weren't on the floor. His whole
16 body was on the couch with his head in the breast of her
17 daughter. Didn't see any improper touching. Didn't see
18 anything other than laying on the couch, uncle on top.

19 What does the child say? The child says that she
20 was sitting on the couch over here, that her uncle was
21 standing, standing, next to her -- maybe kneeling, but I
22 think standing. I don't recall exactly -- with his pants
23 half down. And she says -- again, go back to the
24 testimony -- that the uncle was trying to get her to
25 touch his penis. You see what I'm getting at?

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1 Eyewitnesses a foot or two apart with entirely different
2 stories. Not minor details, substantive details. Pants
3 down, trying to touch his penis; standing up, kneeling
4 down. Or was it that he was laying down? That's why I
5 would hope that you would look for, as you recall the
6 other day, third-party verification so that you can feel
7 satisfied when you make the decision that you will this
8 afternoon whether or not these allegations are based on
9 anger, jealousy, misconduct with themselves, trying to
10 prove bonafides (phonic) of the mother to make up for
11 past days, to try to draw attention to make her feel
12 better as a victim.

13 Why didn't we hear what happened in Mount Pleasant?
14 Why didn't we hear what happened in Mount Pleasant with
15 the counselor? You heard from the counselor at the
16 Medical University. You heard from the counselor with
17 the Lowcountry Children's Center. Why would we not hear
18 from the follow-up counselor in Mount Pleasant?

19 Judge Nicholson is going to say to you, I believe,
20 you can make a decision in this case not just from the
21 evidence that came from the witness stand, not just from
22 the exhibits that were produced in this trial, but just
23 as importantly in this case, from the lack of evidence, a
24 the lack of evidence that the State chose not to present
25 to you. Think about it. Through records that were not

1 provided, you can presume that it wouldn't help the
2 State's case, and that's why they didn't provide it.

3 The speckled penis, the multi-colored penis.
4 You're left with the testimony of an accused who said
5 absolutely under oath that he did not engage in this
6 misconduct. You're also left with the testimony under
7 oath by the accused, embarrassing testimony, that he has
8 a disfigured penis with a speckled and multi-colored,
9 different pigment shaft and head of his penis. How can
10 you say that under oath? How can you say that under oath
11 when you know that the resources of the State, their
12 access to records, their access to cameras, their access
13 to whatever they choose to do, would easily disprove it?
14 And what did they do? They bring back the angry wife.
15 They don't ask father. They don't ask mother. They
16 don't ask -- they don't ask anybody except an interested
17 party who's trying to further their own cause in getting
18 leverage in a divorce proceeding. That's who they asked.

19 I'm asking for your help today. I'm asking each one
20 of you for your help. And what I'm asking for you to do
21 not do is to allow somebody's liberty to be taken away
22 with this level of evidence. I don't say that lightly,
23 and I don't say it because I'm mad at anyone. I say that
24 because, as a member of this community, as I am, as are
25 you, we expect more. We expect more. We pay a lot of

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1 money in tax dollars for law enforcement, for the Medical
2 University. We expect a better return on our money.

3 Erick Arroyo has never been convicted in his life.
4 We know that because he wouldn't be in the Navy. At age
5 fifty-three, his reputation is already tarnished. He's
6 already embarrassed, has to hide his head when he goes
7 into Publix and Piggly Wiggly grocery stores. Has to
8 wear a monitor on his leg. Had to pay a hundred-and-
9 fifty-thousand-dollar bond.

10 MS. GORDON: Objection, Your Honor.

11 THE COURT: Bond doesn't have anything to do
12 with it, Mr. Savage. Move on.

13 MR. SAVAGE: He's already substantially been
14 harmed by these accusations. He hired me. I'm glad he
15 did. I'm glad I got to know him. But it wasn't cheap.
16 I'm asking you to help. I'm asking you to help this
17 community. I'm asking you to find Erick Arroyo not
18 guilty because the State has failed in its burden of
19 proof with an investigation and supporting evidence that
20 would allow you to take away that presumption of
21 innocence. Please find him not guilty.

22 Thank you.

23 THE COURT: All right. Ladies and gentlemen,
24 you may stand up and take a stretch before we go to the
25 closing -- final closing argument. We'll stand and

1 stretch.

2 That doesn't include all the audience either. Get
3 out or stay in.

4 Solicitor, go ahead while they're stretching to get
5 prepared for your closing argument.

6 Does anybody need to go to the restroom real quick?
7 Go ahead.

8 (WHEREUPON, court stood at ease.)

9 THE BAILIFF: All present, Your Honor.

10 THE COURT: All present? Okay. All right.

11 Solicitor, you may proceed with your closing
12 argument whenever you're ready.

13 CLOSING ARGUMENT

14 BY MS. GORDON:

15 Thank you, ladies and gentlemen of the jury. I
16 think I can assure you this is the last time you'll have
17 to hear from either myself or Mr. Savage. And again, I
18 thank you for your patience.

19 I just want to talk to you a little bit about child
20 sexual abuse. Coming in you may have had some
21 preconceived ideas about what it is. And you may or may
22 not have learned something new. But I hope that you've
23 become more educated about it through the process of this
24 week.

25 It's not what we sometimes think. It's not loud.

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1 It's not vile. It doesn't necessarily happen by
2 strangers in dark allies like kidnaping a child and
3 taking them away. It happens behind closed doors by
4 people who the victim trusts. It's quiet, and it goes
5 unnoticed.

6 Sometimes it goes unnoticed for years. Sometimes it
7 goes unnoticed for months. In this case it went
8 unnoticed for about fifteen months before it was reported
9 to the police. But also, like you know in child sexual
10 abuse, sometimes people start getting suspicious. But it
11 doesn't necessarily get reported.

12 In this case, Joyce Arroyo got suspicions. But it
13 was the Defendant who convinced her, no one is going to
14 believe you. I can convince everyone that you're crazy.
15 And no one is going to believe you. And he succeeded.
16 She tried to tell her children. They're sitting over
17 there. She tried to tell Melina, but the Defendant got
18 to her first. He's smart. He's convincing. He's been
19 convincing them for a long time. But when Melina saw
20 what she saw, she knew. And when Joyce saw what she saw,
21 she knew.

22 Now, the Defense would like to talk about everything
23 but about what's really important in this case. I know
24 when we had jury qualification, Judge Jefferson said that
25 this is not going to be like Judge Judy, and it's not

1 going to be like Judge Joe Brown. Well, let me tell you
2 what else it's not like. It's not C.S.I. The State does
3 not have unfettered access to every medical record of
4 every person that's ever lived in this state. We do not
5 have unfettered access to everybody's home and
6 everybody's garage.

7 What Minor 1 was able to report that night was the
8 touching on the breast. And you've heard Detective Bacon
9 say that to get a search warrant, I've got to be able to
10 say that I can go in that house and collect something
11 that's going to prove it happened. It's his house. His
12 D.N.A. is going to be there. And if she went in there
13 and got the D.N.A., it wouldn't have proved anything
14 because of course his D.N.A. is there. It's his house.

15 Minor 1's D.N.A. would have been there. And if we had
16 brought it in and said, oh, look, Minor 1's D.N.A. was on
17 the couch and the Defendant's D.N.A. was on the couch,
18 he'd be arguing, of course it was on the couch. She was
19 there. It means nothing that her D.N.A. was there.

20 He talked about an armed robbery. Would you go out
21 and get the surveillance video of the armed robbery? Of
22 course, we would because the victim of an armed robbery
23 is not afraid to tell it was happening. Minor 1 had been
24 groomed, and she had been manipulated. And she knew that
25 -- or she thought that she would be in trouble if she

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1 told. So by the time it comes to light, there is no
2 surveillance video.

3 She can't tell you that she was at Sam's Club on
4 Wednesday afternoon between two and two thirty on October
5 17th of a particular day or anything like that. And the
6 State can't go out and say, I'm going to need all the
7 surveillance video from July of 2008 to September of 2009
8 and look at every single day. And maybe there's a white
9 truck that enters the parking lot. Are you going to be
10 able to show that it's them? You've seen the
11 surveillance video on the news. It doesn't show what's
12 happening inside the cars.

13 You saw the Google Earth. In fact, it did show lots
14 of area where there are no cars. And I don't know when
15 that was taken. But the point of that picture is not to
16 show you what it looked like on that day; it's just to
17 show you where it was to just give you some frame of
18 reference in case you haven't been out there.

19 You heard -- and the reason that we had Dr. Amaya
20 come in is because a lot of us don't know about child
21 sexual abuse. And thank goodness that we don't all have
22 to go through it. But Dr. Amaya was here to explain to
23 us that we might think there's all this D.N.A. evidence,
24 but there's not.

25 And he -- Mr. Savage says, but what if they had sex

1 several times? What if there really is penetration?
2 Well, you heard Dr. Amaya quote the study. The
3 preeminent standing, she said Dr. Kellogg where all these
4 pregnant girls who they knew had had sex because they
5 were pregnant, and hardly any of them was there any
6 evidence that there ever had been a penetration. Well,
7 we know there had been. Just because there's not a tear
8 in the hymen doesn't mean that he didn't put his penis
9 inside Minor 1 .

10 The Defendant would like to say that we didn't
11 accept our burden of reasonable doubt. We accept that
12 burden. And I submit to you that it doesn't mean beyond
13 all doubt. Because if you knew beyond all doubt, you'd
14 have had to have been a witness.

15 Minor 1 , she knows beyond all doubt
16 that Erick Arroyo molested her, that he put his penis
17 inside of her, that he put his hands inside of her, that
18 he fondled her, that he groomed her and he made her feel
19 guilty about it and made her feel like nothing.

20 Malina Arroyo, she knows beyond all doubt because
21 she saw it with her own eyes. And Joyce Arroyo knows it
22 beyond all doubt because she saw it with her own eyes.
23 You don't have to have that standard of proof. You just
24 have to have beyond a reasonable doubt.

25 The Judge will tell you that Minor a's testimony alone

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1 could be enough. That the testimony of one witness can
2 be enough, and the testimony of a sexual assault victim
3 need not be corroborated. And why is that? Because
4 generally there are no other witnesses. It's not like an
5 armed robbery where there might be lots of people who saw
6 it happen. But in this case, we actually do have in
7 addition to her two other witnesses. It is also
8 corroborated by the expert testimony.

9 Minor 1, you saw her testify. If she were making that
10 up, she doesn't need to be in this courtroom. She should
11 be getting an Academy Award because you can't fake that
12 kind of emotion. The kind that you're scared and you
13 don't want to talk about it. She has spent years trying
14 to not talk about it. Do you think she wanted to get up
15 here and reveal the most horrible details of her life?
16 But she did it. She was able to do it because she knows
17 how important it is that you hear the truth about what
18 happened and stop letting Erick Arroyo convince everyone
19 that everybody else is crazy. Anybody that says anything
20 bad about Erick Arroyo must be crazy. They have cast
21 blame on everyone in the courtroom except the person
22 who's really responsible. And that is Erick Arroyo.

23 And you've learned in this family that if you go
24 against Erick, you're cut off. And that's what happened.
25 When Joyce tried to tell the truth, cut her off. And you

1 heard she didn't even know he had been arrested. Didn't
2 even know. And you know why he didn't want her to know?
3 Because she knew the truth.

4 Detective Bacon had to call her. And Detective
5 Bacon called her because she found out from Minor1 that
6 she might be a witness. Not from Malina, from Minor1's
7 forensic interview. She found out about this incident in
8 the garage. And they call her up, and lo and behold she
9 just happens to know the same exact thing.

10 The idea that Malina and Joyce kind of colluded
11 together to make this up doesn't hold water because they
12 don't even really like each other. They have had no
13 contact. Joyce was gone. She was done. Malina told her
14 she was crazy. She was siding with her brother. She
15 didn't believe her. Don't tell me anything. I know. My
16 brother's already called me. He's already told me that
17 you're crazy and that you're going to say this ridiculous
18 thing. But lo and behold if Joyce is not able to say the
19 exact same thing.

20 Now, the Defense would like to argue about whether
21 or not somebody remembers this little detail or that
22 little detail. And we all know kind of how memories
23 work. It's the salient details that are important. Who
24 remembers if the light was on or off or if it was the
25 light that Joyce remembers or if it was the light from

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1 the kitchen or the light from the garage? She knows what
2 she saw. And that was Erick and Minor1 face-to-face
3 exactly the way Minor1 describes it, with him with his --
4 her with her zipper down and her pants not pulled down.
5 He was caught in the act. He got caught before it got
6 that far on that night. And that he scooted over to the
7 freezer and she scooted over and they're pretending to
8 look for ice cream. I mean, those are the details that
9 are salient. Whether or not who turned the light on, it
10 was off, did they flick it on here, that was not an
11 important detail. It certainly is not going to be to
12 Minor1 because this is just, you know, one of a dozen or
13 more times this has happened.

14 Minor1 and Malina came in here, and they have been
15 open books. They have told you everything that's ever
16 happened in great detail. And that's why you can believe
17 them. They haven't tried to hide it.

18 And the Defense would argue that Malina is making
19 this up. But you heard her on the stand. Like this is
20 all Malina. She wants the attention. And she was
21 grilled and she was grilled and she was grilled about
22 every mistake she's ever made in her entire life starting
23 from the time -- I don't know how it's her fault how she
24 was conceived. But somehow that can be blamed on her
25 too. From the time she was conceived until she got in

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1 here today, everything she's ever done wrong you've heard
2 about. But what did she say? Bring it on. I can take
3 it. This is not about me. Say anything bad you want to
4 say about me. This is about what Erick Arroyo did to her
5 daughter. If she were out to get attention, that's not
6 how she would have behaved. This is not about Malina.
7 This is about what Erick did to Minor 1. And Malina knows
8 that, and she told you that. This is not -- bring it on,
9 I think were her words. I can take it. This is about
10 what you did to my daughter.

11 You know what it does tell you though? A little bit
12 about that background and the chaos? It explains why he
13 thought he could get away with it. He thought, I can
14 convince everybody Malina's crazy. It explains to you
15 why he thought Minor 1's never going to tell. It explains
16 to you why he's so brazen as to think he can do it with
17 other people in the room. Because he's already gotten
18 caught once by Joyce. And he's already convinced people
19 she's crazy. So I can do it in front of whoever I want.
20 I'm in control of this situation. I'm the head of this
21 family. I'm the person that people respect. I'm the
22 person they'll listen to.

23 What did they gain? Mr. Savage asked you to think
24 about that. What's their motive for coming in here? Did
25 Minor 1 or Malina gain anything from this? They gained

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1 nothing. They lost their entire family over this. But
2 they're willing to do that for the truth because they are
3 not ashamed of what happened because it's not Minor1's
4 fault.

5 You saw Erick Arroyo on the stand, and you saw that
6 he was willing to correct anything that I said. And he
7 wanted to give an explanation for everything. And I was
8 wrong about the F-150. It was an F-250. But you didn't
9 see him correct that. Just deny, deny. No, never had
10 one. Never in my life. Never had a white Ford F-150.
11 Now, he knew exactly what truck we were talking about.
12 But he thought, oh, I think I can get away with this.
13 I'm going to show you I can get away with it again
14 because I'm not going to admit that I had a white Ford
15 250 because she didn't ask about that. But anything else
16 he was perfectly willing to correct.

17 Don't let him get one over on us again. He thought
18 he would get away. He might be a Navy veteran and a
19 bronze medal winner, but it doesn't give him a free pass.
20 It does not become a free pass to molest Minor1. The most
21 important testimony you heard was hers. She told you
22 what happened. And it really boils down to is she
23 credible, and is what she said corroborated by Joyce and
24 her mother who were eyewitnesses.

25 And we ask that you return a verdict which speaks

1 the truth of what happened. And that is that Erick
2 Arroyo is guilty of C.S.C. with a minor on both penile
3 penetration and digital penetration and for lewd act on a
4 minor.

5 And I'll sit down in just one moment because I want
6 to address that last indictment. Mr. Savage knows why
7 that last indictment came. And that's because Minorl,
8 when she was finally in therapy, was able to tell the
9 additional details that she didn't disclose at her
10 original forensic interview.

11 We ask that you render a verdict that speaks the
12 truth, and that is that the Defendant is guilty. Thank
13 you.

CHARGE

15 - BY THE COURT:

16 Mr. Foreman and members of the jury, I will give you
17 a copy of these instructions in written form. During
18 your deliberations you may refer to the instructions to
19 guide your decision-making. You must consider the
20 instructions as a whole and not follow some and ignore
21 others. Mr. Foreman, please return the instructions to
22 the Court after you have reached a verdict.

23 The indictments in this case allege several
24 different offenses against the Defendant. The charges
25 are in indictment number one criminal sexual conduct with

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1 a minor second degree, to wit digital penetration;
2 indictment number two lewd act upon a minor; number
3 three, criminal sexual conduct with a minor second
4 degree, penile penetration.

5 Each indictment charges a separate and distinct
6 offense. You must decide each indictment separately on
7 the evidence and the law applicable to it uninfluenced by
8 your decision as to any other indictment. The Defendant
9 may be convicted or acquitted on any or all of the
10 offenses charged. You will be asked to write a separate
11 verdict of guilty or not guilty for each indictment.

12 And Mr. Foreman, I have prepared a verdict form.
13 And it has the number of the cases, the indictment
14 numbers, and it covers each particular indictment on one
15 sheet. And the indictment [sic] form says, we, the jury,
16 by unanimous consent find ... Your verdict has to be
17 unanimous. All twelve of you have to agree.

18 The Defendant has pled not guilty to this
19 indictment. And that places and puts the burden on the
20 State to prove the Defendant guilty. A person charged
21 with committing a criminal offense in South Carolina is
22 never required to prove himself innocent. I charge you
23 that it is an important rule of law that the Defendant in
24 a criminal trial, no matter what the seriousness of the
25 charge may be, will always be presumed to be innocent of

1 the crime for which an indictment was issued until guilt
2 has been proven by evidence satisfying you of the guilt
3 beyond a reasonable doubt. This presumption of innocence
4 does not end when you begin your deliberations, and it
5 accompanies the Defendant throughout the trial until you
6 reach a verdict of guilty based on evidence satisfying
7 you of that guilty beyond a reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed upon the shoulders of the Defendant
10 which remains with the Defendant until it has been
11 stripped from the Defendant by evidence satisfying you of
12 the Defendant's guilt beyond a reasonable doubt.

13 A presumption of innocence is not a mere legal
14 theory. It is not just a legal phrase. It's a
15 substantial right to which every defendant is entitled
16 unless you, the jury, are satisfied from the evidence of
17 the Defendant's guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, what is reasonable doubt?
19 A reasonable doubt is the kind of doubt that would cause
20 a reasonable person to hesitate to act. The State has
21 the burden of proving the Defendant guilty beyond a
22 reasonable doubt.

23 Some of you may have served as jurors in civil cases
24 where you were told that it's only necessary to prove
25 that a fact is more likely true than not true, such by

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1 the greater weight or preponderance of the evidence. In
2 criminal cases, the State's proof must be more powerful
3 than that. It must be beyond a reasonable doubt.

4 Proof beyond a reasonable doubt is proof that leaves
5 you firmly convinced of the Defendant's guilt. There are
6 very few things in this world that we know with
7 absolutely certainty. And in criminal cases, the law
8 does not require proof that overcomes every possible
9 doubt. If, based on your consideration of the evidence,
10 you're firmly convinced that the Defendant is guilty of
11 the crime charged, you must find the Defendant guilty.
12 On the other hand, if you think there's a real
13 possibility the Defendant is not guilty, you must give
14 the Defendant the benefit of the doubt and find him not
15 guilty.

16 Under the Constitution and the Code of Laws, only
17 you, the jury, can make the findings of facts in the
18 case. I'm not permitted to indicate to you how I may
19 feel about the testimony that has been presented
20 throughout the trial. It's been my intention to be fair
21 and impartial toward each of the parties involved.

22 Necessarily, you must determine the credibility of
23 the witnesses who have testified in this case.
24 Credibility simply means believability. It's your duty
25 as jurors to analyze and evaluate the evidence to

1 determine which evidence convinces you of its truth.

2 As you decide whether or not to believe a witness'
3 testimony about a particular matter, you may consider the
4 following: the manner and appearance while on the
5 witness stand. Was he or she straightforward or hesitant
6 in answering? The testimony of a witness. Was it
7 consistent or inconsistent? How the witness came to know
8 the facts that he or she testified to. Was the witness
9 present during the incident, or did the witness happen on
10 the scene after the incident occurred?

11 The reason a witness would want to give testimony
12 which would help or hurt one side or the other. Has the
13 witness exhibited to you any interest, bias, prejudice or
14 other motives in this case? Thus, you may consider
15 whether a particular witness may gain some other reward,
16 payment, personal advantage, vindication through his or
17 her testimony.

18 The strength of the testimony of a witness. Was the
19 testimony of a witness strengthened or weakened by other
20 testimony or evidence? The duration and length of time
21 between the incidents and when they were reported. Has
22 the duration of time weakened or strengthened the
23 witness' memory of the incident? Are prior statements
24 made by the witness consistent or inconsistent with the
25 witness' testimony?

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1 In determining the believability of the witnesses
2 who have testified in this case, you may believe one
3 witness over several witnesses or several witnesses over
4 one witness. You may believe a part of the testimony of
5 a witness and reject the remaining part of the testimony
6 of the same witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony of a
8 witness in its entirety.

9 Of course, you do not determine the truth by merely
10 counting the number of witnesses presented by each side.
11 Throughout the process you have but one objective, to
12 seek the truth regardless of its source.

13 Now, there are two types of evidence which are
14 generally presented during a trial. Direct evidence, the
15 testimony of a person who claims to have actual knowledge
16 of a fact, such as an eyewitness, is evidence which
17 immediately establishes the main fact to be proven.

18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a fact. It
20 is evidence which immediately establishes collateral
21 facts from which the main facts may be inferred.
22 Circumstantial evidence is based on inference and not on
23 personal knowledge or observation.

24 The law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence.

3 You should weigh all the evidence in the case.
4 After weighing all the evidence, if you're not convinced
5 of the guilt of the Defendant beyond a reasonable doubt,
6 then you must find the Defendant not guilty.

7 The testimony of a victim need not be corroborated
8 in the Prosecution's -- the evidence or lack of evidence
9 from which you are to decide the facts include the
10 following: the sworn testimony of a witness both on
11 direct and cross-examination, regardless of which side
12 called the witness, the exhibits that have been received
13 into evidence by the Court and any facts agreed or
14 stipulated to by all the lawyers.

15 The following things are not evidence and you may
16 not consider them in deciding the facts: arguments and
17 statements by the lawyers are not evidence. The lawyers
18 are not witnesses. Their opening statements and closing
19 arguments or other statements are intended to help you
20 interpret the evidence but are not evidence. If the
21 facts as you remember them differ from the lawyers'
22 statements, your memory controls.

23 Questions and objections by the lawyers are not
24 evidence. Lawyers have a duty to their clients to make
25 objections when they believe a question is improper under

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1 the rules of evidence. You should not allow any
2 objections or the Court's ruling on the objections to
3 influence you.

4 Testimony that's been stricken or that you've been
5 instructed to disregard is not evidence and must not be
6 considered. Anything that you may have seen on
7 television or read in the newspaper, on the Internet or
8 heard from others when court is not in session is not
9 evidence. You should base your decision solely on the
10 sworn testimony of the witnesses, exhibits received into
11 evidence by the Court and any facts agreed or stipulated
12 to by all the lawyers.

13 The fact the Defendant was arrested, charged and
14 indicted in this case is not evidence and cannot be
15 considered as evidence of guilt, nor does it create any
16 presumption or inference of guilt. The indictment is
17 simply the formal written instrument which contains the
18 charges made against the Defendant.

19 Now, the rules of evidence ordinarily do not permit
20 witnesses to testify to opinions or conclusions. An
21 exception to this rule exists for witnesses called expert
22 witnesses. A witness who by education or experience have
23 become an expert in some art, science or profession are
24 permitted to give their opinion in certain areas if the
25 Court qualifies them as an expert witness.

1 An expert witness may also give the reasons for
2 their opinion. An expert opinion is evidence for you to
3 use in any way you see fit. You should give the evidence
4 the weight and credibility you believe is appropriate.
5 If you decide an expert witness' opinion is not based on
6 sufficient evidence or experience or you decide that the
7 reasons given in support of the opinion are not sound or
8 that the opinion is outweighed by other evidence, you may
9 disregard that evidence altogether.

10 Now, the same constitution and laws which designate
11 and make you the finders of the facts make me the sole
12 instructor of the law. It's my duty to charge you the
13 law applicable to this case, and it's your duty as jurors
14 to accept and apply the law as I now state it to you.

15 The lawyers are not the instructors of the law. You
16 must accept the law and apply the law exactly as I state
17 it to you. You must not base your decision on your idea
18 of what the law is or what you think the law should be.

19 The Defendant is charged with committing a lewd act
20 on a minor. The State must prove beyond a reasonable
21 doubt that the Defendant was over the age of fourteen.
22 Next the State must prove that the Defendant wilfully and
23 lewdly committed or attempted a lewd or lascivious act on
24 or with the body or parts of a child under the age of
25 sixteen with the intent to arouse or appeal to or gratify

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1 the lust, passions or sexual desires of the Defendant or
2 the child.

3 Wilfully means voluntarily and intentionally with
4 specific intent to do something the law forbids. Lewd
5 means lascine (phonic), lustful, indecent and lecherous.
6 Lascivious means tending to incite lust, lewd, indecent,
7 obscene or tending to deprive the morals in respect to
8 sexual relations.

9 In order to establish criminal liability as to lewd
10 act on a minor, criminal intent is required. Specific
11 intent as to second-degree criminal sexual conduct with a
12 minor is not required. The mental state required to be
13 proven beyond a reasonable doubt by the State for the
14 charge of lewd act on a minor might be purpose, intent,
15 knowledge, recklessness or criminal negligence.

16 Criminal intent must be proven by the State beyond a
17 reasonable doubt. Criminal intent is always a matter
18 which must be determined by the jury from the
19 circumstances surrounding the situation. There is no way
20 to prove intent to a mathematical certainty. There is no
21 way medical science can dissect a person's brain and
22 determine what the person had in mind. So the law says
23 that criminal intent may be inferred from the
24 circumstances shown to have existed. This is how you
25 make a determination of whether or not the element

1 requiring intent was present. It's not necessary to
2 establish intent by direct and positive evidence, but
3 intent may be established by inference in the same way as
4 any other act, by taking into consideration the acts of
5 the parties and all the facts and circumstances of the
6 case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. It's up to you to determine what the
9 Defendant intended to do based on the circumstances shown
10 to have existed. Criminal intent can arise from the
11 action or a failure to act. It may arise from
12 negligence, recklessness or an indifference to duty or to
13 consequences that is considered by the law to be the
14 equivalent of criminal intent.

15 Second-degree criminal sexual conduct with a minor.
16 The Defendant is charged with two counts of second-degree
17 criminal conduct with a minor.

18 Digital penetration and penile penetration. Digital
19 penetration is defined as the defendant placing his
20 fingers or other instruments in the victim's vagina or
21 anus. Penile penetration is defined as the defendant
22 placing his penis into the victim's vagina or anus.

23 The State must prove beyond a reasonable doubt that
24 the Defendant engaged in a sexual battery with the
25 Defendant [sic]. A sexual battery is sexual intercourse,

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1 cunnilingus, fellatio, anal intercourse or any other
2 intrusion however slight of any part of a person's body
3 or any object into the genital or anal openings of
4 another person's body except when the intrusion
5 accomplishes a medically recognized treatment or
6 diagnostic purpose.

7 Fellatio is defined as oral sex performed on the
8 penis of a male. Cunnilingus is defined as an oral sex
9 act performed on the vagina of a female.

10 The State must prove beyond a reasonable doubt that
11 the Defendant [sic] was at least eleven years old but not
12 more than fourteen years old at the time of the sexual
13 battery. Consent, willingness, indifference or ignorance
14 on the part of the minor, if any, as to what was taking
15 place does not in any way affect the charge of criminal
16 sexual conduct with a minor because an unmarried woman
17 under the age of fourteen cannot legally consent to
18 sexual intercourse.

19 Now, you've heard references concerning the penalty
20 a person can serve for the crimes alleged in the
21 indictments. In determining the innocence or guilt of
22 the Defendant, you cannot consider any possible penalty
23 for any particular crime. The punishment for the crimes
24 is a matter for me to determine. It should never be
25 considered by you in any way whatsoever in arriving at a

1 fair and impartial verdict as to the guilt or innocence
2 of the Defendant.

3 Now, you've been selected as fair and impartial
4 jurors, sworn to impartially try and determine the facts
5 in this case. And when you comply with your oath to do
6 so, no one will have the right to criticize your verdict,
7 and you will have fully discharged your duty as jurors.
8 You are to decide this case according to the testimony
9 you've heard from the lips of the sworn witnesses along
10 with the other evidence introduced.

11 I charge you as jurors you must make your decision
12 in this case without bias and without prejudice to any
13 party and not allow yourself to be governed by sympathy,
14 prejudice, passion, public opinion or any other arbitrary
15 factor. Both the State and the Defendant have the right
16 to expect that each of you will carefully and impartially
17 consider all the evidence in the case and you will follow
18 the law as I have explained it to you.

19 Nothing I may have said or done during the course of
20 this trial has been in any way intended to express or
21 suggest a view of this case or an opinion as to the
22 facts, the weight of the evidence or the credibility of
23 the witnesses. If you believe that any of my actions or
24 words have indicated otherwise, you must disregard such
25 and form your own view of this case or your own opinion

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1 as to the facts and weight of the evidence and
2 credibility of the witnesses.

3 Now, the Court has permitted you to take notes
4 during the course of the trial. You have not been
5 obligated to take notes. But if you've taken notes, they
6 should be used only as memory aids. You should not give
7 your notes precedent over your independent recollection
8 of the evidence.

9 If you have chosen not to take notes, you should
10 rely on your own independent recollection of the
11 proceedings. You should not be influenced by the notes
12 of other jurors. I emphasize that notes are not entitled
13 to any greater weight than the recollection and
14 impression of each juror as to what the testimony may
15 have been. Rather these notes are your notes. You may
16 destroy them yourself or the Court will destroy them for
17 you after the jury has reached a verdict.

18 Now, ladies and gentlemen, as I said earlier, your
19 verdict has to be unanimous. All twelve of you have to
20 agree. I would tell you to respect each other's
21 opinions, reevaluate your opinions if you think it's
22 necessary. It's a give and take. It's a collective
23 reasoning, a collective decision process on all twelve of
24 your parts.

25 Mr. Foreman, I'm not going to read the verdict form.

1 But I showed it to you earlier. And if you'll follow it
2 down, straight down, it covers all three indictments. As
3 I said earlier, you can find the Defendant guilty of all
4 three, you can find the Defendant innocent of all three
5 or any other combination thereof. And they're all
6 independent on each one. You got to make a finding of
7 guilty or not guilty on each indictment.

8 Now, I'm going to ask you to go to the jury room,
9 and you may take your notes with you. I do not want you
10 to begin your deliberations until the bailiff has brought
11 all the exhibits that's been admitted into evidence, the
12 charge book, the verdict form and instructs you to begin
13 your deliberations.

14 The three alternates, Ms. Thompson, Ms. Lindsey and
15 Ms. Morgan, if you'll just keep your seats while the rest
16 of the jury goes to the jury room.

17 Mr. Foreman, members of the jury, if you'll follow
18 the bailiff.

19 (WHEREUPON, the jury exited the open court at
20 approximately 4:18 p.m.)

21 THE COURT: Any exceptions to the charge from
22 the State?

23 MS. GORDON: Your Honor, I think you may have
24 misstated the charge on testimony of the victim need not
25 be corroborated. I think that statute specifically

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1 relates to sexual assault victims.

2 THE COURT: Right. Did I say that or didn't I?

3 MS. GORDON: When you stated it, you just said
4 testimony of the State's victim, or something like that,
5 need not be corroborated. Or the testimony of a victim
6 of a crime need not be corroborated.

7 THE COURT: The testimony of the victim need
8 not be corroborated in prosecutions.

9 MS. GORDON: Correct. And that's ---

10 THE COURT: I was referring to this case. What
11 do you want me to tell them?

12 MS. GORDON: I think that statute is specific
13 to victims in ---

14 THE COURT: Criminal sexual cases, right?

15 MS. GORDON: Conduct, yes, Your Honor.

16 THE COURT: Right. What do you want me to say?

17 MS. GORDON: Just exactly -- if Your Honor
18 wants to leave it, that's fine. I just wanted to point
19 out in case you misspoke the statute actually reads,
20 regarding a sexual assault victim, but it's not just the
21 victims of any crime.

22 THE COURT: I understand. But it didn't say
23 the victim; it says the testimony of the victim. I
24 didn't say in this case, but it said testimony of the
25 victim.

1 MS. GORDON: Okay.

2 THE COURT: I mean, I'll change it if you want
3 me to bring them back.

4 MS. GORDON: I would request that you read it
5 specifically because it is a criminal sexual conduct --
6 because I'm arguing -- and the reason for that is that
7 ---

8 THE COURT: Well, let me see the statute. I
9 got it around here somewhere. And I'll be happy to do
10 that.

11 MS. GORDON: Your Honor, I think I handed up --
12 oh, wait, I've got another copy.

13 THE COURT: I'll be happy to do that. All
14 right. Anything else from the State?

15 MS. GORDON: Nothing, Your Honor.

16 THE COURT: Okay.

17 Now, you had a charge for character that you
18 presented?

19 Solicitor, will you come read this?

20 MS. GORDON: I'm sorry. And I see that that's
21 not the statute.

22 THE COURT: I mean, it's debating what I just
23 told the jury.

24 MS. GORDON: Yeah. I think this cites the
25 statute which is -- which these statutes are the criminal

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1 sexual conduct.

2 THE COURT: I know, but it states -- I stated
3 just exactly what's in here. Okay?

4 MS. GORDON: That's fine.

5 THE COURT: I mean, I didn't give them the code
6 sections.

7 MS. GORDON: Right. And it's just limited to
8 those code sections which are all the criminal sexual
9 conduct.

10 THE COURT: Do you want a clarification on
11 that?

12 MR. SAVAGE: On the State's position?

13 THE COURT: Pardon me?

14 MR. SAVAGE: The State's position?

15 THE COURT: What's your position on her
16 request?

17 MR. SAVAGE: What Your Honor said was that -- I
18 mean, this case only involves criminal sexual conduct.

19 THE COURT: Right. I just said the victim
20 referring to this particular case.

21 MS. GORDON: That's fine, Your Honor.

22 THE COURT: I'll come back and clarify it if
23 you want me to.

24 Now, you had a request for a character charge which
25 I said I would not charge. Do you still want that

1 charge?

2 MR. SAVAGE: Yes, sir.

3 THE COURT: Do you want to mark it as a Court's
4 exhibit?

5 MR. SAVAGE: Thank you, Your Honor.

6 THE COURT: I have not marked it, and I'm not
7 sure where it is. If y'all want to mark it as a Court's
8 exhibit so it will be there.

9 (WHEREUPON, Court's Exhibit Number 13 was marked for
10 identification only.)

11 THE COURT: All right. Any other exceptions
12 from the Defendant?

13 MR. SAVAGE: Yes, Your Honor. Judge, I don't
14 have the page number. But the start of the section I'm
15 referring to is entitled, fair and impartial jurors.

16 THE COURT: I'm sorry. Now, what, Mr. Savage?
17 Let me get on the right page with you.

18 MR. SAVAGE: The headline is, fair and
19 impartial jurors. You have been selected as fair and
20 impartial jurors.

21 THE COURT: Okay.

22 MR. SAVAGE: On the second -- and I'm not sure
23 you have the same page. But on the flip page at the end
24 of that paragraph it reads, you are to decide this case
25 according to the testimony that you have heard from the

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1 lips of the sworn witnesses along with other evidence
2 introduced. We believe the correct statement of law
3 would include the lack of evidence. So they can decide
4 either based on the evidence or on the lack of evidence.

5 THE COURT: Well, I think I said that in
6 another portion. Okay?

7 MR. SAVAGE: I believe you did, but I believe
8 that if you repeat it, that they can decide the case on
9 the evidence, which is also redundant, then it must
10 include, or the lack of evidence.

11 THE COURT: All right. Where are you referring
12 to, now?

13 MR. SAVAGE: I'm referring to under the fair
14 and impartial juror section.

15 THE COURT: Right.

16 MR. SAVAGE: Which reads ---

17 THE COURT: You are to decide this case
18 according to -- along with the other evidence introduced?

19 MR. SAVAGE: You ---

20 THE COURT: You're talking about along with the
21 other evidence introduced, right?

22 MR. SAVAGE: Yes, sir. Exactly.

23 THE COURT: All right. On evidence I charged
24 the jury, the evidence or lack of evidence from which you
25 are to decide the facts include the following. I covered

1 it there. I'm not going to cover it again. Okay?

2 MR. SAVAGE: Yes, sir.

3 THE COURT: It's already been covered in the
4 charge. That issue.

5 All right. Any other exceptions?

6 (No response)

7 THE COURT: Any other exceptions?

8 (No response)

9 THE COURT: It's sort of like the auction,
10 going, going, last call.

11 (Laughter)

12 THE COURT: Do you have any more exceptions?

13 MR. SAVAGE: Judge, I wanted to go back where
14 you said 'a lack of evidence' because I believe that that
15 area -- could you help me with where that is?

16 THE COURT: Yes, I'll be happy to. That's
17 under the evidence. If you look at the very top, it's
18 evidence, and it comes right after direct and
19 circumstantial evidence. It's not in your copy. Okay?
20 It's in my copy. Okay? I'll read to you what I said.
21 The evidence or lack of evidence from which you are to
22 decide the facts include the following. But that's not
23 in the copy you have. I added that at your request.

24 MR. SAVAGE: Thank you.

25 THE COURT: Okay?

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1 MR. SAVAGE: Thank you.

2 THE COURT: All right. Any other exceptions?
3 Going once, going twice.

4 MR. SAVAGE: I'm sorry. No, Your Honor.

5 THE COURT: Okay. All right.

6 Would the parties come forward and let's talk about
7 -- first of all, I want you to look at the exhibits and
8 make sure they're all here. Let's put on the record that
9 they're all here. And I want to get straight on this
10 exhibit number 9 that we're going to redact before that
11 goes back.

12 Could I ask the bailiff to come around and pick this
13 up, please, sir?

14 (WHEREUPON, Mr. Savage and Ms. Gordon reviewed the
15 exhibits.)

16 THE COURT: All right. Mr. Savage, all your
17 exhibits present?

18 MR. SAVAGE: Yes, sir.

19 MS. GORDON: Number 2 is not admitted, right?
20 Number 1 is not admitted.

21 THE COURT: Okay. All right. Do you want to
22 come up here and show me about this -- you said you
23 weren't satisfied with the redaction on number 9?

24 MR. SAVAGE: Yes, sir.

25 THE COURT: You want to bring that up? I've

1 got both of them up here if y'all want to use my copies.
2 Here's the copy that I had marked, and it complies with
3 what I marked on the original. Here's the one that's
4 been redacted. If it's something that I missed, I'll be
5 happy to correct it.

6 (Off record discussions)

7 THE COURT: All your exhibits are there?

8 MS. GORDON: Yes, sir.

9 THE COURT: Get her to mark this as State's
10 Exhibit Number 9.

11 (WHEREUPON, State's Exhibit Number 9 was replaced
12 with a redacted copy, marked and admitted into
13 evidence.)

14 THE COURT: And Mr. Bailiff, if you'll take the
15 exhibits back to the jury room. Tell the jury that they
16 may begin their deliberations, please, sir.

17 (WHEREUPON, the exhibits in evidence were delivered
18 to the jury to begin their deliberations at approximately
19 4:32 p.m.)

20 THE COURT: All right. Are y'all going to be -
21 --

22 MR. SAVAGE: But I want to make sure that it's
23 in the record that I object to the type of redaction the
24 Court proposed.

25 THE COURT: It is. It's there. Everything

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1 you've asked to be redacted, I redacted except what I
2 refused that you put on the record earlier. It's all
3 there. Okay?

4 Let me see the attorneys up here just a second.

5 (WHEREUPON, a bench conference was held off the
6 record after which court stood at recess awaiting
7 the verdicts of the jury.)

8 THE COURT: Please tell the jury to leave
9 everything they have in the jury room where they are
10 except for their personal belongings. Bring their
11 personal belongings and come into the courtroom. Leave
12 everything else in there except their personal
13 belongings.

14 Hold the jury.

15 THE BAILIFF: They're asking for five or ten
16 more minutes.

17 THE COURT: They need five or ten more minutes?

18 THE BAILIFF: That's what they said.

19 THE COURT: All right. Did you tell them what
20 we were going to do?

21 THE BAILIFF: No, I didn't tell them anything.

22 THE COURT: Okay. All right.

23 (WHEREUPON, Court's Exhibit Number 14 was marked for
24 identification only.)

25 THE COURT: The jury said give them five or ten

1 more minutes which I will do. Okay? I'll give them till
2 eight fifteen. That's about fifteen minutes.

3 (WHEREUPON, court stood at recess for a short
4 break.)

5 THE BAILIFF: Your Honor?

6 THE COURT: Yes, sir?

7 THE BAILIFF: They're ready to come in.

8 THE COURT: Pardon?

9 THE BAILIFF: They're ready to come in.

10 THE COURT: Okay. Bring them on in.

11 (WHEREUPON, the jury entered the open court at
12 approximately 8:14 p.m.)

13 THE COURT: All right. Mr. Foreman, I
14 understand you've reached a verdict; is that correct?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: Would you hand the verdict forms to
17 the bailiff, please, sir?

18 THE BAILIFF: Here you go, sir.

19 THE COURT: Thank you.

20 All right. Mr. Foreman, I have placed on your
21 verdict -- the indictment your verdict that I have dated
22 today 7/13/2012. And I'm going to give it to the Clerk
23 and ask you to sign it, please, sir. Okay?

24 (WHEREUPON, the jury foreman complied.)

25 THE COURT: Thank you very much.

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1 Mr. Clerk, if you would publish the verdict, please,
2 sir.

3 THE CLERK: The verdict form in the matter of
4 the State of South Carolina versus Erick Aroyo,
5 Defendant, as to indictment number 2010-GS-10-522 for
6 this charge of criminal sexual conduct with a minor
7 second degree, to wit, digital penetration, we, the jury,
8 by unanimous consent, find the Defendant guilty of
9 criminal sexual conduct with a minor second degree, to
10 wit, digital penetration.

11 As to indictment number 2011-GS-10-4790 for this
12 charge of criminal sexual conduct with a minor second
13 degree, to wit, penile penetration, we, the jury, by
14 unanimous consent, find the Defendant guilty of criminal
15 sexual conduct with a minor second degree, to wit, penile
16 penetration.

17 As to indictment number 2010-GS-10-529 for this
18 charge of lewd act upon a minor, we, the jury, by
19 unanimous consent, find the Defendant guilty of lewd act
20 upon a minor. Signed by the foreperson of the jury on
21 July 13th, 2012.

22 Ladies and gentlemen of the jury, if these were your
23 verdicts, please raise your right hand.

24 (WHEREUPON, all jurors hands were raised.)

25 THE CLERK: Thank you. Please let the record

1 reflect that all twelve jurors raised their right hand.

2 THE COURT: Okay. Thank you so very much.

3 Is there any request from either party concerning
4 the jury?

5 MS. GORDON: Nothing from the State, Your
6 Honor.

7 THE COURT: Anything from the ---

8 MR. SAVAGE: Request that the jury be polled,
9 Your Honor.

10 THE COURT: You want the jury polled? Okay.

11 Mr. Clerk, if you'll poll the jury,
12 please, sir.

13 THE CLERK: Yes, Your Honor.

14 THE COURT: And explain to the jury what you're
15 doing, please, sir.

16 THE CLERK: Of course.

17 Ladies and gentlemen of the jury, what I'm going to
18 do now is called polling the jury. When I call your
19 juror number, if you would please raise your hand. I'll
20 acknowledge you; you can put your hand down. I'll then
21 ask you two questions. Were those your verdicts? And are
22 they still your verdicts? Please answer each question
23 verbally.

24 Juror Number 124, were those your verdicts?

25 THE JUROR: Yes, sir.

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1 THE CLERK: Are they still your verdicts?
2 THE JUROR: Yes, sir.
3 THE CLERK: Thank you.
4 Juror Number 34? Yes, ma'am. Were those your
5 verdicts?
6 THE JUROR: Yes, sir.
7 THE CLERK: Are they still your verdicts?
8 THE JUROR: Yes, sir.
9 THE CLERK: Thank you.
10 Juror Number 230? Yes, ma'am. Were those your
11 verdicts?
12 THE JUROR: Yes, sir.
13 THE CLERK: Are they still your verdicts?
14 THE JUROR: Yes, sir.
15 THE CLERK: Thank you.
16 Juror Number 15? Yes, ma'am. Were those your
17 verdicts?
18 THE JUROR: Yes.
19 THE CLERK: I'm sorry. What was that?
20 THE JUROR: Yes.
21 THE CLERK: Are they still your verdicts?
22 THE JUROR: Yes.
23 THE CLERK: Thank you.
24 Juror Number 2? Yes, ma'am. Were those your
25 verdicts?

1 THE JUROR: Yes, sir.

2 THE CLERK: Are they still your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Thank you.

5 Juror Number 104? Yes, sir. Were those your

6 verdicts?

7 THE JUROR: Yes, sir.

8 THE CLERK: Are they still your verdicts?

9 THE JUROR: Yes, sir.

10 THE CLERK: Thank you.

11 Juror Number 43? Yes, sir. Were those your

12 verdicts?

13 THE JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Thank you.

17 Juror Number 170? Were those your verdicts?

18 THE JUROR: Yes, sir.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you.

22 Juror Number 241? Yes, ma'am. Were those your

23 verdicts?

24 THE JUROR: Yes, sir.

25 THE CLERK: Are they still your verdicts?

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1 THE JUROR: Yes, sir.

2 THE CLERK: Thank you.

3 Juror Number 229? Yes, ma'am. Were those your
4 verdicts?

5 THE JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 THE JUROR: Yes.

8 THE CLERK: Thank you.

9 Juror Number 132? Were those your verdicts?

10 THE JUROR: Yes, sir.

11 THE CLERK: Are they still your verdicts?

12 THE JUROR: Yes, sir.

13 THE CLERK: Thank you, sir.

14 Juror Number 162? Were those your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Are they still your verdicts?

17 THE JUROR: Yes, sir.

18 THE CLERK: Thank you.

19 Was there any juror whose number I did not call?

20 Please raise your hand.

21 (No response)

22 THE CLERK: Your Honor, the jury's been polled,
23 and the verdicts stand.

24 THE COURT: Okay. Thank you very much.

25 Y'all may have a seat if you want, if you would

1 like. Let me say this. It's late in the evening. I
2 will give you ten days to file whatever motions you would
3 like to file. And also, I am not going to sentence the
4 Defendant tonight. I want to get a complete evaluation
5 done by either the forensic psychiatrist, Donna Swartz-
6 Watts, or the forensic psychiatrist, Pam Crawford. The
7 Court's concern is the prior allegations by Jenny Brewer,
8 who was the stepdaughter, concerning the sexual
9 allegations against her plus these sexual allegations,
10 both being twelve-year-olds at the time. I want to get a
11 forensic examination of this Defendant before I sentence
12 him which will be a tremendous benefit to the Court.

13 Now, I can't force the Defendant to pay for this. I
14 would like to have it. If you would talk to them, get a
15 price and please get the money from your client before
16 they do any work. And please notify me within ten days
17 whether you're going to comply with that request or not
18 comply. It's not mandatory. I'm just telling you the
19 Court would like to have it. I want to address the issue
20 of pedophilia with these people, both of these
21 psychiatrists, forensic psychiatrists. They've been very
22 active in the sexual predator process by evaluating
23 those. And I would like for him to be evaluated by one
24 of the two, either one. It doesn't matter to the Court.
25 But if you don't want to accept that and pay for it,

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1 please let me know. And I will commence sentencing at
2 that time. Do you understand?

3 MR. SAVAGE: Your Honor, what I understand is
4 that the Court would like for the Court in evaluating the
5 appropriate sentence to have a report from Dr. Donna
6 Swartz-Watts or Dr. Pam Crawford.

7 THE COURT: Right, that's what I would prefer.
8 But I can't force the Defendant to do that and pay for
9 it.

10 MR. SAVAGE: It's virtually impossible for that
11 to be completed within ten days.

12 THE COURT: I'm not asking it be completed in
13 ten days. I'm just asking you to get the money and make
14 the contract and tell me that the Defendant's willing to
15 do that.

16 MR. SAVAGE: Your Honor, I can say right now
17 that we are willing to do it. We will do that, make the
18 appropriate contact. And I'll keep you notified.

19 THE COURT: All right. Solicitor, do you have
20 a sentencing sheet?

21 MS. GORDON: I do not have it, Your Honor.

22 THE COURT: I don't really need one, but I need
23 something to give to the jail.

24 MS. GORDON: If the deputies would just let me
25 know whatever they need. I know that I've given them the

1 booking sheet.

2 THE COURT: What do you need for the jail? I
3 want to hold him until we get this evaluation done and
4 sentencing.

5 THE DEPUTY: Just get an order stating that.

6 MS. GORDON: I'll prepare the order, Your
7 Honor.

8 THE COURT: It would be a lot easier to give me
9 a sentencing sheet. I could write on the sentence sheet
10 if you get me one.

11 MS. GORDON: I'll get it for you.

12 THE COURT: Pardon?

13 MS. GORDON: I'll get you a sentence sheet.

14 THE DEPUTY: He's not going to go anywhere
15 right away. We'll just book him and hold him.

16 THE COURT: All right. I'll be happy to get
17 the sentence sheet for you if you need it tonight.

18 THE DEPUTY: No, we don't.

19 THE COURT: Okay. They don't need the sentence
20 sheet tonight.

21 MS. GORDON: Okay.

22 THE COURT: Okay?

23 THE DEPUTY: Because if we have a sentencing
24 sheet, then ...

25 THE COURT: But just let me know if I can be of

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1 any assistance if I need to order -- either one of the
2 forensics may want an order with me appointing them to do
3 the evaluation on behalf of the Court. I'll be happy to
4 sign that for you.

5 MR. SAVAGE: We're not asking for an
6 appointment other than a literal appointment.

7 THE COURT: Right. I mean, it may take them a
8 month or six weeks to do it. I don't know how long it's
9 going to take. I don't know what their schedules are.
10 That's why I gave you both names. Pick whichever one you
11 want or however quickly you can get it done. Okay?

12 MR. SAVAGE: Thank you.

13 THE COURT: That's going to be a tremendous
14 benefit to this Court in sentencing.

15 MR. SAVAGE: As far as the Defendant's status
16 tonight, I don't think it would be any different than if
17 his bond was up on Monday.

18 THE COURT: No, sir. No. His bond is up now.

19 MR. SAVAGE: Yes, sir.

20 THE COURT: Okay?

21 MR. SAVAGE: That's why I don't think there
22 will be a problem at the jail.

23 THE COURT: I understand. Well, he's going to
24 jail tonight. Okay?

25 MR. SAVAGE: I understand.

1 THE COURT: You understand that?

2 MR. SAVAGE: Yes, sir.

3 THE COURT: Okay. All right. Is there
4 anything else? I'll give you ten days to file any post-
5 trial motions. Okay?

6 MR. SAVAGE: Yes, sir.

7 THE COURT: And any order you need appointing
8 the particular forensic psychiatrist to do the
9 evaluation.

10 MR. SAVAGE: We'll provide that.

11 THE COURT: And they'll understand what I want.
12 They've done this for me before. Okay? It's not my
13 first time having required this.

14 MR. SAVAGE: Judge, thank you for your
15 courtesies during the course of this trial.

16 THE COURT: Okay. Thank y'all very much.

17 Mr. Foreman, ladies and gentlemen of the jury, I
18 want to thank you. I enjoyed working with you this week.
19 I know it's been a long week. It's late. But thank you
20 so very much. If you want to go to the jury room and get
21 your personal items.

22 And the bailiffs need to collect the evidence and
23 turn it over to the court reporter, please. And then
24 that can be turned over to the Clerk. If y'all will
25 follow the bailiff to the jury room.

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1 All right. We'll stand adjourned. Thank you very

2 much.

3 (WHEREUPON, court stood at recess in this case.)

4 *** End of Requested Transcript of Record ***

1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Ninth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 9th through 13th days of 2012.

10 That this trial was taken by Jo Rice, Official Court
11 Reporter, and transcribed by me to the best of my
12 ability.

13 This transcript may contain quoted material. Such
14 material is reproduced as read by the speaker.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

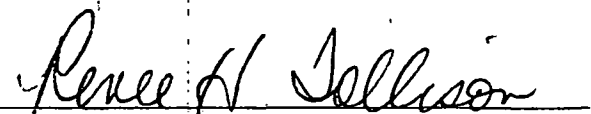
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September 12, 2013

18

19

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Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) CASE NO.: 2010-GS-10-00522

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 ERICK A. ARROYO,)
)
 DEFENDANT.)

MOTIONS HEARING

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Monday, March 4, 2013, Commencing at 11:22 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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MARKED/ADMITTED

Defendant's Exhibit Number 1
[Mitigation Package]

Court's Exhibit Number 1
[Dr. Burke's Report]

State v. Arroyo
Motions Hearing/Sentencing
March 4, 2013

PROCEEDINGS

[Whereupon, Defendant's Exhibit Number 1 is
marked by the court reporter]

THE COURT: Is the State ready to proceed on the
sentencing on Mr. Arroyo?

MS. GORDON: Your Honor, the State is ready to
proceed. As you recall, the victims now live in
Nebraska. I have -- they are on the telephone and
just observing the proceedings via Face Time.

THE COURT: All right. Is the defense ready to
proceed on sentencing?

MR. SAVAGE: The defense is ready, Your Honor.

THE COURT: I understand that the defense is --
the defense has presented an Exhibit Number 1, which
the Court would like to read. I didn't receive it
until about five minutes before I walked into the
courtroom and I plan on reading that before I actually
put a number to the sentence. However, the defense
also filed a motion for a new trial and I understand
the parties -- after a sentence has been handed down
by the Court, that the parties will address the new
trial based upon a memo from respective parties, which
the defense has already filed.

Is that correct, Mr. Savage?

MR. SAVAGE: That is correct, Your Honor.

MIA PERRON, CVR-CM-M

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1 THE COURT: Is that correct? From the State?

2 MS. GORDON: Yes, Your Honor.

3 THE COURT: Now, I also will tell you that I
4 will issue the sentence after I read Defendant's
5 Exhibit Number 1. And if you change your mind and you
6 want oral arguments on the new trial, please let me
7 know. I'm doing non jury all next week. I'll be glad
8 to squeeze it in at your convenience next week.

9 MR. SAVAGE: Judge, we're satisfied with the
10 motion that we had filed when the State files their --
11 hasn't changed. I doubt that affects it.

12 THE COURT: If for some reason y'all change your
13 mind, just call the law clerk and we'll work it in
14 next week. I'm sure there will be things falling off
15 on the non-jury roster next week. Okay?

16 MR. SAVAGE: Yes, sir.

17 THE COURT: I'll be happy to set it for y'all to
18 make oral arguments.

19 MS. GORDON: Thank you, Your Honor.

20 THE COURT: All right. Let me see. Mr. Arroyo
21 was tried apparently on it looks like, if I can read
22 my writing, on July the 13th, 2012. He was found
23 guilty of a lewd act on a minor under the age of
24 sixteen. Criminal sexual conduct with a minor second
25 degree under the age of sixteen and criminal sexual

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1 conduct in the second degree on all three charges.

2 Solicitor, what's the max on the --

3 MS. GORDON: On criminal sexual conduct with a
4 minor in the second degree, the sentence is -- the
5 maximum sentence is twenty years and on lewd act on a
6 minor, the maximum sentence is fifteen years, Your
7 Honor.

8 THE COURT: Okay. Mr. Savage, do you agree with
9 those numbers?

10 MR. SAVAGE: Yes, I do, Your Honor.

11 THE COURT: All right. I'll be glad to -- who
12 would like to proceed first? The State or the
13 defendant? Or how do y'all want to proceed? I'm
14 going to hear everything today that needs to be heard,
15 other than me reviewing Defendant's Exhibit Number 1.

16 MS. GORDON: That's fine, Your Honor.

17 As you'll recall, we had a full trial.

18 THE COURT: Right.

19 MS. GORDON: You heard most of everything the
20 State would have to say. We may have something in
21 rebuttal from Mr. Savage's mitigation, unless you
22 would like the State to give a recitation of the trial
23 at this time.

24 THE COURT: I remember the trial. But whatever
25 you want to tell me, I'll be glad to hear it. If you

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1 want to wait for rebuttal, that's fine.

2 MS. GORDON: We'll just wait for rebuttal, Your
3 Honor.

4 THE COURT: All right. Mr. Savage, I'll be glad
5 to hear you.

6 I understand Mr. Burke is here. I have reviewed
7 Mr. Burke -- if you'll hand up a copy, I would like to
8 mark that as a Court's Exhibit or Defendant's Exhibit
9 Number 2, if you don't mind. Or here's my copy. I
10 can just mark it. I'll mark it as Court's Exhibit
11 Number 1.

12 MR. SAVAGE: It's in the mitigation package, as
13 well.

14 THE COURT: It is also? Okay.

15 MR. SAVAGE: Yes, sir.

16 THE COURT: Okay.

17 [Whereupon, Court's Exhibit Number 1 is marked
18 by the court reporter]

19 MR. SAVAGE: Your Honor, the reason we are here
20 today is because following the guilty verdict, Your
21 Honor has asked that a psychiatric evaluation be
22 performed. I proposed two practitioners out of
23 Columbia. With the help of the State, Ms. Gordon, and
24 Your Honor's consent, we asked Dr. Burke, who had
25 already evaluated the defendant many -- two years

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1 prior to this, to conduct another evaluation on the
2 specific issue of whether or not he suffered from
3 pedophilia.

4 Dr. Burke's report is before you. It's rather
5 interesting in the sense that -- well, his status has
6 not changing -- his status had not changed from the
7 earlier assessment. The DSM Edition Number 5, which
8 is coming out this spring, actually changed the
9 definition of pedophilia and expanded it. And I think
10 that Dr. Burke, he wanted to be able to explain that.

11 Dr. Burke?

12 DR. BURKE: Sure. So the explanation of the new
13 DSM pedophilia--

14 [Off the record momentarily]

15 THE COURT: When is it coming out?

16 MR. SAVAGE: June 3rd. June of this year.

17 THE COURT: Okay. That will be number what, 6?

18 MR. SAVAGE: 5.

19 DR. BURKE: 5.

20 THE COURT: 5?

21 DR. BURKE: Well, essentially what's changing
22 with DSM 5 is they've added two categories to create a
23 continuum regarding attraction, age attraction --
24 actually, more specifically, morphology attraction,
25 body type attraction. In DSM 4 we had pedophilia, and
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1 then that's it regarding attraction to a body type.
2 Although it's not structured that way in the
3 diagnostic criteria, they give specific ages. And the
4 problem with that is some twelve-year-old girls look
5 sixteen, some sixteen-year-old girls look twelve. So
6 it's difficult to go strictly by the age. So what's
7 occurring with DSM 5 is they're keeping pedophilia and
8 putting that age range up to eleven years of age. And
9 then ages eleven to thirteen is being categorized as a
10 abephilia.

11 THE COURT: What?

12 DR. BURKE: Abephilia.

13 THE COURT: You had all that in your report?

14 DR. BURKE: Yes, sir, it's all in there.

15 THE COURT: It's all in your report.

16 DR. BURKE: And an abephilia is a child that is
17 starting to have secondary sexual characteristics,
18 with females starting breast development and maybe
19 pubic hair development and things like that.
20 Curvature of the body starts to occur. Now, beyond
21 that, fourteen to seventeen years of age is
22 hebephilia. Hebephilia is considered normal for both
23 adult men and women, heterosexual and homosexual.
24 That is to say it's normal for an adult man attracted
25 to girls to be attracted to someone fourteen to

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1 seventeen years of age if they look that age, have
2 sexual -- secondary sexual characteristics. So --

3 [Off the record momentarily]

4 DR. BURKE: So the solicitor was kind enough to
5 send me some photographs of the victims and also point
6 out to me I believe -- correct me if I'm wrong -- the
7 age when the offending began, one of the victims was
8 ten. I believe that's what you told me.

9 MS. GORDON: Of the first victim.

10 DR. BURKE: Right.

11 So judging from that, the physiological testing
12 -- in his physiological testing in the laboratory, he
13 seems aroused to adult females only. There's no
14 attraction to children, there's no attraction to
15 teenagers, that were indicated in two different kinds
16 of tests, the plethysmograph and the visual sexual
17 preference test.

18 Now, as I've spelled out in my report, there's
19 different levels of risks assigned to these kinds of
20 diagnoses. The greatest level of risk would be
21 pedophile-exclusive mix. And what that means is an
22 individual is only attracted to children, prepubescent
23 children, cannot in any way find themselves or get
24 themselves attracted to adults. That's what the
25 exclusive labels added. And then mixed means male and

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1 female. So they typically abuse other people's
2 children because they typically don't have children of
3 their own, because they're not attracted to adults.
4 Now, there's sort of a mid-level area of pedophilia,
5 non-exclusive mixed. So what that means is the person
6 is attracted sexually to adults and to children. And
7 the mix is males and females. Just below that would
8 be pedophilia non-exclusive female only. Some
9 pedophiles are only attracted to females that are like
10 little boys.

11 And in the lowest level of risk within the
12 pedophilia diagnosis is pedophilia non-exclusive
13 female incest. Incest is defined by their own
14 biological child or stepchild or a child that's lived
15 with them for more than a year. My understanding
16 is that's the kind of victim that we have here with
17 Mr. Arroyo.

18 MS. GORDON: She had not lived with him for a
19 year.

20 DR. BURKE: She was a family member?

21 MS. GORDON: Yes.

22 DR. BURKE: Yes. Okay.

23 Now, the reason that is -- usually it's a lower
24 level of risk is they tend to only abuse children
25 within the family, within the family structure. They

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1 don't go outside the family to molest children and
2 incestuous.

3 Now, with the new developing criteria with
4 DSM 5, what we would have now is Mr. Arroyo would meet
5 the diagnostic criteria of pedophilia, pedohebophilia,
6 which represents that he started maybe molesting a
7 child around ten and so and it continued over a period
8 of time and then got into the eleven- to thirteen-year
9 age range. So it would appear that that would be the
10 category risk that he would fall in, which is very
11 similar to the old category of pedophilia non-
12 exclusive incest female. That's a lot of -- they have
13 to print something, I guess. Add something. Well, I
14 don't know. I do think there's a legitimate reason to
15 help identify different morphology types as opposed to
16 age strictly.

17 THE COURT: Do you want me to ask you a question
18 since you stopped, or do you want me to tell me
19 anything else?

20 DR. BURKE: I'm ready for questions.

21 THE COURT: All right. What's the treatment of
22 the lowest risk level, where you classify him? What's
23 the treatment?

24 DR. BURKE: Well, the treatment would be the
25 treatment that meets the standards of care of the

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1 Association for Sexual -- Association for the
2 Treatment of Sexual Abusers, which is based on three
3 different approaches. One is the Good Lives Model,
4 which is to help people pick up the pieces to live the
5 best life they can in the community while being a sex
6 offender and on the registry. In addition to that,
7 there's cognitive behavioral therapy, to help them
8 take responsibility for their actions, understand the
9 damage they've done, identify thinking errors, help
10 them to think differently and approach situations
11 differently. And then the third category is
12 physiological interventions, where we do arousal
13 reconditioning, we do medication management to reduce
14 sexual arousal across the board equally. And in some
15 cases we have the capability to be really specific,
16 with some sexual arousal, with different kinds of
17 medication.

18 THE COURT: Is it -- I guess for lack of a
19 better word, is it curable or is it -- the urges
20 are -- just taught to control the urges?

21 DR. BURKE: It's to control their urges, Your
22 Honor.

23 THE COURT: Pardon?

24 DR. BURKE: To control the urges. And to --

25 THE COURT: To control the urges.

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1 DR. BURKE: -- you know, we have something to
2 work with if the client is attracted to adult. In
3 this case he's heterosexual, so adult females. That
4 bodes well for treatment outcome regarding that.

5 THE COURT: I know you can't -- I'm sorry. I
6 didn't mean to interrupt. Go ahead.

7 DR. BURKE: If one were not attracted to adults
8 at all, you know, the best we could hope for is just
9 monitoring because there's nothing really to work
10 with.

11 THE COURT: Right.

12 DR. BURKE: But when they do have an attraction
13 towards adults, they --

14 THE COURT: So you just try to steer their urges
15 to the adults?

16 DR. BURKE: Yes, sir.

17 THE COURT: I know you probably can't answer
18 this conclusive, but I've got to ask it. The
19 recidivism: and that's what -- and that's where, you
20 know, I guess we run afoul. I'm concerned about that.

21 DR. BURKE: Yes, sir.

22 THE COURT: And that's the reason I asked for
23 the tests. Tell me your thoughts on recidivism
24 pertaining to this particular individual, because you
25 haven't examined and treated him in the past.

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1 DR. BURKE: I've not treated him in the past but

2 I --

3 THE COURT: You examined him?

4 DR. BURKE: Yes, sir..

5 Well, in making that kind of determination, what
6 the research strongly suggests is the greatest
7 predictor of recidivism is sexual arousal to children
8 or rape in the plethysmograph laboratory. That is the
9 single greatest predictor. On both exams, some years
10 apart, Mr. Arroyo responded essentially the same way.
11 So being nothing to rape and nothing to children of
12 any significance, the fact his arousal to adult
13 females was four standard deviations above everything
14 else. It was off the Bell curve. So in my mind, the
15 beast [phonetic] that occurred was more emotionally
16 and power driven as opposed to sexually driven.

17 THE COURT: Okay.

18 DR. BURKE: Now, recidivism is a very difficult
19 thing to predict. And I personally have problems with
20 some of the data that's out there because most of the
21 data that's published, the folks doing the work don't
22 polygraph these guys. And to me -- polygraphy is not
23 at all perfect, but it's been my experience with other
24 research that with polygraphy you can get a better
25 handle of what you're dealing with and sort of reduce

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1 recidivism that way.

2 I know in our treatment program or with the ATSA
3 approved program, polygraphy is required every six
4 months to make sure that they're complying with
5 probation's recommendations and treatment
6 recommendations. So I think that -- that in the
7 context of treatment, any treatment program that has
8 polygraphs every six months greatly helps reduce your
9 recidivism.

10 There is some research to indicate that overall,
11 in my world, he's in the lower level of risk because
12 he stayed within the family system for his victims.
13 Now, when I say this, I am in no way suggesting or
14 implying that the suffering of the victims should not
15 be considered, or lessened. I'm not -- this has
16 nothing to do with how these girls have been
17 victimized. It has everything to do with statistics.

18 THE COURT: I understand that.

19 DR. BURKE: I just wanted to make you aware of
20 that.

21 THE COURT: I understand that. And that's --

22 DR. BURKE: But that --

23 THE COURT: I understand. I appreciate your
24 saying that because they need that explanation, also.

25 You said you thought he had done it from emotion

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1 and control?

2 DR. BURKE: Yes, sir.

3 THE COURT: Can you expound upon that, if you
4 would?

5 DR. BURKE: Yes, sir.

6 And this is typical of an incest offender.

7 You're in an environment where through the process of
8 habituation you no longer are contained by the normal
9 social boundaries that prohibit us physically and
10 psychologically, physiologically, from doing anything
11 incestuous. And what I mean by that is whatever is
12 going on in ones relationship, at work, with their own
13 personality, being in the same household, having a lot
14 of contact with a child, they begin to project onto
15 the child the feelings and thoughts that they have
16 towards adults and then they interpret common normal
17 behavior that children exhibit as indications that
18 they may be interested in them sexually or want him to
19 teach them about sex. In addition to that, there's
20 implied power when you're a father figure, an uncle or
21 whatever. In an adult, there's this unspoken implied
22 power associated with it. So that's typically how an
23 incest type offender works.

24 So they have a lot of contact with the child,
25 they start thinking in terms of it not being a child

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1 anymore but more, you know, having adult thoughts and
2 adult feelings and they find themselves attracted to
3 them sexually and then in turn they're thinking, well,
4 they must be attracted to me, too. Which isn't the
5 case at all, but that's part of the illness is that
6 simple behaviors that are normal they interpret as
7 indications that they're interested in sex. For
8 instance, you may roughhouse with your child, be in a
9 swimming pool and throw them around and, you know,
10 they didn't object to that so they must like it. That
11 sort of distorted thinking.

12 THE COURT: So the treatment there is also
13 incorporated in what you said earlier as far as
14 teaching them to control the emotions and the control
15 issues?

16 DR. BURKE: And the way they talk and the way
17 they think and they process information.

18 THE COURT: The thought process --

19 DR. BURKE: Yes, sir.

20 THE COURT: Their thought process?

21 DR. BURKE: Yes, sir.

22 THE COURT: Trying to recognize the problem and
23 changing their thought process?

24 DR. BURKE: Yes, sir.

25 THE COURT: All right. What treatment do you

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1 recommend for that?

2 DR. BURKE: What treatment?

3 THE COURT: Yes. How would you treat him? If
4 we weren't here in court and he walked in and you know
5 everything you know about him today, what treatment
6 would you recommend for him?

7 DR. BURKE: Under the umbrella of a Good Lives
8 Model and a psychiatric evaluation, meeting with a
9 psychiatrist, he would be placed on medication to help
10 control the sex drive. There would be cognitive-
11 behavior-specific treatment interventions that are
12 accepted by ATSA. There would be arousal
13 reconditioning. There would be what we call a
14 clarification process where one takes responsibility
15 for their crime. And they do that in a manner -- it's
16 very structured. And typically is one of the longest
17 parts of treatment. It's not uncommon for us to spend
18 a year with an individual just to get them to the
19 point where they can --

20 THE COURT: I had one of the sexual abusers. He
21 had been out of jail and in the system, in the State
22 system, seven years. They still hadn't accepted him
23 in the program because he wouldn't ever -- I guess he
24 wouldn't clarify his wrongdoings. So they've had him,
25 well, I won't say incarcerated. The Supreme Court

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1 said it's not penal. But they've had him confined and
2 in the treatment process in Columbia for seven years
3 and he's still not in the treatment program. You said
4 a year. This guy -- apparently he says now he's going
5 to participate in it. I don't know.

6 DR. BURKE: Well, we polygraph them.

7 THE COURT: It took him seven years.

8 DR. BURKE: We polygraph them. And we get
9 through a lot of denial with polygraphy --

10 THE COURT: Does polygraph --

11 DR. BURKE: -- and instead of using just one --

12 THE COURT: Does polygraph help?

13 DR. BURKE: Tremendously.

14 THE COURT: I didn't mean to interrupt. That
15 was just a sort of a side issue. I found that
16 interesting that he was confined in the state sexual
17 predator program and he had been there for seven years
18 and hadn't participated in the program.

19 DR. BURKE: Right.

20 THE COURT: I didn't mean to interrupt.
21 Anything else you want to tell me on the treatment?
22 How long of a process does that treatment take?

23 DR. BURKE: Well, it's --

24 THE COURT: Lifelong? Sort of like AA and NA?

25 DR. BURKE: That would be the optimal --

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1 THE COURT: Pardon?

2 DR. BURKE: We don't get that. Well, we do now
3 with the federal cases. We have lifetime probation,
4 so we've got several guys that --

5 THE COURT: It's too bad with these sexual
6 offenders we can't put them -- order counseling for
7 the rest of their life. But we can't do it. I'm
8 limited to five years.

9 DR. BURKE: Yes, sir.

10 THE COURT: Does that five years do any good?

11 DR. BURKE: I think so. I hope so. I wouldn't
12 be doing what I'm doing.

13 THE COURT: And I'm not trying to put you on the
14 spot with this last question. Would confinement do
15 him any good, as far as recognizing and controlling
16 emotions and the control issues, not necessarily
17 identifying his thought process and correcting it?

18 DR. BURKE: Would punishment --

19 THE COURT: Yeah. Confinement.

20 DR. BURKE: -- incarceration?

21 THE COURT: Yeah, incarceration.

22 DR. BURKE: -- be beneficial?

23 THE COURT: When I say confinement: locked up
24 in jail.

25 DR. BURKE: Well, to speak in general terms,

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1 I think it might be helpful for some people. But
2 Mr. Arroyo might be -- I think -- it's my
3 understanding -- just overhearing, being in here this
4 morning, that he may want another trial, I don't know,
5 so that might be another issue to do that. But I
6 don't feel qualified to --

7 THE COURT: Well, if you don't want to answer
8 it, that's fine. I'm not trying to put you on the
9 spot. I just want to hear what you're saying. I
10 value your opinion. I've got to make the ultimate
11 decision. I understand that.

12 DR. BURKE: Yes, sir. Yes, sir. I can --

13 THE COURT: Anything else you would like to add
14 that you think would help me in sentencing Mr. Arroyo?

15 DR. BURKE: Nothing that comes to mind --

16 THE COURT: I want to thank you, Dr. Burke, for
17 doing the evaluation. I want to thank you for being
18 here today. I've always respected your opinion. I
19 think you do a wonderful job. Okay?

20 DR. BURKE: Thank you, sir.

21 THE COURT: Thank you so very much.

22 MR. SAVAGE: Could I just keep him for a second,
23 Judge?

24 THE COURT: Yes, sir.

25 MR. SAVAGE: I think, you know, you had

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1 mentioned two other psychiatrists in this area. And I
2 think Ms. Lash was here a minute ago --

3 THE COURT: Well, I don't have any problem with
4 Dr. Burke. I think he's qualified. And when I
5 mentioned the other two, his mind just didn't -- his
6 name didn't come to my mind. Okay?

7 MR. SAVAGE: But the feds -- he works for the
8 state more than he works for the defense side.

9 But I would say in terms of success I've had
10 scores of individuals in his program. Scores. None,
11 zero, have re-offended. But I have --

12 THE COURT: Either that or they haven't been
13 caught, one.

14 MR. SAVAGE: But I have had some that Dr. Burke
15 put back in jail. Seriously. So my experience with
16 him is that he's a pretty straight arrow. He calls it
17 like it is. And if he messed up, he messed up.
18 There's no contesting it.

19 But he has two programs, basically. One is a
20 very intense program, and that is Florence to Columbia
21 to Charleston. And the other one is more or less the
22 maintenance program after maybe a year or so. The
23 nice thing that I like about Dr. Burke, having dealt
24 with the number of sexual -- well, his treatment.

25 But in evaluation what I like is that he uses a

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1 collage of tests. In this case Mr. Arroyo went
2 through the litmus graph, which I'm sure Your Honor is
3 aware, pretty intense. I call it the polygraph for
4 your sexual organ, which measures reaction. But he
5 went through a number of other ones: the Limestone
6 Visual Sexual Preference Test, he went through the
7 regular MMPI, the PCMR, the Static '99, Stable 2007,
8 the Q 2007, Dr. Burke's own examination of testing, as
9 well as with the psychiatrist in Atlanta, the ABEL
10 exam. So in the constellation of exams, the results
11 were all the same and every one have indicated the
12 lowest possible risk.

13 Now, what do we do with somebody like Arroyo?
14 Well, number one, he's in denial so that has to be
15 broken down. Dr. Burke will tell you he's extremely
16 successful in that. But number two, if he goes to
17 prison, he will not get -- will not get -- the type of
18 remedy, treatment that Dr. Burke suggests. They just
19 don't have the money to do it. The denial in prison
20 is much easier because they're not constantly
21 confronted with it, there are no polygraph exams, they
22 do not have the intensity at -- of what Dr. Burke has.

23 So the question is does he need to be punished.
24 Well, if he's guilty of this, probably, yes, he does
25 need to be punished. And has he been punished? Yes,

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1 he has. He's spent the last eight months in terrible
2 conditions in the county jail.

3 But moving forward to protect society, when he
4 says he's low risk, that's linked to freedom. So the
5 concept, I think, is that he's -- is he able to go
6 through a therapeutic environment where he will be at
7 low risk? The answer is yes. But if he goes to
8 prison and doesn't have that freedom, then there's
9 another issue in terms of public safety. So I would
10 ask the Court to consider that.

11 Is that all factually accurate, Dr. Burke?

12 DR. BURKE: I believe so, yes.

13 THE COURT: Let me just ask you one question.
14 You may not be able to answer it. If you can't,
15 that's fine.

16 From your experience, does incarceration help
17 the denial, break down the denial process, or hinder
18 it?

19 DR. BURKE: It's idiosyncratic, Your Honor. It
20 depends on the person.

21 THE COURT: It depends on the individual?

22 DR. BURKE: Yes, sir.

23 THE COURT: And how they -- and how they relate
24 to it?

25 DR. BURKE: Yes, sir.

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1 THE COURT: All right. Thank you. Thank you
2 very much.

3 Do you want to excuse -- do you want to excuse
4 -- I'm sorry. Solicitor, do you have any questions
5 you would like to ask Dr. Burke before he leaves?

6 MS. GORDON: Dr. Burke, is it your opinion that
7 in order to be successful in treatment, the person has
8 to actually admit to what he did wrong?

9 DR. BURKE: Well, I believe that's absolutely
10 necessary. I will say that ninety-five percent of the
11 guys that we get in are all in denial so we have to
12 break through that. So it's not uncommon to be in
13 denial and get the treatment.

14 But, you know, I firmly believe you have to take
15 responsibility for your behavior and -- you know,
16 taking responsibility for our behavior, and treatment,
17 is one of the best things to help the victims recover.
18 And so that's why I spend so much time focusing on
19 that in the beginning. So I think that's really
20 important for treatment outcome but also for the
21 victims, as well.

22 THE COURT: Thank you, Doctor. Anything else?

23 MS. GORDON: Nothing from the State, Your Honor.

24 THE COURT: Thank you, Dr. Burke.

25 Mr. Savage, any reason that he can't be excused?

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1 MR. SAVAGE: Thank you.

2 THE COURT: Thank you, Dr. Burke.

3 All right. Mr. Savage, be glad to hear you.

4 MR. SAVAGE: Judge, you know a little bit about
5 Mr. Arroyo from his trial last summer. He'll be
6 fifty-five years of age this April. He was born in
7 Puerto Rico. He attended Texas A&M University where
8 he received a bachelor of science in civil
9 engineering. He was in the United States Navy from
10 1984 to 2008. He retired as a lieutenant commander
11 February 1st of 2009. The first nine years he was an
12 NFO. For the final twelve, he was assigned to the
13 Naval Civil Engineering Corp as a CV. Prior to that
14 time, he was enlisted in the air force where he
15 received the rank of E-5. At the time of his arrest
16 he was with Erie International as a project manager.
17 He lost his job as a result of his arrest.

18 You have a lot of investigator -- a lot of
19 character letters, all of his commendations from his
20 service to the government. That's contained in the
21 mitigation package.

22 I would like to briefly point out that there are
23 a number of people here for him. If you would stand
24 as I call your name. Janet and Kyle. This is his
25 daughter and his daughter's boyfriend. Js.

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1 Let's see. Rose Denaris [phonetic]. His mom.
2 Marjorie Royal. Sister and brother-in-law. Herb
3 Hadley [phonetic], brother-in-law. Eddie and Rob
4 Newland [phonetic], cousins who rode down last night
5 from Baltimore. William Medina [phonetic], brother.
6 Phyllis and Mike Yates [phonetic]. Phyllis is back
7 there -- next-door neighbor, Michelle Richards
8 [phonetics].

9 So all these people would basically say to you
10 what they said in the character letters I presented to
11 the Court: that all of their dealings with him have
12 been aboveboard, and no sign of any proprieties.

13 Your Honor, we talked about acceptance of
14 responsibility in a therapeutic setting and a legal
15 setting, of course --

16 THE COURT: Well, they're two different things.

17 MR. SAVAGE: Two different areas, and sometimes
18 they have conflict. So I don't want the judge to
19 assume because he exercised his rights to go to
20 trial, that would be a problem. I'm not vouching for
21 that. I'm just saying there is a difference.

22 And particularly -- it is interesting that the
23 mother -- and I know the mother is on the phone. But
24 almost immediately after the jury came back, a lawsuit
25 was filed. And most interesting was there are three

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1 areas or reasons why Mr. Arroyo should pay money, all
2 three for the benefit of the mother.

3 THE COURT: I'm sorry. What, now?

4 MR. SAVAGE: All three causes --

5 THE COURT: I didn't hear you.

6 MR. SAVAGE: -- causes of action in this
7 lawsuit, all three, a hundred percent of them, are for
8 the benefit of the mother.

9 THE COURT: What's the cause of action?

10 MR. SAVAGE: There were three of them, Your
11 Honor. If I could just have a moment to refer to
12 them.

13 [Whereupon, Mr. Savage reviews documents]

14 MR. SAVAGE: This was filed in October, court --
15 in common pleas court here. The case number is 12-CP-
16 10-6869. Again, three causes of action. The first
17 cause of action is battery. The mother and daughter
18 are both claiming injuries. The second cause of
19 action is intentional emotional -- intentional
20 affliction of emotional distress. Again, the mother,
21 the daughter, are each claiming actual and punitive
22 damages. For the third cause of action, the loss of
23 services, an interesting concept. The mother is the
24 only one claiming actual and punitive damages.

25 So, you know, that complicates it. And there's

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1 a way around that. I'm confident that there is and
2 that we can pursue the appropriate therapeutic
3 requirement for Mr. Arroyo.

4 That's pretty much all we have, Judge. In light
5 of the motion for the new trial and other legal
6 proceedings that may exist, we would understand why
7 Mr. Arroyo is not going to comment at this time.

8 THE COURT: Okay. Thank you so very much. I
9 appreciate it.

10 MR. SAVAGE: Thank you.

11 THE COURT: Solicitor?

12 MS. GORDON: Yes, Your Honor.

13 Again, you've heard days worth of testimony --

14 THE COURT: Let me interrupt just one second.

15 You may have said it but I missed it. What did
16 he do in the navy? What was his --

17 MR. SAVAGE: He was a naval flight officer for
18 the first eight years and then he was a construction
19 engineer for the remainder of his term.

20 THE COURT: Okay. Thank you very much.

21 Go ahead.

22 MS. GORDON: Your Honor, you heard days of
23 testimony regarding this case. But what was evidence
24 is that Mr. Arroyo has been the wolf in sheep's
25 clothing. He has convinced every one that he's come

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1 in contact with that he is the upstanding citizen that
2 can be trusted. But you heard the testimony. He
3 convinced everyone that his wife was crazy, he
4 convinced everyone that his sister was crazy, and that
5 Paula was only making this up to appease her mom.
6 That was clearly not the case, Your Honor. But his
7 ability to manipulate people is quite telling and I
8 think that will work against him for treatment.

9 In addition, Your Honor, it can't -- we don't
10 look to when a defendant is convicted. Yes, we look
11 to see can he be rehabilitated. But there is another
12 reason for incarceration, and that is as punishment.
13 Mr. Arroyo committed a sexual battery upon his niece.
14 It happened over and over again. We have heard that
15 this is not the first time that this type of behavior
16 had occurred, and we would ask that you impose the
17 maximum sentence, Your Honor.

18 THE COURT: Okay. What's the total time that
19 he's been in jail? incarcerated? Does anybody know
20 that figure?

21 MS. GORDON: Your Honor, actually, I think
22 that --

23 THE COURT: When was he arrested, I guess.

24 MS. GORDON: He was arrested on September 22nd
25 of 2009. Mr. Savage indicates that he was released on

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1 October 23rd, which is thirty-one days. He was served
2 with a direct indictment and he had to go get
3 processed at the jail, but I do not believe he spent
4 the night that night. And then he has spent 235 days
5 since the guilty verdict.

6 THE COURT: So 266 days; is that correct?

7 MS. GORDON: That's correct.

8 THE COURT: All right. Thank y'all very much.

9 I want to read Defendant's Exhibit Number 1 and
10 then I will reconvene with the court reporter and put
11 on the record my sentence in the three different
12 cases. And I will communicate that to the solicitor
13 and to Mr. Savage after I have done that and filed the
14 sentence sheet with the clerk's office.

15 Now, if you want to be present, I'll be glad to
16 have you present. But I probably won't get this read
17 today because I've got to draw a jury and start
18 another trial, but I will probably get it read by
19 tomorrow night if y'all want to be present when I
20 pronounce sentence on him. What's the pleasure?

21 MR. SAVAGE: We'll waive our presence.

22 THE COURT: Pardon?

23 MR. SAVAGE: We'll waive our presence. I can
24 have somebody from the office to be here --

25 THE COURT: Well, it doesn't matter. As long as

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1 Mr. Arroyo waives his presence when I pronounce
2 sentence on him, that's fine.

3 Mr. Arroyo, do you want to be present when I
4 pronounce your sentence?

5 MR. ARROYO: No, sir.

6 THE COURT: Pardon?

7 MR. ARROYO: No, sir.

8 THE COURT: Thank you very much.

9 Does the State want to be present?

10 MS. GORDON: No, Your Honor.

11 THE COURT: All right. Thank you y'all very
12 much.

13 MS. GORDON: Thank you, Your Honor.

14 [HEARING ADJOURNS AT 12:00 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable J.C. Nicholson, Jr., on Monday, March 4, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 18th day of August, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2013 FEB 26 PM 4:58) FOR THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NUMBERS: 2010-GS-10-522;
 JULIE J. ARMSTRONG) 2010-GS-10-529;
 CLERK OF COURT) 2010-GS-10-4790
 STATE OF SOUTH CAROLINA,) WARRANT NUMBERS: K-667048; K-667049

Plaintiff,

-versus-

ERICK ARROYO,

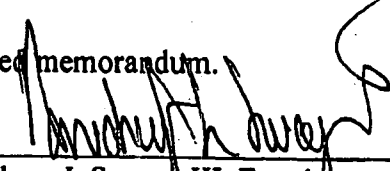
Defendant.

MOTION FOR NEW TRIAL

COMES NOW Defendant, Erick Arroyo, by counsel, pursuant to Rule 29, SCRCrimP, and moves this Court for a new trial as the accompanying memorandum explains. The admission into evidence of the forensic interviewer's report constituted reversible error. The report contained inadmissible hearsay bolstering the trial testimony of the minor and improperly gave the forensic interviewer's expert opinion on the veracity of the child. Accordingly, Defendant should be granted a new trial.

This motion is supported by the attached memorandum.

Dated: February 26, 2013


 Andrew J. Savage III, Esquire
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Attorney for Defendant

FILED

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 2013 FEB 26) FOR THE NINTH JUDICIAL CIRCUIT
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Plaintiff,

-versus-

ERICK ARROYO,

Defendant.

MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL

STATEMENT OF FACTS

Following a jury trial in July 2012, Defendant Erick Arroyo was convicted of two counts of criminal sexual conduct with a minor, second degree, and one count of a lewd act upon a minor under 16 years old. Sentencing is scheduled for March 4, 2013. The minor (Minor 1) was 13 years old at the time of the alleged incident in 2009 and is Defendant's niece; her mother is Defendant's sister.

During trial, the State introduced State's Exhibit No. 9, a written report from a forensic interviewer, who had been qualified as an expert. After the introduction of the report into evidence, but before it was published, Defendant objected and asked for its removal from evidence. The trial court denied this request. Defendant then requested that the report be redacted to remove all opinion evidence along with any statements that would bolster the testimony of the minor. The trial court redacted certain portions of the report but not all of

the statements objected to, nor the opinion of the expert. Defendant renewed his objection to these remaining portions of the report allowed into evidence throughout the trial and also moved for a mistrial based on the improper admission into evidence of the report. These objections and the motion for mistrial were denied. Defendant is now moving for a new trial based on the improper admission into evidence of the unredacted portions of the report.

The forensic interviewer's report at issue contains inadmissible hearsay and double-hearsay statements from the mother, as well as hearsay statements of the child, and it also gives the expert's opinion that the child was telling the truth. The written report at issue (State's Exhibit No. 9) was prepared by the State's expert, a forensic interviewer. The report contains several sections of information. The report first provides basic information, such as the identity of the child and her mother. The report then identifies the "alleged offender" as Erick Arroyo, the "mom's brother." (Ex. 9 at 1.)

The report next relates statements made by the child's mother about what happened. The report states that according to the mother, the mother fell asleep on the couch at her brother's house, and when she woke up "she saw her brother on top of Minor " (Ex. 9 at 2.) The mother then left with her children. The report then states: "Mom saw Minor looking odd, and Mom has seen this face before. Mom asked and Minor 1 initially denied anything happened." (Ex. 9 at 2.) But Minor then "said Uncle touched her breasts under the bra. Minor said the uncle has kissed her, put his fingers in her vagina and he has touched himself. She said it happened other times." (Ex. 9 at 2.)

More hearsay and double hearsay is then presented in the report, where the mother relates that "the alleged offender's wife has left him many times in their marriage" and "left again a few months ago and he told Mom that his wife was accusing him of molesting^{Minor}. Mom confronted him and he denied this. . . . Mom found out that Uncle's wife said there were concerns about Uncle and^{Minor} in the garage." (Ex. 9 at 2.)

The next section of the report sets forth the summary of information elicited from the child. This part begins by the forensic interviewer stating her opinion that "the child present[ed] as an accurate reporter regarding verifiable information." (Ex. 9 at 2.) The report also states that the child was "able to respond to trauma specific questions . . . though she was upset and tearful." (Ex. 9 at 2.)

The report then sets forth what the child told the interviewer about what her uncle did to her. It states that the "child reported her uncle told her not to tell" and that "Mother has been very angry about the allegations." (Ex. 9 at 2.) The report then goes into detail about what the child said the uncle had done. The report states that the child

disclosed that her uncle Eric had sexually abused her on more than one occasion. She said roughly a year ago he touched her vagina, on the skin, while in Eric's living room. ^{Minor} said Eric told her not to tell. She said the last time was the past Sunday when he got on top of her and touched her breasts. ^{Minor} said in the times he has touched her, he has hurt her vaginal area by touching her inside her vagina. She said he also had touched her bottom and she had seen him touch his erect penis. ^{Minor} said once he was trying to take off her pants in the garage and she didn't let him. She said Eric's wife asked her later if she was okay and asked the uncle what he was doing.

^{Minor} was tearful in relating how this made her feel disgusting.

(Ex. 9 at 3.)

The admission into evidence of the report was clearly prejudicial error, requiring a new trial. The case law in South Carolina—including a recent opinion from the South Carolina Supreme Court, issued after Defendant's trial, that harshly criticizes the role of forensic interviewers at trial, their use as experts at trial, and the prejudicial effect of their testimony (or reports) in cases such as this—strongly supports the conclusion that the erroneous admission of the report cannot be deemed harmless error.

ARGUMENT

THE ADMISSION INTO EVIDENCE OF THE REPORT OF THE FORENSIC INTERVIEWER CONSTITUTED REVERSIBLE ERROR.

I. Improper Vouching

The assessment of witness credibility is within the exclusive province of the jury. *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Therefore, witnesses are generally not allowed to testify as to whether another witness is telling the truth. *Id.* It is well settled in South Carolina that it is improper for an expert to comment on the veracity or credibility of a child's accusations of sexual abuse. *See State v. Kromah*, No. 27212, 2013 WL 239070, at *9-10 (S.C. Jan. 23, 2013); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *McKerley*, 397 S.C. 461, 725 S.E.2d 139; *State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000). In *Jennings*, the court explained that such evidence constitutes improper vouching:

For an expert to comment on the veracity of a child's accusations of sexual abuse is improper. *See State v. Dawkins*, 297 S.C. 386, 393–94, 377 S.E.2d 298, 302 (1989) (finding therapist indicating he believed victim's

allegations were genuine was improper); *see also State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct.App.2000) (finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child); *but see State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009) (forensic interviewer did not vouch for the victim's veracity where she never stated she believed the victim and gave no other indication concerning the victim's veracity).

394 S.C. at 480, 716 S.E.2d at 94.

In the case before it, *Jennings* held that the trial court erred in allowing the State to introduce portions of a forensic interviewer's written reports about interviews conducted with the three alleged minor victims, because the reports improperly vouched for the victims' credibility. "In each report, the forensic interviewer stated that during the interviews, each child had 'provide[d] a compelling disclosure of abuse by [appellant].'" *Id.* (alterations in original). The court found that this was prejudicial error as "[t]here is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful." *Id.*

The court further found that the improper admission of such evidence did not amount to harmless error:

There was no physical evidence presented in this case. The only evidence presented by the State was the children's accounts of what occurred and other hearsay evidence of the children's accounts. Because the children's credibility was the most critical determination of this case, we find the admission of the written reports was not harmless. *See State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 492 (2001) ("An officer's improper opinion which goes to the heart of the case is not harmless.").

Id., 716 S.E.2d at 94-95; *see McKerley*, 397 S.C. 461, 725 S.E.2d 139 (where forensic interviewer testified that she found both interviews with the victim to be compelling for

sexual abuse, court relied on *Jennings* and held that such testimony improperly bolstered victim's testimony and was not harmless error).

Recently, in an opinion rendered after the trial in this case, the South Carolina Supreme Court again addressed this issue and strongly reaffirmed that it is improper to allow into evidence the opinion of the forensic interviewer that, in effect, the minor was credible. *Kromah*, 2013 WL 239070. The court also was very critical of the role of forensic interviewers at trial and their use as experts by the State. *Id.* In *Kromah*, as in *Jennings*, the court found that it was error to admit the testimony of Heather Smith, a forensic interviewer qualified as an expert witness at trial, who testified that based on her interview of the child and other information, "her finding was compelling for [physical] child abuse." *Id.* at *5-6.

As the court explained in *Kromah*:

[E]ven though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a "forensic interviewer" as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert the impermissible harm is compounded. Our courts have previously held that "[t]he assessment of witness credibility is within the exclusive province of the jury," and that witnesses generally are "not allowed to testify whether another witness is telling the truth." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012); *see also* L.A. Bradshaw, Annotation, *Necessity and Admissibility of Expert Testimony as to Credibility of Witness*, 20 A.L.R.3d 684 (1968 & Supp.2012) (stating an expert witness should not vouch for the truthfulness of a witness). Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter. *State v. Hill*, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct.App.2011); *cf. Smith v. State*, 386 S.C. 562, 564-65, 689 S.E.2d 629, 631 (2010) (observing the forensic interviewer interjected impermissible hearsay into the trial, which improperly bolstered the victim's testimony; the forensic interviewer testified that the victim told her that the defendant had sexually assaulted her and that she found the victim's statement "believable").

Id. at *9.

In the case before it, *Kromah* found that Smith's testimony about a "compelling finding" was inappropriate. *Id.* at *10. Similar to the holding in *Jennings*, *Kromah* held that "Smith should not have been allowed to testify about a compelling finding of child abuse as that was the equivalent of Smith stating the child was telling the truth." *Id.* (court found error was harmless due to overwhelming evidence of physical abuse, including the testimony of numerous medical experts concerning the nature and cause of the child's genital wounds, evidence that the defendant was alone with the child when the injury occurred, and the defendant's testimony about how the injury occurred that was inconsistent with the overwhelming medical evidence that the wound resulted from physical abuse; *Kromah* is thus easily distinguishable from this case and others, such as *Jennings*, where there was no physical evidence and the most critical determination in the case was the child's credibility).

The *Kromah* court then took the opportunity to offer guidance on the issue, stating:

Because the admissibility of forensic interviews and the testimony based thereon at trial has been the subject of several recent appeals, we believe it would be helpful to set forth, by way of example, the kinds of statements that a forensic interviewer should avoid at trial:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or

- an opinion that the child's behavior indicated the child was telling the truth.

Id. (footnote omitted). The court stated that a forensic interviewer, however, may properly testify regarding the following:

- the time, date, and circumstances of the interview;
- any personal observations regarding the child's behavior or demeanor; or
- a statement as to events that occurred within the personal knowledge of the interviewer.

These lists are not intended to be exclusive, since the testimony will of necessity vary in each trial, but this may serve as a general guideline for the use of this and other similar testimony by forensic interviewers.

Id.

In addition to setting forth the foregoing guidelines, *Kromah* went further and criticized the State's use of forensic interviewers as "expert" witnesses, even though their job is only to collect facts, and noted that it was inappropriate to use them as experts at trial:

Smith is a forensic interviewer of children. "[A] forensic interviewer is a person specially trained to talk to children when there is a suspicion of abuse or neglect." *In re K.K.C.*, 728 N.W.2d 225, at *2 (Iowa Ct. App.2006). The job of the interviewer is not to provide therapy, but to collect facts. *State v. Borden*, 986 So.2d 158, 163 (La.Ct.App.2008). It has been said that a forensic interviewer's purpose is to prepare for trial. *See State v. Blue*, 717 N.W.2d 558, 564 (N.D.2006) (observing "[t]he forensic interviewer's purpose was undoubtedly to prepare for trial" as "[f]orensic by definition means 'suitable to courts,'" (quoting *Merriam-Webster's Collegiate Dictionary* 490 (11th ed.2005)); *Black's Law Dictionary* 721 (9th ed.2009) (stating "forensic" is derived from the Latin terms "forensis" (public) and "forum" (court) and defining "forensic" as "[u]sed in or suitable to courts of law or public debate"). Smith testified that she used the RATAAC method of interviewing. This is an acronym for Rapport, Anatomy, Touch, Abuse Scenario, and Closure. RATAAC

is reportedly used nationwide in the forensic interviewing of children. *State v. Douglas*, 380 S.C. 499, 500, 671 S.E.2d 606, 607 (2009).

Smith was qualified as an expert and, although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts. The label of expert should be jealously guarded by the court and never loosely bandied about.

Id. at *9 (footnote omitted).

In a footnote, the court was more specific in its criticism or concern with the use of forensic interviewers by the State as "experts" and their use in the courtroom in general:

⁵In this case, there was no objection made to Smith's qualification as an expert, but we have previously observed that such qualification may be unnecessary. *See, e.g., Douglas*, 380 S.C. at 504, 671 S.E.2d at 609 (concluding it was unnecessary for the forensic interviewer to be qualified as an expert because no specialized knowledge was required there; the interviewer testified only as to her personal observations and experiences, and her interview with the victim; the Court found no error, however, noting the interviewer gave no opinion concerning the victim's veracity). In considering the ongoing issues developing from their use at trial, *we state today that we can envision no circumstance where their qualification as an expert at trial would be appropriate*. Forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, *but this does not make their work appropriate for use in the courtroom*. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of the abuse. Part of the RATAC method, which is not without its critics, involves evaluating whether the victim understands the importance of telling the truth and whether the victim has told the truth, as well as the forensic interviewer's judgment in determining what actually transpired. For example, an interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns, are all factors that can influence the

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

Id. at *11 n.5 (emphasis added).

In light of the foregoing authority and the strong concerns raised in *Kromah* about the use of forensic interviewers at trial and as experts, it is clear that the admission of the forensic interviewer's expert opinion in her report that "the child present[ed] as an accurate reporter regarding verifiable information" (Ex. 9 at 2) constituted prejudicial error. As in *Jennings* and *Kromah*, there is no other way to interpret the language used in the report, especially in light of the guidelines issued by *Kromah*, than to mean that the forensic interviewer believed the child was being very truthful about her claim that Defendant sexually abused her.

Thus, just as in *Jennings* and *Kromah*, it was patently error to admit such evidence. Furthermore, as in *Jennings* and *McKerley*, such error was not harmless. As in *Jennings*, there was no physical evidence, and the only evidence presented was the child's account of what had occurred (and other hearsay evidence of the child's account, which is discussed below). Because the child's credibility was the most critical determination of this case, the admission of the report was not harmless. See *Jennings*, 394 S.C. 473, 716 S.E.2d 91; *McKerley*, 397 S.C. 461, 725 S.E.2d 139; see also *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010) (granting postconviction relief); *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001) (same).

II. Inadmissible Hearsay

In addition to improper vouching, the report also improperly bolstered the child's testimony at trial with hearsay statements made by her and her mother, which even included double-hearsay statements. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. A "statement" is an "oral or written assertion." *Id.* Rule 801(a). Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court Rule, or by statute. *Id.* Rule 802; *Kromah*, 2013 WL 239070; *Jennings*, 394 S.C. 473, 716 S.E.2d 91.

Numerous South Carolina cases have held that the admission of hearsay statements such as those set forth in the forensic interviewer's report at issue here constitute prejudicial error. *See, e.g., Jennings*, 394 S.C. 473, 716 S.E.2d 91. As *Jennings* explained:

Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). "Improper corroboration testimony that is *merely cumulative to the victim's testimony*, however, cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration." *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994) (emphasis in original); *see also Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010) (forensic interviewer's hearsay testimony impermissibly corroborated the victim's testimony because the outcome of the case hinged on the victim's credibility regarding the identification of the perpetrator); *Dawkins v. State*, 346 S.C. 151, 154, 551 S.E.2d 260, 261 (2001) (defendant was entitled to post-conviction relief where four witnesses testified without objection regarding the victim's out-of-court conversations with them concerning the alleged abuse).

Id. at 478-79, 716 S.E.2d at 93-94 (emphasis added)

In *Jennings*, the court found that the portions of the forensic interviewer's report "where the mother related to the interviewer that the middle child told her appellant molested her and specific things the victims told the forensic interviewer during the interviews" constituted inadmissible hearsay, "as they were out-of-court statements offered to prove that appellant did in fact inappropriately touch the girls in the way that they claimed." *Id.* at 479, 716 S.E.2d at 94.

The court further found that such error was not harmless, stating:

This trial hinged on the children's credibility, and the written reports were cumulative to the children's testimony. As this Court has held before, where credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless. *Jolly, supra; Dawkins, supra; Smith, supra*. Because the children's credibility was the ultimate determination for the jury to make in deciding appellant's guilt, the trial court's error in admitting the reports could not have been harmless. *Id.*

Id.; see also *Smith*, 386 S.C. at 566, 689 S.E.2d at 631-32 (under Rule 801(d)(1), SCRE, corroborative witness testimony in a criminal sexual conduct case is limited to time and place of alleged assault; the corroborative testimony cannot include details or particulars regarding assault, which includes identity of perpetrator; but since forensic interviewer testified that the child told her that the defendant sexually assaulted her and also that she found the victim's statement to be believable, defendant was prejudiced and entitled to new trial); *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001) (same result, where witnesses testified regarding victim's out-of-court conversations with them concerning the alleged abuse and repeated the victim's identification of the defendant's identity as the perpetrator); *Sanchez v. State*, 351 S.C. 270, 275, 569 S.E.2d 363, 365 (2002) (same result; the hearsay

exception for limited corroborative testimony in criminal sexual-conduct cases did not apply where hearsay testimony went beyond time and place of sexual assault and identified defendant as perpetrator; the inadmissible hearsay was prejudicial and required new trial "because improper corroboration testimony that is merely cumulative to the victim's testimony cannot be harmless. As stated in *Jolly v. State*, 314 S.C.[17] at 21, 443 S.E.2d [566] at 569 [1994], 'it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.'"); *Vail v. State*, No. 5092, 2013 WL 621210 (S.C. Ct. App. Feb. 20, 2013) (defendant entitled to new trial due to counsel's ineffective assistance in failing to object to hearsay testimony about child's statements to witnesses about her sexual encounters with defendant; the hearsay statements did not fall within any exception to hearsay rule and improperly bolstered the child's testimony; the improper admission of such hearsay was not harmless where the child's credibility was extremely crucial to the outcome of the case and there was an absence of overwhelming evidence of defendant's guilt).

In this case, as in the foregoing cases, the hearsay statements in the report of the forensic interviewer did not fall within any exception to the hearsay rule and improperly bolstered the child's testimony. The mother's statements to the interviewer described the alleged abuse committed by Defendant as told to the mother by her daughter. The mother's statements to the interviewer also described Defendant's wife's concerns that Defendant was abusing the child, which is double hearsay. The report also describes in detail the sexual abuse of the child by Defendant as told to the interviewer by the child. As in the cases cited above, such hearsay statements improperly bolstered the child's testimony at trial and were

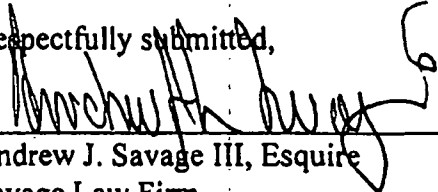
inadmissible. Also, as in the cases cited above, the erroneous admission of these hearsay statements prejudiced Defendant and was not harmless. *See Jennings*, 394 S.C. 473, 716 S.E.2d 91; *Vail*, 2013 WL 621210. As in *Jennings*, the trial hinged on the child's credibility, and the report was cumulative to the child's testimony. Where credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless. *Jennings*, 394 S.C. 473, 716 S.E.2d 91; *Vail*, 2013 WL 621210. Because the child's credibility was the ultimate determination for the jury to make in deciding Defendant's guilt, the trial court's error in admitting the report could not have been harmless. *See Jennings*, 394 S.C. 473, 716 S.E.2d 91; *see also Dawkins*, 346 S.C. 151, 551 S.E.2d 260.

Furthermore, the combination of this inadmissible hearsay evidence along with the improper vouching by the forensic interviewer for the minor's truthfulness clearly establishes that the admission of such evidence was not harmless. The foregoing case law, including *Kromah* and *Vail*, decided after this case was tried, requires that a new trial be granted. Particularly in light of the serious concerns and criticisms raised in *Kromah* about the State's use of forensic interviewers and their role at trial, the prejudicial effect of the erroneous admission of the evidence at issue cannot be overstated and cannot be deemed harmless error. Therefore, a new trial is required.

CONCLUSION

For all the foregoing reasons, the erroneous admission of the report, which included improper vouching for the child's veracity by the forensic interviewer and improper hearsay statements that bolstered the child's testimony at trial, prejudiced Defendant and was not harmless error. Therefore, a new trial should be granted.

Respectfully submitted,



Andrew J. Savage III, Esquire
Savage Law Firm
15 Prioleau Street
Charleston, SC 29401
Telephone: (843) 720-7470
Facsimile: (843) 720-7478
Email: andy@savlaw.com

Attorney for Defendant

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 FEB 26 PM 4:59

FILED

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON) OF THE NINTH JUDICIAL CIRCUIT

2013 MAR 22 PM 12:56

JULIA ARMSTRONG
 CLERK OF COURT

INDICTMENT NO.: 2010-GS-10-522;
 2010-GS-10-529;
 2011-GS-10-4790

STATE OF SOUTH CAROLINA

BY

mac

vs.

**Order Denying Defendant's
 Motion for a New Trial**

ERICK ARROYO,
 Defendant.

THIS MATTER CAME BEFORE THE COURT on the Defendant's motion for a new trial filed on February 26, 2013.

IT IS THEREFORE ORDERED, after having fully considered the Defendant's motion for a new trial, as well as having fully reviewed the record and the various interests balanced by the Court at the time of its rulings, the Defendant's Motion is hereby **DENIED** pursuant to Rule 29, SCRCrimP.¹ The Court finds that there is competent direct and substantial circumstantial evidence to sustain the jury's verdict and the verdict will stand.

IT IS SO ORDERED.

3/22, 2013
 Charleston, SC

J.C. Nicholson Jr.
 Presiding Judge

¹ This motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 29, SCRCrimP.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

2011 SEP 19

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUITINDICTMENT NUMBERS: 2010-GS-10-522;
2010-GS-10-529

CLERK OF COURT

WARRANT NUMBERS: K-667048; K-667049

STATE OF SOUTH CAROLINA,)

BY _____

Plaintiff,)

-versus-)

ERICK ARROYO,)

Defendant.)

**MOTION IN LIMINE
TO EXCLUDE THE TESTIMONY OF
MARIA STEENKAMP**

Comes now Erick Arroyo, by and through his undersigned counsel, who respectfully seeks an Order from this Court precluding the Solicitor from referring to or arguing in any manner whatsoever the expected testimony of Maria Steenkamp.

Further, Arroyo does herein move this Honorable Court to exclude Maria Steenkamp from testifying. This motion is based on the following authority:

Rule 702, SCRE; State v. Tapp, 387 S.C. 159, 165 (2009) (trial court has a gatekeeping function of ensuring the proposed expert testimony meets a threshold level of reliability, regardless of whether it is scientific or nonscientific.); Rule 401, SCRE; and Rule 403, SCRE.

Respectfully submitted,

SAVAGE & SAVAGE, P.A.

15 Prioleau Street

Post Office Box 1002

Charleston, SC 29402

Telephone: (843) 720-7470

BY: _____

ANDREW J. SAVAGE, III

SC Bar Number: 4946

ATTORNEY FOR DEFENDANT

Charleston, South Carolina

September 19, 2011.

FILED

STATE OF SOUTH CAROLINA,) IN THE COURT OF GENERAL SESSIONS
 2017 JUL 15 PM 12:31) FOR THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON,)
 JULIE N. ARMSTRONG) INDICTMENT NUMBERS: 2010-GS-10-522;
 CLERK OF COURT) 2010-GS-10-529;
 BY) 2011-GS-10-4790
 WARRANT NUMBERS: K-667048; K-667049

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-versus-)

ERICK ARROYO,)

Defendant.)

**AMENDED MOTION IN LIMINE
 TO EXCLUDE THE TESTIMONY OF
 DONALD (DON) ELSEY**

COMES NOW Erick Arroyo, by and through his undersigned counsel, who respectfully moves this Honorable Court for an order precluding Don Elsey - who conducted the forensic interview - from testifying as a witness at this trial.

“[Where] there is no other way to interpret [the forensic interviewer’s testimony] other than to mean the forensic interviewer believed the child[] was being truthful” it is reversible error to admit such testimony. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). As in this case, the *Jennings* Court held; when there exists “no physical evidence . . . [and t]he only evidence [to be] presented by the State [will be the] child’[s] account of what occurred[; b]ecause the [child’s] credibility [is] the most critical determination” the admission of the interviewer’s testimony is not harmless, but reversible error. *Id.*

The prohibition on forensic interviewer testimony extends also to testimony that bolsters the accuser or indirectly affirms her account is truthful. *State v. McKerley*, 397 S.C. 461, ---, 725 S.E.2d 139, 142 (Ct. App. 2012) (prohibiting direct testimony that the interviewer believed the accuser was

telling the truth, but also prohibiting indirect testimony in the form of the forensic interviewer's belief that: the accuser expressed the requisite detail, the accuser presented a compelling account, the accusations were persuading, there were no innocent explanations for the allegations, the accuser displayed the appropriate body language, the accuser's account is internally consistent, and that the accuser was not coached).

The sole purpose of the forensic interview is to determine whether any criminal conduct occurred and if so to acquire facts upon which to base a criminal charge. In this case, based on the accusing witness's age, the video recording of the forensic interview is not admissible. See S.C. Code Ann. § 17-23-175 (the video is not admissible if the accusing witness is not under the age of twelve (12) years old). Therefore, the testimony of Don Elsey can accomplish nothing more than bolstering and vouching for the veracity of the accusing witness. Our Appellate Courts have made abundantly clear that such evidence is wholly inadmissible and that its admission will result in reversal on appeal. *See Jennings*, 394 S.C. at 480, 716 S.E.2d at 94; *McKerley*, 397 S.C. 461, 725 S.E.2d at 142.

FILED

2012 JUL -5 PM 12:31

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Respectfully submitted,

SAVAGE LAW FIRM

15 Prioleau Street

Post Office Box 1002

Charleston, SC 29402

Telephone: (843) 720-7470

BY: _____

ANDREW J. SAVAGE, III

SC Bar Number: 4946

ATTORNEY FOR DEFENDANT

Charleston, South Carolina

July 5, 2012.

FILEDSTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2012 JUL -5 PM 12:29

JULIE J. ARMSTRONG
CLERK OF COURTIN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUITINDICTMENT NUMBERS: 2010-GS-10-522;
2010-GS-10-529;
2011-GS-10-4790

WARRANT NUMBERS: K-667048; K-667049

BY
STATE OF SOUTH CAROLINA,

Plaintiff,

-versus-

ERICK ARROYO,

Defendant.

CERTIFICATE OF SERVICE BY HAND

The undersigned hereby certifies that a copy of the following motions have been served upon Elizabeth Gordon, by hand delivering a filed copy of same this 5th day of July, 2012 at her current address, 101 Meeting Street, Fourth Floor, Charleston, South Carolina, 29401:

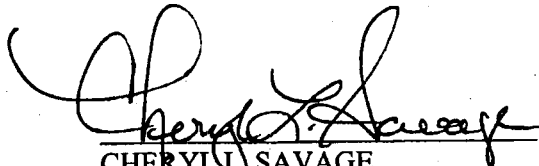
Motion to Adopt All Previously Filed Motions

Motion re: Out of State Witnesses (a.k.a. "Motion to Reveal the Deal")

Amended Motion in Limine re: 404(b) Testimony

Amended Motion to Quash Indictments, or in the Alternative, Motion for Bill of Particulars

Amended Motion in Limine to Exclude the Testimony of Donald (Don) Elsey


 CHERYL SAVAGE

SWORN TO and SUBSCRIBED BEFORE me this

5th day of July, 2012.


 (L.S.)
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 09/07/2021

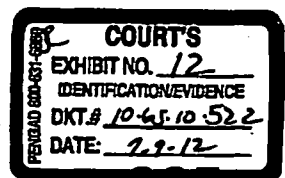
ARROYO V. ARROYO

I. Texas Divorce Action

A.	Petition for Divorce filed by Joyce Arroyo in Brazos County District Court	11/20/2010
B.	Order denying jurisdiction in Texas	05/23/2011

II. South Carolina Divorce Action

A.	Complaint for Divorce filed by Joyce Arroyo in Charleston County Family Court	09/27/2011
B.	Affidavit of Erick Arroyo	Undated
C.	Temporary Order signed by Family Court Judge Jocelyn Cate	12/30/2011





I. Texas Divorce Action

A. Petition for Divorce filed by Joyce Arroyo
in Brazos County District Court

11/20/2010

B. Order denying jurisdiction in Texas

05/23/2011

CITATION-GENERAL PERSONAL SERVICES IN STATE-EITHER COURT

CLERK OF THE COURT

Marc Hamlin
300 East 26th Street, Suite 216
Bryan, TX 77803

ATTORNEY FOR PLAINTIFF

Freddy B. Ruiz
8018 Broadway, Ste 101
San Antonio, Texas 78209

THE STATE OF TEXAS

CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO Erick Alberto Arrovo who may be served at 1266 Horseshoe Bend Mount Pleasant, SC 29464

Defendant,

Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition For Divorce at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 361st District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on the 220th day of November A.D. 2010, in the case, numbered 10-003120-CVD-361 on the docket of said court, and styled,

Joyce Soliz Arrovo Plaintiff

VS.

Erick Alberto Arrovo Defendant

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition For Divorce accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, this the 22nd day of November, 2010.

Marc Hamlin
Clerk of Brazos County, Texas

By

Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
Executed at _____, within the County of _____ at _____ o'clock _____ M.

on the _____ day of _____, 20____, by delivering to the within named _____

each,
in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

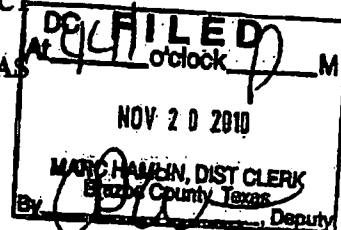
To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____
Returned Record _____

Sheriff of _____ County, Texas
By _____ Deputy

NO. 10-003120 CVD-361IN THE MATTER OF
THE MARRIAGE OFJOYCE SOLIZ ARROYO
AND
ERICK ALBERTO ARROYO§ IN THE DISTRICT COURT
§
§
§
§
§
§
§ JUDICIAL DISTRICT
§
§ BRAZOS COUNTY, TEXAS

ORIGINAL PETITION FOR DIVORCE

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas

Rules of Civil Procedure.

2. *Parties*

This suit is brought by Joyce Soliz Arroyo, Petitioner. The last three numbers of Joyce Soliz Arroyo's Social Security number are 871.

Erick Alberto Arroyo is Respondent.

3. *Domicile*

Petitioner has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

4. *Service*

Process should be served on Respondent at

Bend, Mount Pleasant, SC

29464.

5. *Long-Arm Jurisdiction*

Respondent is a nonresident of Texas. Petitioner is a resident or a domiciliary of Texas at the commencement of this suit. However, the State of Texas has jurisdiction over respondent because respondent has had sufficient minimum contacts with the State of Texas and the exercise of jurisdiction over respondent would comport with fair play and substantial justice. In this regard, the

parties were married in Texas, respondent went to college in Texas, he continuously went to Texas for his Air Force Reserve training, he established residency in Texas and obtained a Texas Driver's License.

6. *Protective Order Statement*

No protective order under title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

7. *Dates of Marriage and Separation*

The parties were married on or about May 8, 1981 and ceased to live together as husband and wife on or about April 2009.

8. *Grounds for Divorce*

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

Respondent is guilty of cruel treatment toward Petitioner of a nature that renders further living together insupportable.

Respondent has left Petitioner with the intention of abandonment and has remained away for at least one year.

9. *Children of the Marriage*

There is no child under eighteen years of age or otherwise entitled to support who was born or adopted of this marriage, and none is expected.

10. *Division of Community Property*

Petitioner requests the Court to divide the estate of Petitioner and Respondent in a manner that the Court deems just and right, as provided by law.

Petitioner should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

- a. fault in the breakup of the marriage;
- b. benefits the innocent spouse may have derived from the continuation of the marriage;
- c. disparity of earning power of the spouses and their ability to support themselves;
- d. health of the spouses;
- e. education and future employability of the spouses;
- f. community indebtedness and liabilities;
- g. earning power, business opportunities, capacities, and abilities of the spouses;
- h. need for future support;
- i. wasting of community assets by the spouses; and
- j. attorney's fees to be paid.

11. *Separate Property*

Petitioner owns certain separate property that is not part of the community estate of the parties, and Petitioner requests the Court to confirm that separate property as Petitioner's separate property and estate.

12. *Postdivorce Maintenance*

Petitioner requests the Court to order that Petitioner be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code.

13. *Request for Temporary Restraining Order*

Petitioner requests the Court to dispense with the issuance of a bond, and Petitioner requests that Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

1. Communicating with Petitioner in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening Petitioner in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to Petitioner.
5. Threatening Petitioner with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to Petitioner or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to Petitioner.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution

for any purpose, except as specifically authorized by order of this Court.

14. Spending any sum of cash in Respondent's possession or subject to Respondent's control for any purpose, except as specifically authorized by order of this Court.

15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.

17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.

18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent.

19. Canceling, altering, failing to renew or pay premiums, or in any manner affecting the present level of coverage of any life, casualty, automobile, or health insurance policies insuring the parties' property or persons.

20. Opening or diverting mail addressed to Petitioner.

21. Signing or endorsing Petitioner's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to Petitioner without the personal signature of Petitioner.

22. Taking any action to terminate or limit credit or charge cards in the name of Petitioner.

23. Discontinuing or reducing the withholding for federal income taxes on Respondent's wages or salary while this case is pending.

24. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

25. Destroying, disposing of, or altering any e-mail or other electronic data relevant to the subject matters of this case, whether stored on a hard drive or on a diskette or other electronic storage device.

26. Entering, operating, or exercising control over all of the vehicles in the possession of Petitioner.

Petitioner requests that Respondent be authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

14. Request for Temporary Orders Concerning Use of Property

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions respecting the temporary use of the parties' property as deemed necessary and equitable, including but not limited to the following:

Awarding Petitioner exclusive use and control of all of the vehicles in her possession and enjoining Respondent from entering, operating, or exercising control over them.

Awarding petitioner a portion of respondent's retirement benefits that he is currently

receiving..

15. Request for Interim Attorney's Fees and Temporary Support

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions regarding attorney's fees and support as deemed necessary and equitable, including but not limited to the following:

Petitioner requests that Respondent be ordered to pay reasonable interim attorney's fees and expenses, including but not limited to fees for appraisals, accountants, actuaries, and so forth. Petitioner is not in control of sufficient community assets to pay attorney's fees and anticipated expenses.

Petitioner has insufficient income for support, and Petitioner requests the Court to order Respondent to make payments for the support of Petitioner until a final decree is signed.

16. Request for Temporary Orders for Discovery and Ancillary Relief

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders for discovery and ancillary relief as deemed necessary and equitable, including but not limited to the following:

Ordering Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

Ordering Respondent to produce copies of the couple's tax returns for tax years 2007, 2008 and 2009 including all supporting schedules.

17. Request for Change of Name

Petitioner requests a change of name to Joyce Soliz.

18. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Petitioner to secure the services of Freddy B. Ruiz and Anthony B. Schram, a licensed attorney, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against Respondent and in favor of Petitioner for the use and benefit of Petitioner's attorney; or, in the alternative, Petitioner requests that reasonable attorney's fees, expenses, and costs through trial and appeal be taxed as costs and be ordered paid directly to Petitioner's attorney, who may enforce the order in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

19. Prayer

Petitioner prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

Petitioner prays that the Court immediately grant a temporary restraining order restraining Respondent, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

Petitioner prays that Petitioner's name be changed as requested above.

Petitioner prays for attorney's fees, expenses, and costs as requested above.

Petitioner prays for general relief.

Respectfully submitted,

By: _____

Freddy B. Ruiz
State Bar No. 15385780
8018 Broadway, Suite 101
San Antonio, Texas 78209
Tel: (210) 828-6777
Fax: (210) 822-8009

Anthony B. Schram
State Bar No. 17810350
8018 Broadway, Suite 101
San Antonio, Texas 78209
Tel: (210) 828-6777
Fax: (210) 822-8009

ATTORNEYS FOR PETITIONER

NO. 10-003120-CVD-361

IN THE MATTER OF
THE MARRIAGE OF

JOYCE SOLIZ ARROYO
AND
ERICK ALBERTO ARROYO

§
§
§
§
§
§

IN THE DISTRICT COURT

361ST JUDICIAL DISTRICT

BRAZOS COUNTY, TEXAS

DC	RECEIVED
At 4:05	o'clock
	M
APR 20 2011	
MARC HAMLIN, DIST CLERK	
Brazos County, Texas	
Deputy	

DC	FILED
At 10:00	o'clock
	M
MAY 24 2011	
MARC HAMLIN, DIST CLERK	
Brazos County, Texas	
Deputy	

ORDER

On March 25, 2011 the Court heard evidence on Respondent, ERICK ARROYO's, Special Appearance.

Petitioner, JOYCE SOLIZ ARROYO, appeared in person and through attorney of record, ANTHONY B. SCHRAM, and announced ready for the hearing.

Respondent, ERICK ALBERTO ARROYO, appeared via telephone and through attorney of record, STEPHANIE IMBRIE, and announced ready for the hearing.

The Court, after hearing evidence in this matter, finds that Texas lacks personal jurisdiction over ERICK ALBERTO ARROYO.

IT IS THEREFORE ORDERED that this matter is dismissed.

SIGNED on MAY 23 2011



JUDGE PRESIDING



II. South Carolina Divorce Action

A.	Complaint for Divorce filed by Joyce Arroyo in Charleston County Family Court	09/27/2011
B.	Affidavit of Erick Arroyo	Undated
C.	Temporary Order signed by Family Court Judge Jocelyn Cate	12/30/2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE SOLIZ ARROYO

vs.

ERICK A. ARROYO

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

FAMILY COURT COVERSHEET

2011 SEP 27 PM 4:03
FILEDJULIE A. STRONG
CLERK OF COURTBY Defendant Docket No. 2011-DR-10 3028

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: Lindsay Foreback

SC Bar # 78844

Address: 104 Broad Street

Telephone # 843-724-7707

Charleston, SC 29401

Fax # 843-724-7058

Email: lindsay@mcgee-lawfirm.com

Other: _____

DOCKETING INFORMATION (Check one box below if filing in a Mandatory Mediation County)

- ☐ This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

Nature of Action Codes
(Check One)

Marital Dissolution

- ☒ Divorce (110)
☐ Annulment (120)
☐ Separate Support and Maintenance (130)
☐ Registration of Foreign Divorce Decree - without support/custody (190)
☐ Registration of Foreign Divorce Decree - with support/custody (191)
☐ Marital Dissolution - Other (199) _____

Abuse and Neglect

- ☐ Abuse and Neglect - Child (210)
☐ Abuse and Neglect - Adult (220)
☐ Abuse and Neglect - Other (299) _____

Juvenile Delinquency

- ☐ Truancy (311)
☐ Incurable (312)
☐ Runaway (313)
☐ Criminal Offense (320)
☐ Juvenile Delinquency - Other (399) _____

Protection from Domestic Abuse

- ☐ Domestic Abuse - Intimate Partner (410)
☐ Domestic Abuse - Minor (420)
☐ Registration of Foreign Order of Protection (490)
☐ Domestic Abuse - Other (499) _____

Support

- ☐ Child Support - Private (501)
☐ Child Support - Administrative Process (502)
☐ Child Support - Judicial Process (503)
☐ Registration of Foreign Order of Support (504)
☐ UIFSA - Outgoing (505)
☐ UIFSA - Incoming (506)
☐ Modification of Child Support - Private (507)
☐ Modification of Child Support - DSS (508)
☐ Modification of Alimony (525)
☐ College Expenses (530)
☐ Support - Other (599) _____

Custody/Visitation

- ☐ Child Custody/Visitation (610)
☐ Modification of Custody/Visitation (615)
☐ Registration of Foreign Child Custody Order (690)
☐ Custody/Visitation - Other (699) _____

Miscellaneous Actions

- ☐ Name Change (710)
☐ Correction/Birth Record (720)
☐ Judicial Bypass (730)
☐ Adoption (740)
☐ Foreign Adoption (741)
☐ Post Dissolution Equitable Distribution (750)
☐ Paternity - Private (761)
☐ Paternity - DSS (762)
☐ Termination of Parental Rights - Private (771)
☐ Termination of Parental Rights - DSS (772)
☐ Miscellaneous Actions - Others (799) _____

Submitting Party Signature:

Lindsay Foreback

Date:

9/27/11

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2011)

Custodial Parent (if applicable): _____

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Oconee (Family Court Only), Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York Counties.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO MEDIATION YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

Rule 3	Actions Subject to ADR
Rule 4(d)(1)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

ALL OTHER CONTESTED ACTIONS

Rule 3	Actions Subject to ADR
Rule 4(d)(2)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2011)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE SOLIZ ARROYO,

Plaintiff,

v.

ERICK A. ARROYO,

Defendants.

FILED

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT
2011 SEP 27 PM 4:03JULIE ARROYO
CLERK OF COURT

CASE NO.: 2011-DR-10-

3028

BY

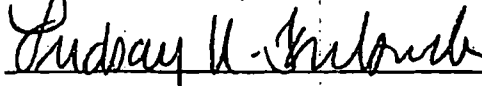
SUMMONS

TO: THE ABOVE NAMED DEFENDANT, ERICK A. ARROYO:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, McGee Law Firm, at their offices at 104 Broad Street, Charleston, South Carolina 29401 within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

McGee Law Firm, LLC



Lindsay K. Foreback

104 Broad Street

Charleston, South Carolina 29401

Office: 843.724.7707

Fax: 843.724.7058

Email: Lindsay@mcgee-lawfirm.com

South Carolina Bar Number: 78844

September 27, 2011
Charleston, S.C.

Attorney for Plaintiff

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE SOLIZ ARROYO,

Plaintiff,

v.

ERICK A. ARROYO,

Defendants.

2011 SEP 27 PM 4:03 IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

JULIE ARMSTRONG

CLERK OF COURT CASE NO.: 2011-DR-10-

3628

BY

COMPLAINT

Plaintiff, complaining of and against Defendant, alleges:

GENERAL ALLEGATIONS

1. This Court has in *personam* jurisdiction as to Plaintiff by reason by her submission to the jurisdiction of this Court by the institution of this action.
2. This Court has in *personam* jurisdiction as to Defendant by reason of the service of these suit papers upon him within the territorial jurisdiction of this Court.
3. This Court has subject matter jurisdiction in that:
 - a.) This is a suit for divorce and incidental relief;
 - b.) By reason of the decision of the South Carolina Supreme Court in Moseley v. Mosier, 279 S.C. 348, 306 S.E.2d 624 (1983), this Court has "jurisdiction over all domestic matters, whether by decree or by agreement . . .";

c.) By reason of Section 20-3-690 of the Code of Laws of South Carolina, 1976, as amended, this Court has subject matter jurisdiction over contracts relating to property which is involved in proceeding of this nature and over the construction and enforcement of those contracts; and

d.) This Court has jurisdiction to adjudicate what property is marital or nonmarital;

4. Plaintiff is a citizen and resident of the State of Texas and submits herself to the jurisdiction of this honorable Court.

5. Defendant is a citizen and resident of the State of South Carolina and has been for many years next preceding the commencement of this action.

6. Venue is properly laid in Charleston County in that the Defendant is a citizen and resident of Charleston County and the parties last lived together as husband and wife in Charleston County.

7. The parties are husband and wife, having been married on May 8, 1981, in Brazos County, Texas.

8. Three children have been born of this marriage to wit: Jeanna, born on August 2, 1989; Jessica, born on February 21, 1986; and Jazmine, born on July 18, 1982. All three children are emancipated.

DIVORCE

9. Upon information and belief, Plaintiff had occasion to witness the Defendant engage in inappropriate sexual contact with his twelve-year-old (12) niece in April 2009.

Plaintiff immediately reported the incident to the minor's mother (Defendant's sister) who subsequently reported the incident to police.

10. Upon information and belief, the Defendant was charged with Criminal Sexual Conduct with a Minor in the Second Degree and Committing a Lewd Act upon a Minor. The Defendant's criminal case is styled, The State of South Carolina v. Erick Arroyo, 2009-P-12382.

11. Plaintiff is informed and believes the Defendant is guilty of multiple acts of serious marital misconduct; and, Plaintiff has a cause of action for a divorce from Defendant on the statutory grounds of adultery, pursuant to S.C. Code Ann. Section 20-3-10(1) (1976, as amended).

12. Plaintiff is informed and believes she is entitled to a divorce *a vinculo matrimonii* of and from the bonds of matrimony existing between Plaintiff and Defendant.

13. Plaintiff did not cause, justify or provoke, or consent to, the misconduct of Defendant about which complaint is made herein; and Plaintiff has not condoned the wrongful conduct of Defendant.

ALIMONY

14. Under the general law of this State, Plaintiff is entitled to have this Court inquire into the matter and award to Plaintiff permanent periodic alimony and/or reimbursement alimony and/or rehabilitative alimony and/or lump sum alimony, as this Court shall determine appropriate, taking into consideration the factors required by the statutory law of this State to be taken into consideration, including, but not limited to, the following:

- a.) Defendant is at fault in bringing about the breakup of this marriage;

- b.) Defendant has an income sufficient to provide for Plaintiff a continuation of the lifestyle she enjoyed during the marriage of the parties;
- c.) Defendant's income and earning capacity is significantly greater than Plaintiff's income and earning capacity. Defendant is a retired naval flight officer who has a Bachelor's and Master's degree, and was subsequently trained as an engineer in the Corps of Civil Engineering;
- d.) Plaintiff did not graduate from college due to her obligations as the primary caregiver for the parties' children;
- e.) Taking into consideration the assets Plaintiff will have and the income Plaintiff may earn, she will not be able to enjoy continuation of the lifestyle enjoyed by her during the marriage without the financial assistance of Defendant.

SECURITY FOR ALIMONY

15. Plaintiff is entitled to an Order of this Court to require Defendant to continue, or obtain, and maintain sufficient insurance on his life for the benefit of Plaintiff to secure the payment of alimony should Defendant die, as Plaintiff would be unable to provide for herself in the event of the death of Defendant without insurance to secure the payment of the same.

PROPERTY

16. During the marriage, the parties accumulated significant marital assets. Their marital assets, include but are not limited to, the marital home where Defendant currently resides located at Bend, Mount Pleasant, South Carolina; retirement accounts; Defendant's pension; numerous vehicles; furniture; and other assets.

17. Upon information and belief, Plaintiff is entitled to an order equitably apportioning the marital property.

18. In addition to acquiring certain assets during the Parties' marriage, the parties also acquired certain indebtedness. Plaintiff is informed and believes that this Court should inquire into all debts of the parties acquired during their marriage including assets Defendant may have acquired without her knowledge and make an equitable division thereof in accordance with the South Carolina Equitable Apportionment Statute. Plaintiff is also informed and believes that she is entitled to an order requiring Defendant contribute his pro rata share to make all outstanding payments on any marital debts, both *pendente lite* and permanently.

FEES, ETC.

19. Plaintiff alleges that she is entitled to have this Court require Defendant to pay fees and costs and expenses incurred by her, as Defendant is at fault in bringing about the breakup of this marriage and as it would be equitable to require Defendant to pay Plaintiff's fees and costs and expenses and as Defendant has and will have ample income to pay such (whereas the payment of such by Plaintiff would adversely affect her lifestyle); and Plaintiff alleges that the fees and costs and expenses which Defendant should be required to pay include, but are not limited to, attorney fees and costs and expenses, and expert fees and costs and expenses, and investigator fees and costs and expenses, and the costs of this litigation.

NAME CHANGE

20. Plaintiff alleges that she is entitled to resume the use of her maiden name, so she shall thereafter be known as Joyce Soliz.

PENDENTE LITE RELIEF

21. Plaintiff alleges that she is entitled to the following permanent relief, upon a hearing on the merits, as determined appropriate by this Court and that, upon this Court's hearing a motion of Plaintiff for pendente lite relief, this Court should issue its pendente lite Order to so provide (and also to provide for such other and further relief as this Court deems just and proper):

- a.) To require Defendant to pay temporary alimony and support sufficient in amount to enable Plaintiff to maintain the lifestyle which she enjoyed while the parties lived together; and to maintain the status quo as to life insurance and health, medical and dental insurance;
- b.) To grant to Plaintiff the use and possession, without hindrance or interference on the part of Defendant, of the former marital home and its contents;
- c.) To award Plaintiff the use and possession, without hindrance or interference on the part of Defendant, the exclusive use and possession of the 1990 Jeep currently in Defendant's possession (and to require Defendant to be solely responsible for any loan payments and all reasonable and necessary maintenance and operation expenses and all outlays of every nature incidental to said vehicles);
- d.) To issue an Order to require Defendant to continue the payment of all debts as he has done historically and to restrain Defendant from altering

the ownership of or the debt upon or the equity in or the location of or the condition or nature of or the identify of any marital assets;

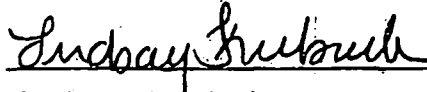
- e.) To issue an Order to restrain Defendant from having any hostile contacts with Plaintiff or the children of the parties, in person or by telephone or by e-mail or otherwise; and Plaintiff alleges that this Court should restrain Defendant likewise from having any hostile contacts with Plaintiff's family or friends or witnesses by way of abusing or harassing or interfering with or molesting or threatening or in any way whatsoever; and Plaintiff alleges that such Order should require Defendant to refrain from entering or attempting to enter Plaintiff's residence or place of business, and to refrain from intentionally coming about her in any way whatsoever in any place;
- f.) Plaintiff alleges that this Court's Order should require Defendant to advance a substantial sum of money to Plaintiff as temporary attorney fees and suit money; and
- g.) Plaintiff alleges that this Court's Order should authorize full pretrial discovery;

WHEREFORE, Plaintiff respectfully prays that this Court:

- a. Upon hearing a motion of Plaintiff for a pendente lite Order, to issue an Order to provide for the pendente lite relief mentioned in Paragraph 21 *supra*;
- b. Upon hearing this matter on its merits, issue its Decree, to grant to Plaintiff *a vinculo matrimonii* on the ground of adultery and to require Defendant to pay fees and costs and

expenses incurred by Plaintiff in the institution and prosecution of this action and to grant to Plaintiff by such Decree all the specific relief sought by her in her Complaint and to grant to Plaintiff such other and further relief as this Court deems just and proper.

McGee Law Firm, LLC



Lindsay K. Foreback
104 Broad Street
Charleston, South Carolina 29401
Office: 843.724.7707
Fax: 843.724.7058
Email: Lindsay@mcgee-lawfirm.com
South Carolina Bar Number: 78844

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE ARROYO,

Plaintiff,

v.

ERICK A. ARROYO,

Defendant.

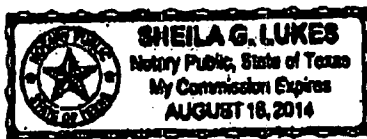
FILED
IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT
2011 SEP 27 PM
JULIE ARROYO CASE NO.: 2011-DR-10-3428
CLERK OF COURT
BY VERIFICATION

PERSONALLY appeared before me, Joyce Arroyo, who being first duly sworn, deposes and says: that she is the Plaintiff in the foregoing action; that she has read the foregoing Complaint and the same is true and correct of her own knowledge, save and except those matters stated therein to be on information and belief, and as to those, she believes them to be true.

Joyce Arroyo 9/27/2011
Joyce Arroyo

SWORN to before me this 27 day of sep, 2011

Sheila G. Lukes
Notary Public for the State of Texas
My Commission Expires: 8/16/14



FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE ARROYO,

Plaintiff,

v.

ERICK A. ARROYO,

Defendant.

IN THE FAMILY COURT FOR THE
2011 SEP 27 JUDICIAL CIRCUITJULIE ARROYO CASE NO.: 2011-DR-10-3428
CLERK OF COURT

BY

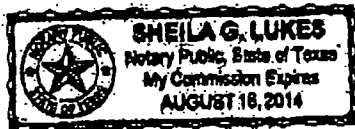
VERIFICATION

PERSONALLY appeared before me, Joyce Arroyo, who being first duly sworn, deposes and says: that she is the Plaintiff in the foregoing action; that she has read the foregoing Complaint and the same is true and correct of her own knowledge, save and except those matters stated therein to be on information and belief, and as to those, she believes them to be true.

Joyce Arroyo 9/27/2011
Joyce Arroyo

SWORN to before me this 27 day of sep 2011

Sheila G. Lukes
Notary Public for the State of Texas
My Commission Expires: 8/16/14



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Joyce Soliz Arroyo,

Plaintiff,

v.

Erick A. Arroyo,

Defendant.

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE No.: 2011-DR-10-3628

AFFIDAVIT OF
ERICK ALBERTO ARROYO

PERSONALLY APPEARED BEFORE ME, Erick Alberto Arroyo, who being duly sworn, deposes and states as follows:

1. I am the Defendant in this action. My full name is Erick Alberto Arroyo, and my date of birth is
2. I am retired from the Navy and presently seeking employment. My address is
Bend, Mt. Pleasant, SC 29464.

HISTORY OF THE MARRIAGE

3. I have known Joyce for approximately 32 years, having met her while I was a student at Texas A&M University in College Station, Texas. I was of the opinion that once I got married that was it. I did not believe in divorce and was committed to making our relationship a lifelong endeavor. I was aware that she was previously divorced and had a daughter, Jennifer that would be part of our family right off the bat. We ended up getting married on the day that I graduated from College.
4. Our relationship has always been one of extremes. We had many good years together and were blessed to have three girls born to us, Jazmine, Jessica, and Jeanna. However our

problems began shortly after Jessica was born back in 1986. Joyce was increasingly moody and depressed most of the time. I attributed this originally as a consequence of the stress related to my new career as a Naval Flight Officer.

5. I firmly believe that my time away from her throughout my career allowed her depression to manifest itself in her attitude towards our daughters and even worse towards me. She never trusted me any time I was deployed, even though I was faithful to her at all times. I began to suspect that she had a worse condition than just depression when she acknowledged to me that her twin sister was a diagnosed manic depressant. This made sense to me that Joyce had it too because of her wild and unreasonable mood swings. As I mentioned already, Joyce was very mean to the girls at times while other times she was overly protective and loving towards them.
6. While stationed in Washington State, Joyce left me for the first time then and went back to Texas for about 6 months while taking all the children with her. We reunited after that but my stepdaughter Jennifer stayed in Texas for a few years.
7. In my desire to reduce the time that I was away from home and spend more time especially with Joyce, I transferred out of Naval Aviation and was accepted into the Civil Engineer Corps of the Navy. In 1992, we moved to Mt Pleasant, SC and I began my Naval Engineering career there. Most of the time things were well with us, however, Joyce did play havoc with my emotions by constantly threatening to leave me again whenever we had an argument or strong disagreement.
8. In 1996, I was released from active duty in the Navy and for a while was unemployed. The resulting financial crisis that we experienced after that created many disagreements

and even heated arguments in our relationship. Joyce did leave again I believe in 1997, and took the two younger girls, Jessica and Jeanna, with her to Texas. Jazmine stayed with me during that time as she refused to leave with Joyce. I pleaded with Joyce to return and told her how much I loved her, whom I still do to this day, and she finally came back after about one year and actually came back with my stepdaughter Jennifer as well.

9. In 1999, while a reservist in the Navy, I was sent to Puerto Rico for an extended deployment. While there I was asked and accepted being recalled back into active duty in the Navy and received orders for the next two years there. Unbeknownst to me, Joyce was apparently having a difficult time there and was being very cruel to the two daughters that came with us there, Jessica and Jeanna. I found out afterwards from them that Joyce was also constantly threatening to leave me there in Puerto Rico and go back to Texas. I suspected this from her during the time there in Puerto Rico because she manifested it in her anger towards me, her treatment of the girls, and her insinuations that she would be better off in Texas.
10. After my tour there in Puerto Rico, I received orders to pursue my Masters Degree from the University of Florida beginning in 2002. Upon our arrival in Gainesville, Florida and after finding a place to live but prior to beginning my studies, we took a trip to Orlando to visit my brother, his family as well as my parents who were visiting them at the time. Joyce and the girls, Jazmine, Jessica, and Jeanna, were asked to spend some additional time with my brothers family and his children, who were close in age, while I returned to Gainesville to begin my studies the following day. After I returned to Gainesville and

began my classes, I found out that Joyce had a huge argument with my brother and the rest of my family and had left to go back to Texas, leaving my daughters there with my brother. On her way out of town, she had tried to forcibly take my two younger daughters with her, but they refused to go with her. I did not see Joyce for two years after that. I completed my Masters program in 12 months and worked diligently providing and being there for my daughters while they attended high school in Gainesville.

11. As I mentioned before, Joyce's volatility and extreme actions were most likely a consequence of her manic depression. Even so, I still loved her very much and tried very hard to get her back into our lives. I felt it was important that even if my relationship with Joyce was not the best in the world, our daughters would benefit most by having both parents there for them. I also still held out hope that somehow Joyce and I could make our relationship work.
12. After graduating from the University of Florida with my Masters Degree in Civil Engineering and without Joyce being there, I received orders to Mississippi in 2003. After a year there working as the Public Works Officer for the Naval Air Station and still being a single parent to my two high school girls, Jazmine was at Amherst College then, I finally was able to convince Joyce to come back to our family. She did so but I paid a dear price with my daughters who after this third time, did not want Joyce to come back to us and were very angry with me. It took them many months to get over the anger and I believe that it was only because of my subsequent assignment that they finally forgave me. Joyce however was reluctant in coming back and it was clear in the way that our relationship was from then on that it was only a matter of time before it would be over.

13. After arriving back to Charleston, SC in 2005 for what I believed would be my final tour in The Navy, I was given 6 month temporary orders to Afghanistan. This did not sit well with Joyce or even I for that matter but I accepted the orders nonetheless. This was a difficult time for us and made the stress level in our relationship even higher. Even though it proved to be a very rewarding tour for me, the toll on Joyce was probably insurmountable. From the time I returned in early 2006 to the time she left in mid 2009, our time together was filled with many arguments between ourselves and her with the girls. She blamed me for her weight problem and had even begun to drink even more excessively than before. Jennifer had returned to live with us again so I thought that maybe we could all work together to save our family. While Jennifer being there was helpful, even she had issues, emotional and alcohol, which only exacerbated our family turmoil.
14. Joyce left for the final time in July 2009, saying she was going to a Mary Kay convention in Texas. In fact, she had only purchased one way tickets and later admitted she never intended to return home. Since that time she has sent for her personal belongings, some furniture and household items, and two cars.
15. In November 2010 she filed divorce proceedings against me in Texas. The grounds for divorce stated were "discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation." The Court found that there was no personal jurisdiction and the case was dismissed (Texas divorce pleadings and Order are attached.)

16. Joyce has gone from us negotiating an amicable divorce to now pleading adultery in her attempt to blame me for our separation and take all she can from me and our girls in a divorce. She has constantly threatened me via phone calls, text messages, and emails (I have attached examples), again being very irrational and extreme in her dealings with me, again no doubt in my mind of her being even more influenced by her manic depression.

CURRENT FINANCIAL SITUATION

17. I am currently unemployed and actively seeking employment. My navy pension is my only source of income, and I am struggling to make ends meet, depending more and more on the assistance of my daughters. I have recently negotiated a new mortgage payment in an attempt to save our home from foreclosure. As you can see from my financial declaration, every penny of my pension is used each month, and in fact I am operating on a deficit. Any amount of income lost would cause my financial "house of cards" to come crashing down, and would likely cause our home to go into foreclosure, among other things.
18. Joyce has been supporting herself in Texas since she left back in 2009. I believe that she is currently employed, in reasonably good health, and is able to continue to provide for herself as she has done for the past two and a half years.
19. I am respectfully asking this Court to deny Joyce's requests for temporary relief.

FURTHER AFFIANT SAYETH NOT.

Mount Pleasant, SC
Dated: _____, 2011

Erick Alberto Arroyo

SWORN to and SUBSCRIBED before me
_____ day of _____, 2011

_____(SEAL)
Notary Public for South Carolina
My Commission Expires:_____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOYCE SOLIZ ARROYO, Clerk of Court

Plaintiff,

v.

ERICK A. ARROYO,

Defendant.

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.: 2011-DR-10-3628

TEMPORARY ORDER**Hearing Date:**

November 7, 2011

Judge:

Honorable Jocelyn B. Cate

Plaintiff's Attorney:

Lindsay K. Foreback, Esquire

Defendant's Attorney:

Erica McElreath, Esquire

Court Reporter:

Pat Danner

THIS MATTER came before that Court pursuant to Plaintiff's Motion for Temporary Relief, as included in the Summons and Complaint filed on September 27, 2011. Defendant filed an Answer and Counterclaim on November 1, 2011. Both parties' Financial Declarations, Affidavit of Lindsay K. Foreback in Support of an Award of Attorney's Fees with attached Exhibits; Defendant's Affidavit with attached Exhibits; and Affidavit of Jeanna Danielle Arroyo were filed on November 7, 2011.

It is noted that Plaintiff did not submit her own affidavit or any other person's affidavit in support of the relief requested in her Temporary Relief Motion other than the affidavit of her counsel. Facts stated upon information and belief by her counsel in her affidavit which were not otherwise supported by proper affidavits or other submissions are not "evidence" and, therefore, were not considered by this Court in making the rulings below.

After careful review of the pleadings, affidavits, testimony of the parties and legal argument of counsel, the Court finds as follows:

1/3

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. I find and conclude that Defendant has sufficiently refuted Plaintiff's minimum *prima facie* showing of entitlement to an award of temporary spousal support; therefore, there shall be no award at this time.
2. However, Defendant shall continue to maintain and not modify in any way the existing health, dental, and life insurance policies during the pendency of this litigation for the benefit of the Plaintiff unless agreed to by the parties in writing or Order of the Court. This includes paying for and maintaining the Survivor's Benefit Plan associated with his military retirement.
- * 3. The Defendant shall continue to have the use and possession of the marital residence and be responsible for all expenses and costs associated therewith.
4. Each party shall continue to have use and possession of the vehicles in their respective possession at the time of the filing of this action and shall be responsible for all expenses associated therewith.
5. The parties shall be under the following restraining orders:
 - a. Neither shall damage, encumber, destroy, transfer, assign, hide, withhold or otherwise alter any asset either personal or real to which the other party may claim an equitable interest without Court approval or by written consent of the other party.
 - b. Neither party shall harass, annoy, bother or interfere with the other and shall at all times act civilly towards one another.

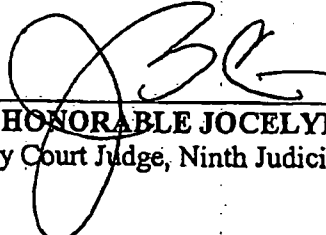
* Should Defendant fail to pay these expenses Plaintiff may bring motion to request that she begin receiving a portion of Defendant's military pension. Jhe.

- c. Neither party shall incur further debts in the name of the other party or for which the other may be held responsible.
6. Temporary fees shall be held in abeyance; however, Plaintiff shall have leave to revisit the issue of suit money after the parties conduct discovery.
7. Mutual discovery is granted.
8. All other relief not specifically addressed herein is held in abeyance pending further Order of the Court.

IT IS THEREFORE,

ORDERED, ADJUDGED AND DECREED that the above paragraphs 1-8 are hereby made the Order of this Court and such Order is hereby enforceable by this Court's contempt powers and is binding upon the parties until such time as a further Order in this matter is issued.

AND IT IS SO ORDERED!


THE HONORABLE JOCELYN B. CATE
 Family Court Judge, Ninth Judicial Circuit

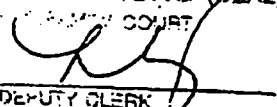
Charleston County, South Carolina

Dated: 12-2-11

FAILURE TO COMPLY WITH THIS ORDER WILL SUBJECT THE OFFENDER TO AN ORDER OF CONTEMPT WITH A POSSIBLE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED (\$1,500.00) DOLLARS IN FINES AND/OR TWELVE (12) MONTHS IMPRISONMENT AND/OR THREE HUNDRED (300) HOURS OF COMMUNITY SERVICE OR A COMBINATION OF ALL THREE.

3/13

A TRUE COPY
 ARMSTRONG (SEAL)
 FAMILY COURT


 DEPUTY CLERK

Joyce Email of 26 May 2011

From: Joyce Soliz [joysol1266@yahoo.com]
Sent: Thursday, May 26, 2011 12:26 AM
To: arroyoea@comcast.net; Erick Arroyo
Subject: Fw: called from Charleston

Funny how when I sent you the below email you responded quickly. But when I sent you an email recently requesting the agreement you are quiet. That's okay... You will have a surprise waiting for you very soon. What is the saying "don't bend over to get the soap" just stay dirty....it will be safer than having to watch your backside. This will be my last correspondence till you receive the divorce papers when you are in prison, unless the judge will sign off on them at your trial? See you in August at the trial...at least that is what the solicitor is stating?

----- Forwarded Message -----

From: Joyce Soliz <joysol1266@yahoo.com>
To: arroyoea@comcast.net; Erick Arroyo <arroyoea@earthlink.net>
Cc: CC <joysol1266@yahoo.com>
Sent: Wed, May 11, 2011 7:58:33 PM
Subject: called from Charleston

I received a call from the prosecutor/Ms.Gordon.

What does she want and why are they calling me?

From: Joyce Soliz [mailto:texasjsoliz@gmail.com]
Sent: Friday, April 15, 2011 2:17 AM
To: arroyoea@earthlink.net; arroyoea@yahoo.com
Subject: Divorce

I'll contact the Newspaper there in Charleston tomorrow to discuss with them the doing a story on predators in your own backyard I think this jurisdiction thing needs some light shined on it

Joyce Soliz (Arroyo)

STATE OF SOUTH CAROLINA) FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
2011 SEP 19 AM 10:53) INDICTMENT NUMBERS: 2010-GS-10-522;
2010-GS-10-529
WARRANT NUMBERS: K-667048; K-667049
STATE OF SOUTH CAROLINA)
CLERK OF COURT)

Plaintiff,)
))
-versus-)
))
ERICK ARROYO,)
))
Defendant.)
))

**MOTION IN LIMINE
TO EXCLUDE THE TESTIMONY OF
MARIA STEENKAMP**

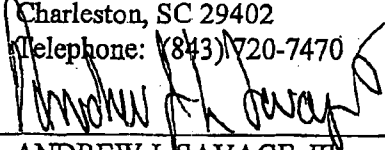
Comes now Erick Arroyo, by and through his undersigned counsel, who respectfully seeks an Order from this Court precluding the Solicitor from referring to or arguing in any manner whatsoever the expected testimony of Maria Steenkamp.

Further, Arroyo does herein move this Honorable Court to exclude Maria Steenkamp from testifying. This motion is based on the following authority:

Rule 702, SCRE; State v. Tapp, 387 S.C. 159, 165 (2009) (trial court has a gatekeeping function of ensuring the proposed expert testimony meets a threshold level of reliability, regardless of whether it is scientific or nonscientific.); Rule 401, SCRE; and Rule 403, SCRE.

Respectfully submitted,

SAVAGE & SAVAGE, P.A.
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone: (843) 720-7470

BY: 

ANDREW J. SAVAGE, III
SC Bar Number: 4946
ATTORNEY FOR DEFENDANT

Charleston, South Carolina

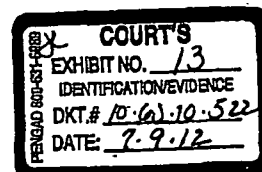
September 19, 2011.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBERS: 2010-GS-10-522;
		2010-GS-10-529;
		2011-GS-10-4790
		WARRANT NUMBERS: K-667048; K-667049
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	JURY CHARGE NO. _____
	)	
-versus-	)	
	)	
ERICK ARROYO,	)	
	)	
Defendant.	)	
_____	)	

GOOD CHARACTER

When a person is charged with a crime, the law permits the proof of his good character and reputation, because under some circumstances, a person might be entitled to a verdict of not guilty, in taking into consideration his good character and reputation, when without it, a verdict of guilty might be authorized. Evidence of good character and good reputation may alone create a doubt sufficient to acquit the accused and should be considered by the jury. The weight you give to that testimony, like all other testimony in the case, is for you to determine and decide, in your good judgement.

See Rule 404(a)(1), SCORE; State v. Braxton, 343 S.C. 629, 635 n.1, 541 S.E.2d 833, 836 n.1 (2001) ("Rule 404(a)(1), SCORE... allows character trait evidence if offered by the accused..."); Sate v. Major, 301 S.C. 181, 185, 391 S.E.2d 235, 238 (1990) ("When the accused offers evidence of his good character regarding specific character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to particular bad acts or conduct. The State is restricted, however, to



ARGUS + 2002

CONFIDENTIAL INFORMATION

INTAKE NO.:

7171

THE DEE NORTON LOWCOUNTRY CHILDREN'S CENTER, INC.
CHILD AND FAMILY TRAUMA ASSESSMENT (CAFTA 2002)
FACE TO FACE INTERVIEW (INFORMATION ELICITED FROM INFORMANT)

VICTIM'S NAME	Minor 1	CLIENT FILE NO.:		SEX:	Female
DATE OF BIRTH:		AGE:	13	RACE:	Hispanic
SCHOOL:	LANG MIDDLE	GRADE:		COUNTY:	Charleston
		PLACEMENT:	REGULAR		

REFERRAL SOURCE:	DET BACON
AGENCY:	MT. PLEASANT POLICE
PHONE:	
INFORMANT:	ARROYO, MELINA
REL TO CHILD:	MOTHER
ADDRESS:	
CITY:	MT. PLEASANT
STATE:	SC
ZIP CODE:	29464
TELEPHONE (HOME):	(843)
(WORK):	

CHILD'S LEGAL GUARDIAN:	Natural Mother	Name:	SAA
WHAT IS THE CHILD'S CURRENT LIVING SITUATION?	IN PARENTS' OR PRIMARY CAREGIVERS' HOME		
Other: (please specify)			
CHILD'S PRESENT LOCATION:	SAA		

CURRENT CAREGIVER:	Natural Mother
CURRENT CAREGIVER NAME:	SAA
TELEPHONE:	(843)
CITY:	MT PLEASANT
STATE:	SC
ZIP CODE:	29464

ASSESSMENT OBSERVERS	YODER, KATIE- CITADEL INTERN
THERAPIST:	ELSEY, DON, ED.D
APPOINTMENT DATE	9/22/2008
TAPED:	Yes
RELEASES SIGNED:	☒ TX Consent ☒ Taped ☒ MOA ☐ Other

Family of Origin/Genogram: (*Identify who was in home at time of allegations/significant other adults/child's names for individuals/significant relationships)

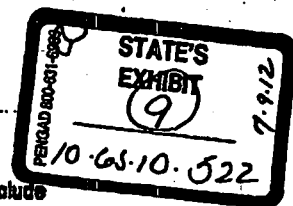
IN THE HOME: MOM, Minor 1 13, A. -71

MOM'S BROTHER IS ERIC ARROYO- THE ALLGED OFFENDER. HE HAS THREE ADULT DAUGHTERS, AND ONE STEPPAUGHTER ALSO WHO IS GROWN.

FATHER OF Minor 1 IS DECEASED. F OF TWO YOUNGER CHILDREN IS IN PUERTO RICO. NO SUPPORT.

Clinical History of Current Concern

What happened that resulted in a request for a trauma assessment? (narrative from caretaker to include problems across individual, family, school, peer and neighborhood domains if applicable):



*** PRIVILEGED AND CONFIDENTIAL ***
 Information provided by The Dee Norton Lowcountry Children's Center, Inc. on
 9/20/2008 and is only for use by
 the person named above. Distribution or copying of this information in whole or part is strictly prohibited.

ARGUS + 2002

CONFIDENTIAL INFORMATION

PER MOM - MOM FELL ASLEEP ON THE COUCH AT HER BROTHER'S HOUSE THIS PAST SUNDAY. WHEN SHE WOKE UP, SHE SAW HER BROTHER ON TOP OF Minor 1 HE ACTED LIKE NOTHING WAS HAPPENING AND MOM JUMPED UP AND SAID SHE HAD TO GO. M LEFT WITH THE CHILDREN. MOM SAW Minor 1 LOOKING ODD, AND MOM HAS SEEN THIS FACE BEFORE. MOM ASKED AND Minor 1 INITIALLY DENIED ANYTHING HAPPENED. MOM SAID SHE HAD TOLD Minor 1 IF ANYONE DID SOMETHING TO HER SHE WILL KILL THEM. Minor 1 SAID UNCLE TOUCHED HER BREASTS UNDER THE BRA. Minor 1 SAID THE UNCLE HAS KISSED HER, PUT HIS FINGERS IN HER VAGINA AND HE HAS TOUCHED HIMSELF. SHE SAID IT HAPPENED OTHER TIMES.

ALLEGED OFFENDER'S WIFE HAS LEFT HIM MANY TIMES IN THEIR MARRIAGE. SHE LEFT AGAIN A FEW MONTHS AGO AND HE TOLD MOM THAT HIS WIFE WAS ACCUSING HIM OF MOLESTING Minor 1 MOM CONFRONTED HIM AND HE DENIED THIS. MOM TOLD HIM IF THIS HAPPENED SHE WILL KILL HIM. MOM CALLED Minor 1 AND ASKED ABOUT THIS AND SHE DENIED ANYTHING BUT NEVER ASKED WHY MOM WAS ASKING THESE QUESTIONS. MOM FOUND OUT THAT UNCLE'S WIFE SAID THERE WERE CONCERNS ABOUT UNCLE AND Minor 1

Is the Informant knowledgeable about the index child and family? (If no, move to outcome expectations section of CAFTA)

YES

SUMMARY OF INFORMATION ELICITED FROM THE INDEX CHILD

(Please provide the basis for your opinion for each question that follows)

7171

Did the child present as an accurate reporter regarding verifiable information?

Yes

Was the child able to respond to trauma specific questions?

Yes

Please describe

THOUGH SHE WAS UPSET AND TEARFUL

Were there internal limitations to the child's ability to respond?

No

Please check all that apply

- ☐ Age ☐ Developmental delay ☐ Psychiatric Disorder
☐ Cognitive limitations ☐ Emotional ☐ Disability
☐ Other

Please describe:

Did the child present as being impacted by external factors?

Yes

Please check all that apply

- ☐ Coaching ☒ Injunctions not to tell ☐ System response
☒ Family response ☐ Multiple interviews ☐ Other

Please Describe:

CHILD REPORTED HER UNCLE TOLD HER NOT TO TELL. THE UNCLE WAS THE ONE IN THE FAMILY OTHERS LOOKED UP TO, MOTHER HAS BEEN VERY ANGRY ABOUT THE ALLEGATIONS

Please describe:

ARGUS + 2002

CONFIDENTIAL INFORMATION

Was the child free to correct interviewer? ☒

Please describe:

[REDACTED]

Did the child present as being able to understand rules of interview and to follow behavioral directives?

☒ Yes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If the child made a disclosure, did the child demonstrate the alleged abuse with: (Please check all that apply)

☒ Yes

☐ Dolls ☒ Drawing ☐ Own body ☐ Other

Please describe:

SHE POINTED TO AREAS ON THE DRAWING

SUMMARY OF OBSERVATIONS/IMPRESSIONS FROM TRAUMA ASSESSMENT

7171

1)

Child's Name (Last Name, First Name, MI) Minor 1

Alleged Offender's Name : ARROYO, ERIC

Alleged Offender Relationship to Victim: Uncle

Typology of Maltreatment: Sexual Abuse

[REDACTED]

Minor 1 WAS VERBAL AND APPEARED BRIGHT. SHE VOICED SUPPORT FROM HER MOTHER. Minor 1 DISCLOSED THAT HER UNCLE ERIC HAD SEXUALLY ABUSED HER ON MORE THAN ONE OCCASION. SHE SAID ROUGHLY A YEAR AGO HE TOUCHED HER VAGINA, ON THE SKIN, WHILE IN ERIC'S LIVING ROOM. Minor 1 SAID ERIC TOLD HER NOT TO TELL. SHE SAID THE LAST TIME WAS THIS PAST SUNDAY WHEN HE GOT ON TOP OF HER AND TOUCHED HER BREASTS. Minor 1 SAID IN THE TIMES HE HAS TOUCHED HER, HE HAS HURT HER VAGINAL AREA BY TOUCHING HER INSIDE HER VAGINA. SHE SAID HE ALSO HAD TOUCHED HER BOTTOM AND SHE HAD SEEN HIM TOUCH HIS ERECT PENIS. Minor 1 SAID ONCE HE WAS TRYING TO TAKE OFF HER PANTS IN THE GARAGE AND SHE DIDN'T LET HIM. SHE SAID ERIC'S WIFE ASKED HER LATER IF SHE WAS OKAY AND ASKED THE UNCLE WHAT HE WAS DOING.

Minor 1

WAS TEARFUL IN RELATING HOW THIS MADE HER FEEL DISGUSTING.

ESG20090905607

WITNESSES

MICHELE BACON

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2009P12328

ARREST WARRANT NUMBER

K667048

DATE OF ARREST

September 22, 2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JAN 13 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1000522

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2010

FILED

8/4/2011 2:42:10 PM

JULIE J. ARMSTRONG

CLERK OF COURT

09-5768-1

THE STATE

vs.

ERICK ALBERTO ARROYO

DOB:

W/M

Indictment for

Criminal Sexual Conduct with a Minor, 2nd
Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

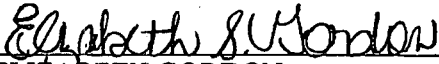
INDICTMENT

At a Court of General Sessions, convened on January 11, 2010 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct with a Minor, 2nd Degree

That ERICK ALBERTO ARROYO, DOB , did in Charleston County between July 1, 2008 September 22, 2009, engage in sexual battery upon Minor I , DOB , to wit: Digital Penetration. This is in violation of §16-3-655 of the South Carolina Code of Laws (1976) as amended :

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


ELIZABETH GORDON
ASSISTANT SOLICITOR

ESG20090905607

WITNESSES

MICHELE BACON

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2009P12328

ARREST WARRANT NUMBER

K667049

DATE OF ARREST

September 22, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

JAN 15 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1000529

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2010

THE STATE

vs.

ERICK ALBERTO ARROYO

DOB:

W/M

Indictment for

Lewd Act Upon a Minor

FILED

8/4/2011 2:42:10 PM

JULIE J. ARMSTRONG

CLERK OF COURT

09-5768-2

TRUE BILL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

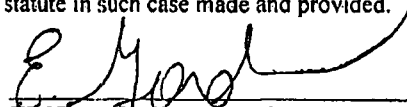
INDICTMENT

At a Court of General Sessions, convened on January 11, 2010 the Grand Jurors of Charleston County present upon their oath:

Lewd Act Upon a Minor

That in Charleston County, South Carolina, between July 1, 2008 and September 22, 2009, the Defendant, ERICK ALBERTO ARROYO, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Minor 1, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

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


ELIZABETH GORDON
ASSISTANT SOLICITOR

ESG20090905607

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2009P12328

ARREST WARRANT NUMBER

DIRIND1472

DATE OF ARREST

July 11, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

JUL 13 2011

VERDICT

GUILTY

[Signature]
Foreperson of Petit Jury

7/13/12
Date:

INDICT

DOCKET NO. 2011GS1004790

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

ERICK ALBERTO ARROYO

DOB:

W/M

Indictment for

Criminal Sexual Conduct with a Minor, 2nd
Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct with a Minor, 2nd Degree

That ERICK ALBERTO ARROYO, DOB _____ did in Charleston County between July 1, 2008 and September 22, 2009, engage in sexual battery upon Minor 1 _____, DOB _____, to wit: Penile Penetration.

This is in violation of §16-3-655 of the South Carolina Code of Laws (1976) as amended .

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


ELIZABETH GORDON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
ERICK ALBERTO ARROYO

INDICTMENT/CASE#: 2010GS1000522

AKA:
Race: WHITE Sex: M Age: 54
DOB: SS#:

A/W#: K667048
Date of Offense: 9/1/2008 - 9/20/2009

Address:
City, State, Zip: MT PLEASANT, SC 294640000

S.C. Code §: 16-03-0655(B)

DL#: SID#: SC01906135

CDR Code #: 0396

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct w/ Minor 2nd Degree, 11-14

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Elizabeth S. Gordon 16952
Gordon, Elizabeth SC Bar# Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 20 days 275

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other: Defendant to be held in Chas. Co. jail until sentenced 3/12/13 gln

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

Clerk of Court/ Deputy Clerk

Court Reporter: So Rice / Susan Perry

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Signature Date: 3/13/12

SENTENCE POSTED DENIED EVAL. of Defendant

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG, CLERK
BY: DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 947

COUNTY OF
STATE

Charleston

VS.

ERICK ALBERTO ARROYO

AKA:

Race: WHITE Sex: M Age: 54

DOB: SS#:

Address:

City, State, Zip: MT PLEASANT, SC 294640000

DL#: SID#: SC01906135

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

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

TO: Lewd Act on a Minor <16

INDICTMENT/CASE#: 2010GS1000529

A/W#: K667049

Date of Offense: 9/1/2008 - 9/20/2009

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Elizabeth S. Arroyo 16952
Gordon, Elizabeth SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed
and/or to pay a fine of \$; provided that upon the service of days/months/years and/o: payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and a-ried by the State Department of Corrections. 275 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Susan M. Parris / Jo Rice

SCCA/217 (03/2011)

Presiding Judge

Code: 2468

Sentence Date: 7/13/12

IN 10

956

ATTEST: A TRUE COPY
JULIA ARMSTRONG (SEAL)
CLERK, C.P. & C.
By: [Signature] DEPUTY CLERK

PTOP COMPLETE VERBATIM
days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: Defendant to be held
in Chas. Co. jail until
SENTENCED 3/12/13
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

SENTENCE postponed pending eval. of Def 956

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

STATE VS.

Erick Alberto Arroyo

AKA:

Race: WHITE Sex: M Age: 54

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC01906135

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

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

TO: Criminal Sexual Conduct w/ Minor 2nd Degree < 16

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1004790

A/W#: DIRIND1472

Date of Offense: 7/1/2008

S.C. Code §: 16-03-0655(C)

CDR Code #: 0397

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Elizabeth Gordon 16952

Gordon, Elizabeth

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed

and/or to pay a fine of \$ 275; provided that upon the service of 275 days/months/years and/or payment

of \$ 275; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ 133.90 plus 20% fee: \$ 26.78

Payment Terms: Set by SCDPPPS

☐ Set by SCDPPPS

Recipient: Callie

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

275 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. in Chas. Co. jail unit

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 275 beginning

\$ 275 paid to Public Defender Fund.

Other: Defendant to be held in Chas. Co. jail unit

SENTENCED 3/12/13

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date: 7/13/12

SENTENCE POSTPONED/PENDING EVAL. BY DAVID

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."

November 5th, 2014



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERICK ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000694

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in admitting the testimony of a psychologist who testified that the complainant suffered from post-traumatic stress disorder where this evidence was irrelevant and only served to improperly bolster the complainant's credibility?

2.

Whether the trial court erred in admitting the report of a forensic interviewer, and alternatively, whether admission of the unredacted portions of the report constituted an improper bolstering of the complainant's credibility?

3.

Whether the trial court improperly limited cross-examination of the defendant's ex-wife by ruling that threatening communications she made to the defendant for challenging jurisdiction in their divorce would open the door to Rule 404(b) evidence previously ruled inadmissible?

4.

Whether the trial court erred in refusing to charge that evidence of good character alone may create reasonable doubt?

5.

Whether the trial judge erred in tolling appellant's probation until appellant completes a sexual abuse program?

STATEMENT OF THE CASE

Appellant was indicted in Charleston County for two counts of second degree criminal sexual conduct with a minor and one count of lewd act on a minor. On July 9 – 13, 2012, appellant was tried before the Honorable J.C. Nicholson and a jury. R. 1. Elizabeth Gordon represented the State. R. 1. Andrew Savage represented appellant. R. 1. The jury convicted appellant on all three counts. R. 829, ll. 3 – 21. The court deferred sentencing. R. 833, l. 24 – 838, l. 13. On February 26, 2013, appellant filed a motion for a new trial. R. 875 (Motion for New Trial; Memorandum in Support of Motion for New Trial). On March 4, 2013, a sentencing hearing was held before Judge Nicholson. R. 841. The trial court again deferred sentencing and the defendant waived his presence. R. 872, l. 8 – 873, l. 12.

On March 12, 2013, Judge Nicholson signed the sentencing sheets. R. 946 - 948. He sentenced appellant to concurrent terms of fifteen years' imprisonment on the criminal sexual conduct charges and a consecutive fifteen year sentence on the lewd act charge which was suspended upon the service of five years' probation. R. 946 – 948. Judge Nicholson wrote on the sentencing sheets that appellant's probation would be tolled until he completed a sexual abuse program. R. 946 – 948. On March 22, 2013, the trial court denied appellant's motion for a new trial. R. 891. Appellant timely filed and served a notice of appeal and this appeal follows.

STATEMENT OF FACTS

Introduction

Four main fact witnesses testified in this child sex abuse case. The defendant, Erick Arroyo ("Arroyo"), a decorated retired Naval officer, testified in his own defense and unequivocally denied abusing the complainant. R. 711, l. 15 – 712, l. 15. The State called the complainant ("Minor"), who was sixteen years old at the time of trial and had been treated for psychiatric illnesses before the alleged abuse. R. 68, ll. 2 – 3. R. 252, l. 10 – 353, l. 20. The State also called Arroyo's wife, Joyce Arroyo ("Joyce") who was suing him for divorce and Minor's mother, Melina Arroyo ("Melina"), who had been previously hospitalized for a psychiatric illness, had two of her boyfriends arrested, and had social services involvement regarding Minor. R. 590, ll. 1 – 2. R. 212, ll. 7 – 14. R. 230, l. 21 – 232, l. 4. R. 234, ll. 9 – 16. R. 210, ll. 12 – 20. R. 251, l. 23 – 352, l. 9. These three witnesses contradicted each other regarding significant details of the alleged abuse. Compare R. 108, ll. 7 – 21 and R. 122, l. 22 – 226, ll. 6 (*Minor's descriptions*) with R. 215, l. 19 – 316, l. 14 (*Melina's description*) and R. 592, l. 14 – 598, ll. 7 (*Joyce's description*). No physical evidence of abuse was introduced. But for the trial court's errors, including two dealing with the State's expert witnesses who were used to bolster Minor's credibility, Arroyo would not have been convicted.

Melina and Minor Move in With the Arroyos

Minor was the oldest of Melina's three children. Minor had a tumultuous upbringing. Her mother, Melina, was hospitalized for a psychiatric illness. R. 212, ll. 7 – 14. Melina was bipolar and suffered from depression that sometimes prevented her from getting out of bed. R. 256, ll. 15 – 19. R. 258, ll. 14 – 16. Melina's former husband was an

alcoholic. R. 258, l. 17 – 259, l. 6. Minor observed violence in her home. R. 213, ll. 8 – 18. She had been caught looking at pornography. R. 237, l. 24 – 239, l. 19. R. 265, l. 2 – 266, l. 7. Melina had two of her own boyfriends arrested. R. 230, l. 21 – 232, l. 9. R. 234, ll. 4 – 16. Minor was treated for psychiatric problems before any alleged abuse occurred. R. 235, ll. 10 – 25. Social services had been involved with the family. R. 251, l. 23 – 252, l. 9.

Melina and her children moved to Charleston from Florida because Arroyo lived in Charleston and Melina considered Arroyo “like a father.” R. 148, l. 7 – 149, l. 14. Melina was Arroyo’s stepsister. R. 555, ll. 17 – 19. Arroyo was a retired naval flight officer, an engineer, and a medal-winning combat veteran. R. 704, ll. 20 – 25. Arroyo received a Bronze Star for his service in Afghanistan. R. 608, ll. 22 – 24.

Melina lost her job after moving to Charleston. R. 149, ll. 17 – 21. She was collecting unemployment. R. 150, ll. 4 – 6. Arroyo had extra room in his house because his daughters were away at college. R. 149, l. 22 – 150, l. 3. Despite warnings from people against letting Melina move into their home, Melina and her daughters moved in with the Arroyos during the summer of 2008. R. 150, ll. 19 – 25. R. 609, ll. 12 – 18. Living there were Arroyo, his wife Joyce, Melina, Minor, and Melina’s two younger children.

The Abuse Allegations

Minor did not tell anyone of the alleged abuse until after being dramatically confronted by Melina. This confrontation occurred after Melina and her children had moved out of Arroyo’s house, but returned to watch an evening football game. R. 157, ll. 3 – 23. Melina had two alcoholic beverages and then fell asleep on a couch in the living room after dinner. R. 158, l. 9 – 160, l. 15. Melina described what happened next:

The next thing I remember after falling asleep on the couch, I felt very cold, freezing, but my body was sweaty. I remember something touching me and telling me, wake up, wake up. You need to wake up now.

Q. Like somebody physically touching you to wake up?

A. I don't know. Like God, like some big hands on my body like telling me, you need to wake up. And then I woke up and opened my eyes. When I open my eyes, I see my brother leaning on my daughter like with his face on her chest and her boobs and her head. I saw him, I saw him.

R. 161, ll. 6 – 16. Her two younger children were also in the room. R. 218, ll. 15 – 17. Minor was laying on her back. R. 218, ll. 5 – 6. Arroyo was lying on top of Minor. R. 219, ll. 19 – 20. Arroyo “rolled over the couch” and appeared to be looking for something. R. 219, ll. 2 – 4.

At trial, Minor described this incident quite differently. Minor said she was laying on the couch covered by a blanket. R. 123, ll. 10 – 13. Arroyo was standing over her. R. 123, l. 20 – 124, l. 10. Minor said that Arroyo was “[s]tanding totally straight up.” R. 124, l. 13. Minor’s clothes were on, but Arroyo’s pants were unzipped. R. 125, ll. 8 – 9. Minor said Arroyo “was trying to make me touch his penis.” R. 124, ll. 21 – 22. Arroyo told Minor “to like put his hand on – my hand on his penis. And I didn’t want to move it, and I just laid it there.” R. 126, ll. 1 – 3.

Melina gathered her children, left the house, and drove to the Mt. Pleasant Police Department. R. 161, l. 19 – 163, l. 7. On the drive to the station, Minor denied anything happened. R. 163, ll. 8 – 20. Melina was mad. R. 163, ll. 17 – 18. She cursed at her daughter. R. 163, ll. 18 – 20. Melina was screaming. R. 164, ll. 7 – 11. Melina described minor as “scared” and “crying.” R. 164, ll. 7 – 11. Minor then told Melina that Arroyo had touched her breast. R. 164, ll. 14 – 17. Melina testified about how she reacted:

I kept telling her, you need to tell me more. I told her, if you don't tell me anything, I'm going to put you through a lie detector test in the police department, and it will be very embarrassing for people that don't know you to hear all this stuff. But here I am, your mother. And if I cannot help you, protect you, how we going to get through this. So when we parked there at the police department, she actually realized that I was being serious. And then she started telling me a bunch of stuff.

R. 165, ll. 9 – 18. Melina got out of her car and was “out of my mind. I was yelling and screaming.” R. 165, ll. 19 – 21. The police did nothing that evening and Melina went to her boyfriend's house, one of the men she later had arrested. R. 166, ll. 5 – 8. R. 234, ll. 4 – 16. This boyfriend tucked Minor into bed that evening. R. 118, l. 12 – 119, l. 1.

The next morning, Detective Michelle Bacon (“Bacon”) contacted Melina. R. 500, ll. 3 – 11. Detective Bacon scheduled a forensic interview for Minor. R. 500, ll. 3 – 16. During the interview, Minor's original allegation that Arroyo touched her breast metastasized into ongoing sexual abuse by Arroyo. R. 501, ll. 20 – 23. After attending therapy, Minor then claimed penile penetration. R. 264, ll. 4 – 17. At trial, Minor alleged that she and Arroyo had sex multiple times.

One of the specific allegations involved Joyce. One night, Minor and Arroyo were in his garage. R. 106, l. 23 – 108, l. 6. Minor said Arroyo “had his pants down and his penis out.” R. 108, ll. 7 – 10. Arroyo's pants were down to “just below his waist.” R. 133, ll. 23 – 25. The lights were on. R. 105, ll. 18 – 25. Minor's pants were not all the way down, but Arroyo was trying to take them off. R. 108, ll. 7 – 21. Her zipper was undone. R. 133, ll. 12 – 15. She was standing. R. 108, l. 17 – 18. Arroyo was trying to penetrate her with his penis. R. 108, ll. 19 – 21. At this point Joyce walked into the garage. R. 134, ll. 1 – 8. She started zipping up her pants and Arroyo walked to the freezer. R. 134, ll. 1 – 16.

In Joyce's version, the "lights were not on." R. 592, ll. 14 – 16. Arroyo did not have his pants "unbuttoned in any way or in any fashion." R. 593, ll. 14 – 16. Joyce affirmed that she was "sure of that." R. 593, ll. 17 – 18. Joyce did not turn on the light. R. 596, ll. 2 – 6. Joyce had a clear view of Arroyo. R. 598, ll. 1 – 7. Joyce claimed that she could see through a crack of the refrigerator door and saw Minor zip up her pants. R. 560, ll. 14 – 21.

Arroyo denied that anything untoward was happening. R. 560, l. 25 – 562, l. 12. Joyce went to Minor's room and asked her "if anything was going on between her and [Arroyo], and she denied it. She said, no." R. 584, ll. 6 – 18. That night, Joyce did not tell Melina what she saw. R. 562, ll. 4 – 12. Joyce instead went to Texas to visit family. R. 584, ll. 19 – 25. She later came back to South Carolina and made an attempt to reconcile with Arroyo. R. 584, l. 19 – 585, l. 2.

During the separation, Joyce wrote a letter on Arroyo's behalf to help him obtain a bond. R. 587, ll. 9 – 19. Joyce wrote that they were separated due to problems "with my husband's sister, Melina, who fled to South Carolina from Florida threatening to commit suicide due to an abusive relationship with a man she left, the husband [sic] of her two children." R. 609, ll. 3 – 11. She wrote that Arroyo was "a well-respected retired naval officer." R. 609, ll. 12 – 18. Joyce stated in the letter that she was sad that their dream of retiring in Mount Pleasant "would not come true due to a person that we took into our home and cared for even when others warned us against it." R. 609, ll. 12 – 18.

Defense counsel intended to impeach Joyce for bias with communications she made to Arroyo after he successfully contested jurisdiction in a divorce proceeding Joyce filed in Texas. R. 572, l. 11 – 580, ll. 6. R. 896. The Texas action was dismissed and Joyce had to

file for divorce in South Carolina. R. 572, l. 11 – 580, ll. 6. R. 896. Joyce left Arroyo a voicemail stating:

You got your jurisdiction over there in South Carolina, at least temporarily because I will appeal because I have the right to fight you here in Texas. But if you want to fight there in South Carolina, that is going to be the worst thing that you could have done for your case because I will make everything and blow it up so badly over there in South Carolina that you are going to wish that you never, never crossed paths with me.

R. 896. On April 15, 2011, Joyce sent Arroyo an email stating:

I'll contact the Newspaper there in Charleston tomorrow to discuss with them doing a story on predators in your own backyard..... I think this jurisdiction thing needs some light shined on it

R. 896. On May 26, 2011, Joyce sent Arroyo another email stating:

Funny how when I sent you the below email you responded quickly. But when I sent you an email recently requesting the agreement you are quiet. That's okay... You will have a surprise waiting for you very soon. What is the saying "don't bend over to get the soap" just stay dirty.... it will be safer than having to watch your backside. This will be my last correspondence till you receive the divorce papers when you are in prison, unless the judge will sign off on them at your trial? See you in August at the trial... At least that is what the solicitor is stating?

R. 896.

The court had previously ruled under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) that a twenty-year-old allegation of sexual abuse by another child was inadmissible. R. 577, ll. 12 – 17. The trial judge then ruled that if Arroyo impeached Joyce with these communications, it would open the door to the inadmissible Lyle evidence. R. 577, l. 18 – 578, l. 14.

Earlier in the trial, Joyce twice attempted to testify during direct examination about the inadmissible Lyle evidence. R. 561, ll. 10 – 18. R. 564, ll. 3 – 4. During an in-camera

discussion, Joyce herself argued with the trial judge that the Lyle evidence needed to be admitted. R. 564, l. 5 – 571, l. 25. Judge Nicholson had to forcefully instruct Joyce not to mention the Lyle evidence and after she continued to argue with him, had to threaten her with “consequences” and directed the solicitor to further instruct her off-the-record. R. 570, l. 2 – 571, l. 25. After the Court’s ruling on opening the door to the Lyle evidence, Arroyo did not use the communications to impeach Joyce, objected to the court’s ruling, and proffered the communications in the divorce pleadings and made them a court’s exhibit. R. 578, l. 15 – 580, l. 6. R. 896.

Minor did not testify regarding any description of Arroyo’s unusual penis. Melina, nor any of the police witnesses, nor any of the three expert witnesses the State called to bolster Minor’s credibility testified that Minor told them Arroyo had an unusual penis. Arroyo had surgery on his penis when he was approximately sixteen. R. 715, ll. 24 – 25. The surgery caused scars on the head of his penis that Arroyo said were easily visible. R. 715, l. 10 – 716, l. 4. His penis also has an unusual discoloration and pigmentation problem which he described as “speckled, mottled.” R. 715, l. 5 – 716, l. 10. The “blotches” cover the entire penis. R. 716, ll. 8 – 10. The discolorations and scarring was sufficiently noticeable that people in the Navy made fun of Arroyo in the showers. R. 714, ll. 23 – 25. Trial counsel wanted to have Arroyo show his penis to the jury during surrebuttal, but the trial judge refused to allow it. R. 760, ll. 4 – 18. Even though these discolorations were so distinctive and easily visible to other males who only showered with Arroyo, Minor never mentioned them. This was despite the fact that, if her allegations were true, she would have seen these distinguishing characteristics and describing them would have been an easy way to prove the truth of her allegations.

ARGUMENT

1.

The trial court erred in admitting the testimony of a psychologist who testified that the complainant suffered from post-traumatic stress disorder where this evidence was irrelevant and only served to improperly bolster the complainant's credibility.

Prior to trial, Arroyo moved *in limine* to exclude the testimony of Dr. Maria Steenkamp. R. 892 (Motion in Limine to Exclude the Testimony of Maria Steenkamp). Arroyo cited Rules 702, 401, and 403 of the South Carolina Rules of Evidence. R. 892 (Motion in Limine to Exclude the Testimony of Maria Steenkamp). The court heard Dr. Steenkamp's testimony *in-camera*. R. 299, l. 5 – 7. Dr. Steenkamp treated veterans and had only seen eight child patients for sexual abuse. R. 323, l. 21 – 324, l. 1. Despite this lack of experience with children, the State offered her as an expert on “the effects of trauma” and the court indicated it would qualify her as such. R. 296, ll. 14 – 17. R. 335, ll. 5 – 7.

The *in-camera* examination continued and Dr. Steenkamp revealed she would testify that she treated Minor for post-traumatic stress disorder (“PTSD”) following the alleged abuse. R. 340, l. 1 – 341, l. 22. After this examination, Arroyo objected to her entire testimony. R. 350, l. 23 – 351, l. 18. Defense counsel argued that her testimony was irrelevant except to “bolster the testimony of Minor.” R. 350, l. 23 – 351, l. 18. He further argued that it was “a back door way” of bolstering Minor's credibility by stating that she diagnosed her with PTSD. R. 350, l. 23 – 351, l. 18. Trial counsel cited State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012) (State's-Pet. Cert. Withdrawn October 17, 2012) and argued that, based on McKerley, it was “impermissible to do an end-run around the bolstering.” R. 353, ll. 6 – 25. The trial court denied the motion and cited

McKerley in its reasoning. R. 354, l. 20 – 356, l. 24. Following the close of the State's case, Arroyo renewed this motion and asked to strike Dr. Steenkamp's testimony because of improper bolstering and relevancy. R. 665, l. 1 – 666, l. 1. The trial court again denied the motion. R. 666, ll. 2 – 3.

When Dr. Steenkamp testified before the jury, she stated that Minor was referred to her "to do an assessment for trauma related symptoms given alleged child sexual abuse." R. 364, ll. 10 – 14. When asked "the result of the assessment," Dr. Steenkamp stated, "The assessment revealed a diagnosis of post-traumatic stress disorder, and we recommended that she receive therapy in our clinic." R. 364, ll. 15 – 18.

After being asked to explain PTSD, Dr. Steenkamp told the jury it "develops after someone has experienced a traumatic event" and used "being raped" as an example. R. 364, ll. 19 – 25. She described three "clusters" of symptoms. R. 364, l. 1 – 366, l. 1. She said Minor had symptoms in each cluster and described Minor's symptoms. R. 366, ll. 6 – 7.

The solicitor also directly linked the diagnosis of PTSD to the alleged abuse. R. 366, l. 24 – 368, l. 6. She said "there has to be first a trauma" to which Dr. Steenkamp affirmatively responded. R. 366, ll. 24 – 25. She had Dr. Steenkamp rule out other past traumas in Minor's life as the source of her PTSD. R. 367, ll. 4 – 18. Dr. Steenkamp said "what we do with a diagnosis of PTSD is that we tie each diagnosis to a specific traumatic event." R. 367, ll. 13 – 16. The following exchange then occurred:

Q. And what was her diagnosis and her treatment with you, related to her treatment with you?

A. Related to her treatment with me was PTSD due to child sexual abuse.

Q. And how did you tie the sexual abuse to her current PTSD diagnosis?

A. You typically look, for example, at the re-experiencing symptoms. So what is it that they're having nightmares about it? What is it? You know, what are the bad memories that keep popping into their mind? **In this case, it was the child sexual abuse.**

Q. Based on her diagnosis what was your recommendation?

A. We recommended trauma-focused therapy.

R. 367, l. 19 – 368, l. 6 (emphasis added).

The above testimony was irrelevant and improperly bolstered Minor's credibility. It is impossible to construe Dr. Steenkamp's diagnosis as anything other than she believed the child's testimony regarding the abuse and believed it caused PTSD. As such, it is indistinguishable from the current line of cases from this Court and the Supreme Court finding such testimony inadmissible. See State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012) (State's Pet. Cert. Withdrawn October 17, 2012). State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012); see also State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009) (holding there is no need to qualify a forensic interviewer as an expert and Pleicones, J., calling forensic interviewers "human 'truth detectors'" in dissent).

In Kromah, a forensic interviewer was qualified as an expert witness. Discussing the qualification of the forensic interviewer in Kromah, the Supreme Court said, "[W]e state today that we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate." Id. at 357, n.5, 737 S.E.2d at 499 n.5. In McKerley, there was no other way "to interpret the interviewer's testimony other than as

her opinion that the victim was telling the truth.” McKerley at 465, 725 S.E.2d at 142. The McKerley interviewer used her testimony regarding the work of forensic interviewers as a trojan horse to lead the jury to her inevitable, “expert” conclusion that the victim told the truth about the abuse. Id. The McKerley court gave numerous examples of improper statements made by the interviewer. Id. at 142-43, 725 S.E.2d at 465-66.

Just as in McKerley, Dr. Steenkamp’s diagnosis cannot be interpreted as having any function other than providing an expert opinion to the jury on whether Minor was telling the truth. See also, Jennings at 482-83, 716 S.E.2d at 95-96 (Kittredge, J., concurring, criticizing the “State’s regrettable desire to admit patently inadmissible evidence.”). “The purpose of [this kind of] testimony is to convince the jury that the interview was done properly, thus bolstering the child’s credibility.” John E. B. Myers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol’y 1, 55 (2010). “[A]llowing the prosecution to offer expert testimony during the state’s case-in-chief violates the rule that a party may not bolster the credibility of its own witnesses unless credibility is attacked.” Id. at 55-56. “Any testimony beyond that, especially expert testimony, is improper bolstering and is unfair to the defendant.” Id.; see also Richardson v. State, 43 A.3d 906, 910-11 (Del. 2012) (reversing because of admission of opinion testimony from a forensic interviewer stating that their “sole role” was to authenticate the recording of the interview and anything further constituted impermissible bolstering).

Dr. Steenkamp’s testimony was also irrelevant. SCORE 401. She was not a fact witness. She was not a crime scene expert. Her only knowledge of the case was based

on hearsay. Her only interaction with the case was after the alleged crime occurred. The treating psychiatrist of a victim of armed robbery would not be allowed to testify that the victim had PTSD as a result of the robbery. It would be irrelevant. See, e.g., State v. Bennett, 369 S.C. 219, 632 S.E.2d 281 (2006) (discussing that victim impact evidence is only allowed during the sentencing phase of a capital trial). Such evidence is just as irrelevant in a child sex case. The admission of this testimony in this case, where no physical evidence was introduced and the jury's decision depended upon the child's credibility, was prejudicial error that requires reversal.

2.

The trial court erred in admitting the report of a forensic interviewer, and alternatively, the admission of the unredacted portions of the report constituted an improper bolstering of the complainant's credibility.

The third of the State's three expert witnesses to testify was Dr. Donald Elsey ("Elsey"). Dr. Elsey conducted the forensic interview of Minor. Arroyo moved pre-trial to exclude his testimony. R. 893 (Amended Motion in Limine to Exclude the Testimony of Donald (Don) Elsey). Arroyo renewed this motion before Elsey's testimony, stating that he objected to "the nature of his testimony." R. 613, ll. 2 – 7. This motion was denied and the trial judge stated he would rule on any 403 or objections to cumulative testimony as it arose. R. 619, ll. 8 – 16.

During redirect, the solicitor offered the report of Elsey's forensic interview into evidence. R. 645, l. 8 – 646, l. 10. Originally, Arroyo did not object to the entry of the report. R. 646, ll. 7 – 10. However, trial counsel admitted the failure to object was a mistake and Judge Nicholson allowed him to make an objection to the admission of the

report. R. 657, ll. 3 – 16. R. 678, l. 18 – 681, l. 24. Citing Jennings, Arroyo then objected to the admission of the report in its entirety on the ground that it commented on Minor's veracity. R. 679, ll. 10 – 24. R. 743, l. 21 – 749, l. 21.

Judge Nicholson then ruled he would redact the report to remove any comment on Minor's veracity. R. 749, ll. 5 – 15. Arroyo then made specific objections to portions of the report that remained that still referred to Minor's veracity. R. 750, l. 1 – 759, l. 3. The trial court overruled a number of these objections and admitted a redacted version of the forensic interviewer's report into evidence. R. 758, l. 6 – 759, l. 1. R. 937.

Arroyo filed a written motion for a new trial regarding the admission of Elsey's report. R. 875. Judge Nicholson did not hear oral argument on the motion and denied it in a written order. R. 891.

In addition to multiple sentences violating the time and place restriction of Rule 801(d)(1), the redacted Elsey report still contains information vouching for Minor's credibility. It states, "Did the child present as an accurate reporter regarding verifiable information?" with a box indicating Elsey's answer of "Yes." R. 937 (State's Ex. 9). It asks, "Was the child able to respond to trauma specific questions?" and shows Elsey's answer of "Yes." R. 937.

It asks whether the child presented "as being impacted by external factors?" with the box checked "Yes." R. 937. This question has several sub-boxes. R. 937. Two were checked: "Injunctions not to tell" and "Family response." R. 937. More significant was the box left unchecked, "Coaching." R. 937. The remainder of the unredacted report repeats the hearsay allegations made by Minor during the interview. R. 937.

Admission of the report was clearly error under Kromah and Rule 801(d)(1). Smith v. State, 386 S.C. 562, 568, 689 S.E.2d 629, 633 (2010). Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001) (granting a new trial in a PCR case because defense counsel failed to object to hearsay testimony about details of a sexual assault); Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994) (granting a new trial in a PCR case because defense counsel failed to object to hearsay testimony about details of a sexual assault).

The statements concerning Minor being an “accurate reporter” violates the dictate of Kromah that forensic interviewers cannot offer opinions on the credibility of others. Kromah at 357, n.5, 737 S.E.2d at 357, n.5. Elsey was improperly qualified as an expert witness, which increases the prejudicial impact of the report. Id. Jennings at 482-83, 716 S.E.2d at 95-96. Minor’s credibility was the central concern of the case and the most important fact for the jury to consider. Therefore, the admission of the report is not harmless and Arroyo’s convictions must be reversed.

3.

The trial court improperly limited cross-examination of the defendant’s ex-wife by ruling that threatening communications she made to the defendant for challenging jurisdiction in their divorce would open the door to Rule 404(b) evidence previously ruled inadmissible.

The trial court erred in ruling that impeaching Joyce with the threatening emails would open the door to inadmissible Rule 404(b) and Lyle evidence. “Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” SCRE 608(c). “Rule 608(c) . . . permits a party to impeach a witness by establishing bias or prejudice wither through

examination or otherwise.” State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 914-15 (2000). “On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.” Id.

Joyce’s threatening emails were evidence of her bias against Arroyo. She wrote the emails in response to an adverse ruling in their divorce. R. 896. In her April 15, 2011, email she said, “I’ll contact the Newspaper there in Charleston tomorrow to discuss with them the doing a story on predators in your own backyard..... **I think this jurisdiction thing needs some light shined on it**”. R. 896 (emphasis added). Her voicemail threatened to “blow it up so badly over there in South Carolina” because of the jurisdiction ruling. R. 896. She again linked the divorce proceedings to her testimony in Arroyo’s criminal case in her April 2011 email. R. 896.

The trial judge found that the emails and Joyce’s veracity were linked to the Lyle evidence. R. 577, l. 18 – 578, l. 14. Judge Nicholson stated “the Court also has an obligation under the rules not to allow misleading evidence to be submitted to the jury.” R. 577, ll. 18 – 20. He ruled it was unfair to allow Arroyo to “insinuate things about the divorce and not give a full picture.” R. 577, l. 24 – 578, l. 1. He specifically stated it was unfair to Joyce. R. 577, l. 23 – 578, l. 1. The court found that the emails were “probably threatening, but they’re threatening for a reason. She wanted to bring out the abuse on both children.” R. 579, ll. 10 – 12. Defense counsel contested this finding and pointed out there was nothing in the communications or divorce pleadings about the Lyle evidence.

The trial judge improperly linked the threatening communications to the Lyle evidence. The communications clearly were the result of Joyce’s anger over Arroyo

contesting jurisdiction. The communications specifically mention jurisdiction. They do not mention anything about the Lyle evidence. In State v. Page, 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008), this Court held that counsel's "zealous" cross-examination of a detective did not open the door to an unredacted statement of a co-defendant. See also State v. Young, 378 S.C. 101, 661 S.E.2d 387 (2008) (finding that defendant's statement that he hated to see a woman cry did not open the door to prior CDV convictions previously held inadmissible). Joyce would not have needed to mention the Lyle evidence to answer questions regarding the emails. The trial court erred in finding that this important evidence of bias could opened the door to the Lyle evidence.

4.

The trial court erred in refusing to charge that evidence of good character alone may create reasonable doubt.

Arroyo submitted the following request to charge:

When a person is charged with a crime, the law permits the proof of his good character and reputation, because under some circumstances, a person might be entitled to a verdict of not guilty, in taking into consideration his good character and reputation, when without it, a verdict of guilty might be authorized. Evidence of good character and good reputation may alone create a doubt sufficient to acquit the accused and should be considered by the jury. The weight you give to that testimony, like all other testimony in the case, is for you to determine and decide, in your good judgment.

R.936. After Judge Nicholson charged and the jury, he excused the jury and asked for exceptions from the parties. R. 818, ll. 19 – 22. The court said, "Now, you had a request for a character charge which I said I would not charge. Do you still want that charge?" R. 821, l. 24 – 822, l. 1. Arroyo answered, "Yes, sir," and the trial judge had Arroyo's request marked as a court's exhibit. R. 822, ll. 2 – 10. The trial judge did not give the charge.

“The law to be charged to the jury is determined by the evidence presented at trial.” State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). “A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” Id. at 406, 649 S.E.2d at 50. Moreover, when determining whether the evidence requires a charge, the court views the facts in the light most favorable to the defendant. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

In this case, evidence of Arroyo’s good character was introduced. He was a naval flight officer, an engineer, and a medal-winning combat veteran. R. 704, ll. 20 – 25. Arroyo received a Bronze Star for his service in Afghanistan. R. 608, ll. 22 – 24. His wife testified about a letter she wrote when Arroyo was considered for bond that Arroyo was a “well respected retired Naval officer.” R. 609, ll. 12 - 18. She wrote about Arroyo’s character and willingness to help family members. R. 610, ll. 1 – 7. Arroyo testified that his mother, father, and two daughters were in court with him. R. 712, ll. 18 – 25.

“A defendant is entitled to a jury instruction regarding evidence of good character and reputation when this type of evidence is presented and the defendant requests the charge.” State v. Harrison, 343 S.C. 165, 175, 539 S.E.2d 71, 76 (Ct. App. 2000). In Harrison, this Court reversed because of the trial court’s failure to give a good character instruction. Id. This Court found that failure to give the charge was not harmless. Id. The evidence of the defendant’s character in Harrison was that he worked at a charity counseling adolescents and presented a character witness. Id. at 168-69, 539 S.E.2d at

Similarly, in this case, there was testimony concerning Arroyo's military service, that he was respected, and his family supported him. The State argued that Arroyo's character should not matter. R. 803, ll. 17 – 24. The solicitor argued, "He might be a Navy veteran and a bronze medal winner, but it doesn't give him a free pass. It does not become a free pass to molest Minor." R. 803, ll. 17 – 24. During her opening statement, the solicitor called Arroyo a "wolf in sheep's clothing." R. 57, ll. 16 – 17. She stated that, "To the outside world, he was the model citizen. A navy veteran, an engineer, a husband, a father, a decent neighbor. No one thought bad of him. He was a good guy." R. 57, ll. 16 – 21. The charge on good character was necessary to counter the solicitor's use of Arroyo's reputation against him. Failing to give this charge constitutes reversible error.

5.

The trial judge erred in tolling appellant's probation until appellant completes a sexual abuse program.

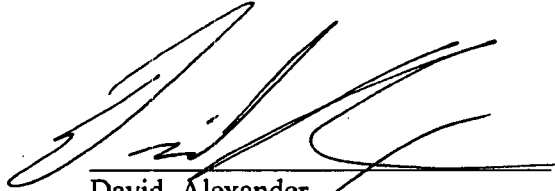
The trial judge ordered Arroyo's probation on the lewd act charge tolled while he completed a sexual abuse program. R. 946 (Sentencing Sheet). This ruling anticipates that Arroyo will be civilly committed under the sexually violent predator program. See S.C. Code Ann. § 44-48-20, et seq. In State v. Miller, 404 S.C. 29, 38, 744 S.E.2d 532, 537-38 (2013), the Supreme Court decided that probation could not be tolled for persons committed in the sexually violent predator program. Therefore, the trial court erred in imposing this sentencing condition.

The State may argue this issue is not preserved for appeal, but, after Miller, cannot seriously contend this term of Arroyo's sentence is not invalid. The Supreme Court decided Miller approximately three months after Arroyo was sentenced. In Miller, the issue did not arise until a probation officer issued a citation and asked the circuit court to toll the probation. Id. at 32-33, 744 S.E.2d at 534. Here, judicial economy is best served by striking this term from Arroyo's sentence now. See State v. Bonner, 400 S.C. 561, 565-67, 735 S.E.2d 525, 527-28 (Ct. App. 2012) (addressing the admittedly unpreserved issue of an illegal LWOP sentence for a juvenile in the interest of judicial economy). It would make little sense to require Arroyo to litigate this issue either in a probation hearing in circuit court or in a post-conviction relief action. Id. In the event this case is not remanded for a new trial, the Court should modify Arroyo's sentence by striking the tolling provision and allowing him to serve his probation during any civil commitment in the SVP program.

CONCLUSION

For the foregoing reasons, Arroyo's convictions should be reversed and this case remanded for a new trial. In the alternative, the invalid sentencing provision should be struck.

Respectfully submitted,



David Alexander
Appellate Defender

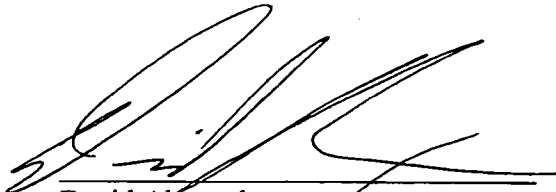
ATTORNEY FOR APPELLANT

This 18th day of November, 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."

November 18th, 2014



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

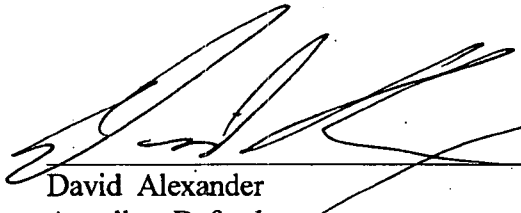
V.

ERICK ARROYO,

APPELLANT

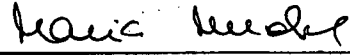
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of November, 2014.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of November, 2014.

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

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
J.C. "Buddy" Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-000694

THE STATE, ...RESPONDENT

v.

ERICK ARROYO, ...APPELLANT.

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly admitted testimony from psychologist Maria Steenkamp regarding her diagnosis of post-traumatic stress disorder (PTSD), where that testimony was relevant to help the jury in understanding the victim's behavior, did not improperly bolster the victim's credibility, and was not unfairly prejudicial to Appellant.
2. Whether the trial court properly admitted into evidence a heavily redacted copy of the written report of forensic interviewer Elsey where: (1) Appellant opened the door to the complete report by asking extensive questions about Dr. Don Elsey's forensic interview during cross-examination; (2) the complete un-redacted report was initially admitted into evidence without objection from Appellant but was subsequently redacted by the trial court in an effort to remove any comments on the victim's veracity; (3) any remaining un-redacted comments are sufficiently vague so as not to constitute prohibited comments on the victim's veracity; and (4) any remaining un-redacted comments were harmless error.
3. Whether the trial court properly placed no limits on Appellant's cross-examination of his estranged wife, and properly ruled that any such cross-examination which focused upon communications she made to Appellant about their pending divorce would open the door to the witness being able to explain all of her reasons for seeking a divorce, including evidence of an alleged sexual assault committed against her daughter, which the trial court had previously ruled was an inadmissible "prior bad act" under Rule 404(b), SCRE.
4. Whether the trial court properly declined Appellant's requested jury instruction on evidence of good character and good reputation where: (1) the requested charge would violate South Carolina's constitutional prohibition against charging juries "in respect to matters of fact"; (2) Appellant failed to call character witnesses or otherwise adequately present evidence of his good character during trial to warrant the charge; and (3) the charge taken as a whole properly charged the law to be applied. Additionally, to the extent the trial court's decision was error, whether the error was harmless because the evidence presented at trial conclusively established Appellant's guilt beyond a reasonable doubt.
5. Whether Appellant's claim that the trial court erred in tolling his probation until he completes a sexual abuse program is unpreserved for appeal, and even if preserved, whether the trial court acted within its discretion in determining the start date of Appellant's term of probation.

STATEMENT OF THE CASE

Erick A. Arroyo (Appellant) was indicted at the January, 2010 term of the grand jury for Charleston County for one count of criminal sexual conduct (CSC) with a minor – 2nd degree (2010-GS-10-522) and one count of lewd act upon a child (2010-GS-10-529). He was subsequently indicted at the July, 2011 term of the grand jury for a second count of CSC with a minor – 2nd degree (2011-GS-10-4790). He was represented by Andrew J. Savage, Esquire, of the Charleston County Bar. The State was represented by Assistant Solicitor Elizabeth Gordon of the Ninth Circuit Solicitor's Office. (Tr.p.1). On July 9-13, 2012, Appellant proceeded to trial by jury before the Honorable J.C. "Buddy" Nicholson, Jr., pursuant to which he was found guilty as indicted. Following the verdict, the trial judge deferred sentencing until Appellant could be given an evaluation by a forensic psychiatrist. (R.p.835, line 18). On February 26, 2013, Appellant filed a motion for a new trial. (R.p.875-890). On March 4, 2013, the trial court reconvened for a sentencing hearing but again deferred imposing sentence until further review of the psychiatrist's report. (R.p.841-p.874). On March 12, 2013, the trial court sentenced Appellant to fifteen (15) years' concurrent imprisonment on the two counts of CSC with a minor in the second degree, and fifteen (15) years' consecutive imprisonment suspended upon the service of five (5) years' probation on the lewd act charge. The court ordered to "toll probation until the defendant can complete a sexual abuse program." (R.p.946-948). On March 22, 2013, the trial court issued an order denying Appellant's motion for a new trial. (R.p.891). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

Appellant sexually abused his twelve to thirteen-year-old niece (the victim) over approximately a year spanning 2008 and 2009, while she and her mother were living in his house in Charleston County. Appellant digitally penetrated the victim's vagina and made her touch his penis and eventually escalated the abuse by putting his penis in the victim's vagina and using his tongue and mouth to perform oral sex on her on multiple occasions. Appellant told the victim he loved her and was doing these things so she would not experiment with other boys. (R.p.67, line 23-p.81, line 23). The victim knew Appellant's penis was actually inside her during the abuse because she could feel it moving. She said it hurt physically the first time and hurt emotionally every time she was raped. (R.p.88, lines 6-20).

The sexual abuse was first reported to law enforcement on September 20, 2009, by the victim's mother, Melina Arroyo. She had fallen asleep in Appellant's living room and awoke to discover Appellant leaning over the victim with his face on her breasts. Melina drove directly to the Mount Pleasant Police Department to report the incident. (R.p.154, line 1-p.163, line 7). Appellant was subsequently arrested and indicted for two counts of CSC with a minor in the second degree and one count of lewd act upon a minor. On July 9-13, 2012, he proceeded to trial pursuant to which he was found guilty as indicted. Additional procedural history and facts are included in each of the arguments below and are herein incorporated by reference.

ARGUMENT

I.

The trial court properly admitted testimony from psychologist Maria Steenkamp regarding her diagnosis of post-traumatic stress disorder (PTSD), where that testimony was relevant to help the jury in understanding the victim's behavior, did not improperly bolster the victim's credibility, and was not unfairly prejudicial to Appellant.

Appellant argues the trial court erred in admitting testimony from psychologist Maria Steenkamp, who testified the victim suffered from PTSD, because her testimony was “irrelevant” and “only served to improperly bolster” the victim’s credibility. He contends: “It is impossible to construe Dr. Steenkamp’s diagnosis as anything other than she believed the child’s testimony regarding the abuse and believed it caused PTSD.” Appellant argues that as such, his case is indistinguishable from the current line of cases from our appellate courts which find such testimony inadmissible, culminating in our supreme court’s 2013 decision in State v. Kromah.¹ (Brief of Appellant p.14). The State disagrees and submits Appellant’s argument is without merit.

Initially, the State submits the trial court acted well within its broad discretion in qualifying Dr. Steenkamp as an expert in “trauma-related psychology” based on her education, training, and experience.² Furthermore, the trial court properly admitted Dr. Steenkamp’s expert testimony pursuant to Rule 702, SCRE, because she possessed scientific, technical or other specialized knowledge which could assist the jury to understand the evidence or to determine a fact in issue. Her diagnosis and opinion of

¹ 401 S.C. 340, 737 S.E.2d 490 (2013). In Kromah, the Supreme Court held a forensic interviewer should not have been allowed to testify about a “compelling finding” of child abuse, as that was the equivalent of stating the child was telling the truth. Id. at 359, 737 S.E.2d at 500.

² Although Appellant bemoans Dr. Steenkamp’s alleged “lack of experience with children” (Brief of Appellant p.12), his appeal does not challenge the trial court’s decision to qualify her as an expert.

PTSD was based on the history received from the victim, her personal observations of the victim, the victim's demeanor, and symptoms exhibited by the victim. Dr. Steenkamp's expert testimony could help explain the victim's avoidance behavior, a hallmark symptom of PTSD. This behavior manifested itself in the victim's initial denial that abuse occurred, her subsequent tentative disclosure of abuse, and ultimately her delayed disclosure of the details of the abuse. The victim's detailed testimony was the strongest evidence of the sexual abuse committed by Appellant; thus, her credibility was central to the jury's determination of the facts in issue. To the extent that credibility could be challenged or attacked by Appellant because of the manner in which the victim disclosed the abuse, Dr. Steenkamp's evaluation of the victim's psychological symptoms, diagnosis of PTSD, and therapy could assist the trier of fact. Thus, her testimony was clearly relevant. In addition, despite Appellant's claims to the contrary, Dr. Steenkamp's testimony can be construed as serving the precise purpose for which it was offered, as a professional explanation for what a layperson may believe to be the victim's unusual course of disclosure. As such, Appellant's case is absolutely distinguishable from Kromah and other cases which involved testimony of a non-scientific "forensic interviewer" who offered either: (1) a "direct opinion as to the child's veracity," (2) a statement that "indirectly vouches for the child's believability," (3) a statement "to indicate to a jury that the interviewer believes the child's allegations in the current manner," or (4) "an opinion that the child's behavior indicated the child was telling the truth." Kromah, 401 S.C. at 360, 737 S.E.2d at 500. The testimony was properly admitted and did not improperly bolster the victim's credibility; therefore, Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013); State v. Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Kromah, 401 S.C. at 349, 737 S.E.2d at 495; Douglas, 369 S.C. at 429-30, 632 S.E.2d at 848; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995).

Procedural History & Facts

Prior to trial, Appellant filed a motion in limine to exclude the testimony of Dr. Maria Steenkamp on grounds it would not meet a threshold level of reliability under Rule 702, that it was not relevant under Rule 401, and that even if relevant it should be excluded because its probative value was substantially outweighed by the danger of unfair prejudice under Rule 403. (R.p.892). During opening statements, the solicitor outlined the sexual abuse that would be described by the twelve to thirteen-year-old victim, how it affected the victim, and the events which led her to finally disclose the sexual abuse. She said at first “[the victim] was too afraid to tell” and noted “it didn’t leave physical scars on [the victim], but the emotional damage is real.” The solicitor then discussed the victim’s reaction to two specific incidents where witnesses “caught” Appellant with her. First, she described an incident in Appellant’s garage and commented: “[The victim] thinks it’s her fault, that she’s been caught doing something wrong. When her aunt asked her, no, nothing happened. Nothing happened. Nothing happened.” Next she described an incident on Appellant’s couch and said: “[Melina] says to her daughter, I know something happened. You’ve got to tell me. [The victim’s] still like, Mama, nothing happened. Nothing happened.” The solicitor explained: “That’s how this case comes to the light of law enforcement. [The victim] finally tells everything that’s been happening for over almost fifteen months. It took two people to catch him in the act because no one could believe that there really was this wolf in sheep’s clothing. But they exist.” (R.p.57, line 9-p.62, line 18).

During trial, the victim gave detailed testimony about the sexual abuse committed by Appellant when she was twelve and thirteen years old. She explained how he started