

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2015-UP-115 (S.C. Ct. App. filed 3/4/2015)
12-GS-02-989-991, 994, 996- 997, 999, 1852-1853

RECEIVED

JUN 15 2015

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

WILLIAM POU,

PETITIONER

APPELLATE CASE NO. 2015-001128

APPENDIX

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

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

The State, Respondent,

v.

William Pou, Appellant.

Appellate Case No. 2012-213617

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-115
Submitted February 1, 2015 – Filed March 4, 2015

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia; and Solicitor James Strom Thurmond, Jr., of
Aiken, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Chavis*, Op. No. 27491 (S.C. Sup. Ct. filed Feb. 4, 2015)
(Shearouse Adv. Sh. No. 5 at 20, 23) ("A trial court's decision to admit or exclude

expert testimony will not be reversed absent a prejudicial abuse of discretion."); Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *State v. Weaverling*, 337 S.C. 460, 474-75, 523 S.E.2d 787, 794 (Ct. App. 1999) ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. . . . It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor."); *Chavis* at 25 ("[I]t 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." (quoting *State v. Kromah*, 401 S.C. 340, 358-59, 737 S.E.2d 490, 500 (2013))); *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) ("[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.").

AFFIRMED.¹

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

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

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2015-UP-115

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant requests rehearing because this Court may have overlooked that State v. Chavis, Op. No. 27491 (S.C. Sup.Ct. filed Feb. 4, 2015), cited in the instant matter, is instructive on why this case *should be reversed*. The trial court erred by qualifying Dr. Benedetto as an expert and allowing her to testify despite appellant's objection that she would improperly bolster the testimony of the accusing minors. Further, State v. Weaverling, 337 S.C. 460, 474-475, 523 S.E.2d 787, 794 (Ct.App. 1999), also cited by this Court on expert testimony about the common characteristics of sexual assault victims is no longer good law following State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), and State v. Chavis, *supra*.

Under White, two threshold determinations must be made. First, the qualifications of the expert must be sufficient, and second, there must be a determination that the expert's testimony will be reliable. White, 382 S.C. at 273, 676 S.E.2d at 688 (citing Rule 702, SCRE). Under Weaverling, and other cases from the 1990's, the familiar mantra that objections to the expert's qualifications, and the reliability of the evidence went to the "weight," and not the "admissibility" was the law. That is obviously not the case anymore:

White involved the admissibility of dog tracking evidence. The court of appeals had decided several cases in which it opined that nonscientific expert testimony, such as that of a dog tracker, was not subject to a reliability determination of the trial judge under Rule 702, SCRE. Rather, any reliability questions of such a nonscientific expert went to the weight a jury should accord the testimony, not to its admissibility. State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct.App.2007); State v. Morgan, 326 S.C. 503, 485 S.E.2d 112 (Ct.App.1997). This is the authority the circuit court relied upon to admit Prodan's testimony based merely upon a finding that he was qualified as an expert.

In White, this Court clarified that all expert testimony, not just scientific expert testimony, must be vetted for its reliability prior to its admission at trial. The Court concluded:

The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked **only after** the trial judge has vetted **the matters of qualification and reliability** and admitted the evidence.

State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474 (2012). (emphasis added).

This Court also cited State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) on expert testimony on rape trauma evidence being admissible to **prove a sexual offense occurred** being admissible after a Rule 403, SCRE analysis. Weaverling and Schumpert are no longer good law, and, at a minimum, as shown above, the qualifications of the expert, and the reliability of such evidence as in Weaverling and Schumpert would have to withstand the gatekeeping function of the trial judge mandated in State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Even if the evidence

could withstand the gatekeeping predicate, and there is frankly little reason to think it could, it also could not fail to bolster the testimony of the alleged victim by signaling to the jury that the “expert” believed the alleged victim had been sexually assaulted.

In Chavis, the Supreme Court noted, and held: “Appellant contends that Mrs. Griggs and Mrs. Elliot should not have been qualified as expert witnesses in the field of child abuse assessment because there was not a sufficient showing of reliability or peer review of their work product. *We agree as to Mrs. Elliot. As to Mrs. Griggs, we do not reach the expert issue but find error in the admission of part of her testimony on separate grounds (bolstering).*” State v. Chavis, 2015 WL 447490 (S.C.,2015) at 2. (emphasis added). Respectfully, this Court should grant rehearing and reconsider its opinion because Chavis strongly supports reversal in this case, and Weaverling and Schumpert are outdated cases, and no longer good law under modern evidentiary standards in criminal sexual conduct cases.

In this case, Dr. Benedetto directly discussed how domestic violence and a “non-supportive” parent allegedly affected the timing of the “disclosure of abuse,” since domestic violence and lack of support were both allegedly involved in this case. Her testimony was obviously meant to bolster the testimony of the complaining stepdaughters as counsel alleged.

In her closing statement, the solicitor told the jurors that appellant was “a horrible man” and “a bad man.” The solicitor also told the jurors that **the mother** of the two alleged victims **did not do anything to support them** in their accusations, and the police had to intervene. R. p. 177, l. 24-178, l. 2. ; R. p. 179, ll. 11 -13; R. p. 182, l. 21- 183, l. 8. There was also evidence of **domestic violence between appellant and the alleged victim’s mother**. The accusing victims admitted they did not like appellant. He was their stepfather and they wanted him out of their lives.

The first accusing minor was eleven years old and was being home schooled at the time of the trial. R. p. 32, ll. 12-23. She claimed appellant asked her to perform oral sex, and she refused. She was then sent to room. R. p. 36, l. 10 – 38, l. 22. She told her mother about the incident. Her reaction, according to the minor was to force appellant to leave for a week. However, her mother then let appellant move back into the house. It was unclear whether the mother believed the minor's accusation. R. p. 39, l. 5- 40, l. 4.

The second accusing stepdaughter was twelve years old. R. p. 50, ll. 7 – 23. She was also being home-schooled at the time of the trial. R. p. 53, ll. 6 - 22. After she went to the Child Advocacy Center she began keeping a journal and she wrote a letter to her grandmother that her mother found. The minor said her mother gave the letter accusing appellant of abuse to appellant. She speculated that appellant then hid the letter. R. p. 68, l. 16 – 70, l. 7. Again, the non-supportive parent allegation Dr. Benedetto conveyed to the jury **matched the testimony in this case. It was meant to bolster, and it did bolster the testimony of the alleged victims.**

The defense had moved to exclude the “expert testimony” of Dr. Benedetto, on the grounds that her testimony would only improperly bolster the alleged veracity of the complaining minors. It was an impermissible attempt to convey to the jury that the minors were being truthful. R. p. 109, ll. 8-22. R. p.241 (motion to exclude testimony).

The solicitor, not surprisingly, stated Dr. Benedetto had not met with the children or viewed their interviews and alleged Benedetto was an expert in the area of “child abuse dynamics.” The solicitor claimed her testimony was necessary because there had been assertions of “recanting” and “inconsistencies” in the testimony of the children. R. p. 146, l. 14 - 147, l. 20. In short, their testimony needed bolstering.

The judge said he was in all likelihood going to allow the testimony. Defense counsel responded that whether the jury believed the minor stepdaughters was the critical issue in this case and this “expert” testimony was not necessary. R. p. 147, l. 21 - 148, l.14. The judge overruled the objection, and allowed Benedetto to testify. R. p. 147, l. 21- 149, l.1.

Benedetto then testified that she worked at the Department of Mental Health at the Assessment and Resource Center in Columbia. She also was the chief psychologist at the Children’s Advocacy Center. R. p. 150, ll. 6- 13.

She had an undergraduate, a masters and doctoral degrees from St. John’s University in psychology. R. p. 150, ll. 17- 22. She had done forensic evaluations and had done between 1,500 and 2,000 interviews with children. She had been working and training with “finding words.” R. p. 151, l. 16 – 157, l. 8.

When the solicitor offered Benedetto as an “expert” in “child sexual abuse dynamics”, defense counsel again objected to her testifying as an expert correctly noting her testimony in reality involved the “finding words” model. R. p. 155, ll. 10 - 24. The judge qualified Dr. Benedetto as an expert and allowed her to testify over objection. Dr. Benedetto then testified she had not become “personally involved with the children in this trial.” R. p. 155, l. 10 – 156, l. 20.

Benedetto maintained that the way children reacted to abuse seemed “counter-intuitive.” She said adults tended to think as adults “they would run away and scream” if they were abused. However, she opined that “children reacted differently, delay disclosure.” Nevertheless, she said “every child is different, every family is different...” R. p. 146, l. 1 – 148, l. 10.

The solicitor then asked how watching **domestic violence** among adults could affect a child disclosing abuse. Dr. Benedetto answered: “If a child has seen domestic violence in the home, of course, they may be fearful there might be danger if they told because, in fact, they

have seen dangerous things happen; so they may be fearful for their own safety or the other parent's safety." R. p. 158, ll. 14 - 24.

The solicitor then asked for her opinion on how the reaction of the non-offending parent may affect "disclosure." Dr. Benedetto then said the response of the other parent was very important as to whether the "child feels important, whether they feel that they are believed, whether they feel they are going to be protected or not." She said if the child did not receive support the child may "[f]eel, well, you know, if my parent doesn't believe me, who will? And if I don't feel my parent will protect me, you know, then nobody will." R. p. 159, l. 14 - 160, l. 16.

This Court also cited State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2011) in support of its opinion in this case. However, in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 499, n.5 (2011), the Supreme Court noted that there was no objection to the qualifications of the witness *in that case*. However, the Court noted it had previously observed that the witness may not even need to be qualified as an expert. See, State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009).

The Supreme Court held that it could **"envision no circumstance where their qualification as an expert at trial would be appropriate"** in the *"forensic interviewer" type context*. Although the Court was speaking of forensic interviewers, the testimony of Benedetto here on "child abuse dynamics" was offered for the same purpose, which was to imply to the jury that someone who worked in this "specialty" of abused children could offer expertise which allegedly would assist the jury in deciding whether the minors were being truthful. The testimony would allegedly assist the jury within the confines of Rules 702 and 703, SCRE.

Defense counsel correctly objected that Benedetto's testimony was meant to bolster the testimony of the minor witnesses while dressed up as "expert testimony." It was just another rehash of the "finding words" method. It was not needed and it was highly prejudicial. The hook allegedly

was that Benedetto did not interview the minors, and her being allegedly “unprepared” was somehow a virtue. The intervening case of State v. Chavis, *supra*, has debunked that myth, and this Court, most respectfully, should not cite it to support its erroneous affirmance in this case of Dr. Benedetto being properly qualified as an expert, and ruling that her testimony did not bolster the testimony of the alleged victims.

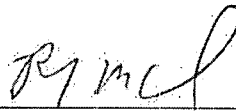
Benedetto, now an “expert, opined as to how domestic violence and having a non-supporting parent would affect disclosure of abuse. The solicitor had already offered evidence about the domestic abuse the minors had viewed, and how their mother allowed appellant to live with them even after they alleged appellant had abused them or elicited sexual favors.

While the judge noted that appellant’s objection cited State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), he nonetheless allowed Benedetto to testify as an expert. *Once Benedetto was qualified as an expert she was entitled to give her opinions about child abuse.* It was error to qualify her as an expert so she could give her opinions to the jury. *See, State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009). This testimony bolstered the allegations of the minors as defense counsel stated. *See, also, State v. McKerley*, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

CONCLUSION

This Court should, respectfully, grant rehearing. The Court's ruling runs counter to current case law on expert testimony, the gatekeeping function of the trial court, and the bolstering of alleged victim's allegations. It is also anchored in cases that are no longer good law as explained above.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 19th day of March, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

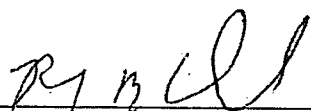
WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

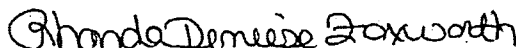
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, on this 19th day of March, 2015.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day
of March, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

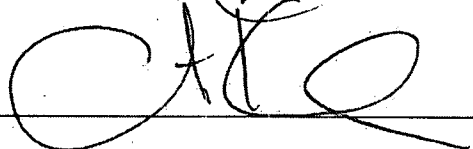
William Pou, Appellant.

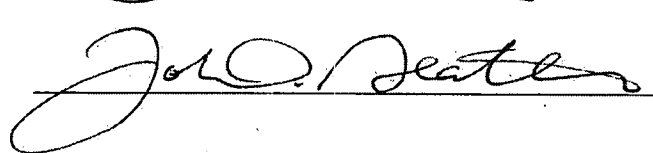
Appellate Case No. 2012-213617

ORDER

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

 J.

 J.

 J.

Columbia, South Carolina

FILED

cc:

Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
James Strom Thurmond, Jr., Esquire
The Honorable Doyet A. Early, III

April 24, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.
STATE'S EXHIBITS 1 AND 2 (CDS OF THE FORENSIC INTERVIEW)**

State of South Carolina	)	
	)	Court of General Sessions
<u>County of Aiken</u>	)	2012-GS-02-00989 - 00091
		2012-GS-02-00994
		2012-GS-02-00996
		2012-GS-02-00997
		2012-GS-02-00999
		2012-GS-02-01000
		2012-GS-02-01852
		2012-GS-02-01852

State of South Carolina)
Plaintiff)
vs.) Transcript of Record
William Wallace Pou)
Defendant)

December 4 - 7, 2012
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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Lisa H. Davenport, RPR
Official Court Reporter

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STATE ' S EXHIBITS

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14	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
15	S-1	CD (NOT TRANSCRIBED)	41	142
16	S-2	CD (NOT TRANSCRIBED)	49	152
17	S-4	Stipulation		209

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COURT ' S EXHIBITS

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21	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
22	C-1	Jury Note	252	
23	C-2	Jury Note	253	
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1 (Whereupon, on December 4, 2012 the following
2 proceedings were held:)

3 THE COURT: The state may call its case.

4 MS. AGNEW: Thank you, Your Honor. The first case
5 the state calls is the State versus William Wallace Pou.
6 He is charged in indictment 12-GS-02-989 with criminal
7 sexual conduct with a minor first degree; 990 with
8 criminal sexual conduct with a minor first degree; 991
9 with criminal sexual conduct with a minor first degree;
10 994, lewd act upon a child; 996 with lewd act upon a
11 child; 997 with criminal sexual conduct with a minor in
12 the first degree; 999 with criminal solicitation of a
13 minor; 1000 with criminal solicitation of a minor;
14 12-GS-02-1852 with lewd act upon a child and 1853 with
15 lewd act upon a child.

16 THE COURT: Thank you.

17 Miss Alves, are y'all ready to proceed? Mr. Hayes?

18 MR. HAYES: Yes, Your Honor.

19 THE COURT: You've heard the state, the solicitor
20 Ms. Agnew call the case for trial. This involves a case
21 that deals with 10 indictments and you've heard what the
22 indictments were for: Criminal solicitation of a minor --
23 a couple of those -- criminal sexual conduct with a minor,
24 lewd act upon a child -- a couple of those -- criminal
25 sexual conduct with a minor in the first degree -- three

1 you where to report in the morning and we'll get started
2 right at 9:30. Like I said, if you want a sausage
3 biscuit, be early. Thank you.

4 Are you okay?

5 THE JUROR: I have just been sitting too long.

6 THE COURT: I bet she doesn't need any help. Thank
7 y'all.

8 Where do you preach?

9 THE JUROR: At church.

10 THE COURT: Where is the church located?

11 THE JUROR: I'm in North Augusta, Judge.

12 (Whereupon, the jury exited the courtroom at 11:27.)

13 THE COURT: All right. Ms. Agnew?

14 MRS. YOUNG: We're ready to proceed and call
15 witnesses regarding introducing the video interviews of
16 the children in this case.

17 THE COURT: All right. This is being done pursuant
18 to Section 17-23-175; is that correct?

19 MRS. YOUNG: I'm sorry, Judge. I have them over
20 here. That's correct.

21 THE COURT: Admissibility of out-of-court statement
22 of child under 12 for determination of trustworthiness.
23 Are you ready to proceed?

24 MRS. YOUNG: Yes, sir. The state calls Kimberly
25 Sawyer.

1 KIMBERLY B. SAWYER, after being duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat in the witness box stating
4 your full name and spelling your last.

5 THE WITNESS: My name is Kimberly Brown Sawyer;
6 S-A-W-Y-E-R.

7 IN-CAMERA DIRECT EXAMINATION

8 BY MRS. YOUNG:

9 Q Mrs. Sawyer, where are you employed?

10 A At the Child Advocacy Center of Aiken County.

11 Q In what capacity?

12 A I am the Child Advocate Coordinator.

13 THE COURT: Ma'am, speak up for me.

14 Q How long have you been employed as a Child Advocate
15 Coordinator?

16 A For a little over two years.

17 Q Please describe your education to the court.

18 A I have a bachelor's of science in psychology from
19 Wofford College and a masters of science in applied
20 clinical psychology from the University of South Carolina
21 at Aiken.

22 Q Can you describe any training that you've gone
23 through regarding interviewing children?

24 A I received the basic 40-hour course in Child First
25 forensic interviewing in Columbia at the ARC -- the

1 Assessment and Resource Center and also have a---

2 THE COURT: Ma'am, you'll have to speak up a little
3 louder.

4 THE WITNESS: Okay. And I have also completed two
5 advanced forensic interviewing courses.

6 Q How about any additional training outside of those
7 two or conferences or things of that nature?

8 A I have attended several national symposiums and other
9 conferences with workshops on interviewing children.

10 Q Could you go into a little bit more detail? You
11 described this -- I think you call it Child First.

12 A Yeah.

13 Q Do you have a different name?

14 A It used to be called Finding Words.

15 Q Okay. And you say that's a 40-hour class. Can you
16 describe a little bit about how the class is conducted and
17 how the training that you received through that class was
18 conducted?

19 A You begin by learning the protocol for interviews
20 which we use the RATAC protocol which is your basic
21 progression through the interview: Rapport building
22 anatomy ID, touch inquiry, abuse scenario, and closure.
23 You begin by learning those stages of the interview and
24 then they bring in children and actors to practice and
25 perform mock interviews with.

1 Q Mrs. Sawyer, you're very soft spoken.

2 A Sorry.

3 Q You're just going to have lean up close or else hold
4 it in your hand -- the microphone -- so we can hear you,
5 okay?

6 A Okay.

7 Q Because we need to hear you all over the courtroom.
8 Do you -- you might have just stated this. Do you conduct
9 mock interviews as part of this training?

10 A Yes.

11 Q And is the additional training that you've been to,
12 you called it advanced training. Is it similar?

13 A It is similar. We do not conduct mock interviews
14 during those trainings, but we do more peer review of
15 interviews that have already been done.

16 Q Describe for the court, if you would, please, how
17 that works.

18 A People from different child advocacy centers will --
19 in addition to other trainings, part of it is also
20 bringing videos of different interviews that you've done
21 in the past to have others view and rate and be sure that
22 you're following the correct protocol.

23 Q And do you know approximately how many interviews you
24 conducted during your two years of employment at the Child
25 Advocacy Center?

1 A I have performed 89 interviews.

2 Q Eighty-nine?

3 A Yes, ma'am.

4 Q Describe, if you would, please, how the interview
5 room at the Child Advocacy Center -- just describe it.

6 A Okay. It's a small room. It has two chairs and a
7 couch and there's an easel in the room that we use for
8 drawing and writing down things and there's a camera and a
9 microphone in the room. It's pretty basic.

10 Q Is it supposed to be a neutral type of environment to
11 look like a house or living room?

12 A Yes.

13 Q Rather than an office?

14 A Correct.

15 Q Is that the idea behind it?

16 A Yes.

17 Q And regarding the interviews of the children, do you
18 have a system of recording those at the Child Advocacy
19 Center?

20 A We do. We record all of our interviews.

21 Q And is that video and audio?

22 A Yes, ma'am.

23 Q And could those also be viewed while the interview is
24 ongoing?

25 A Yes. There is an observation room down the hallway

1 where other staff members and typically law enforcement
2 will watch the interview as it's ongoing.

3 Q In this particular case did you have an opportunity
4 to interview MINOR 1

5 A Yes, I did.

6 Q Do you recall the date of that interview?

7 A It was in October of 2011. I am not sure what date.

8 Q Do you know how old MINOR 1 was at the time
9 of the interview?

10 A She was 10 years old.

11 Q Have you had an opportunity to review that interview
12 prior to coming to court today?

13 A Yes, I have.

14 MRS. YOUNG: May I approach the witness, Your Honor?

15 THE COURT: You may.

16 Q For purposes of this hearing, Mrs. Sawyer, I am going
17 to hand you what's been marked as State's Exhibit No. 1
18 and ask if you recognize it.

19 A Yes. This is the DVD of my interview with MINOR 1

20 Q That would be the same one that you reviewed prior to
21 coming to court today?

22 A Yes.

23 Q And did you observe any alterations or deletions --

24 A No.

25 Q -- on that?

1 MRS. YOUNG: Your Honor, at this time we'd move to
2 enter for purposes of this hearing State's Exhibit 1 into
3 evidence and to publish it to Your Honor.

4 MR. HAYES: No objection.

5 THE COURT: Thank you.

6 (Whereupon, State's Exhibit No. 1 was marked for
7 identification only.)

8 (Whereupon, the video marked as State's Exhibit No. 1
9 is played.)

10 THE COURT: You don't mind us redacting this part
11 out, do you, where you're just sitting waiting?

12 MR. HAYES: No, sir.

13 THE COURT: It is just an empty room waiting for the
14 interview.

15 (Whereupon, the video marked as State's Exhibit No. 1
16 continues.)

17 MRS. YOUNG: In terms of substantive charges, that's
18 all you're going to hear.

19 THE COURT: That's fine.

20 (Whereupon, the video marked as State's Exhibit No. 1
21 was stopped.)

22 Q Do y'all keep copies of all videotapes that you make?

23 A Yes.

24 Q What information did you have the day you were
25 interviewing MINOR 1 about why she was there?

1 A The initial incident report that Investigator Blevins
2 gave us.

3 Q So your understanding was she was being brought there
4 by law enforcement -- or, excuse me, as a result of law
5 enforcement talking to her.

6 A Yes.

7 MRS. YOUNG: Your Honor, I believe that's all the
8 questions I have for Mrs. Sawyer.

9 THE COURT: All right. Anything on cross at this
10 point?

11 MR. HAYES: No, Your Honor.

12 THE COURT: Okay. You may step down. Anything else?
13 How many more tapes we got?

14 MRS. YOUNG: We have one more tape and it's two hours
15 long.

16 THE COURT: Two hours?

17 MRS. YOUNG: Yes, sir.

18 THE COURT: All right. We got a 1:30 hearing that's
19 going to last about an hour. I know the court reporter
20 wants something to eat; so let's take a break. We'll
21 start back about 2:30.

22 (Whereupon, a lunch break was taken.).

23 THE COURT: Mrs. Beth Ann Young, are y'all ready to
24 proceed?

25 MRS. YOUNG: Yes, sir, Your Honor. The state calls

1 Anne Laver.

2 MR. HAYES: Judge, I do have an objection.

3 THE COURT: Hold on one second.

4 Mert, there's a lawyer coming. When he gets to the
5 door let him in.

6 Mr. Hayes?

7 MR. HAYES: I do have an objection to the video if --
8 I'd like to be heard on that one separate and distinct
9 from the two videos.

10 THE COURT: On the video separate---

11 MR. HAYES: There's two separate videos -- one is for
12 MINOR 1 and one for MINOR 2

13 THE COURT: All right.

14 MR. HAYES: And would you like my objection to it or
15 do you want me to do them all together?

16 THE COURT: We're going to do them all together.
17 We're going to take them all in and then you can do them.
18 I am not going to rule on them today. They got to be made
19 available for cross examination and all that, but I'll
20 listen to you preliminarily and we'll go from there.

21 MR. HAYES: Yes, sir. Judge, I'll argue that it was
22 leading. It is suggestive as to the answers -- that
23 Mrs. Sawyer suggested to MINOR 1 in one specific instance
24 his room before anything or any mention of room was
25 indicated by the child.

1 Judge, in that after multiple times asking the child
2 if anything happened and the child indicating no, she
3 persisted and pushed the child to answer questions which
4 were suggested with answers as well as leading in nature.

5 THE COURT: Thank you.

6 MR. HAYES: And under Section 17-23---

7 THE COURT: I am familiar with 17-23-175, the things
8 I have to look at to determine whether or not it's
9 trustworthy. The first thing is whether or not it's
10 elicited by leading questions. Obviously, there were
11 leading questions asked of the child, but I'll just make
12 that determination. Let's get the other one in or play it
13 for the in-camera part and then we'll look at all of it in
14 toto and see where we go.

15 MR. HAYES: Yes, sir.

16 THE COURT: All right. Y'all just sit back on that
17 back there.

18 Mr. Pendarvis, let's go. I've got y'all at 2:30; so,
19 if you're ready to proceed.

20 (Whereupon, a break was taken.).

21 THE COURT: All right. Let's get started back.

22 MRS. YOUNG: The state calls Anne Laver.

23 ANNE LAVER, after being duly sworn, testified as
24 follows:

25 THE WITNESS: My name is Anne Laver; L-A-V-E-R.

IN-CAMERA DIRECT EXAMINATION

1
2 BY MRS. YOUNG:

3 Q Mrs. Laver, where are you employed?

4 A I am with the Child Advocacy Center in Aiken County.

5 Q And in what capacity?

6 A I am the Program Coordinator.

7 Q And how long have you been with the Child Advocacy
8 Center?

9 A I have been there since its inception in 2005.

10 Q And would you describe for the court, please, your
11 educational background?

12 A I have a bachelors from Denison University which is
13 in Ohio.

14 Q And can you describe what training you had, if any,
15 regarding forensic investigations or rather investigations
16 in interviewing children?

17 A I have completed the basic training class that Kim
18 spoke of earlier and I have done I think the advanced
19 maybe four times in different places around the United
20 States -- advanced forensic interviewing.

21 Q And I believe that she stated in the initial training
22 there was mock interviews conducted?

23 A That's correct.

24 Q And then in the advanced training rather than that it
25 would be peer review of interviews -- actual interviews?

1 A It is. You spend significant time on peer review.

2 Q You stated that you've done at least four of the
3 advanced classes?

4 A I have across the United States.

5 Q Do you have any additional training or have you been
6 to any other training regarding this field?

7 A I have been to numerous national symposiums, crimes
8 against children, things of that nature, where they spend
9 significant amount of time on forensic interviewing and
10 training on children.

11 Q And do you have an estimation or number of how many
12 interviews you've done since you began working with the
13 Child Advocacy Center?

14 A I think I've done about 1265; something like that.

15 Q And with the description that Mrs. Sawyer gave
16 previously about the room and the set-up and the video,
17 were you present for that?

18 A I was.

19 Q And would you agree with all of her assertions
20 regarding -- and descriptions regarding that?

21 A Yes, I would.

22 Q What is the name of the protocol you're supposed to
23 use when you're doing these child interviews?

24 A It used to be called Finding Words. Now it is called
25 Child First.

1 Q Is there some acronym that's used as well?

2 A There is. In the protocol there is an acronym called
3 RATAAC which is sort of a general format when you're
4 conducting interviews under this particular protocol and
5 RATAAC -- the R stands for rapport-building. The A stands
6 for anatomy identification and T stands for some general
7 touch inquiry and the next A stands for possibly abuse
8 scenario and the last C represents the closure and it's
9 just sort of a broad sort of basis to do the questionings
10 from.

11 Q Did you have an opportunity to interview ^{MINOR 2}
12 regarding this case?

13 A I did.

14 Q And do you recall when that was?

15 A That was in October of 2011.

16 Q And do you know how old ^{MINOR 2} was at the time of the
17 interview?

18 A She was 11.

19 Q And what was your understanding of why ^{MINOR 2} was
20 being brought to the Child Advocacy Center for interview?

21 A I knew that she had been referred by Investigator
22 Blevins from the sheriff's office in regard to something
23 that had occurred that he had spoken to her about.

24 Q So was a law enforcement investigation ongoing?

25 A That's correct.

1 MRS. YOUNG: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 Q I am going to show you what's been marked for
4 identification purposes as State's Exhibit No. 2 and ask
5 if you recognize that.

6 A I do.

7 Q Can you identify it?

8 A That's the interview with MINOR 2

9 Q And have you had an opportunity to review this
10 interview prior to coming to court today?

11 A I have.

12 Q You have?

13 A Yes.

14 Q Did you observe any alterations to the interview?

15 A No, I did not.

16 Q This is a true and correct copy to the best of your
17 recollection?

18 A It is.

19 MRS. YOUNG: Your Honor, at this time for purposes of
20 this hearing we'd move to enter State's Exhibit 2 and
21 publish it for Your Honor.

22 THE COURT: Thank you.

23 MR. HAYES: No objection.

24 (Whereupon, State's Exhibit No. 2 was marked for
25 identification only.)

1 MRS. YOUNG: Your Honor, while she's setting this up
2 I may -- and we haven't discussed this with Mr. Hayes yet,
3 but we are actively trying to obtain the headset system
4 for the jurors so perhaps they might be able to better
5 hear the video in this case.

6 THE COURT: I'll be honest. I'm glad you're doing
7 that, but I'll be honest with you. It was most difficult
8 to try to understand what was being said from up here.

9 MRS. YOUNG: Your Honor, I agree with you.

10 THE COURT: That leaves me some concern.

11 MRS. YOUNG: And that is why we're trying to get
12 those headphones and I did want to make you aware that we
13 are working on that. I should have some more information
14 on that this afternoon. I think it would benefit
15 everybody.

16 THE COURT: It certainly will. Of course, I still
17 got to rule on the leading question issue.

18 MRS. YOUNG: Your Honor, with the court's permission
19 once she gets it playing we'll skip ahead to where they
20 actually come into the room so there is not just the
21 screen.

22 (Whereupon, the video marked State's Exhibit No. 2 is
23 played.)

24 THE COURT: I can't hear a thing.

25 THE WITNESS: There is nobody in there yet.

1 THE COURT: I hear something.

2 THE WITNESS: You hear us coming down the hall.

3 (Whereupon, the video marked State's Exhibit No. 2
4 continues.)

5 THE COURT: Are we about half-way?

6 MRS. YOUNG: Yes.

7 THE COURT: Let's take a quick break.

8 (Whereupon, the video marked State's Exhibit No. 2
9 was stopped and a break was taken.)

10 THE COURT: Let the record reflect that while we took
11 a break I had an in-chambers discussion with all the
12 lawyers. I don't think it is any fault of, obviously, the
13 lawyers or facility or the interviewer or the alleged
14 victim, but it's just -- the sound quality is lacking and
15 it is to the point that I can't understand the testimony
16 of the young girl. Every now and then I'll catch
17 something. I thought it was me. I have asked several of
18 the clerks and bailiff. Y'all have verified it back in
19 chambers it's awful difficult to understand.

20 With everybody's permission, we have a laptop. We're
21 going to listen to it through the headsets up here. That
22 may cure it. If it does, then we'll get SLED in here
23 tomorrow. If it doesn't cure it, I'll have to make a
24 ruling on it because if it is incoherent it can't be used.

25 All right. Who is going to start it back up?

1 THE LAW CLERK: Me.

2 THE COURT: Why don't I listen to about 10 minutes of
3 it this way and then if it is good we'll put it back on
4 there and keep going. However y'all want to do it.

5 MRS. YOUNG: I mean, Judge, we've all reviewed it. I
6 believe the defense has reviewed it. The question is
7 whether we can prove to your satisfaction.

8 THE COURT: Okay.

9 MRS. YOUNG: I think this is the best method at this
10 moment.

11 THE COURT: I'll continue to listen. I think we
12 stopped right at an hour.

13 (Whereupon, the video marked State's Exhibit No. 2 is
14 played on a laptop for the Court.)

15 THE COURT: All right. The headsets are much, much
16 better.

17 MRS. YOUNG: Your Honor, Mr. Weeks has informed me
18 that we can get the headsets and they'll be here at
19 7 o'clock in the morning.

20 THE COURT: The jury is going to be here at 9:30.
21 Let's all be here about nine to see if we got any kinks
22 with it and go from there. All right.

23 Mr. Hayes?

24 MR. HAYES: Judge, I would ask that if we get
25 headsets that the defense have access to the headsets as

1 well as Your Honor. How many pair you got?

2 MR. WEEKS: Twelve and a half. No, we have 20
3 according to SLED and we have some extra speakers.

4 THE COURT: We'll set it up. Obviously, you and your
5 client will be provided a headset.

6 MR. HAYES: Thank you.

7 THE COURT: All right. Obviously, I can't rule on
8 the admissibility of it until they put the alleged victims
9 up for cross examination and that is part of the
10 requirements. So I'll rule on your motions when we do
11 that unless you got anything else you want to put on the
12 record.

13 MR. HAYES: No, sir, nothing else.

14 THE COURT: I'll give you an opportunity in the
15 morning if you think of anything you need to put on.

16 MR. HAYES: I'm sorry. I spoke too soon. There is
17 one statement if the video is allowed at 11 minutes and 37
18 seconds in ^{MINOR 2} where she's indicating or mentioning
19 jail time from a previous incidence. I would ask for that
20 one quick blurb to be redacted.

21 THE COURT: I thought you told us yesterday you
22 didn't want it redacted.

23 MR. HAYES: I spoke too soon, Judge.

24 THE COURT: Now you do want it redacted.

25 MRS. YOUNG: The difficulty for that is it is very

1 difficult to redact and that's why Ms. Agnew asked for
2 this months ago and has not gotten a response until the
3 eve of trial.

4 THE COURT: I'll give a curative instruction on that.
5 We might can redact it. Give us the exact place.

6 MR. HAYES: 11:37. Not the actual timer from the
7 bottom corner, but the actual timer in the video. I wrote
8 down 11:37.

9 THE COURT: Get with Adam. He'll help you. Anything
10 else before we break for the evening?

11 MS. AGNEW: Your Honor, the only other thing that
12 we'd like to put on the record is the stipulation as to
13 his prior conviction so that we don't have to call someone
14 from the Clerk of Court's office.

15 THE COURT: Do you stipulate that?

16 MR. HAYES: Yes, sir.

17 THE COURT: That's an element of the offense, is it
18 not?

19 MS. AGNEW: That's correct, Your Honor.

20 THE COURT: And if you'll just read the stipulation
21 to the jury and I'll tell them what a stipulation is.

22 MR. HAYES: Judge, I would ask the court to exclude
23 the two girls from each other's testimony. That's the
24 only witnesses that I'm concerned listening about each
25 other. I think I had talked to Ms. Agnew about that.

1 MS. AGNEW: That's not an issue. We weren't going to
2 do that anyway.

3 MR. HAYES: That's it. Thank you, Judge.

4 MRS. YOUNG: Just briefly, Your Honor. We will --
5 since we hopefully will be able to run this on our
6 computer and everything will be working, we'll work on
7 trying to get that redacted just to make sure all -- we'll
8 go down and attempt to do that.

9 THE COURT: All right. I appreciate everybody being
10 cooperative. We'll start at -- let's be here about nine
11 in the morning and make sure everything is going.

12 Mr. Pou, anything you need? Any questions you have
13 of me? Anything I can do for you?

14 THE DEFENDANT: No, sir.

15 (Whereupon, the proceedings were concluded for the
16 day and were reconvened on December 5, 2012 as
17 follows:)

18 THE COURT: Anything we need to put on the record
19 before we start?

20 MS. AGNEW: Nothing from the state.

21 THE COURT: Mr. Hayes, are you ready to proceed?

22 MR. HAYES: Yes, sir.

23 THE COURT: Anything we need to put on the record
24 before we start?

25 MR. HAYES: I would like to put on the record I am

1 withdrawing that objection to the redaction in the tape,
2 Judge.

3 THE COURT: Thank you. We had a motion yesterday to
4 sequester the witnesses.

5 Ms. Agnew, have we complied with that?

6 MS. AGNEW: Yes. Everybody is out of the courtroom.

7 THE COURT: Thank you.

8 MR. HAYES: Just for clarity, that's just for the two
9 girls; correct?

10 THE COURT: Whatever you moved.

11 MS. AGNEW: Your Honor, we just sequestered
12 everybody.

13 THE COURT: All right. Bring the jury in. Hold on.
14 You got a full house?

15 BAILIFF MR. WHITTLE: No, we don't have but eight.
16 How many is missing?

17 BAILIFF MS. WILLING: We don't have but eight.

18 THE COURT: Well, nobody told me that. All right.
19 We'll stand at ease until I have a full jury.

20 (Whereupon, a break was taken.)

21 (Whereupon, the jury came into open court at
22 approximately 9:40.)

23 THE COURT: Good morning. I'm sorry you had trouble
24 getting in downstairs. I will have that corrected
25 tomorrow morning. They're having family court downstairs

1 MS. AGNEW: Not from the state, Your Honor.

2 THE COURT: By the defendant?

3 MR. HAYES: None, Your Honor.

4 THE COURT: Thank you. Okay. State, you may make an
5 opening statement. Hold on one second.

6 All right. Keep that door closed. Thank you.

7 MS. AGNEW: Thank you, Your Honor.

8 OPENING STATEMENT

9 MS. AGNEW: Members of the jury, the Judge talked to
10 you yesterday about the charges in the case and he brought
11 them up again today. He is going to explain the law to
12 you and I can promise you at the end of this trial you're
13 going to have heard more about the law in this case than
14 you probably ever wanted to; so I am not going to into all
15 of it now, but I am going to give you the gist of it.

16 In South Carolina it is against the law to do sexual
17 things with children. Sounds simple. It is against the
18 law to do sexual things with children. What you're going
19 to hear today, that's exactly what that man did -- not
20 just with children, but with his stepdaughters when they
21 were in elementary school.

22 Now before we get started I am going to warn you and
23 the Judge kind of talked about this, this isn't TV. It
24 seems like half the TV shows nowadays are courtroom shows,
25 cop shows, but this is the real thing. We don't have

1 super-labs with microscopes and big touch-screen computers
2 where you can put all the pieces in place. Crimes don't
3 get solved by the first commercial break. This trial is
4 not going to take 30 minutes. This is real. What you're
5 going to hear today is about real people and real girls.

6 Now, one of the other things that we see a lot in TV,
7 especially in these types of cases -- I think Law and
8 Order SVU is just about these types of cases and you hear
9 a lot about DNA -- how the ace detective or lab tech finds
10 that microscopic piece of evidence that blows the whole
11 case out of the water right in the important time. You
12 are not going to hear a lot about DNA in this case. There
13 isn't any DNA in this case.

14 Unfortunately, we don't have DNA a lot in real life,
15 but let me tell you what you are going to hear. You're
16 going to hear from those little girls MINOR 1 and
17 MINOR 2 You're going to hear from them because they're
18 going to be sitting right here and you're going to hear
19 about what happened to them when they were in third grade,
20 fourth grade, fifth grade, sixth grade.

21 It's not going to be entertaining. It's not going to
22 be exciting, and it's not going to be fun because this
23 isn't TV. It's going to be awkward and it's going to be
24 uncomfortable, but as awkward and uncomfortable as it is
25 for you, it is going to be just as much, if not more,

1 awkward and uncomfortable for those little girls.

2 So I ask you listen to them. Listen to what they
3 have to say because you're going to hear things today that
4 grown-ups don't talk about at home. You're going to hear
5 things today that girls that age shouldn't even know
6 about. So I ask you to listen to them. Focus on what
7 they have to say.

8 You're probably going to hear from a whole bunch of
9 witnesses today and you might hear things that don't have
10 anything to do with those little girls. It doesn't have
11 anything to do with what that man did sexual things with
12 children, but that's your job. As the Judge told you
13 you're the judges of the facts. It is your job to decide
14 what happened and so I ask you remember your job. Don't
15 get distracted. Don't forget what this case is about.
16 Don't forget about MINOR 1 and MINOR 2 and what that man
17 stole from them.

18 MR. HAYES: May it please the court.

19 THE COURT: Yes, sir.

20 OPENING STATEMENT

21 MR. HAYES: Ladies and gentlemen, at the heart of
22 this case there is one question and that question is why
23 would MINOR 1 and MINOR 2 tell you something happened
24 when, in fact, it did not? Now, Mr. Pou is not a nice
25 man. As a matter of fact, by the end of this trial I'm

1 willing to bet you're not going to like him, but that's
2 not the question. The question that we're here to
3 determine is why would these girls tell you something
4 happened with Mr. Pou when, in fact, it did not?

5 Now, they're going to come in. They're going to
6 place their hand on the Bible and they're going to swear
7 to tell you the truth, the whole truth, and nothing but
8 the truth. I hope they do and that's going to be nothing
9 happened, but if they don't I am prepared throughout the
10 course of this trial to show you why these girls will come
11 in here and tell you something happened when, in fact, it
12 did not.

13 THE COURT: You may call your first witness.

14 MS. AGNEW: Your Honor, the state calls MINOR 1

15

16 THE COURT: MINOR 1 please. Is she in the
17 courtroom?

18 MR. MCCARLEY: They're making their way upstairs,
19 Your Honor.

20 MINOR 1 after being duly sworn,
21 testified as follows:

22 THE COURT: Ladies and gentlemen of the jury, I hate
23 to do this to you, but I need to do one thing with the
24 lawyers only. It is going to take me about three minutes.
25 Y'all step back there for just a second.

1 (Whereupon, the jury exited the courtroom at 9:59.)

2 IN-CAMERA EXAMINATION

3 THE COURT: MINOR 1 good morning. How are you?

4 THE WITNESS: Good.

5 THE COURT: Stand up for me and let me see you. How

6 old are you?

7 THE WITNESS: Eleven.

8 THE COURT: Eleven. Where are you in school?

9 THE WITNESS: I am homeschooled.

10 THE COURT: You're in homeschool?

11 THE WITNESS: Yeah.

12 THE COURT: Do you enjoy all of those lessons?

13 THE WITNESS: Yes.

14 THE COURT: What are you taking? What kind of
15 subjects?

16 THE WITNESS: School science like regular school.

17 THE COURT: You have to speak loud. You know you're
18 here today to testify in trial. Do you understand what
19 testifying means?

20 THE WITNESS: No, sir.

21 THE COURT: You know that means you'll be asked
22 certain questions about certain things that have happened
23 and that's what is called testifying when you answer those
24 questions. Do you understand that?

25 THE WITNESS: Yes, sir.

1 THE COURT: You understand what you're supposed to do
2 here today; right?

3 THE WITNESS: Yes, sir.

4 THE COURT: And you know or do you know that what you
5 tell us has to be the absolute truth? Do you understand
6 that?

7 THE WITNESS: Yes, sir.

8 THE COURT: Do you know the difference between right
9 and wrong and when you do something right and you do
10 something wrong?

11 THE WITNESS: Yes, sir.

12 THE COURT: You know what happens to you if you don't
13 tell the truth? You get the trouble; right?

14 THE WITNESS: Yes, sir.

15 THE COURT: Are you prepared here today to answer
16 questions and to tell us the truth?

17 THE WITNESS: Yes, sir.

18 THE COURT: You think you can do that?

19 THE WITNESS: Yes, sir.

20 THE COURT: And what you tell us today will be
21 truthful?

22 THE WITNESS: Yes, sir.

23 THE COURT: You're going to have to speak all of
24 those people on that jury over there. Will you be able to
25 do that?

1 THE WITNESS: Yes, sir.

2 THE COURT: Will you be able to talk into that
3 microphone so we can all hear you?

4 THE WITNESS: Yes, sir.

5 THE COURT: I think you'll do a great job. Thank
6 you. You may be seated.

7 (Whereupon, the jury came into open court at
8 approximately 10:05.)

9 THE COURT: Okay. You may go.

10 DIRECT EXAMINATION

11 BY MS. AGNEW:

12 Q Will you do me a favor and make sure when you talk
13 that you talk into that box right there so we can hear you
14 real loud?

15 A Yes.

16 Q What's your name?

17 A MINOR 1

18 Q What's your last name?

19 A [REDACTED]

20 Q How old are you?

21 A Eleven.

22 Q Are you in school anywhere?

23 A I am homeschooled.

24 Q Do you still have -- Can you speak a little bit

25 louder? You might can actually pick that up if it helps.

1 Are you in a grade in homeschool?

2 A Sixth.

3 Q When is your birthday?

4 A [REDACTED].

5 Q Where do you live, MINOR 1

6 A [REDACTED]

7 THE COURT: Ashley, she's got to speak' up.

8 Q Can you pick that up for me and hold it near your
9 mouth? Is that a little bit louder? Tell me where you
10 live again.

11 A [REDACTED].

12 MS. AGNEW: Is that better, Judge?

13 THE COURT: Raise your hand if you can't hear.

14 THE JUROR: I am having trouble understanding her.

15 Q Tell me one more time where you live but just slow
16 down a little bit.

17 A [REDACTED].

18 Q What town is that in?

19 A South Carolina, Aiken.

20 Q Have you always lived there?

21 A No.

22 Q How long have you lived there?

23 A Two years.

24 Q Do you know where you lived before that?

25 A [REDACTED].

- 1 Q What town is that in?
- 2 A South Carolina, Aiken.
- 3 Q Who all lives with you at [REDACTED]?
- 4 A Me, Kelsey, Chelsea, and my sister and my mama.
- 5 Q Who are Kelsey and Chelsea?
- 6 A My two baby sisters.
- 7 Q Has anybody else ever lived with you?
- 8 A No.
- 9 Q Have there ever been any boys living with you?
- 10 A Yeah.
- 11 Q Who?
- 12 A William.
- 13 Q Who is William?
- 14 A Chelsea and Kelsey's dad.
- 15 Q Is he your daddy?
- 16 A No.
- 17 Q Tell me this, MINOR 1 Do you know what the truth
- 18 is?
- 19 A Yeah.
- 20 Q What is the truth?
- 21 A Something that happened.
- 22 Q So if that's the truth, what is a lie?
- 23 A Something that didn't happen.
- 24 Q Do you know what happens if you tell a lie?
- 25 A You get in big trouble.

1 Q And what did you promise to do today?

2 A To tell the truth.

3 Q Minor 1 when you -- well, have you always been
4 homeschooled?

5 A No.

6 Q Did you go to school before you were homeschooled?

7 A Yes.

8 Q Where did you go to school?

9 A JD Lever.

10 Q Where did you go?

11 A JD Lever.

12 Q What grades did you go there?

13 A Kindergarten through fifth.

14 Q When you went to JD Lever did the police ever come
15 see you at school?

16 A Yes.

17 Q What did they come see you about?

18 A About William.

19 Q Did they ask you questions?

20 A Yes.

21 Q What kind of questions did they ask you?

22 MR. HAYES: Objection; hearsay.

23 MS. AGNEW: Your Honor, it's not for the truth of the
24 matter asserted.

25 THE COURT: Overruled.

- 1 Q What kind of questions did the policeman ask you?
- 2 A Has William ever touched me in the wrong way.
- 3 Q Has William ever touched you in the wrong way?
- 4 A No.
- 5 Q Has William ever done anything else that made you
- 6 uncomfortable?
- 7 A Yes.
- 8 Q What did he do?
- 9 A He, uh---
- 10 Q Speak up for me, okay, so everybody can hear.
- 11 A He told me to suck his thing.
- 12 Q Okay. Where did it happen?
- 13 A Where we're living now.
- 14 Q At [REDACTED]?
- 15 A Yes.
- 16 Q What room -- were you in the house?
- 17 A Yes.
- 18 Q What room were you in?
- 19 A The living room.
- 20 Q Who all was there?
- 21 A Me, my sister, and William.
- 22 Q Which sister?
- 23 A MINOR 2
- 24 Q Was your mama there?
- 25 A She was at work.

- 1 Q Why did he say that to you? Do you know?
- 2 A Because me and my sister was being bad.
- 3 Q Well, did he tell you anything else when he said it?
- 4 A No.
- 5 Q How did he say it?
- 6 A Suck my thing.
- 7 Q Did he use the word thing?
- 8 A No.
- 9 Q What word did he use?
- 10 A The cuss word.
- 11 Q You won't get in trouble for saying it here. Can you
- 12 say that word for me?
- 13 A (Witness shakes head.)
- 14 Q Can you spell it for me?
- 15 A D-I-C-K.
- 16 Q Did he tell you anything else or did he just say it
- 17 all of a sudden?
- 18 A He said it all of a sudden.
- 19 Q Did anything else happen or did he just say it?
- 20 A He just said it.
- 21 Q Did you have to do anything?
- 22 A No.
- 23 Q Did you stay in the living room the whole time?
- 24 A No. He told me to go to his room.
- 25 Q I'm sorry. Could you say that a little louder?

- 1 A He told me to go to his room.
- 2 Q Did you go to his room?
- 3 A Yes.
- 4 Q Who was in his room?
- 5 A Me and him.
- 6 Q Was the door open or was the door closed?
- 7 A Open.
- 8 Q Did you have your clothes on?
- 9 A Yes.
- 10 Q Did he have his clothes on?
- 11 A Yes.
- 12 Q Did he say anything once you went in his room?
- 13 A No.
- 14 Q He didn't ask you any questions?
- 15 A No.
- 16 Q He didn't say anything to you?
- 17 A No.
- 18 Q Did you stay in his room?
- 19 A No.
- 20 Q Well, what happened after that?
- 21 A He told me to suck his thing and I said no; so he
- 22 sent me to my room.
- 23 Q I'm sorry. The Judge can't hear you; so can you talk
- 24 a little bit louder and show down just a little bit? So I
- 25 asked you if you stayed in his room and you said no.

1 What happened?

2 A Then he told me to suck his thing and I said no; so
3 he sent me to my room.

4 THE COURT: Everybody hear?

5 Q Did he say how long you have to stay in your room?

6 A Until my mama got back from work.

7 Q When did she get back?

8 A Like 12 o'clock.

9 Q At night time or in the daytime?

10 A Night time.

11 Q Were you awake or asleep?

12 A Asleep.

13 Q Tell me, when did this happen? Do you remember how
14 old you were?

15 A Ten; nine or ten.

16 Q And you said you were still in -- at JD Lever?

17 A Yes.

18 Q Did you ever talk to your mama about it?

19 A Yes.

20 Q Did you talk to her that night?

21 A No, because I was asleep.

22 Q When did you talk to her?

23 A The next day.

24 Q Did William get in trouble?

25 A Yes.

1 Q Did he keep living with y'all?

2 A No.

3 Q He never came back after that?

4 A He stayed gone for a week and then came back.

5 Q Okay. Tell me this, ^{Minor 1} can you look and see if
6 you see William in the courtroom today?

7 A Yes.

8 Q Can you see the courtroom? Do you see him?

9 A No.

10 Q You don't see him anywhere in this courtroom? Will
11 you look from this wall to that wall to that wall?

12 MR. HAYES: Objection.

13 THE COURT: What is the objection?

14 MR. HAYES: The question has been asked and answered.

15 THE COURT: Overruled. Look all around, Young Lady,
16 and tell me if you see William in the courtroom.

17 Q Did you look all the way back there and did you look
18 all the way over there?

19 A I don't see him.

20 Q Okay. After you talked to the policeman at school
21 did you talk to anybody else about this?

22 A No.

23 Q Did you go to the Child Advocacy Center?

24 A Yes.

25 Q Did you talk to anybody there?

1 A Yes.

2 Q Do you remember who you talked to there?

3 A No.

4 Q Okay. Do you remember what you talked about there?

5 A What I just said.

6 Q I'm sorry. Could you say that a little bit louder
7 for me?

8 A What I just said.

9 Q Do you remember what kind of room you were in?

10 A No.

11 Q Did it have anything special about it?

12 A No.

13 Q Were there any video cameras?

14 A Yes.

15 Q Did they tell you anything about the video cameras?

16 A That I was being videotaped.

17 Q Okay. Hold on just a second for me, okay? All
18 right. You know how you were telling us earlier about
19 William telling you the suck his thing?

20 A Yes.

21 Q And you said you were in the living room?

22 A Yes.

23 Q What were you doing in the living room?

24 A Watching TV.

25 Q Were you in the floor or sitting somewhere or

1 standing up?

2 A On the couch.

3 Q Were you doing anything on the couch?

4 A Me and my sister was playing ball.

5 Q Which sister?

6 A MINOR 2

7 Q Okay. Did he say anything to you about that?

8 A No.

9 Q Okay. I am going to go sit down and you answer any
10 questions that he has for you, okay?

11 A Okay.

12 THE COURT: Mr. Hayes, any questions?

13 CROSS-EXAMINATION

14 BY MR. HAYES:

15 Q Hey, MINOR 1 How are you doing?

16 A Good.

17 Q You said you are 11 today?

18 A Yes.

19 Q And that you're homeschooled?

20 A Yes.

21 Q Prior to that you went to JD Lever?

22 A Yes.

23 Q That's an elementary school?

24 A Yes.

25 Q How many grade does JD Lever have?

- 1 A Fifth. Kindergarten to fifth.
- 2 Q Kindergarten to fifth. I heard you answer them
- 3 earlier but I didn't understand the first part. How long
- 4 did you go to JD Lever?
- 5 A Six years.
- 6 Q Six years. So you went from kindergarten through
- 7 fifth grade?
- 8 A Yes.
- 9 Q And now you're in the sixth grade this year?
- 10 A Yes.
- 11 Q Okay. How old is your sister ^{MINOR 2}
- 12 A Twelve.
- 13 Q And did she go to JD Lever with you?
- 14 A Yes..
- 15 Q And how long did she go to JD Lever?
- 16 A Six years.
- 17 Q Six years. So you and her went to school together?
- 18 A Yes.
- 19 Q Up until last year?
- 20 A Yes.
- 21 Q Okay. When y'all would go to school did y'all go to
- 22 school together?
- 23 A Yeah.
- 24 Q Y'all rode the bus to school together?
- 25 A Yes.

1 Q Or home together?

2 A Yes.

3 Q You remember when you were talking to the people at
4 the Child Advocacy Center?

5 A Yes.

6 Q You were saying that when William told you that you
7 were going to have to suck his thing he was punishing you?

8 A Yes.

9 Q He told you to stay on the couch and that if you got
10 off you would have to suck his thing?

11 A Yes.

12 Q That's what you told them?

13 A Yes.

14 Q He was punishing you because y'all were running
15 through the house?

16 A We wasn't listening.

17 Q You weren't listening to William?

18 A Yes.

19 Q Okay. You had your clothes on the whole time?

20 A Yes.

21 Q He had his clothes on the whole time?

22 A Yes.

23 Q In the interview with them you told them it happened
24 one time; right?

25 A Yes.

1 Q How long have you lived with William?

2 A (No response.)

3 Q How long -- let me rephrase that for you. How long
4 has Mr. Pou been with your mama? How long have they been
5 together?

6 A I think six years.

7 Q About six years. MINOR 1 I want to clarify
8 something real quick, okay? When did Mr. Pou -- you
9 testified a minute ago that you were on the couch and he
10 told you you were going to have to suck his thing?

11 A Uh-huh.

12 Q And then you said that he took you to his room and
13 told you then as well?

14 A Yes.

15 Q Or did he just tell you one time?

16 A He told me twice.

17 Q Okay. And that's on the same day?

18 A Yes.

19 Q It never happened before?

20 A No.

21 Q It never happened after?

22 A No.

23 Q Mr. Pou and your mama fight a lot, don't they?

24 A Yes.

25 Q They fight over the title to the house?

- 1 A Yes.
- 2 Q They fight over if he's cheating or she's cheating on
3 him?
- 4 A I don't know.
- 5 Q You see these fights, though?
- 6 A Yes.
- 7 Q Minor 1 do you like William?
- 8 A No.
- 9 Q Did he punish you?
- 10 A Yes.
- 11 Q When he punished you was it always to put you on the
12 couch or would he spank you?
- 13 A He would put me on the couch.
- 14 Q And he would make you stay on the couch?
- 15 A Yes.
- 16 Q He never spanked you?
- 17 A No.
- 18 Q You ever get any spankings?
- 19 A No.
- 20 Q Didn't you tell the people at the video that your
21 papa spanked you once?
- 22 A Yes.
- 23 Q Didn't you tell them that you only got one spanking?
- 24 A Yes.
- 25 Q Tell me, when are you saying that this incident with

1 the couch happened?

2 A How old was I?

3 Q How old were you?

4 A Nine or ten.

5 Q Nine or ten. Now when you were talking to the people
6 in the Child Advocacy Center you told them it was either
7 two years ago, five years ago, four years ago, or three
8 years ago; is that correct?

9 A I don't know.

10 Q You don't remember?

11 A No.

12 Q Did you ever get sent to your room for punishment?

13 A Yes.

14 Q Now you saw a lot of fights with Mr. Pou and your
15 mama with a screwdriver, didn't you?

16 A Yes.

17 Q You said that Mr. Pou hurt your mama?

18 A It was in his pocket.

19 Q It was in his pocket. And he threw her on the floor
20 and she got cut?

21 A Yes.

22 MS. AGNEW: Your Honor, I am going to object to the
23 relevance of this.

24 THE COURT: Overruled.

25 Q You also saw a fight between your nana and Mr. Pou?

1 A Yes.

2 Q That would be your grandmother; right?

3 A Yes.

4 Q And that fight you said that she had gotten drunk and
5 she smokes and she drinks; right?

6 A Yes.

7 Q And he grabbed her and Mr. Pou pushed her back?

8 A Yes.

9 Q You like staying at your papa's and your grandmama's?

10 A Sometimes.

11 Q Sometimes. You also told about an incident when you
12 were in the shower with your mama and Mr. Pou came in and
13 took the door off the shower?

14 A Yes.

15 Q And they had an argument right there?

16 A Yes.

17 Q Over the title to the house?

18 A Yes.

19 Q And the argument over the title to the house -- do
20 you know why they were arguing over it?

21 A No.

22 MR. HAYES: I beg the court's indulgence.

23 All the arguments, did they take place before or
24 after the couch issue?

25 THE WITNESS: Before.

1 Q You knew Mr. Pou and your mama didn't get along,
2 didn't you?

3 A Yes.

4 Q You didn't like him either?

5 A Yes.

6 Q You didn't like him or she didn't?

7 A Both. We both didn't like him.

8 Q You both didn't like him?

9 A Yes.

10 Q The time when you were on the couch and Mr. Pou says
11 to suck his thing, he was having an argument with your
12 mama, wasn't he?

13 A I don't know.

14 Q You don't remember?

15 A No.

16 MR. HAYES: Nothing further, Your Honor.

17 THE COURT: Anything on redirect?

18 MS. AGNEW: No, Your Honor.

19 THE COURT: Okay. Miss [REDACTED] you may step down.

20 Mr. McCarley, are you going to walk her out?

21 MR. MCCARLEY: Yes, sir.

22 THE COURT: Call your next witness.

23 MS. AGNEW: The state calls MINOR 2

24 THE COURT: Ladies and gentlemen, I need to do the
25 same thing with this young lady before she testifies.

1 Y'all step right out just a second. This will be the last
2 time we have to do this.

3 (Whereupon, the jury exited the courtroom at 10:24.)

4 MINOR 2 after being duly sworn,
5 testified as follows:

6 IN-CAMERA EXAMINATION

7 THE COURT: Give us your full name.
MINOR 2

8 THE WITNESS:

9 THE COURT: I'm sorry. Do that again.
MINOR 2

10 THE WITNESS:

11 THE COURT: Spell for me.

12 THE WITNESS: MINOR 2

13 THE COURT: And, tell me how old you are.

14 THE WITNESS: Twelve.

15 THE COURT: Twelve. And what grade in school -- I
16 think you're being homeschooled; is that correct?

17 THE WITNESS: (Nods head.)

18 THE COURT: But you went to JD Lever through the
19 fifth grade?

20 THE WITNESS: Yes.

21 THE COURT: Answer for me. How long have you been
22 homeschooled now?

23 THE WITNESS: In seventh grade.

24 THE COURT: In the seventh grade; so a couple of
25 years; correct?

1 THE WITNESS: For just the seventh grade.

2 THE COURT: Yes, ma'am. Now do you know why you are
3 here today?

4 THE WITNESS: Yes.

5 THE COURT: They're going to be asking you some
6 questions concerning things that may or may not have
7 happened in your home. Do you understand that?

8 THE WITNESS: Yes.

9 THE COURT: That's called testifying. Do you know
10 that?

11 THE WITNESS: (Witness nods head.)

12 THE COURT: Answer for me.

13 THE WITNESS: Yes.

14 THE COURT: Do you understand what you're supposed to
15 do as far as telling the truth when you testify?

16 THE WITNESS: Speak loud.

17 THE COURT: Speak loud. That's one thing you're
18 supposed to do. That's right. How about telling the
19 truth? Are you supposed to tell the truth?

20 THE WITNESS: Yes.

21 THE COURT: Do you know the difference between
22 telling the truth or telling a story or a lie?

23 THE WITNESS: Yes.

24 THE COURT: And you've taken an oath to tell the
25 truth here today. Do you know what that means?

1 THE WITNESS: Yes.

2 THE COURT: That you will do what?

3 THE WITNESS: Tell the truth.

4 THE COURT: Do you know what will happen to you if
5 you don't tell the truth?

6 THE WITNESS: No.

7 THE COURT: You might get in some trouble. Do you
8 understand that?

9 THE WITNESS: Yes.

10 THE COURT: You know the difference between the truth
11 and not the truth; right?

12 THE WITNESS: Yes, sir.

13 THE COURT: And you're going to tell the truth for us
14 here today?

15 THE WITNESS: Yes.

16 THE COURT: Okay. All I ask you to do is when these
17 lawyers ask you a question just speak up loudly. We'll
18 have some jurors over there. They'll need to hear what
19 you're saying. Speak -- you know what the word distinctly
20 means? Speak so they can understand you. You know how to
21 do that, don't you?

22 THE WITNESS: Yes.

23 THE COURT: All right. I find that she's competent
24 to testify.

25

1 (Whereupon, the jury came into open court at
2 approximately 10:28.)

3 THE COURT: Yes, ma'am?

4 DIRECT EXAMINATION

5 BY MS. AGNEW:

6 Q Now, really slow and really loud can you tell us your
7 name?

8 A MINOR 2 [REDACTED]

9 THE COURT: MINOR 2 do me a big favor. See that
10 little box right there? That little black box? Pick that
11 up and speak into it for me, okay? That's the little
12 microphone.

13 Q MINOR 2 how old are you?

14 A Twelve.

15 Q When is your birthday?

16 A [REDACTED].

17 Q What year were you born?

18 A [REDACTED].

19 Q Are you in school anywhere?

20 A Homeschool.

21 Q What grade are you in?

22 A Seventh.

23 Q Have you always been homeschooled?

24 A No.

25 Q Where did you go to school before that?

- 1 A Aiken Middle.
- 2 Q What grade were you at in Aiken Middle?
- 3 A Sixth.
- 4 Q Did you go to elementary school before that?
- 5 A Yeah.
- 6 Q What elementary school did you go?
- 7 A JD Lever.
- 8 Q How many grades did you go to at JD Lever?
- 9 A First through fifth.
- 10 Q Where are you living, ^{MINOR 2}
- 11 A [REDACTED].
- 12 Q Do you know the number?
- 13 A [REDACTED].
- 14 Q What town is that in?
- 15 A Aiken.
- 16 Q Have you always lived there?
- 17 A No.
- 18 Q How long have you lived there?
- 19 A For about two years.
- 20 Q Where did you live before that?
- 21 A [REDACTED].
- 22 Q Do you know what town that's in?
- 23 A I think Aiken, too.
- 24 Q And, Judge, if I could just inquire if they can hear.
- 25 THE COURT: They can. I'm watching them. A little

1 bit -- speak up loud for me.

2 Q Do you remember when you moved to [REDACTED]?

3 A I think in April.

4 Q Was it before your birthday or after your birthday?

5 A Before.

6 Q Who lived with you at [REDACTED]?

7 A My mom, Casey, my sisters, and Tasha.

8 Q What are your sisters' name?

9 A Chelsea, Kelsey, ^{MINOR 1} -- MINOR 1

10 Q Has anybody else ever lived with you?

11 A William.

12 Q Who is William?

13 A He used to be my stepdad.

14 Q Is he your real dad?

15 A No.

16 Q Is he anybody's real dad in your house?

17 A Boo-Boo's and Summer's which is Kelsey and Chelsea.

18 THE COURT: Speak up for me, please, ma'am.

19 Q Don't forget. Speak really loud, okay? Tell me

20 this, ^{MINOR 2} When you first came in the courtroom what

21 did you do?

22 A I put my hand on the Bible.

23 Q And what did you say?

24 A That I would tell the truth.

25 Q Do you know what the truth is?

1 A Yeah.

2 Q Do you know what a lie is?

3 A Yeah.

4 Q What happens if you tell a lie?

5 A You can get in trouble.

6 Q Okay. When you were still in school did the police
7 ever come see you?

8 A Yeah.

9 Q What school were you at?

10 A Aiken Middle.

11 Q Do you remember what grade you were in?

12 A Sixth.

13 Q Do you remember what the policeman's name was?

14 A No.

15 Q What did he come talk to you about?

16 A William.

17 Q I'm sorry. I know it's hard, but can you speak loud
18 for me? What did they come talk to you about?

19 A William.

20 THE COURT: Take a deep breath for us. Take a deep
21 breath and we'll get through this.

22 BAILIFF MR. WHITTLE: Would you like a drink of
23 water, Dear?

24 THE WITNESS: (Shakes head.)

25 THE COURT: Just give her a second. She'll be fine.

1 Q Are you ready to keep going? Do you remember what
2 they asked you about William?

3 A At first they said did he ever like beat us.

4 THE COURT: Ma'am, do me a favor, please. Take a
5 deep breath and answer that question again so I can hear
6 you.

7 Q Speak into the box.

8 A They said if he ever beat us.

9 Q Did they ask you any other questions about William?

10 A If he had ever touched us.

11 Q MINOR 2 has William ever touched you?

12 A Yes.

13 Q Let's talk about touches for a minute. Are there
14 such thing as good touches?

15 A Yeah.

16 Q Like what?

17 A Like hugs.

18 Q Are there such things as bad touches?

19 A Yes.

20 Q Can you tell me what a bad touch would be?

21 A When someone touches you in the wrong spot.

22 Q What would the wrong spots be?

23 A Your private.

24 Q Can you tell me in your family do you have a name for
25 your private?

- 1 A Yeah.
- 2 Q What is it?
- 3 A We call it a cookie.
- 4 Q Is that your front private or your back private?
- 5 A Front.
- 6 Q Do you have a name for your back private?
- 7 A Yeah.
- 8 Q What is that?
- 9 A Butt.
- 10 Q Are there any other private parts?
- 11 A Your front parts.
- 12 Q What do you call those?
- 13 A Your boobies.
- 14 Q When William would touch you was it a good touch or a
- 15 bad touch?
- 16 A A bad touch.
- 17 Q Can you tell me where he would touch you?
- 18 A In my private.
- 19 Q Which one?
- 20 A The front.
- 21 Q The boobies or the cookie?
- 22 A The cookie.
- 23 Q Did it happen one time?
- 24 A No.
- 25 Q Did it happen two times?

1 A No.

2 Q Can you tell me how many times it happened?

3 A I'm not sure.

4 Q Was it every month?

5 A It was in months.

6 Q So it was more than one month?

7 A Yeah.

8 Q Was it in more than one year?

9 A Yeah.

10 Q Can you tell me when it started?

11 A I think when I was eight.

12 Q Where were you living then?

13 A [REDACTED].

14 Q Did it happen once you moved to [REDACTED]?

15 A Yeah.

16 Q Did it happen when you were nine years old?

17 A Yeah.

18 Q Where were you living then?

19 A [REDACTED] -- no, not [REDACTED]; [REDACTED].

20 Q Did it happen when you were 10 years old?

21 A Yeah.

22 Q Do you remember where that was?

23 A [REDACTED].

24 Q Did you move to [REDACTED] that year?

25 A I think so.

1 Q Did it happen when you were 11 years old?

2 A Yeah.

3 Q And where were you living then?

4 A [REDACTED]

5 Q When William would bad-touch you, who would be there?

6 A Sometimes the babies.

7 Q And who are you talking about when you say the
8 babies?

9 A Summer and Boo-Boo.

10 Q What are Summer and Boo-Boo's real names?

11 A Kelsey and Chelsea.

12 Q You said they were babies then?

13 A Yeah.

14 Q Would it happen in the house or outside?

15 A In the house.

16 Q What room would it happen in?

17 A His.

18 Q Would the babies be in there?

19 A No.

20 Q What about your mama? Where would she be?

21 A Work.

22 Q Did she always work at the same place when you were
23 growing up?

24 A No.

25 Q What about your sister MINOR 1

1 A She would be there.

2 Q Would she always be there?

3 A No.

4 Q Would she be in the same room with you?

5 A No.

6 Q Do you know where she would be?

7 A Her room.

8 Q I'm sorry?

9 A Her room.

10 MS. AGNEW: And, Your Honor, can they still hear?

11 THE COURT: Just raise your hand if you can't.

12 Q MINOR 2 you told me where he would bad-touch you.

13 What did he bad-touch you with?

14 A His hands and sometimes his...

15 Q His what?

16 A Private.

17 Q Do you have a name in your family for a boy's
18 private?

19 A No.

20 Q Just his private?

21 A (Nods head.)

22 Q When you were talking to the officer did he show you
23 any pictures of girls and boys?

24 A Yeah.

25 MS. AGNEW: Your Honor, permission to approach

1 the witness.

2 THE COURT: Yes, ma'am.

3 Q Now, ^{MINOR 2} I am going to show you two pieces of
4 paper; okay? Do you know what that is?

5 A Yes.

6 Q Have you seen it before?

7 A Yes.

8 Q What is it?

9 A The picture the officer showed me.

10 Q What is on that picture?

11 A A girl.

12 Q Did you do anything with this picture?

13 A I think he circled them.

14 Q Okay. Did you tell him where to circle?

15 A Yes.

16 Q What is circled?

17 A The girl's cookie and butt.

18 Q And what do those circles mean?

19 A Where he touched me.

20 Q what about this piece of paper? Do you know
21 what that is?

22 A Yes.

23 Q What is it?

24 A A picture of a boy.

25 Q Does the boy have clothes on?

- 1 A No.
- 2 Q Have you seen this picture before?
- 3 A Yes.
- 4 Q Where did you see it?
- 5 A The officer showed me.
- 6 Q Are there circles on this picture?
- 7 A Yes.
- 8 Q What are they circles of?
- 9 A His private and his hand.
- 10 Q What do those circles mean?
- 11 A What he touched me with.
- 12 Q All right. MINOR 2 this is a really big picture.
- 13 Does this look like the picture we just looked at?
- 14 A Yes.
- 15 Q Is there anything different about it?
- 16 A There's no circles on it.
- 17 Q Can you point on here where William bad-touched you?
- 18 A (Indicating.)
- 19 Q Is that the only place?
- 20 A (Indicating.)
- 21 Q And here is another really big picture. Does that
- 22 look like any picture you've seen before?
- 23 A Yes.
- 24 Q What does it look like?
- 25 A The picture the officer showed me.

1 Q Is there anything different about this picture?

2 A There is no circles on it.

3 Q Can you show me on this picture what William used to
4 bad-touch you?

5 A (Indicating.)

6 Q When William would bad-touch you did it always happen
7 in his room?

8 A Yes.

9 Q Did you have clothes on?

10 A He would take my pants off.

11 Q Okay. You got to speak a little bit louder for me,
12 okay? Did you always have clothes on?

13 A He would take my pants off.

14 Q Would you wear underwear?

15 A He would take them off, too.

16 Q Did that happen every time?

17 A Yes.

18 Q Did he have clothes on?

19 A He would pull his pants down.

20 Q Would he pull them all the way down to his feet?

21 A Yes.

22 Q Did he wear underwear?

23 A Sometimes.

24 Q Okay. Would his underwear stay on?

25 A Sometimes.

1 Q Did his skin touch your skin? Would he touch you on
2 top of your clothes or underneath your clothes?

3 A Underneath.

4 Q Did he always touch the same way?

5 A Yes.

6 Q Did he touch on the outside of your cookie?

7 A Yes.

8 Q Did he ever touch on the inside of your cookie?

9 MR. HAYES: Objection; leading.

10 THE COURT: Overruled.

11 THE WITNESS: A little.

12 Q Would he do that with his hand or his private?

13 A Both.

14 Q Did anything ever happen with MINOR 1 in the room?

15 A No.

16 Q Did he ever say anything to you?

17 A He told me not to tell my mama.

18 Q Not to tell what?

19 A My mom.

20 Q Did he ever say anything to you and MINOR 1

21 A When we were in the living room.

22 Q Which room were you in?

23 A The living room.

24 Q Which house was that in?

25 A [REDACTED]

- 1 Q Do you remember how old you were?
- 2 A No.
- 3 Q Were you at Aiken Middle?
- 4 A No.
- 5 Q Were you at JD Lever?
- 6 A Yes.
- 7 Q Do you know if you were in fifth grade?
- 8 A I don't know.
- 9 Q Were the babies alive?
- 10 A I think.
- 11 Q How old are the babies?
- 12 A Boo-Boo just turned five which is Kelsey and Summer
- 13 is two which is Chelsea.
- 14 Q When you were in the living room who else was in the
- 15 living room with you?
- 16 A My sister.
- 17 Q Which sister?
- 18 A Minor 1.
- 19 Q Where were the babies?
- 20 A I'm not sure.
- 21 Q Where was your mama?
- 22 A Work.
- 23 Q Do you remember where she was working?
- 24 A I think at Circle K.
- 25 Q Do you know what time of day it was?

- 1 A Night.
- 2 Q Nine or night?
- 3 A Night.
- 4 Q Was William home?
- 5 A Yes.
- 6 Q What were you doing in the living room?
- 7 A He told us if we got off the couch we had to suck his
- 8 private.
- 9 Q What were you doing when he said that to you?
- 10 A We were sitting on the couch.
- 11 Q Were you doing anything on the couch?
- 12 A We were just sitting there -- me and my sister.
- 13 Q Why did he tell you you couldn't get off the couch?
- 14 A I'm not sure.
- 15 Q When he said that to you did he say private?
- 16 A He said his...
- 17 THE COURT: Speak up. Speak up.
- 18 THE WITNESS: He said the bad word.
- 19 Q I'm sorry. Can you say it loud for me?
- 20 A He said the bad word.
- 21 Q Okay. Can you tell me what the bad word is?
- 22 A Can I spell it?
- 23 Q Yeah, you can spell it.
- 24 A D-I-C-K.
- 25 Q Did anything happen after he said that?

- 1 A No.
- 2 Q Did you get off the couch?
- 3 A No.
- 4 Q Did MINOR 1 get off the couch?
- 5 A No.
- 6 Q Did you stay on the couch all night?
- 7 A Until my mom got home.
- 8 Q Do you remember when your mom got home?
- 9 A About 8:30.
- 10 Q Did MINOR 1 stay on the couch all night?
- 11 A With me.
- 12 MR. HAYES: Objection; asked and answered.
- 13 THE COURT: Overruled.
- 14 Q Were you awake when your mom got home?
- 15 A Yeah.
- 16 Q Did you tell your mom about what happened on the
- 17 couch?
- 18 A No.
- 19 Q Did you tell your mom about William bad-touching you?
- 20 A No.
- 21 Q Did you ever try to tell anybody else?
- 22 A No.
- 23 Q Did you ever -- did you talk to anybody at the Child
- 24 Advocacy Center?
- 25 A Yeah.

1 Q Do you remember who you talked to?

2 A Mary Ann.

3 Q What did you talk to her about?

4 A At first we were just like talking about moods and
5 everything.

6 THE COURT: Speak up.

7 Q Did you talk to her about William?

8 A A little bit, yeah.

9 Q Did you ever write anything about William?

10 A We were writing a book.

11 Q Did you ever write anything to anybody else about
12 William?

13 MR. HAYES: Objection; leading.

14 THE COURT: Overruled.

15 THE WITNESS: I wrote a letter that my mom found.

16 Q Who did you write a letter to?

17 A My nana.

18 THE COURT: Who?

19 Q Who is your nana?

20 A My grandmother.

21 Q Is that your mom's mom?

22 A Yeah.

23 Q And what happened to the letter?

24 A My mom found it.

25 Q Did she keep it?

1 A She gave it --
2 MR. HAYES: Objection.
3 THE WITNESS: -- to William to read.
4 MR. HAYES: Asks for speculation.
5 THE COURT: If you know. Overruled.
6 Q Do you know if she kept it?
7 A I think William hid it.
8 Q Did anything happen after the letter?
9 A I'm not sure.
10 Q Can you do me a favor, ^{MINOR 2} Can you look and see
11 if you see William in the courtroom?
12 A I don't see him.
13 Q Do what?
14 A I don't see him.
15 Q Okay. How long has it been since you've seen
16 William?
17 A A year.
18 Q Hold on for me just a second, okay? We're almost
19 done. I just got a couple of questions, okay? You said
20 that the first time William bad-touched you you were eight
21 years old?
22 A Yeah.
23 Q Do you remember what grade you were in?
24 A Third or fourth.
25 Q Did he bad-touch you in fourth grade?

1 A Yeah.

2 Q And were you nine years old, ten years old?

3 MR. HAYES: Objection; leading.

4 THE COURT: I'm going to overrule that.

5 THE WITNESS: (Witness nods head.)

6 Q And did he bad-touch you when you were in the fifth
7 grade?

8 A Yeah.

9 MR. HAYES: Objection.

10 THE COURT: Overruled.

11 Q What about sixth grade?

12 A Yeah.

13 Q You said that when he would bad-touch you sometimes
14 it would be on the outside of your cookie and sometimes it
15 would be a little on the inside of your cookie?

16 A Yeah.

17 Q Did he bad-touch you both of those ways when you were
18 eight years old?

19 A I think.

20 Q Did he bad-touch you both of those ways when you were
21 nine years old?

22 MR. HAYES: Objection; leading.

23 THE COURT: All right. I am going to sustain that.

24 Don't lead her, please, ma'am. Rephrase the question.

25 Just ask her how he touched her when she was eight or

1 nine.

2 Q How did he bad-touch you when you were nine?

3 A I think like that.

4 Q How did he bad-touch you when you were 10?

5 A I think like that. I think like that.

6 Q And how did he bad-touch you when you were 11?

7 A Like that.

8 Q I'm sorry. Just hold it up there the whole time you
9 answer.

10 A Like that.

11 MS. AGNEW: MINOR 2 he's got to ask you a couple of
12 questions. Just answer his questions, okay?

13 THE COURT: MINOR 2 are you okay? We need to take a
14 break? Are you all right?

15 All right. Mr. Hayes.

16 CROSS-EXAMINATION

17 BY MR. HAYES:

18 Q Hey, MINOR 2 You said that you're homeschooled now;
19 right?

20 A Yeah.

21 Q You were -- last school you attended was Aiken Middle
22 and you were in the sixth grade and that was last year?

23 A Yeah.

24 Q And then before that you attended JD Lever?

25 A Yeah.

- 1 Q And you went to JD Lever from one to fifth?
- 2 A Yeah.
- 3 Q Or first to fifth. Your sister went to school with
- 4 you at JD Lever?
- 5 A Yeah.
- 6 Q And y'all went to school together. Y'all rode the
- 7 bus?
- 8 A Yeah.
- 9 Q What grade is your sister in?
- 10 A Sixth.
- 11 Q So she's one grade behind you?
- 12 A Yeah.
- 13 Q You don't like William, do you?
- 14 A No.
- 15 Q You haven't liked William in a long time, have you?
- 16 A Yeah.
- 17 Q Because William and your mama fight?
- 18 A They did.
- 19 Q They don't anymore because he's not there; right?
- 20 They don't fight right now because he's not there?
- 21 A Yeah.
- 22 Q But prior to that --
- 23 A Huh?
- 24 Q -- they fought?
- 25 A Yeah.

1 Q They fought over the title to the house?

2 A Yeah.

3 Q They fought over who was cheating on who?

4 A Yeah.

5 Q As a matter of fact, you even told William one time
6 somebody that was a possible person that your mama was
7 seeing knowing that that wasn't the same person?

8 A Yeah.

9 Q Y'all were looking for a new place to go because
10 William was mean to you?

11 A Yeah.

12 Q Now did William spank you and MINOR 1

13 A My sister.

14 Q He spanked your sister?

15 A Yeah.

16 Q You saw a fight between William and your mom in the
17 kitchen?

18 A Yeah.

19 Q That involved a screwdriver?

20 A Yeah.

21 Q Your mama had a screwdriver?

22 A Yeah.

23 Q And came at Mr. Pou?

24 A Yeah.

25 Q She took it away from him or he took it away from

1 her?

2 A Yeah.

3 Q And they fought and your mama ended up getting cut?

4 A Yeah.

5 Q They have been together for about six years?

6 A Yeah.

7 Q They fought more when they first got together?

8 A Yeah.

9 Q How many times have you told or had to talk about
10 this story today?

11 A Today? Just this time.

12 Q So you didn't talk to somebody at a Child Advocacy
13 Center?

14 A No.

15 Q You didn't talk to the solicitors?

16 A Not today.

17 Q I mean, how many times have you told it in the last
18 year? I'm sorry if I wasn't clear.

19 A About 10 times.

20 Q About 10 times. William would spank you, too?

21 A No.

22 Q No? You didn't tell the lady at the Child Advocacy
23 Center that he would spank you, too?

24 A No.

25 Q You didn't tell her that sometimes he would spank you

1 to be funny for your birthday?

2 A I think he would do that.

3 Q You also told her that you knew the difference
4 between when it was being funny and when he was being mad
5 because he would cuss and holler at you?

6 A I think.

7 Q So you did tell her that?

8 A I think.

9 Q Didn't you tell them at the interview center that he
10 was mean?

11 A Yeah.

12 Q Didn't like him. As a matter of fact, you told her
13 when she asked you what happened didn't you tell her that
14 you told the police something happened because he really
15 is mean and I wanted to get away and mom wouldn't do
16 nothing; so I went -- I wanted to go to papa's.

17 A I don't know.

18 Q You don't know. Now, in the interview you told her
19 when she asked you has anything ever happened like that
20 before when she was referring to the couch, the thing
21 about sucking his thingy, she asked you had anything like
22 that ever happened before or after that incident and
23 didn't you tell her that you didn't know but you think he
24 has a girlfriend he does that with?

25 A I don't know.

1 Q Didn't you also tell her that you interrupted Mr. Pou
2 and your mama having sex one time and your mama told you
3 thank you; that she didn't want to do it?

4 A Yeah.

5 Q Didn't you also tell her that your mom was trying to
6 get away from William because he was mean and that she was
7 looking at different houses and schools for you and

8 Minor 1 ?

9 A I don't know about schools, but I know about houses.

10 Q We talked a little bit about them fighting over the
11 house title. Why were they fighting over the house title?

12 A Because William wanted it.

13 Q All right. Why did William want it?

14 A I guess to get us out.

15 Q I'm sorry. You got to speak up a little bit for me.

16 A I guess to get us out.

17 Q All right. You are guessing to get you out? Didn't
18 you tell the interviewer that y'all were looking for a new
19 place because step-dad is mean to us and your mama; that
20 she signed over the notice to the house or the title
21 because he was in debt and she was going to pay it off
22 but he doesn't know that your mama gave it to your papa?

23 A Yeah.

24 Q You told the interviewer that; right?

25 A Yeah.

1 Q And that when he would get mad they would have a
2 fight because he wants it back?

3 A Yeah.

4 Q Didn't you tell the interviewer on four different
5 occasions nothing happened when she asked you about
6 it?

7 A I think, yeah.

8 Q You think you did? I'm sorry. I'm having a hard
9 time hearing you.

10 A I think.

11 Q You think? MINOR 1 do you know Betty C.

12 A Yeah.

13 Q Who is Betty C.

14 A She used to be one of our friends.

15 Q She used to be one of your friends? Where did she
16 live?

17 A Right up the road from my nana.

18 Q Is that [REDACTED]?

19 A Yeah.

20 Q Right down the road from where y'all used to live,
21 too?

22 A Yeah.

23 Q MINOR 2 do you admit or deny telling Betty C. that
24 this was all a lie?

25 A I don't know.

1 Q Do you know what admit or deny means?

2 A Yeah.

3 Q Did you tell Betty C. that this was all a lie?

4 A I don't know.

5 Q Does I don't know mean you don't remember or does I
6 don't know ---

7 MS. AGNEW: Your Honor, I am going to object. She
8 answered the question.

9 THE COURT: She has. What do you mean by I don't
10 know?

11 THE WITNESS: I don't remember.

12 THE COURT: Very well. Move along.

13 Q Now, you testified a few minutes ago in your direct
14 that MINOR 1 would be in her room when these incidents
15 would occur. In your video didn't you tell the
16 interviewer that it would happen on days that William
17 would pick you up from school?

18 A Yeah.

19 Q Okay. And that MINOR 1 would be on the bus and
20 wouldn't be home?

21 A Yeah.

22 Q Didn't you also tell the interviewer that William was
23 mean and one of the examples was is that he told y'all one
24 time if y'all didn't clean up behind the cats and ferrets
25 that he would feed them to his dog?

1 A I think.

2 THE COURT: All my jurors with me? Ma'am? Ma'am?

3 What is your name, please, ma'am?

4 THE JUROR: Tiara.

5 THE COURT: I can't hear you.

6 THE JUROR: Tiara.

7 THE COURT: Okay. What number is she? Go ahead.

8 THE CLERK: Number 94.

9 THE COURT: Thank you.

10 Q Isn't it true that you told the lady at the Child
11 Advocacy Center that William got in trouble when he was
12 younger for having -- when he was 19 for having sex with a
13 14-year-old?

14 A I think.

15 Q You told the girl at the Advocacy Center that; right?

16 A I think.

17 Q So you know that if you were to tell the police that
18 an adult had sex with you they would be in trouble?

19 A Yeah.

20 MR. HAYES: I beg the court's indulgence.

21 Now the fight in the kitchen that you saw, that was
22 before the incident with the couch?

23 THE WITNESS: I think.

24 Q When was that? Do you remember?

25 A No.

1 Q You don't remember? Now, there was also an incident
2 when you were in the bathroom that you told the
3 interviewer about, wasn't it?

4 A I don't know.

5 Q You didn't tell the interviewer that William came
6 into the bathroom and took the shower door off the shower
7 while you and your sisters were in the shower?

8 A Yeah.

9 Q You told her he had a knife and he was hollering at
10 your mama about the title or whether she was cheating?

11 A Yeah.

12 Q Who told you about your natural father?

13 A My mom. Well, actually, my gram did, but my mom.

14 Q William told you. William told you that he had
15 passed away; right?

16 A No. We had called and they told us.

17 Q Who called?

18 A My mom called somebody that knew him.

19 Q They fought on a regular basis? William and your
20 mama, they fought all the time, didn't they?

21 A Kind of.

22 Q You saw it. You watched most of it?

23 A Yeah.

24 MR. HAYES: I beg the court's indulgence.

25 Now on the incident with the couch you just testified

1 that your mama came home about midnight?

2 THE WITNESS: About 8:30.

3 Q About 8:30 she came home?

4 A Yeah.

5 Q And did you tell her?

6 A We told her that he made us stay on the couch.

7 Q You didn't tell her anything about having to suck his
8 thingy or the statement?

9 A No.

10 Q Now your mama was looking for a new place before any
11 of these incidents, wasn't she?

12 A (No response.)

13 Q Your mama was looking for somewhere before you told
14 the police?

15 A I think so.

16 Q She was trying to get out and leave?

17 A Yeah.

18 Q You think he is mean, don't you?

19 THE COURT: What?

20 Q You think Mr. Pou is mean, don't you?

21 MS. AGNEW: Your Honor --

22 THE WITNESS: Yeah.

23 MS. AGNEW: -- he's asked that about three times now.

24 THE COURT: Well, she can answer it again. You think
25 he is mean?

1 THE WITNESS: Yeah.

2 Q Did you think he was mean back then when you were
3 little and he was fighting with your mama?

4 A I'm not sure.

5 MR. HAYES: Nothing further, Your Honor.

6 MS. AGNEW: Your Honor, I don't have anything
7 further.

8 THE COURT: Thank you. Okay, Young lady. You may
9 step down. Go with Mr. Nick over there.

10 All right. Ladies and gentlemen, we're going to take
11 a short break for our morning recess. If you would,
12 please, select me a foreperson when you take the recess.

13 Mr. Whittle, would you call the Bowery? We'll have
14 14 jurors for lunch.

15 BAILIFF MR. WHITTLE: Fifteen?

16 THE COURT: Fourteen. We'll probably break about
17 12:30, a quarter 'til one. Thank you. All right. Y'all
18 step back to your jury room. Please do not discuss the
19 case. Please do not deliberate.

20 Ms. Johnson, please remain seated.

21 (Whereupon, the jury exited the courtroom at 11:11
22 except for Juror Tiara Johnson.)

23 THE COURT: Ms. Johnson, I am going to excuse you
24 from any further service on this jury. You were sound
25 asleep. I asked if you were okay three times. You didn't

1 take about a 10 or 15-minute break.

2 (Whereupon, a break was taken.)

3 THE COURT: All right. Anything from the state
4 before we move forward?

5 MRS. YOUNG: Judge, we were going to call an
6 intervening witness right now before we plan to call the
7 child advocacy witnesses. I didn't know if you wanted to
8 go ahead and hear argument on the admission of the tapes
9 or not.

10 THE COURT: Thank you.

11 Mr. Hayes, I reviewed in-camera yesterday the two
12 videotapes that the children gave at the Child Advocacy
13 Center. I did that in compliance with Section 17-23-175
14 and I had the in-camera review and the state now wishes to
15 introduce the out-of-court statement made by the children.
16 What is the defendant's position?

17 MR. HAYES: Judge, as previously argued I only have
18 objection to MINOR 1 video as to the leading and the
19 suggestive nature of the questioning. I don't think the
20 questioning is as leading in the second video of MINOR 2

21 THE COURT: Thank you. Anything else?

22 MR. HAYES: No, sir.

23 THE COURT: All right. I find that I've conducted
24 the in-camera review as required by the statute. The
25 statute requires that I pay close attention and give

1 consideration to four factors in support of the admission
2 of the evidence: One, whether the statements were
3 elicited by leading questions; two, whether the
4 interviewers had been trained in conducting investigative
5 interviews of children; three, whether the statements
6 contained a detailed account of the offense; four, whether
7 the statements have internal coherence; and, five, sworn
8 testimony of any participants which may be determined as
9 necessary by the court.

10 I am to do that and consider these factors to
11 guarantee as much as possible the trustworthiness to make
12 it sufficient for admission under the section. I find
13 that there is absolutely no question that the interviewers
14 were sufficiently trained. The statements did contain a
15 detailed account of the offense. There were some leading
16 questions, but from the totality of the entire interview
17 the leading questions I do not believe to have compromised
18 the trustworthiness of the statements or its
19 admissibility.

20 As mentioned yesterday in chambers as well as on the
21 record I have considerable concern about the internal
22 coherence of the statements and what I mean internal
23 coherence -- the tape itself I had trouble sometimes
24 understanding or trying to comprehend what the children
25 said. In other words, it was incoherent to me. As we all

1 know we later on used a computer with headsets and it was
2 much better for me to understand what the children said.

3 We attempted to get headsets from SLED over the
4 evening. They were brought in this morning early but were
5 inoperative because of some type of electronic or other
6 problems with the -- where they were and perhaps some
7 equipment as I was told here in the courtroom; so they --
8 or in the courthouse -- and they are of no use to us now.

9 That having failed it has been suggested that we move
10 the jury, the defendant, and counsel and the solicitor as
11 well as court personnel to the grand jury room where the
12 video and audio would be up close to the jurors. During
13 the break I asked them to just play a portion of it so I
14 could listen to it to see if it was more coherent today
15 than it was yesterday. It still is not the best in the
16 world; so I am going to admit it and I am going to allow
17 the jurors to start listening to it, but I am going to
18 give them a caveat or instruction that if they are unable
19 to understand the conversations between the interviewer
20 and the alleged victims then I am going to ask them to
21 advise me because, obviously, if they can't understand it
22 and hear it -- I mean, they can hear it but they can't
23 understand it, it serves no purpose for anybody.

24 Any suggestions to that way of proceeding by the
25 state? Any suggestions, objections, comments, whatever

1 you may have?

2 MRS. YOUNG: No, sir. I just received information
3 from Mrs. Adams. She fiddled with the speaker wires. She
4 thinks it is better. I understand we are just going to
5 have to try this and it'll be your call at the appropriate
6 time.

7 THE COURT: Well, I certainly don't want to preclude
8 any testimony that is vital to the prosecution of this
9 case, but I certainly don't want the case being
10 compromised with testimony that people can't understand.
11 So I don't know any other way to do it than let's get
12 started with it and if the jurors are having trouble
13 understanding it, then I am going to have to make a call.

14 Any objection to that other than -- I know you object
15 to having it in otherwise, but I am going to rule it
16 admissible, but any objection from handling it from that
17 technological standpoint?

18 MR. HAYES: No, Your Honor.

19 THE COURT: And, likewise, Mr. Hayes, if y'all feel
20 like it's not coherent, please let me know and I'll
21 address it with you as well. I am not just going to leave
22 it in the jurors' hands. So, you may not agree with it,
23 but nobody has any objection to handling it in that
24 manner? Hearing none -- all right. Let's bring the jury
25 in. Let's bring the jury in. You'll take that next

1 witness and let's try to go until about 12:30 or a quarter
2 'til one. How does that sound to everybody?

3 Mr. Whittle, how about call the Bowery and tell them
4 one instead of 12:30.

5 BAILIFF MR. WHITTLE: Okay.

6 THE COURT: Mr. Hayes, let me see you and Ms. Agnew
7 at sidebar.

8 (Whereupon, a bench conference was held.)

9 (Whereupon, the jury came into open court at
10 approximately 11:50.)

11 THE COURT: Juror number 44, Mr. Jermaine Dunbar?

12 THE JUROR: Yes, sir.

13 THE COURT: How are you doing?

14 THE JUROR: Fine. You?

15 THE COURT: I am going to elevate you to the regular
16 jury panel. You can sit right there until we move again.
17 Unfortunately, that juror went sound asleep and I can't
18 have that; so if anybody gets sleepy, please raise their
19 hands. I have to have people paying attention.

20 We're going to move the lunch back until about one.
21 Let me tell you why we took a little longer for that
22 break. We have an interview that the children gave to at
23 the Child Advocacy Center and yesterday I had to review it
24 to make sure it met all of the requirements that it meets
25 for introduction. We had some trouble with the -- being

1 able to understand it -- the quality of the audio part --
2 and we attempted this morning to bring in some speakers
3 from SLED so you would all have earphones.

4 Well, when they brought them here at 7 o'clock this
5 morning there was some interference in the courtroom; so
6 that didn't work. So, what we've done is we've set it up
7 in the grand jury room and when the appropriate time comes
8 we're going to move back there to listen to that. I think
9 they've got one other witness before we get the that, but
10 that's sort of where we are right now.

11 Now did y'all select me a foreperson?

12 THE JUROR: (Raises hand.)

13 THE COURT: All right. When we come back -- I am not
14 going to make you do it right now -- take this seat down
15 here always. The rest of you can sit where you would
16 like. You sit with the regular jury panel for me, please.

17 Any objection to that comment that I made to them
18 about the audio?

19 MS. AGNEW: No, Your Honor.

20 MR. HAYES: No, sir.

21 THE COURT: All right. You may call your next
22 witness.

23 MS. AGNEW: The state calls Mandy Fredell.

24 MANDY FREDELL, after being duly sworn, testified
25 as follows:

1 THE CLERK: Have a seat in the witness box stating
2 your full name and spelling your last.

3 THE WITNESS: My name is Mandy Fredell. It is
4 F-R-E-D-E-L-L.

5 THE COURT: Speak up loud for me, please, ma'am, so
6 we can all hear.

7 DIRECT EXAMINATION

8 BY MS. AGNEW:

9 Q Mandy, I got to hear you all the way over here; so
10 you got the talk loud, Okay? How old are you?

11 A Thirty-six.

12 Q Do you have any kids?

13 A Yes, I do.

14 Q How many kids do you have?

15 A Four.

16 Q What are their names?

17 A MINOR 2 MINOR 1 Kelsey, and Chelsea.

18 Q Do they have the same father?

19 A No.

20 Q Are you currently married?

21 A No.

22 Q Have you been living with anybody?

23 A I used to.

24 Q Who did you used to live with?

25 A William Pou.

1 Q Do you see William in this courtroom today?

2 A Yes.

3 Q Can you tell me where he is sitting?

4 A (Indicating)

5 MS. AGNEW: Your Honor, let the record reflect that
6 the witness has identified the Defendant.

7 THE COURT: Thank you.

8 Q Mandy, are you aware of why we're all here?

9 A Yes.

10 Q Did you tell your daughters what to say here?

11 A No.

12 MR. HAYES: Objection.

13 THE COURT: What's the objection?

14 MR. HAYES: It is an improper question, Judge.

15 THE COURT: Overruled.

16 Q Did you tell your daughters to make up a story?

17 MR. HAYES: Objection; leading.

18 THE WITNESS: No.

19 THE COURT: All right. Sustained. Rephrase the
20 question.

21 MS. AGNEW: I'll move on, Judge.

22 THE COURT: Thank you.

23 MR. HAYES: Judge, I'd ask to have it struck from the
24 record.

25 THE COURT: Do what?

1 MR. HAYES: I would ask to have the last answer
2 stricken from the record.

3 THE COURT: She didn't answer it? Did she?

4 THE COURT REPORTER: Yes.

5 THE COURT: Ladies and gentlemen, y'all are the
6 judges of the credibility of the witnesses. You have to
7 determine who is telling the truth and who is not and
8 whether this lady instructed her children to or not to,
9 that's y'all's decision to make. Y'all are the judges of
10 the facts in the case.

11 Move along.

12 Q Have you told anybody what to say up here today?

13 A No, I haven't.

14 MR. HAYES: Objection; leading.

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury, the rules are this: That when you
17 call a witness to the stand, you have to ask them direct
18 questions. You can't lead them and suggest answers. An
19 example of that is, What day is it? Today is Wednesday.
20 Instead of, Today is Wednesday, is it not? That's
21 leading. When you're on cross examination you can lead
22 witnesses. So, that's what the objections are about.

23 So, Ms. Agnew, please ask your questions of your
24 witness in a direct manner.

25 MS. AGNEW: Your Honor, I don't have any other

1 questions for this witness.

2 THE COURT: Thank you. Any other questions by the
3 defendant?

4 MR. HAYES: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. HAYES:

7 Q How are you doing, Ms. Fredell?

8 A Hi.

9 Q You and Mr. Pou had a relationship together?

10 A Yes.

11 Q For six years?

12 A Yes.

13 Q In that six years you've had multiple children?

14 A Three.

15 Q Three. Okay. Earlier you said you had four. You
16 had MINOR 2 MINOR 1 Kelsey, and Kelsey. [sic]

17 A My son passed away. I have four living.

18 Q And the son was Mr. Pou's son?

19 A (Nods head.)

20 Q How old was he?

21 A He was almost three.

22 Q Almost three. What was he sick with?

23 THE COURT: That's not relevant.

24 MR. HAYES: Okay.

25 THE COURT: Please. Come on.

1 Q I'm sorry, but when did he pass away?

2 A March 7 of '09. I'm sorry.

3 THE COURT: Just take a deep breath. Take a second.

4 Q Are you okay?

5 THE COURT: Go ahead.

6 Q Ms. Fredell, you and Mr. Pou argued a lot over the
7 title to the trailer, didn't you?

8 A We argued over a lot of things.

9 Q So y'all argued a lot?

10 A (Nods head.)

11 Q Sometimes y'all had fights?

12 A (Nods head.)

13 THE COURT: Please answer yes or no.

14 THE WITNESS: Yes.

15 Q One time you were cut by a screwdriver?

16 A Yes.

17 Q And that was in a fight in the kitchen?

18 A Yes.

19 Q One time you were in the shower with MINOR 1 and
20 MINOR 2 and he came in and took the door off the shower and
21 was yelling at you over the title to the house?

22 A Yes.

23 Q And the girls would be present during these fights?

24 A On some, yes.

25 Q When did the girls tell you about the incident with

1 the couch?

2 A Right as all this was -- well, a few days before all
3 of this.

4 Q Okay. Specifically, when you mean a few days before
5 this, a few days before you were contacted by the police?

6 A Uh-huh.

7 Q So back in October of 2011?

8 A (Nods head.)

9 THE COURT: Answer yes or no, please.

10 THE WITNESS: Yes.

11 Q That's the first time you heard any mention about an
12 incident with the couch?

13 A Yes.

14 Q Is that the first time you heard about anything?

15 A As in?

16 Q Any kind of allegations of sexual abuse.

17 A Right before that is when I found the letter, but
18 other than that, no.

19 Q When did you find this letter?

20 A It was all within a couple of days of everything just
21 -- I found it and I asked my daughter about it.

22 Q Okay. Now, MINOR 2 and MINOR 1 are your two children
23 not with Mr. Pou?

24 A Right.

25 Q MINOR 2 and MINOR 1 don't have the same father

1 either?

2 A No.

3 Q Okay. Now, didn't Mr. Pou inform ^{MINOR 2} that her dad
4 was not, in fact---

5 MS. AGNEW: Objection, Your Honor. This is not
6 relevant.

7 THE COURT: How is this relevant? I mean, seriously.

8 MR. HAYES: Yes, sir. I'll move on.

9 Q Isn't it true that you were looking for other
10 homes -- other place to live during this time before? You
11 were trying to leave Mr. Pou?

12 A No. I never tried to look for another home.

13 Q Okay. I beg the court's indulgence.

14 THE COURT: Yes, sir.

15 Q So you didn't know anything about the couch incident
16 until some time in the week or two before---

17 MS. AGNEW: Your Honor, he's already asked this
18 question.

19 THE COURT: You have asked and answered it, but you
20 can ask it one more time. When did you learn about the
21 couch incident and how?

22 THE WITNESS: ^{MINOR 1} come and told me just a few
23 days -- like a day or two before the police contacted me.

24 Q Okay. So ^{MINOR 2} did not tell you and ^{MINOR 1} didn't
25 tell you the day it happened?

1 A No. They were scared.

2 Q Okay. And they didn't -- he wasn't forced to leave
3 the home and be gone for several days as a result?

4 A We were in the process of taking care of things when
5 all this went down. This just happened.

6 Q What I am asking you is this. As a result of
7 MINOR 1 or MINOR 2 telling you on the night that it
8 occurred that you made Mr. Pou leave the home, that's not
9 true; right?

10 A I confronted him, but, no, he won't leave.

11 Q Mr. Pou won't leave his home?

12 A My home.

13 Q Your home. But what I am asking you is this. On the
14 night with the incident with the couch, the girls -- did
15 they tell that you it happened?

16 A They told me some of what happened. I did not get it
17 all until they started talking to the CAC people. That's
18 when I found out everything.

19 Q When did the girls tell you the incident on the couch
20 happened?

21 A Like a day or two before the police was contacted.

22 Q All right. So you're saying that the girls told you
23 that the incident with the couch happened only a day or
24 two before the police was contacted?

25 MS. AGNEW: Your Honor, you told him one more time.

1 This has been about the fifth time.

2 MR. HAYES: Judge, I am just trying to nail down
3 exactly when she was informed.

4 THE COURT: She's answered it two or three times.

5 You can answer it one more time, ma'am. When did
6 they tell you, ma'am?

7 THE WITNESS: A day or two before the police came.

8 MR. HAYES: Thank you. I beg the court's indulgence.
9 I have nothing further. Thank you.

10 THE COURT: Anything on redirect?

11 MS. AGNEW: No, Your Honor.

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

13 MS. AGNEW: Your Honor, I would ask at this time
14 unless there is any other need that---

15 THE DEFENDANT: You know you lied.

16 THE COURT: What? What? Whoa.

17 Ladies and gentlemen, y'all step out.

18 (Whereupon, the jury exited the courtroom at 12:06.)

19 THE COURT: Turn around.

20 THE POLICE OFFICER: Sir, face this way.

21 THE COURT: Mr. Pou, look at me, please. You need a
22 minute to compose yourself?

23 THE DEFENDANT: (Shakes head.)

24 THE COURT: Are you okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Pou, I know this is a difficult
2 situation, but I cannot allow any further conduct such as
3 you just displayed. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You need a few minutes?

6 MR. HAYES: Judge, can we have a few minutes?

7 THE COURT: Just hold on. I'm talking to him.

8 Mr. Pou, do you need a few minutes?

9 THE DEFENDANT: No, sir.

10 THE COURT: Mr. Hayes, do you need a few minutes with
11 your client?

12 MISS ALVES: He'll be all right. Judge, I do have a
13 concern. Judge, I know that Mr. Pou was improper by
14 making the comment that he made, but he made the comment
15 when -- when he made the comment I immediately put my arm
16 on him and he turned around and was calming down.

17 I understand law enforcement's concerns for safety in
18 the courtroom; however, I think having four police
19 officers rush over here and standing in front of Mr. Pou
20 with the jury present was excessive in light of the
21 situation and I move for a mistrial at this point.

22 THE COURT: Thank you. Respectfully denied. We all
23 are cognizant of safety in this courtroom and what has
24 happened around the country. I applaud the prompt
25 response by law enforcement. It would not be necessary

1 had your client not made the outburst that he did.
2 Mistrial denied. Thank you.

3 (Whereupon, the jury came into open court at
4 approximately 12:09.)

5 THE COURT: Mr. Foreman, ladies and gentlemen of the
6 jury, oftentimes during the trial of a case it gets a
7 little emotional and sometimes we have to interrupt the
8 proceedings when emotions flow. I spoke with the
9 defendant. He is under control. He just got emotional
10 for a second.

11 However, in criminal cases when we have that type of
12 emotional display it's protocol for the officers to
13 approach the defendant; so they did what they were
14 supposed to do under the situation. So please don't hold
15 that against him in any manner whatsoever. The police
16 officers were responding as they're trained to do and,
17 obviously, this is an emotional case and Mr. Pou has the
18 right to get emotional. He just has to keep his emotions
19 under control and he has assured me that he can.

20 I was just informed by two of the jurors that they
21 were having a little bit of difficulty with hearing. I
22 tried to keep the young girls to speak up. I instructed
23 all of the jurors to raise their hand if they had any
24 problems and I did not see any hands raised. The last
25 witness was a little soft, but if we need to replay any of

1 that testimony for you we can do that.

2 The rest of the witnesses are -- will be
3 professionals. When I say professionals, social workers,
4 perhaps investigators, perhaps other types of things, and
5 they should not give you any trouble with the being able
6 to hear them. However, if anybody has any trouble at all
7 with witnesses at any time, please raise your hand and
8 I'll do the best I can to make them speak up.

9 Next witness, please, ma'am.

10 MRS. YOUNG: The state calls Kimberly Sawyer.

11 KIMBERLY B. SAWYER, after being duly sworn,
12 testified as follows:

13 THE COURT: Have a seat in the witness box stating
14 your full name, spelling your last.

15 THE WITNESS: My name is Kimberly Brown Sawyer;
16 S-A-W-Y-E-R.

17 DIRECT EXAMINATION

18 BY MRS. YOUNG:

19 Q Mrs. Sawyer, with the air and acoustics we're having
20 trouble hearing. I will ask you to speak as loudly as you
21 can. That would be great.

22 THE COURT: Well, not at loud as you can, but loud
23 enough for us to hear you.

24 Q Right. Loud enough so we can hear you. Mrs. Sawyer,
25 where do you work?

1 A At the Child Advocacy Center of Aiken County.

2 Q What is the Child Advocacy Center of Aiken County?

3 A It is a non-profit organization that is used for law
4 enforcement and the Department of Social Services to refer
5 children who have been allegedly abused physically,
6 sexually, neglect to come for forensic interviews.

7 Q What is your employment or role with the Child
8 Advocacy Center?

9 A I am the Child Advocate Coordinator.

10 Q How long have you been employed there?

11 A A little over two years.

12 Q Could you please describe all of your educational
13 background?

14 A I have a bachelors of science in psychology from
15 Wofford College and a masters in science in applied
16 clinical psychology from the University of South Carolina
17 Aiken.

18 Q Have you been through any specific training regarding
19 interviewing of children?

20 A I have been through the basic Child First course for
21 forensic interviewing which is a 40-hour course to be
22 certified to perform forensic interviews.

23 Q Speak up.

24 A And also several advanced forensic interview
25 trainings.

1 Q And if you could, please, describe a little bit -- I
2 can't remember what you call it. It used to have a
3 different name. Child First?

4 A It used to be called Finding Words and now it is
5 called Child First.

6 Q Describe that for the jury loudly, please.

7 A Okay. Child First is a protocol for interviewing
8 children. It gives you a specific -- well, an outline of
9 the types of questions, the manner in which you should
10 proceed, and your basic skills for interviewing children
11 in a leading non-suggestive way. The protocol goes
12 through -- it has an acronym called RATAC and it is your
13 basic guideline for how you should proceed through the
14 interview.

15 It begins with rapport building, then anatomy
16 identification, touch inquiry, possible abuse scenario,
17 and then at the end is closure.

18 Q So RATAC is spelled?

19 A R-A-T-A-C.

20 Q You said it was a 40-hour training?

21 A Yes.

22 Q Could you describe what sorts of things you did
23 during the training?

24 A At the beginning of the training you learn about
25 different types of questions to ask, different scenarios,

1 the potential reaction from children, how to make them
2 comfortable, how to put them at ease and also once
3 learning the protocol you have mock interviews with
4 children and also actors to -- that you're rated on and
5 are peer-reviewed.

6 Q What additional training, if any, have you been
7 through regarding interviewing children?

8 A I have been to several national symposiums and
9 conferences with workshops on interviewing and also just
10 children and child abuse in general.

11 Q Do you know approximately how many interviews you
12 conducted during your two years with the Advocacy Center?

13 A I have done 89 interviews.

14 Q Did you have an opportunity to interview MINOR 1
15 [REDACTED] in this case?

16 A I did.

17 Q And what was your understanding of why you were
18 interviewing her, how she got there?

19 A We received an intake from Investigator Blevins with
20 the Sheriff's Office that he had received a call that
21 something had happened with MINOR 1 and he had talked
22 with her and referred her to us to be interviewed.

23 Q So it would be correct to refer that as a law
24 enforcement investigation?

25 A Yes.

1 Q And do you know when you interviewed MINOR 1 What
2 was the date?

3 A It was October 11, 2011, I believe.

4 Q And do you know how old MINOR 1 was at the time of
5 the interview?

6 A She was 10.

7 Q Could you describe for the jurors the interview room
8 at the Child Advocacy Center?

9 A The interview room is a small room. It has a couch
10 and a chair and a couple of tables. It has an easel and a
11 microphone and a camera that's in the ceiling.

12 Q And are all the interviews at the Child Advocacy
13 Center recorded?

14 A Yes.

15 Q Are the children informed they're being recorded?

16 A Yes, they are.

17 Q And did you have a full interview with MINOR 1

18 A I did.

19 Q Did you inform her that she was being interviewed?

20 A Yes.

21 Q I mean, well -- excuse me, let me rephrase that. Did
22 you inform her that the interview was being recorded?

23 A I did.

24 MRS. YOUNG: Your Honor, may I approach the witness?

25 THE COURT: You may.

1 Q I am handing you what's been marked for
2 identification as State's Exhibit 1 and ask if you can
3 identify that, please.

4 A This is the DVD recording from my interview with
5 Minor 1 .

6 Q Have you had an opportunity to review that prior to
7 coming to court today?

8 A Yes, I have.

9 Q Does it appear to be a true and correct copy of the
10 interview that you had of MINOR 1

11 A Yes.

12 Q Are there any additions or deletions to that
13 interview?

14 A No.

15 MRS. YOUNG: Your Honor, at this time we'd move to
16 introduce State's Exhibit No. 1 into evidence and ask for
17 permission to publish it to the jury if you feel that the
18 timing is appropriate.

19 THE COURT: Certainly.

20 (Whereupon, State's Exhibit No. 1 was admitted into
21 evidence.)

22 THE COURT: Mr. Hayes, you're protected on the
23 in-camera objections and do you need to put anything else
24 on the record regarding that?

25 MR. HAYES: No, sir. I don't need to put anything

1 else on the record.

2 THE COURT: Well, let's do this. We got the video
3 set up in the grand jury room; so here is what I would
4 suggest.

5 Mr. Hayes, if you and Miss Alves would go ahead with
6 Mr. Pou with security and let's -- Adam, show them. I am
7 going to let him sit on the far right. If y'all would go
8 ahead and then I'll let the solicitor's office go ahead
9 and go in.

10 Mrs. Adams, tell them to walk back a second.

11 All right. Let's put this on the record. In just a
12 second I am going to let the court reporter go set up and
13 once she has set up please let me know and then,
14 Mr. Whittle, let's let the jury -- anybody need a
15 bathroom? Everybody okay? It won't take the court
16 reporter but a second to set up and then we'll bring the
17 jury in.

18 All right, Lisa.

19 (Whereupon, the following proceedings were held in
20 the grand jury room.)

21 THE COURT: Ladies and gentlemen of the jury, if at
22 any -- I am going to be sitting back here, but if at any
23 time you have trouble with this tape hearing it, let me
24 know -- or understanding it because if you can't
25 understand it, we're not going to play it all the way

1 through because it won't do you any good if you can't
2 understand it. So, everybody understand what I am saying?

3 MRS. YOUNG: Is it okay if she moves it to when they
4 actually come in the room?

5 THE COURT: Yeah.

6 (Whereupon, the video entered as State's Exhibit
7 No. 1 is played.)

8 THE COURT: Mr. Foreman, we're going to let you -- Is
9 it nice outside? What is it like?

10 BAILIFF MR. WHITTLE: I hadn't looked.

11 THE COURT: If it's nice do y'all feel like walking?
12 It's about two blocks. Everybody okay? All right. Y'all
13 enjoy your lunch. It is 1 o'clock. We've got some work
14 we got to do at 1:30 and 2 and then another motion at 2;
15 so let's start back at 2:30. If y'all get back before
16 2:30 you can enjoy the fresh air outside, but we need to
17 be back in the jury room about 25 after and we'll start
18 right at 2:30 and this tape is a few minutes longer and
19 we'll go from there. Don't discuss the case and don't
20 deliberate.

21 Y'all are all going to be together. You going to
22 walk down together. Everybody got their wallets? I am
23 just kidding. I am paying for it. The county is paying
24 for it. Y'all walk down together. They'll have a room
25 back in the back for you. Don't do let anybody discuss

1 the case. Y'all enjoy your lunch.

2 (Whereupon, the jury exited the grand jury room at
3 12:58.)

4 THE COURT: Okay. We're going to break 'til 2:30.
5 Thank you.

6 (Whereupon, a lunch break was taken.)

7 THE COURT: Anything by the state before we proceed
8 back?

9 MS. AGNEW: Not from the state, Your Honor.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: No, Your Honor.

12 THE COURT: All right. Bring the jury in, please.

13 (Whereupon, the jury came into the grand jury room at
14 approximately 2:57.)

15 THE COURT: Everybody enjoy your lunch? The deal is
16 we get lunch, but you have to stay awake after lunch.
17 We're going to continue on. I am going to sit back here,
18 but if you see that you're not being able to hear, Mr.
19 Foreman, let us know and we'll keep on going.

20 Hold on a second. The reason we're running twenty
21 minutes late is I had two lengthy hearings over lunch and
22 we took 10 minutes to gobble something; so we hadn't been
23 sitting back here twiddling our thumbs. That's what
24 happened.

25 (Whereupon, the video entered as State's Exhibit

1 No. 1 is played.)

2 THE COURT: Do y'all agree to let us go through the
3 drawing part and get back to the verbal part?

4 MR. HAYES: Yes, Your Honor.

5 (Whereupon, the video is fast-forwarded and then
6 continues to play.)

7 THE COURT: Any additional questions of this witness
8 by the state?

9 MRS. YOUNG: None by the state, Your Honor.

10 THE COURT: Any cross?

11 MR. HAYES: No, Your Honor.

12 THE COURT: Thank you. Call your next witness,
13 please.

14 MRS. YOUNG: The state is going to call Anne Laver.

15 ANNE LAVER, after being duly sworn, testified as
16 follows:

17 THE COURT: Please have a seat give us your full name
18 for the record spelling your last.

19 THE WITNESS: My name is Anne Laver; L-A-V-E-R.

20 DIRECT EXAMINATION

21 BY MRS. YOUNG:

22 Q Mrs. Laver, I am going to stand back here by
23 Mr. Mert. Since we're in a kind of an unusual position
24 and there is no amplification, if you don't mind speak
25 really loudly so all the jurors can hear you. Okay?

1 A Okay.

2 Q Where are you employed, Mrs. Laver?

3 A I'm with the Child Advocacy Center.

4 Q In what capacity do you work there?

5 A I'm the program coordinator.

6 Q How long have you been at the Child Advocacy Center?

7 A I've been there since its inception which was 2005.

8 Q What are some of your general duties with the Child
9 Advocacy Center?

10 A Well, my primary duty is to do the forensic
11 interviews at the Advocacy Center at this point.

12 Q Would you describe your educational background?

13 A I have a bachelor of arts in sociology.

14 Q And could you describe any particular training you
15 had regarding interviewing children?

16 A I have completed the basic forensic interviewing
17 class which is offered by the children's law office. It
18 is a five-day training curriculum and then I have
19 completed, I believe, four different advanced forensic
20 interview classes which are all at least 40 hours apiece.

21 Q What would be the main difference between your basic
22 original training and your advanced training?

23 A Well, the advanced training addresses -- does a lot
24 of peer review with interviews that we've conducted and
25 it's national; so it's all across the country -- forensic

1 interviewers from all over the United States that gather
2 with the training. We do peer reviews with that. We do
3 different issues involved in forensic interviewing and
4 those type of things.

5 Q And could you describe exactly what you mean by when
6 you're speaking about peer review at the advanced
7 seminars?

8 A Right. Peer review is -- we use our peers,
9 obviously, other forensic interviewers around the country
10 to observe your interviews and we use them to sort of
11 critique our interviews and use objective discussion with
12 us about what we did well and what we didn't do well and
13 what we could do better and that's across the country and
14 it's a national standard which is part of -- we're a
15 nationally-accredited center in Aiken; so it's part of our
16 national accreditation.

17 Q Could you tell the jury how many interviews you've
18 done since you've been working there?

19 A I think I've done about 1270-something, in that
20 range.

21 Q And if you would just briefly describe the set-up of
22 the room where you do interviews of the children.

23 A It looks kind of like a den. It is a small room with
24 a sofa or two chairs and across the country they're all
25 the same. They all look like a little room from a house

1 and there is nothing in there other than an easel and some
2 markers and that furniture and that's it.

3 Q Do you record these interviews as you do them?

4 A We do. We record all our forensic interviews at the
5 center.

6 Q Do you advise the children that they're being
7 recorded?

8 A We do. We tell them up front that -- show them the
9 camera and that we're filming it and why we're filming it
10 and let them know that that is there.

11 Q And briefly describe the protocol that you use when
12 you do these interviews with the children.

13 A We use a protocol that's called -- it is now called
14 Child First, but it's a national protocol and I think it's
15 now used in 17 states and South Carolina was actually the
16 first state to adopt this protocol and it's, you know, a
17 forensic-interviewing protocol that we're all trained in
18 throughout South Carolina and then in 17 other states
19 across the country. It is taught at the Children's Law
20 Office and it comes out of Corner House which is in
21 Minnesota and it---

22 Q Let me just kind of direct you.

23 A Okay.

24 Q I was specifically thinking about something called
25 RATAC.

1 A Right. We follow sort of a thing called RATAAC that
2 we refer to which is R-A-T-A-C and it is a general
3 format -- very general, very flexible format, but the
4 broad picture of it would be the interview would begin
5 with rapport building. Then you would seg-way into
6 anatomy identification and talking with the child about
7 basic anatomy and things that they call different parts of
8 the body, that kind of thing, and then you seg-way into a
9 touch inquiry and different kinds of touch and then from
10 there you would seg-way into what's called a possible
11 abuse scenario and then the C stands for closure and
12 that's R-A-T-A-C.

13 Q Mrs. Laver, did you have an opportunity to interview
14 a child named MINOR 2

15 A I did.

16 Q Do you recall when that was?

17 A I interviewed her in October of 2011.

18 Q And how old was MINOR 2 at the time of the interview?

19 A She was 11.

20 Q And how did she get referred to the Child Advocacy
21 Center?

22 A She was referred to us through Aiken County Sheriff's
23 Office.

24 Q Through law enforcement investigation?

25 A Yes, ma'am.

1 MRS. YOUNG: Your Honor, I'd like the approach the
2 witness but I am going to have a little difficulty.

3 THE COURT: You may.

4 Q I am just going to let you hang on to that and ask
5 you can you please identify that for us?

6 A This is a copy -- a copy of the DVD that was
7 conducted -- was, you know, for ^{MINOR 2} interview.

8 Q So it would be a copy of the interview you did with
9 her?

10 A Correct.

11 Q Have you had an opportunity prior to coming to court
12 today to review that interview?

13 A I have.

14 Q And is that a true and correct copy of the interview
15 you conducted?

16 A Yes, it is.

17 Q Are there any alterations or deletions or changes
18 that you are aware of?

19 A No, there are not.

20 MRS. YOUNG: Your Honor, at this time we would offer
21 State's Exhibit 2 into evidence and request it be
22 published for the jury.

23 THE COURT: All right. Mr. Hayes, any objections
24 other than the ones that you've already made in-camera?

25 MR. HAYES: I have none for this statement.

1 THE COURT: You renew those and you're protected.

2 MR. HAYES: I have none for this statement.

3 THE COURT: Okay. None for this statement. Thank
4 you.

5 (Whereupon, State's Exhibit No. 2 was admitted into
6 evidence.)

7 THE COURT: Ladies and gentlemen, Mr. Foreman, we're
8 going to -- we have one more tape and that will conclude
9 the videotapes; so let's listen to this one, please.

10 (Whereupon, the video entered as State's Exhibit
11 No. 2 is played.)

12 THE COURT: Mr. Foreman, ladies and gentlemen, we're
13 going to take about a 10-minute break. That will take us
14 until about 4:25, 4:20.

15 We got about how much longer?

16 MRS. YOUNG: An hour.

17 THE COURT: We're going to come back to do about 30
18 minutes to 5 o'clock. Then we'll come back and finish
19 this up and that will be the last tape. Let's take an
20 afternoon break and don't discuss the testimony. Let's go
21 until five and I think we'll be able to finish it up
22 tomorrow.

23 (Whereupon, the jury exited the grand jury room at
24 4:11.)

25 THE COURT: That particular juror just asked me a

1 question. She told me she has a doctor's appointment
2 Friday morning. I told her I'd discuss it with her before
3 we leave this afternoon.

4 Anything from the defendant before we break?

5 MR. HAYES: No, sir.

6 THE COURT: Ladies?

7 MRS. YOUNG: No, sir.

8 THE COURT: Sir?

9 MR. MCCARLEY: No, sir.

10 (Whereupon, a break was taken.)

11 THE COURT: Do I have permission from the state to
12 talk that one juror right outside in the hall before she
13 comes in?

14 MRS. YOUNG: Yes, sir.

15 MR. HAYES: Yes, sir.

16 (Whereupon, the jury came into the grand jury room at
17 approximately 4:40.)

18 THE COURT: All right. I apologize. It went a
19 little longer than I thought. I had to meet with the
20 Clerk of Court about a security issue about y'all having
21 to go through the metal detector after you came back from
22 lunch. It didn't suit me. If I can't trust y'all I can't
23 trust anybody.

24 We're going to go until a little after five. That
25 will leave a little bit of the video for tomorrow morning.

1 Before we leave tonight I'll talk to you about tomorrow.

2 Fair enough?

3 (Whereupon, the video entered as State's No. 2 is
4 played. A request was made by the jury to replay one
5 specific portion three times and then the video is
6 stopped.)

7 THE COURT: It is after five. It is getting dark
8 outside. Anybody having problems with their rides?
9 Ladies? Everybody? Okay. Is 9:30 okay in the morning?
10 Is that an imposition? Mr. Whittle is cooking. What do
11 y'all want? Choices? Sausage biscuits I promise you in
12 the morning.

13 If there is a line downstairs take your badge and
14 show them that my jury is to get to the front of the line
15 straight in. We'll have sausage biscuits and hot coffee
16 in the morning. We'll start at 9:30. I know this is a
17 difficult situation, but y'all are doing a great job. I
18 appreciate you being so attentive. Please don't discuss
19 the case. Don't deliberate tonight. I'll see you bright
20 and early in the morning.

21 (Whereupon, the jury exited the grand jury room at
22 5:08.)

23 THE COURT: Anything for the record before we break
24 for the evening by the defense?

25 MR. HAYES: No, sir.

1 THE COURT: By the state?

2 MRS. YOUNG: No, sir.

3 THE COURT: All right. We are at 1:11:33, Jessie.
4 We'll go back maybe a couple of minutes in the morning or
5 I'll ask them how far they want to go back. Everybody
6 agree it is 1:11:33?

7 MISS ALVES: I was looking at the time on the top,
8 Judge. I see it. Thank you.

9 THE COURT: Okay. We'll break for the evening. It
10 looks like we might get through with testimony tomorrow;
11 so if anybody gets any specific jury charges other than my
12 standard let me have them in the morning. The verdict
13 forms will be as to each indictment not guilty or guilty.
14 They'll be specified out with the alleged victim's name
15 and the date reference on each one of them.

16 MS. AGNEW: My only concern is confusion with the CSC
17 with a minor first for a victim under 11 versus CSC with a
18 minor first---

19 THE COURT: I'll let you and your team give me some
20 proposed verdict forms about that.

21 (Whereupon, the proceedings were concluded for the
22 day and were reconvened on December 6, 2012 as
23 follows in the grand jury room:)

24 THE COURT: Ms. Agnew, anything for the record before
25 we start?

1 MS. AGNEW: No, your Honor.

2 THE COURT: Mr. Hayes?

3 MR. HAYES: No, sir, Your Honor.

4 THE COURT: Bring the jury in, Mr. Whittle, please.

5 (Whereupon, the jury came into open court at
6 approximately 9:33.)

7 THE COURT: Without wasting any time we're going to
8 start right back in. They tell me it's about 35 minutes
9 more, maybe a little less, and we're going to
10 fast-forward through any breaks they have. And then
11 once we finish that we'll go back in the courtroom and
12 conclude the testimony from the state and see where we
13 stand.

14 (Whereupon, the video entered as State's Exhibit
15 No. 2 is played.)

16 THE JUROR: Judge, there is a problem.

17 MRS. ADAMS: It's on the video.

18 THE COURT: We had something on the video. That will
19 go off in a minute.

20 (Whereupon, the video entered as State's Exhibit
21 No. 2 is stopped.)

22 THE COURT: All right. Any additional questions of
23 this witness, ma'am?

24 MRS. YOUNG: Just briefly, Your Honor.

25 DIRECT EXAMINATION

1 BY MRS. YOUNG:

2 Q Mrs. Laver, when you're conducting the interview you
3 repeated a lot of things back. Why did you do that?

4 A I have been trained to make sure that I have clarity
5 and understanding; so I have asked her early on if I have
6 said anything incorrect to correct me and she did
7 throughout the interview. So, I am repeating what I
8 believe -- you know, what I feel that she's heard and I
9 want to make sure that I understand exactly what she said;
10 so I may repeat back to make sure that she corrects me if
11 I misunderstood anything.

12 Q That's part of your training?

13 A Yes, ma'am, that is.

14 MRS. YOUNG: I have no further questions.

15 THE COURT: Any questions by the defense?

16 MR. HAYES: No questions, Your Honor.

17 THE COURT: Thank you. All right. Mr. Foreman,
18 ladies and gentlemen, we're going to take a quick, quick
19 break so we can get moved back into the courtroom. Y'all
20 will go back to your jury room. Don't discuss the case.
21 We'll get you right soon as we can get resituated.

22 (Whereupon, the jury exited the courtroom at 10:18.)

23 THE COURT: For the record I asked for the foreman to
24 check on the preference for lunch -- to walk down or order
25 in. All right. Let's go back out and get reset in the

1 courtroom and we'll continue on.

2 (Whereupon, a break was taken and the following
3 proceedings were held in open court.)

4 THE COURT: Ms. Agnew, who is your next witness?

5 MS. AGNEW: The state is ready to call the next
6 witness unless you want to deal with the verdict forms.

7 THE COURT: No, ma'am. Who is your next witness?

8 MS. AGNEW: David Blevins.

9 THE COURT: When are you going to call the expert?

10 MS. AGNEW: After---

11 THE COURT: Because we'll have to do a little
12 proffer on her in light of their motion that they say
13 she's not qualified.

14 What is your motion on that?

15 MR. HAYES: Judge, I would argue that --

16 THE COURT: Sir?

17 MR. HAYES: -- it is improper expert testimony. It
18 goes to the credibility of the children and that in this
19 case the credibility of the children is the ultimate
20 issue.

21 THE COURT: Well, do we need to do a proffer on that
22 or is that just your argument?

23 MR. HAYES: Judge, depending on what she testifies to
24 I may have an additional objection.

25 THE COURT: Well, bring the jury in.

1 (Whereupon, the jury came into open court at
2 approximately 10:26.)

3 THE COURT: What is your pleasure?

4 THE FOREPERSON: We'd like to eat out.

5 THE COURT: Eat out. You sound like my wife. That's
6 fine.

7 You may call your next witness.

8 MS. AGNEW: The state calls David Blevins.

9 DAVID BLEVINS, after being duly sworn, testified
10 as follows:

11 THE CLERK: Have a seat in the witness box stating
12 your full name and spelling your last.

13 THE WITNESS: David Blevins; B-L-E-V-I-N-S.

14 DIRECT EXAMINATION

15 BY MS. AGNEW:

16 Q Investigator Blevins, where do you work?

17 A Aiken County Sheriff's Office.

18 Q How long have you worked there?

19 A Seventeen years.

20 Q What is your job capacity?

21 A Investigator.

22 Q What does it mean to be an investigator?

23 A When the road deputies go out and make reports of
24 various crimes depending on the situation or the severity
25 of the crime it gets sent up to what they call CID for us

1 to investigate and look into.

2 Q What does CID stand for?

3 A I'm sorry. Criminal Investigative Division.

4 Q How long have you been an investigator?

5 A For 13 years.

6 Q Were you working back on October 6 of 2011?

7 A Yes, ma'am.

8 Q Were you working in investigations then?

9 A Yes, ma'am.

10 Q On that day did you have a chance to become involved
11 in the investigation in this case?

12 A Yes, ma'am.

13 Q Can you tell us about that?

14 A On October 6, 2011 I was dispatched to JD Lever
15 Elementary School in reference to possibly alleged child
16 abuse case.

17 Q Who did you meet with at JD Lever Elementary?

18 A I met with the initial responding deputy and then I
19 met with the guidance counselor.

20 Q Did you talk to anybody else while you were there?

21 A I talked to MINOR 1

22 Q Where did you talk to her?

23 A I talked to her in an office-type room off to the
24 side of the main office of the school.

25 Q Was anybody else with you when you talked to her?

1 A No.

2 Q Why not?

3 A I asked her prior to going in if she felt comfortable

4 talking with me alone and she said she did.

5 Q How did MINOR 1 appear to you that day?

6 A She was fine, normal, relaxed.

7 Q In talking with MINOR 1 did she indicate anything to

8 you?

9 A Yes.

10 Q Did she indicate any abuse to you?

11 A Yes, she did.

12 Q Did she say when that occurred?

13 A She -- based on her age and her timeframe she said --

14 I gathered it was a few months prior to me talking to her.

15 Q Did she say how old she was?

16 A She would have been nine years old.

17 Q Did she say where this happened?

18 A She said it happened at their house.

19 Q Did you know where they lived?

20 A Only on the incident report which would have been at

21 [REDACTED] at that time.

22 Q Is that in Aiken County?

23 A Yes, ma'am.

24 Q What did you do after you talked to MINOR 1

25 A I left there and went to Aiken Elementary School.

1 Q Did you go straight there or did you make any stops
2 on the way?

3 A I went straight there.

4 Q What did you do when you got to Aiken Middle School?

5 A I met with the guidance counselor, Assistant
6 Principal Mrs. Keating; advised her of why I was there and
7 what the circumstances was and that I needed to talk to a
8 student.

9 Q Did you talk to any students while you were there?

10 A Yes, I did.

11 Q Who did you talk with?

12 A MINOR 2

13 Q Where did you meet with her at?

14 A I met with her in the assistant principal's office.

15 Q Was anybody with you when you met with her?

16 A Yes, Ms. Keating was present.

17 Q Why was that?

18 A I asked MINOR 2 that I needed to talk to her and I
19 asked her if she felt comfortable talking to me alone or
20 would she prefer having somebody with her and she
21 indicated that she would like to have Ms. Keating present.

22 Q How did MINOR 2 appear to you that day?

23 A At first she was very -- just typical 10-year-old
24 child.

25 Q You said at first. Did that change?

1 A Yes, it did.

2 Q How did it change?

3 A During the course of the interview the questions I
4 was asking her about she became very withdrawn and upset.

5 Q And by upset, what do you mean upset?

6 A She was crying, scared.

7 Q Did she indicate any abuse to you?

8 A Yes, she did.

9 Q Did she tell you when that occurred?

10 A She told me it started when she was around eight
11 years old and continued up until shortly before the
12 interview.

13 Q Did she say where that abuse occurred?

14 A She named off two addresses -- one being [REDACTED]

15 [REDACTED] in Aiken County and the current residence of [REDACTED]

16 [REDACTED] in Aiken County.

17 Q After you spoke with both MINOR 1 and MINOR 2, what
18 did you do at that time?

19 A I talked---

20 MR. HAYES: Objection.

21 THE COURT: Restate the question.

22 MS. AGNEW: After you spoke with the girls what did
23 you do at that time?

24 THE COURT: What is the objection?

25 MR. HAYES: Judge, he is limited to witness of the

1 time and place. Anything beyond that I believe is outside
2 of the scope.

3 THE COURT: Say that again.

4 MR. HAYES: Anything beyond that would go to
5 credibility, Judge, of the children.

6 MS. AGNEW: I am not asking a hearsay question.

7 THE COURT: Overruled.

8 Q What did you do after talking to the girls?

9 A I contacted the Department of Social Services and the
10 children's mother.

11 Q Did you refer the children to the Child's Advocacy
12 Center?

13 A Yes, I did.

14 Q Tell me, Investigator Blevins, during the course of
15 your investigation did you look for DNA?

16 A No.

17 Q Why?

18 A Based on the children's disclosure and timeframe
19 there would have been no DNA to gather.

20 Q Did you ultimately make a decision to get warrants in
21 this case?

22 A Yes, I did.

23 Q And who did you get warrants on?

24 A I got warrants on William Pou.

25 Q Did you ever meet William Pou as part of your

1 investigation?

2 A Yes, I did.

3 Q What did he look like?

4 A He was a little bit thicker, heavier, short-cut hair,
5 close-cut, had somewhat of an unshaven face.

6 Q Does he look any different to you today?

7 A Yes, he does very much.

8 Q Tell me, Investigator Blevins, did the children's
9 mother ever call police to have y'all investigate?

10 A No.

11 MR. HAYES: Objection; hearsay.

12 MS. AGNEW: It's not going to the substance of any
13 statement.

14 THE COURT: I'll sustain it.

15 Just disregard that, ladies and gentlemen.

16 Q Do you know if the girls were expecting you that day?

17 A No, they were not.

18 Q Do you have any knowledge if the girls were able to
19 speak to each other between the times that you spoke with
20 both of them?

21 A No.

22 THE COURT: You have no knowledge or what?

23 THE WITNESS: No, sir. I have no knowledge of that,
24 no.

25 MS. AGNEW: Thank you. No further questions.

1 THE COURT: Anything on cross, Mr. Hayes?

2 MR. HAYES: I beg the court's indulgence. Judge, I
3 have no questions.

4 THE COURT: Thank you. You may step down. Next
5 witness.

6 MS. AGNEW: The state calls Kate Chappell.

7 KATHERINE N. CHAPPELL, after being duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat in the witness box stating
10 your full name, spelling your last.

11 THE WITNESS: My name is Katherine Neese Chappell;
12 last name C-H-A-P-P-E-L-L.

13 THE COURT: Ma'am, can you speak up a little louder?
14 The jurors have to hear you.

15 THE WITNESS: Sure. My name is Katherine Neese
16 Chappell.

17 DIRECT EXAMINATION

18 BY MS. AGNEW:

19 Q Ms. Chappell, what do you do for a living?

20 A I am a Clinical Assistant Professor at USC in the
21 College of Nursing in Columbia.

22 Q How long have you been doing that?

23 A Since 2006.

24 Q What kind of classes do you teach at the school
25 of nursing?

1 A I teach primarily pediatrics courses, undergraduate
2 clinical as well as graduate clinical courses for nursing
3 students and for nurse practitioner students.

4 Q Do you supervise any students' work or research?

5 A I do a little bit of research supervision -- honor
6 students that most recently my student wanted to look at
7 autistic student in the ED and how we can help facilitate
8 that experience for them and I supervise clinical
9 experiences.

10 Q And what kind of education background do you have to
11 do that?

12 A I have a bachelors of science in nursing from USC. I
13 have a master's of science in nursing with pediatric
14 primary care as my specialty at USC. I am also certified
15 as a pediatric nurse practitioner.

16 Q Do you hold any other positions besides being a
17 professor at the school of nursing?

18 A As far as my position there in our faculty practice
19 plan I work as the nursing practitioner who provides
20 medical exams at the Child Advocacy Center of Aiken.

21 Q Have you ever worked anywhere else where you had to
22 do medical exams for children?

23 A Yes. As a nurse I worked in pediatric intensive care
24 and then medical exams in pediatric neurology. I had a
25 contact with them also through USC.

1 Q Approximately how many children medical exams or
2 children's medical exams did you do at that time?

3 A With neurology?

4 Q Uh-huh.

5 A Approximately 250 or more.

6 Q And how many medical exams have you done at the Child
7 Advocacy Center?

8 A During my training period for the Child Advocacy
9 Center position I saw 20-plus children with other
10 providers who are certified and then at the center I've
11 seen just over 120.

12 Q Now you mentioned training. Can you tell us what
13 kind of training you've had to go through in your career?

14 A Specific to?

15 Q Specific to, I guess, child -- child medical exams
16 and pediatrics.

17 A Okay. So as part of my master's degree we did
18 clinicals with primary care as well as specialty areas of
19 pediatrics; so we had clinical and I saw probably in the
20 neighborhood of 400 children or 300.

21 Q And if I can stop you there.

22 A Yeah.

23 Q Can you explain what clinical means?

24 A Sure. Absolutely. So in clinical we are with a
25 preceptor. A preceptor is either a physician or a nurse

1 practitioner or a physician's assistant. All of mine were
2 nurse practitioners or physicians who is an expert in
3 their field, well experienced, and you go and spend
4 clinical days with them at their site and they supervise
5 your exams. They supervise your diagnostic decisions and
6 those sorts of things.

7 Q In addition to that training during your master's
8 have you gone through in any other training?

9 A Yes. To prepare specifically for the role of the
10 Child Advocacy Center I am part of a network in the
11 state -- the South Carolina Child Abuse Medical Response
12 System -- which requires a certain amount of training to
13 make sure that those providing those exams are all on the
14 same page and doing the same evidence-based practice. So
15 the requirements for that, we are required to do a medical
16 training at the academy which is a National Child Advocacy
17 Center offering and that's a three-day training and then
18 we also are required to do a minimum of three days -- I
19 actually did six because I just wanted more experience
20 with different providers, but a minimum of three days with
21 providers in the state who are already experienced in
22 seeing patients who had been potential victims of child
23 abuse or neglect.

24 Q You have already mentioned this, but do you have any
25 certifications?

1 A I am certified as a pediatric nurse practitioner,
2 yes.

3 Q Do you have to do any type of continuing education
4 requirements to maintain that?

5 A Yes. Every year I have to do at least 15 hours of
6 continuing education to maintain that requirement. There
7 are -- that particular certification works in cycles. So
8 you can potentially use other things for your 15 hours,
9 but I have to get 15 hours regardless for the SCCAMRS or
10 S-C-C-A-M-R-S network.

11 Q Have you attended any conferences on pediatrics,
12 child abuse or child exams?

13 A Yes. This year I attended the Sara Schuh Child Abuse
14 Conference which is in April held in Charleston by MUSC
15 and I attend some state-level conferences to get
16 continuing education hours, pharmacology or prescribing
17 hours and I've attended some other -- every year I attend
18 at least one or two conferences.

19 Q Are you a member of any professional associations?

20 A I am a member of the American Nurses Association, the
21 South Carolina Nurses Association, the National
22 Association of Pediatric Nurses and Practitioners, Sigma
23 Theta Tau which is the nursing honor society.

24 Q Do you hold any positions in those associations?

25 A Currently with the South Carolina NAPNAP which is

1 what we called the National Association of Pediatric
2 Nurses and Practitioners currently I am the treasurer for
3 the state chapter there. I am also the treasurer for the
4 nurse educator chapter of the South Carolina Nurses
5 Association.

6 Q Have you ever had any publications?

7 A I actually had a publication accepted earlier this
8 year. We're waiting for the exact publication date
9 because they kind of give notice, hey, you've been
10 accepted and in the next year we'll put it into the
11 journal and that one is going into the Journal of Nursing
12 Management.

13 Q And other than teaching classes as a professor at the
14 college, do you ever teach any seminars?

15 A Yes. I currently fulfill a contract for USC teaching
16 about newborn assessments for nurses who are going out to
17 do post-partum visits through South Carolina DHEC.

18 MS. AGNEW: Your Honor, at this time we would offer
19 Ms. Chappell as an expert in pediatric nursing and child
20 wellness examinations.

21 THE COURT: Any cross examination of her
22 qualifications?

23 MR. HAYES: None, Your Honor.

24 THE COURT: All right. She'll be allowed to give
25 opinions in that field. Thank you. I qualify her as an

1 expert.

2 Q Now, Ms. Chappell, you mentioned that you perform
3 medical exams or medical examinations on children. Can
4 you kind of tell the jury what those involve?

5 A Specific to the Child Advocacy Center?

6 Q Sure.

7 A So at the Child Advocacy Center we take a head to toe
8 approach to the medical exam because we know that children
9 who are being seen for possible allegations of abuse or
10 neglect may possibly have other health issues just like
11 any child who could go into any doctor's office on any
12 given day. So, for my exams I have either a nurse or a
13 nurse practitioner student -- that type of person help me
14 out so that while I'm gathering history from the parent
15 and making sure I understand their medical history before
16 I see them, the person helping me is talking to the child
17 and saying, So this is what's going to happen in your
18 check-up, and it actually makes things go really smoothly
19 and I wish that we had that opportunity in every practice,
20 but they explain to them the procedure that I am going to
21 follow which is that I start with the hands and the feet
22 because it's less threatening to the children when you
23 start with things that are farther away from their
24 personal space.

25 Then we move on to check out the tummy. I like to

1 try to guess what 4-years-olds had for breakfast. I am
2 right a lot. I love it. Then we do the private parts
3 and, you know, whenever they're explaining that part it's
4 -- and when I am explaining it to the parents I do say I
5 would be doing this in any setting because it's an
6 important part of the body just like everything else and
7 we don't want to skim over one part of the body just
8 because it happens to be private.

9 We check the private parts only on the outside. I
10 don't use any instrumentation to do that. I do --
11 occasionally if it's an older girl I do use a Q-tip just
12 because it helps me kind of smooth out some tissue so that
13 I can make sure I'm seeing what I need to see and after
14 that part we put bottoms back on. We stay dressed as much
15 as possible the whole time.

16 Then we look at the eyes, the ears, the mouth, check
17 out the hair and make sure we don't have any fun friends
18 living in our hair and talk to the child about their
19 health and whether they have any questions and I do also
20 because I would do this in any exam that if I am seeing
21 the child not frequently I would check on making sure that
22 they know that they're safe and how can they make sure
23 that they're safe.

24 Q You mentioned starting with the hands and the feet
25 and trying to keep the child clothed as much as possible.

1 Why do you do those things?

2 A Well, it would probably work better for adults, too,
3 in check-ups if we didn't see if we could get everybody
4 stripped down and put them in a paper gown, but for little
5 kids, you know, we want to make sure that they feel
6 comfortable and the more they're able to kind of keep
7 things for themselves the better off they are. They're
8 just more comfortable. They're more willing to
9 participate.

10 Q Are children often initially uncomfortable with
11 medical exams?

12 MR. HAYES: Objection; leading.

13 THE COURT: Overruled.

14 THE WITNESS: It depends on their age, honestly, and
15 it depends on their past experiences with medical exams.
16 If they recently had, you know, like an ear infection and
17 so they had a really painful ear check they may be a
18 little skittish to go into a medical exam room, but
19 typically young children are really sort of unaware of
20 what's going to happen and as long as everything is
21 friendly and nothing hurts they're willing to play along.
22 For older children they, of course, start to get more
23 private about their body; so they can be a little
24 tentative at first.

25 Q Now, you mentioned the private part section of the

1 exam. Do you have an official name for that?

2 A The official name is anogenital exams. Of course, I
3 don't use that with children.

4 Q And when you're conducting that part of the exam what
5 are you typically looking for?

6 A I am looking to make sure they're healthy, number
7 one. There are a lot of possibilities just like any other
8 part of the body where there could be skin changes that
9 are causing discomfort, those types of things, and I am
10 also looking for any signs of possible trauma.

11 Q Can you actually see signs on trauma on the outside?

12 A Sometimes and if I can the inside exam where we use
13 instrumentation for females is more to look at the cervix
14 which is not really about trauma or whether anything has
15 ever been in that space that didn't belong there. The
16 external exam gives you more information about that.

17 Q Can you give us some examples of some of these signs
18 that you would look for?

19 A So you can see signs of acute trauma and that would
20 be -- just like any other sort of soft tissue that would
21 be bruising, bleeding, acute lacerations or tears in
22 tissue and you also look for chronic findings. There are
23 some chronic findings that can tell us that something
24 penetrating occurred in that area of tissue. I don't have
25 a crystal ball; so I can only say -- at the most I can say

1 that something penetrated this tissue and caused what we
2 call lacerations which would be the most extreme type of
3 injury.

4 Q How quickly do you see children for these exams after
5 there have been allegations of abuse?

6 A At this particular Child Advocacy Center our protocol
7 is that if it's 72 hours or less since the last abuse
8 occurred then they go to the emergency room because they
9 would need a rape kit to specifically look for those acute
10 signs of physical findings as well as DNA evidence and
11 that sort of thing. We see them or rather I see them at
12 some point after because these are more the chronic
13 findings which may be after a child has been to the ER. I
14 may see them two or three weeks after that or if it's a
15 child who did not go to the ER because of the timeframe of
16 their disclosure I see them at any point after.

17 Q Does that timeframe affect your expectations of what
18 to find?

19 A Yes. Certainly, acute findings within a few days are
20 going to go away just like any other tissue. If you get
21 punched in the nose in a few days hopefully I am not going
22 to be able to see that you got punched in the nose.

23 Q Is it odd to not find any signs of sexual abuse in
24 these exams?

25 A No, it is actually really common and especially

1 depending on the disclosure. If a disclosure is digital
2 penetration or if it is fondling I don't expect there
3 really to be any signs of that, but we still look to help
4 ensure the overall safety of the child.

5 Q And if you don't find any signs of sexual abuse in an
6 exam does that mean that nothing happened?

7 A No. Again, without a crystal ball I do not know. So
8 my report -- if everything is completely normal I report
9 that the child had normal anogenital findings on their
10 exam. This does not contradict any disclosures they may
11 have made because we know it's possible to be abused and
12 not have long-lasting physical signs or even acute
13 physical signs.

14 Q Did you happen to perform a medical exam on ^{MINOR 2}
15 [REDACTED]

16 A Yes.

17 Q When did you do that?

18 A That was in October of last year.

19 Q And where did you see her to do this exam?

20 A At the Child Advocacy Center of Aiken.

21 Q Did you -- how did you perform that medical exam?

22 Did you do it in the same way as you always do?

23 A I did. I spoke to the mother beforehand so that she
24 knew the procedure for the exam. I think it is always
25 important that the families kind of know what is going to

1 happen and the nurse practitioner student that was with me
2 that day prepared ^{MINOR 2} for what was going to happen when
3 I came in the room and then I went in the room and started
4 as usual first trying to talk to her and kind of build
5 some rapport or some friendship.

6 Q How did that go?

7 A Pretty much the minute I sat in front of her she was
8 very quiet, very tentative, looking down, maybe speaking
9 one word here or there, but not a whole lot of
10 conversation.

11 Q And did that medical exam go normally?

12 A It did not.

13 Q Can you tell us what happened?

14 A After trying to talk with her a bit and let her know,
15 so we're going to do the things that Lydia who was the
16 nurse practitioner student with me -- the things that the
17 two of you talked about; we're going to go ahead and do
18 our check-up. She allowed me to do the hands and feet.
19 We have a bench in the exam room. I typically start there
20 so we can kind of get a little comfortable and she allowed
21 me to do that part.

22 We moved to the exam table and I was going to check
23 her tummy and pretty much at that point when it was like,
24 okay, so we need to take off pants and we need to take off
25 underwear and we're going to wrap this cover around us to

1 do that part, she just kind of went into herself and began
2 to shut down and from a body-language perspective she
3 leaned forward and her hair was covering her face. I had
4 to kind of look under to see her face to try to make eye
5 contact with her.

6 Q Were you able to complete the exam?

7 A I was not able to complete all portions of the exam.

8 Q What part of the exam were you not able to complete?

9 A I couldn't complete the anogenital portion because
10 she was not answering my questions at that point and just
11 not able to move forward to taking off her pants and I
12 tried to talk to her a little bit about it and how, you
13 know, what was she concerned about and what did we need to
14 talk about before we did that part to make sure she was
15 comfortable and she basically wasn't responding to me at
16 all at that point. She was just looking straight down
17 into her lap and was crying a little bit -- not sobbing,
18 but just kind of tears falling.

19 Q So did you get any type of results from that part of
20 the exam?

21 A No. With a child in that emotional state I am not
22 going to force them to do anything. That's not fair to
23 them, and so I told her we're not going to do that part of
24 the exam today because you just don't seem ready, and once
25 I told her that and began playing with her -- she had on

1 silly bands. Once I began kind of touching her silly
2 bands and asking her which ones they were because I can't
3 ever tell she began to sit back up and tentatively
4 communicate with me again and we finished the other parts
5 of the exam -- the eyes and the ears.

6 Q Were you surprised by her reaction?

7 MR. HAYES: Objection.

8 THE COURT: I'll sustain that.

9 Q Can you tell us what, if anything, her reaction meant
10 to you in your field?

11 MR. HAYES: Objection.

12 THE COURT: Sustained.

13 Q Ms. Chappell, did you ever get a chance to complete
14 the medical exam of MINOR 2

15 MR. HAYES: Objection; asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: No. She did not return for an
18 additional exam.

19 MS. AGNEW: Thank you. No further questions.

20 THE COURT: Mr. Hayes, any questions?

21 MR. HAYES: No questions, Judge.

22 THE COURT: Thank you. You may step down. Next
23 witness.

24 MS. AGNEW: The state calls Dr. Alicia Benedetto.

25 THE COURT: Mr. Foreman, I have to take up a matter

1 outside of your presence. We'll take the morning break
2 right now. When we get back we'll probably go until about
3 12:30 and then y'all can walk down for lunch. Fair
4 enough? Don't discuss and don't deliberate.

5 MS. AGNEW: Your Honor, may Ms. Chappell be released?

6 MR. HAYES: No objection.

7 (Whereupon, the jury exited the courtroom at 10:58.)

8 THE COURT: All right. We had a pretrial motion, I
9 guess a motion in limine. It was titled motion to
10 suppress dealing with the testimony of Dr. Benedetto. I
11 assume I'm pronouncing that correctly. The motion says
12 this: Her testimony constitutes improper corroboration
13 testimony that is cumulative to the minor's testimony and
14 the testimony of Mrs. Laver and Sawyer. Her testimony is
15 only to tell the jury how a child acts in her opinion
16 after experiencing sexual abuse. Her testimony would
17 vouch for the veracity of the minor witness because it
18 attempts to elicit how the child must appear after there's
19 been a disclosure of sexual abuse. The only reasonable
20 conclusion to be drawn is that in her expert opinion the
21 minors are being truthful. The testimony constitutes both
22 improper bolstering and improper vouching.

23 The court is aware of numerous cases cited in State
24 versus Jennings 716 SE 2d 91 which says that an expert to
25 comment on the veracity of a child's accusations of sexual

1 abuse is improper; finding therapist indicating he
2 believed the victim's allegations were genuine was
3 improper; finding therapist's testimony the children were
4 being truthful in 95 percent of instances in which sexual
5 abuse was alleged was improper vouching and forensic
6 interviewer did not vouch -- strike that.

7 So the court is aware of the Supreme Court rulings
8 dealing with an expert's opinion about the veracity and
9 truthfulness of the alleged victim. Obviously, that
10 veracity is the sole province of the jury as the
11 fact-finders.

12 Madam Solicitor, what is the purpose of
13 Dr. Benedetto, if I am pronouncing that correctly?

14 MRS. YOUNG: Yes, sir, Your Honor. Dr. Benedetto
15 actually has not met with these children or reviewed their
16 interviews. She would not be offered or questioned in any
17 way about the veracity of their allegations. Under Rule
18 702 regarding testimony by experts, if scientific,
19 technical, or in this case other specialized knowledge
20 will assist the trier of fact to understand evidence or to
21 determine a fact in issue and that would be the reason for
22 the state offering Dr. Benedetto in this case.

23 THE COURT: What is she going to testify about?

24 MRS. YOUNG: Your Honor, we're going to offer her as
25 a witness -- as an expert rather in the area of child

1 sexual abuse dynamics which in this case there was delayed
2 reporting. There have been allegations of recanting.
3 There have been some inconsistencies, chronological terms
4 that the children have related, and she would be offered
5 to state in her opinion based on her experience in that
6 area why some of those things might be present which the
7 state believes would assist the jury in understanding the
8 children's reactions, the children's reactions on the
9 stand, specifically the children's reactions in the
10 forensic interview, but, again, it would be just her
11 general opinion testimony based on her being admitted as
12 an expert in the field of child sexual abuse dynamics.

13 She has been admitted in numerous areas in general
14 sessions in this state including the areas of forensic
15 evaluation and interviewing, child psychology, child
16 development, sexual abuse, psychological abuse, alienation
17 dynamics, competence to take oath, and child abuse
18 dynamics. She's been qualified as an expert in all of
19 those areas in General Sessions court and allowed to
20 testify.

21 THE COURT: Thank you. Mr. Hayes, I will more than
22 likely allow her to give testimony along those lines, but
23 will absolutely not allow her to give an opinion or
24 comment on these alleged victims' accusations, testimony,
25 or whatever. I'll be glad to hear from you.

1 MR. HAYES: Judge, I would argue also that under 702
2 that specialized knowledge to assist a trier of fact that
3 this goes strictly to credibility. There is absolutely no
4 physical evidence that -- the most critical question is
5 for the jury whether they believe the children are telling
6 the truth or not. I don't see how that this specialized
7 knowledge or child abuse dynamics expert can be able to
8 give anything to the jury of credibility or anything
9 outside of credibility.

10 THE COURT: She's not going to be allowed to testify
11 about credibility.

12 MR. HAYES: As to something that would be -- the jury
13 is expected to have common knowledge and being able to
14 assess credibility as a lay person.

15 THE COURT: Well, I doubt many ordinary citizens and
16 if I weren't in the position I'm in I certainly wouldn't
17 have -- I would hope I would not have a lot of knowledge
18 about sexual abuse in little girls and I think it is a
19 proper subject matter for expert testimony and I
20 respectfully deny your motion to exclude her altogether.

21 However, I caution the solicitor. Mrs. Beth Ann
22 Young is a seasoned solicitor. Don't even go close to
23 trying to elicit opinion testimony from this particular
24 witness dealing with the veracity of these two young
25 girls. Clear?

1 MRS. YOUNG: Yes, sir, Your Honor.

2 MR. HAYES: I would ask, Your Honor, if we could
3 proffer this testimony before.

4 THE COURT: No. I am capable of if she gets close to
5 that and if you don't object I will interrupt her.

6 MR. HAYES: Yes, sir.

7 THE COURT: All right. Y'all need a break before we
8 start back?

9 MRS. YOUNG: Your Honor, could we have a five-minute
10 break? It would be helpful to me.

11 THE COURT: Yes, ma'am.

12 (Whereupon, a break was taken.)

13 THE COURT: Anything for the record before we bring
14 the jury back in?

15 MS. AGNEW: No, sir.

16 THE COURT: Anything from the defense?

17 MR. HAYES: No, sir.

18 THE COURT: You need to get your client in here.

19 (Whereupon, the Defendant enters the courtroom.)

20 (Whereupon, the jury came into open court at
21 approximately 11:23.)

22 MRS. YOUNG: The state calls Dr. Alicia Benedetto.

23 ALICIA BENEDETTO, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat in the witness box stating

1 your full name, spelling your last.

2 THE WITNESS: My name is Alicia Benedetto;

3 B-E-N-E-D-E-T-T-O.

4 DIRECT EXAMINATION

5 BY MRS. YOUNG:

6 Q And, Dr. Benedetto, where are you employed?

7 A I am employed by the Department of Mental Health in
8 Columbia at the Assessment and Resource Center.

9 Q And in what capacity are you employed with the
10 Assessment and Resource Center?

11 A And it's known as the ARC which is a little easier to
12 say and I am a psychologist there. I am the chief
13 psychologist at Children's Advocacy Center.

14 Q And how long have you been employed in that capacity?

15 A I've been at the ARC full time for 11 years and then
16 part time for about two years before that.

17 Q Dr. Benedetto, would you please describe your
18 educational background?

19 A Sure. My undergraduate degree in psychology is from
20 New York University in New York and my master's degree and
21 my doctoral degrees are from St. Johns University also in
22 New York. Following completion of those programs I
23 completed a one-year internship at the William S. Hall
24 Psychiatric Institute in Columbia and following that I was
25 offered a position with the Department of Mental Health.

1 Q And do you hold any licenses?

2 A I am a licensed clinical psychologist in the State of
3 South Carolina.

4 Q And are there any requirements -- yearly requirements
5 or things of that nature to maintain that license?

6 A Sure. Continuing education is the main requirement
7 to maintain that license, but as part of my position at
8 the ARC in addition to sort of general continuing
9 education we have requirements to maintain accreditation
10 as a Children's Advocacy Center which involve more
11 specific trainings on issues related to child abuse and
12 that sort of thing.

13 Q So the ARC is the Child Advocacy Center that's
14 located in the in Columbia; is that correct?

15 A That's correct.

16 Q What are your duties with the ARC, Dr. Benedetto?

17 A I conduct forensic evaluations at the request of law
18 enforcement or child protective services. Over the years
19 I have conducted somewhere between 1500 and 2000
20 interviews of children when there are concerns of abuse.

21 In addition to forensic interviews and evaluations, I
22 also conduct therapeutic interventions with children when
23 abuse has been identified and a child has been referred
24 for therapy services to address the problem. I also
25 provide training state-wide to child abuse professionals

1 to help train on best practices in interviewing, to train
2 on the dynamics of child sexual abuse, and to help
3 interviewers understand everything that goes into
4 conducting a legally-defensible
5 developmentally-appropriate child-friendly interview.

6 Q Dr. Benedetto, do you actually do the training of
7 what used to be Finding Words that's now called Child
8 First?

9 A That's correct. I am on the faculty of Child First
10 and have been for about 10 years.

11 Q And that would be the training for the people who go
12 do the interviews in other locations?

13 A That's right.

14 Q And what specific training have you had to elevate up
15 to faculty position in training in this state?

16 A Sure. Well, in order to become a faculty member for
17 Finding Words you have to go through a process of a state
18 has to apply to be a state that's going to provide the
19 training. South Carolina was actually the first state.
20 That's something we can be very proud of here in this
21 state -- the first state to be allowed to disseminate that
22 training and so we go through a process where we apply for
23 it and are accepted and then once you've gone through the
24 training yourself you have to be observed by the
25 accrediting members of the agency who come and actually

1 watch you provide the training and determine that you are
2 providing it correctly.

3 Annually we're provided with updates and attend
4 trainings in advanced forensic interviewing to make sure
5 that we stay abreast of new research in the field; so we
6 all attend trainings regularly in that area to keep our
7 skills up.

8 Q And you stated you've been on the faculty for about
9 10 years?

10 A Yes.

11 Q And during that 10 years have you continued to do all
12 these continuing education courses that you've stated?

13 A Yes. I not only attend them, but I also provide a
14 number of continuing education courses. In addition to
15 Child First the ARC teaches an advanced Finding Words --
16 an advanced interviewing course every other year where we
17 teach on various subjects. I provide training as well as
18 attend it annually.

19 Q Would you be one of the people involved with peer
20 review and guiding of the people that come to the training
21 and the advanced training for the State of South Carolina?

22 A Sure. Peer review is actually a very important
23 element of what we do because research has shown that it's
24 important to do that in order to stay true to
25 best-practices interviewing. So we not only maintain peer

1 interview process at the ARC, of course, but we train
2 other CAC's on how to set up a peer review program and
3 what to put into it and how to maintain it.

4 Q And you stated you've done thousands of interviews
5 throughout the years?

6 A I would say --

7 Q Throughout the year.

8 A -- 1500 to 2000 would be a safe estimate.

9 Q Do you know approximately how many interviews that
10 you've peer-reviewed? Could you make an approximation of
11 something like that?

12 A Well, that would be difficult really to estimate
13 because we do peer review in a number of different ways.
14 It would kind of depend on how you break it down.
15 Sometimes other centers will send us interviews and ask us
16 to review it. So that would be one way and then we also
17 review our own interviews quarterly. In other words, all
18 the interviewers at the ARC submit an interview to be
19 reviewed by all of us and we watch it and critique it and
20 kind of go through and figure out what could have been
21 done differently -- what we might have tried if it didn't
22 go to way we felt it needed to. So, you know, that sort
23 of thing, but it would be difficult to get a number on
24 that, honestly.

25 Q And, Dr. Benedetto, have you testified as an expert

1 witness in the General Sessions court here in the State of
2 South Carolina?

3 A Yes.

4 Q How many times?

5 A I haven't kept track of that number, but I've been
6 doing it for about 10 years and I would say between family
7 court and general sessions court and a couple of court
8 marshals -- courts marshal nationally -- somewhere between
9 60 and 70 would be a safe estimate.

10 MRS. YOUNG: Your Honor, at this time the State of
11 South Carolina would offer Dr. Benedetto as an expert in
12 the field of child sexual abuse dynamics.

13 THE COURT: Any cross examination of her credentials?

14 MR. HAYES: Judge, I would object. The testimony has
15 been towards the advanced training in Child First.

16 THE COURT: Say that again.

17 MR. HAYES: The testimony that she has given today as
18 to her qualifications has all been towards the advanced
19 Child First training; nothing towards the child abuse
20 dynamics.

21 THE COURT: I have given you an opportunity to cross
22 examine her on her credentials if you want to. That's
23 what I've asked you.

24 MR. HAYES: No, sir. I don't want to cross her.

25 THE COURT: Thank you. She'll be admitted to testify

1 in the field as stated as an expert.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 normally our rules of evidence says this: That a witness
4 can only testify about things that they directly observed,
5 see, smell, touch. In other words, I see it raining
6 outside. I can testify about the rain coming down.

7 We have an exception to that rule. Someone who
8 because of education, training, and experience has gained
9 specialty in some area such as the area that we're talking
10 about here today, they're allowed to give opinion
11 testimony whereas a regular, normal lay witness cannot
12 give opinion testimony. So, she will be allowed to give
13 opinions and at the conclusion of the case I will instruct
14 or charge you on how you look at an expert witness'
15 testimony. That will be a charge on that. Thank you.

16 You may proceed.

17 MRS. YOUNG: Thank you.

18 Dr. Benedetto, you haven't been personally involved
19 with the children in this trial in any way, have you?

20 THE WITNESS: No, I have not.

21 Q You haven't spoken to them, met them, or observed
22 their interviews; correct?

23 A No, I have not.

24 Q Could you tell the jury what -- generally what child
25 sexual abuse dynamics means?

1 A Well, when you think about child sexual abuse it is
2 important to understand it is coming from the standpoint
3 of the child and I think often as adults some of the
4 behaviors that we sometimes see in children when they've
5 been abused seem kind of counter-intuitive. In other
6 words, they don't quite make sense to us as adults because
7 we think, well, if somebody did that to me I would tell
8 right away, I would run, I would scream -- whatever you
9 think you might do if you were in that situation, but
10 you're thinking of it as an adult and what we know is that
11 children don't respond that way.

12 Children don't necessarily feel empowered in the same
13 way and so there are a lot of different dynamics that go
14 into a situation and it's different for every child and
15 every family. It's not the same across the board, but the
16 idea of child sexual abuse dynamics is that it's important
17 to consider those factors and understand how those factor
18 might have an impact on a child.

19 Q In answering that question, Doctor, one of the things
20 you mentioned was not telling somebody right away. Is
21 there a term or a name for that?

22 A Sure. In our field we call it delayed disclosure and
23 what we know is that it's not at all unusual for a child
24 to delay disclosure. In fact, it is more common for
25 children to delay, and, you know, when you think about

1 that you have to think about, well, does a child delay for
2 hours or days or weeks or years? All of those are fairly
3 common, actually, and so that's one of the factors that we
4 look at.

5 Q And, Dr. Benedetto, based on your experience in the
6 field of child sexual abuse dynamics, what are some of the
7 factors or reasons that might cause a child to delay
8 disclosing abuse?

9 A Well, again, every child is different. Every family
10 is different, but I would say that the most sort of
11 comprehensive way of understanding it is fear -- fear of
12 something -- and it can be fear of negative consequences
13 to the family, even fear of negative consequences to the
14 alleged perpetrator whom the child might care about or
15 feel that the family needs in some way, fear because of
16 threats that have been made. Those can be explicit
17 threats not to tell or just implicit threats that you
18 understand that it would be a problem if you did tell.
19 Bad things might happen if you did tell.

20 Children can want to protect a parent, want to
21 protect their own place in the family. So, in other
22 words, children may fear they'll be taken out of the
23 family or that someone might face consequences such as
24 prison. It depends a lot on the age of the child, the
25 relationship they have to the alleged perpetrator, and

1 their understanding of what might happen if they tell.

2 Q And would a child's disclosure be affected if the
3 perpetrator was living in the home with them?

4 MR. HAYES: Objection; leading.

5 THE COURT: Sustained.

6 Q What effect, if any, would the perpetrator living in
7 the home have on a child based on your training and
8 experience in the field of child sexual abuse dynamics?

9 A Well, and I'll say again it depends on the child's
10 situation. Each child is different, but we do know that
11 sort of the relationship to the perpetrator is a very
12 important factor in whether a child feels comfortable and
13 or safe making a disclosure.

14 Q What opinion do you have, if any, regarding a child
15 who is in a home where they might be viewing domestic
16 violence in relation to disclosing abuse?

17 A Well, that would have to do with what I talked about
18 when I mentioned that the fear doesn't necessarily have to
19 be an explicit threat that's been made. If a child has
20 seen domestic violence in the home, of course, they may be
21 fearful that there might be danger if they told because,
22 in fact, they have seen dangerous things happen; so they
23 may be fearful for their own safety or the other parent's
24 safety.

25 Q Dr. Benedetto, based on your training and experience

1 in this field do you have an opinion about what effect the
2 reaction or non-reaction of the non-offensive parent may
3 have on the disclosure of a child?

4 A Sure. So the non-offending parent -- the parent that
5 has not done something to the child; that there are no
6 allegations against that parent -- their response to the
7 child when they find out is very important in whether the
8 child feels supported, whether they feel that they are
9 believed, whether they feel they're going to be protected
10 or not. You know, children depend on their caregivers for
11 everything, for emotional support and protection and if
12 the response of a caregiver is less than supportive and
13 protective that child may feel, well, you know, if my
14 parent doesn't believe me, who will? And if I don't feel
15 that my parent will protect me, you know, then nobody
16 will.

17 Q Dr. Benedetto, would you describe for the jury based
18 on your training and experience in this field the
19 phenomenon of how this reporting occurs by the children in
20 terms of how much at one time, if that makes sense?

21 A Sure.

22 Q I didn't ask that very well.

23 THE COURT: You're not speaking of the children in
24 this case?

25 MRS. YOUNG: No, sir.

1 THE COURT: Just children in general.

2 MRS. YOUNG: I'm speaking about children in general.

3 Based on your training and experience generally
4 speaking can you make any opinion about how they may
5 disclose?

6 THE WITNESS: Sure. And what we call that in this
7 field is the process of disclosure and we understand that
8 disclosure is not a discrete event that just happens --
9 you know, it happens, the child tells, and that's all
10 there is to it. We call it a process because children
11 will often test the waters by making a small disclosure to
12 see kind of what the reaction of the system will be. What
13 is the reaction of the person they tell? What happens in
14 their family? Did the consequences that had perhaps been
15 threatened come true? And then they may back off. So, it
16 is a process and it's influenced by the response of the
17 people who get that information.

18 Q And so breaking that down in general terms would it
19 be common for a child to disclose a little bit at a time?

20 A Exactly. And that's what we're talking about when we
21 say a tentative or partial disclosure that a child may
22 tell a little bit to one person and then may tell more if
23 the child feels comfortable and safe doing so and that can
24 be for a number of reasons.

25 Children don't necessarily understand the -- you

1 know, the importance of telling everything immediately.
2 They're not necessarily clear on how important this
3 information is. They may not quite understand the import
4 of it; so they may tell a little bit and kind of see what
5 happens. They may remember a little bit more and that's
6 not uncommon.

7 Q Dr. Benedetto, based on your training and experience
8 in this field have there been studies regarding generally
9 children's ability to remember chronology and to relate
10 that to people they are speaking with?

11 A Sure. Well, there have been studies on it. Memory
12 and suggestibility studies and, you know, what we learned
13 from those studies is that it's very important to ask
14 children questions in a well-considered manner and it
15 matters who is asking the questions and under what
16 circumstances -- so who is there when the child is being
17 asked -- what level of comfort do they have when they're
18 talking to that particular person.

19 Again, do they feel supported or do they feel, you
20 know, interrogated by that person -- kind of what is the
21 dynamic between the person whose asking questions? That
22 could be a parent. That could be an investigator. That
23 could be a guidance counselor. It could be another
24 sibling. It depends on the situation.

25 Certainly, we know that children's memory is affected

1 by trauma. The amount of time that passes between an
2 incident can affect how well they remember it and other
3 factors such as their comfort in who they're talking to
4 and their feeling that they are being supported in that
5 interview.

6 Q So speaking in general terms, Doctor, it wouldn't be
7 uncommon for children of sexual abuse to have
8 inconsistencies in memory based on your training and
9 experience in this field?

10 A It's not uncommon. We certainly look for some level
11 of consistency. In other words, a core consistency would
12 be so in other words that the alleged offender, for
13 example, the identity of that person doesn't change
14 because that would be very confusing, but things such as,
15 you know, what -- how old were you when it happened or
16 when did it stop or, you know, where are all the places it
17 happened, I mean, things like that you could imagine would
18 be very difficult for a child who is being interviewed if
19 we're talking about chronic abuse to go back and
20 immediately remember. I mean, many of us couldn't
21 remember what we, you know, ate yesterday, let alone if
22 somebody said something that happened several years ago.

23 Q If you would, please, Doctor, define for the jury
24 what you mean by chronic abuse.

25 A Chronic abuse would be ongoing as opposed to a single

1 incident of abuse. Chronic means over time, more than one
2 instance, repetitive.

3 Q Directing your attention to interviewing which you
4 apparently have a lot of experience in, could you
5 generally describe some body language or cues that you
6 look for when you're interviewing children who are alleged
7 victims?

8 A Sure.

9 MR. HAYES: Objection. That's over-broad, Judge.

10 THE COURT: Over-broad?

11 MR. HAYES: Yes, sir.

12 THE COURT: Overruled.

13 THE WITNESS: One of the things that I train on is
14 the importance of looking at not only -- listening not
15 only to the words that a child is using when they're
16 disclosing something, but also their body language, their
17 emotions in the room, and what's important to know about
18 that is that emotions can be different for different
19 children. Again, it can be one of those sort of
20 counter-intuitive things. Children may or may not express
21 a lot of distress.

22 In fact, one of the things that surprises us
23 sometimes even as many interviews as I've done is that
24 children are not always as emotional as we might expect
25 them to be in an interview. Again, it depends on that

1 child's demeanor, how comfortable they are with the
2 interviewer and their understanding of what's happening.
3 You know, part of what an interviewer tries to do is build
4 that child's comfort in the room; so we're looking to do
5 anything we can just to make them feel safe in that room
6 and so sometimes, you know, children are very comfortable
7 talking about things and they don't necessarily show
8 emotions that we as adults might think that you would show
9 if you were talking about sexual abuse.

10 Another response children sometimes have is a sort of
11 dissociative response and that refers to kind of what we
12 call a flat affect -- really no emotions at all and that
13 can be confusing for people sometimes because the child
14 seems to just be staring off into the distance and
15 describing something that, again, you would think might
16 bring up a lot of feelings, but that the child just kind
17 of goes into what we call a dissociative state to go
18 through and describe the experience.

19 Q Is that the reason for this RATAC protocol that's
20 been described by some other witnesses that there is a
21 reason to do interviews in a certain manner?

22 A That's certainly one of the reasons. The RATAC
23 protocol and other protocols are designed to be
24 developmentally appropriate, legally defensible, neutral
25 fact-finding kind of investigative interviews. At the

1 same time we are trying to create an atmosphere in the
2 room that is comfortable for the child to come in and talk
3 about something, but only to the extent that, again, it
4 remains a neutral interview.

5 Q Based on your training and experience, Dr. Benedetto,
6 do children have trouble confronting their abusers?

7 A Well, certainly, that can be a very frightening
8 experience for a child. It depends, again, on their
9 relationship to that individual. Some children are very
10 fearful and that would be based on perhaps past experience
11 with that person and their understanding of whether that
12 individual is going to be angry or dangerous or violent or
13 blaming of them in some way.

14 Other children, however, don't feel that way. It's
15 very individual to the child, but it certainly would not
16 be something that would be surprising.

17 MRS. YOUNG: I beg the court's indulgence. I have no
18 further questions for Dr. Benedetto at this time. Thank
19 you.

20 THE COURT: Mr. Hayes?

21 CROSS-EXAMINATION

22 BY MR. HAYES:

23 Q Dr. Benedetto, are you familiar with the facts of
24 this case?

25 A No. Only just that it's a child sexual abuse

1 allegation with some family dynamics involving. In other
2 words, it's not a stranger.

3 Q In your studies what has -- what precautions are
4 taken as to false allegations?

5 A Tell me a little bit more what you're asking.

6 Q Have you ever studied cases that are false
7 allegations?

8 A Certainly. The whole idea behind what we do is to
9 try to clarify and, as I said, provide a forum where the
10 facts can be elicited from a child; so every question we
11 ask is aimed towards doing that as opposed to leading a
12 child in a particular direction. That wouldn't serve any
13 purpose.

14 Q But still there are cases that involve false
15 allegations?

16 A Oh, certainly. There are sometimes cases that
17 involve false allegations, yes.

18 Q Is it not uncommon to find these allegations in
19 domestic cases?

20 A You can find them in any case. Sure, it's possible.

21 Q What about where there was distrust between parents?

22 THE COURT: Is that a question?

23 Q Sorry. If there more allegations or false
24 allegations found where there is distrust between the
25 two parents?

1 A That would depend. I guess I would need a little
2 more information. Distrust regarding what?

3 Q Like in a divorce case or a child custody case where
4 the parents are trying to fight over who is going to have
5 the child.

6 A Uh-huh. That is an important dynamic to consider.
7 Certainly if there are custody -- divorce custody issues
8 in a case it is important to consider whether that's an
9 element and it may or may not be relevant, but it is
10 important to consider it.

11 Q And it would be easy in those cases to exaggerate
12 child abuse?

13 A Well, I'm not sure -- I'm not sure I would say that.
14 I mean, I suppose that that could happen in any case that
15 a child could exaggerate just as an adult could
16 exaggerate, but I don't know that that would be limited to
17 that kind of a case.

18 Q Are there any scientific studies on the
19 characteristics or dynamics involved in allegations that
20 are made where there are false allegations?

21 A Can you---

22 Q During a family court dispute?

23 A So you're asking about -- I guess I am not sure I
24 understand the question. I'm sorry.

25 Q Is there any studies as to the dynamics between the

1 child and the allegations when there is a dispute between
2 the parents and the case is in family court over custody
3 of the child?

4 A Well, as I said I don't know of any -- Actually,
5 there are some studies that look at false allegations when
6 there are custody issues and those studies basically tell
7 us that we need to look at that very carefully, try to
8 determine whether or not that in some way is playing --
9 having influence on the child or whether that's just a
10 sort of secondary factor that, you know, is not really
11 related to the allegation.

12 MR. HAYES: I beg the court's indulgence.

13 Dr. Benedetto, didn't you do a presentation on
14 September 30, 2011 where you actually presented to a
15 conference the alienation dynamics in children and their
16 parents?

17 A Yes. Yes.

18 Q As well as evaluating allegations of abuse embedded
19 in divorce/custody litigation in Huntsville, Alabama on
20 March 28, 2011?

21 A Yes.

22 Q So there are some concerns as to whether there are
23 false allegations when you have these dynamics?

24 A As I said, it's definitely an important thing to
25 consider. It is one of those alternative hypotheses that

1 needs to be evaluated in the interview and as well as any
2 other investigation that takes place during the
3 investigation to help bring to light whether that is a
4 relevant factor or not.

5 Q And in those cases there is also a concern over
6 whether there is parental motivation for coaching?

7 A There can be a concern over that, yes.

8 Q And some of the factors in that to consider is the
9 custody and the visitation?

10 A Yes, it can be a parents's motive to gain economic
11 benefit or custody or visitation. All of those are
12 possible motives, certainly.

13 Q When you say economic benefit you mean monetary
14 issues?

15 A Correct.

16 Q As well as possible revenge?

17 A Yes.

18 Q How about misguided or distorted beliefs between the
19 parents?

20 A Yes.

21 Q Isn't it possible that a parent can exploit the
22 suggestibility of the child resulting in the false
23 statements or beliefs?

24 MRS. YOUNG: Your Honor---

25 THE COURT: Objection?

1 MRS. YOUNG: -- objection.

2 THE COURT: That's not a proper form of question for
3 an expert. Anything is possible. Sustained.

4 Q In your studies have you found that it's possible
5 that parents---

6 THE COURT: Sustained. You can't ask it that way.
7 In your studies have you found more likely than not to a
8 reasonable degree of --

9 MR. HAYES: Yes, sir.

10 THE COURT: -- certainty.

11 Q In your studies have you found it more likely or not
12 to a reasonable degree of certainty that the parents can
13 exploit the suggestibility of the child resulting in false
14 allegations?

15 A In my experience I have found that there is a small
16 sub-set of cases where that is a relevant dynamic and it's
17 important if you have a concern about that in an interview
18 to try and ask questions to help determine if that's a
19 factor in that particular case or not. So, in other
20 words, just because a case involves a custody dispute
21 doesn't preclude the possibility that a child's
22 allegations are true, nor does it confirm that they are
23 false allegations.

24 MR. HAYES: I beg the court's indulgence. Nothing
25 further, Your Honor.

1 THE COURT: Thank you. Anything on redirect?

2 MRS. YOUNG: No, sir, Your Honor. No further
3 questions.

4 THE COURT: Thank you, Doctor. You may step down.
5 May she be released from her subpoena?

6 MR. HAYES: No objection.

7 THE COURT: Next witness.

8 MS. AGNEW: Your Honor, at this time the state would
9 like to read into the record and enter into evidence
10 what's been premarked as State's Exhibit 4 which is the
11 aforementioned stipulation.

12 THE COURT: All right. Madam -- I mean, Mr. Foreman
13 and ladies and gentlemen of the jury, a stipulation which
14 the solicitor is getting ready to read to you is an
15 undisputed fact that is deemed to be true, not contested
16 by either side. So this is a fact that you don't have to
17 determine the credibility. This is a fact that will be in
18 evidence that both side agree to the truthfulness.

19 Any objection to that definition of stipulation?

20 MR. HAYES: No, Your Honor.

21 THE COURT: All right. You may read the stipulation.
22 Both sides have agreed to this.

23 MS. AGNEW: The state and the defense stipulate that
24 the Defendant William Wallace Pou has a prior conviction
25 for criminal sexual conduct with a minor second degree on

1 October 26, 1998 which is an offense listed in Section
2 23-3-430(c) or Section 23-3-430(d) of the Code of Laws of
3 South Carolina as amended and we would move this into
4 evidence as State's Exhibit 4.

5 THE COURT: No objection; correct?

6 MR. HAYES: No objection.

7 THE COURT: Thank you.

8 (Whereupon, State's Exhibit No. 4 was admitted into
9 evidence.)

10 THE COURT: Next witness, please.

11 MS. AGNEW: Your Honor, at this time the state rests.

12 THE COURT: That concludes the state's testimony. At
13 this time I need to discuss some matters of law with them
14 or go over some other things. It's a great time to take a
15 break. They are expecting you now a little earlier.
16 They're calling.

17 Mr. Whittle, who have you got going with them today?

18 BAILIFF MR. WHITTLE: Mert and Jimmie.

19 THE COURT: All right. Now, what kind of
20 arrangements have you made? I don't want them to go
21 through that metal detector when they come back.

22 BAILIFF MR. WHITTLE: They're going to bypass it.
23 We're going to have someone down there.

24 THE COURT: You got that under control?

25 BAILIFF MR. WHITTLE: Yes, sir.

1 MR. THURMOND: -- motion is probably ten or fifteen
2 minutes. I don't know if the lawyers would like twenty
3 minutes or so to collect their thoughts before they argue.
4 If you want Mr. Huff and I to go prior to we'd be happy to
5 accommodate them.

6 THE COURT: I've never seen the solicitor be so
7 accommodating. All right. We've got a 20-minute quick
8 motion. I am going to tell the foreman where we are and
9 we're going to proceed on tonight. Any objection to that?

10 MR. HAYES: No, sir.

11 THE COURT: All right. We'll stand at ease with
12 y'all until 2 o'clock.

13 (Whereupon, a break was taken.)

14 THE COURT: All right. Have y'all had a chance to
15 look at the verdict forms, Mr. Hayes?

16 MR. HAYES: Yes, sir.

17 THE COURT: Sir?

18 MR. HAYES: Yes, sir.

19 THE COURT: Are you okay with them?

20 MR. HAYES: Judge, on 997 I would object to the
21 language after October 4, 2011 where it starts in "and the
22 defendant having previously been convicted and plead
23 guilty." I don't think that's necessary for the verdict
24 form as well as the age of 11. It's got her name on it
25 and the indictment clearly stated what her age was. As

1 well as for the other verdict forms I would still object
2 to the age of the minor being on the verdict form.

3 THE COURT: Okay.

4 MR. HAYES: As to the instruction that the -- I'm
5 sorry.

6 THE COURT: Your objections are noted on the verdict
7 form. I am going to stay with what we got.

8 MR. HAYES: Yes, sir.

9 THE COURT: Anything else?

10 MR. HAYES: As to the proposed instruction that the
11 statement does not have to be corroborated I would like
12 the judge to instruct the jury that that is only for the
13 CSC and not the lewd acts.

14 THE COURT: Very well. I'll do that. Is that
15 correct? Let me see that statute real quick.

16 MS. AGNEW: Yeah, I think it only applies to that
17 section, Judge.

18 THE COURT: Only CSC first; is that correct?

19 MS. AGNEW: Yes, Your Honor.

20 THE COURT: And we're going to charge first degree
21 criminal sexual conduct with a minor and lewd act and
22 solicitation; correct?

23 MS. AGNEW: That's correct, Your Honor.

24 THE COURT: And then y'all all know what my other
25 charges are.

1 MR. HAYES: Yes, sir.

2 THE COURT: Reasonable doubt, duties of the judge and
3 lawyer, credibility of witnesses, presumption of
4 innocence, failure to testify, expert witness.

5 MR. HAYES: I would also, Judge, ask for our charge
6 as to the element of the crime of the previous CSC being
7 limited to just that.

8 THE COURT: I'll charge that. Anything else?

9 MS. AGNEW: Not from the state, Your Honor.

10 THE COURT: Okay. Ready?

11 Anybody out there want to come in, Mr. Bailiff?

12 (Whereupon, the jury came into open court at
13 approximately 2:06.)

14 THE COURT: Everybody okay? You're used to people
15 going to sleep.

16 THE JUROR: Absolutely.

17 THE COURT: Y'all have been a great jury. I
18 appreciate all that you've done. What we've got left now
19 are the final arguments. The state will present theirs
20 first followed by the defendant. Bear in mind the final
21 argument is not testimony. You've already heard all the
22 testimony; so these lawyers, obviously, represent their
23 side of the case and they'll be in an adversarial position
24 against each other arguing the evidence in the light most
25 favorable to their client. Please listen carefully to the

1 arguments.

2 Once the arguments are completed then I will instruct
3 you on some general propositions of law and then
4 specifically on the charges we're dealing with here today
5 and once we complete that y'all will be in a position to
6 start your deliberation. Normally, we don't take breaks
7 during the argument and all, but if anybody gets
8 uncomfortable raise your hand. Thank you.

9 Madam Solicitor.

10 CLOSING STATEMENT

11 MS. AGNEW: Thank you, Judge. Members of the jury,
12 this is not a case about a house title. This is not a
13 case about spouses cheating. This is not a case about
14 spouses fighting. This is not a case about whether or not
15 he's a bad man. This case is about that man William Pou
16 doing sexual things with his stepdaughters.

17 Now the defense is trying to say that these girls
18 have made this whole story up; that they're scared of this
19 man and he is a bad man and they want to get him out of
20 the house so they've made this story up. Well, members of
21 the jury, if they're making this story up because he is a
22 bad man, they've got plenty they can go on that they don't
23 need to make something up.

24 That's one thing that I think everybody in here can
25 agree on is that he's definitely a bad man. He is a

1 bully. He's got a temper. He is violent and he prays on
2 children. If these girls were going to make this story
3 up, why wouldn't they make it as horrible as possible to
4 make sure that they could get him out of the house? Why
5 wouldn't they come up here and say he had intercourse with
6 both of us -- not just with one? If they're going to make
7 this story up to get him out of the house, how come nobody
8 ever called the police?

9 Mama didn't call the police. Girls didn't call the
10 police. The police had to come to them. If they were
11 going to make this story up how come when they sat in this
12 seat right here they didn't point immediately at him and
13 say, That's the man? They didn't point at him because
14 they were terrified of him.

15 Do y'all remember MINOR 1 the first little girl?
16 When she was sitting here I asked her, I said, Look at
17 this wall. Look at that wall. Look at that wall. See if
18 you see him in the courtroom. She looked at every single
19 one of y'all and then she looked at me and she never once
20 even tried to look in that direction because she knew that
21 that man was sitting over there.

22 If these girls were trying to make this up to get
23 this man out of the house, why did it take so long on that
24 video for MINOR 2 to say what happened? Y'all sat there.
25 It took over an hour before this story came out. She was

1 worried about her mama going to jail. She was worried
2 about her little baby sisters not having a daddy. She was
3 worried about everybody else. If she was making this up
4 to get him out of the house, why is that not the first
5 thing she said?

6 Members of the jury, the reason that these girls got
7 up here and told you what they said, got up in front of
8 complete strangers that they've never seen before and told
9 you things that little girls that age shouldn't know about
10 is because it happened. It is because that's their
11 reality. That's what they've lived through because what
12 happened is that that horrible man did horrible things to
13 those girls.

14 He told an 8-year-old -- I'm sorry. He told a
15 9-year-old and a 10-year-old -- a third grader and a
16 fourth grader -- to perform oral sex on him, to suck his
17 thing, but he didn't say thing and the girls told you he
18 used the bad word. He told them to suck his D-I-C-K. He
19 even took MINOR 1 into his room and told her to do it
20 again, but, unfortunately, that's not all he did because
21 for four years when MINOR 2 was eight, when she was nine,
22 when she was 10, and when she was 11 he would take her
23 into that same bedroom where he took MINOR 1 when
24 MINOR 1 was either on the bus on the way home from school
25 or when she was in her room -- he took MINOR 2 alone into

1 his room. He pulled her pants down. He pulled her
2 panties down and he touched her and she showed you.

3 She said he touched me here. She showed you what
4 with. She said he touched me with that and he touched me
5 with that. When she was in third grade, when she was in
6 fourth grade, when she was in fifth grade, and when she
7 was in sixth grade he would touch her on her front private
8 part -- her cookie. He would touch on the outside. He
9 would touch on the inside, too. She told you in the video
10 that the touching would change; that he would touch on the
11 inside. She told you here that he would touch a little on
12 the inside. For four years month after month that's what
13 she lived through.

14 Now the judge has got 10 indictments and he is going
15 to go through each one with you and you're going to hear
16 all the charges. I will start with the two solicitations
17 of a minor. There is one for MINOR 1 and there is one
18 for MINOR 2 Solicitation of a minor means talking or
19 communicating with somebody in order to get them to
20 perform a sexual activity. Telling two little girls
21 sitting on a couch to suck his thing, that's solicitation
22 of a minor.

23 There is going to be four indictments for lewd act
24 upon a child; one for each year when MINOR 2 was eight,
25 when she was nine, when she was 10, when she was 11, and

1 lewd act as the Judge is going to tell you is an act upon
2 somebody that's sexual in nature and it's for your sexual
3 gratification. When he would use his hand and his front
4 private part to touch her cookie, that was a lewd act.

5 The last four indictments are for criminal sexual
6 conduct with a minor in the first degree. In three of
7 those are for when ^{MINOR 2} was eight, when she was nine,
8 and when she was 10 because as the Judge will tell you
9 criminal sexual conduct with a minor is a sexual battery
10 done on someone under the age of 11. It doesn't have to
11 be full-blown intercourse. The judge will tell you that
12 the slightest penetration counts.

13 There is a special criminal sexual conduct with a
14 minor and it's different because that last time ^{MINOR 2}
15 wasn't under the age of 11. She was 11, but the Judge
16 will explain that the law allows that if someone is 11 and
17 the defendant has a prior conviction then he can still be
18 guilty of criminal sexual conduct with a minor first
19 degree. That other thing that everybody agreed on besides
20 the fact that the defendant is a bad man, we all agreed
21 that the defendant has a prior conviction for criminal
22 sexual conduct with a minor in the second degree. As the
23 judge told you that's not something you have to determine
24 whether it's true or not. It is a fact.

25 Now, members of the jury, I don't get to come back up

1 here again. This is my last chance to talk to you; so I
2 don't get to talk about anything that he says, but I ask
3 you while he's talking stay focused. Don't get
4 distracted. Remember what this case is about.

5 The Judge is going to going to tell you about
6 reasonable doubt. It's not doubt beyond any doubt in the
7 world or beyond all doubt, but it's about being firmly
8 convinced. You saw MINOR 2 sit in this chair. You
9 watched her cry and she talked about what happened. You
10 watched her video. Tell me that's not firmly convincing.

11 For MINOR 1 and MINOR 2 this case doesn't end today
12 because their lives have been changed forever. When they
13 go home William Pou is still in the back of their minds.
14 For MINOR 2 her first boyfriend---

15 MR. HAYES: Objection; improper.

16 THE COURT: Sustained.

17 MS. AGNEW: This isn't over for them. Now, members
18 of the jury, I ask you to listen and y'all did a great job
19 even when the sound wasn't good. I ask you to listen
20 again because these girls tried time after time after time
21 to tell somebody what was going on. After the couch
22 incident MINOR 1 says she tried to tell her mom. Nothing
23 happened. MINOR 2 told you that she wrote her mom a letter
24 and her mom sat right there and said, yeah, I got the
25 letter. The letter was for her grandmother, but it never

1 made it because William got it.

2 Those girls then found help from someone else. The
3 police came finally. They both told the police what
4 happened. They went and were interviewed at the Child
5 Advocacy Center and they told the same story to the women
6 at the Child Advocacy Center and now yesterday those girls
7 sat in front of a room full of strangers and told all of
8 y'all their story. Listen to them. Find him guilty.

9 CLOSING STATEMENT

10 MR. HAYES: May it please the court, Madam Solicitor.

11 Ladies and gentlemen, remember at the beginning of
12 this trial I said there is one question at the heart of it
13 and that question is why would these girls come in here
14 and tell you something happened when, in fact, it did not?
15 Now, throughout this trial you have heard a lot about
16 Mr. Pou. You've heard a lot from the girls as to what
17 they've seen, what they experienced starting with a fight
18 in the kitchen.

19 They said they experienced watching a fight in the
20 kitchen when the mother came after Mr. Pou with a
21 screwdriver. He took it away from her and cut her on the
22 arm and on the ear. When asked about what they did
23 MINOR 1 said she cried. When I asked MINOR 1 what she
24 thought about it she said she was mean.

25 She then went on to tell you about the incident in

1 the bathroom where everybody was taking a shower. He
2 kicks the door open, comes in, and pulls the shower door
3 down and starts hollering and yelling over a title to the
4 house or whether there was cheating. Then they cried and
5 then they started laughing because they couldn't get out.

6 By no means is Mr. Pou the stepfather of the year.
7 That doesn't mean that he committed these crimes. They've
8 witnessed fights over who was fighting Mr. Pou and
9 Mrs. Fredell over who was cheating on who. They even took
10 part in it telling Mr. Pou that was one individual -- a
11 Jason that was a fat guy -- but it wasn't him and they
12 were entertaining it and supporting their mother.

13 They both tell you in the videos that y'all watched
14 we're mama's kids; not Mr. Pou's kids. These kids know
15 more than what an average 8, 9, 10, 11-year-old should
16 know. They're witnessing it. They're watching it. If
17 you have kids, you know they're like little sponges. They
18 don't necessarily comprehend everything, but they get
19 enough of it to make a mess of everything.

20 I questioned ^{MINOR 2} about her knowledge on the sex.
21 She said she interrupted them -- that the babies were
22 awake one night; that they were being quiet and you know
23 what that means; that she went into the room and told them
24 that the babies were awake. Her mama got up and went and
25 tended to the babies, but in the meantime she also told

1 her thank you for interrupting because I did not want to
2 do that with him. That's completely inappropriate and
3 that's giving this child knowledge that an 8-year-old,
4 9-year-old, 11-year-old wouldn't normally have.

5 MINOR 2 also told you that she was aware that Mr. Pou
6 had been to jail two times -- one time she thinks or -- it
7 was a marriage between him and a 19-year-old -- he was 19.
8 This girl was 14 and he went to jail for it. Now she also
9 knew that if she told somebody that he would get in
10 trouble for it. That's knowledge 11-year-olds normally
11 don't know. Normal people wouldn't tell their kids this
12 kind of information.

13 Now, the state says I'm saying that they're scared of
14 him. I never said they were scared of him. I said he was
15 mean and they didn't like the way he treated them and I
16 don't think any of the girls ever once on that stand said
17 they were scared of him or in any of their videos said
18 they were scared of him. As a matter of fact, MINOR 1
19 talks about playing basketball around the world with
20 Mr. Pou and that he would always win and he misses one
21 shot. MINOR 2 did the same thing -- talked about playing
22 basketball with Mr. Pou, that he would always win, and
23 they'd play around the world and he would miss one shot. I
24 don't think that indicates any kind of scared.

25 They also talk about play-fighting; that Mr. Pou

1 would play-fight with them, roll around in the floor.
2 MINOR 1 said it. MINOR 2 also told you that MINOR 1
3 would act like she's crying or hurt just to get Mandy
4 Fredell to yell at Mr. Pou to get him into trouble. That
5 doesn't sound like a child that's scared to me. If they
6 were scared of him, why would Mandy leave them with
7 Mr. Pou? They're alleging that they would leave them with
8 Mr. Pou and she would go to work. Why would a mother do
9 that?

10 The kids aren't scared of him. It don't mean they
11 like him. Being scared and being mean and liking somebody
12 are way different things. MINOR 1 told you about him
13 pushing a hamster off of a dresser in mama's room only to
14 have the other sister catch it.

15 Now in the video alleges that these incidents
16 took place on days that Mr. Pou would pick her up from
17 school and in the video she talked about carpooling with
18 an Isaac -- another child from school -- but and
19 MINOR 1 both told you that -- they're one year apart.
20 They both attended JD Lever. They both are at school at
21 the same time. They are one grade apart.

22 Now what kind of sense does it make for a parent or
23 an adult or a guardian to go to the same school where both
24 children are and take one home and make the other one ride
25 the bus and pick up a neighbor kid to carpool? That

1 doesn't make any logical sense. They both told you, too,
2 they rode the bus together when they testified -- not
3 making sense to me.

4 MINOR 1 also told you about her grandmother smoked
5 some and drinks and gets drunk and one time there was a
6 fight between Mr. Pou and the grandmother and that the
7 grandfather came and got -- if I remember right from the
8 video that the grandfather came and got the grandmother
9 off of Mr. Pou and that he had gone over to the house to
10 pick up the two babies -- his biological children Chelsea
11 and Kelsey.

12 Let's talk about MINOR 2 When Mrs. Laver is starting
13 to question her about the incident on the couch she
14 doesn't say I'm there. She says my sister told the cop
15 and she stuck with that and there was persistent
16 questioning. MINOR 2 tells you from the stand and from the
17 video that Ms. Fredell came home around 8 o'clock -- 7:30
18 or 8 o'clock. MINOR 1 says that after she was told to go
19 to the room and to suck his thing that she told him no and
20 that he sent her to her room and she had to stay in there
21 and it was some time late in the evening around midnight
22 she thought when her mother got home. MINOR 2 testified
23 that they both stayed on the couch and that their mama
24 came home around 8:30.

25 It is completely inconsistent and in the video MINOR 2

1 tells you, oh, yeah, she got down. She went to his room
2 and then he told her to give him a kiss on the lips and
3 she said no and sent her to her room. She didn't want to
4 go to her room because the animals make messes in there
5 and it stinks and that she cries because she don't want to
6 be in her room. That's inconsistent. In the video she
7 also tells you that they stayed on the couch. They both
8 were on the couch when their mama got home.

9 MINOR 2 was in that interview room for two hours.
10 After the first hour when the first break takes you hear
11 her ask the interviewer can I go get my picture that I
12 started drawing and the interviewer tells her, no, draw a
13 new one. You can draw a new one. She comes back. She
14 keeps telling her nothing happened, nothing happened,
15 nothing really happened. At 11:51:10 on that video, MINOR 2
16 says nothing ever really happened. Mrs. Laver says,
17 MINOR 2 I need to know the truth. You told the police
18 officer that something had happened and immediately after
19 that MINOR 2 says, Because, um, he was really mean and I
20 want to, um, get away and mama wouldn't do nothing; so I
21 did that so I could go to my papa's because he was really
22 mean.

23 What did she do after that? You told the police
24 officer something happened. What happened? She is
25 pressing her for what she told the police. MINOR 2 is

1 trying to tell her nothing happened. Nothing happened
2 with Mr. Pou and this is why nothing happened. He is
3 mean. My mama won't leave and I don't want to be there.
4 I want to be at my papa's. She testified up here her
5 friends are at her papa's. She likes it at her papa's,
6 but Mrs. Laver said, What did you tell the police, and at
7 that point in the video -- go back and watch it -- she
8 turns, stops making all eye contact with the interviewer,
9 puts her hand over her face and starts telling what she
10 told the police and at that point in the interview the
11 perception changed.

12 They were nicer to her. They went and got her chips,
13 got her a drink. Do you want to take something to your
14 mama? There is at least about four times if I counted
15 correctly the girl says nothing happened before it gets
16 drug out of her, but before it gets drug out of her she
17 tells them why nothing happened. Her mama sat right there
18 on the stand and said William would not leave. They
19 wanted him gone. They wanted him to get up and leave and
20 he wouldn't do it. Mama wasn't leaving. They fought over
21 the title to the house. He says, It's hers -- She says,
22 It's mine. The girls say it's not even either one of
23 their names. It is in their papa's name now.

24 This letter -- mama gets up here and says I found a
25 letter. I asked her, When did you find this letter? She

1 said about two weeks before all this started. In the
2 video ^{MINOR 2} says I wrote a letter to my nana, but my mama
3 found it. When was that? About two weeks ago. Then
4 later in the same video when she's being questioned about
5 did you ever tell anybody, does anybody know, she goes, My
6 mama. My mama knows. When did you tell your mama? Back
7 around the beginning of school and in the same breath she
8 says the beginning of the year.

9 They don't even know when they told -- when this
10 letter that we don't have ever came into existence. When
11 did they tell? When did mama find out? It's not
12 consistent with what the girls say. It's not consistent
13 with what mama says on the stand.

14 Throughout that video she's asked, Are you worried?
15 Are you worried to tell me? Why are you worried now to
16 tell me? Consistently repeating over and over when she
17 wasn't getting the answers. What does the girl do? I
18 don't want my mama to go to jail. That was her concern.
19 Why would her mama go to jail unless she had something to
20 do with it?

21 Ladies and gentlemen, the videos are in evidence. I
22 will ask you while you're in the jury room and you're
23 deliberating, don't take my word for it. Go back, watch
24 the videos. The girl persistently in the beginning of the
25 video tries to tell the truth -- nothing happened -- and

1 why she did what she did and I believe that this statement
2 because he's mean and I wanted to go live at my papa's and
3 my mama wouldn't do nothing answers the question I am
4 posing to you. Why would these girls come into this
5 courtroom and tell you something happened when nothing
6 happened? Because when they did try to tell them, the
7 ball had already started rolling and it was too late.
8 They could not stop it. It goes downhill from there. It
9 was out of their hands.

10 She got what she wanted in the short term. Children
11 don't reason like an adult. They see short term. I want
12 something and I want it now. I want to live at my papa's.
13 I want to be away from Mr. Pou. How can I accomplish that
14 because my mama -- she's not doing it. She's not going to
15 do it. If she was going to do it she would have done it a
16 long time ago. What can I do?

17 An opportunity presented itself to these girls and
18 they took it. Carpe diem. Seize the day. Seize the
19 moment. These girls seized this moment.

20 You heard from an expert. You heard me question her.
21 When there is questions and issues and dynamics as to
22 domestic disputes, money, revenge, there can be false
23 allegations. She said it. They even have studies because
24 they are concerned about such a thing. May I pose to you
25 this is one of those cases, be it money, be it revenge, be

1 it the children just seizing the moment to get away from
2 somebody they don't like -- that became blatantly clear to
3 them that the mama wasn't going to do it for them?

4 Ladies and gentlemen, there is not one stitch of
5 physical evidence. Not one. No DNA. No medical report
6 stating that there was an injury. The nurse told you that
7 from the stand. This is strictly a case on credibility
8 and that is what is before you.

9 Y'all are the sole determiners of fact. You decide
10 who is telling the truth and who is not. I say with all
11 of these items that I have pointed out to you there is
12 definitely a question of credibility that y'all have to
13 determine on whether these children are telling you the
14 truth. I believe that would also amount to reasonable
15 doubt.

16 JURY CHARGE

17 THE COURT: Mr. Foreman, ladies and gentlemen, the
18 charge is probably about 15 or 20 minutes. Anybody need a
19 bathroom break or can we go straight on into it? As I go
20 around the state in criminal cases the first part of the
21 instructions deal with general propositions of law that we
22 deal with on all types of cases in the general sessions
23 court; so let me go through those first and when I finish
24 that part then we'll specifically turn our attention to
25 the charges in indictments in this case.

1 As we've talked about on a number of occasions this
2 week the indictments in this case allege several different
3 offenses against the defendant and they are four
4 indictments for criminal sexual conduct with a minor.
5 Well, there is one of those and then there is three of
6 criminal sexual conduct with a minor in the first degree.
7 There are four indictments for lewd act upon a child and
8 then there are two indictments for criminal solicitation
9 of a minor as it pertains to each of the young ladies
10 MINOR 2 and MINOR 1

11 Each indictment charges a separate and distinct
12 offense. Even though they're the same offense there are
13 different dates in some of them; so you must decide each
14 indictment separately on the evidence and the law
15 applicable to it uninfluenced by your decision as to any
16 other indictment. The defendant may be convicted or found
17 not guilty on any or all of the offenses charged. You'll
18 be asked to write a separate verdict of guilty or not
19 guilty as to each indictment. So, you consider each one
20 of them separate and apart from the other and I'll give
21 you 10 verdict forms as to each one and they'll have some
22 dates in there where you'll have to differentiate between
23 them.

24 As to each of these 10 indictments the defendant has
25 plead not guilty and a plea of not guilty puts the burden

1 on the State of South Carolina to prove the defendant
2 guilty of each and every indictment separate and apart. A
3 person charged with committing a criminal offense in our
4 state is never required to prove himself innocent. I
5 charge you that it is an important rule of the law that a
6 defendant in a criminal trial no matter how serious the
7 crimes may be will always be presumed innocent of the
8 crimes for which the indictments were issued unless guilt
9 has been proven by evidence satisfying you of that guilt
10 beyond a reasonable doubt.

11 The presumption of innocence does not end when you
12 begin your deliberations, but it stays with the defendant
13 throughout the trial until you reach a verdict of guilt
14 based on evidence satisfying you of that guilt beyond a
15 reasonable doubt. The presumption of innocence is not a
16 mere legal theory or phrase. It is a substantial
17 constitutional right to which every defendant is entitled
18 unless you, the jury, are satisfied from the evidence of
19 the defendant's guilt beyond a reasonable doubt.

20 What is a reasonable doubt in the law? Our courts
21 have -- has defined reasonable doubt as the kind of doubt
22 that would cause a reasonable person to hesitate to act.
23 It's the kind of doubt that would cause a reasonable
24 person to hesitate to act. Proof beyond a reasonable
25 doubt is proof that leaves you firmly convinced of the

1 defendant's guilt. There are very few things in this
2 world that we know with absolute certainty and in criminal
3 cases the law does not require proof that overcomes every
4 possible doubt.

5 If based on your consideration of the evidence you
6 are firmly convinced that the defendant is guilty of the
7 charges, then you must find him guilty. If, on the other
8 hand, you think there is a real possibility that he is not
9 guilty, then you must give him the benefit of the doubt
10 and find him not guilty.

11 When we started the case I instructed you that you
12 and I have different functions to perform. My position
13 makes me the judge of the law; so you must accept the law
14 as I give it to you now. If you have some preconceived
15 idea about what the law is or should be and it does not
16 agree with what I tell you, you must set that aside and
17 accept the law as I give it to you. My position makes me
18 the judge of the law in this case, but, more importantly,
19 the law makes you the judges of the facts in the case and
20 you have the sole responsibility to determine what the
21 true facts are in the case.

22 So, if at any time during the trial of this case I
23 have yawned or raised my eyebrows or smiled or frowned or
24 whatever and you think I had some opinion about these
25 facts, I do not. The law does not allow me to have any

1 opinion about the facts in these cases. You are the sole
2 finders of the facts in the case. You take those findings
3 of fact and apply it to the law as I give it to you. Then
4 you'll be in a position to render a verdict.

5 By being the finders of the facts, obviously, you
6 must determine the credibility of the witnesses who have
7 testified in the case. Credibility simply means
8 believability. Who do you believe? It becomes your duty
9 as jurors to analyze and evaluate the evidence and
10 determine which evidence convinces you of its truth. In
11 making this determination or determining the believability
12 of the witnesses who have testified in the case you may
13 believe one witness over several, several over one. You
14 can believe a little bit about what somebody says and
15 disregard the rest. You can believe everything or you can
16 disbelieve everything. You have the right to determine
17 whether anyone has an interest, bias, prejudice, or other
18 motive in the case and you may also consider the
19 appearance and manner of a witness while on the witness
20 stand.

21 Ladies and gentlemen, y'all deal with people all the
22 time in your life -- husbands, wives, children, employees,
23 friends, and you know how to judge when somebody is
24 telling the truth; so don't leave that common sense in
25 that jury room. Take it back there with you and exercise

1 it in determining what the true facts are in this case.
2 You are the sole finders of the facts. You're the judges
3 of the facts.

4 We had one lady who testified as an expert and I told
5 you at that time our rules of evidence ordinarily do not
6 permit a witness to testify to opinions or conclusions.
7 An exception to this rule is what we call the expert
8 witness exception. A witness who by education and
9 experience and training has become expert in some art or
10 field or science may state an opinion as to any relevant
11 or material matter to which the witness claims to be an
12 expert.

13 You should consider any expert opinion received in
14 evidence in this case and like any other evidence give it
15 the weight you think it deserves. If you decide the
16 opinion of an expert is not based on sufficient education
17 and experience or if you conclude that the reasons given
18 in support of the opinion are not sound or that the
19 opinion is outweighed by other evidence you may disregard
20 the opinion entirely. An expert witness's testimony is to
21 be given no greater weight than that of any other witness
22 simply because they were qualified as an expert. Further,
23 you're not required to accept an expert's opinion even
24 though it is not contradicted.

25 Another important constitutional rule of law is this:

1 I instruct you and emphasize that the fact the defendant
2 did not testify is not a factor to be considered by you in
3 any way in your deliberation and in your consideration on
4 the question of the guilt or innocence of the defendant.
5 It must not be considered by you in any manner whatsoever.
6 A defendant has the constitutional right to remain silent
7 and the assertion of this right must not be considered by
8 you in your deliberations.

9 I repeat under your oath you're to draw no
10 conclusions whatsoever from the fact that the defendant in
11 this case did not testify. The fact that this defendant
12 did not testify should not even be discussed in your jury
13 room. The burden of proof as I have stated to you is on
14 the state. The defendant is not required to prove his
15 innocence. The state has the burden of proving guilt
16 beyond a reasonable doubt.

17 Now let's turn our attention to the allegations or
18 the -- each indictment in this case. As I said there are
19 four indictments dealing with ^{MINOR 2} -- four
20 indictments for criminal sexual conduct with a minor in
21 the first degree. The defendant in this case is charged
22 with first degree criminal sexual conduct with a minor in
23 four indictments.

24 The charge is a statutory charge. In other words, it
25 is contained and codified in our code of laws in Section

1 16-3-6558. That law sets forth the statutory provision
2 for first degree sexual conduct with a minor. It is as
3 follows: A person is guilty of criminal sexual conduct
4 with a minor in the first degree if, one, the actor
5 engages in sexual battery with a victim who is less than
6 11 years of age or the actor engages in sexual battery
7 with a victim who is less than 16 years of age and the
8 actor has previously been convicted of, plead guilty, or
9 nolo contendere to or adjudicated delinquent for an
10 offense listed in Section 23-3-430(c) or has been ordered
11 to be included in the sex offender registry pursuant to
12 23-3-430.

13 That's a lot of words. Criminal sexual conduct with
14 a minor in the first degree is one of two things. It can
15 be both. If the actor engages in a sexual battery with a
16 victim who is less than 11 or the actor engages in a
17 sexual battery with a victim who is less than 16 years of
18 age and the actor has previously been convicted of a crime
19 as set forth in those statutes.

20 Now, the first element the state must prove beyond a
21 reasonable doubt is that the defendant engaged in sexual
22 battery with the victim. What is sexual battery? Our
23 laws define sexual battery as sexual intercourse or any
24 intrusion, however slight, of any part of a person's body
25 or of any object into the genital or anal openings of

1 another person's body. Sexual battery is defined as
2 sexual intercourse or any intrusion, however slight, of
3 any part of a person's body or of any object into the
4 genital or anal openings of another person's body.

5 If you find that the state has not proven beyond a
6 reasonable doubt that sexual battery occurred, then,
7 obviously, you must stop deliberating and find him not
8 guilty on these charges. It has to have a sexual battery
9 before the other two come into play. If you find that a
10 sexual battery did occur, then you must decide whether the
11 state has proven beyond a reasonable doubt that the victim
12 was less than 11 years of age at the time of the sexual
13 battery or the victim was less than 16 years of age at the
14 time of the alleged incident and the defendant had been
15 previously convicted of, plead guilty, or adjudicated
16 for -- and in this case the stipulation was for criminal
17 sexual conduct with a minor in the second degree. Okay?
18 That's criminal sexual conduct with a minor in the first
19 degree -- the battery and then those other two things or
20 both.

21 In the indictment for criminal sexual conduct with a
22 minor in the first degree the testimony of the victim by
23 law Section 16-3-658 says that it need not be corroborated
24 for prosecutions under this section.

25 All right. There are four indictments for lewd act

1 upon a child, lewd act upon a child under 16 years of age.
2 The difference in those were, obviously, the dates and
3 those were dealing with a child ^{MINOR 2} Our law Section
4 16-15-140 says this: It is unlawful for a person over the
5 age of 14 years to willfully and lewdly commit or attempt
6 a lewd or lascivious act upon or with the body or its
7 parts of a child under the age of 16 with the intent of
8 arousing, appealing to, or gratifying the lust or passions
9 or sexual desires of the person or the child.

10 It is unlawful for a person over the age of 14 years
11 to willfully and lewdly commit or attempt a lewd or
12 lascivious act upon or with the body or its parts on a
13 child under the age of 16 with the intent of arousing,
14 appealing to, or gratifying the lust or passions or sexual
15 desires of the person or of the child. Our law defines an
16 act is willfully done if it is done voluntarily and
17 intentionally and with the specific intent to do something
18 the law forbids. Our law defines lewd as meaning
19 something obscene, lustful, indecent, lecherous, tending
20 to moral impurity. Lascivious means tending to incite
21 lust, indecent, obscene, intending to deprave the morals
22 and respect to sexual relations.

23 This law requires criminal intent on the part of the
24 defendant. Criminal intent is a state of mind which
25 operates jointly with an act or omission in commission of

1 a crime. Criminal intent is a mental state of conscious
2 wrongdoing.

3 We next turn to the two indictments dealing with
4 criminal solicitation of a minor and that deals -- one
5 deals with MINOR 2 and one deals with MINOR 1 The state
6 must prove a person is 18 years -- prove beyond a
7 reasonable doubt a person 18 years or older -- that person
8 is 18 years of old -- he is guilty of solicitation of a
9 minor if the state can prove beyond a reasonable doubt
10 that the criminal solicitation of a minor, he does it
11 knowingly -- he knowingly contacts or communicates with or
12 attempts to contact or communicate with a person who is
13 under the age of 18 or a person reasonably believes to be
14 under the age of 18 for the purpose of or with the intent
15 of persuading, inducing, enticing, or coercing the person
16 to engage or participate in a sexual activity.

17 Consent is not a defense to a prosecution pursuant to
18 this section and the law defines sexual activity among
19 other things as a touching in an act of apparent sexual
20 stimulation or sexual abuse of the clothed or unclothed
21 genitals, pubic area, or buttocks of another person or the
22 clothed or unclothed breasts of a human female or the
23 insertion of any part of a person's body other than the
24 male sex organ or of any object into a person's anus or
25 vagina. That's what is known as criminal solicitation of

1 a minor.

2 Mr. Foreman, in the jury room you'll have a verdict
3 form for each of the 10 indictments -- four or criminal
4 sexual conduct, one will deal with the sexual battery of
5 the child under the age and then the other one deals with
6 someone who has been convicted of a crime that was set out
7 in the statute; criminal sexual conduct with a minor in
8 the second degree. You have one of two choices: Not
9 guilty or guilty. You have to do each one of those
10 separately. The difference in them is that there are
11 different dates on them that were set out in the
12 indictment. Those are four for the criminal sexual
13 conduct. You have four for the lewd act upon a child
14 MINOR 2 and they are not guilty or guilty and the only
15 difference are the dates in those. Then you have two
16 criminal solicitations of a minor dealing with MINOR 2 and
17 MINOR 1

18 Now each one of them, obviously, has to be considered
19 separate and apart from the other. Your verdict must be
20 unanimous. All 12 must agree as to each one. Please bear
21 in mind that you have absolutely no friends to reward, no
22 enemies to punish. I ask that you make -- have a clear
23 deliberation of these facts and apply these facts to the
24 law and base your decision solely on what you heard in the
25 courtroom and your finding of the facts.

1 I am going to let you retire to your jury room. I
2 ask you not to start deliberating until I ask the lawyers
3 if I have left anything out, we gather the evidence and
4 send it back in there to you. If at any time during the
5 deliberation you have a question, please write it out on a
6 piece of paper and Ms. Barbara or one of the bailiffs will
7 hand it to me. Sometimes I can answer it. Sometimes I
8 can't depending on what the question is, but I'll send you
9 a written response and we'll go from there.

10 Once you've reached a decision on all of them, knock
11 on the door and let us know and we'll receive you back.
12 It is a little bit quicker than I thought. I said about
13 3:30. It is 3 o'clock. You're in charge of deliberations
14 with input from your fellow jurors. We can go as long in
15 the evening as you want to. Whatever. It is in your
16 hands now and I'll comply with your wishes. Fair enough?

17 THE FOREPERSON: Sounds good.

18 THE COURT: Thank you. Y'all may step down.

19 Please separate the alternates.

20 (Whereupon, the jury exited the courtroom at 3:03.)

21 THE COURT: Any requested additions, deletions, or
22 objections to the charge by the state?

23 MS. AGNEW: Your Honor, nothing substantive, but just
24 for clarification of the record two witnesses were
25 actually qualified as experts, not one, but I don't think

1 it is something to bring them in for.

2 MR. HAYES: Judge, I did not hear if you had charged
3 that his prior record only be considered as to the element
4 of the defense. I would ask that, Judge, bringing that up
5 by itself would be prejudicial. I would ask that you
6 charge burden of proof and reasonable doubt along with it.

7 THE COURT: I have already charged burden of proof
8 and reasonable doubt. I'll charge the other thing that
9 you requested about the stipulated offense can only be
10 used for that and for no other purpose. I should have
11 done that. I apologize. Anything else?

12 MR. HAYES: No, sir.

13 THE COURT: Y'all looked at the verdict forms?
14 Everybody looked at those and they're in order? Is that
15 correct?

16 MS. AGNEW: Yes, Your Honor.

17 MR. HAYES: Yes.

18 THE COURT: Bring them right back out for one quick
19 second.

20 BAILIFF MS. COLEMAN: Judge, did you want the
21 alternates back in, too?

22 THE COURT: Yes, ma'am.

23 (Whereupon, the jury came into open court at
24 approximately 3:04.)

25 THE COURT: I'm sorry. I left something out.

1 Preacher, when I leave something out in my sermon I
2 can bring y'all back out and say it again.

3 THE JUROR: If I let them go, I'm through.

4 THE COURT: I know. I left one thing out. When we
5 were talking -- charging you about the first degree
6 criminal sexual conduct with a minor I said that a person
7 is guilty of criminal sexual conduct with a minor in the
8 first degree if the actor engages in a sexual battery with
9 the victim who is less than 11 years and battery -- I
10 defined that for you -- or the actor engages in a sexual
11 battery with a victim who is less than 16 and the actor
12 has previously been convicted of, plead guilty, or
13 adjudicated for an offense and in this case the parties
14 stipulated that the defendant had been -- plead guilty or
15 found guilty, whatever, of criminal sexual conduct with a
16 minor in the second degree. That was the stipulation.

17 Now, the fact that the defendant and the state
18 entered into this stipulation regarding that prior
19 conviction you can only consider the prior conviction for
20 the sole purpose of determining whether the state has
21 proven an element of that offense charged and you can't
22 consider the prior conviction for any other purpose and
23 that should not be discussed at all when discussing the
24 other elements. In other words, you can't use that to
25 show that he plead guilty before, he might be guilty this

1 time. That is just simply to show that they have
2 stipulated to that one element of one offense and you
3 still have to find everything else; so just use that
4 stipulation for no other reason other than whether or not
5 it meets the element of that criminal sexual conduct of a
6 minor. Okay?

7 Fair?

8 MR. HAYES: (Nods head.)

9 MS. AGNEW: (Nods head.)

10 THE COURT: Y'all come up and get the evidence.

11 Y'all can go back now.

12 (Whereupon, the jury exited the courtroom at 3:08.)

13 THE COURT: All right. Any objection to the
14 additional charge I gave by the state?

15 MS. AGNEW: No, Your Honor.

16 THE COURT: By the defendant?

17 MR. HAYES: No, Your Honor.

18 THE COURT: All right. Y'all are both -- there are
19 only three exhibits and y'all have looked at those and the
20 verdict form. I am going to send it back to the jury. It
21 is 10 after 3 and the alternates will be separated. Thank
22 you.

23 (Whereupon, the jury begins to deliberate at 3:10.)

24 (Whereupon, the jury came into open court at
25 approximately 5:35.)

1 (Whereupon, the jury came into open court at
2 approximately 1:40.)

3 THE COURT: Mr. Foreman, have y'all reached a
4 verdict?

5 THE FOREPERSON: Yes, we have, Your Honor.

6 THE COURT: Hand it to the bailiff. All right.
7 Ready to receive the verdict?

8 MR. HAYES: Yes, Your Honor.

9 THE CLERK: The State of South Carolina versus
10 William Wallace Pou in the court of General Sessions,
11 Second Judicial Circuit on indictment number
12 2012-GS-02-01000. With regard to the charge of criminal
13 solicitation of a minor MINOR 2 between the dates
14 of August 21, 2010 and August 21, 2011 we, the jury,
15 unanimously find the defendant not guilty.

16 In reference to indictment 2012-GS-02-000999 in
17 regards to the charge of criminal solicitation of a minor
18 MINOR 1 between the date of August 21, 2010 and
19 August 21, 2011 we, the jury, unanimously find the
20 defendant guilty.

21 In reference to indictment 2012-GS-02-00989 with
22 regards to the charge of criminal sexual conduct with a
23 minor in the first degree upon MINOR 2 a minor
24 eight years of age, between the dates of April 20, 2008
25 and April 20, 2009 we, the jury, unanimously find the

1 defendant guilty.

2 In reference to indictment 2012-GS-02-00990 with
3 regards to the charge of criminal sexual conduct with a
4 minor in the first degree upon MINOR 2 a minor
5 nine years of age, between the dates of April 20, 2009 and
6 March 31, 2010 we, the jury, unanimously find the
7 defendant guilty.

8 In reference to indictment number 2012-GS-02-00991,
9 with regards to the charge of criminal sexual conduct with
10 a minor in the first degree upon MINOR 2 a MINOR
11 2
12 10 years of age, between the dates of April 1, 2010 and
13 April 20, 2011 we, the jury, unanimously find the
14 defendant guilty.

15 Indictment number 2012-GS-02-00997 with regard to the
16 charge of criminal sexual conduct with a minor upon MINOR 2
17 [REDACTED] age 11, between the dates of April 20, 2011 and
18 October 4, 2011 and the defendant having been previously
19 convicted of or plead guilty or nolo contendere to the
20 offense listed in Section 23-3-430(c) or has been ordered
21 to be included in the sex offender registry reference
22 Section 23-3-430 we, the jury, unanimously find the
23 defendant guilty.

24 In reference to indictment number 2012-GS-02-00994
25 with regards to the charge of lewd act upon a child MINOR 2
[REDACTED] between the dates of April 20, 2008 and April 20,

1 2009 we, the jury, unanimously find the defendant guilty.

2 Indictment number 2012-GS-02-00996 with regard to the
3 charge of lewd act upon a child ^{MINOR 2} between the
4 dates of April 20, 2010 and October 4, 2011 we, the jury,
5 unanimously find the defendant guilty.

6 Indictment number 2012-GS-02-01853 with regards to
7 the charge of lewd act upon a child ^{MINOR 2} between
8 the dates of April 1, 2010 and April 20, 2010 we, the
9 jury, unanimously find the defendant guilty.

10 Indictment number 2012-GS-02-01852 with regards to
11 the charge of lewd act upon a child ^{MINOR 2} between
12 the dates of April 20, 2009 and March 31, 2010---

13 THE COURT: Hold on a second. You need to be
14 removed?

15 THE DEFENDANT: (Nods head.)

16 (Whereupon, the Defendant exits the courtroom.)

17 THE COURT: Go ahead.

18 THE CLERK: With regard to the charge of lewd act
19 upon a child ^{MINOR 2} between the dates of April 20,
20 2009 and March 31, 2010 we, the jury, unanimously find the
21 defendant guilty.

22 Foreman, ladies and gentlemen of the petit jury, is
23 this your verdict? Please indicate by raising your right
24 hand.

25 THE COURT: All hands are raised. Thank you.

1 Anything additionally for the jury before I dismiss
2 them by the state?

3 MS. AGNEW: Not from the state, Your Honor.

4 THE COURT: By the defendant?

5 MR. HAYES: I would ask to poll the jury, Your Honor.

6 THE COURT: Thank you. Mr. Foreman, ladies and
7 gentlemen of the jury, I will ask you a question. My
8 question will be this: Is this your verdict as to each
9 indictment and is it still your verdict? As I call your
10 name, please stand and respond either yes or no.

11 Juror number 37, Gary Cromwell, is this your verdict
12 as to all indictments and is it still your verdict?

13 THE JUROR: Yes.

14 THE COURT: Thank you. Juror 121, Joseph Meyer.
15 Mr. Meyer, is this your verdict as to all 10 indictments
16 and is it still your verdict?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you. 184, Gregory Weis. Mr. Weis,
19 is this your verdict as to all 10 indictments and is it
20 still your verdict?

21 THE JUROR: Yes.

22 THE COURT: Thank you. Juror number 17, Mr. Bradley.
23 Mr. Alfred Bradley, is this your verdict and is it still
24 your verdict as to all 10 indictments?

25 THE JUROR: Yes, Your Honor.

1 was?

2 MS. AGNEW: It was a YOA.

3 THE COURT: So we have at least one criminal sexual
4 conduct in the past and perhaps something else that was
5 plead down to an assault and battery of a high and
6 aggravated nature.

7 MS. AGNEW: That's correct, Your Honor.

8 THE COURT: Mr. Hayes, I assume you've been over with
9 Mr. Pou that as to the criminal sexual conduct first
10 degree that carries 25 years to life. The criminal sexual
11 conduct with a minor with a previous record, that's a
12 minimum of 10 to 30. The solicitation is a zero to 10 and
13 the lewd acts are all zero to 15.

14 MR. HAYES: That's correct, Judge.

15 THE COURT: Is that your understanding?

16 MR. HAYES: Judge, there were a few things I would
17 like to put on record.

18 THE COURT: Absolutely. And you know what? Before
19 we do all of this, do you have any motions post-trial?

20 MR. HAYES: I do, Judge. I would like to at this
21 time -- I don't remember renewing my directed verdict at
22 the close of my case as well as move for a new trial.
23 Judge, also I would like to ask the court for a mistrial
24 based on the fact that when they were reading off the
25 guilty sentences they did -- the officers did come in and

1 close in on Mr. Pou and I believe that would be -- that
2 was highly prejudicial and it was prior to us polling each
3 of the jurors. Taken in conjunction with the prior
4 incident even though it was his behavior but the officers
5 coming in and closing on him previously for the outburst,
6 I believe that was highly prejudicial to my client, Judge,
7 and I would ask for a mistrial.

8 THE COURT: Thank you. As to your motion for
9 directed verdict and new trial, I'll respectfully deny for
10 the same reasons I have put in the record before. There
11 was ample evidence from the two young girls of which the
12 jury believed which will support the verdicts rendered by
13 them.

14 Your client brought about the need for additional
15 security with his actions while the verdicts were being
16 read and, in fact, I gave him an opportunity to settle
17 down and he decided that he chose to leave the courtroom.
18 So the need for the additional security and him leaving
19 the courtroom was as a result of his own actions. I'm
20 sorry he can't control himself any better than exhibited
21 throughout the trial of this case. So, respectfully
22 denied as to the mistrial.

23 The verdicts had already been rendered and he
24 exhibited that behavior about the third or fourth
25 indictment and then even gave some types of signals with

1 his hands to his family as he was leaving the courtroom.
2 I mean, he did that -- not officers, not me, not you. He
3 is the author of his own actions. Respectfully denied.

4 Now, tell me anything about what you want to tell me
5 about Mr. Pou as far as mitigation as far as sentencing.

6 MR. HAYES: His family was here. The lady that was
7 in the courtroom is the mother of his son and she is the
8 one that he was charged with in 1997 that he plead to the
9 ABHAN on. She stood by him all these years. She was with
10 him all this through this trial and I believe -- I don't
11 know, Judge. I did not turn around while the verdicts
12 were being read.

13 THE COURT: She was there.

14 MR. HAYES: I'm assuming that after that was read she
15 was highly emotional and left. I have not seen or spoke
16 with her since.

17 THE COURT: She was the same lady I had to remove
18 from the courtroom because of staring and glaring at the
19 young girls while they were testifying and then exhibiting
20 inappropriate behavior when we took a break one time;
21 however, I did allow her back in the courtroom today
22 with the admonition that she should behave herself and
23 she exhibited good behavior today. That certainly
24 is not going to be held against your client in any
25 manner whatsoever.

1 THE COURT: Not I'm sorry or anything? Nothing?

2 THE DEFENDANT: Sorry for my outburst.

3 THE COURT: Thank you. I'll accept your apology for
4 the outburst. Any others for being sorry for anything
5 else?

6 THE DEFENDANT: No, sir, because I'm not guilty.

7 THE COURT: Thank you.

8 MR. HAYES: Judge, I'm sorry. He has been in jail on
9 these offenses for the last 414 days and I would ask the
10 court for credit for that time, Judge.

11 THE COURT: All right. As to indictment
12 12-GS-02-00991, an indictment for criminal sexual conduct
13 with a minor under 11 years of age first degree, the
14 sentence of the court is you be committed to the State
15 Department of Corrections for a period of 30 years.

16 As to indictment 990, the sentence of the court is
17 that you be committed to the State Department of
18 Corrections for a period of 30 years.

19 As a indictment 989, the sentence of the court is
20 that you be committed to the State Department of
21 Corrections for a period of 30 years.

22 As to indictment 997, the sentence of the court is
23 that you be committed to the State Department of
24 Corrections for a period of 30 years.

25 As to indictment 999, the sentence of the court is

1 that you be committed to the State Department of
2 Corrections for a period of 10 years.

3 As to indictment 1853, the sentence of court is that
4 you be committed to the State Department of Corrections
5 for a period of 15 years.

6 As to indictment 1852, the sentence of the court is
7 that you be committed to the State Department of
8 Corrections for 15 years.

9 As to indictment 996, the sentence is that you be
10 committed to the State Department of Corrections for 15
11 years.

12 As to 994, the sentence is that you be committed to
13 the Department of Corrections for a period of 15 years.
14 All of the sentences will run concurrent to 991. You'll
15 be given credit for your time served.

16 That requires registration, does it not?

17 MS. AGNEW: Your Honor, he's already on the registry.

18 THE COURT: He's already on the registry. Good luck
19 to you.

20 MR. HAYES: Judge, just for the record I want to put
21 on there that indictment numbers 993 and 998 were
22 dismissed it is my understanding by the state for issues
23 within the indictment itself and that they were replaced
24 with 1852 and 1853 is my understanding.

25 MS. AGNEW: That's correct, Your Honor.

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045438

ACTION OF GRAND JURY

True Bill

Wishy Eubank

Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200996

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 2468

Indictment for

LEWD ACT UPON A CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

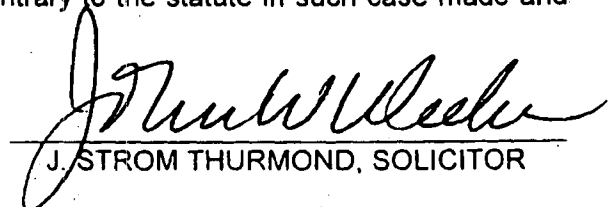
INDICTMENT FOR
LEWD ACT UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU**, being over the age of fourteen (14) years, did in Aiken County on or between the dates of April 20, 2010 and October 4, 2011, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of MINOR 2 a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

ARREST WARRANT
M-045438
STATE OF SOUTH CAROLINA
County/ Municipality of
Aiken

THE STATE 11063793
against
William Wallace Pou
Address
Phone
Sex M Race W Height 6 Weight 160
DL State DL #
DOB Agency ORI #: SC0020000
Prosecuting Agency Aiken County Sheriff
Prosecuting Officer Inv. David Blevins - 4163
Offense Lewd Act, committing or attempting lewd act upon child under 16
Offense Code 2468
Code/Ordinance Sec 16-15-0140
This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)
Signature of Judge
Date

RETURN
A copy of this arrest warrant was delivered to
defendant
on
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
P.O. Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
County/ Municipality of)
Aiken)
Personally appeared before me the affiant Inv. David Blevins who
being duly sworn deposes and says that defendant William Wallace Pou
did within this county and state on or about 10/04/2011 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Aiken)
in the following particulars:

DESCRIPTION OF OFFENSE Lewd Act, committing or attempting lewd act upon child under 16

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That between the dates of April 20, 2010 and October 4, 2011, one William Wallace Pou (33 yoa) did willfully and lewdly commit a
lewd or lascivious act upon the body of the victim, 11 yoa MINOR 2 by rubbing his penis on her vagina. This taking place at
Aiken, Aiken County, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant
STATE OF SOUTH CAROLINA)
County/ Municipality of)
Aiken)
Affiant's Address 420 Hampton Avenue North East
Aiken, SC 29801-
Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 10/4/2011 defendant William Wallace Pou
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Lewd Act, committing or attempting lewd act upon child under 16

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me

on 10/19/2011
Signature of Issuing Judge
Donna Hutto Williamson
Judge Code 5937

Judge's Address Post Office Box 99
Wagener, SC 29164-9570
Judge's Telephone (803)564-5989
Issuing Court: X Magistrate Municipal Circuit

ORIGINAL

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ORIGINAL

219

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045437

July 12 / 12
J. St. Thromond
55 St. Thromond

ACTION OF GRAND JURY

True Bill

W. E. Carter

Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200994

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 2468

Indictment for

LEWD ACT UPON A CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
LEWD ACT UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU**, being over the age of fourteen (14) years, did in Aiken County on or between the dates of April 20, 2008 and April 20, 2009, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of MINOR 2 a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

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


STROM THURMOND, SOLICITOR

ARREST WARRANT

M-045437

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

THE STATE

11063793

against

William Wallace Pou

Address

Phone

SSN

Sex M Race W Height 6 Weight 160DL State SC DL # 123456789DOB 11/11/1980 Agency ORI # SC0020000Prosecuting Agency Aiken County SheriffProsecuting Officer Inv. David Blevins - 4163Offense Lewd Act, committing or attempting lewd act upon child under 16Offense Code 2468Code/Ordinance Sec 16-15-0140This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant William Pouon 11-20-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P.O. Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Personally appeared before me the affiant Inv. David Blevinsbeing duly sworn deposes and says that defendant William Wallace Poudid within this county and state on or about 04/20/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE Lewd Act, committing or attempting lewd act upon child under 16

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between the dates of April 20, 2008 and April 20, 2009, one William Wallace Pou (30 yo) did willfully and lewdly commit a lewd or lascivious act upon the body of the victim, 8 yo MINOR 2 by rubbing his penis on her vagina. This taking place at [redacted], Aiken County, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North EastAiken, SC 29801-Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2008 defendant William Wallace Pou

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Aiken) as set forth belowDESCRIPTION OF OFFENSE: Lewd Act, committing or attempting lewd act upon child under 16

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge

Donna Hutto Williamson

Judge Code 5937Judge's Address Post Office Box 99Wagener, SC 29164-9570Judge's Telephone (803)564-5989Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCGA 518

WFO

222

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

DOCKET NO. 2012GS0201853

The State of South Carolina

County of Aiken

ALA

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

DECEMBER TERM 2012

12-DI02-0051

Nov-29 112

Liz Hodard
C.C.P. & G.S.

55 Sharon Higgins
Deputy Clerk

THE STATE
vs.

WILLIAM POU

ACTION OF GRAND JURY

Tove Bill

Wesley Carter

Foreperson of Grand Jury
Date: November 29, 2012

CDR #: 2468

Indictment for

VERDICT

LEWD ACT UPON A CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
LEWD ACT UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on December 3, 2012, the Grand Jurors of Aiken County present upon their oath:

That WILLIAM POU, being over the age of fourteen (14) years, did in Aiken County on or between April 1, 2010 and April 20, 2010, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of MINOR 2. a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

DOCKET NO. 2012GS0201852

The State of South Carolina

County of Aiken

ALA

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

12-DI02-0050

DECEMBER TERM 2012

THE STATE
vs.

WILLIAM POU

ACTION OF GRAND JURY

True Bill

CDR #: 2468

Indictment for

LEWD ACT UPON A CHILD

§ 16-15-0140

J. STROM THURMOND, SOLICITOR

Wesley E. Carter
Foreperson of Grand Jury
Date: November 29, 2012

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 LEWD ACT UPON A CHILD

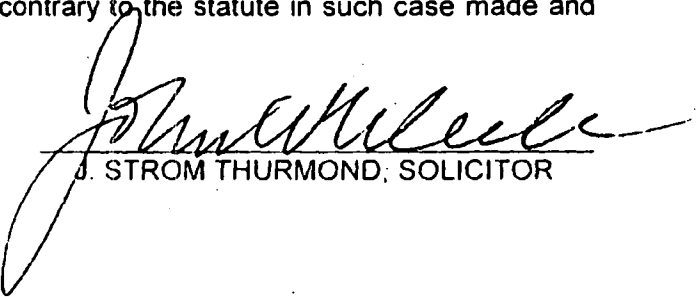
§ 16-15-0140

At a Court of General Sessions, convened on December 3, 2012, the Grand Jurors of Aiken County present upon their oath:

That WILLIAM POU, being over the age of fourteen (14) years, did in Aiken County at divers times on or between April 20, 2009 and March 31, 2010, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of ^{MINOR}₂

a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

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


 J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blewins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

12-DI02-0110

ACTION OF GRAND JURY

True Bill

Wesley E. ...

Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200999

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 2999

Indictment for

CRIMINAL SOLICITATION OF A MINOR

§ 16-15-0342

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 CRIMINAL SOLICITATION OF A MINOR
 § 16-15-0342

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU** did in Aiken County on or between the dates of August 21, 2010 to August 21, 2011, commit the crime of Criminal Solicitation Of A Minor in that the Defendant, who was eighteen (18) years of age or older at the time of the incident, did knowingly contact or communicate with, or attempt to contact or communicate with MINOR 1 a person who is under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing MINOR 1

to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of MINOR 1 All in violation of Section 16-15-342, Code of Laws of South Carolina (1976), as amended.

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


 J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045434

ACTION OF GRAND JURY

Toke Bill

Wesley E. ...

Foreperson of Grand Jury
Date: July 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200991

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

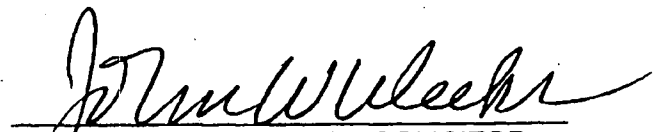
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of
Aiken County present upon their oath:

That **WILLIAM WALLACE POU** did in Aiken County on or between April 1, 2010
and April 20, 2011, commit the crime of Criminal Sexual Conduct With A Minor In The
First Degree, in that the Defendant did commit a sexual battery upon ^{MINOR 2} a
minor who was Ten years of age at the time of the incident. All in violation of §16-3-
655, Code of Laws of South Carolina (1976), as amended.

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


STROM THURMOND, SOLICITOR

ARREST WARRANT

M-045434

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

THE STATE

11063793

against

William Wallace Pou

Address

Phone _____ SSN: _____
Sex M Race W Height: 6 Weight: 160

Dr. State _____ DL # _____

DOB _____ Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Inv. David Blevins - 4163

Offense: Criminal sexual conduct under 11 yrs of age - First Degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P.O. Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Personally appeared before me the affiant Inv. David Blevins

being duly sworn deposes and says that defendant William Wallace Pou

did within this county and state on or about 04/01/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE Criminal sexual conduct under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between the dates of April 1, 2010 and April 20, 2011, one William Wallace Pou, 32 yoa, did commit a sexual battery upon
the body of the victim, 10 year old MINOR 2 by inserting his finger into her vagina. This taking place at _____
_____. Aiken County, Aiken, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East

Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/1/2010 defendant William Wallace Pou

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Criminal sexual conduct under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge
Donna Hutto Williamson

Judge Code: 5937

Judge's Address Post Office Box 99
Wagener, SC 29164-9570

Judge's Telephone (803)564-5989

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

231

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045433

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: July 17, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200990

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE

vs.

WILLIAM WALLACE POU

CDR #: 0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU** did in Aiken County on or between the dates of April 20, 2009 and March 31, 2010, commit the crime of Criminal Sexual Conduct With A Minor In The First Degree, in that the Defendant did commit a sexual battery upon MINOR 2 a minor who was Nine years of age at the time of the incident. All in violation of §16-3-655, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

ARREST WARRANT

M-045433

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

THE STATE

11063793

against

William Wallace Pou

Address

Phone

SSN

Sex: M

Race: W

Height: 6

Weight: 160

DL State

DL #

DOB

Agency ORI #: SC0020000

Prosecuting Agency

Aiken County Sheriff

Prosecuting Officer

Inv. David Blevins - 4163

Offense: Criminal sexual conduct victim under 11 yrs of age
- First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P.O. Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

Personally appeared before me the affiant Inv. David Blevins

being duly sworn deposes and says that defendant William Wallace Pou

did within this county and state on or about 04/20/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Aiken

in the following particulars:

DESCRIPTION OF OFFENSE Criminal sexual conduct victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between the dates of April 20, 2009 and March 31, 2010, one William Wallace Pou, 31 yoa, did commit a sexual battery upon
the body of the victim, 9 year old MINOR 2 by inserting his finger into her vagina. This taking place at
Aiken County, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East

Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2009 defendant William Wallace Pou

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Aiken

) as set forth below:

DESCRIPTION OF OFFENSE: Criminal sexual conduct victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge (L.S.)

Donna Hutto Williamson

Judge Code: 5937

Judge's Address Post Office Box 99

Wagener, SC 29164-9570

Judge's Telephone (803)564-5989

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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ORIGINAL

ORIGINAL

Not Approved by
S.C. Attorney General
April 20, 2003
SCCA 518

284

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045432

ACTION OF GRAND JURY

True Bill

Wesley E. Carter

Foreperson of Grand Jury
Date: July 12/2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200989

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

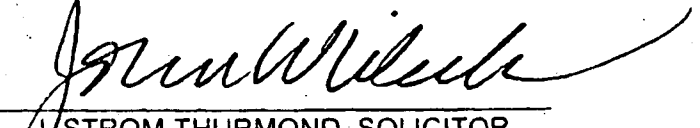
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

§ 16-03-0655(1)

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU** did in Aiken County on or between the dates of April 20, 2008 and April 20, 2009, commit the crime of Criminal Sexual Conduct With A Minor In The First Degree, in that the Defendant did commit a sexual battery upon MINOR 2 a minor who was Eight years of age at the time of the incident. All in violation of §16-3-655, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

ARREST WARRANT

M-045432

STATE OF SOUTH CAROLINA

County/

Municipality of

Aiken

THE STATE

11063793

against

William Wallace Pou

Address

Phone

SSN:

Sex M Race W Height: 6 Weight: 160

DL State

DL #

DOB

Agency ORI # SC0020000

Prosecuting Agency Aiken County Sheriff

Prosecuting Officer Inv. David Blevins - 4163

Offense Criminal sexual conduct with - victim under 11 yrs of age - First degree

Offense Code 0385

Caser/Ordinance Sec 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

County/

Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P.O. Box 583
409 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/

Municipality of

Aiken

Personally appeared before me the affiant Inv. David Blevins

being duly sworn deposes and says that defendant William Wallace Pou

did within this county and state on or about 04/20/2008

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Aiken

in the following particulars:

DESCRIPTION OF OFFENSE Criminal sexual conduct with - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on April 20, 2008, one William Wallace Pou did between the dates of April 20, 2008 and April 20, 2009, did commit a sexual battery upon the body of the victim, 8 year old MINOR 2 by inserting his finger into her vagina. This taking place at [REDACTED] Aiken County, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/

Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East

Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2008 defendant William Wallace Pou

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Aiken

) as set forth below

DESCRIPTION OF OFFENSE: Criminal sexual conduct with - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge
Donna Hutto Williamson

Judge Code 5937

Judge's Address Post Office Box 99

Wagener, SC 29164-9570

Judge's Telephone (803)564-5989

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

NOTED
S.C. Attorney General
April 21, 2008
SCCA 513

237

WITNESSES

Aiken County Sheriff

David Blevins

Law Enforcement Case #: 11-063793

NRM

ARREST WARRANT NUMBER

M045439

ACTION OF GRAND JURY

True Bill

Wesley Edmon

Foreperson of Grand Jury
Date: July 12/2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200997

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

WILLIAM WALLACE POU

CDR #: 3022

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR

§ 16-03-0655(A)(2)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT WITH A
 MINOR

§ 16-03-0655(A)(2)

At a Court of General Sessions, convened on July 16, 2012, the Grand Jurors of Aiken County present upon their oath:

That **WILLIAM WALLACE POU** did in Aiken County on or between the dates of April 20, 2011 and October 4, 2011, commit the crime of Criminal Sexual Conduct With A Minor, in that the Defendant did commit a sexual battery upon ^{MINOR 2} a minor who was Eleven (11) years of age at the time of the incident and the defendant having previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D). All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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


 J. STROM THURMOND, SOLICITOR

ARREST WARRANT

M-045439

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

THE STATE

11063793

against

William Wallace Pou

Address

Phone

SSN

Sex M

Race W

Height: 6

Weight: 160

DL State

DL #

DOB

Agency ORI # SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Inv. David Blevins - 4163

Offense: Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous record

Offense Code: 3022

Code/Ordinance Sec: 16-03-0655 (A) (2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on 10-20-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P.O. Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

Personally appeared before me the affiant Inv. David Blevins

being duly sworn deposes and says that defendant William Wallace Pou

did within this county and state on or about 10/04/2011

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Aiken

in the following particulars:

DESCRIPTION OF OFFENSE Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous record

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Upon information and belief the Defendant did between the dates of April 20, 2011 and October 4, 2011, the Defendant William Wallace Pou (33 yoa) commit a sexual battery upon the body of the victim, MINOR 2 (11 yoa) by inserting his finger into her vagina. The Defendant having a prior conviction of CSC with a minor in 1998. This incident occurred at [REDACTED] Aiken County, Aiken, SC and being in violation of SC Code of Laws, as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East

Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/4/2011 defendant William Wallace Pou

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Aiken

) as set forth below.

DESCRIPTION OF OFFENSE: Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous record

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 10/19/2011

Signature of Issuing Judge

Donna Hutto Williamson

Judge Code: 5937

Judge's Address Post Office Box 99

Wagener, SC 29164-9570

Judge's Telephone (803)564-5989

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 27, 2003
SCCA 1-18

w/o

240

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN)

STATE OF SOUTH CAROLINA)

vs.)

William Pou,

Defendant.

Indictment Numbers: 2012-GS-02-00989,
2012-GS-02-00990, 2012-GS-02-00991,
2012-GS-02-00994, 2012-GS-02-00996,
2012-GS-02-00997, 2012-GS-02-00999,
2012-GS-02-01000, 2012-GS-02-01852,
2012-GS-02-01853

MOTION TO SUPPRESS

MO45432, MO45433, MO45434, MO45437,
MO45438, MO45439, ~~MO45439~~ SR

TO: Ashley Agnew, Assistant solicitor for the Second Judicial Circuit; 2012-GS-02-00999
2012-GS-02-01000
2012-GS-02-01852
2012-GS-02-01853

PLEASE TAKE NOTICE THAT on December 3, 2012, or as soon thereafter as this motion may
be scheduled, the Defendant will move before this Honorable Court for an Order suppressing all
evidence and testimony from Dr. Benedetto, Ann Laver, and Kimberly Sawyer in this matter.
Arguments of counsel will be based upon the relevant case law.

I SO MOVE



C. Dave Hayes

Attorney for the Defendant

PO Drawer 2247

Aiken, South Carolina

December 3, 2012

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

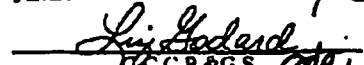
SEP 17 2014

C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk

FILED

3 December 2012



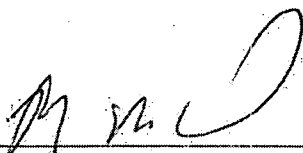
Shannon D. Roden Priddy
Deputy Clerk

4 cert. copies PD

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."

August 19th, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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The court erred by qualifying Dr. Benedetto as an expert and allowing her to testify over appellant's objection that her testimony would improperly bolster the testimony of the accusing minors, particularly when her testimony directly discussed how domestic violence and a "non-supportive" parent allegedly affected the timing of the "disclosure of abuse" since domestic violence and lack of support were both allegedly involved here, and her testimony was meant to bolster the testimony of the complaining stepdaughters as counsel alleged	5
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by qualifying Dr. Benedetto as an expert and allowing her to testify over appellant's objection that her testimony would improperly bolster the testimony of the accusing minors, particularly when her testimony directly discussed how domestic violence and a "non-supportive" parent allegedly affected the timing of the "disclosure of abuse" since domestic violence and lack of support were both allegedly involved here, and her testimony was meant to bolster the testimony of the complaining stepdaughters as counsel alleged?

STATEMENT OF THE CASE

Appellant was indicted at the July 2012 of the Aiken County Grand Jury for three counts of criminal sexual conduct with a minor in the first degree, four counts of lewd act upon a minor, two counts of criminal solicitation of a minor and criminal sexual conduct with a minor. R. P. 217. Appellant's case was called to trial on December 4, 2012 before the Honorable Doyet A. Early, III, and a jury. C. David Hayes and Wallis Alves represented appellant. Ashley Agnew and Elizabeth Young were the assistant solicitors. R. p. 1.

On December 7, 2012 the jury found appellant guilty on each count except one count of criminal solicitation of a minor on which appellant was acquitted. R. p. 208, l. 9 – 214, l. 25. Judge Early then sentenced appellant to concurrent sentences totally thirty years imprisonment. R. p. 215, l. 11- 216, l. 15.

This appeal follows.

ARGUMENT

The court erred by qualifying Dr. Benedetto as an expert and allowing her to testify over appellant's objection that her testimony would improperly bolster the testimony of the accusing minors, particularly when her testimony directly discussed how domestic violence and a "non-supportive" parent allegedly affected the timing of the "disclosure of abuse" since domestic violence and lack of support were both allegedly involved here, and her testimony was meant to bolster the testimony of the complaining stepdaughters as counsel alleged.

Relevant Facts

In her closing statement, apparently worried the jury may not believe the complaining stepdaughters; the solicitor told the jurors that appellant was "a horrible man" and "a bad man." She asked the jury to find appellant guilty of the charges the government chose to bring against him. The solicitor also told the jurors that the mother of the two alleged victims did not do anything to support them in their accusations, and the police had to intervene. R. p. 177, l. 24- 178, l. 2. ; R. p. 179, ll. 11 -13; R. p. 182, l. 21- 183, l. 8.

As will be seen infra, there was also evidence of domestic violence between appellant and the alleged victim's mother. The accusing victims admitted they did not like appellant. He was their stepfather and they wanted him out of their lives.

The first accusing minor was eleven years old and was being home schooled at the time of the trial. R. p. 32, ll. 12-23. She lived with appellant, her mother, her sister and two step-sisters that her mother had with appellant. R. p. 34 ll. 3-25. The first accusing minor testified appellant asked her to perform oral sex, and she refused. She claimed she was then sent to room. R. p. 36, l. 10 – 38, l. 22.

The accusing minor said she told her mother about the incident. Her reaction, according to the minor was to force appellant to leave for a week. Her mother then let appellant move back into the house. It was unclear whether the mother believed the minor's accusation. R. p. 39, l. 5- 40, l. 4.

On cross-examination the minor claimed that appellant told her the sex he allegedly elicited was punishment for not listening to him. R. p. 44, ll. 6-22. The child admitted that appellant and her mother fought a lot about "cheating" and "the title to the house." The minor said she did not like appellant, and she alleged that appellant once cut her mother with a screwdriver during one of their arguments. R. p. 44, l. 6 - 49, l. 7.

The second accusing stepdaughter was twelve years old. R. p. 50, ll. 7 - 23. She was also being home-schooled at the time of the trial. R. p. 53, ll. 6 - 22. She identified appellant as her former stepfather. R. p. 55.

The minor witness went to Aiken Middle School before she was homeschooled. She remembered a policeman came to talk to her about appellant at her school. R. p. 56, ll. 6-10. The policeman asked her if appellant had ever beaten her or her sister or whether he had he ever touched them. R. p. 56, l. 6 - 57, l. 23.

The stepdaughter said when she was ten years old that appellant gave her a "bad touch." She said appellant also elicited sex from her. R. p. 60, l. 5 - 68, l. 25.

After she went to the Child Advocacy Center she began keeping a journal and she wrote a letter to her grandmother that her mother found. The minor said her mother gave the letter accusing appellant of abuse to appellant. She speculated that appellant then hid the letter. R. p. 68, l. 16 - 70, l. 7.

The second stepdaughter also testified that appellant often fought with their mother. She maintained they were looking for a "new place" to move so they could get away from appellant. The minor also said appellant wanted "the title" to the house because he wanted them to move. R. p. 73, l. 3 – 78, l. 7.

On cross-examination the minor said she thought she had been informed that appellant had gotten in trouble when he was nineteen-years-old for having sex with a fourteen-year-old. She admitted she knew if she told the police an adult had sex with her she would get that adult in trouble. R. p. 80, ll. 10-19.

The forensic interviews were then played for the jury. They are on file with this Court for viewing. R. p. 84, l. 5 – 87, l. 18.

Mandy Fredell was the mother of the two accusing minors. She maintained that she did not tell the daughters what to say in their testimony against appellant. R. p. 91, l. 8 – 92, l. 13.

She admitted that she and appellant "argued over a lot of things" including "the title" to the house. Her children were present during the fights. R. p. 94, ll. 6-24.

Fredell acknowledged she found the letter her daughter wrote to her grandmother alleging abuse: "I asked my daughter about it." R. p. 95, ll. 11-24.

She denied she was trying to move and leave appellant. She also said appellant was never forced to leave the home as a result of her daughter's accusation of abuse. "We were in the process of taking care of things when all of this went down. This just happened." Fredell said she was told of the allegations "like a day or two before the police was contacted." R. p. 95, l. 11 – 98, l. 7.

Katherine Chappell testified as an expert in pediatric nursing and child wellness examination. R. p. 135, l. 15 – 136, l. 6. She testified she was not able to do a complete examination on one of the accusing witnesses because she began sobbing and crying. The judge sustained the defense objections to whether she was surprised by the minor's tearful reaction, and what "her reaction meant to you in your field." R. p. 143, l. 6 – 144, l. 15. It was apparent the solicitor wanted Chappell to testify that such reactions from a person that had been abused were "normal." Chappell testified the child never returned to finish the examination. R. p. 144, ll. 17-18.

After Chappell's testimony, the judge noted the defense had made a motion to exclude the "expert testimony" of the next witness, Dr. Benedetto, on the grounds that her testimony would only improperly bolster the alleged veracity of the complaining minors. It was an impermissible attempt to convey to the jury that the minors were being truthful. R. p. 109, ll. 8-22. R. p. 241 (motion to exclude testimony)

The solicitor, not surprisingly, stated Dr. Benedetto had not met with the children or viewed their interviews and alleged Benedetto was an expert in the area of "child abuse dynamics." The solicitor claimed her testimony was necessary because there had been assertions of "recanting" and "inconsistencies" in the testimony of the children. R. p. 146, l. 14 - 147, l. 20. In short, that their testimony apparently needed bolstering.

The judge said he was in all likelihood going to allow the testimony. Defense counsel responded that whether the jury believed the minor stepdaughters was the critical issue in this case and this "expert" testimony was not necessary. R. p. 147, l. 21 - 148, l. 14. The judge overruled the objection, and allowed Benedetto to testify. R. p. 147, l. 21- 149, l. 1.

Benedetto then testified that she worked at the Department of Mental Health at the Assessment and Resource Center in Columbia. She also was the chief psychologist at the Children's Advocacy Center. R. p. 150, ll. 6- 13.

She had an undergraduate degree in psychology and a masters and doctoral degrees from St. John's University in psychology. R. p. 150, ll. 17- 22. She had done forensic evaluations and had done between 1,500 and 2,000 interviews with children. She had been working and training with "finding words." R. p. 151, l. 16 – 157, l. 8.

When the solicitor offered Benedetto as an "expert" in "child sexual abuse dynamics", defense counsel again objected to her testifying as an expert correctly noting her testimony in reality involved the "finding words" model. R. p. 155, ll. 10 - 24. The judge qualified Dr. Benedetto as an expert and allowed her to testify over objection. Dr. Benedetto then testified she had not become "personally involved with the children in this trial." R. p. 155, l. 10 – 156, l. 20.

Benedetto maintained that the way children reacted to abuse seemed "counter-intuitive." She said adults tended to think as adults "they would run away and scream" if they were abused. However, she opined that "children reacted differently, delay disclosure." However, she said "every child is different, every family is different..." R. p. 146, l. 1 – 148, l. 10.

The solicitor then asked how watching domestic violence among adults could affect a child disclosing abuse. Dr. Benedetto answered: "If a child has seen domestic violence in the home, of course, they may be fearful there might be danger if they told because, in fact, they have seen dangerous things happen; so they may be fearful for their own safety or the other parent's safety." R. p. 158, ll. 14 - 24.

The solicitor then asked for her opinion on how the reaction of the non-offending parent may affect “disclosure.” Dr. Benedetto then said the response of the other parent was very important as to whether the “child feels important, whether they feel that they are believed, whether they feel they are going to be protected or not.” She said if the child did not receive support the child may “[f]eel, well, you know, if my parent doesn’t believe me, who will? And if I don’t feel my parent will protect me, you know, then nobody will.” R. p. 159, l. 14 - 160, l. 16.

Dr. Benedetto also testified that the body language of the children being interviewed was important because their emotions were different than adults. “One of the things that surprises us sometimes even as many interviews as I have done is that children are not always as emotional as we might expect them to be in an interview.” R. p. 164, ll. 13- 25.

After Dr. Benedetto’s testimony the solicitor read a stipulation that appellant had a prior conviction for criminal sexual conduct in the second degree from 1998, thirteen years before this trial. R. p. 172, l. 23 – 173, l. 6.

Discussion

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 499, n.5, (2011) the Supreme Court noted that there was no objection to the qualifications of the witness *in that case*. However, the Court noted it had previously observed that the witness may not even need to be qualified as an expert. See, State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009).

The Supreme Court held that it could “**envision no circumstance where their qualification as an expert at trial would be appropriate**” in the “*forensic interviewer*” *type context*. Although the Court was speaking of forensic interviewers, the testimony of

Benedetto here on “child abuse dynamics” was offered for the same purpose, which was to imply to the jury that someone who worked in this “specialty” of abused children could offer expertise which allegedly would assist the jury in deciding whether the minors were being truthful. The testimony would allegedly assist the jury within the confines of Rules 702 and 703, SCRE.

Defense counsel correctly objected that Benedetto’s testimony was meant to bolster the testimony of the minor witnesses while dressed up as “expert testimony.” It was just another version of the “finding words” method. It was not needed and it was highly prejudicial. The hook allegedly was that Benedetto did not interview the minors, and her being allegedly “unprepared” was really a virtue.

Benedetto gave her opinions once clothed as an “expert” over appellant’s objection about how domestic violence and having a non-supporting parent would affect disclosure of abuse. The solicitor had already offered evidence about the domestic abuse the minors had viewed, and how their mother allowed appellant to live with them after they alleged appellant had abused them or elicited sexual favors.

While the judge noted that appellant’s objection cited State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), in support of its position he nonetheless stated he was going to allow Benedetto to testify as an expert. Once Benedetto was qualified as an expert she was entitled to give her opinions about child abuse. It was error to qualify her as an expert so she could give her opinions to the jury. See State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009). Her testimony bolstered the allegations of the minors as defense counsel stated. See, also, State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

The state will undoubtedly argue the evidence here is sufficiently different, but **it is not**. Further, this is South Carolina and **our** Supreme Court has spoken clearly on this issue regardless of what some other jurisdictions may allow.

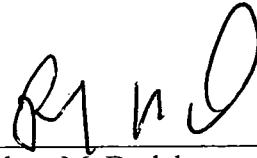
The jury was told that the viewing of domestic violence and having a non-supporting mother would cause the children to fear disclosing abuse. Again, domestic violence and a non-supporting mother were allegedly factors in this case. The solicitor told the jurors: "After the couch incident Adrianna says she tried to tell her mom. Nothing happened. Briana told you that she wrote her mom a letter and her mom sat right there and said, yeah, I got the letter. The letter was for her grandmother, but it never made it because William got it. Those girls then found help from someone else. The police came finally. They went and were interviewed at the Child Advocacy Center and they **told the same story** to the women at the Child Advocacy Center . . . Find him guilty." R. p. 182, l. 19 – 183, l. 8 (emphasis added).

Benedetto should not have qualified as an expert which allowed her to impermissibly bolster the testimony of the complaining stepdaughters. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Aiken County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

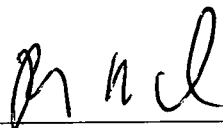
ATTORNEY FOR APPELLANT

This 9th day of October, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 9, 2014



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

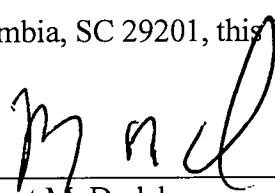
WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

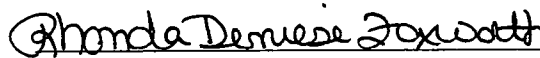
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of October, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

WILLIAM POU,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting the decidedly qualified child psychologist as an expert in child abuse dynamics because the expert provided helpful background information designed to address common misconceptions about child abuse and did not vouch for the victims' credibility.

STATEMENT OF THE CASE

Appellant Pou was indicted for three counts of criminal sexual conduct with a minor in the first degree, four counts of lewd act upon a minor, and two counts of criminal solicitation with a minor. Pou was tried by jury before the Honorable Doyet A. Early, III, on December 4-7, 2012. Pou was convicted of every count except one count of solicitation. Judge Early sentenced Pou to an aggregate sentence of thirty years' imprisonment.

STATEMENT OF FACTS

Victim A and Victim B were both victimized by Mr. Pou. Pou's counsel warned the jury that they would not like Pou very much. ROA. pp. 28-29. The essence of Pou's desperate defense was that he was the evil stepfather they did not like. The prosecution conceded in closing argument that he was horrible and bad.

Victim A was eleven years old at trial. Law enforcement came to Victim A's school and asked her if Pou ever touched her inappropriately. Victim A indicated that he did not. But she disclosed that while she and her sister, Victim B, were home alone in the living room with Pou, Pou asked Victim A to "suck his thing." Victims' mother (Mother) was at work at the time. Victim A spelled out the actual word he used because she was uncomfortable saying it in court ("D-I-C-K"). Victim A explained on cross-examination that it was

punishment and that Pou told her to stay on the couch in the living room or she would have to perform oral sex on him. Pou then told Victim A to go to his room. In Pou's bedroom, Pou requested Victim A perform oral sex a second time and when Victim A refused, Pou sent her to her room. Victim A told her mother about the incident the next day. Victim A testified that Pou got in trouble after she told and he stopped living with them for a week, but he came back. Victim A testified she was nine or ten years' old at the time of the incident. ROA. pp. 32-40; pp. 44-45.

Victim B was twelve years old at the time of trial. She testified Pou was her stepdad. Police interviewed Victim B while she was at school at Aiken Middle School. Victim B testified the inappropriate touching began when she was eight years old. The touching occurred in Pou's room when her mother was at work. Pou would use his hands or his private. Pou would take off both his pants and her pants. Pou would touch Victim on both the outside and inside of her "cookie." Pou told her not to tell anyone. Victim B testified Victim A was never in the same room when Victim B was sexually abused. ROA. p. 53; pp. 56-65; p. 71. Victim B testified the abuse occurred in every grade from fourth through sixth. ROA. pp. 70-71.

Victim B confirmed the incident about which Victim A testified. Victim B testified they were all in the living room when Pou told both sisters that if they got up off the couch, they would have to "suck his private." Victim B also spelled out "D-I-C-K" when asked about the actual word Pou used. Victim B testified they stayed on the couch all night until their mother came home. ROA. pp. 67-68.

Victim B also testified about a letter she wrote to her grandmother. Her mother found

it and never gave it back to Victim B. ROA. p. 68-69. Mother confirmed on cross-examination that she found a letter a few days before Victim A reported the couch incident, which was the first time Mother heard allegations about sexual abuse. ROA. p. 95. The victims told Mother about a day or two before the police went to each of their respective schools. ROA. pp. 95-98.

On cross-examination, as a matter of trial strategy, defense counsel elicited testimony from Victim B that she was aware that when Pou was nineteen years' old, he got in trouble for having sex with a fourteen-year-old. ROA. p. 80.

Kimberly Sawyer and Anne Laver from the Child Advocacy Center both testified. Both utilized the Child First protocol; the acronym for the protocol is RATAC. Laver testified that this protocol is used in South Carolina and seventeen other states. ROA. p. 113. Each interviewed one of the sisters. The forensic interviews were put into evidence. ROA. p. 106, p. 115. There actually is no contention that either of these witnesses testified inappropriately.

Investigator David Bevins from the Aiken County Sheriff's Office testified he was dispatched to Victim A's school about a possible incident of child sexual abuse. ROA. p. 124. Bevins interviewed Victim A. Immediately, without making any other stops, he went to Victim B's school and interviewed Victim B. Victim B became upset and withdrawn; she cried during the interview. She disclosed abuse starting when she was eight years old until sometime shortly before the interview. ROA. p. 123-127. Notably, in contradiction to the defense presented, Mother never called law enforcement to investigate the abuse. ROA. p. 129.

Nurse Katherine Chapell examined Victim B but was unable to complete the examination. In relevant part, Chapell testified as follows:

Q: Were you able to complete the exam?

A: I was not able to complete all portions of the exam.

Q: What part of the exam were you not able to complete?

A: I couldn't complete the anogenital portion because she was not answering my questions at that point and just not able to move forward to taking off her pants and I tried to talk to her a little bit about it and how, you know, what was she concerned about and what did we need to talk about before we did that part to make sure she was comfortable and she basically wasn't responding to me at all at that point. She was just looking straight down into her lap and was crying a little bit – not sobbing, but just kind of tears falling.

Q: So did you get any type of results from that part of the exam?

A: No. With a child in that emotional state I am not going to force them to do anything. That's not fair to them, and so I told her we're not going to do that part of the exam today because you just don't seem ready

ROA. p. 143, lines 6-24.

Dr. Alicia Benedetto is the witness who is the subject of Appellant's remonstrations. Dr. Benedetto never spoke with or met the victims or observed their interviews. ROA. p. 156, lines 18-23. Pou often takes disrespectful tones in his brief, but Dr. Benedetto is an accomplished professional. She is employed by the Department of Mental Health in Columbia at the Assessment and Resource Center, commonly known as ARC. She is the chief psychologist at the Children's Advocacy Center. She has been employed with ARC for the last thirteen years. She has an undergraduate degree in psychology from New York

University and master's and doctoral degrees from St. John's University. She completed a one-year internship at the William S. Hall Psychiatric Institute. Dr. Benedetto has conducted in the neighborhood of 1,500 to 2,000 forensic interviews of children over concerns of child abuse. She also completes continuing education to maintain her license and to maintain accreditation for ARC. ROA. pp. 150-151.

Dr. Benedetto testified as follows:

In addition to forensic interviews and evaluations, I also conduct therapeutic interventions with children when abuse has been identified and a child has been referred for therapy services to address the problem. I also provide training state-wide to child abuse professionals to help train on best practices in interviewing, to train on the dynamics of child sexual abuse, and to help interviewers understand everything that goes into conducting a legally-defensible developmentally-appropriate child-friendly interview.¹

ROA. p. 151, line 21 – p. 152, line 5. Dr. Benedetto estimated she has testified as an expert sixty or seventy times. ROA. p. 155, lines 5-9.

Dr. Benedetto was qualified as an expert in child abuse dynamics over the following objection from defense counsel: "Judge, I would object. The testimony has been towards the advanced training in Child First." ROA. p. 155, lines 14-15. Rephrased for the trial court's benefit, defense counsel remonstrated: "The testimony that she has given today as to her qualifications has all been towards the advanced Child First training; nothing towards the

¹ For context, see State v. Michaels, 642 A.2d 1372, 1379 (N.J. 1994) ("[A] sufficient consensus exists within the academic, professional, and law enforcement communities, confirmed in varying degrees by courts, to warrant the conclusion that the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child's recollection of events, thereby undermining the reliability of the statements and subsequent testimony concerning such events.").

child abuse dynamics.” ROA. p. 155, lines 17-19.

Dr. Benedetto defined child sexual abuse dynamics as follows:

Well, when you think about child sexual abuse it is important to understand it is coming from the standpoint of the child and I think often as adults some of the behaviors that we sometimes see in children when they’ve been abused seem kind of counter-intuitive. In other words, they don’t quite make sense to us as adults because we think, well, if somebody did that to me I would tell right away, I would run, I would scream – whatever you think you might do if you were in that situation, but you’re thinking of it as an adult and what we know is that children don’t respond that way.

Children don’t necessarily feel empowered in the same way and so there are a lot of different dynamics that go into a situation and it’s different for every child and every family. It’s not the same across the board, but the idea of child sexual abuse dynamics is that it’s important to consider these factors and understand how those factor[s] might have an impact on a child.

ROA. p. 157, lines 1-18.

Dr. Benedetto testified about delayed disclosure as follows:

Well, again, every child is different. Every family is different, but I would say that the most sort of comprehensive way of understanding it is fear – fear of something – and it can be fear of negative consequences to the family, even fear of negative consequences to the alleged perpetrator whom the child might care about or feel that the family needs in some way, fear because of the threats that have been made. Those can be explicit threats not to tell or just implicit threats that you understand that it would be a problem if you did tell. Bad things might happen if you did tell.

Children can want to protect a parent, want to protect their own place in the family. So, in other words, children may fear they’ll be taken out of the family or that someone might face consequences such as prison. It depends a lot on the age of the child, the relationship they have to the alleged perpetrator, and their understanding of what might happen if they tell.

ROA. p. 158, line 9 – p. 159, line 1. Dr. Benedetto explained “the relationship to the perpetrator is a very important factor in whether a child feels comfortable [and/or] safe making a disclosure.” ROA. p. 159, lines 9-13.

Dr. Benedetto further explained: “If a child has seen domestic violence in the home . . . they may be fearful that there might be danger if they told because in fact, they have seen dangerous things happen; so they may be fearful for their own safety or the other parent’s safety.” ROA. p. 159, lines 19-24.²

Dr. Benedetto was asked about the impact of the reaction by a non-offending parent on disclosure by a child. She noted the response of the non-offending parent was “very important in whether the child feels supported, whether they feel that they are believed, whether they feel they’re going to be protected or not.” ROA. p. 160. Explaining the dynamics between a child and a non-offending parent, Dr. Benedetto commented: “You know, children depend on their caregivers for everything, for emotional support and protection and if the response of a caregiver is less than supportive and protective that child

² Note that as a matter of trial strategy, defense counsel elicited testimony from Mother that Pou, during an argument with Mother, removed the bathroom shower door while Mother was helping the sisters take a shower. Pou yelled at Mother about the title to the house. ROA. p. 94, lines 19-22. In his brief, Pou complains that the prosecution elicited testimony about Pou’s domestic abuse of Mother that the victims observed. Br. of Appellant, p. 11. This is a disingenuous assertion, because most of the testimony was elicited by defense counsel in pursuit of his strategy of arguing the allegations were made so Pou would be removed from the home. See ROA. pp. 45-48 (asking if parents fight a lot, reference to an incident with a screwdriver, and an incident where he pushed Mother); ROA. pp. 73-74 (Pou and mother used to fight, discussed screwdriver incident); ROA. p. 94 (Mother agreed with defense counsel that Pou cut her with a screwdriver and they argued in front of victims a lot). Notably, the prosecution objected to testimony by defense counsel that Pou threw

may feel, well, you know, if my parent doesn't believe me, who will? And if I don't feel that my parent will protect me, you know, then nobody will." ROA. p. 160, lines 10-16.

Dr. Benedetto discussed the nature of disclosure by sexually abused children as a process, rather than a "discrete event," noting children will make a small disclosure to "test the waters" and gage the response from the non-offending adult. ROA. p. 161, lines 6-17.

Dr. Benedetto also discussed the range of responses from children and the body of language a children might exhibit in the interviewing process. Dr. Benedetto noted that in her interviews, "children are not always as emotional as we might expect them to be in an interview." ROA. p. 164, lines 13-25.

Children may become "very comfortable talking about things and they [won't] necessarily show emotions that we as adults might think that you would show" when discussing child abuse, especially if the children feel safe in the interviewing environment. That feeling of safety and comfort is something an interviewer will seek to build. ROA. p. 165, lines 3-9 (direct quote, p. 165, lines 6-7). Other children might respond with a dissociative response. ROA. p. 165, lines 10-18.

Although already referenced by defense counsel in his cross-examination, the parties stipulated that Pou was convicted of criminal sexual conduct in the second degree, which was to prove the prior offense element for criminal sexual conduct in the first degree. ROA. p. 172, line 23 – p. 173, line 6.

Mother on the floor and hurt Mother, based on relevance. ROA. p. 47, lines 17-24.

ARGUMENT

The trial court did not err in admitting the decidedly qualified child psychologist as an expert in child abuse dynamics because the expert provided helpful background information designed to address common misconceptions about child abuse and did not vouch for the victims' credibility.

Pou claims the trial court erred in admitting Dr. Benedetto as an expert in child abuse dynamics. Pou cites cases in which a forensic interviewer testifies about the credibility of a child they interviewed. This is not the situation presented in this case – Dr. Benedetto never interviewed the records and never commented on their credibility. In fear of an onslaught of out-of-state authority, Pou declares: “Further, this is South Carolina and our Supreme Court has spoken clearly on this issue regardless of what some other jurisdictions allow.” Appellant’s initial brief, p. 12 (emphasis in the original). As discussed below, our Supreme Court spoke clearly on the issue raised and found the challenged expert testimony is admissible. Pou fails to cite those cases in his brief, although they are dispositive.

The South Carolina Supreme Court spoke clearly when it found “that both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.” State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993). This case resolves the issue, but Pou does not cite the case in his brief.

This Court relied on Schumpert when it found no error in qualifying a social worker in the field of “victims of sexual abuse.” State v. Weaverling, 337 S.C. 460, 473, 523 S.E.2d 787, 794 (Ct. App. 1999). This Court found, “Expert testimony concerning common

behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” Id. at 474, 523 S.E.2d at 794. “Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child’s often strange demeanor.” Id. at 475, 523 S.E.2d at 794 (internal citation omitted). This case is also missing from Pou’s analysis, but neatly resolves the issue.

Our Supreme Court later noted: “Expert testimony on rape trauma may be more crucial in situations where children are victims. The inexperience and impressionability of children often render them unable to effectively articulate the events giving rise to criminal sexual behavior.” State v. White, 361 S.C. 407, 414-15, 605 S.E.2d 540, 544 (2004) (finding testimony is admissible in prosecutions where the victim of sexual abuse is an adult).

These cases all stand for the proposition that an expert may testify about the resulting trauma and actions of a victim of child sexual abuse. These are the cases that are relevant for analysis of the issue raised. The cases cited by Pou all stand for the proposition that an interviewer, like any other witness, may not testify about whether or not they believed the victim. Dr. Benedetto testified she did not interview the victim and she never testified about the victim’s veracity. Other than the most superficial references to the four cases cited in Pou’s brief, Pou does not explain how those cases are remotely applicable to the instant case. Pou instead relies on a conclusory assertion that: “[T]he State will undoubtedly argue the evidence here is sufficiently different, but it is not.” Br. of Appellant, p. 12 (emphasis removed).

Side references to immaterial facts or hyperbolic declarations cannot change the fact that Pou is barking up the wrong tree. These cases have little, if any, applicability to the instant case. For instance, in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), there was no challenge to the forensic interviewer being admitted as an expert. The Supreme Court found error because of improper hearsay and because the forensic interviewer's notes were admitted in which the forensic interviewer found a "compelling disclosure of abuse." The forensic interviewer provided similar testimony in State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), which this Court noted was opinion testimony on the veracity of the victim. Such testimony invaded the province of the jury. Id. In State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), the Supreme Court found admission of an interviewer as an expert in forensic interviewing was not warranted. However, Douglas never purported to overrule Weaverling or Schumpert, where individuals are admitted as experts in child sexual abuse to provide educational background information on victims traumatized by child sexual abuse.

The Supreme Court, in dicta, indicated that forensic interviewers should not be admitted as expert witnesses. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). In so finding, the Supreme Court noted the forensic interviewer's specialized role in collecting data from children as an investigative tool. Id. at 357, 737 S.E.2d at 499. Kromah did not suggest that the expert testimony approved in Weaverling or Shumpert was improper. In contrast to the facts in the cases cited by Pou, Dr. Benedetto did not comment on the victims'

veracity, but merely provided background information as an educator-expert.³

Of course, expert testimony on common behavior by victims of sexual abuse is allowed in South Carolina, as this Court has observed. “Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.” See State v. Weaverling, 337 S.C. 460, 474-475, 523 S.E.2d 787, 794 (Ct. App. 1999) (citing with approval State v. Lujan, 967 P.2d 123 (Ariz. 1998) (opinion testimony describing behavioral characteristics outside jurors’ common experience is admissible)). “Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault.” Id. at 475, 523 S.E.2d at 794; see also People v. Carroll, 740 N.E.2d 1084, 1090 (N.Y. 2000) (“We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]”).

As Pou predicted, the State will reference case law from other jurisdictions. Such reference shows how out of touch Pou’s anachronistic argument is from the great weight of authority, not just in South Carolina, but most other states. The Supreme Court of Hawaii observed in 1990 that “sexual abuse of children ‘is a particularly mysterious phenomenon.’”

³ The nature of Dr. Benedetto’s expert testimony falls under what a Texas court has aptly described as “educator expert” evidence. Coble v. State, 330 S.W.3d 253 (Tx. Crim. App. 2010) (finding expert testimony about Texas prison classification system and prison violence admissible despite claim the testimony did not relate to appellant personally; testimony was relevant as rebuttal “educator-expert” evidence). Dr. Benedetto agreed with the prosecutor that she had not spoken with or met the victims or observed their interviews. ROA. p. 156, lines 18-23. That was not her purpose at trial; it was not a matter of being unprepared as Pou speciously alleges in his brief.

State v. Batangan, 799 P.2d 48, 51 (Haw. 1990) (quoting State v. Castro, 756 P.2d 1033, 1044 (Haw. 1988)).

The Hawaii Supreme Court quoted with approval the observations of other courts as follows:

While jurors may be capable of personalizing the emotions of victims of physical assault generally, and of assessing witness credibility accordingly, tensions unique to trauma experienced by a child sexually abused by a family member have remained largely unknown to the public. . . . [T]he routine indicia of witness credibility – consistency, willingness to aid the prosecution, straight forward rendition of the facts – may, for good reason, be lacking. As a result jurors may impose standards of normalcy on child victim/witnesses who consistently respond in distinctly abnormal fashion.

Batangan, 799 P.2d at 51 (quoting State v. Moran, 728 P.2d 248, 251 (Ariz. 1986) and State v. Middleton, 657 P.2d 1215, 1222 (Or. 1983) (Roberts, J., concurring)).

The Batangan court further observed:

Child victims of sexual abuse have exhibited some patterns of behavior which are seemingly inconsistent with behavioral norms of other victims of assault. Two such types of behavior are delayed reporting of the offenses and recantation of allegations of abuse. Normally, such behavior would be attributed to inaccuracy or prevarication. . . . In these situations it is helpful for the jury to know that many child victims of sexual abuse behave in the same manner. Expert testimony exposing jurors to the unique interpersonal dynamics involved in prosecutions for intrafamily child sexual abuse . . . may play a particularly useful role by disabusing the jury of some widely held misconceptions . . . so that it may evaluate the evidence free of the constraints of popular myths.

Batangan, 799 P.2d at 51-52 (citations and internal quotation marks omitted). The Minnesota Supreme Court found: “Background data providing a relevant insight into the

puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children." State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984).

Georgia's Court of Appeals rejected an argument that an expert's testimony "bolstered" the victim's testimony. Westbrooks v. State, 710 S.E.2d 594, 597-98 (Ga. Ct. App. 2011). The Georgia court found the forensic interviewer's testimony regarding partial disclosure and delayed disclosure was relevant and did not directly address the victim's credibility or express a direct opinion that the victim was sexually abused. Id. The Georgia court opined "the fact that such testimony may also indirectly involve the child's credibility" does not mean that it improperly bolsters the child's credibility. Id. at 598. Similarly, South Dakota's Supreme Court also rejected the argument that an expert who testified as to the general characteristics of an abused child bolstered the victim's credibility, noting the expert did not interview the witness or testify that the victim had any of those characteristics. State v. Edelman, 593 N.W.2d 419, 423 (S.D. 1999).

The Alabama Criminal Court of Appeals found an expert's testimony on delayed disclosure based on her specialized knowledge was admissible and "clearly assisted the jury to understand the evidence presented" regarding the victim's ten-year delay in disclosing abuse. W.R.C. v. State, 69 So.3d 933, 939 (Ala. Crim. App. 2010) (noting "other jurisdictions have held similar testimony to be admissible in child-sexual-abuse cases").

A law review article confirms the soundness of expert testimony on delayed disclosure:

Psychological research demonstrates that delayed reporting is

common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome.

John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y, 45-46 (2010) (footnotes omitted).

The New Jersey Supreme Court declared the following: "There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS [Child Sexual Abuse Accommodation Syndrome] identifies or describes behavioral traits commonly found in child abuse victims." State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993) (finding testimony about CSAAS is admissible to show victim displayed symptoms of child abuse or to explain delayed disclosure or recantation, but not to establish guilt or innocence).

Generally, "[e]xpert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. App. Ct. 2003). Further, disclosure in child abuse cases is generally delayed because of coercion, guilt, or some other reason, [and thus] there will be no physical evidence to corroborate the victim's allegations. Therefore . . . expert testimony will . . . assist the jury in understanding the evidence." People v. Beckley, 456 N.W.2d 391, 402 (Mich. 1990); see also State v. Carpenter, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (finding expert testimony on delayed

disclosure is “clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage”).

In State v. Cardany, 646 A.2d 291 (Conn. App. Ct. 1994), Connecticut’s Appellate Court found expert testimony on delayed disclosure admissible in the state’s case-in-chief, noting: “It is natural for a jury to discount the credibility of a victim who did not immediately report alleged incidents of abuse whether or not the defense emphasizes the delay in cross-examination. Thus, testimony that explains to the jury why a minor victim of sexual abuse might delay in reporting the incidents of abuse should be allowed as part of the state’s case-in-chief.” Id., 646 A.2d at 294.

In State v. Perry, 218 P.3d 95 (Or. 2009), the Oregon Supreme Court found expert testimony on the phenomenon of delayed disclosure by victims of child sexual abuse admissible. The expert testified that examiners and interviewers in her organization received extensive specialized training, and there were specialized journals and other peer-reviewed literature devoted to the area of child sexual abuse. The expert also testified that the phenomenon was common and well understood, with a body of literature concerning the issue. Id. at 97.

In responding to a claim of trial court error in allowing the state’s expert to testify about sexual abuse of children and characteristics of perpetrators, the Louisiana Court of Appeals noted the following:

[The expert] testified very broadly about the general characteristics of sexual abuse victims, namely how such victims delay disclosure and some of the reasons why disclosure may be delayed, such as fear or shame. As discussed, part of [the expert’s] training and experience included counseling

children who were victims of sexual abuse. It would not have been beyond her expertise to explain, based on her own practice and experience, the basics of delayed disclosure.

State v. Friday, 73 So.3d 913, 931-32 (La. Ct. App. 2011).

The Iowa Court of Appeals found counsel was not ineffective for failing to object to an expert's testimony on characteristics of abused children, noting in part: "We determine the opinion evidence could help the jury in understanding the evidence because it explained the delayed reporting symptom that existed in children who were sexually abused." State v. Tonn, 441 N.W.2d 403, 405 (Iowa Ct. App. 1989).

"Indeed, the majority of states permit expert testimony to explain delayed reporting, recantation, and inconsistency" People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011). The trial court did not abuse its discretion in admitting this testimony as it is clearly admissible under Schumpert and Weaverling and case law from the majority of jurisdictions that goes back decades.

Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives **great deference** to the trial court." (emphasis added)).

In South Carolina, "[t]he admission or exclusion of expert testimony is a matter within the sound discretion of the trial court." Burroughs v. Worsham, 352 S.C. 382, 390,

574 S.E.2d 215, 219 (Ct. App. 2002). “A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.” State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). A trial court abuses its power of discretion when it commits an error of law or when there has been a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). “There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury’s good judgment and common knowledge.” State v. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991).

In the instant case, the trial court did not err in allowing the expert testimony from Dr. Benedetto. She did not opine as to whether delayed disclosure occurred in the present case, did not comment on the victims’ veracity, and did not bolster the victims’ credibility.

Further, the issue is not remotely preserved. Defense counsel’s objection was that Dr. Benedetto was not qualified. The argument concerning whether such testimony should be allowed despite the controlling authority of Schumpert and Weaverling was not made when Dr. Benedetto testified. “[A] specific objection to the admission of evidence must be made to preserve the issue for appeal.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). “The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.” Id. “The same ground argued on appeal must have been argued to the trial judge.” Id.

Accordingly, the convictions and sentences should be affirmed.

CONCLUSION

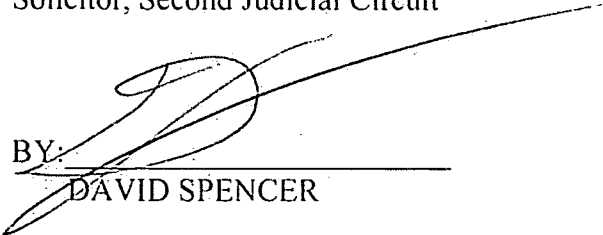
For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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October 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIAM POU,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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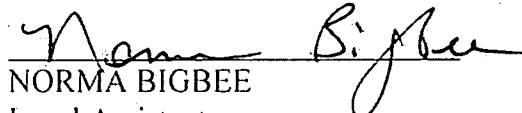
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Robert M. Dudek, Esquire, Chief Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 3RD day of October, 2014.


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM POU,

APPELLANT

APPELLATE CASE NO. 2012-213617

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The state cites case law that is outdated and no longer good law since the Supreme Court in recent years has made it abundantly clear that “expert” opinion bolstering a child’s sex allegations is impermissible, and that the trial judge has a “gatekeeping” duty on non-scientific evidence as well. Further, merely renaming the title of the expert from a “forensic interviewer” to another title does not change the underlying bolstering problem if the expert relays to the jury that the child is telling the truth in a slightly different fashion.

The state cites precedents of this Court and the Supreme Court from the 1990’s that predates relevant precedent on the evils of bolstering in child sex cases. See, State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2011); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2009); State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

The state cites to the State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 487, 494 (Ct. App. 1999) language that “expert testimony concerning common behavioral characteristics of sexual assault victims and a range of responses to sexual assault encountered by experts is admissible.” The state also cites State v. Schumpert, 312 S.C. 402, 506, 435 S.E.2d 859, 862 (1993), for the proposition that “both expert testimony and behavioral evidence are admissible as rape trauma evidence *to prove a sexual offense occurred* where the probative value of such evidence outweighs its prejudicial effect.” (emphasis added). At a minimum Schumpert obviously mandated a Rule 403, SCRE analysis before such evidence could be admitted. Brief of Respondent at 9-10.

Further, and more importantly, such older cases must be viewed through the lens of modern precedents such as Kromah. For example, in State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (1997), this Court held that a psychotherapist possessed the ability and skill to be

qualified as an expert to render an opinion that the alleged victim suffered from post-traumatic stress disorder. The psychotherapist based her diagnosis and opinion of post-traumatic stress disorder on what she was told by the alleged victim and her observations of the victim's demeanor and symptoms exhibited by the alleged victim. She made no attempt to corroborate the alleged victim's testimony.

In State v. Henry the alleged victim testified she was an honor roll student in high school, but she was being sexually abused. R. 225-232. However, at the University of Florida her GPA fell to 1.88. She blamed her low grades on having nightmares and an inability to concentrate. She did not disclose the abuse.

The psychotherapist in Henry -- based on her "expertise" -- opined that it was not unusual at all for a person who was sexually abused to excel in high school while at home, and then have trouble coping once away from the abuser (in college). R. 374, ll. 13-16. It was not also unusual for that alleged victim to have nightmares, and not disclose the alleged abuse. The bottom line opinion of the psychotherapist was that the alleged victim suffered from PTSD. This, she explained, was a process people go through after suffering from a traumatic event such as being sexually abused. This Court can take judicial notice of the fact that certiorari in Henry to the Supreme Court was not sought.

In Henry, this Court cited State v. Morgan, 326 S.C. 503, 485 S.E.2d 112 (Ct. App.1997), and State v. Schumpert, 312 S.C. 402, 506, 435 S.E.2d 859, 862 (1993), and held, essentially, that defects in the knowledge or experience of the experience of the expert, or the adequacy (reliability) of her testimony went to its weight and not its admissibility.

Clearly, an opinion that an "expert" believed the alleged victim's allegation of sexual abuse would be improper today. Moreover, in State v. White, 382 S.C. 265, 676

S.E.2d 684 (2009) our Supreme Court held that the trial court's gate keeping function in assuring reliability of expert testimony applies to non-scientific evidence also, thereby overruling State v. Morgan, 326 S.C. 503, 485 S.E.2d 112 (Ct. App.1997).

"The familiar tenet of evidence law that a continuing challenge to evidence goes to 'weight, not admissibility' has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability. Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter."¹ State v. White 326 S.C. at 273, 676 S.E.2d at 688.

In Morgan, this Court had held that behavioral science opinions offered by medical doctor and medical health counselor were not subject to challenge based upon reliability of the opinions or of methods and techniques used. It is apparent there has been a vast change in South Carolina precedent on this subject since Weaverling, Schumpert and Henry.

It is evident that solicitors have adopted a strategy of renaming forensic interviewers to "experts" in "child abuse dynamics" or similar titles in a thinly veiled attempt to evade the holding of Kromah. In fact, in an argument before this Court one Assistant Attorney General in the last several months candidly acknowledged that his office had recommended that solicitors not seek to qualify forensics interviewers as experts because they will be accused of bolstering the child's testimony.

¹ Appellant understands that the "expert" in Henry interviewed the alleged victim, and then cited to a variety of "statistics" on nondisclosure of abuse. The salient point is that the reasoning of Henry, the same as in Morgan is no longer good law.

There is no need for appellant to reiterate his arguments in his brief of appellant. Suffice it to say that here defense counsel correctly objected that Dr. Benedetto's testimony was meant to bolster the testimony of the minor given the similarities in alleged victim's life, and those same similarities which allegedly existed in the lives of other victims of sexual abuse. The jury was told that a child viewing domestic violence in her family would be scared to disclose abuse out of fear. Further, having a non-supportive mother would further cause the child to fear disclosing abuse.

The state presented evidence of domestic violence in the alleged victim's family during its case-in-chief. The state also offered evidence that the mother of the alleged victim here was a non-supportive (non-believing) mother.

Dr. Benedetto's testimony improperly bolstered the testimony of the alleged victim. It was not done in the **identical** fashion as that in Kromah because Dr. Benedetto, for years a "forensic interviewer" relying on the prosecutions "finding words" routine, was careful to say she had not interviewed the alleged victims.

However, qualifying Dr. Benedetto an expert in "child abuse dynamics," and not having her interview the minors, did not solve the bolstering problem. Appellant wants to be absolutely clear on "bolstering." It is presenting "expert" testimony which explicitly or implicitly informs the jury that the expert's testimony reveals that the child is telling the truth.

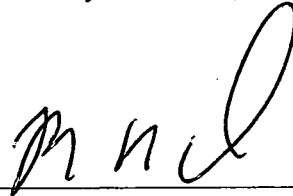
Dr. Benedetto's testimony here clearly conveyed that the child's behavior mirrored that of other alleged "non-disclosing" minors who had been sexually abused. It was a back door attempt to convey to the jury that Dr. Bendetto saw identical symptoms involving non-disclosure in a variety of other cases, it was common, and therefore the jury should believe

the accusing witnesses in this case who had the same experiences. This testimony, pursuant to Morgan, Henry, and Shumpert was inadmissible under the modern precedents of **our Supreme Court** in child sexual abuse cases.

CONCLUSION

By reason of the arguments in the brief of appellant, and in this reply brief, appellant's conviction should be reversed, and this case remanded to the Aiken County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

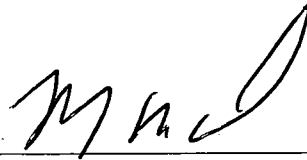
ATTORNEY FOR APPELLANT.

This 9th day of October, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 9, 2014



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STATE OF SOUTH CAROLINA

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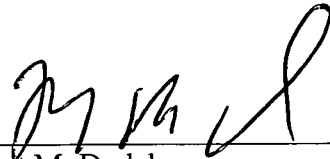
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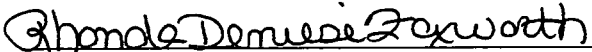
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of October, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021