

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dillon County
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2014-002401

RECEIVED

AUG 24 2015

S.C. Supreme Court

Jeffrey Caulder, No. 336973.....Appellant,

v.

State of South Carolina.....Respondent.

APPENDIX TO PETITION FOR CERTIORARI – VOL. ONE

JOHN D. (JAY) ELLIOTT
Post Office Box 607
1122 Lady Street – Suite 710
Columbia, South Carolina 29202
Phone: (803) 252-9236
Fax: (803) 799-2079
E-Mail: jayel@mindspring.com
ATTORNEY FOR PETITIONER

JOSHUA L. THOMAS
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
Phone: (803) 734-2134
ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
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IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Jeffrey Caulder, #336973)
CLERK OF COURT)
DILLON COUNTY)
Applicant,)

Case No. 2012-CP-17-156

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2012. Respondent made a timely Return on or about July 24, 2012. The Court convened an evidentiary hearing into the matter on July 21, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by John D. Elliott, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Rosalind L. Sellers, Esquire, testified at the evidentiary hearing. The Court also had before it a copy of the trial transcript, the records of the Dillon County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendments, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In September 2009, the Dillon County Grand Jury indicted Applicant for three counts of unlawful neglect of a child (2009-GS-

17-274, -275, and -276). Rosalind L. Sellers, Esquire ("trial counsel"), represented Applicant. On September 17-18, 2009, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. The jury found Applicant guilty as indicted. Judge Baxley sentenced Applicant to consecutive terms of ten (10) years for each count.

Applicant filed a timely notice of appeal, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on May 18, 2011. State v. Caulder, Op. No. 2011-UP-223 (S.C. Ct. App. filed May 18, 2011). The remittitur was returned to the circuit court on June 6, 2011.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant."
 - a. "The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible. Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra*."

In an amendment dated January 10, 2014, Applicant set forth the following grounds for

relief:

1. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant."

- a. "The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible.

Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra*. Moreover, one of the counselors was allowed to give opinion testimony as to whether the children were the victims of "child abuse." There was no objection to the qualifications of either counselor as experts, and hence able to provide opinion testimony, nor any challenge to their methodology for arriving at such an assessment. *Cf., State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), requiring South Carolina's trial courts to perform a gatekeeping function in the qualifications of experts or admissions of their testimony.

Finally, there was no reason for the counselors to testify in the first place. All three children testified, as did their mother. The testimony of the counselors added no relevant evidence to prove the charges against the defendant, other than to bolster the testimony of the children. *See, State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct.App. 1997), *rev'd* on other grounds by *State v. White, supra*."

2. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to the testimony of the investigating police officer, whose testimony impermissibly bolstered the state's case, and vouched for the testimony of the prosecution."

¹ *Anders v. California*, 386 U.S. 738 (1967).

- a. "Throughout the testimony of the investigating officer, he routinely commented that he had probable cause to make the arrest of Mr. Caulder. This is inadmissible due to the unfair prejudice which attaches to such testimony. *S.C.D.S.S. v. Lisa C.*, 380 S.C. 406, 669 S.E.2d 647 (Ct.App. 2008). Without objection, he was allowed to testify that he "determined that child abuse had been committed by [the wife] and the subject here," meaning Mr. Caulder. Opinion testimony, especially by a police officer, that a defendant is guilty is clearly inadmissible and prejudicial. *Cf. State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013), where the investigating officer merely testified what actions he took in response to his investigation. *See, e.g., State v. Odom*, 116 N.J. 65, 560 A.2d 1198 (1989); *Smith v. State*, 674 So.2d 791 (Fla.Dist.Ct.App. 5th Cir. 1996); *Nugent v. Commonwealth*, 639 S.W.2d 761 (Ky. 1982).

Moreover, the investigating officer testified without objection that he relied heavily on the opinions, of the local forensic interview facility, the Durant Center, as to whether "child abuse" has occurred. This improperly bolstered the state's case. *See, Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010), where counsel's failure to object to impermissible testimony by a "forensic interviewer" could not amount to a reasonable trial strategy, citing *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001)."

3. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to testimony improperly attacking his character."
 - a. "The prosecution, without objection, introduced testimony from one child that the defendant had no heart. The prosecution also introduced evidence that the defendant got in arguments with his wife, and threw things at her. The prosecution introduced testimony from another child that he was "mad at him" for what the defendant did to him. The prosecution introduced testimony from another child that "he didn't really care enough for us," or he would not have committed the alleged maltreatment. The defendant's wife, a co-defendant, testified to other irrelevant characteristics of the defendant. In a criminal case, the state cannot attack the character of the defendant unless he himself places his character at issue. *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989). This and other evidence regarding the character of the accused was improperly admitted into evidence, despite the fact that the defendant did not even take the stand."

4. "The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to move to sever the three counts against three children, due to unfair prejudice."
 - a. "The defendant was accused of abusing three children. The prosecution joined all three charges in this prosecution. Even though joinder may be permissible, a court must consider whether joinder of the offenses and the proof presented on those charges may nonetheless deprive the defendant of a fair trial. Cf., *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974). The defendant was unduly prejudiced by trying all three of these cases together, due to the prospect that the jury would be overcome with emotion or passion and might infer a criminal disposition on the part of the defendant. See, e.g. *State v. Tate*, 286 S.C. 462, 334 S.E.2d 289 (Ct.App. 1985). Counsel's failure to seek severance was ineffective, resulting in prejudice to the defendant."
5. The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to insist on a proper instruction to the jury regarding reasonable doubt.
 - a. "The trial court gave an instruction to the jury on reasonable doubt which did not comport with the elements required for instruction on this issue in this state's courts. State trial courts have been cautioned since as long ago as 1991 not to attempt to define reasonable doubt for a jury beyond its plain and ordinary meaning. See, *State v. Manning*, 305 S.C. 413, 409 S.E.2d 372 (1991). Furthermore, the trial court charged the jury on the facts in the context of this instruction, saying that the mere debate by the jury on the guilt or innocence of the victim "does not mean that reasonable doubt automatically exist(sic) in this case, or any other case for that matter." The trial court's instruction to the jury, taken as a whole, was confusing and there is a reasonable likelihood the jury applied the instruction in a way which undermined the state's burden of proof. Cf., *Todd v. State*, 355 S.C. 396, 585 S.E.2d 305 (2003). Counsel was ineffective in failing to insist on a proper instruction on reasonable doubt."

At the evidentiary hearing, the Applicant proceeded on all of the allegations in his amended application except the allegation of ineffectiveness for failing to sever the cases, which

Applicant withdrew at the hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified she was appointed to Applicant's case while she was working as a contract public defender in the Fourth Circuit. She recalled cross-examining Deputy Tyler on why he determined there was probable cause to arrest Applicant. Trial counsel testified she did not object to Deputy Tyler's testimony because he never stated he believed Applicant was guilty. Trial counsel testified part of her trial strategy was to show Deputy Tyler did not do an independent investigation because he was friends with the children's grandmother.

Trial counsel recalled the testimony of the victims in this case. On cross-examination, she testified the State's theory of the case was that Applicant had mentally abused the children, as there was no evidence of physical abuse. Trial counsel also recalled the testimony of the victims' therapists, Ms. Tuck and Ms. Allen-Cook. She testified these witnesses were the victims' treating counselors. She testified each witness testified to their qualifications and were qualified to testify as the victims counselors. Trial counsel testified Ms. Tuck was involved in the forensic interview of one of the victims, but did not testify at trial as to the substance of the forensic interview. She recalled neither of these counselors or Deputy Tyler testified about the

children's forensic interview. However, she did recall cross-examining the counselors about the diagnostic techniques they used to diagnose the victims. Trial counsel also testified she did not find any part of Judge Baxley's charge objectionable.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at

688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Counselors' Testimony

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of Ms. Tuck and Ms. Allen-Cook. Initially, the Court finds the line of cases dealing with testimony of forensic interviewers inapposite in this case because neither of these witnesses were qualified as forensic interviewers. See State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013); State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012); State v. Jennings, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011). Furthermore, each of these cases were decided after Applicant's trial. Thus, trial counsel did not have the benefit of their guidance. See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (citations omitted), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) ("We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.").

In this case, the counselors were qualified as experts in the field of child abuse counseling and treatment. (Trial Tr. 307:4-6; 348:7-9). The Court finds this was a proper ground for expert testimony because it could assist the trier of fact in determining whether the alleged crimes actually occurred. Cf. State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) (expert testimony and behavioral evidence admissible to prove crime occurred). Accordingly, trial counsel was not deficient in failing to object to the counselor's qualification as expert witnesses.

Furthermore, the testimony of the counselors was not irrelevant to any issues in the case. Ms. Tuck testified she diagnosed the victims with symptoms of child abuse and developed a treatment plan for them. Ms. Allen-Cook further diagnosed one of the victims with post-traumatic stress disorder and developed a treatment plan for him. The counselors' testimony was relevant to the elements of the alleged crime of unlawful neglect of a child.² The record indicates the State proceeded on a theory that Applicant's conduct threatened the mental health of the victims. The testimony of the victims' counselors was relevant to the mental injuries of the victims. Accordingly, trial counsel had no viable objection to the relevancy of the counselors' testimony.

Finally, the Court finds Applicant was not prejudiced by the admission of any testimony from the counselors that vouched for the credibility of the victims. Most of the testimony Applicant alleges was improper vouching was merely testimony about the diagnosis and treatment of the victims. However, the Ms. Tuck did testify she did not believe the victims inflated the story (Trial Tr. 342:10-14), and Ms. Allen-Cook testified one of the victims did not appear to be lying about the abuse (Trial Tr. 357:14-20). To the extent this testimony was objectionable,³ the Court finds its admission did not prejudice Applicant. The State only referenced the testimony of the counselors once in its closing argument. (Trial Tr. 399:22-401:7). However, Judge Baxley instructed the jury arguments are not evidence. (Trial Tr. 72:16-24). Judge Baxley also instructed the jury it was the sole judge of the credibility of

² See S.C. Code Ann. § 63-5-70(A)(1) ("It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child [...] to place the child at unreasonable risk of harm affecting the child's life, physical or mental health[.]").

³ Again, the Court notes the cases addressing vouching by expert witnesses were not decided until after Applicant's trial.

witnesses. (Trial Tr. 419:6-420:3). Furthermore, the testimony of each of the victims was consistent, and the victims' mother corroborated their story. In light of the entire record, including the other evidence presented at trial, the Court finds Applicant was not prejudiced by the admission of the counselors' testimony. See Kromah, 401 S.C. at 362, 737 S.E.2d at 501 ("Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial[.]"). Therefore, Applicant has not shown trial counsel was ineffective for failing to object to the counselors' testimony.

2. Deputy Tyler's Testimony

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of Deputy Tyler. The Court finds credible trial counsel's admission she did not object to any of Deputy Tyler's testimony because she wanted to show the inadequacies in his investigation. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The Court also finds Deputy Tyler's testimony was not unfairly prejudicial in the context of this case. Deputy Tyler's testimony was not opinion testimony regarding Applicant's guilt. See S.C. Dep't of Soc. Servs. v. Lisa C., 380 S.C. 406, 417, 669 S.E.2d 647, 653 (Ct. App. 2008) ("For the fact-finder to make a determination based on the Detective's opinion of guilt would be improper."). Instead, Deputy Tyler testified to the actions he took in response to a report of child abuse. Such testimony is admissible. Kromah, 401 S.C. at 355, 737 S.E.2d at 498 (citing State

v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004)). Furthermore, Deputy Tyler never revealed any of the contents of the forensic interviewers report upon which he relied in making the determination to arrest Applicant. Id. Accordingly, Applicant has not shown trial counsel was ineffective in failing to object to Deputy Tyler's statements regarding Applicant's arrest.

3. Children's Testimony

The Court further finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to object to the testimony of the victims in this case. Although a witness normally may not comment on the character of the defendant, testimony about prior bad acts may be admitted under the *res gestae* theory. State v. Wood, 362 S.C. 520, 527, 608 S.E.2d 435, 439 (Ct. App. 2004). "The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." Id. At 528, 608 S.E.2d at 439 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)).

Under the facts of the present case, the Court finds the testimony of the victims was "necessary and relevant to a full presentation of the evidence in this case." Id., 608 S.E.2d at 439-40. The State did not present a single incident of abuse to support its case, but rather alleged an ongoing course of conduct by Applicant resulting in damage to the victims' mental health. The challenged testimony encompasses the children's understanding of the injuries they allegedly sustained from Applicant. In light of the State's theory of the case, the Court finds the children's testimony about Applicant's other actions and their perception of him was admissible

as part of the *res gestae* of the alleged crime. Accordingly, trial counsel was not ineffective in failing to object to this testimony.

4. Reasonable Doubt Charge

The Court finds Applicant failed to meet his burden of proof to show trial counsel ineffective in failing to object to Judge Baxley's reasonable doubt charge. "[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)). The Court agrees with trial counsel's testimony that she found nothing objectionable about Judge Baxley's charge. Judge Baxley's charge on reasonable doubt is largely a recitation of the charge cited with approval in Todd v. State, 355 S.C. 396, 401, 585 S.E.2d 305, 308 (2003). Furthermore, the charge that a "full and free discussion of the issue ... does not mean that reasonable doubt automatically exists" (Trial Tr. 424:8-12) is not an improper comment on the facts because it does not reference any specific facts of the trial. In light of the entirety of Judge Baxley's thorough charge, the Court finds Applicant has not shown a reasonable likelihood the jury misapplied the law or misunderstood the State's burden of proof. Accordingly, trial counsel was not deficient for failing to object to the charge.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

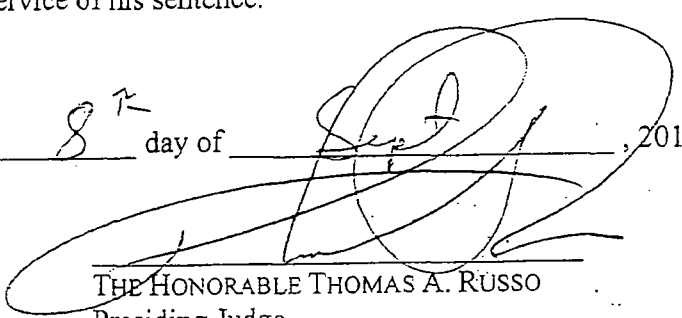
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of Sept, 2014.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Darlington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Jeffrey Caulder,
No. 336973,

Applicant,

vs.

State of South Carolina,

Respondent.

FILED
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CLERK OF COURT
DILLON COUNTY

2012-CP-17 156

APPLICATION FOR
POST CONVICTION RELIEF

CERTIFIED
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CLERK OF COURT
DILLON COUNTY

The Applicant alleges as follows, in conformity with Rule 71.1 of the South Carolina Rules of Civil Procedure.

1. Place of detention:

Lee Correctional Institute, Bishopville, South Carolina

2. Name and location of Court which imposed sentence:

The Hon. J. Michael Baxley
Judge, Court of General Sessions
Dillon, South Carolina 29536

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 2009-GS-17-0274: Unlawful Neglect of a Child
- (b) 2009-GS-17-0275: Unlawful Neglect of a Child
- (c) 2009-GS-17-0276: Unlawful Neglect of a Child

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) September 18th, 2009
- (b) Three terms of 10 years, consecutive.

5. Check whether a finding of guilty was made: (a) after a plea of guilty; (b) after a plea of not guilty; (c) after a plea of nolo contendere.

- (a) after a plea of not guilty to all counts.

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

7. If you answered yes to (6), list: (a) the name of each Court to which you appealed; (b) the result in each Court to which you appealed; (c) the date of each such result; (d) if known, the citations of any written opinion or orders entered pursuant to such results:

- (a) South Carolina Court of Appeals
- (b) Appeal denied
- (c) May 18th, 2011
- (d) Unpublished Opinion No. 2011-UP-223

8. If you answered "no" to (6), state your reasons for not so appealing:

Not applicable

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

9 (a) The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible.

Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra*.

11. Prior to this application have you filed with respect to this conviction (a) any petition in a State Court under South Carolina law?; (b) any petitions in State or Federal courts for habeas corpus or post-conviction relief? (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)?; (d) any other petitions, motions, or applications in this or any other Court?

(d) No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- (b) the name and location of the Court in which each was filed:
- (c) the disposition thereof:
- (d) the date of each such disposition:
- (e) the date of each such disposition:

Not applicable.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application you have filed?

No.

14. If you answered "yes" to (13), identify (a) which grounds have been presented; (b) the proceedings in which each ground was raised:

Not applicable.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented?

Not applicable.

16. Were you represented by an attorney at any time during the course of: (a) your arraignment and plea?; (b) your trial, if any?; (c) your sentencing?; (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?; (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes.

17. If you answered "yes" to one or more parts of (16) list:

(a) the name and address of each attorney who represented you: Rosalind Sellers, P.O. Box 429, 104 N. First Avenue, Dillon, S.C. 29536-3428; Robert M. Pachak, Deputy Appellate Defender, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201; John D. Elliott, P.O. Box 607, Columbia, South Carolina 29202.

(b) the proceedings at which each such attorney represented you: Rosalind Sellers, trial counsel; Robert M. Pachak, appellate counsel. John D. Elliott, Esquire prepared this application for post-conviction relief.

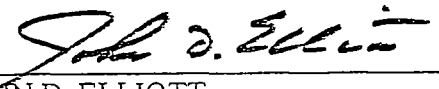
18. State clearly the relief you seek in filing this application:

Reversal and new trial.

19. Are you now under sentence from any other court that you have not challenged?

No.


JEFFREY CAULDER
No. 336973
Lee Correctional Institute
990 Wisacky Highway
Bishopville, South Carolina 29010


JOHN D. ELLIOTT
Attorney for Jeffrey Caulder
P.O. Box 607
1122 Lady Street, Fifth Floor
Columbia, SC 29202
Phone: 803.252.9236
Fax 803.799.2079
E-Mail: jayel@mindspring.com

April 5th, 2012

U C 17

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
IN THE COURT OF COMMON PLEAS

Jeffrey Caulder,)
No. 336973,)
Civil No. 2012-CP-17-156

Applicant,)
vs.)
State of South Carolina,)
Respondent.)
A CERTIFIED TRUE COPY
AMENDED APPLICATION FOR POST CONVICTION RELIEF
CLERK OF COURT
DILLON COUNTY

The Applicant alleges as follows, in conformity with Rule 71.1 of the South Carolina Rules of Civil Procedure.

1. Place of detention:

Lee Correctional Institute, Bishopville, South Carolina

2. Name and location of Court which imposed sentence:

The Hon. J. Michael Baxley
Judge, Court of General Sessions
Dillon, South Carolina 29536

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GWEN T. HYATT
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CLERK OF COURT
DILLON COUNTY

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 2009-GS-17-0274: Unlawful Neglect of a Child
- (b) 2009-GS-17-0275: Unlawful Neglect of a Child
- (c) 2009-GS-17-0276: Unlawful Neglect of a Child

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) September 18th, 2009
- (b) Three terms of 10 years, consecutive.

5. Check whether a finding of guilty was made: (a) after a plea of guilty; (b) after a plea of not guilty; (c) after a plea of nolo contendere.

- (a) after a plea of not guilty to all counts.

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

7. If you answered yes to (6), list: (a) the name of each Court to which you appealed; (b) the result in each Court to which you appealed; (c) the date of each such result; (d) if known, the citations of any written opinion or orders entered pursuant to such results:

- (a) South Carolina Court of Appeals
- (b) Appeal denied
- (c) May 18th, 2011
- (d) Unpublished Opinion No. 2011-UP-223

8. If you answered "no" to (6), state your reasons for not so appealing:

Not applicable

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

9 (a): The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the admission of incompetent, inadmissible evidence at trial, unobjected to by his counsel at trial, resulting in prejudice to the defendant.

9 (b): The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to the testimony of the investigating police officer, whose testimony impermissibly bolstered the state's case, and vouched for the testimony of the prosecution.

9(c): The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution because of the failure of his counsel to object to testimony improperly attacking his character.

9(d): The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to move to sever the three counts against three children, due to unfair prejudice.

9(e): The defendant was convicted in violation of his right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution, due to the failure of counsel to insist on a proper instruction to the jury regarding reasonable doubt.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a): The defendant was accused of acts of misconduct and maltreatment regarding three stepchildren, the children of his girlfriend. While the three children testified, so did two counselors who saw the children. Those counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible.

Such testimony is inadmissible. *See, State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *State v. McKerley*, Opinion No. 4957 (Ct.App. filed March 28th, 2012). This was established law in this state. *See, State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). The testimony of the two counselors was not harmless. *State v. Jennings, supra*.

Moreover, one of the counselors was allowed to give opinion testimony as to whether the children were the victims of "child abuse." There was no objection to the qualifications of either counselor as experts, and hence able to provide opinion testimony, nor any challenge to their methodology for arriving at such an assessment. *Cf., State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), requiring South Carolina's trial courts to perform a gatekeeping function in the qualifications of experts or admissions of their testimony.

Finally, there was no reason for the counselors to testify in the first place. All three children testified, as did their mother. The testimony of the counselors added no relevant evidence to prove the charges against the defendant, other than to bolster the testimony of the children. *See, State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct.App. 1997), rev'd on other grounds by *State v. White, supra*.

(b): Throughout the testimony of the investigating officer, he routinely commented that he had probable cause to make the arrest of Mr. Caulder. This is inadmissible due to the unfair prejudice which attaches to such testimony. *S.C.D.S.S. v. Lisa C.*, 380 S.C. 406, 669 S.E.2d 647 (Ct.App. 2008). Without objection, he was allowed to testify that he "determined that child abuse had been committed by [the wife] and the subject here," meaning Mr. Caulder. Opinion testimony, especially by a police officer, that a defendant is guilty is clearly inadmissible and prejudicial. *Cf. State v. Kromah*, 401 S.C. 340, 737 S.E.2d 490 (2013), where the investigating officer merely testified what actions he took in response to his investigation. *See, e.g., State v. Odom*, 116 N.J. 65, 560 A.2d 1198 (1989); *Smith v. State*, 674 So.2d 791 (Fla.Dist.Ct.App. 5th Cir. 1996); *Nugent v. Commonwealth*, 639 S.W.2d 761 (Ky. 1982).

Moreover, the investigating officer testified without objection that he relied heavily on the opinions of the local forensic interview facility, the Durant Center, as to whether "child abuse" has occurred. This improperly bolstered the state's case. *See, Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010), where counsel's failure to object to impermissible testimony by a "forensic interviewer" could not amount to a reasonable trial strategy, citing *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001).

10(c): The prosecution, without objection, introduced testimony from one child that the defendant had no heart. The prosecution also introduced evidence that the defendant got in arguments with his wife, and threw things at her. The prosecution introduced testimony from another child that he was "mad at him" for what the defendant did to him. The prosecution introduced testimony from another child that "he didn't really care enough for us," or he would not have committed the alleged maltreatment. The defendant's wife, a co-defendant, testified to other irrelevant characteristics of the defendant. In a criminal case, the state cannot attack the character of the defendant unless he himself places his character at issue. *Mitchell v. State*, 298 S.C. 186, 379 S.E.2d 123 (1989). This and other evidence regarding the character of the accused was improperly admitted into evidence, despite the fact that the defendant did not even take the stand.

10(d): The defendant was accused of abusing three children. The prosecution joined all three charges in this prosecution. Even though joinder may be permissible, a court must consider whether joinder of the offenses and the proof presented on those charges may nonetheless deprive the defendant of a fair trial. Cf., *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974). The defendant was unduly prejudiced by trying all three of these cases together, due to the prospect that the jury would be overcome with emotion or passion and might infer a criminal disposition on the part of the defendant. See, e.g. *State v. Tate*, 286 S.C. 462, 334 S.E.2d 289 (Ct.App. 1985). Counsel's failure to seek severance was ineffective, resulting in prejudice to the defendant.

10(e): The trial court gave an instruction to the jury on reasonable doubt which did not comport with the elements required for instruction on this issue in this state's courts. State trial courts have been cautioned since as long ago as 1991 not to attempt to define reasonable doubt for a jury beyond its plain and ordinary meaning. See, *State v. Manning*, 305 S.C. 413, 409 S.E.2d 372 (1991). Furthermore, the trial court charged the jury on the facts in the context of this instruction, saying that the mere debate by the jury on the guilt or innocence of the victim "does not mean that reasonable doubt automatically exist(sic) in this case, or any other case for that matter." The trial court's instruction to the jury, taken as a whole, was confusing and there is a reasonable likelihood the jury applied the instruction in a way which undermined the state's burden of proof. Cf., *Todd v. State*, 355 S.C. 396, 585 S.E.2d 305 (2003). Counsel was ineffective in failing to insist on a proper instruction on reasonable doubt.

11. Prior to this application have you filed with respect to this conviction (a) any petition in a State Court under South Carolina law?; (b) any petitions in State or Federal courts for habeas corpus or post-conviction relief? (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)?; (d) any other petitions, motions, or applications in this or any other Court?

(d) No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- (b) the name and location of the Court in which each was filed:
- (c) the disposition thereof:
- (d) the date of each such disposition:
- (e) the date of each such disposition:

Not applicable.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application you have filed?

No.

14. If you answered "yes" to (13), identify (a) which grounds have been presented; (b) the proceedings in which each ground was raised:

Not applicable.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented?

Not applicable.

16. Were you represented by an attorney at any time during the course of: (a) your arraignment and plea?; (b) your trial, if any?; (c) your sentencing?; (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?; (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes.

17. If you answered "yes" to one or more parts of (16) list:

(a) the name and address of each attorney who represented you: Rosalind Sellers, P.O. Box 429, 104 N. First Avenue, Dillon, S.C. 29536-3428; Robert M. Pachak, Deputy Appellate Defender, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201; John D. Elliott, P.O. Box 607, Columbia, South Carolina 29202.

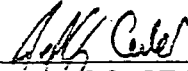
(b) the proceedings at which each such attorney represented you: Rosalind Sellers, trial counsel; Robert M. Pachak, appellate counsel. John D. Elliott, Esquire prepared this application for post-conviction relief.

18. State clearly the relief you seek in filing this application:

Reversal and new trial.

19. Are you now under sentence from any other court that you have not challenged?

No.



JEFFREY CAULDER

No. 336973

Lee Correctional Institute

990 Wisacky Highway

Bishopville, South Carolina 29010



JOHN D. ELLIOTT

Attorney for Jeffrey Caulder

P.O. Box 607

1122 Lady Street, Fifth Floor

Columbia, SC 29202

Phone: 803.252.9236

Fax 803.799.2079

E-Mail: jayel@mindspring.com

January 10th, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON	)	
	)	
	)	2012-CP-17-156
	)	
Jeffrey Caulder, 336973	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed April 10, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted by the Dillon County Grand Jury for three counts of unlawful conduct towards a child (2009-GS-17-0274, 0275 and 0276). Rosalind Sellers, Esquire, represented Applicant.

On September 18, 2009, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury. After the jury returned convictions on Applicant's charges, Judge Baxley sentenced Applicant to three terms of ten years imprisonment, to be served consecutively. Applicant filed a timely notice of appeal from the verdict and sentence. The appeal was dismissed. The State v. Jeffrey Caulder 2011-UP-223. The Remittitur was filed June 3, 2011. Counsel reserves the right to amend and add further information upon receipt.

Attached herewith and incorporated herein are the records of the Dillon County Clerk of Court regarding the subject conviction, Applicant's SCDC records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons: "...counselors were allowed to testify about previous statements made to them by the children, and make comments to the jury about their interviews which had the effect of bolstering the testimony of the children and indicating they were credible. Such testimony is inadmissible." Respondent interprets this claim as one of ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 24, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

JEFFREY CAULDER, 336973

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-17-0156

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

John D. Elliott, Esquire
Post Office Box 607
Columbia SC 29202

DATED this 24th day of July, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

State of South Carolina)
County of Darlington)

In the Court of Common Pleas
Fourth Judicial Circuit
2012-CP-17-000158

Jeffrey Caulder,)
Plaintiff,)
vs.)
State of South Carolina,)
Defendant.)

Transcript of Record

July 21, 2014
Darlington, South Carolina

B e f o r e:

The Honorable Thomas Russo, Judge

A p p e a r a n c e s:

Joshua Thomas, Esquire
Attorney for the Defendant

John D. Elliott, Esquire
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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Argument/Mr. Thomas	46
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

THE COURT: Yes, sir.

MR. THOMAS: Please the Court, last case today is *Jeffrey Caulder vs. the State of South Carolina*. It's case number 2012-CP-17-156. Mr. Caulder was indicted in September of 2009 for three counts of unlawful neglect of a child. He was represented on that charge by Ms. Sellers.

He pled -- or sorry, he went to trial between September 17th and 18th of 2009. The jury found him guilty as indicted. Judge Baxley sentenced to 10 years on each charge, each one consecutive to the last, for a total of 30 years.

He did file an appeal. Robert Paycheck of the Office of Public Defense filed an Anders brief on his behalf. The Court of Appeals dismissed that appeal in unpublished opinion 2011 UP 223. He filed his PCR on April 10th, 2012, and an amendment on January 10th, 2014, alleging ineffective assistance of counsel. He is represented by John D. Elliott, and the State's ready to proceed.

THE COURT: All right. Mr. Elliott?

MR. ELLIOTT: We're ready to proceed. There will be one witness, that would be Ms. Sellers.

THE COURT: All right. Ms. Sellers, if you would please come around to be sworn, ma'am.

ROSALIND SELLERS, having been first duly sworn, testifies as follows:

THE COURT REPORTER: Would you spell your name for me, please?

THE WITNESS: Rosalind, R-o-s-a-l-i-n-d.

THE COURT REPORTER: Last name, too.

THE WITNESS: Sellers, S-e-l-l-e-r-s.

THE COURT REPORTER: Thank you.

THE COURT: Yes, sir.

MR. ELLIOTT: Your Honor, before we begin, very briefly, Mr. Caulder was convicted of these three different charges in a trial lasting about two and a half days. At the time, the -- the alleged victims were his stepchildren. The alleged victims were ages -- were minor¹ age 9, minor² age 10; and minor³ who was either 12 or 13 years old. All three testified.

Three other folks testified: the investigating officer and two alleged experts about child abuse. We -- and as a result, as you just heard, Mr. Caulder there, at the close of this case, was sentenced to three 10-year sentences consecutive.

As you might imagine, he -- he had nothing to lose by going forward, so we -- you know, we don't need to have a colloquy with him about whether he wishes to proceed.

THE COURT: All right.

MR. ELLIOTT: But also, Judge, I think that the -- I think that the -- the severity of the sentence had to do

with the -- the -- the -- the testimony that was elicited that -- that not only was improper, in my opinion, but that also goes to the prejudice that -- that Mr. Caulder suffered. I -- I think it -- it cannot be said, as a result of the errors we're going to bring out, that this is a harmless error case.

THE COURT: All right. Any ...

MR. THOMAS: Other than the fact that the State takes the opposite tact, that -- that's -- I have no --

THE COURT: Objection. All right.

DIRECT EXAMINATION BY MR. ELLIOTT:

Q All right. Ms. Sellers, you represented Mr. Caulder at trial?

A Yes, sir.

Q And I believe we testified that -- that indeed, you were appointed as a result of your employ with the Public Defender's Office.

A Yes, sir.

Q And you -- you left the Public Defender's Office, but you continued your responsibility to Mr. Caulder because you had -- you -- you had been appointed to represent him and you weren't going to abandon him.

A Well, actually what happened is that I began working with the Public Defender's Office in Dillon in 2008. At that time, I worked in all four counties: Dillon,

Darlington, Marlboro County, and Chesterfield.

Because of budgetary concerns and restrictions, I was no longer employed with the Public Defender's Office by July of 2009; however, I was under contract.

Q I understand.

A And it is correct that I was assigned Mr. Caulder's case sometime in 2008 because his previous attorney was David Watson.

Q Okay.

A So when Michael Stevens came on as the chief public defender, Mr. Caulder's case was assigned to me in Dillon.

Mr. Caulder and I had met several times. We were discussing this matter at length. And so when I left the Public Defender's Office as a full-time employee in July of 2009, I began to contract with them. The files that I was already working on, those clients that I was familiar with, I did retain some of those clients.

Q Okay. All right. Very good. Now, do you have the transcript of the trial in front of you?

A Yes.

Q I want to direct your attention first to the testimony of Investigator Tyler, which starts around [page 79. Directing your attention to page 79, Investigator Tyler's testimony.

A Okay.

Q Now, Investigator Tyler was the one that was assigned this case with which department?

A The Dillon County Sheriff's Office.

Q All right. Now, you'll notice over on page 80, at the bottom of the page, looking at about line 22, he -- he said that part of his investigation consisted of obtaining a report, quote, "... from the Durant Center. I determined from that report that the grounds were probable cause for an arrest to be made, and I sought warrants then on the two defendants."

Now, Ms. Sellers, obviously, his opinion that there was probable cause was completely irrelevant to this case and not competent and testimony. Would you agree with that?

A I would ---

MR. THOMAS: Objection, Your Honor. That's a leading question.

MR. ELLIOTT: Well, it is -- it is leading, Judge, and I intend to lead throughout. I -- I believe that -- that while Ms. Sellers is a nice, nice lady, she's adverse to me. And I think I get to cross-examine her.

THE COURT: All right. Overruled.

A I believe that that was a point of contention, and if you were to look through my cross-examination of Mr. Tyler, I did bring that to his attention in asking him what

qualifications he had, what other information he'd reviewed, what other investigation.

Q Sure. We'll get to that in a minute, but bear with me. He -- he goes on in -- in -- in his direct testimony, he goes on to say that he, quote -- this is on page 9 -- 80 -- 81, looking at Line 8, he says that he (as read): "... made the determination that there was probable cause for an arrest to be made and sought warrants against the two defendants." That would be Mr. Caulder and the mother of the child, correct?

A That's correct.

Q So once again, he testified, without objection, that he had probable cause to arrest Mr. Caulder --

A That's correct.

Q -- correct?

A Uh-huh.

Q Then on cross-examination, you -- you -- you said earlier that -- indeed, at the bottom of page 81, top of page 82, that once again, you had him reiterate that he had probable cause to make the arrest, correct?

A Correct.

Q So we now have three -- within the space of about a minute and a half, we have the investigating officer give his opinion that Mr. Caulder was probably guilty, correct?

A I don't believe that the opinion that he was probably

guilty, that was never indicated. We just discussed the probable cause --

Q Well, that's what probable cause means ---

A -- if you're thinking that's an inference.

Q --- though, doesn't it?

A Probable cause to believe that it's likely that someone has committed an act.

Q No. Probable cause that he did it, correct? Not probable cause that it's likely that he maybe did it. It's probable cause that he did it, correct?

A There was probable cause for an arrest to be made if --

Q By now, in the space of a minute of a half of testimony, we've had him say that three times, right?

A I don't know in terms of the length, but he did mention this on two or three occasions, yes.

Q Well -- and then looking at page 85, at the bottom of the page, along about line 22, in response to your questions, he once again says, as a part of his investigation, he read the Durant Center report and (as read): "... to determine if I believed there was probable cause to make the arrest," correct?

A Correct.

Q And then once again, over on page 86, elicited by you, he says (as read): "Based on what the Durant Center

stated, I believe there was probable cause that they had committed this crime," correct?

A Which line is this on page 86?

Q Sorry. This would be page 86, lines 7 through 9.

A Yes.

Q So, let's see, I -- I -- I believe that is what, the fourth and fifth time we have re -- re -- we have re -- reiterated to the jury that he had probable cause to believe this man was guilty?

A Correct.

Q And obviously, he -- he sets great store by the Durant Center, right?

A I'm sorry. Could you repeat that?

Q He said -- yeah. Let -- let's talk about the Durant Center. The Durant Center is the local forensic child abuse forensic interview center, correct?

A At that time, I believe it was.

Q Right. And obviously, this investigator, Mr. Tyler, sets great store -- he -- he relies heavily on the Durant Center, correct?

A From my memory, Mr. Elliott, I believe that's the only information that he had regarding the allegations of abuse --

Q I understand.

A -- from the Durant Center. So, yes.

Q I understand. Let's go on in his testimony. Does the investigating officer -- was he wearing a uniform at the time?

A I can't remember if he was wearing a uniform.

Q Well, he ---

A I would imagine so.

Q He clearly was in -- in -- in the employ of the -- the police agency that made this case, correct?

A Correct.

Q So he goes on, and once again, as you challenge his testimony on cross-examination, looking at Page 89 at the bottom of the page, you ask him (as read): "And you take an oath when you go before the Grand Jury, correct?" And he says, "I do." Is that what he said?

A Yes.

Q And so we have now established that not -- that not only is this what he's saying, he is -- he is -- this -- this is the sworn truth that he's -- that he's now testifying to, right?

A Correct.

Q Elicited by you?

A Correct.

Q And he goes on to say -- you -- you said (as read): "And you swore to that information, correct?" That was your question, right?

A Correct.

Q And then he says (as read): "I swore to them that I believe that this is what had happened." That's what he said, right?

A Correct.

Q And so he has now, once again, given his opinion, as the investigating officer, that this occurred and he did it, right?

A Correct.

Q Then you ask him (as read): "And at that time -- well, let's see. Withdrawn.

Now, the solicitor then stands up on redirect -- and I'm looking at page 90. And let's look at what Mr. -- Mr. Daniels -- Mr. Daniel, the solicitor, asked. He says (as read): "Mr. Tyler, let's kind of uncomplicate this. Can you tell me what the significance of the Durant Center report is in your role in -- in law enforcement?" And look at what he goes on to say. Let's read it (as read): "In my opinion," he says, "they are experts on what has happened to children when they are interviewing them. I take what they recommend very seriously and I take -- when they say that they believe that this has occurred.

"I'm not an expert in the field, I'm not a counselor with children, I don't have the training to do that, so I rely very heavily on places like the Durant Center, to

determine if a crime has been committed, which is what I did in this case."

So the investigating officer has now relied on the Durant Center as the experts for what he did, correct?

A In terms of arresting Mr. Caulder?

Q Yes.

A Correct.

Q And in forming his belief that Mr. Caulder is guilty, correct?

A Based on this information in his answer, it seems of if -- as if he did rely heavily on the Durant Center.

Q And then he goes onto the next page to say (as read): "I determined that child abuse had been committed by both Ms. Miller and the subject here." That's what he said, isn't it?

A Correct.

Q All without any objection.

A Correct.

Q So we now have the Durant Center, as experts in whether child abuse occurred, and that -- relying on their hearsay report and opinion, it did indeed occur in his opinion. That's what he said, right?

A That Mr. Tyler believed that it occurred based on the Durant Center's report.

Q Correct.

A Correct.

Q And that's what he said, right?

A With your summarizing, yes.

Q With no objection from you --

A Correct.

Q -- right? Now, I want to talk to you a little bit about -- now, the -- now, the children testified, correct?

A Correct.

Q And Mr. Caulder was accused of beating the children and -- and -- and -- and abusing the children, right?

A Correct.

Q He did not take the stand and testify though, did he?

A No, he did not.

Q So never at any time was his character in issue, correct?

A No, it was not.

Q Yet over on page 145, the prosecutor brought out the fact -- he said (as read): "Did you ever see Jeffrey hurt your -- your mom?" See that, over -- it's like line 7.

A Yes.

Q And it looks like minor2 -- the little girl, minor2 says, "Well, they got in bad arguments and he would throw stuff at her sometimes," right?

A Correct.

Q There was never any notice furnished to you that the

State of South Carolina would rely on some uncharged criminal domestic violence conduct, correct?

A That's correct.

Q And yet that was admitted without objection ---

A Correct.

Q --- right? And by the way, looking at page 192, in the -- the testimony of minor3 Miller.

MR. ELLIOTT: Beg the Court's indulgence.

(Brief pause.)

Q Looking at page 192, line 13, the solicitor says (as read): "How -- how -- young -- young minor3 how do you feel about Mr. Caulder here?" He asked that question of minor3 right?

A Correct.

Q What does that got to do with anything, Ms. Sellers? How is that relevant to anything?

A I'm not sure how that was relevant to anything.

MR. ELLIOTT: Your Honor, as an aside, I bring to the Court's attention the *State v. Saltz*; *State v. Saltz*, S-a-l-t-z. That's 346 South Carolina 104, 346 104. (As read) "A witness's thoughts or feelings are irrelevant in any criminal trial."

Q But certainly that's an open-ended question, isn't it, Ms. Sellers?

A It is.

Q And look what minor3 says. He says (as read): "I think -- what I think that Jeffrey is him -- I think to him, the character he will always be to me is really -- I don't think Jeffrey has a heart. I think that he doesn't care about no one but himself, and I don't -- I don't -- looks like I don't believe he ever will. I think he hates the whole world." And that came in without objection ---

A Correct.

Q --- didn't it. And in fact, you recall that the prosecutor actually argued that in closing. You remember that?

A I don't remember specifically his reference to that in closing arguments, but he may have.

Q Well, I believe over on page 397, the prosecutor's closing, Mr. Daniel, at line 14 (as read): "minor3 said he doesn't think Jeffrey has a heart. That came by a 12-year-old. A 12-year-old who, for years, lived with a mother and a mother's boyfriend who had a very abusive hand and a hateful heart." He said that, didn't he?

A Yes.

Q Without objection.

A Yes.

Q And his character had nothing to do with whether he was guilty of being a child abuser or not, correct?

A Correct.

Q And then, once again, over at page 248, the prosecutor gets from Christina Miller --

MR. ELLIOTT: And my apologies, Judge, that -- that was a witness I omitted to -- omitted to bring up.

Q He brings out from Christina Miller that -- and -- and who was Christina Miller so the Court will know?

A Christina Miller was the mother of the three children that testified. She was Mr. Caulder's, at that time, ex-girlfriend. It's my belief that they'd lived together on and off for some period of time.

And they also had a child in common at that time. Her name is Cheyenne.

Q Right.

A And I believe she was about four or five at the time.

Q Right.

A But there were no allegations of abuse or neglect revolving -- regarding Cheyenne.

Q Cheyenne, correct. But Christina Miller pled -- pled guilty, did she not?

A She -- she did.

Q And Mr. Daniel asked her, at the very bottom of page 248 (as read): "How did it all end?" And she says, "Well, after he lost his leg, he would go to different hospitals trying to get pain medication." See that?

A What line is that?

MR. THOMAS: Twenty-four.

Q Twenty-four and 25.

A Yes.

Q Now, whether he was a pill popper had nothing to do with the charges against him, correct?

A I believe that's why there was an objection to that statement.

Q Pardon me?

A Line 26, I objected.

Q Oh. My apologies to you.

A And said again this information. I don't know if there were other -- any other references or any other objections to that line of questioning.

Q Good job. Now, the -- the prosecutor saw fit to call couple of folks from the Durant Center, did he not?

A I believe he only called one individual from the Durant Center.

Q And the other lady was a psychologist, a treating psychologist? Was that -- was that who we're talking about?

A Yes, Gaye Allen-Cook. I believe she worked -- was employed by "Children's Works." Some type of therapy center for children.

Q Okay. And Ms. Tuck was the lady from the Durant Center?

A Correct.

Q And she was identified -- looking at page 304 onward, she was ultimately identified as a -- some sort of an expert, without objection. Looking at page -- bottom of page 307, top of 308, right?

A Correct.

Q But there were -- there -- there -- there was -- I'll leave that to you. Just exactly what did she add to this case?

A Only the fact that she treated the children. I would have to glance over her testimony really quickly.

I believe she may have testified to -- that she was present during the forensic interview. There were notations that she brought into court that there was an objection about because I did not have an opportunity to review any of her notations.

Q Well, without any challenge whatsoever, we have now identified her, for the benefit of the jury, as an expert, right?

A Correct.

Q And we know that juries and judges set -- set -- set -- set great store on experts, right?

A Correct.

Q And so let's look at what she's allowed to testify to over on page 312, starting at line 18. (As read): "Based

on your training and experience, Ms. Tuck, was the victims's delayed reporting consistent or inconsistent with their history of physical and mental abuse?" And she says without objection (as read): "Consistent". See that?

A Correct, yes.

Q And then he goes on to say (as read): "Now, hypothetically, if a perpetrator is a family member or someone who lives in the home, this delay disclosure or partial disclosure be consistent or inconsistent with physical and mental abuse?" And her answer, once again, is (as read): "Consistent," correct?

A Correct.

Q Doesn't that suggest -- doesn't that get across to a jury that somehow she is -- she is telling these -- telling the jury that these children are to be believed?

A Again, I can only state that she just believes it's consistent or inconsistent.

Q I understand. Then over on page 316, she is somehow allowed to give a diagnosis. Do you see that? Down at the bottom, Line 22 (as read): "Did you have enough time to make any sort of diagnosis in your meetings with minor 1 Answer, "Yes." "Can you tell the jury about that diagnosis?" And she says (as read): "He was diagnosed with child abuse with a focus on the victim." Do you see that?

A Yes.

Q Ms. Sellers, never at any time did you ask the trial judge, Judge Baxley, to dismiss the jury and take up the question, under *White v. State*, whether this lady had any competence whatsoever to make such a diagnosis.

A Again, without looking through and reading line by line, I don't recall doing so.

Q She doesn't talk about any testing that she conducted, correct?

(Brief pause.)

A No. I don't believe there were any tests or any specific evaluations that she named; just speaking of the treatment plans.

Q Well, in fact, all she really talks about is -- look over on 309, 310, 311, looks like all she really talks about is glittering generalities or what we might call "glittering generalities," right? "Well, usually this is what happens and generally this is what happens," and that's the kind of things she that testified to leading up to this purported diagnosis, correct?

A (No audible response.)

Q She conducted no testing; am I right?

A I think everything's just based on her observation and her -- just based on her observation, but I don't see any specific tests referred -- or ---

Q So she can tell whether child abuse occurred just by looking at these kids and talking to them. Is that -- is that -- is that the -- is that the sum and substance of her expertise?

A The sum substance of her expertise --

Q Or the basis of her opinion, pardon me. That's the sum and substance of the basis of her opinion that she talked to the kids?

A It appears that that was the base of her -- basis of her opinion.

Q Right. So, once again, there was no test administered, correct?

A Not to my knowledge.

Q There was no -- there was no discussion of any methodology that she employed as an expert, in making this diagnosis, correct?

A Diagnostic and statistical, that's the only thing that she refers to.

Q The DSM manual, right? There was no -- there -- there was -- there was no challenge whatsoever to whether any of her -- her methodology or analysis was -- had been the -- the subject of peer review? You know what peer review is?

A Yes.

Q No discussion of that. No challenge to that, correct?

A Correct.

Q Then, once again, looking at page 316, at the bottom of the page, she diagnoses young minor with child abuse with focus on the victim. I think we talked about that.

A Correct.

Q And then she goes on to talk about her treatment plan, over on the next page, page 317, right?

A Correct.

Q How is that relevant to anything? I mean, the only question for the jury is whether -- is whether Jeffrey Caulder here had battered or beat these three kids.

There's no -- there's no question for the jury about whether these kids deserve, say, damages. It's not a tort case, right?

A Correct.

Q So whether -- whether they needed and got treatment is completely irrelevant to the matter at hand for this jury in this criminal case, correct?

A Correct.

Q Then, once again, minor2 who is the 11-year-old girl, bottom of page 318, top of page 319, once again, this lady, apparently without -- without any testing, without any methodology, without any kind of -- of scientific analysis whatsoever diagnoses minor2 as having been the victim of physical abuse, right?

A What line is that diagnosis?

Q The bottom of page 318, top of page 319.

A Yes.

Q So she's now diagnosed minor2 with child abuse, right?

A Yes.

Q And she talks about the treatment plan for her, correct?

A Correct.

Q And once again, over on page 320, she diagnoses minor3 the oldest -- looking at lines 16 through 20, diagnosed minor3 with child abuse and had a -- had a treatment plan for him, right?

A (No audible response.)

Q All of that without objection.

(Brief pause.)

(The witness and Mr. Elliott speak simulataneously.)

A Could you ---

Q Ms. Sellers, if you're ---

A --- give me the line ---

Q If you're having a hard time finding it, once again, as to ---

A minor3 you asked me specifically about ---

Q Yeah, minor3

A --- Jonathan's diagnosis ---

Q minor3 is over at page 320, starting line 16.

A Okay. So there's a misprint in the ---

Q Right.

A --- on 20, so yes, that's correct.

Q Should have said "minor3 not "minor2 right.

And over on page 322, Ms. Tuck is asked this by the prosecutor (as read): "Are the symptoms that minor had shown or minor2 or minor3 consistent or inconsistent that this could have been a different perpetrator than the defendant?" And she says in her answer, "No. They were very clear." See that?

A Yes.

Q Meaning they were telling the truth, right?

A I think that would call for speculation. I can only say that she said that "No. They were very clear."

Q Well, it goes on (as read): "Are the symptoms that they have shown you, in your experience, consistent or inconsistent with a child that is not being truthful with you?" Answer, "No." See that?

A Yes.

Q And Ms. -- Ms. Sellers, obviously, we don't let -- we ordinarily don't let lie detector results into the -- into -- into -- in evidence in the courtroom, do we?

A No, we don't.

Q And there's no such thing as a human lie detector, is there?

A No, there is not."

Q Then she goes on -- he -- he goes on (as read): "In your experience dealing with child abuse victims, could this have been -- could the things that they described to you have been simply punishment for a -- for a bad child misbehaving?" And she said, "No." See that?

A Yes.

Q So once again, the inference is, for that jury, they must have been telling the truth, right?

A Yes, possibly.

Q And then over on page 327, Ms. Tuck, the expert, with all this experience and all this expertise, Mr. Daniel asked her this question (as read): "Finally, Ms. Tuck, in your years of experience in dealing with victims of child abuse, how did this case -- this case with minor3 minor2 and minor1 how does this case -- how does this compare to other cases that you have worked on in your 20 years of experience?" He asked that question, right?

A Correct.

Q And that is relevant to nothing, correct?

A Correct.

Q And yet, she is able to answer (as read): "I would say it is moderately severe," right?

A Correct.

Q And not only -- obviously, not only did the jury hear that, but apparently so did Judge Baxley, right?

A Yes.

Q Then we have -- and I think we had Gaye Allen-Cook testify. She was the -- what, the treating psychologist?

(Brief pause as loud sirens from outside are heard.)

A She was a psychologist. I'm not positive if she treated all of the kids, all -- all three children for an extended period of time because one of the children had actually relocated out of the area.

Q Okay. By the way, before I go on to that topic, there is one thing that I omitted to ask you about with Ms. Tuck over on page 342. He asked (as read): "In your experience -- if what you just heard Ms. Sellers talk about with these children inflating this story, in your experience, your expert experience of over 20 years, did these children inflate their stories?" Remember, he asked that question?

A Yes.

Q And he asked that question in response to your cross-examination, right?

A I'm assuming because he -- because he did -- he does reference a question or some line of questioning that I've had with her.

Q Which gives her the opportunity to then say once again, "No, they did not." Right?

A Correct.

Q So once again, we have Ms. Tuck determining who's

telling the truth in this case, right?

A Correct.

Q Then Ms. Allen-Cook was qualified as an expert in the field of child abuse counseling and treatment, at page 348, right?

A Correct.

Q Again without any challenge whatsoever to her credentials, right?

A After stating her credentials, no. Correct.

Q And then, she, as a psychologist, is asked over on page 357, line 13 (as read): "Based on the disclosure that I have given" -- sorry, sorry, let me back up. "Are the symptoms that minor3 has shown -- in your experience and in your opinion, are they consistent with the idea that anyone other than the defendant could have been responsible?" And she says (as read): "Based on the disclosure that I have been given, noone else has ever been mentioned other than the defendant." See that?

A Yes.

Q Then Mr. Daniel goes on and says (as read): "Are your -- are your symptoms that minor3 has shown you consistent with a child who is lying?" And she says, "No." See that?

A Yes.

Q He asked one more question (as read): "Are the symptoms that minor3 has shown you been consistent with a

child who has inflated what has happened to him?" And she say, "No," correct?

A Correct.

Q Without objection.

A Yes.

Q Then she goes on, over on page 359, to talk about minor3 and how -- how -- how well he is now able to tell the truth. You see that?

Looking at page 16, here's what she says (as read): "And then, based on the allegations, there's -- done lots of things to these children ...," which I believe would be hearsay, correct? I mean, she wasn't there, right?

A (No audible response.)

Q (As read) "There's done lots of things to these children that they should not have gone through, and that has greatly impacted their development, in my professional opinion, and has also caused minor3 Miller to have some trust issues with male adults also."

Question by Mr. Daniel says (as read): "Has minor3 improved since he's been under your care?" Answer, "Yes, he has."

She goes onto say -- page 361, starting at line 10 -- now listen to what she says, without objection (as read): "He can cope with it a little better. In my opinion, that's why he was able to come in here and give the

testimony he gave because he has become appropriately desensitized -- desensitized to the emotion around that trauma, which is exactly what we want him to do." See that?

A Yes.

Q So he has -- he has learned to tell the truth more better, right? Because he got all this help, right?

A I'm not sure if that could be construed as learning to tell the truth or that he doesn't have any emotional attachment anymore. He can speak freely about the issue.

And then she goes onto -- on page 359, to talk about what model she used in assisting him in that manner.

Q Okay. All right. But then she -- then he goes on and -- and -- and Mr. Daniels can't help himself. He goes once again and says (as read): "Finally, Ms. Allen-Cook, in your years of experience in dealing with child abuse victims, how does this case with minor³ rank among all your patients that you have ever treated?" See that question?

A Correct. Yes.

Q And that is relevant to absolutely nothing in this criminal case, correct?

A Yes. Correct.

Q And yet she is allowed to say (as read): "I would say that it is -- it is not the worst case of child physical

abuse that I ever -- ever seen, but it is pretty close."

A Yes.

Q She says that.

A Yes.

Q And then Ms. Allen-Cook, who is apparently a lie detector extraordinaire, is asked, over on page 363, by you (as read): "So in your professional opinion, from your experience, you have never had a child who is lying about being abused?" And she says, "Not in my professional practice, no, ma'am."

Then you go on (as read): "So every child you speak with, you are positive, you believe that they have been abused?" And she says, "The children that I have worked with, I have not had any one of them make up stories to me as a therapist." That's what she says.

A Yes.

Q And Ms. Sellers, with the benefit of hindsight, you'll agree with me that the adults had no business talking about who was telling the truth or not in this case, correct?

A That in terms of the therapist, yes, those -- the line of questioning should not have been asked or discussed.

Q Now, in Mr. Daniel's closing, over at page 401, he -- he argues this, he says (as read): "They said that in their experience dealing with these children in this case, that everything that they had picked up from these kids is

consistent with these -- with three kids who have been severely abused. There is no doubt that these kids were severely abused. There is no doubt."

Now, of course, this is argument on his part. (As read) "There is also no doubt that he is the one who did it and ..." -- now, he says this in closing -- "and his mama, I agree, his mamma did it, too." I guess that would be the kids' mom. "And even though -- and even she agreed that she did it, she admitted to it, she pled guilty."

Now, how is that relevant at all to the guilt or innocence of Mr. Caulder here?

A It's not relevant.

Q Okay. Then finally, over -- over on page 423, Judge Baxley gives the charge on reasonable doubt. Do you remember that?

A Yes.

Q And he goes on to attempt to define reasonable doubt. You were there.

A Yes.

Q And he goes on over on the next page to say something very, very curious. He says (as read): "The very fact, however, that the jury engages in a full and free discussion of the issue of guilt or not guilt, with the conversational ebb and flow on these issues, does not mean that reasonable doubt automatically exists in this case or

any other case, for that matter." See that?

A Yes.

Q That suggests, does it not, that reasonable doubt does not exist in this case?

A (No audible response.)

Q And isn't that really -- isn't that really what the solicitors argue in courts of South Carolina? Isn't that -- isn't that argument, rather than a jury instruction?

A Can you rephrase the question or ...?

THE COURT: Yeah. I didn't -- where -- wherer are you at in the transcript?

MR. ELLIOTT: Judge, page 424, line 8 through 12.

THE COURT: Okay.

MR. ELLIOTT: And as an aside -- and I'm -- I -- I've finished my direct with Ms. Sellers.

But as an aside, my observation, if I may, is that -- you know, the solicitors argue that a lot in the courts of this state. But it's never been a part of an instruction on reasonable doubt. And -- well, I-- I'll come back to that in argument.

THE COURT: Sure.

MR. ELLIOTT: No further questions. Please answer any questions that counsel may have.

Q Oh. Sorry. One more thing, very briefly. These kids -- all three of these charges -- these -- these kids' cases

were -- were called together, right?

A Correct.

Q Did it never occur to you to ask for severance?

A There -- yes, it did occur. But there were inconsistencies in the children's statements specifically.

Q So that was a -- in -- in fairness, that was a strategic decision on your part?

A Yes.

Q Okay.

MR. ELLIOTT: Thank you. No further questions.

MR. THOMAS: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION BY MR. THOMAS:

Q Thank you for being here today, Ms. Sellers.

A Thank you for inviting me.

Q I will -- next time I'm inviting people to a party, I'll just send them subpoenas then, if that's the way you look at it.

So how much experience did you have when you were appointed to this case?

A At that time, I'd been practicing for two years. I spent about a year in the prosecution's office and then a year -- a little over a year in the public defender's office.

Q And how many meetings did you have with Mr. Caulder

during your representation?

A Several meetings. At least 15 to 20 meetings. Not only with Mr. Caulder, but his mother, Wanda, his grandmother, his aunt.

Q And I'm assuming you -- you're the party who filed the discovery motions in this case?

A Correct, yes.

Q And did you get a chance to review all that with Mr. Caulder?

A Yes.

Q Is it fair to say that -- well, let me ask this question: Was there any physical evidence of abuse of these children?

A There was no physical evidence, no.

Q So is it fair to say that the State's theory was that there was an emotional damage that had been caused to these children by the abuse?

A Yes. And -- and let me back up, there were -- when -- when -- when I say "physical," there were allegations that marks and bruising were left; however, when the officer -- or when the Sheriff's Department began to investigate this -- this case, there was no visible markings or anything left on the children.

Q And did you have an opportunity to discuss with Mr. Caulder what his version of the events was?

A Yes.

Q And in those discussions with him, did you sort of formulate a defense -- an overall defense strategy for this case?

A The -- yes.

Q And what was your defense strategy?

A The defense strategy only -- was solely that there was a custody battle ensuing between Mr. Caulder's mother, Christina's biological father, and stepmother. And that the -- Christina's parents had coaxed these children, specifically, minor³ in making these allegations so they would be able to live with the step grand -- the stepmother and Christina's father.

Q And was part of your strategy also that the police didn't really investigate this. They sort of just relied on everybody else's testimony?

A Correct. Not only did the officer, Randy Tyler, just rely on the Durant Center, but also that Mr. Tyler had a personal relationship with Christina Miller's stepmother and father.

Q Okay. You had a chance during direct to pretty thoroughly review Mr. Tyler -- Officer Tyler's testimony. At any point in there, do you recall him repeating anything that the children had said to him?

A Nothing that the children -- I don't recall him

repeating anything that the children said to him. Go back to that.

(Brief pause.)

A Because I believe that was one of the issues as well.

(Brief pause.)

A He didn't -- he spoke with the children briefly, but it didn't appear that -- that he discussed anything that was stated between them.

Q And he also didn't -- he didn't read anything from the Durant Center report, did he? He just testified that he reviewed it?

A That's correct, yes.

Q Did you ever get a chance to enter into any plea negotiations on this case?

A There was a -- there was a plea offer extended by Mr. Daniel of eight years, and Mr. Caulder refused that offer on several occasions.

Q Did -- did the forensic interviewer ever testify in this case, to your recollection?

A I can't remember if Ms. Tuck -- I can't recall.

Q Let me -- let me direct your attention to page 330 of the transcript, starting on line 7 through -- or well, on line 5 through line 8. I'll let you review that, and then I'll ask you did -- was Ms. Tuck involved in the forensic interview or was she involved after that?

(Brief pause.)

A It appears that she was involved afterwards. She just begun treating them or just was involved in the treatment process.

Q And she was sort of the treating physician for two of the children, and Ms. Allen-Cook was the treating physician for the third?

A I -- I believe that's correct.

Q They both testified extensively as to their qualifications?

A Correct.

Q You remember that?

A Yes.

Q And I'm also going to direct you to page 338. And if you'll look at page -- I'm sorry, 338, line 14 through 25.

(The witness complies.)

Q And after that, do you -- do you recall Ms. Tuck testifying as to the type of assessment she did to come to her diagnosis?

A Yes.

Q And the same thing on page 350, starting at line 5 all the way through line 17.

A Yes.

Q And so did Ms. Allen-Cook also testify about the steps she took to come to her diagnosis?

A Yes.

Q And in reading through that, is there any point in there where -- well, I -- strike that.

Have you had a chance in the past couple of years to sort of follow the developments in terms of developing law on forensic interviewers?

A Not really. I usually don't -- I haven't had many other cases involving abuse and neglect. So that hasn't been my -- when I have criminal cases, it's generally not sexual abuse or abused children. But on occasion it is.

Q Well, let's talk about sort of just in broad strokes about the testimony here. Isn't it -- I mean, isn't it -- we've already established sort of that the State's theory was they had no physical evidence of abuse, so they had to prove emotional or mental abuse?

A Correct, yes.

Q And that's one of the things that they specifically talked about, if you'll turn to page ---

MR. THOMAS: Beg the Court's indulgence.

(Brief pause.)

Q Turn to page 383 -- sorry, 382 through 383, starting on line 23 of page 382.

(Brief pause.)

MR. ELLIOTT: Your Honor, if I could interject. This may be of some help to the Court, and -- and in fairness to

1 the State's attorney. The -- the -- the instruction on the
2 elements of the two crimes, the unlawful neglect and the
3 lesser charge of cruelty or ill treatment, Judge, is found
4 on page 426 and 427. And it it -- it indeed -- those
5 crimes indeed do contain an element of mental harm.

6 Q And so let's just -- since we're -- we're operating
7 from hindsight here, let's say neither Ms. Tuck nor Ms.
8 Allen-Cook had testified. Would that have made your job a
9 little bit easier in terms of countering this allegation
10 that there was emotional damage to these children?

11 A No.

12 Q It wouldn't have?

13 A Yes. Yes, it would have made it easier.

14 Q So without their testimony, you would have had a much
15 stronger argument that there was no proof of any sort of
16 mental damage to these kids?

17 A That's correct.

18 Q As far as the -- the officer's testimony goes -- oh,
19 wait. We already -- as far as the -- the mother -- the
20 mother's testimony basically corroborated everything the
21 children said, didn't it?

22 A Correct.

23 Q There was some -- there were obviously some
24 inconsistencies between the three children and the mother.
25 And you highlighted those as best you could?

A Correct.

Q And the allegation was sort of that Mr. Caulder's behavior was an ongoing course of conduct to everyone in the house, except for his own daughter?

A Yes.

Q We -- I know we looked at Judge Baxley's charge on reasonable doubt. You -- did you think there was anything objectionable about his charge on reasonable doubt?

A No, I did not. Because we only -- in -- in Mr. Elliott's questioning, we only focused on one paragraph. But I believe there was another page and a half before -- prior to that paragraph.

Q And Judge Baxley consistently pointed out that -- that arguments are not -- arguments are not evidence.

A Correct.

Q He said that.

A Yes.

Q And he also gave a circumstantial evidence instruction. He -- he thoroughly charged that the burden was on the State of South Carolina to prove Mr. Caulder's guilt?

A Yes.

Q Did you see any grounds for severance of these charges?

A Again -- there -- there were grounds just because

they're three individuals, but I believe --

MR. ELLIOTT: Judge, I'll -- I'll concede that. That -- that's gone. That -- that allegation's gone. She made it clear -- mulled it over and made a strategic decision.

THE COURT: All right, sir.

MR. THOMAS: I think that's all the questions I have. Thank you, Ms. Sellers.

THE WITNESS: Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION BY MR. ELLIOTT:

Q Ms. Sellers, you -- you realize, don't you, that the trial courts of this state have been cautioned by the State Supreme Court, since 1991, not to attempt to define reasonable doubt? You realize that?

A I'm not sure if I was aware of that since 1991 or in that capacity.

Q Right. And in fact, in *State v. Manning*, trial courts were cautioned not to go beyond the plain and ordinary meaning of the term reasonable doubt. Don't try to -- don't try to define it, right?

A Again, from my recollection in terms of the -- going over the jury charges with Judge Baxley and the State, in terms of what was actually stated versus what we read in the charges, seemed to be pretty consistent, a standard jury charge.

MR. ELLIOTT: Okay. Thank you.

THE COURT: Thank you very much, ma'am.

MS. SELLERS: Thank you.

THE COURT: You may step down.

(The witness complies.)

MR. THOMAS: We'd ask Ms. Sellers be released from her subpoena.

THE COURT: Sure.

MR. ELLIOTT: And Your Honor, briefly, I have a little bit of authority. I'll hand it up. I know you'll take it under advisement. I'm going to hand up for you, and the benefit of your clerks, *State v. Dawkins*. This is a 1989 case, and that -- that -- that first established that -- that, you know, folks are not to somehow come in the courtroom and comment on -- on some so-called abused child's credibility.

Also, handing up, Judge, *Smith v. State*, which is a -- might as well -- might as well stand up for a second, Madam Clerk.

That's a post-conviction relief case, Judge, that involves the issues before this Court and has some discussion of -- of harmless error, which you may find helpful.

I'm also going to hand up *Lisa C.*, Judge, *DSS vs. Lisa C.* That's a Court of Appeals case. That was my case. And

the -- the Court of Appeals -- and this was -- this predated -- this was 2008, published in 2008. The Court of Appeals had some pretty explicit instructions about police officers commenting on -- or testifying to the existence or not of probable cause.

State v. Jennings, Judge, is a case that -- that also cautions about the language about "consistent with." You know, you'll -- you'll see that some of the cases, including the last one I'm going to hand up, some of the cases involve these folks -- and in fact, minor and I talked about this. Some of these -- some of these so-called forensic interviewers just can't help themselves. And they -- they -- you know, they go so far as to say well, the child's statement was compelling.

Well, you don't -- you don't have to be that strong to suggest to a jury that the child is telling the truth. And the -- the -- the "consistent with" language has -- has also been criticized by our courts as -- as approaching a comment on credibility.

Finally, Judge, *State v. Kromah*, which, of course, came out after this trial. I'm going to hand that up essentially for comparison purposes. The trial court nor Ms. Sellers had the -- had the advantage of *Kromah*, but I think it is an interesting comparison of -- of the law. Sort of the state of the law now in this field, and it's

got some sort historical references as well that you might find helpful.

THE COURT: All right, sir.

MR. ELLIOTT: minor anything?

THE COURT: Anything, minor 1

MR. THOMAS: Just briefly. And I think you probably understand the arguments, but I'll just make them for the record. Obviously, all of these cases that we've talked about forensic interviewers, we did not have forensic interviewers in this case. They were the treating physicians. Obviously, we -- we brought out that the State's theory was not physical abuse as much as emotional abuse. And I think that's what the testimony as a whole is read as.

And again, all of the allegations the children made, I think *Kromah* is -- is pretty good on point on this one far -- as far as the prejudice analysis goes where, you know, if there's something to also prove that the children's statements other than the -- just the testimony of the -- the expert that's been qualified. If there's other evidence bolstering their statements, then there's no prejudice to the defendant on that guard -- on that regard.

And again, I don't think the State even actually used that in their closing all that much. I mean, basically, it was sort of -- it's the same thing as even when we have a

dead body, we always call in the pathologist to testify as to cause of death. And I think that's sort of the similar thing you have here. They were calling in the treating physician to -- to talk about what the injuries were.

As far as the officer's testimony, that's actually addressed in *Kromah* as well. It's -- it's -- I think the DSS case is distinguishable in that. In that case, the officer was actually repeating the hearsay statements when talking about probable cause. And in *Kromah*, they said as long as you don't actually repeat anything, there's no prejudice, there's no hearsay violation. So it's okay for them to testify to that.

The children's testimony, again, I think that was not necessarily character evidence as much -- as much as it was the injuries that they had sustained, the emotional scars they had. And even if it was, I think it probably goes to *res gestae*, sort of the continuing course of conduct of his behavior, especially with the mother's testimony about the things he did to the mother. I think that's all sort of one course of conduct.

We've waived joinder. The reasonable doubt instruction, it seems like a perfectly simply instruction. So that would be the State's position on everything.

MR. ELLIOTT: Just briefly in response, Judge. The -- comparing *Kromah* and my case, *Lisa C.*, you'll see that in

Kromah, Investigator Livingston testified that he got information without attesting to what it was: got information from this source, this source, this source and the child; and as a result, he did thus and so.

In this case and in *Lisa C.*, the -- in fact, in *Lisa C.*, the -- the officer was allowed to testify that she had probable cause to believe Mr. Caulder did it. And -- and in that case, which was, of course, a bench trial, the Court of Appeals talked about the -- the -- the -- the prejudice, the harmful prejudice that -- that results. And of course, in this case, we had that repeated -- repeated routinely. And in fact, the investigator even kind of double downed on it at the end.

But in any event, you know the issues. I know minor will submit a proposed order. I will, too. And how soon would you like to have those orders?

MR. THOMAS: I generally wasn't -- wasn't going to do a proposed order unless one was requested of me. But if Your Honor would love one -- I mean, if you'd like one, I'd love to do one.

THE COURT: Yeah. I -- I mean, I would. What kind of time do you need?

MR. THOMAS: Thirty days.

THE COURT: I was gonna say 20/30 days?

MR. THOMAS: I -- that's more than enough for me, Your

Honor.

THE COURT: Thirty days.

MR. ELLIOTT: 30 days.

THE COURT: 30 days.

MR. THOMAS: Thank you.

THE COURT: Thank you.

-- END OF TRANSCRIPT RECORD --

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DILLON	)	FOURTH JUDICIAL CIRCUIT
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	2009-GS-17-0274
	)	2009-GS-17-0276
versus	)	
	)	
Jeffrey Caulder	)	
	)	
Defendant	)	
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

William Shipp Daniel, III, Esquire
Attorney for The State

Rosalind L. Sellers, Esquire
Attorney for The Defendant

Pamela Ozment-Cartee
Circuit Court Reporter

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STATE WITNESSES

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Randolph C. Tyler			082	084	094	
minor 1	Court 096	098	102	116	127	128
minor 2		128	133	155	168	171
minor 3		172	176	200	222	225

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VOIR DIRECase No.: 2009-GS-17-0274 Date: August 24, 2009Plaintiff: The State Attorney W. Shipp Daniel, IIIDefendant: Jeffrey Caulder Attorney Rosalind SellersPresiding Judge: J. Michael Baxley Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
Juror #	Juror Name	Race	Sex	Court	State	Defd
154	Antwon J. Smith	B	M		✓	✓
008	Amy K. Bethea	B	F		✓	✓
136	Stuart C. Poston	W	M		✓	✓
105	Ranata Y. McCormick	B	F		✓	✓
145	Mae F. Rogers	B	F		✓	✓
148	Donald M. Sandifer, Jr.	W	M		✓	X
053	Randy Ford	B	M		X	---
093	Sybil N. Lane	W	F		✓	X
149	Billy J. Sawyer	W	M		X	---
023	Joseph E. Bucy	B	M		✓	✓
062	Jeffery A. Graham	W	M		✓	✓
040	Wanda J. Dobbs	W	F		✓	✓
069	Carol C. Herring	W	F		✓	X
170	Dominique J. Williams	B	F		✓	✓
083	Elizabeth C. James	B	F		✓	✓
080	Johnny W. Hyatt	W	M		✓	X
168	Evans J. Washington	B	M		✓	X
134	Cynthia R. Pinkney	B	F		✓	✓
068	Chad A. Hensley	W	M		✓	✓
131	Mary L. Page	B	F		✓	✓
060	Fred Goaden	B	M		✓	✓

COURT EXHIBIT

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1	Affidavit of Kristina Miller	462
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DEFENSE EXHIBITS

Number	Description	Admitted on Page	Removed I. D.
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2	Agreement of Kristina Miller	270	393

STATE EXHIBITS

Number	Description	Page
	No Exhibits Offered	

1 (Whereupon, Court comes to order at 10:14 a.m. on
2 Monday, September 14, 2009.)

3 -- DAY ONE OF TRIAL --

4 THE COURT: All right, ladies and gentlemen we are
5 now going to go through a process where we actually pick
6 juries in cases, and we will wait a moment or two for the
7 other parties to come in. But let me just talk with you a
8 little bit about this process.

9 First of all, can you hear me in the back? Are you
10 still able to hear me? Okay, Very good. You have such a
11 beautiful courtroom here in Dillon, I always count it a
12 privilege to work here, not only because of the kindness of
13 the people here, but the beauty of the courtroom, and it
14 have very good acoustics. Not every courtroom in the State
15 does. But in any event, we are going to ask you a series of
16 questions, not about your qualifications, but about this
17 first case we are going to pick a jury in specifically.

18 Now I know just from psychology, and you are sitting
19 like you are a lot of times, you will hear a question and
20 you will, well, maybe that doesn't apply to me, or I'm not
21 going to call attention to myself, I am just going to sit
22 here, stay here, and keep my peace. But, I am going to ask
23 you to please, if you have some inkling that you stand up
24 and answer, give us the benefit of that information. I will
25 tell you that there are no wrong answers in jury
26 qualifications. The purpose of this process is that

1 whatever jury we pick will be, and I'm going to use the word
2 disinterested, and when I say, that I don't mean that you
3 don't care; what I mean is that you don't have some
4 connection to the case that might make you an inappropriate
5 juror for this particular case.

6 Now the way that we proceed in the trial is, the
7 Solicitor actually calls the case for trial, and sets the
8 priority of the cases that are to be tried. This is the
9 responsibility of the Solicitor, who is an elected
10 individual, and charged with that responsibility.

11 Now let me ask if our prosecution team will step up to
12 the side just one moment, please, and let's talk about the
13 first case we are going to qualify.

14 (Whereupon, a bench conference was held.)

15 **THE COURT:** Thank you, ladies and gentlemen. Let me
16 tell you ladies and gentlemen, in this first case for trial,
17 what we were discussing here was scheduling. We will not
18 actually begin the trial of the case today. We are going to
19 pick the jury today in this first case for trial, and then
20 we are going to start the trial on Thursday morning. I just
21 tell you that for your information. But, the first thing we
22 are going to do is pick the jury for trial.

23 And, Mr. Solicitor, please call the first case for
24 prosecution.

25 **MR. DANIEL:** Thank you, Your Honor, may it please the
26 Court.

1 The State calls Docket 2009-GS-17-274, The State versus
2 Jeffrey Caulder for unlawful neglect of a child.

3 2009-GS-17-275 The State versus Jeffrey Caulder for
4 unlawful neglect of a child.

5 Finally, 2009-GS-17-276, The State versus Jeffrey
6 Caulder for unlawful neglect of a child.

7 THE COURT: All right. Thank you, and Ms. Sellers do
8 you represent William Caulder with regard to these charges?

9 MS. SELLERS: Yes, sir.

10 THE COURT: All right. And I note the Indictments
11 says Jeffrey Caulder is --- Mr. Caulder is known as Jeffrey
12 William Caulder?

13 MS. SELLERS: That is correct, Your Honor.

14 THE COURT: Very good.

15 MS. SELLERS: Your Honor, for the record, his middle
16 name is actually Jeffrey Charles Caulder, not William.

17 THE COURT: Very good. Then let's make sure we have
18 that correct. And you represent Mr. Jeffrey Charles Caulder
19 with regard to all of these charges?

20 MS. SELLERS: That's correct, Your Honor.

21 THE COURT: All right. And how does he plead to
22 these charges?

23 MS. SELLERS: Not guilty, Your Honor.

24 THE COURT: And is that to each and every charge?

25 MS. SELLERS: That's correct, Your Honor.

VOIR DIRE

1
2 **THE COURT:** All right, then ladies and gentlemen ---
3 Thank you Ms. Sellers.

4 Ladies and gentlemen you have heard the case called.
5 You have the case announced. You have heard the entry of a
6 plea of not guilty, meaning thus the issues of joined for
7 trial. And we will proceed to pick a jury in the case of
8 The State versus Jeffrey Caulder. Now we are going to start
9 this by letting the lawyers who are involved in the case
10 introduce themselves to you, as well as any complaining
11 witnesses or alleged victims who are present. But first,
12 please give us the name of counsel, and then we will come
13 back for the name of parties.

14 **MR. DANIEL:** Thank you, Your Honor. My name is Shipp
15 Daniel, and I am Assistant Solicitor here in the fourth
16 circuit. I prosecute cases in Dillon County.

17 **THE COURT:** All right, very good. And will you have
18 anyone with you at the table?

19 **MR. DANIEL:** They will not be participating in the
20 trial, Your Honor.

21 **THE COURT:** All right, very good. And now to the
22 defense, please introduce yourself.

23 **MS. SELLERS:** Good morning. My name is Rosalind
24 Sellers. I am in private practice in Dillon, South
25 Carolina. I am also a contractor with The Public Defender's
26 Office, and I represent Mr. Caulder. Thank you.

1 **THE COURT:** All right. Now ladies and gentlemen, let
2 me first ask about the lawyers. You were introduced to the
3 prosecution as well to the defense. I want to know if there
4 is any member of this jury panel related by blood or
5 marriage, or has any connection whatsoever, whether it is a
6 close connection, professional, social, or business, or
7 either now or in the past, been a client of Mr. Shipp
8 Daniel, who introduced himself as the Solicitor in this
9 case. If that applies to you, please stand.

10 **JUROR:** Ah, I --

11 **THE COURT:** Ma'am, please tell me your name please.

12 **MS. MORRISON:** Melissa Townsend-Morrison.

13 **THE COURT:** One more time.

14 **MS. MORRISON:** Melissa Morrison.

15 **THE COURT:** And, ma'am, if you know your juror
16 number, give me that too as well.

17 **MS. MORRISON:** I don't know what that is.

18 **THE COURT:** And tell me why you are standing, please.

19 **MS. MORRISON:** Ms. Rosalind is related to me.

20 **THE COURT:** You are related to defense counsel?

21 **MS. MORRISON:** Yes.

22 **THE COURT:** And, what is that relationship?

23 **MS. MORRISON:** Her mother and my Grandmother are
24 cousins.

25 **THE COURT:** All right. When was the last time you

1 saw Ms. Sellers before court today?

2 MS. MORRISON: I saw her on Sunday.

3 THE COURT: Ma'am, based upon what you are telling
4 me, since you have a blood relation, or a marriage relation
5 to counsel, I am going to remove you from this case. We
6 will just remove your name from this jury panel. You don't
7 need to answer any further questions with regard to this
8 case. I do that not because I don't think you are capable,
9 but I don't want someone who may be reviewing this record to
10 somehow think that there was an unfair advantage to one side
11 or the other; thus out of an abundance of caution, I am
12 going to remove your name. All right, so please be seated.

13 And, yes, sir. Please give me your name.

14 JUROR. My name is Benson Stackhouse, juror number 159.

15 THE COURT: Thank you. And, tell me why are you
16 standing, sir.

17 MR. STACKHOUSE: Because, I am related to Ms. Sellers.

18 THE COURT: Ms. Sellers, as well.

19 MR. STACKHOUSE: Yes, sir.

20 THE COURT: And, tell me what your relationship is to
21 her?

22 MR. STACKHOUSE: We are first cousins.

23 THE COURT: All right, very good. And, for the same
24 reason, and it is not because I don't think you are capable
25 Mr. Stackhouse, but just so there won't be any appearance of
26 impropriety, I am going to remove your name from this jury

1 panel, all right. Thank you, sir. You don't need to answer
2 any further questions in regard to this case. Thank you.

3 Now, continuing with questions about the lawyers, and
4 back to the prosecution, I want to ask. Is there any member
5 of the jury panel related by blood, or marriage, or have
6 some close business, professional, social connection to
7 anyone who works in the Solicitor's Office here in Dillon
8 County, and that would include whether you have been a
9 previous client as a victim of crime with the Solicitor's
10 Office, have some business connection such as a vendor,
11 selling them something, or have some other connection to the
12 Solicitor's Office, if that applies to you, please stand?
13 All right, sir, please tell me your name.

14 **JUROR:** Corey Smith.

15 **THE COURT:** All right. Mr. Smith, tell me sir, do
16 you know your jury number?

17 **MR. SMITH:** No, sir.

18 **THE COURT:** All right. You are number 155. Let me
19 just say to everyone. I know you had a name before you
20 arrived, and you really don't need a number. But, we use a
21 number so we can be certain that the record will reflect to
22 whom we are speaking when we are talking to someone in the
23 courtroom. And Mr. Smith, tell me why are you standing,
24 sir?

25 **MR. SMITH:** Do what now?

26 **THE COURT:** Tell me why you stood up.

1 **MR. SMITH:** Oh, Okay. I service copy machines in the
2 courthouse, and the Solicitor's Office, and everywhere. I
3 service all their copy machines.

4 **THE COURT:** All right. So then, you have business
5 relationships perhaps with the Solicitor's Office, and maybe
6 even The Public Defender's Office as well?

7 **MR. SMITH:** Yes, sir.

8 **THE COURT:** All right. Would that prevent you
9 somehow from giving a fair and impartial trial in this case
10 if you are summoned as a juror?

11 **MR. SMITH:** Uh' I know him.

12 **THE COURT:** Well, let me ask you --- Let me put it
13 this way to you. I live in Darlington County. It is a
14 small county as well, and people know people on the jury
15 panel. It seems like they always know people. It is not
16 unusual that they may know a lawyer. The question is, are
17 you able to listen to the evidence and make your ruling as a
18 juror, and make your decision based on the evidence in the
19 case and put aside the fact that you know anyone, or any
20 other relationships that you may have; can you do that?

21 **MR. SMITH:** Yes, sir.

22 **THE COURT:** All right, sir. Are you certain of that?

23 **MR. SMITH:** Uh, I reckon.

24 **THE COURT:** All right, sir. Then I find that you are
25 qualified by your response. Thank you. You may be seated.
26 And, ma'am, please tell me your name and jury number.

1 **JUROR:** Number 65. I use to work in the Solicitor's
2 Office. I had some things stolen from my property.

3 **THE COURT:** So, you were a victim of crime. Would
4 the fact that you have had that working relationship with
5 the Solicitor's Office, as well as the fact that you have
6 been a victim of crime, would that prevent you from giving a
7 fair and impartial trial here somehow in this case?

8 **JUROR NUMBER 65:** No, sir.

9 **THE COURT:** Then I find that you are qualified by
10 your response, ma'am. How long ago was that by the way?

11 **JUROR NUMBER 65:** Probably two years ago.

12 **THE COURT:** Two years, all right, very good, thank
13 you. Is there anyone else who would now stand that had
14 some connection with the Solicitor's Office whatever that
15 connection maybe? All right, no one further has stood.

16 All right. Now we have already had some responses on
17 the defense side of the case. I want to ask you if there is
18 any member of this jury panel, related by blood or marriage,
19 we have already had some who have stood for Ms. Sellers, or
20 have some close business, professional, social connection to
21 Ms. Sellers, or at any time been a client of Ms. Sellers, or
22 The Public Defender's Office of Dillon County. If that
23 applies to you, please stand? Let's let the record reflect
24 that no one further has stood in response to the Court's
25 question.

26 All right. Now please tell us, if you will, Mr.

1 Solicitor, the names of your alleged victims in this case.
2 And, let me say, the reason I use the term alleged victim,
3 perhaps another term would be complaining witness, is
4 because I don't wish to use a term that may somehow
5 prejudice one side or the other of a case. What happened in
6 this case, what the allegations are, what the defenses are,
7 all of this is for the jury to decide. So please understand
8 when I use this term, I am simply trying to determine who
9 the parties are in the case without using any type of label
10 or names.

11 So, please tell us, who are the complaining witnesses
12 in the case, counsel?

13 **MR. DANIEL:** Thank you, Your Honor. The complaining
14 witnesses in this case are, minor3 Miller, minor2 Graham,
15 and minor1 Miller.

16 **THE COURT:** All right. And what are their ages?

17 **MR. DANIEL:** minor3 Miller is twelve. minor2 Graham
18 is ten. And minor1 Miller is eight.

19 **THE COURT:** Okay. And are they present by chance
20 here in the courtroom here today?

21 **MR. DANIEL:** They are not.

22 **THE COURT:** All right. And just so there will be ---
23 Are they residents of Dillon County?

24 **MR. DANIEL:** Your Honor, minor3 Miller is a
25 resident of Dillon County.

26 **THE COURT:** All right. Very good. Now, ladies and

1 gentlemen, you have heard the names called of the alleged
2 victims in the case, that is the complaining witnesses in
3 the case. I ask you now, is there any member of this jury
4 panel, and I should ask --- tell me Mr. Prosecutor, what is
5 the name of their mother?

6 **MR. DANIEL:** Their mother is Kristina Miller.

7 **THE COURT:** All right. You have heard the names of
8 the individuals who are the complaining witnesses in the
9 case, and I ask you now if there is any member of this jury
10 panel who knows them through any source, whatsoever it may
11 be, socially, business, professionally, or locally, who may
12 be related to them by blood or marriage, or have any other
13 connection to that individuals. If that applies to you, or
14 you think it does, please stand. If you think you know the
15 complaining witnesses in the case, please stand. All right.
16 Let's let the record reflect that no one has stood.

17 And now to the defense side of the case. And, again
18 please introduce Mr. Caulder to the jury panel.

19 **MS. SELLERS:** This is Jeffrey Charles Caulder.

20 **THE COURT:** All right. And is Mr. Caulder a resident
21 of Dillon County?

22 **MS. SELLERS:** He is a resident of Dillon County.

23 **THE COURT:** Very good. Thank you, Mr. Caulder. Now,
24 ladies and gentlemen I want to ask you if there is any
25 member of the jury panel who knows or think that you may
26 know the defendant in this case, or have any connection to

1 him whether it is business, professional, social, whatever
2 it may be, or related to him by blood or marriage. If that
3 applies to you, please stand? Let's let the record reflect
4 then that no one has stood in response to the Court's
5 question.

6 All right. I have in my hand three pieces of paper.
7 And I want to say to you that is exactly what they are.
8 These are pieces of paper. These are Indictments. An
9 Indictments is a document by which the Solicitor commences
10 or starts a prosecution against a person. An Indictments is
11 to be accepted only as an allegation, because that is what
12 it is at this point. It is not to be accepted as the truth,
13 and it is not to be accepted as evidence, because it is not
14 evidence. What the truth is ultimately going to be coming
15 from the witness stand, not from what some piece of paper
16 says. Please understand that it is a foundational bedrock
17 presumption in our constitutional court system that the
18 defendant is presumed innocent of these charges. And, even
19 if the defendant didn't enter a plea, we presume the
20 defendant is innocent. You have heard the defendant enter a
21 plea of not guilty, which means he --- he denies the charges
22 the allegations contained in these Indictments. I want to
23 tell you that the Indictments say, that between the dates of
24 July 1, 2003 and November 30, 2007 that Jeffrey Caulder did
25 in Dillon County while having charge, or custody, or being
26 responsibility for the welfare of the minor children, who

1 are minor¹ Graham, minor² Graham, and minor³ Miller. Did
2 place the children at unreasonable risk of harm effecting
3 the child's lives, physical or mental health, or safety, or
4 did unlawfully or maliciously cause or caused to be done
5 bodily harm to the children, so that the life or health of
6 the children was in danger or likely to be in danger, or did
7 wilfully abandon the children to wit: Including but not
8 limited to striking or excessive punishment, and/or
9 infliction of mental or emotional harm in violation of South
10 Carolina Law. These are the allegations. And, again I say
11 to you, these are only allegations that are pending against
12 the defendant. Now I tell you that, to tell as you this
13 ladies and gentlemen. Is there any member of this jury
14 panel that knows anything about this case or about this
15 prosecution from any source whatsoever, if you have some
16 knowledge about this case, please stand?

17 All right. Ladies and gentlemen I am advised that
18 there may have been newspaper coverage, or perhaps other
19 media coverage about the fact that this trial was scheduled
20 for today. I ask you now if there is any member of the jury
21 panel who has seen or heard any media, newspaper, radio, or
22 other press coverage about this trial being scheduled for
23 today, and jurors being chosen today. If that applies to
24 you, please stand.

25 All right. Let's do this. I am going to ask each of
26 you your names, and then I am going to ask you to respond

1 collectively to a question I am going to ask. Let's start
2 on the right. And, sir, please tell me your name.

3 JUROR: Donald Sandifer.

4 THE COURT: And, tell me your juror number if you
5 know it.

6 JUROR: I think it is 148.

7 THE COURT: All right. Thank you. Just please remain
8 standing.

9 Sir, please tell me your name.

10 JUROR: Jeffery Graham.

11 THE COURT: And, do you know your jury number?

12 JUROR: No, sir.

13 THE COURT: All right. Let's get that straight. One
14 number.

15 MS. SELLERS: Number 62.

16 THE COURT: All right. Thank you. And, ma'am,
17 please tell me your name.

18 JUROR: Jennifer Halterman.

19 THE COURT: And, your jury number.

20 JUROR: Sixty-five, I believe.

21 THE COURT: All right, thank you. And then ma'am,
22 behind you, all the way to the back wall.

23 JUROR: Crystal Smith, 156.

24 THE COURT: All right. Thank you, ma'am. And, then
25 beside you ma'am. Tell me your name and jury number.

1 JUROR: Jessica Hinson, 72.

2 THE COURT: Thank you. And, then ma'am in the green.

3 JUROR: Mae Rogers.

4 THE COURT: All right. Ms. Rogers, and let's make
5 sure we have your jury number correct.

6 MS. SELLERS: One-forty-five.

7 THE COURT: Very good. And then ma'am in the pink.

8 JUROR: Amy Bethea.

9 THE COURT: And, Ms. Bethea, tell me your jury
10 number, please.

11 JUROR: Number eight.

12 THE COURT: Juror number eight. All right. Let me
13 ask you ladies and gentlemen, are there any of you who are
14 standing, if you have read or heard or saw anything in the
15 media that would prevent you from giving a fair and
16 impartial trial in this case, please raise your hand.

17 All right. Let me ask the question this way. If you
18 believe, based on what --- based on what you may have seen
19 in the media, and I should say, putting outside of your mind
20 anything you may have seen, or heard, or observed in any
21 media, if you believe you are able to give a fair and
22 impartial trial, and you believe that you are able to render
23 your decision as a juror, based solely on the facts in this
24 case, as put forth in the evidence of this case from the
25 witness stand, if you believe you are able to do that; put
26 out of your mind any other information that may or may not

1 be correct that you may or may not have heard if that is the
2 case, then please sit down. Let's let the record reflect
3 that all of our jurors have now taken their seat, and thus
4 all have advised me by that act that they are, able to
5 render a fair verdict, and an impartial verdict in this
6 case.

7 All right. Now, ladies and gentlemen let me ask now of
8 the jury panel, and now let me define immediate family to
9 you. Your immediate family is your spouse and your
10 children, regardless of where they live, and anyone living
11 in your household, that is how we are going to define
12 immediate family for purposes of this proceeding. I want to
13 ask now if there is any member of this jury panel, who has a
14 member of their immediate family, who is currently being
15 prosecuted by the Solicitor's Office here in Dillon County
16 or any other county for a crime at this time. If that
17 applies to you, if you have an immediate family member who
18 is under Indictments or under investigation by the
19 Solicitor's Office, please stand.

20 All right, sir, and please tell me your name and juror
21 number?

22 **JUROR:** Kenneth Cook, Juror Number 33.

23 **THE COURT:** And, Mr. Cook, if you don't mind telling
24 me, sir, what is the relationship of the family member to
25 you?

26 **MR. COOK:** To this family or to my family?

1 **THE COURT:** To your family.

2 **MR. COOK:** I have a son in Marlboro County that has
3 been charged with a crime.

4 **THE COURT:** All right. And is that currently
5 pending?

6 **MR. COOK:** Yes, sir.

7 **THE COURT:** All right, sir. And let me ask you if
8 there is anything in that incident that would prevent you
9 from giving a fair and impartial trial in this case somehow
10 if you are summoned as a juror?

11 **MR. COOK:** Yes.

12 **THE COURT:** You believe that it would?

13 **MR. COOK:** Yes.

14 **THE COURT:** All right, sir. Then what I am going to
15 do, and I appreciate your candor. I am going to remove your
16 name from this jury panel, so that you will not be chosen in
17 this panel, and we have another panel coming behind, and I
18 will talk with you about that at that time. I will let you
19 remain with us, but there is no need to answer any further
20 questions in regard to this case.

21 Is there anyone else ladies and gentlemen? And, sir in
22 the front, please tell me your name?

23 **JUROR:** Sammy Monroe.

24 **THE COURT:** All right, sir. And tell me, what family
25 relationship is this?

1 MR. MONROE: Monroe, Derrick Darren Monroe, I don't
2 know the particulars, because --

3 THE COURT: And, let me ask you is that something
4 going on now?

5 MR. MONROE: Yes.

6 THE COURT: And, sir --

7 MR. MONROE: And, I got a nephew, in fact Dottie
8 Monroe.

9 THE COURT: And, would that prevent you, the fact
10 that that is going on now, would that prevent you from
11 giving a fair and impartial trial in this case somehow in
12 your opinion?

13 MR. MONROE: Ah, I --

14 THE COURT: Tell me that again now?

15 MR. MONROE: Would you say that again, now?

16 THE COURT: All right. The fact that you have a
17 family member being prosecuted by the Solicitor's Office,
18 would that prevent you as juror from being fair in this
19 case?

20 MR. MONROE: I wouldn't want to be on a jury.

21 THE COURT: For that reason?

22 MR. MONROE: Uh'huh.

23 THE COURT: All right, sir. Then I will stand you
24 down for that very reason, sir. Again, just so there won't
25 be some confusion with someone who would be reviewing this

1 may think that is an appearance of impropriety. I am going
2 to remove your name as well, Mr. Monro, from this jury, all
3 right, sir, I am going to let you be seated, and we will
4 come back to you, in just a moment.

5 And sir, please tell me your name.

6 **JUROR:** Donnie Burgess.

7 **THE COURT:** Yes sir, Mr. Burgess, tell me what family
8 member, what relationship is being prosecuted?

9 **MR. BURGESS:** My nephew, my son.

10 **THE COURT:** Your son. Would that prevent you from
11 being fair in this case in your opinion?

12 **MR. BURGESS:** I had rather not be a juror.

13 **THE COURT:** Tell me that again?

14 **MR. BURGESS:** I had rather not be.

15 **THE COURT:** You say you had rather not be?

16 **MR. BURGESS:** Yes.

17 **THE COURT:** All right, sir. I am going to, accept
18 that then Mr. Burgess. I am going to release you from jury
19 service on this case as well, so please be seated. You
20 don't need to answer any further questions about this case.

21 Now anyone else who would stand that they have a family
22 member who is being prosecuted by the Solicitor's Office at
23 this time?

24 Now, I want to change that question and ask if there is
25 any member of this jury panel who has a family member, or
26 you yourself, who has been a victim of crime, and thus being

1 represented by the Solicitor's Office, not prosecuted by
2 them but represented by them as a victim of crime. If that
3 applies to you, please stand. We had one who responded
4 earlier. You don't need to respond again. Anyone else
5 ladies and gentlemen, please stand at this time. All right,
6 let's let the record reflect that no one has stood.

7 I want to ask now whether there is any member of the
8 jury panel, who is a member of an organization that has as
9 its purpose the protection of or advocacy for victims
10 rights. And let me say, there is nothing wrong with being a
11 member of such an organization, I am simply asking if you
12 are. And this would be groups such as Mothers Against Drug
13 Driving which is MADD, Citizens Against Spousal Abuse which
14 is CASA, Citizens Against Violent Crime, which is called
15 CAV, and there are other organizations. So I ask you if
16 there is anyone who is a member of any of these
17 organizations. If so, please stand. All right, let's let
18 the record reflect that no one has stood in response to the
19 Court's question.

20 I want to ask now if there is any member of this jury
21 panel who presently has children, these are your children,
22 under the age of twelve. If you have children under the age
23 of twelve, please stand.

24 All right. And now Mr. Monroe, I am going to let you
25 be seated, because we are not taking you in this case.

26 Anyone who is not in this case that I have already removed

1 there is no need for you to stand. I have already removed
2 you from this case.

3 All right. Let's do this, I am going to just ask each
4 of you to give me your name, and then we are going to come
5 back and ask the question as we did a moment ago when we had
6 a group standing. And let's start over on the right, and
7 sir, please give me your name.

8 **JUROR:** Randy Johns.

9 **THE COURT:** And, sir, do you know your jury number?

10 **JUROR:** No, sir.

11 **THE COURT:** All right. Tell me your name one more
12 time?

13 **JUROR:** Randy Johns.

14 **THE COURT:** We will be right back with you.

15 **CLERK OF COURT:** Number 84, Judge.

16 **THE COURT:** 84, please remain standing. And ma'am,
17 please give me your name and jury number.

18 **JUROR:** Carol Herring, number 69.

19 **THE COURT:** Thank you, ma'am. Please remain
20 standing. Let's go all the way to the back. Ma'am, on the
21 right, that's you. Please tell me your name and jury
22 number.

23 **JUROR:** Dominique Williams, number 170.

24 **THE COURT:** Thank you. And now come forward in the
25 red.

1 JUROR: Elizabeth James, and I don't know my number.

2 THE COURT: Tell me your name again, ma'am?

3 JUROR: Elizabeth James.

4 THE COURT: All right, Ms. James. Thank you. Just
5 remain standing.

6 CLERK OF COURT: Number 83, Your Honor.

7 THE COURT: Thank you. Please remain standing. And,
8 next to you ma'am, please give me your name.

9 JUROR: Alberta Nichols, and I don't know my number.

10 THE COURT: All right, Ms. Nichols. Thank you. And,
11 coming back on the front row, sir, please give me your name.

12

13 JUROR: Greffrey George, I'm not sure of my number.

14 THE COURT: Thank you, Mr. George. And then sir, on
15 the next row.

16 JUROR: Randy Ford, I don't know my number.

17 THE COURT: All right, Mr. Ford. Thank you. And
18 then the gentleman behind you sir.

19 JUROR: Joseph Bucy, number 23.

20 THE COURT: Mr. Bucy, very good. And then ma'am
21 right behind Mr. Bucy. Yes, ma'am.

22 JUROR: Julisa Eaddy, 42.

23 THE COURT: Tell me that one more time, please.

24 JUROR: Julisa Eaddy, number 42.

25 THE COURT: Thank you, ma'am. And ma'am right there

1 on the same row.

2 JUROR: Number 105, 105 Renata McCormick.

3 THE COURT: All right, thank you. And, way back in
4 the back. Please tell me your name and juror number.

5 JUROR: Number 72, Jessica Hinson.

6 THE COURT: All right, thank you. Now, ladies and
7 gentlemen, you have heard the allegations that are put forth
8 by the State in this case that this involves placing
9 children, the allegations of placing the children at
10 unreasonable risk of harm to their safety, or their physical
11 or mental well-being, and perhaps excessive punishment, or
12 other infliction of physical or mental distress on children,
13 these are the allegations. Again, they are denied. But, I
14 ask you, those of you who are standing who have children
15 under twelve. If you believe that these allegations and the
16 nature of them would prevent you from giving a fair and
17 impartial trial just based on what they are, please raise
18 your hand. All right, then if you believe that you can give
19 a fair trial based on the evidence and make your decision
20 based on what the evidence is, and what the witnesses in the
21 case testifies to, and be fair and impartial, if you believe
22 you can do that please be seated. All right. And, then all
23 of our jurors but one have been seated.

24 And, ma'am, please give me your name and juror number
25 again.

26 JUROR: Alberta Nichols, I don't know my number.

1 **THE COURT:** All right. Just one moment, please.

2 **CLERK OF COURT:** She is number 146, Your Honor.

3 **THE COURT:** All right. Ma'am. And are you telling
4 me by standing that you don't believe, based on these
5 allegations that you are concerned that you can't be fair
6 and you can't be impartial, is that what you are saying?

7 **MS. NICHOLS:** I don't want to be a part of it.

8 **THE COURT:** All right. Then, ma'am, I am going to
9 remove your name from this jury panel. And, tell you what I
10 am going to do, we have several jurors now, and so that we
11 won't get confused. I am going to ask the jurors whom I
12 have removed from this panel, if you don't mind standing up
13 and lets move to the other side and sit on the other side of
14 the courtroom, just right there in that row so we won't get
15 confused. All right. You all just make yourself
16 comfortable right there, please.

17 All right. Now those jurors who have moved to the left
18 side of the courtroom, there is no reason for you to respond
19 to any of these further questions.

20 But I want to ask now if there is any member of this
21 jury panel who has children, regardless of what their
22 current age is who were a victim at one time of physical,
23 mental, or sexual abuse. If you have children that you
24 believe may have been victim of such abuse please stand.
25 Let's let the record reflect that no one has stood.

26 **U** Is there any member of the jury panel who is the parent

1 of a child who has made the report or allegation of
2 physical, sexual, or mental abuse that was not
3 substantiated? If that applies to you, please stand. In
4 other words, one of your children made an allegation that
5 ultimately was determined not to be substantiated, or not to
6 be found provable. If that applies to you, please stand.

7 I am going to ask now if there is any member of the
8 jury panel, this is the jury member yourself, who believe
9 you have ever been the victim of mental, sexual, or physical
10 abuse --- before anyone stands ladies and gentlemen, let me
11 say at the end of my questions, I am going to give you an
12 opportunity to come down here to speak to me at the Court
13 reporter's stand, if any of you have something you wish to
14 discuss, without even standing or responding to any of these
15 questions in open court. Is there anyone who would like to
16 stand at this time? And, there may have been, you the juror
17 may have been a victim of mental, sexual, or physical abuse.
18 All right. Ma'am, let's do this, I would prefer to talk
19 with you down at the jurors --- here at the Court Reporter's
20 stand, and at the end of my questions, I will talk with you
21 then. At the end of my questions I will talk with you then.
22 All right, you just remain where you are for the time being.

23 Thank you.

24 All right. Is there any member of this jury panel who
25 has an immediate family member who is employed with the
26 Department of Social Services here in Dillon County? If

1 that applies to you, please stand. If you have an immediate
2 family member employed with DSS, please stand. And, if you
3 yourself have been previously employed with DSS or currently
4 employed with DSS please stand. Let's let the record
5 reflect that no one has stood.

6 And, I want to ask ladies and gentlemen, if there is
7 any member of this jury panel who works with children in any
8 type of rehabilitative capacity, such as whether it is
9 mental rehabilitation, physical rehabilitation, or any other
10 effort in rehabilitating, regardless of what may have
11 happened, whether it is trauma or some other difficulty that
12 children may have experienced. If that applies to you,
13 please stand. Let's let the record reflect that no one
14 further has stood.

15 Now, are there any other questions that the State has
16 with Voir Dire?

17 **MR. DANIEL:** Yes, Your Honor. The State would ask
18 that the Court inquire of the panel if anyone or any
19 immediate family member has been under investigation by DSS.

20 **THE COURT:** Very good. I'll do it. All right.
21 Ladies and gentlemen, you have heard the question, and the
22 Court will repeat it. Which is, whether or not there is any
23 member of this jury panel, either you or a member of your
24 immediate family, as I have defined earlier, have ever been
25 under investigation by the Department of Social Services in
26 family matters, whether that be matters with your children

1 or some other activity from which DSS has jurisdiction. If
2 that applies to you, if you have been under DSS
3 investigations, or a member of your immediate family has,
4 please stand. Let's let the record reflect that no one
5 further has stood.

6 All right. I want to ask now if whether there is any
7 member of this jury panel or a member of their immediately
8 family has ever had a child removed from their home by any
9 authority whether it is a DSS or any other authority for any
10 reason. If that applies to you, please stand. Let's let
11 the record reflect that no one further has stood.

12 And now from the defense, are there any further Voir
13 Dire questions?

14 **MS. SELLERS:** No further questions from the defense,
15 Your Honor.

16 **THE COURT:** All right. Ladies and gentlemen, I am
17 now going to come and stand down by the Court reporter, and
18 we have at least one individual, and let me ask, is there
19 anyone else who has anything they wish to discuss with the
20 Court about the allegations in this case, if so please stand
21 at this time. All right, then there will be three
22 individuals. I will let you be seated, and I will talk with
23 you in just a moment. And I have one more question for you
24 before you come down which is this.

25 Is there any member of this jury panel for any reason
26 personal to you, whether it be a religious, moral, or

1 personal, or philosophical reason, and based upon the
2 allegations in this case, believe that you would not be an
3 appropriate juror in this case, if that applies to you,
4 please stand --- we have three that have already stood, if
5 there is anyone else who wishes to discuss that with the
6 Court, please stand at this time.

7 All right. I am going to ask the three --- all right
8 we have four individuals then, I am going to ask the four
9 individuals to come to the side, let me speak to you
10 individually, and we will be right back with you.

11 Counsel, do you want to stand with me you may.

12 (PAUSE)

13 THE COURT: All right, let's take our first one, and
14 if the others will wait just one moment, please.

15 JUROR: I was raped by a friend of the family.

16 THE COURT: I am sorry to hear about that.

17 MS. SMITH: I am fine now.

18 THE COURT: Based on that experience, do you think
19 you are capable of being fair and impartial witness in this
20 case?

21 MS. SMITH: No, sir.

22 THE COURT: I will stand you down in this case, if
23 you will go back and be seated on this side of the
24 courtroom. Good luck to you ma'am. Please come forward.

25 CLERK OF COURT: This is juror number 76 Rachel
26 Huggins.

1 **JUROR:** I am Juror Number 76, Rachel Huggins. I was
2 the victim of sexual abuse as a child.

3 **THE COURT:** I am sorry for that.

4 **MS. HUGGINS:** I have said it out loud before.

5 **THE COURT:** I admire you for your courage. And, let
6 me ask you --- based upon what you have just told me, I
7 believe I should dismiss you from this case, because of the
8 difficultly it would cause you.

9 **MS. HUGGINS:** I would do my best, but it would be
10 difficult.

11 **THE COURT:** Thank you. If you would sit on this side
12 of the courtroom.

13 Ma'am, please come forward. Yes, ma'am, please tell me
14 your name.

15 **JUROR:** Jennifer Halterman, number 65. How are you?

16 **THE COURT:** Doing good. Yes, ma'am, tell me why you
17 are coming forward?

18 **MS. HALTERMAN:** I was sexually abused as a child.

19 **THE COURT:** At what age?

20 **MS. HALTERMAN:** Five or six?

21 **THE COURT:** Are you okay?

22 **MS. HALTERMAN:** Yes, sir. I am fine.

23 **THE COURT:** I'm sorry you had to bring up what may
24 have been difficult. I am going to release you, because I
25 think it would be uncomfortable for you. If you would go

1 back and sit on this side of the courtroom. Thank you,
2 ma'am.

3 All right, sir. Please come forward. Please tell me
4 your name and why you are coming forward?

5 **JUROR:** Fitzgerald Lytch.

6 **THE COURT:** Mr. Lytch, tell me why you are coming
7 forward?

8 **MR. LYTCH:** Well, I am on the school board, and I work
9 with a lot of children's groups, and I would be a little
10 bias for these children.

11 **THE COURT:** First of all, thank you for your service.
12 The school board is a difficult service, and thank you for
13 your candor. It is not that you are incapable, but I will
14 remove you from this case simply because, I do not want to
15 put you in an uncomfortable position, if you would go back
16 and sit on that side of the courtroom. Thank you, sir.
17 Have a good day.

18 All right, ladies and gentlemen, while I'm down from
19 the bench, let me ask you one last time. Is there anyone
20 who believes, or for reasons personal to you, that you would
21 not be an appropriate juror, based on the allegation in this
22 case, I'm going to ask you one last time. If you believe
23 that that may apply to you, or if you believe that you would
24 like to discuss it with the Court, please stand at this
25 time. All right. Let's let the record reflect that no one
26 further has stood. Thank you, ladies and gentlemen.

1 All right. Is there anything further from the State
2 regarding jury qualification?

3 MR. DANIEL: Nothing, Your Honor.

4 THE COURT: And, defense?

5 MS. SELLERS: Nothing from defense, Your Honor.

6 THE COURT: All right. How many strikes are claimed
7 by the State?

8 MR. DANIEL: Five, Your Honor.

9 THE COURT: And, how many are claimed by the defense?

10 MS. SELLERS: Five, Your Honor.

11 THE COURT: All right. Strikes are five and five.

12 MR. DANIEL: Your Honor, I'm sorry. What about the
13 witness lists?

14 THE COURT: You know, that is an excellent point,
15 counsel. I'm going to ask you if you would kindly publish -
16 -- listen ladies and gentlemen of the jury to the names of
17 potential witnesses. I need to ask you whether you may be
18 related to some of these individuals.

19 Please give us the names of these witnesses who may be
20 called for the State. Thank you, Mr. Daniel.

21 MR. DANIEL: minor 3 minor 1 minor 2

22 , Salley Huggins-McIntyre, Janet
23 Byrd, Joanna Jackson, Maggie Miller, Gene Miller, Phillip
24 Graham, Gaye Allen-Cook, Kristina Miller, Felicia Davis,
25 Rosa Valero, Kristie Tuck, Doctor Gerald Atwood, Makesha

1 Jackson, Robin Griggs, Cindy McDaniel, Eric Miller, Randy
2 Tyler, Troy Jones, Roanell Hough, Ellen Bullard, and Jackie
3 Rowland.

4 **THE COURT:** All right. Now, when I asked you about
5 the parties, I asked you if you even knew them. My
6 questions for the witnesses are not so close. It is whether
7 you have some close business professional or social
8 connection to any of these witnesses; whether you are
9 related by blood or marriage to any one of these witnesses,
10 or if it is a professional witness such as a physician or
11 perhaps if you are a client or a patient of those witnesses,
12 please stand. All right, and ma'am please tell me your name
13 and jury number.

14 **JUROR:** Barbara Scarborough. I don't know my number.

15 **THE COURT:** And, Ms. Scarborough, tell me, which of
16 the witnesses are you standing for?

17 **MS. SCARBOROUGH:** Troy Jones.

18 **THE COURT:** And, are you related or is that someone
19 you know?

20 **MS. SCARBOROUGH:** I am his aunt.

21 **THE COURT:** Say again?

22 **MS. SCARBOROUGH:** I am his aunt.

23 **THE COURT:** You are related. All right. Let me ask
24 you ma'am, if he appears as a witness --- Counsel, let me
25 ask you. Will that individual be a witness in the case?

26 **MR. DANIEL:** Your Honor, at this time it is looking

1 like Mr. Jones will not be called.

2 **THE COURT:** All right.

3 **MR. DANIEL:** Barring something unforeseen, he will not
4 be called.

5 **THE COURT:** All right. Let me just say it to you
6 this way. If the witness will be called, I am going to
7 disqualify the juror, because of the blood relationship to a
8 witness. I think that would create an appearance of
9 impropriety. Not that Ms. Scarborough is not capable, I
10 don't want there to be an impropriety to appear to have
11 occurred.

12 So, if you are withdrawing that witnesses name, we will
13 leave Ms. Scarborough in the pool, what say ye?

14 **MR. DANIEL:** I will withdraw that witness at this
15 time, Your Honor.

16 **THE COURT:** Very good. Then we have resolved that
17 problem for you Ms. Scarborough. Thank you. You may be
18 seated. Anyone else who would stand?

19 All right, ladies and gentlemen, let me say to you that
20 again one of the foundational principles of our Constitution
21 is that the defendant has no burden of proof in this case.
22 The defendant is presumed innocent. The burden of proof
23 never shifts to the defendant to prove the defendant's
24 innocent. That is not how it works. The burden of proof is
25 always on the State to prove beyond a reasonable doubt that
26 the defendant, is guilty before any conviction may occur.

1 Now for that reason, because the defendant has no
2 burden of proof, the defendant does not have to call any
3 witnesses. The defendant does not have to testify. The
4 defendant may remain silent. None of that is to be inferred
5 against him in any way, because again he has no burden of
6 proof. But I ask you Ms. Sellers, are there other
7 individuals for whom I should query this jury as to whether
8 they may be related who may appear in the case not called by
9 the Solicitor?

10 **MS. SELLERS:** Yes, Your Honor.

11 **THE COURT:** Go ahead.

12 **MS. SELLERS:** Those individuals are Officer Melvin
13 Lease, Tracy Williamson, Carol Byrd, Brandon Hayes, Janice
14 Caulder, Richard Williamson, Jeff Stevenson, Nichol
15 Stevenson, Helen Caulder, Thad Caulder, Sr., Wanda
16 Williamson, Eloise Garret, Thad Caulder, Jr. Damion
17 Johnson, Sherry Dilliard, Sherry Ward, Sharon Hardee, and
18 Brandon Caulder.

19 **THE COURT:** All right, thank you. You heard the
20 names of potential witnesses who may be called by the
21 defendant. I ask you if there are any members of the jury
22 panel related by blood or marriage to one of them, or have
23 some close business, professional, social connection to
24 them, if so please stand. Let's let the record reflect that
25 no one has stood further.

26 Now, anything further from the State?

1 **MR. DANIEL:** Nothing further from the State, Your
2 Honor.

3 **THE COURT:** And, from defense?

4 **MS. SELLERS:** Nothing from the defense, Your Honor.

5 **THE COURT:** All right. Now, ladies and gentlemen we
6 are going to go through a process of what we call a jury
7 strike. And here is how it is going to be done. Everyone
8 who remains qualified and sitting on this side of the Court,
9 your name is on a piece of paper that is in a cigar box that
10 the Clerk of Court is going to, make what we call a blind
11 pull without looking, is going to your name. And when your
12 name is called, please stand. Just stand where you are.
13 This is what is going to happen. Both sides are going to
14 have an opportunity to determine whether they want to seat
15 you or they want to excuse you. Now, I want you to know
16 please first of all it may suit you fine if you are excused
17 or struck. That may be what your preference is. But, if
18 you are not accepted, I don't want you to be offended by
19 that. It is not that you are not capable. It may be that
20 some strategy or tactic only to the lawyers. But, I will
21 tell you that it is not because of your sex, and not because
22 of your race, because they cannot strike for those reasons,
23 and each side will have an opportunity to challenge the
24 other side strikes, so please understand it is not for that
25 reason. If you are chosen to be on the jury, we will get
26 you to come and sit in the jury box. If you are not chosen,

1 we will just get you to sit back down where you are, and we
2 will be back with you at a later time.

3 Counsel, if you all want to turn your back to me,
4 please do so.

5 MR. DANIEL: Thank you.

6 THE COURT: Let me say one other thing. This may be
7 socially maybe psychologically uncomfortable for our jury,
8 but you are going to stand up. They are going to be talking
9 at their table, and you know they are talking about you, and
10 we know that they are talking about you. But I will tell
11 you that this is a process of choosing jurors that has stood
12 our country well for over two hundred and thirty years. In
13 some cases the jurors have to, get up, come down here and
14 stand up in front of the Court, but I don't ask you to do
15 that, because I feel like that is a little invasive. I just
16 let you stand where you are and be more comfortable where
17 you are.

18 Now, Madame Clerk, you may proceed.

19 CLERK OF COURT: Number 154, Antwon Smith. What saith
20 the State?

21 MR. DANIEL: Please present Mr. Smith.

22 CLERK OF COURT: Defendant.

23 MS. SELLERS: Please seat Mr. Smith.

24 CLERK OF COURT: Would you come down sir, and sit in
25 the jury box to my right, please sir..

26 Number 8, Amy Bethea, what saith the State? U

1 MR. DANIEL: Please present Ms. Bethea.

2 CLERK OF COURT: Defendant.

3 MS. SELLERS: Please seat Ms. Bethea.

4 CLERK OF COURT: Come sit in the jury box to my right
5 please, ma'am, and if you would bring all of your personal
6 belongings with you.

7 Number 136 Stuart Poston, what saith the State?

8 MR. DANIEL: Please present Mr. Poston.

9 CLERK OF COURT: Defendant.

10 MS. SELLERS: Please seat Mr. Poston.

11 CLERK OF COURT: Have a seat in the jury box please
12 sir.

13 Number 105 Ranata McCormick, what saith the State?

14 MR. DANIEL: Please present Ms. McCormick.

15 CLERK OF COURT: Defendant.

16 MS. SELLERS: Please seat Ms. McCormick.

17 CLERK OF COURT: Have a seat in the jury box, please
18 ma'am.

19 Number 145 Mae Rogers, what saith the State?

20 MR. DANIEL: Please present Ms. Rogers.

21 CLERK OF COURT: Defendant.

22 MS. SELLERS: Please seat Ms. Rogers.

23 CLERK OF COURT: Have a seat in the jury box, please
24 ma'am.

25 Number 148 Donald Sandifer, what saith the State?

1 MR. DANIEL: Please present Mr. Sandifer.

2 CLERK OF COURT: Defendant.

3 MS. SELLERS: Please excuse Mr. Sandifer.

4 CLERK OF COURT: You are excused, sir.

5 Number 53, Randy Ford, what saith the State?

6 MR. DANIEL: May we approach briefly, Your Honor?

7 THE COURT: You may.

8 (Whereupon, a bench conference was held.)

9 THE COURT: All right, thank you ladies and gentlemen
10 for your patience, while we were talking. Mr. Ford, let me
11 ask you sir. I noticed at the break, I believe you were
12 talking with one of the defendants, who has charges here
13 pending in the Court, not in this case. I want to ask you
14 sir, what relationship if any do you have with that
15 individual?

16 MR. FORD: It is my daughter's boyfriend.

17 THE COURT: Now, would the fact, I asked you about
18 close family members or immediate family members and that
19 would not have been included in the list. Let me ask you
20 sir, are they engaged, or are they just simply boyfriend and
21 girlfriend?

22 MR. FORD: They live together.

23 THE COURT: All right, sir. Would that prevent you
24 from giving a fair and impartial trial in this case, in your
25 opinion, if you are summoned as a juror?

1 MR. FORD: No, I guess not.

2 THE COURT: All right, sir. Are you certain of that?

3 MR. FORD: Yes.

4 THE COURT: All right, thank you for your response.

5 And I find that you are qualified.

6 And, now, let's go back to the strike process. I just
7 wanted to inquire about that to make sure. Now, what says
8 the State?

9 MR. DANIEL: Please excuse Mr. Ford from service in
10 this case.

11 CLERK OF COURT: You are excused, sir.

12 THE COURT: Thank you, sir.

13 CLERK OF COURT: Number 93 Sybil Lane, what saith the
14 State?

15 MR. DANIEL: Please present Ms. Lane.

16 CLERK OF COURT: Defendant.

17 MS. SELLERS: Please excuse Ms. Lane.

18 CLERK OF COURT: You are excused, ma'am.

19 Number 149 Billy Sawyer, what saith the State?

20 MR. DANIEL: Please excuse, Mr. Sawyer from the
21 service in this case.

22 CLERK OF COURT: You are excused, sir.

23 Number 23, Joseph Bucy, what saith the State?

24 MR. DANIEL: Please present Mr. Bucy.

25 CLERK OF COURT: Defendant.

1 MS. SELLERS: Please seat Mr. Bucy.

2 CLERK OF COURT: Have a seat in the jury box please
3 sir.

4 Number 62, Jeffrey Graham, what saith the State?

5 MR. DANIEL: Please present Mr. Graham.

6 CLERK OF COURT: Defendant.

7 MS. SELLERS: Please seat Mr. Graham.

8 CLERK OF COURT: Have a seat in the jury box please
9 sir.

10 Number 40, Wanda Dobbs, what saith the State?

11 MR. DANIEL: Please present Ms. Dobbs.

12 CLERK OF COURT: Defendant.

13 MS. SELLERS: Please seat Ms. Dobbs.

14 CLERK OF COURT: Have a seat in the jury box, please
15 ma'am.

16 Number 69, Carol Herring, what saith the State?

17 MR. DANIEL: Please present Ms. Herring.

18 CLERK OF COURT: Defendant.

19 MS. SELLERS: Please excuse Ms. Herring.

20 CLERK OF COURT: You are excused, ma'am.

21 Number 170, Dominique Williams. What saith the State?

22 MR. DANIEL: Please present Ms. Williams.

23 CLERK OF COURT: Defendant.

24 MS. SELLERS: Please seat Ms. Williams.

25 CLERK OF COURT: Have a seat in the jury box, please

1 ma'am.

2 Number 83, Elizabeth James, what saith the State?

3 MR. DANIEL: Please excuse Ms. James from service in
4 this case.

5 CLERK OF COURT: You are excused ma'am.

6 Number 80, Johnny Hyatt, what saith the State?

7 MR. DANIEL: Please present Mr. Hyatt.

8 CLERK OF COURT: Defendant.

9 MS. SELLERS: Please excuse Mr. Hyatt.

10 CLERK OF COURT: You are excused, sir.

11 THE COURT: Defense has one strike remaining.

12 CLERK OF COURT: Number 168 Evans Washington, what
13 saith the State?

14 MR. DANIEL: May we approach one more time, Judge?

15 (Whereupon, a bench conference was held.)

16 THE COURT: What says the State?

17 MR. DANIEL: Beg the Court's indulgence.

18 (PAUSE)

19 MR. DANIEL: Please excuse Mr. Washington from
20 service in this case.

21 CLERK OF COURT: You are excused, sir.

22 THE COURT: The State has one strike remaining.

23 CLERK OF COURT: Number 134 Cynthia Pinkney, what
24 saith the State?

25 MR. DANIEL: Please present Ms. Pinkney.

1 CLERK OF COURT: Defendant.

2 MS. SELLERS: Please seat Ms. Pinkney.

3 CLERK OF COURT: Have a seat in the jury box, please
4 ma'am.

5 Number 68 Chad Hensley, what saith the State?

6 MR. DANIEL: Please present Mr. Hensley.

7 CLERK OF COURT: Defendant.

8 MS. SELLERS: Please seat Mr. Hensley.

9 CLERK OF COURT: Have a seat in the jury box, please
10 sir.

11 Number 131, Mary Page, what saith the State?

12 MR. DANIEL: Please present Ms. Page.

13 CLERK OF COURT: Defendant.

14 MS. SELLERS: Please seat Ms. Page. Have a seat in
15 the jury box, please ma'am.

16 THE COURT: All right. Madame Clerk, we will choose
17 one alternate, and the strikes for the alternate will be one
18 for the State and two for the defense.

19 CLERK OF COURT: Number 60, Fred Gooden, what saith
20 the State?

21 MR. DANIEL: Please present Mr. Goodsen.

22 CLERK OF COURT: Defendant.

23 MS. SELLERS: Please seat Mr. Goodsen.

24 CLERK OF COURT: Have a seat in our alternate seat,
25 please sir.

1 **THE COURT:** All right. Ladies and gentlemen, welcome
2 to the jury box. You came in this morning, you had safety
3 in numbers, and now we have had our first jury draw and
4 there you sit. Let me ask you this. Now many of you have
5 served before on a jury, if you have raised your hand
6 please. Well, I see we have some with experience. But for
7 those of you, who find yourself sitting there for the first-
8 time, don't be uncomfortable about where you find yourself.
9 Jurors need two tools in order to serve well and serve
10 capable, and you have them both. The first is your ability
11 to listen, and the second is your collective common sense.
12 Armed with those two things, you will find yourself in good
13 stead.

14 All right, counsel step up and lets talk about
15 scheduling so I can give our jury panel as well as our
16 greater panel further information about this case. Please
17 come to the side.

18 (Whereupon, a bench conference was held in the
19 presence of the jury but out of the hearing of the jury.)

20 **THE COURT:** All right. Ladies and gentlemen let's
21 talk a little bit about scheduling here. First of all, what
22 I am going to do is, I am going to ask you to come back on
23 Thursday morning at 10:00. That is when we are going to
24 start the trial of this case. What I would like for you to
25 do though on Wednesday night as a failsafe, is to call the
26 jury number that you have --- you should all have it, if you

1 don't we will make sure that our bailiff gives you a card
2 for instructions for jury panel number one. We will just
3 make sure as a failsafe to see whether there is any change
4 in that time. I don't think that there will be. But, what
5 I would like for you to do is come back Thursday morning at
6 10:00. Call the jury number after 6:00 at night, again as a
7 failsafe.

8 All right. Now I am also going to release you as
9 jurors, and I am speaking to the rest of our jury panel as
10 well as you in just a moment, I am going to let you stay
11 with me a moment and let them go first. But I will tell you
12 that we will not be holding jury trials Tuesday or
13 Wednesday. So that means tomorrow and Wednesday are going
14 to be your days to use in your personal lives and your
15 personal schedules as you wish. But then Wednesday night,
16 call for instructions to panel number one that is you, but I
17 anticipate those instructions will be to return at 10:00
18 Thursday morning. Now, are there any questions now about
19 our jury panel.

20 All right. Then I am going to ask you to do a couple
21 more things. Number one. There was an article in The
22 Florence Morning News about the draw of this jury today. I
23 am going to ask you to not read The Florence Morning News
24 today. Thank you. If you hear or see some other media
25 story about this trial, please disregard it. You can't
26 always control what is coming on the radio or what is coming

1 on in front of you, but turn away or disregard if you hear
2 it. I do that not because the Court is trying to hide
3 anything or to make you less than fully aware. But, it is
4 just that it is important that whatever verdict you reach be
5 the result of evidence in this courtroom, and this is
6 evidence that is going to be under an oath, subject to
7 direct and cross examination, and something that somebody
8 out on the street may say, or some other source please and
9 thank you for your understanding.

10 Another thing is your loved ones are going to say what
11 happened in court today, or what is the case about. Tell
12 your family members that the Judge has instructed you not to
13 discuss the case until it is over. When it is over you can
14 discuss it fully. But, I don't want them saying something
15 that may influence your decision that is outside of this
16 courtroom, that would not be appropriate. Fair enough?

17 Now, one final thing. Please don't undertake some
18 investigation on your own, whether that is by computer, or
19 internet, or reading, or whatever. Just come back on
20 Thursday morning well rested, ready to go forward. And we
21 will be ready to go at that time. We will see you 10:00
22 Thursday. Call Wednesday night to confirm. Any questions
23 now about scheduling?

24 All right. Now, out of respect for our jury, let's all
25 remain where we are while this jury panel departs the
26 courtroom. Have a nice day. When you come back, you will

1 come back to the jury room, and the bailiff will show you
2 where that is. Have a good day ladies and gentlemen, you
3 are free for the day, and Tuesday and Wednesday.

4 (Whereupon, the jury departs the courtroom at
5 12:50 p.m..)

6 **THE COURT:** All right. To our jurors, ladies and
7 gentlemen the remaining jurors, let me just say one or two
8 things. First of all you are not chosen on this case. and
9 you may be disappointed or you may be pleased by it. Some
10 of the allegations in this case were difficult for some of
11 our jurors, and I admire the courage that our jurors have
12 shown in coming forward and talking to the Court, being
13 present today.

14 And, ladies and gentlemen I am going to release you now
15 for the remainder of the day and Tuesday, and Wednesday.
16 But, what I want you to do is call Wednesday night for
17 instructions to the remaining jury panel. There are going
18 to be instructions for jury number one, that is not you, but
19 to the remaining jury members, the remaining jury panel
20 that's you. So, please respond to whatever those
21 instructions are. Are there any questions from our jury
22 panel about that? We are going to release you at this
23 time. Have a good day today, tomorrow and Wednesday.

24 (Whereupon, the panel was released at 12:53.)

25 **THE COURT:** Now, is there anything further for our
26 record before we stand this case down for trial on Thursday

1 morning?

2 MR. DANIEL: Nothing from the State, Your Honor.

3 THE COURT: Defense?

4 MS. SELLERS: Nothing from the defense, Your Honor.

5 THE COURT: All right. Mr. Caulder, I am going to
6 release you sir --- Let's wait just one moment. I am going
7 to release you sir to the custody of your attorney. Please
8 understand Mr. Caulder --- take that down please.

9 (PAUSE)

10 THE COURT: Mr. Caulder, I want to say to you sir, I
11 am going to release you to the custody of your attorney.
12 Please understand, when Thursday morning comes if for
13 whatever reason you are not here this case is going to go
14 forward in your absence, which clearly is not in your
15 benefit. Do you understand that, sir?

16 MR. CAULDER: Yes, sir.

17 THE COURT: All right, very good. Then this case
18 will stand down until Thursday morning at 9:30. And this
19 courtroom right now will be in recess until 2:15 for lunch.

20 MR. DANIEL: Thank you, Your Honor.

21 MS. SELLERS: Thank you, Your Honor.

22 (Whereupon, the day one of this hearing was
23 concluded at 12:50 p.m. on September 14, 2009.)

24 -- END OF DAY ONE OF TRIAL --

1 (Whereupon, Court begins at 10:05 a.m. on
2 Thursday, September 17, 2009.)

3 -- DAY TWO OF TRIAL --

4 **THE COURT:** All right, ladies and gentlemen welcome
5 to the courtroom. I am Judge Baxley. We want to begin this
6 morning by welcoming to the courtroom, a class from the
7 Dillon Christian School.

8 We are here to begin a criminal trial. We have certain
9 issues and motions that are to be made between the parties.
10 The jury is here. They will not be in the courtroom while
11 we are deciding this matter.

12 Let me ask the prosecution, are there any issues or
13 motions that the Court needs to resolve prior to the jury
14 being brought in.

15 **MR. DANIEL:** Thank you, Your Honor. The first thing
16 Your Honor, that I would like to address with the Court is
17 having witnesses sequestered, which, I believe, Ms. Sellers
18 consents.

19 **MS. SELLERS:** I do not, object to that Your Honor, I
20 filed the same motion.

21 **THE COURT:** All right. Very good. And how many
22 witnesses are present that will be --- that you are asking
23 to be sequestered, which ladies and gentlemen, means they
24 are asking that the witnesses before they testify not be
25 allowed to be in the courtroom. And how many witnesses do
26 you have that will testify for the State that are present in

1 the courtroom right now?

2 MR. DANIEL: Your Honor, present in the courtroom now
3 that may testify for the State are six. I have six
4 witnesses who may testify for the State.

5 THE COURT: And defense?

6 MS. SELLERS: Your Honor, for the defense I believe
7 there are three. There are three witnesses that are
8 present.

9 THE COURT: All right. And is there anyone that the
10 State asks to be exempted from the sequestration?

11 MR. DANIEL: Your Honor, I would at this time ask
12 that Gaye Allen-Cook, who is a counselor of the oldest
13 victim, I would ask that she be allowed to stay. She has
14 requested that she stay as far as --- obviously not to be up
15 there with the witness, but to be able to see what goes on
16 so that she may better counsel this young man, who has
17 undergone some serious trauma from somebody. So, I would
18 ask that she be allowed to stay just for his testimony.

19 THE COURT: All right. What says the defense to
20 that?

21 MS. SELLERS: Your Honor, I am not opposed to that as
22 long as Mrs. Cook is removed upon Jonathan's --- at the
23 completion of Jonathan's testimony.

24 THE COURT: All right. Then we will allow that, and
25 there being no objection, the Court will sequester the
26 witnesses.

1 Now, do you wish for the witnesses to leave at this
2 time?

3 MR. DANIEL: Your Honor, that would probably be the
4 best thing.

5 THE COURT: All right. Ladies and gentlemen, if you
6 are a witness in this case, I am going to have to ask you to
7 step from the courtroom, and I do that again at the request
8 and agreement of both sides in this case. And those who are
9 witnesses, please exit the backdoor at this time.

10 (PAUSE)

11 MR. DANIEL: Your Honor, I'm sorry, we have another
12 witness that is already out, but we had to separate --- make
13 sure they didn't see this crowd.

14 THE COURT: Well, I also noticed that several people
15 left, including children and others that might not be
16 witnesses. The sequestration is only for individuals --

17 MR. DANIEL: -- Right --

18 THE COURT: -- who are here as witnesses.

19 MR. DANIEL: But those individuals were just with the
20 family, and just wanted to go out and be with them.

21 THE COURT: All right, Very good.

22 MR. DANIEL: Your Honor, there is one other issue
23 that I forgot about, and one we talked about in chambers,
24 and that is there are some DSS matters concerning the
25 maternal grandfather, and some use of marijuana as far as
26 custody is concerned. It is my position that this is wholly

1 irrelevant to the charge that we are here about, and I would
2 ask that that not be not allowed to be discussed during the
3 testimony, because I don't think it is the least bit
4 relevant.

5 THE COURT: Defense.

6 MS. SELLERS: Your Honor, it is my position that that
7 information is completely relevant. These individuals are
8 also in the midst of a child custody dispute. Your Honor, I
9 believe that information is relevant. He is going to put
10 this witness up, and I feel I have the right to cross
11 examine him fully about that matter.

12 THE COURT: All right. Help me understand the impact
13 of that testimony. Now for what purpose would you wish to
14 put that evidence in?

15 MS. SELLERS: Well, Your Honor, it could go toward
16 his motive in terms of some statements that he has made with
17 DSS. Also some other actions that he has taken subsequently
18 to the children being removed from their mother's custody.

19 MR. DANIEL: If I may Your Honor.

20 THE COURT: Just one moment. Is this charged
21 conduct? Has there been a conviction or a criminal charge
22 brought up as a result of this behavior?

23 MS. SELLERS: There has not been a criminal
24 conviction or a charge I believe associated with this. But,
25 Your Honor, this was --- This information was provided to
26 DSS. Based on this information there have been several

1 changes in their treatment plan. And, Your Honor, I believe
2 that information would be relevant.

3 **THE COURT:** And provided by whom from DSS?

4 **MS. SELLERS:** Sir?

5 **THE COURT:** By whom is it provided by DSS?

6 **MS. SELLERS:** I believe that is going to be through
7 Mr. Hough, the caseworker.

8 **THE COURT:** All right. And then your response, Mr.
9 Daniel?

10 **MR. DANIEL:** Your Honor, first of all, I take issue
11 with the statement by Ms. Sellers that there is an ongoing
12 custody battle. I have --- would contradict that. Also, I
13 think that Ms. Sellers is basing some of this opinion or
14 some of her statements on some witnesses she thinks I may
15 call, and at this time I do not anticipate calling even the
16 one who has been --- who is allegedly taking marijuana or
17 using marijuana. So, again Your Honor, Jeffrey Caulder has
18 been charged with child abuse. What the grandfather of the
19 children has done or has not done is in my opinion
20 irrelevant.

21 **THE COURT:** If that individual is not a witness the
22 Court will not allow that evidence to come in, because ---
23 for multiple reasons. Number one. It is hearsay. Number
24 two. It would not bear on the credibility or believability
25 of an individual witness. Thirdly, it is prejudicial. So
26 at this juncture, if the individual who is accused is not a

1 witness, the Court will not allow the testimony. Please
2 understand, this is a ruling in Limini. If a door is opened
3 in testimony, or if there is some other purpose for which
4 you believe this may be admissible, relevant, and probative
5 I will be glad to hear from you at that time. Ms. Sellers.

6 MS. SELLERS: Thank you, Your Honor, because I have
7 included that individual on my witness list as well.

8 THE COURT: Very good.

9 MR. DANIEL: Thank you, Your Honor. That concludes
10 any motions made by the State other than, I would ask again
11 after talking to one of the counselors of the children, I
12 would ask that the --- when the three children testify,
13 because of their age in part, they are twelve, ten and
14 eight. And, also because of the sensitive nature of these
15 charges and because of the trauma that these children have
16 experienced, I would ask that the courtroom be cleared for
17 their protection and for their comfort.

18 THE COURT: And what says defense?

19 MS. SELLERS: Your Honor, I would be in opposition to
20 that motion. I believe that my client is entitled to
21 confront his witnesses. Of course I understand that he is
22 not trying to remove the defendant from the courtroom. But,
23 also, Your Honor, this is a public forum. The media is
24 here. There are other individuals here, Your Honor. I
25 believe that we have the protections in place with our
26 judicial system, that there is not a need to clear the

1 courtroom during their testimony.

2 THE COURT: All right. This is a public forum. The
3 Court declines to clear the courtroom when any individual
4 testifies. And that motion is denied.

5 MR. DANIEL: Thank you, Your Honor. That concludes
6 the pretrial motions from the State.

7 THE COURT: All right. Are there motions now from
8 the defense?

9 MS. SELLERS: Yes, Your Honor.

10 THE COURT: Tell me what they are.

11 MS. SELLERS: Your Honor, there is a motion opposing
12 the State's motion for introduction of out of Court
13 statements pursuant to South Carolina Code Section 17-23-
14 175. From our conversations in Chamber, I do believe, that
15 the Solicitor does not intend to call --- to use that
16 information.

17 MR. DANIEL: If Ms. Sellers is referring to the
18 forensic interview tapes, she is correct. I do not intend
19 to introduce those.

20 THE COURT: Very good. Are there further issues?

21 MS. SELLERS: Your Honor, that the Solicitor's Office
22 be compelled to furnish a bill of particulars of the
23 Indictments for the above case.

24 THE COURT: And, under what authority do you requests
25 that?

26 MS. SELLERS: Your Honor, I will withdraw that motion

1 at this time.

2 **THE COURT:** Very good. And is there anything
3 further?

4 **MS. SELLERS:** The only other thing Your Honor, is we
5 would, like to be heard on the issue, Your Honor. We
6 believe that certain evidence pertaining to my client's
7 injury to his leg should be inadmissible, in terms of the
8 way that this information is presented to the jury. There
9 have been several accounts that I have read through reports,
10 also the forensic interview that indicates that, I believe,
11 would be very prejudicial toward my client if this
12 information is presented improperly to the jury.

13 **THE COURT:** And what is this evidence?

14 **MS. SELLERS:** Your Honor, there is some allegation
15 that it was a suicide attempt. Your Honor, that it was an
16 attempt because he was trying to seek disability. That
17 there was malice about it. Your Honor, that would be mere
18 speculation, and I felt that information would be
19 prejudicial.

20 **THE COURT:** All right. And what do you say
21 Solicitor?

22 **MR. DANIEL:** Your Honor, the fact or the idea that
23 Mr. Caulder shot his own leg off is not the least bit a part
24 of our case. In talking with some of our witnesses who will
25 testify, there have been times in my conversation with them
26 that they have said something like, on the day Jeffrey shot

1 his leg off, or maybe referring to that as some sort of
2 marker of time, or reminder that this is the day that
3 something happened. But Your Honor, to my knowledge at this
4 point, nothing in my case will have anything to do with
5 focusing on Mr. Caulder's accident or whatever it was. And
6 I, for the record, have never heard any of my witnesses say
7 anything about an attempted suicide attempt, or anything.
8 So I don't think there is any problem with a witness, in my
9 opinion, referring to that incident as a reminder of when
10 something may have happened. But, again, the State does not
11 intend on getting into that at all.

12 **THE COURT:** All right. Very good. It appears that
13 the State does not intend for that to be a part of the
14 State's case. And we are dealing with children witnesses,
15 and the Court cannot predict in advance what responses or
16 what statements a witness may make. If there is some
17 request for curative instructions at the time that something
18 may occur, then I will weigh in when the objection is made
19 contemporaneously. Ms. Sellers, I think to try to do
20 something in advance, either coach a witness or instruct a
21 witness would only add to the pressure of the situation
22 which they find themselves. And thus when the Court
23 understands what you are asking, but cannot give you any
24 relief at this time. And again upon appropriate Motion,
25 will give curative instruction should something occur.

26 **MS. SELLERS:** Thank you, Your Honor.

1 **THE COURT:** All right. Now, is there anything else
2 before we bring in the jury?

3 **MR. DANIEL:** Your Honor, it is my understand, just
4 for the record, that any sort of discovery that was turned
5 over this morning from or to either side is inadmissable.
6 Is that correct?

7 **THE COURT:** First of all the Court does not prohibit
8 what is agreed between the parties. But if someone brought
9 evidence today that has not been provided to the other side
10 before today, and the other side objects to it, the Court
11 will not permit it. I don't know what the evidence is.
12 But, I simply note that it is too late to meet the
13 requirements of our discovery process. Thus, the Court will
14 exclude it.

15 **MR. DANIEL:** Thank you, Your Honor.

16 **THE COURT:** Now a word to our --- those who are
17 present. Obviously, these are serious charges brought
18 against the defendant. I am going to ask that there not be
19 any reactions from those who remain in the courtroom please,
20 whatever the testimony may be, whatever part of the case you
21 hear. To our press, I am going to ask that you not use a
22 click camera during the proceedings when the jury is in the
23 courtroom. That is very distracting. Thank you for
24 complying to that request.

25 Is there anything further before we bring in the jury
26 from the State?

1 MR. DANIEL: No, Your Honor.

2 THE COURT: And from the defendant?

3 MS. SELLERS: No, Your Honor.

4 THE COURT: All right. Then Madame Clerk, let's
5 bring the jury in please. Are you going to swear our jury
6 in?

7 CLERK OF COURT: Yes, sir.

8 (Whereupon, the jury enters the courtroom at 10:22
9 a.m.)

10 THE COURT: Good morning, ladies and gentlemen.

11 THE JURY: Good morning.

12 THE COURT: Please wait while we check the sound
13 system to make sure that it is on so that everyone can hear.
14 Very good.

15 Welcome back to the courtroom. We are going to begin
16 this process with you taking the oath as jurors in this
17 specific case. And please follow our clerk's instructions.

18 WHEREUPON, THE JURY PANEL WAS SWORN AT 10:23 A.M.

19 THE COURT: Let me ask ladies and gentlemen, is there
20 any member of the jury panel that did not take the oath that
21 was just administered to you, if you did not take the oath
22 for any reason, please stand.

23 Let's let the record reflect that everyone has raised
24 their hand --- no one raised their hand, thus everyone is
25 appropriately sworn.

26 I asked you to be back in your jury room at 10:00

1 o'clock this morning. Thank you for complying, because you
2 were back at ten, but unfortunately we were unable to begin
3 right at ten simply because we had some issues that we
4 needed to resolve prior to the trial of the case. Thank you
5 for your patience. I want you to understand the Court is
6 well aware that your time is important, and we thank you for
7 your understanding while we resolved some thing that will
8 actually make the trial go a little bit more smoothly as
9 well as more quickly.

10 I will tell you that the witnesses in this case have
11 been sequestered, and while that sounds like a big word what
12 that really means is the witnesses have been removed from
13 the courtroom so that the testimony of one will not
14 necessarily influence the testimony of the other.

15 The witnesses when we call a witness, we will have to
16 go outside to bring that witness in. They won't be sitting
17 here in the courtroom. I tell you that so that you won't
18 expect someone to stand up immediately and come to the
19 witness stand.

20 I also tell you that we have visiting with us this
21 morning a class form the Dillon Christian School, which we
22 welcome to the courtroom, here to observe courtroom
23 proceedings, and be with us a part of the day today.

24 Now, what I would like to say to you ladies and
25 gentlemen here at the beginning of the case really serves as
26 the introduction to the trial of the case. It is not

1 intended though to take the place of a much more detailed
2 instruction that I will give you at the end of the case
3 about what the law is, in South Carolina, but with regard to
4 these three charges of being tried in this one proceeding.

5 Now this is a criminal case. It is commenced by the
6 State, as I sometime call the State the prosecution, and the
7 case is based on Indictments. You may remember I published
8 portions of the Indictments to you the other day when we
9 were qualifying you as a jury. But I want to say to you
10 again that you should simply understand that the
11 Indictments, which again I have here on the desk, are simply
12 pieces of paper by which the State commences a prosecution
13 against an individual, and that is all they are, they are
14 allegations. They are not to be accepted as the truth, and
15 they are not to be accepted as evidence, because they are
16 not evidence. And whether or not they are the truth is to
17 be determined by the jury from what the witnesses and the
18 evidence in the case shows. Not because of a piece of paper
19 that says it, but because the evidence proves it, and the
20 State meets its burden of proof in this case.

21 Now I will tell you that one of our traditions in our
22 courtroom is, that the party with the burden of proof sits
23 closest to the jury. If you will look out in the courtroom
24 you will see that the State is seated at the table closest
25 to you, and the defendant is seated at the table furthest
26 away. I say that to point this out, which is a foundational

1 principle of our justice system. The State has the burden
2 of proof. The defendant has no burden of proof. It is
3 never incumbent upon the defendant to prove himself or
4 herself innocent of any charge, no matter what that charge
5 may be. The burden is on the State to prove the defendant
6 guilty beyond a reasonable doubt and that is the level of
7 proof required before any type of conviction may occur.

8 Now, as I said a moment ago, the Indictments are just
9 allegations, and even if the defendant didn't enter a plea,
10 then the defendant is presumed innocent, again because the
11 defendant has no burden of proof. But you heard in open
12 court, the defendant entered a plea of not guilty, which
13 means the defendant denies the allegations that are
14 contained in these Indictments, and the defendant does not
15 have to prove the denial or anything else for that matter.
16 The State has to prove the charge, all three, beyond a
17 reasonable doubt. And I will tell you that the State has
18 the burden of proving each and every element of these
19 charges, beyond a reasonable doubt. The purpose of this
20 trial is to determine whether or not the State can meet this
21 high burden. I will tell you that it is a high burden, and
22 I further tell you that the defendant is presumed innocent,
23 and that presumption carries all the way through to the end
24 of the trial, unless and until the State proves the elements
25 of each charge, beyond a reasonable doubt.

26 Now, let's talk about your role as jurors in this case.

1 I want you to understand that while I am the judge of the
2 law, you are the judges of the facts. What that really
3 means is, you will listen to the testimony. You will
4 determine what the facts are. You will apply those facts to
5 the law that I give you at the end of the case. And working
6 together, that is how a verdict is reached.

7 Now, I will tell you that one of the duties of the
8 judges of the facts, which again that is you, nobody else in
9 this courtroom is the judge of the fact, is to determine
10 what the facts are. In other words to listen to the
11 testimony and determine the facts.

12 Now just like you I haven't heard the testimony in this
13 case. But I will tell you that in many proceedings in this
14 courtroom, you will have witnesses who will come in and
15 testify to things, that seems sometimes inconsistent, and
16 sometimes mutually exclusive, absolutely cannot be
17 reconciled. And, if that happens in this case, I want you
18 to understand that it is up to you as the judges of the
19 facts to determine the credibility and believability of the
20 witnesses, if they are saying different things to determine
21 which witnesses are more credibility and believability so
22 that you can determine what the facts are.

23 Now, if you think about it, this is something that we
24 do every day in life. Every time we talk to someone we gage
25 them, perhaps subconsciously, for credibility and
26 believable. So you should employ those factors that you use

1 every day here in the courtroom to determine whether
2 testimony is credibility and believability.

3 I will also tell you that some of the things that you
4 may want to look to, and I tell this now so you can consider
5 it while you are hearing the testimony. And I should say
6 this is why the witnesses sit right there where they do, and
7 you sit right there where you do so you can see and observe
8 and hear testimony.

9 Some of the things, that you may want to look to, is
10 what is the demeanor of a witness when they testify. Is it
11 hesitant, is it straightforward? How does that witness come
12 to know what it is they are talking about? What is their
13 ability to know what they are in here testifying about? Is
14 the witness' testimony consistent either with itself, and is
15 it weakened or strengthened by other evidence in this case?
16 And further, in light of the global evidence in the case,
17 how reasonable is what that witness saying? And finally,
18 might there be a reason a witness may want to help or hurt
19 one side or another in a case? Might that witness have a
20 bias or a prejudice? These are the things that you may wish
21 to consider as you are observing the testimony of the
22 witness.

23 Now, again, let me talk with you a little bit about our
24 procedure, and how this trial will actually work. Again the
25 State has the burden of proof. In just a moment the lawyers
26 will come before you in opening statement, both lawyers.

1 The prosecution first, because they have a burden to prove,
2 and then the defense. After we finish opening statement we
3 go into the State's case. The State goes first, because
4 again they have the burden of proof. And every time they
5 call a witness, their witnesses will be subject to direct
6 examination by state's counsel and cross examination by
7 defense counsel. Then we will go through their witnesses
8 one after another. And then the State rests after they have
9 called all of their witnesses, and put up all of their
10 testimony. And if the defendant wishes to put up a case,
11 they are not required to. The defendant is not required to
12 testify. The defendant has the right to remain silent.
13 But, if they wish to, then they may call witnesses. And
14 every time they do, the defense witnesses will be subject to
15 direct examination by defense counsel, and cross examination
16 by state's counsel. Then all the testimony closes. The
17 lawyers come before you in closing statement. I give you
18 the charge on the law, and you retire to deliberate, in a
19 nutshell, that is how this case is going to proceed.

20 Now let me tell you two or three things further about
21 how we are going to proceed. I want you to --- First of all
22 I usually go about an hour and a half before I take a break.
23 But, I don't want you watching the clock and be worried
24 about that to the minute, because it is never to the minute,
25 it just depends on where we are in the proceedings. But, if
26 you need to take a break before we reach a break point,

1 please raise your hand, I will understand what that means,
2 and we will take a break immediately. I do that for two
3 reasons.

4 Number one, you are giving your time, or just about
5 giving it for a most important civic responsibility, and I
6 want you to be comfortable in what you are doing. But
7 secondly, I don't want you worried about something else. I
8 want you to be able to listen to the testimony and the
9 evidence in this case, and make your ruling based on that.
10 So please stop us if you need to stop us.

11 Secondly, when we do take a break, please don't go back
12 in the jury room and discuss this case until it is given to
13 you for deliberations, and this is the reason for that. It
14 would be unfair if we heard half of a witness or the first
15 witness, we took a break, the jury went back and made some
16 preliminary decision based on that one witness' testimony
17 that drove the rest of the case, it would be unfair,
18 because, there are many more witnesses to come. So please
19 don't discuss the case until it is give to you at the end of
20 the case for deliberations.

21 Now you may have also noticed that there are some media
22 present in the courtroom today. I want you to understand
23 that under South Carolina Law the jurors' faces are never
24 shown in the media. And it is not permitted for the camera
25 to catch the jury or your faces, or anything that would
26 represent you in this case, because the jury does its work

1 confidentially, and in anonymity. So please understand that
2 no matter what you may see in the courtroom with regard to
3 the media or camera coverage, your pictures as jurors will
4 not be displayed in the media.

5 I also will say to you that during the course of this
6 trial we operate this courtroom on a system of rules that we
7 call the Rules of Criminal Procedure. And when one side or
8 the other believes that the other is about to or is breaking
9 those rules, then they call that to the Court's attention by
10 an objection. Well, just like you are sitting where you are
11 sitting, and I am sitting where I am, I don't know what the
12 objections are or when they are going to come. But when
13 they do, I rule on them based on my understanding of South
14 Carolina Law, my training as a judge, and my experience as a
15 lawyer for many years in the courtroom before I became a
16 judge. But never do I rule on something to somehow send you
17 a message about how I may feel about the facts, because I
18 will tell you now, I don't have a position on the facts. If
19 I did, I would be invading your providence. You are the
20 jurors of the facts, and the judges of the facts; so please
21 take no inference from any rulings you may see the Court
22 make, other than the fact that I made a ruling on some
23 objection that was before me at the appropriate time.

24 Now ladies and gentlemen, I look forward to working
25 with you in this matter. I thank you again for your
26 willingness to come forward and serve. The fact that you

1 have been chosen is a high public responsibility which you
2 are discharging during the course of this trial.

3 With that, the Court recognizes the prosecution for
4 Opening Statement.

5 **MS. SELLERS:** Your Honor, may we approach briefly?

6 **THE COURT:** And as you come forward there is one
7 other thing I want to say. I'll let you come to this side.

8 I want to talk a little bit about evidence and lawyers'
9 arguments. The lawyers are going to come before you in
10 opening, and then they are going to come before you at the
11 end in closing. Now opening statement is not some big
12 persuasive event, it is an opportunity for the lawyers to
13 tell you what they believe the evidence will show or won't
14 show in the course of the trial. At the end in closing
15 argument the lawyers can in persuasive argument tell you
16 what they believe the evidence has shown. Please understand
17 the difference between a lawyers' argument and the evidence
18 in the case. The lawyers are advocates, but they are not
19 witnesses. So whatever the lawyers say in opening and in
20 closing is not evidence. Now, whether or not the evidence
21 will bear out what the lawyers' say is for you to decide
22 ultimately in this case. But, please, appreciate the
23 distinction between lawyers' arguments and evidence in the
24 case.

25 One moment, please.

26 (Whereupon, a bench conference was held in the

1 presence of the jury, but out of the hearing of the jury.)

2 **THE COURT:** The lawyers have asked me to inquire
3 about one other thing, which is appropriate. I mentioned
4 earlier that there has been some media coverage. When we
5 qualified you as jurors, I asked you on Monday whether or
6 not any of you had seen any media reports about this case,
7 and had been influenced by that. All of you who are sitting
8 where you are told me no, and you told me no by not replying
9 that you somehow have been influenced. I want to ask,
10 since we were lasted together as jurors, has any juror seen
11 any media report about this case. If so, please raise your
12 hand? Let me further ask, is there any member of the jury
13 panel who has had a discussion about the facts of this case
14 with anybody nobody who it may be someone on the street,
15 someone who maybe in their family or some passerby, if you
16 had a discussion about the facts or this case at all with
17 anyone please raise your hand? Let's let the record reflect
18 that no one has replied. Thank you ladies and gentlemen for
19 complying with the Court's request about discussions.

20 Then are there any further questions with regard to
21 jury inquiry from the State?

22 **MR. DANIEL:** None from the State, Your Honor.

23 **THE COURT:** And, from the defense?

24 **MS. SELLERS:** None from the defense, Your Honor.

25 **THE COURT:** All right. Now having resolved that
26 ladies and gentlemen, the Court recognizes prosecution for

1 opening statement.

2 OPENING STATEMENT BY MR. DANIEL

3 MR. DANIEL: Thank you, Your Honor, may it please the
4 Court, Ms. Sellers.

5 Good morning, ladies and gentlemen. My name is Shipp
6 Daniel, and I am the Assistant Solicitor here in Dillon
7 County. What that means is, I prosecute criminal cases here
8 in Dillon.

9 The case that we are here about today is the case of
10 Jeffrey Caulder, and he has been charged with three counts
11 of unlawful neglect of a child. And that is the case we are
12 trying.

13 It is my burden, it is the State's burden as you just
14 heard Judge Baxley tell you, to prove Mr. Caulder's guilt
15 beyond a reasonable doubt. Now, Judge Baxley will go into
16 what that means later, and I will too in our closing
17 argument, after all the testimony we will talk a lot more
18 about reasonable doubt.

19 But, as he sits there right now, Mr. Caulder is
20 presumed innocent, which is what the judge also just told
21 you. And it is my burden. It is my duty, to prove to you
22 that he is guilty beyond a reasonable doubt. Ladies and
23 gentlemen, I want you to know that I welcome that burden.

24 In law school students are taught how to conduct
25 themselves during a trial. We take classes called trial
26 advocacy classes, and they take us into a courtroom and they

1 show us how to do things like give an opening statement, and
2 how to question a witness, and how to talk to the judge, and
3 how to give a closing argument. They teach of all of these
4 things. Well, almost universally in these classes they
5 teach you --- the professor and the text books in these
6 classes teach these students to develop a theme of your
7 case. Have a theme of your case. What is the theme of the
8 case? A theme is something that I am supposed to stand up
9 here and say ladies and gentlemen of the jury, this case is
10 about whatever. Or this is a case about whatever it maybe.
11 The reason we are taught to give you a theme of the case is
12 because it gives you something to hold onto, something for
13 you to think about throughout the course of the trial.
14 Something that, if I am a good lawyer, I should sprinkle in
15 throughout the testimony, things that remind you about that
16 theme, and then at the end in the closing argument I can
17 bring it all together, so that when you go back into that
18 jury room, you are thinking about the theme that I told you
19 to think about. That is what they teach us. So, this file
20 has been on my desk for some time and I have been thinking
21 what is my theme in the case. What do I want the jury to be
22 thinking about when they go back to deliberate? So, I
23 thought about the fact that you are going to hear from three
24 children, minor 3 minor 2 and minor 1 You are going to hear
25 from these children. They are going to sit right there and
26 tell you what happened to them. They are going to tell you

1 about the harsh discipline that they experienced. So, I
2 thought discipline can be my theme, something about
3 discipline. Then I thought, well the jury is also going to
4 hear from some therapist, some counselors who counseled
5 these children to help them deal with their issues. So I
6 thought maybe I can have some sort of theme about therapy,
7 counseling, or something like that.

8 You are also going to hear from the mother of these
9 children. You are going to hear that the mother did some
10 very bad things to these children too. So I thought well
11 maybe I can use some sort of mother/parent sort of thing.
12 But then this week, just this week, as I was sitting in my
13 office preparing for this trial, I thought, it just sort of
14 hit me, and I said, you know, it is more simple than that. I
15 don't need a military theme or sort of discipline, or I
16 don't need trauma and the counseling, I don't need parent
17 --- it is much more simple than that. This case, ladies and
18 gentlemen, is simply about minor3 minor2 and minor1 That
19 is what this case is about. This case is about three
20 children who will never be the same because of what that man
21 has done to them. That is what this case is about. And
22 that is what I ask you to think about throughout this whole
23 trial. Don't get sidetracked. Don't get sidetracked by red
24 herrings that are thrown out to you, minor3 Jenna and
25 minor1 that is our purpose. I am convinced that after you
26 hear all of the testimony in this case, you will find

OPENING STATEMENT BY MS. SELLERS

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1 Jeffrey Caulder guilty of abusing minor3 guilty of
2 abusing minor2 and guilty of abusing minor1

3 Thank you for your attention.

4 **THE COURT:** Defense.

5 **OPENING STATEMENT BY MS. SELLERS**

6 **MS. SELLERS:** May it, please the Court. Mr. Daniel,
7 Mr. Redmond. Good morning.

8 **JURORS:** Good morning.

9 **MS. SELLERS:** Good morning. As you all heard, my
10 name is Rosalind Sellers. I am a part time public defender.
11 I contract with that office. I also just opened my own
12 officer here in Dillon, The Sellers Law Firm, and I have the
13 pleasure of representing Mr. Jeffrey Caulder, who is seated
14 at the defense table today. The Solicitor's Office, Mr.
15 Daniel has made a very interesting point. They have the
16 burden, the burden of proof. The judge has already told you
17 that my client --- he plead not guilty. On Monday when he
18 stood before you, not guilty, and he is not guilty until you
19 all speak about the verdict in the jury. He also said that
20 there is something simple, everything is simple about this
21 case. It was interesting that he told you, you would hear
22 from the mother. Did he tell you, that you would find out
23 through testimony by the mother and several others from DSS,
24 that there has been a pattern of abuse in this family.

25 This case is about three children, minor2 minor1 and
26 Cheyenne. But ironically you didn't hear about the fourth

1 child which is Cheyenne Miller --- I'm sorry, minor 2 minor 1
 2 and minor 3 But there is a fourth child Cheyenne.
 3 Cheyenne happens to be Jeffrey Caulder's daughter. Jeffrey
 4 is just like any other father. He is concerned about his
 5 daughter. You will learn through testimony that there was a
 6 child custody battle ensuing against not only the mother,
 7 the mother's parents, Jeffrey Caulder, and also Jeffrey
 8 Caulder's family. So when you hear the testimony in this
 9 trial, I want you to ask yourself, why would someone say
 10 things like this? What is the motive behind it?

11 My client has been charged with three counts of child
 12 abuse. The Solicitor has indicated discipline. Discipline
 13 is necessary. You all are parents. You know that
 14 discipline is necessary. I just ask you to pay attention to
 15 the information that you will receive jury, from the witness
 16 box. Don't get sidetracked, like I said, by emotions.
 17 Child abuse is a very serious charge. We are all afraid
 18 when we hear that word. It is an ugly word. But listen to
 19 what is really being said in this witness box. You will
 20 learn there are no scares. There were no bruises. There
 21 was no documentation whatsoever. And I just ask that you
 22 listen to that information. And at the conclusion of this
 23 trial, I believe that you will find my client not guilty.

24 Thank you.

25 **THE COURT:** All right, before the State calls their
 26 witness, you will notice that there is scaffolding around

1 the Courthouse, and there is constantly construction going
2 on outside of the courtroom today. If at some point that
3 noise is such that you in the jury box, who is closer to the
4 construction than we are over here, and you cannot hear,
5 please let us know. If you cannot hear a witness while
6 there is noise outside, or you just cannot hear internally
7 because a witness is not speaking up, please put a hand
8 behind your ear, and we will respond to that. If it gets
9 too noisy, we will stop the construction outside so that it
10 does not interfere with the proceedings. We hesitate to do
11 that unless it does in fact interfere with the proceedings.

12 All right. Now please call your first witness.

13 MR. DANIEL: Thank you, Your Honor. The State calls
14 Randy Tyler.

15 THE COURT: Please come forward and take the oath of
16 a witness.

17 WHEREUPON, RANDOLPH CURTIS TYLER

18 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

19 MR. TYLER: I swear.

20 CLERK OF COURT: Be seated in the witness box. State
21 your full name for the Court, spelling your last name, sir.

22 MR. TYLER: My name is Randolph Curtis Tyler, the last
23 name is T-Y-L-E-R.

24 MR. DANIEL: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MR. DANIEL:

26 Q. Mr. Tyler, as you just heard the judge say there is

1 scalffing stuff going on out there, so if you could
2 make sure you speak up so we can all hear you. I am
3 going to stand here, and I can hear you, I know they
4 can hear you.

5 A. Yes, sir.

6 Q. How are you employed?

7 A. I am employed with the Dillon County Sheriff's Office.

8 Q. How long have you been so employed?

9 A. About eight years with Dillon County, and two years
10 with Richland County.

11 Q. Deputy, is that what you go by?

12 A. Yes, sir.

13 Q. Deputy. Deputy Tyler, have you had occasion to work on
14 a case involving Jeffrey Caulder and/or Kristina
15 Miller?

16 A. I have.

17 Q. Tell me about your involvement in the case?

18 A. There was an initial report taken by another deputy,
19 and --- Douglas Parnell, who was at the time the Chief
20 Deputy in the Sheriff's Department, asked me to take a
21 look at it and do a followup investigation. I did.
22 During that report I read a report by the Durant
23 Center. I determined from that report that there were
24 grounds --- were probable cause for an arrest to be
25 made, and I sought warrants then on the two defendants.

26 THE COURT: I'm going to get you to speak-up a little

1 bit sir, if you would please. Thank you.

2 MR. TYLER: Okay.

3 Q. Say the last part of what you said one more time.

4 A. I said there was an initial report by another deputy
5 concerning this matter, Douglas Pernell, who was the
6 Chief Deputy at the time asked me to look into it, do a
7 followup. While I was doing that I read the report
8 from The Durant Center, made the determination that
9 there was probable cause for an arrest to be made, and
10 sought warrants against the two defendants.

11 Q. And that was the extent of your investigation?

12 A. That's correct.

13 MR. DANIEL: Thank you. No further questions.

14 THE COURT: Is there cross examination?

15 MS. SELLERS: Yes, Your Honor, thank you.

16 THE COURT: Go ahead.

17 CROSS EXAMINATION BY MS. SELLERS

18 Q. Good morning, Mr. Tyler.

19 A. Good morning.

20 Q. Now that initial investigation, that initial call, when
21 was that made?

22 A. The initial?

23 Q. Yes.

24 A. I'm not real sure. It was done by Deputy Melvin Lee.

25 Q. Okay. Now you indicated that you made the
26 determination?

1 A. I made the determination that there was probable cause
2 based on the report from the Durant Center.

3 Q. Did you contact DSS and speak with them?

4 A. I spoke briefly with DSS.

5 Q. Briefly with DSS. Do you know when you made that
6 contact with them?

7 A. It would have been the same day I spoke with Douglass
8 Pernell. I can't give you the exact date. No, ma'am.

9 THE COURT: Please speak up.

10 A. I'm sorry. I can't give you the exact date. No,
11 ma'am.

12 Q. And did you ask DSS --- Did you inquire with DSS if
13 they had reviewed the information?

14 A. To my knowledge they had not.

15 Q. They had not. And DSS, don't they typically contact
16 you when there is a finding of child abuse, or an
17 allegation of child abuse?

18 A. They do.

19 Q. You wouldn't necessarily have to go to them and tell
20 them, correct?

21 A. That is correct.

22 Q. Now let me ask you, what specialized training do you
23 have in terms of child abuse and child neglect?

24 A. I have a Bachelors of Science Degree in Criminal
25 Justice and Social Work.

26 Q. And what special classes have you taken in terms of

1 addressing child abuse cases?

2 A. Family and law courses.

3 Q. But nothing specifically --- no specific training on
4 child abuse, correct?

5 A. Not on child abuse by itself. No, ma'am.

6 Q. So what qualified you to make that determination?

7 A. I am qualified to know what are actions that would be
8 considered against an adult.

9 Q. However the agency that handles these types of cases
10 did not find that to be true at that time; correct?

11 **MR. DANIEL:** Objection, Your Honor, that calls for
12 speculation. He has not been a part of any DSS
13 investigation.

14 Q. You did not work with DSS on this matter?

15 A. I did not work with DSS on this matter.

16 Q. Now, let me ask you. You know Gene and Maggie Miller,
17 don't you?

18 A. I do know them. Yes, ma'am.

19 Q. And these are the grandchildren --- the grandparents of
20 these children, correct?

21 A. I believe that is the case.

22 Q. And you have a very personal relationship with these
23 individuals?

24 A. That is not true.

25 Q. However, you do know them well?

26 A. I do know them. I have no personal relationship with

1 them.

2 Q. Does Ms. Maggie actually cut your hair for you, or has
3 cut your hair in the past?

4 A. I don't think so.

5 Q. You don't think so?

6 A. I don't believe --- I've been cutting my hair cut for a
7 right long time in downtown Dillon. If she has, it was
8 a one time years ago, but I don't even remember her
9 ever cutting my hair.

10 Q. And you said that you made the determination, correct?

11 A. That is correct.

12 **MS. SELLERS:** Beg the Court's indulgence.

13 Q. Let me ask, Mr. Tyler are you an investigator?

14 A. I am not.

15 Q. Why wasn't this case given to an investigator?

16 A. We are a small department, and we are often --- We are
17 all Deputy Sheriffs, and the attitude is that we are
18 all Deputy Sheriffs, and we all conduct investigations
19 as well as anything else.

20 Q. But you all do have an Investigations Department,
21 correct?

22 A. We do.

23 **THE COURT:** Anything further?

24 **MS. SELLERS:** Just one moment, Your Honor.

25 Q. Typically, do you know the procedure of investigating
26 child abuse cases?

1 A. Yes, ma'am.

2 Q. And what is that procedure if you could explain?

3 A. Well, if someone, anybody, it doesn't have to be DSS,
4 but if anyone comes to the Sheriff's Department as a
5 complainant, and makes a complaint or an allegation
6 that a law has been broken, the deputy, any deputy can
7 make an investigation to see if --- not necessarily if
8 they committed the law, but only if there is probable
9 cause to believe that a law might have been broken.

10 Q. Now that initial investigation or that initial claim
11 that wasn't made by an individual was it?

12 A. I believe that an individual complaint to the initial
13 deputy that took the report.

14 Q. But you had a chance to review that report, correct?

15 A. Yes, ma'am.

16 Q. And what were the findings in that report?

17 A. Are you talking about the report that the deputy did?

18 Q. Correct. That is what you reviewed, correct?

19 A. Right. That is the report --- Yes, I look at the
20 initial report, and then the Chief Deputy actually
21 asked me to look at it to determine if I believed that
22 there were --- you know --- and to read the Durant
23 Center report and determine if I believed there was
24 probable cause to make the arrest.

25 Q. So you read the initial report that was given to whom?

26 A. Melvin Lee, Deputy Melvin Lee.

1 Q. And where did he take that report from, if you --

2 A. -- I believe he took it from Ms. Miller, but I am not
3 positive.

4 Q. From Ms. Jean Miller --- from Ms. Maggie Miller.

5 A. I would have to look at the report and tell you.

6 Q. Okay. Again what was your finding in that report?

7 A. Based on what The Durant Center stated I believe that
8 there was probable cause that they had committed this
9 crime.

10 Q. And did you ever go out and speak directly with the
11 children?

12 A. I did speak with the children briefly. Yes, ma'am.

13 THE COURT: All right, sir. I can't hear you.

14 A. I did speak with the children briefly. Yes, ma'am.

15 Q. Did you speak to the children prior to that arrest or
16 after that arrest?

17 A. Prior to the arrest.

18 Q. Prior to the arrest?

19 A. Yes, ma'am.

20 Q. So you didn't speak with the children at all about what
21 was going on, but you still arrested Mr. Caulder,
22 correct?

23 A. We --- I sought a warrant for his arrest. Yes, ma'am.

24 Q. And there was only one warrant, correct?

25 A. I believe that is the case. Yes, ma'am. I believe
26 there was a warrant for each child, so that would have

1 been three counts, I think.

2 Q. There was one arrest for a warrant for each child?

3 A. I believe so.

4 Q. Now let me ask you a question in terms of your
5 procedure and in working with DSS after this
6 information. Did you ever consult with them further?

7 A. I did not.

8 Q. Did you provide --- Did you investigate at all anymore?

9 A. No, ma'am. Not with them, no ma'am.

10 Q. So who did you investigate with?

11 A. I turned the evidence that I had over to the
12 Solicitor's Office.

13 Q. So you never spoke to any of the officers about this
14 case?

15 A. I did not.

16 Q. Did you turn over any notes to the Solicitor's Office?

17 A. I just turned over the initial report, the
18 supplementary report and they already had I believe a
19 copy of The Durant Center report.

20 Q. Now if my memory serves me correct, the initial report
21 was done in may, correct?

22 A. I believe so. Again, I don't have it right here in
23 front of me, that was my mistake. I should have
24 brought it up here with me.

25 Q. And then your supplementary report was done five-months
26 later, in October correct?

1 A. I believe it was later, yes ma'am.

2 Q. And by that time had the children been removed from
3 their mother's custody?

4 A. They had.

5 Q. Had you ever gone and interviewed the mother?

6 A. I had not.

7 Q. You didn't interview the person who had custody of
8 these children?

9 A. That is true, I did not.

10 Q. But you did go and interview Mrs. Maggie Miller?

11 A. Not at this point, no ma'am.

12 MS. SELLERS: Beg the Court's indulgence.

13 THE COURT: All right.

14 (PAUSE)

15 Q. Isn't it true Mr. Tyler that initially DSS had this
16 case unfounded by DSS?

17 MR. DANIEL: Objection, Your Honor. Again, that
18 calls for speculation. Mr. Tyler --

19 THE COURT: Sustained. It is not necessary for a
20 speaking objection.

21 Ladies and gentlemen, the best evidence of that would
22 be someone from DSS, not from this witness. Sustained.

23 MS. SELLERS: Thank you, Your Honor.

24 Q. Mr. Tyler, how many times have you gone to the Grand
25 Jury about this matter?

26 A. I only went to the Grand Jury I believe one time.

1 Q. Do you believe just one time?

2 A. That is my belief.

3 Q. Now when you went to the Grand Jury the first time,
4 wasn't there an allegation of serious bodily harm done
5 to these children?

6 A. I don't recall this. I recall going one time, after
7 this I went to the Solicitor's Office before the Grand
8 Jury, and that is it.

9 Q. And with Indictment you don't remember what you alleged
10 in that Indictment.

11 A. I read it off of the --- I'm not sure.

12 THE COURT: I'm going to get you to step back, so
13 that our witness will project to you, because I think one of
14 the things that is bringing the witness' volume down is that
15 you are standing close.

16 A. I believe I just brought the facts as I knew them to
17 the Grand Jury, and presented the case there, and asked
18 for the Indictment.

19 Q. And you take an oath when you go before the Grand Jury,
20 correct?

21 A. I do.

22 Q. And you swore to that information, correct?

23 A. I swore to them that I believe that this is what had
24 happened.

25 Q. And at that time it was that serious bodily injury had
26 occurred to these children, correct?

1 A. I can't --- I don't recall exactly what I said to the
2 Grand Jury.

3 MS. SELLERS: I have no further questions for this
4 witness. Thank you, Mr. Tyler.

5 THE COURT: All right. Ladies and gentlemen, the way
6 a presentation of a witness works, you have direct
7 examination then cross. And, if a new matter is brought up
8 in cross, then on redirect counsel, the proponent of the
9 witness, who called the witness may address the new matter.
10 Not to rehash what we have just heard. Is there any
11 redirect for the witness?

12 MR. DANIEL: Briefly, Your Honor.

13 REDIRECT EXAMINATION BY MR. DANIEL

14 Q. Mr. Tyler, let's kind of uncomplicated this. Can you
15 tell me what the significance of The Durant Center
16 report is in your role in law enforcement?

17 A. In my opinion they are experts on what has happened to
18 children when they are interviewing them. I take what
19 they recommend very seriously, and I take --- when they
20 say that they believe that this has occurred, I'm not
21 an expert in that field. I'm not a counselor with
22 children. I don't have the training to do that, so I
23 rely very heavily on places like The Durant Center to
24 determine if a crime has been committed, which is what
25 I did in this case.

26 Q. Tell me about this case. You read the report, and from

1 that report what?

2 A. I determined that child abuse had been committed by
3 both Ms. Miller and the subject here.

4 Q. And typically as a law enforcement officer when you
5 sign a warrant, do you put on that warrant what the
6 charges are?

7 A. I do.

8 Q. Okay. And what happens to that warrant? Where does it
9 go?

10 A. It goes --- it goes to the Sheriff's Department and
11 then it is taken, usually by another deputy, not the
12 one who signed it, and an arrest is made of that
13 individual, and then the wheels just start. Then at
14 sometime in the future you will go before the Grand
15 Jury to --- unless a Preliminary Hearing has been
16 called, you will go before the Grand Jury. You will
17 ask for an Indictment. You will briefly give them the
18 facts as you know them to the Grand Jury.

19 Q. At any point does it come to the Solicitor's Office?

20 A. I'm not sure.

21 Q. Any charge?

22 A. I believe it does, yes. Because I believe that is
23 where we have the Indictments --- We get the
24 Indictments from the Solicitor's Office when we go to
25 the Grand Jury.

26 Q. And the Solicitor's Office, my office, does what with

1 the charge? What do we do with cases?

2 A. You prosecute them.

3 Q. Right. Have you ever known it to be your experience,
4 or has it ever been your experience that the charge on
5 a warrant, once it gets to the Solicitor's Office, the
6 Solicitor's Office may review the law and change the
7 charge?

8 A. Yes.

9 MR. DANIEL: Thank you. No further questions, Your
10 Honor.

11 THE COURT: Very good. Sir, you may step down.
12 Please call your next witness.

13 MR. DANIEL: Your Honor, the State calls minor 1
14 and he is up there.

15 THE COURT: How are you?

16 MASTER Fine.

17 THE COURT: minor 1 we are going to let you stop
18 right there. Please follow our clerk's instructions, we are
19 going to place you under oath, Okay.

20 CLERK OF COURT: Can you place your left hand on the
21 Bible for me, and raise your hand?

22 MASTER Yes, ma'am.

23 WHEREUPON, minor 1

24 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

25 MASTER I do.

1 CLERK OF COURT: You do, Okay. Will you sit, right
2 here for me, please?

3 Would you stand and state your name for the Court?

4 MASTER Uh'huh.

5 CLERK OF COURT: Would you tell me what your name is?

6 MASTER minor 1

7 CLERK OF COURT: What is your last name?

8 MASTER

9 CLERK OF COURT: Okay. You can be seated.

10 THE COURT: All right. minor 1 my name is --- I am
11 Judge Baxley, how are you?

12 MASTER Good.

13 THE COURT: I'm going to tell you what I want you to
14 do. I want you to pull your chair up a little bit closer,
15 and speak into those microphones that are down there, right
16 there on the bench.

17 Okay. Let me ask you a question. How old are you
18 minor 1

19 MASTER Eight.

20 THE COURT: Eight. And, when is your birthday?

21 MASTER December tenth.

22 THE COURT: So you will be nine this coming December?

23 MASTER (Affirmative response.)

24 THE COURT: minor 1 where do you go to school?

25 MASTER In Clover.

1 **THE COURT:** Okay. And do you know what it means to
2 take an oath to tell the truth like you just did, and you
3 swore an oath to tell the truth?

4 **MASTER** (Affirmative response.)

5 **THE COURT:** All right, you are going to have to
6 answer me yes or no.

7 **MASTER** Yes, sir.

8 **THE COURT:** And, speak into the microphone so that we
9 can all hear you.

10 Do you know the difference between right and wrong?

11 **MASTER** Yes, sir.

12 **THE COURT:** And do you know the difference between
13 the truth and a lie?

14 **MASTER** Yes, sir.

15 **THE COURT:** All right. And when you swear on the
16 Bible and you took the oath as you just did; did you promise
17 to tell the truth?

18 **MASTER** Yes, sir.

19 **THE COURT:** All right. Very good. You may have
20 further questions along those lines, but the Court wanted to
21 make an initial inquiry.

22 Mr. Daniel is going to ask you some questions, so you
23 can turn and face him, and speak into the microphone please
24 so we can all hear you.

25 Go ahead.

1 MR. DANIEL: Thank you.

2 COMPETENCY EXAMINATION BY MR. DANIEL

3 Q. Do you want to smile for me? You smiled every time I
4 meet with you. All right. What is your name Buddy?

5 A. minor 1

6 Q. what? What is your last name?

7 A.

8 Q. How old are you?

9 A. Eight.

10 Q. When did you say your birthday is?

11 A. December tenth.

12 Q. What year, do you remember what year you were born?

13 A. Two thousand.

14 Q. Okay. Where do you go to school minor 1

15 A. Clover.

16 Q. Clover as in Elementary School?

17 A. Yes, sir.

18 Q. What grade are you in?

19 A. Third.

20 Q. Who are your teachers?

21 A. Ms. Koewing and Ms. Thomas.

22 Q. Ms. who?

23 A. Ms. Koewing and Ms. Thomas.

24 Q. Do y'all have school today?

25 A. I do, but I'm not down there right now.

26 Q. Are you glad to be away from school for a day?

1 A. I'm away from school for a whole week.

2 Q. You are missing school for a whole week to be here?

3 A. Yes, sir. Yes, sir.

4 Q. Let me ask you this. What grade were you in last year?

5 A. Second.

6 Q. Where did you go to school last year?

7 A. Ebinport, in Clover.

8 Q. So it was a different school in Clover. You are at a
9 new school this year. Do you make good grades?

10 A. Yes, sir.

11 Q. A's? Ut'oh. B's?

12 A. No.

13 Q. Ut'oh. Well, I'll we ask another question. Who lives
14 in your house with you?

15 A. My Dad, Amy, my four sisters and me.

16 Q. Okay.

17 **THE COURT:** Counsel, push the microphone a little
18 closer to witness please? Very good, and minor 1 please
19 speak close to the microphone if you can, so that we can all
20 hear you in the courtroom. Thank you.

21 **MR. DANIEL:** Everybody --- These people --- remember
22 the jury that we talked about. They have got to hear you.
23 This lady has got to hear you. The judge has got to hear
24 you, and everybody has got to hear you back here. Okay?
25 All right.

26 Q. Do you have any pets?

1 A. Dogs.

2 Q. How many?

3 A. Seven --- I meant, six.

4 Q. Do you know their names?

5 A. Yes, sir.

6 Q. What are they?

7 A. Lucy, Cheyenne, Gabby, Peter, and Scrappy, and Spade.

8 Q. Okay. How about your brothers and sisters; do you have
9 any brothers and sisters?

10 A. Four --- I meant, five sisters and one brother.

11 Q. What are their names?

12 A. , minor3 Amber, minor2 , and

13 Q. minor1 is it good or bad to tell a lie?

14 A. Bad.

15 Q. Is it good or bad to tell the truth?

16 A. Good.

17 Q. If you were to go home and tell somebody at your house
18 a lie, would that be right or wrong?

19 A. Wrong.

20 Q. What do you think might happen if you might do that?

21 A. I would get grounded.

22 Q. If you were to go to school and tell your teacher a
23 lie, what do you think would happen?

24 A. I would go to the Principal's Office and get grounded.

25 Q. If somebody tells a lie to the Judge, what do you think
26 might happen?

1 A. They might go to jail, if they were a grown up.

2 Q. For what?

3 A. If they was a grown up.

4 Q. If it was a grown up. Is it right or wrong, good or
5 bad to tell the truth?

6 A. Good.

7 Q. Do you think as you sit here in this courtroom today do
8 you think you can tell us the truth about what
9 happened?

10 A. Yes, sir.

11 MR. DANIEL: Your Honor, at this point I would offer
12 minor 1 as a competent witness.

13 THE COURT: All right. Any questions as to the
14 competency of the witness?

15 MS. SELLERS: No questions, Your Honor.

16 MR. DANIEL: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. DANIEL

18 Q. All right, minor 1 Do you know why you are here today?

19 A. Yes, sir.

20 Q. Do you know Jeffrey Caulder?

21 A. Yes, sir.

22 Q. Do you know Kristina Miller?

23 A. Yes, sir.

24 Q. Who is Kristina Miller?

25 A. My mom.

26 Q. Who is Jeffrey Caulder?

1 A. He is right there.

2 Q. Who is he?

3 A. My mom's boyfriend.

4 Q. Is he currently your mom's boyfriend, or use to be your
5 mom's boyfriend?

6 A. Use to.

7 Q. minor1 did Jeffrey ever hurt you?

8 A. Yes, sir.

9 Q. Can you tell the jury about some of the times Jeffrey
10 hurt you?

11 A. In the apartment me and my sister was playing with the
12 hot sauce. Jeffrey, he got up and caught us, and
13 poured the rest of it down our throats.

14 Q. I just want to make sure everyone can hear that. Talk
15 a little bit louder and tell me that same story, and
16 talk a little bit louder.

17 A. One time me and my sister was --

18 Q. -- What is your sister's name?

19 A. minor2

20 Q. Okay.

21 A. Me and her were playing with the hot sauce and the
22 ketchup. We was spraying it everywhere. And Jeffrey,
23 he got up and caught us, and he poured the rest of it
24 down our throats.

25 Q. He poured the rest of the hot sauce down your throat,
26 your throat, or Jenna's throat, or both of y'all's?

1 A. Both of us.

2 Q. Both. How old were you then, do you remember?

3 A. I think I was five.

4 Q. And how old are you now?

5 A. Eight.

6 Q. Can you tell me about some other things that Jeffrey
7 did to you?

8 A. Uh -- Once we was playing outside, but I was on my bike
9 that day, and I was riding around. I looked back and

10 Q. Speak up.

11 A. Sir?

12 Q. Speak up a little bit. I can't hear you.

13 A. Yes, sir.

14 Q. You were riding your bike around?

15 A. Yes, sir.

16 Q. Okay.

17 A. And I don't know what happened, but something crashed
18 into me, and I thought it was Jeffrey at that point.

19 Q. Jeffrey crashed into you when you were riding your
20 bicycle?

21 MS. SELLERS: Objection, Your Honor.

22 THE COURT: Your objection is?

23 MS. SELLERS: He is restating what the witness did
24 not say. He's putting words in this witness' mouth.

25 THE COURT: Leading?

26 MS. SELLERS: He is leading, but I know that is

1 acceptable with children. But Your Honor, he is just
2 restating something the child did not --

3 **THE COURT:** All right. First of all I am going to
4 overrule your objection. The jury is sitting here watching
5 this, they would be aware if indeed that happened.

6 The objection is overruled.

7 Obviously counsel cannot testify for the witness, but
8 is given some leeway when we have a younger witness in
9 attempting to obtain the testimony. So you may proceed.

10 **MR. DANIEL:** I'm sorry, Your Honor.

11 **THE COURT:** minor 1 one more time, I am going to need
12 for you to move a little bit closer to that microphone, and
13 speak up real loud, so we can all hear you, okay?

14 **MASTER GRAHAM:** Yes, sir.

15 **THE COURT:** Thank you. Go ahead, counsel.

16 **MR. DANIEL:** I thought that was what he said Judge,
17 I'm sorry.

18 Q. Do you remember in my office yesterday when I had you
19 yell your name? Do you remember that?

20 A. Yes, sir.

21 Q. Okay. Why did I have you yell?

22 A. I forgot.

23 Q. Because it is important to talk loudly in here, right?

24 A. Yes, sir.

25 Q. Everybody has got to hear you, Okay?

26 A. Yes, sir.

1 Q. Don't be scared, just talk loud.

2 A. Yes, sir.

3 Q. You don't get in trouble for talking loud in here like
4 you would in school. Tell me about when you were on
5 your bicycle. Tell me exactly what happened that day?

6 A. I was riding around, and I thought like something
7 crashed into me, and at that point I thought it was
8 Jeffrey.

9 Q. Was it Jeffrey?

10 A. I'm not sure. I can't remember.

11 Q. Okay. Can you tell me about some other things that
12 Jeffrey did to you and your brother and sister?

13 A. (No response.)

14 Q. Did you ever have to, stand up for a long time?

15 A. Yes, sir.

16 Q. Tell me about that.

17 A. We had to hold our arms back, well out like this with
18 pillows on our arms. And if we dropped 'um he would
19 beat us and put two more pillows on it.

20 Q. Okay. I want you to describe that a little bit better.
21 You had to stand up --- Where did you have to stand up?

22 A. In the bedroom.

23 Q. Just in the middle of the room?

24 A. Yes, sir.

25 Q. Okay. And you would have to hold your arms out?

26 A. Yes, sir.

1 Q. Can you show me how?

2 A. We had to do it like this.

3 Q. And what did you say about the pillows?

4 A. If we dropped 'um, he would beat us and put two more
5 pillows on it.

6 Q. So you were standing out like this, and where were the
7 pillows?

8 A. On our arms.

9 Q. They were on your arms?

10 A. No. On our hand.

11 Q. On your hands. And why would you have to do this?

12 A. I can't remember.

13 Q. So how long did you have to stand there and hold the
14 pillows?

15 A. Like probably three hours.

16 Q. Three hours. And if you dropped the pillows what
17 happened?

18 A. We would get two more put on it, and we --- he would
19 get me.

20 Q. What would he beat you with?

21 A. A belt.

22 Q. Can you describe that belt?

23 A. It was a black one.

24 Q. When you were standing up holding the pillows, what if
25 you had to go to the bathroom?

26 A. We couldn't go.

1 Q. You couldn't go?

2 A. No, sir.

3 Q. Even if you said I've got to go to the bathroom, he
4 wouldn't let you go?

5 A. No, sir.

6 Q. Did you ever go to the bathroom in your pants?

7 A. Yes, sir.

8 Q. When he would beat you with a belt, did he ever leave
9 marks on you?

10 A. Yes, sir.

11 Q. Where would the marks be?

12 A. On my butt.

13 Q. Anywhere else?

14 A. My legs.

15 Q. What kind of marks were they, do you remember?

16 A. No, sir.

17 Q. Were they bruises?

18 A. Some of 'um was.

19 Q. Did he ever draw blood on your legs or your butt?

20 A. With a switch.

21 Q. With a switch. He would beat you with a switch too?

22 Did he hit you a little bit or a lot?

23 A. A lot.

24 Q. Do you remember how long he lived with you?

25 A. No, sir.

26 Q. Was it a little bit of time or a lot?

1 A. Well it was a real long time.

2 Q. It was what?

3 A. It was a real long time.

4 Q. Can you remember anything else Jeffrey did to you,

5 minor 1

6 A. He would tape my brother and my sister to the wall.

7 Q. He taped your brother and sister to the wall?

8 A. Yes, sir.

9 Q. You saw this?

10 A. Yes, sir.

11 Q. What is your brother's name?

12 A. minor 3

13 Q. What was the sister's name that he did this to?

14 A. minor 2

15 Q. Did you ever see him beat minor 3 and minor 2 too?

16 A. Yes, sir.

17 Q. Did that happen a little bit or a lot?

18 A. A lot.

19 Q. What else did he do to you?

20 A. He hogtied my brother to the bed and beat him where he
21 couldn't leave.

22 Q. He hogtied your brother to the bed and beat him?

23 A. Yes, sir.

24 Q. Which brother?

25 A. minor 3

26 Q. What else did he do minor 1

1 A. He made me and my brot --- minor3 my brother, he made us
2 wear my sister's underwear on our heads all day.

3 Q. He made minor3 you said?

4 A. Yes, sir.

5 Q. Wear your ~~Sister's~~ underwear. Your sister being who?

6 A. minor2

7 Q. He made you wear ~~Sister's~~ underwear on?

8 A. My and my brother's head all day.

9 Q. Speak up, Okay. Speak up a little bit. Tell me again,
10 he made you and your brother minor3 wear ~~Sister's~~
11 underwear where?

12 A. On our heads.

13 Q. How long would he do that? I mean, how long would you
14 have to walk around with underwear on your head?

15 A. All day.

16 Q. And why would he do that, do you know?

17 A. We was --- we was looking for a remote controller in
18 ~~Sister's~~ drawers, cuz he hid it. And we messed it up,
19 and that's why he did it.

20 Q. You messed up the remote control?

21 A. No. We messed up ~~Sister's~~ clothes in her drawers.

22 Q. And he made you wear that all day?

23 A. Yes, sir.

24 Q. What else minor1 Tell me some other things.

25 (PAUSE)

26 Q. Do you remember?

1 A. Not that much.

2 Q. Would anything happen if you got sick?

3 A. One night I was in my bed, and I got up --- I threw up
4 in the bed.

5 Q. You threw up in the bed?

6 A. Yes, sir.

7 Q. Talk loud, Okay?

8 A. Yes, sir. And then I didn't know, but I got beat for
9 it.

10 Q. You got beat for throwing up?

11 A. Yes, sir.

12 Q. Who --- who cleaned it up?

13 A. I had to.

14 Q. Did this happen more than once?

15 A. No, sir.

16 Q. Did anything ever happen with a cup?

17 A. Me, my brother, or my sister, we left ah --- one of us
18 left a cup behind the couch.

19 Q. And when you say your brother and sister, tell me
20 again, just to make sure who you are talking about?

21 A. minor3 and minor2

22 Q. Okay.

23 A. One of us left a cup back behind a couch, and got beat
24 for it until one of us told the truth.

25 Q. How long did you get beat for that?

26 A. A long time.

1 Q. Can you remember anything else that Jeffrey did to you?

2 (PAUSE)

3 Q. That's Okay. Tell me this. Did your mom ever hurt
4 you?

5 A. She kicked me in my side for asking for hot dogs.

6 Q. She kicked you in your side for asking for hot dogs?

7 A. That night.

8 Q. What night?

9 A. I think it was in October of last year.

10 Q. Did your mom ever beat you too?

11 A. Not really.

12 Q. When Jeffrey lived with you minor 1 you testified earlier
13 --- you told us earlier that he lived with you for a
14 long time. Did he --- Was he ever the only one --- the
15 only adult home to take care of you and your brother
16 and sister?

17 A. Sometimes.

18 Q. Did you ever see Jeffrey hurt your mother?

19 A. Once they were fighting and Jeffrey threw the crutch,
20 and it was like, this far away from me.

21 Q. His what?

22 A. His crutch.

23 Q. His crutch. Why did he have a crutch?

24 A. He broke his leg.

25 Q. Would Jeffrey ever hurt you, or your brother, or
26 sister in front of his friends?

1 A. No, sir.

2 Q. Did he ever do anything else to your mom that you saw?

3 A. He was banging her head up against the wall.

4 Q. He was beating her head up against the wall?

5 A. Yes, sir.

6 Q. Did it hurt the wall?

7 A. It made a hole in it.

8 Q. minor 1 can you remember anything else that Jeffrey did
9 to you?

10 A. No, sir.

11 Q. And how old are you again?

12 A. Sir?

13 Q. How old are you again?

14 A. Right now?

15 Q. Yeah.

16 A. Eight.

17 Q. Was there ever any happy times?

18 A. Once he let me and minor steer.

19 Q. One time Jeffrey let what?

20 A. Me and minor steer.

21 Q. Steer, steer what?

22 A. A car.

23 Q. The car. That was fun?

24 A. (Affirmative response)

25 Q. You didn't get in a wreck did you?

26 A. (Negative response)

1 Q. Did you ever do anything nice for Jeffrey?

2 A. I can't remember.

3 Q. minor 1 why haven't you ever told anybody about this?

4 Why did you never tell?

5 A. I was scared I was going to get beat.

6 Q. You were scared you were going to get beat?

7 A. Yes, sir.

8 Q. You were scared who was going to beat you?

9 A. Jeffrey.

10 Q. Who is David?

11 A. My mom's ex-boyfriend.

12 Q. Did David ever live with y'all?

13 A. Yes, sir.

14 Q. Did he live with you for a long time or a short time?

15 A. It was like one-year.

16 Q. Did David ever hurt you?

17 A. No, sir.

18 Q. minor 1 have you ever gone to counseling about all of
19 this?

20 A. (Affirmative response)

21 Q. Have you ever seen anybody, talk to somebody about ---
22 an adult?

23 A. Yes, sir.

24 Q. Did it help?

25 A. Yes, sir.

26 Q. Are you happy now?

1 A. Yes, sir.

2 Q. Would you --- would you ever want to live with Jeffrey
3 or Kristina again?

4 A. No, sir.

5 Q. How do you feel about Kristina? Again, who is
6 Kristina?

7 A. My mom.

8 Q. What do you call her?

9 A. My mom.

10 Q. Do you see her a lot?

11 A. No, sir.

12 Q. Can you remember the last time you saw her?

13 (PAUSE)

14 A. Outside this --

15 Q. Today?

16 A. No. Not today. It was the last time we came here I
17 saw her out there.

18 Q. Do you visit with her?

19 A. No, sir.

20 Q. Do you ever see Jeffrey?

21 (PAUSE)

22 Q. Do you want to see Jeffrey?

23 A. No, sir.

24 Q. How do you feel about Jeffrey?

25 A. Mad at him.

26 Q. You are mad at him?

1 A. Yes, sir.

2 Q. Why are you mad at him?

3 A. For all the abuse he did to us.

4 MR. DANIEL: minor1 I don't have any more questions
5 for you right now. Ms. Sellers, is going to get up, and she
6 is going to ask you some questions, Okay?

7 Okay, good job.

8 MS. SELLERS: If it, please the Court.

9 CROSS EXAMINATION BY MS. SELLERS

10 Q. Good morning, minor1 Let me know if you need to take a
11 break, Okay?

12 A. Yes, ma'am.

13 Q. Now, minor you were telling us about you having some
14 dogs?

15 A. Yes, ma'am.

16 Q. How many dogs do you have again?

17 A. Six.

18 Q. One of their names is Cheyenne?

19 A. Yes, ma'am.

20 Q. Did you name that after your sister?

21 A. No, ma'am.

22 Q. It just happened to have the same name?

23 A. Yes, ma'am.

24 Q. And you live in York right now, right?

25 A. Yes, ma'am.

26 Q. But you haven't always lived in York?

1 A. No, ma'am.

2 Q. Where else do you remember living in Dillon?

3 A. With my Grandma.

4 Q. With your Grandma. Did your Grandma and your mamma
5 live together?

6 A. Yes, ma'am.

7 Q. Now which Grandma is this, is this Grandma Cindy or
8 Grandma Maggie?

9 A. Grandma Edna.

10 Q. Edna. And, did you ever live with Grandma Cindy?

11 A. I can't remember.

12 Q. You can't remember? And when you lived with Grandma
13 Maggie, or Edna, I'm sorry. Was your mom there too?

14 A. Yes, ma'am.

15 Q. Okay. And your other sisters and brothers were there
16 as well?

17 A. Yes, ma'am.

18 Q. Okay. Do you recall living in an apartment in Dillon?

19 A. Yes, ma'am.

20 Q. And where was that apartment at, do you remember?

21 A. No, ma'am.

22 Q. Do you know --- remember who was living there with you?

23 A. My mom, my brother and my sister.

24 Q. Okay. And Jeffrey wasn't living there, right?

25 A. No, ma'am.

26 Q. Okay. And do you remember moving? How many times did

1 you move with your mom?

2 A. Like --

3 Q. Did y'all move a lot?

4 A. Yes, ma'am.

5 Q. Ah,

6 A. Seven to eight times.

7 Q. Seven to eight times. And, did you also live in motels
8 with your mom?

9 A. Once.

10 Q. One time. And it was always you and your brothers and

11 C e?

12 A. Yes, ma'am.

13 Q. minor2 yourself, and minor3 correct?

14 A. Yes, ma'am.

15 Q. And your mamma was there?

16 A. Yes, ma'am.

17 Q. And wasn't one of your mom's boyfriends there?

18 A. No, ma'am.

19 Q. David wasn't there?

20 A. No, ma'am.

21 Q. Do you remember getting sick in the motel room?

22 A. No, ma'am.

23 Q. Do you remember any of the cigarette smoke bothering
24 you?

25 A. No, ma'am.

26 Q. Okay. And at the motel Jeffrey wasn't living there

1 either was he?

2 A. No, ma'am.

3 Q. And did you remember the trailer that you lived at?

4 A. Yes, ma'am.

5 Q. And who lived at the trailer?

6 A. Jeffrey, my mom, me, minor 2 C and minor 3

7 Q. And at that time Jeffrey's leg --- he had already lost
8 his leg, correct?

9 A. Yes, ma'am.

10 Q. Okay. Now, --

11 A. He lost it when we was living there.

12 Q. Okay. Now you said you were playing with hot sauce and
13 ketchup with minor 2

14 A. Yes, ma'am.

15 Q. Were y'all spraying the hot sauce all over the house?

16 A. Yes, ma'am. In the living room.

17 Q. In the living room. Did you do stuff like that often?

18 A. No, ma'am.

19 Q. Okay. Now, you said that you got spankings correct?

20 A. Beatings.

21 Q. They were beatings?

22 A. Yes, ma'am.

23 Q. And you were beat on your bottom?

24 A. Yes, ma'am.

25 Q. Okay. But no where else?

26 A. No, ma'am.

1 Q. Okay.

2 A. On my legs though.

3 Q. Just on your legs, and was that when you were moving
4 around?

5 A. Yes, ma'am.

6 Q. Okay. But you were --

7 A. -- I got beat with a switch too.

8 Q. On a switch. But if you were standing still, you were
9 getting hit on your bottom?

10 A. (No response.)

11 Q. Okay. Do you remember ever being placed in foster
12 care?

13 A. No, ma'am.

14 Q. Do you ever remember living without your mom?

15 A. No, ma'am.

16 Q. But to your knowledge you have always lived with your
17 mom?

18 A. (Affirmative response.)

19 Q. Have you watched your mom hit anybody?

20 A. No, ma'am.

21 Q. Never saw your mom hit anybody?

22 A. No, ma'am.

23 Q. She never hit your brothers and sisters?

24 A. With her hand.

25 Q. With her hand? And where did she hit them? Did she
26 hit them in the face?

1 A. Not as I can remember.

2 Q. Was her hand ever balled up in a fist?

3 A. No, ma'am.

4 Q. Did she ever hit you with any other object?

5 A. A belt.

6 Q. Just a belt.

7 A. And a switch sometimes.

8 Q. And a switch. No close hanger?

9 A. No, ma'am.

10 Q. Do you remember going to the Durant Center?

11 A. No, ma'am.

12 Q. Do you remember speaking with Ms. Robin Griggs?

13 A. (No response.)

14 Q. Do you remember going into a room where she pointed out
15 a camera to you and a microphone?

16 A. No, ma'am.

17 Q. You don't remember speaking with her?

18 A. (No response.)

19 Q. So you wouldn't remember telling her that David hit
20 you?

21 A. That was probably my brother.

22 Q. That was probably your brother?

23 A. Because David hit him.

24 Q. David did hit him? How long did David stay with y'all?

25 A. Like probably a year.

26 Q. And did David hit you anywhere?

1 A. No, ma'am.

2 Q. When David hit your other sisters and brothers did he
3 hit them anywhere?

4 A. Not as I can remember?

5 Q. Do ever remember staying with Jeffrey's mom?

6 A. Some.

7 Q. And how long did you stay there?

8 A. I can't remember.

9 Q. And who lived there with you all?

10 A. Jeffrey, Wanda, Tom, Kristina.

11 Q. Were there any other children there?

12 A. My sister, and C e, and minor2 and minor3 and me.

13 Q. Now did you start going to church when you moved in
14 with Ms. Wanda?

15 A. No, ma'am.

16 Q. Did you ever get baptized at Sardis Baptist Church?

17 A. Yes, ma'am.

18 Q. Okay. Do you remember going to Bible study?

19 A. Yes, ma'am.

20 Q. Did you have fun while you were there?

21 A. Yes, ma'am.

22 Q. Did you have fun while you were at Ms. Wanda's house?

23 A. Not a lot.

24 Q. Not a lot of fun. Did you enjoy Grandma Helen?

25 A. Ma'am?

26 Q. Do you know who Grandma Helen is?

1 A. Yes, ma'am.

2 Q. Did you spend a lot of time with her as well?

3 A. No, ma'am.

4 Q. You didn't? Do you remember having birthday parties?

5 A. No ma'am, except for once.

6 Q. I'm sorry what?

7 A. Only once.

8 Q. Only one birthday party?

9 A. That's all I can remember.

10 Q. Okay. And that birthday party, was it your birthday?

11 A. Yes, ma'am.

12 Q. And they threw it at Ms. Wanda's house for you?

13 A. Yes, ma'am.

14 Q. Okay. Do you remember Easter Egg Hunts?

15 A. Yes, ma'am.

16 Q. And that was at Ms. Wanda's house too?

17 A. No, ma'am.

18 Q. Where was that?

19 A. At --- I can't remember.

20 **THE COURT:** Speak up just a little bit please minor 1

21 Just move a little bit closer to that microphone please, so

22 we can all hear you. Thank you.

23 You may continue, Ms. Sellers.

24 **MS. SELLERS:** Yes, Your Honor.

25 Q. And you said you also remember Christmas' at Ms.

26 Wanda's house, correct?

1 A. No, ma'am.

2 Q. You don't remember Christmas?

3 A. No, ma'am.

4 Q. And you don't remember living in a motel room growing
5 up?

6 A. No, ma'am.

7 Q. And you don't ever remember living in foster care?

8 A. No, ma'am.

9 Q. And you don't remember talking with Mrs. Griggs at the
10 Durant Center?

11 A. No, ma'am.

12 Q. Do you remember talking to anyone at DSS?

13 A. No, ma'am.

14 Q. Did you --- Have you spoken with your Grandma Edna
15 about this?

16 A. Yes, ma'am.

17 Q. Has she told you anything about this case?

18 A. No, ma'am.

19 Q. Has she told you anything about Jeffrey?

20 A. I can't remember a lot.

21 Q. You can't remember what?

22 A. A lot.

23 Q. But can you remember some things that she has told you?

24 **MR. DANIEL:** Your Honor, that is hearsay?

25 **THE COURT:** Well, Ms. Sellers is not asking what it
26 was. I will overrule your objection at this juncture.

1 Q. How many times have you met with Mr. Daniels?

2 A. A lot.

3 Q. A lot of times?

4 A. Like three or four times.

5 Q. Three or four times. And have you talked about what
6 you are going to speak about?

7 A. Yes, ma'am.

8 Q. Okay. And you say you have done that three or four
9 times?

10 A. Yes, ma'am.

11 Q. Has anybody ever told you what to say?

12 A. Mr. Shipp.

13 Q. Mr. Shipp?

14 A. Yes, ma'am.

15 MS. SELLERS: I have no further questions.

16 THE COURT: Redirect, if you have any.

17 MR. DANIEL: Very briefly.

18 REDIRECT EXAMINATION BY MR. DANIEL

19 Q. And what did I tell you say?

20 A. The question --- To answer the questions you ask me.

21 Q. Did I ever tell you specific stories to tell?

22 A. No, sir.

23 Q. Did I tell you the questions I was going to be asking
24 you?

25 A. Yes, sir.

26 Q. Did I ever tell you to lie?

1 A. No, sir.

2 Q. Did I tell you to tell the truth?

3 A. Yes, sir.

4 MR. DANIEL: That's it, Your Honor, I'm finished.

5 THE COURT: All right. Do you wish to follow on
6 those issues?

7 MS. SELLERS: Yes, Your Honor.

8 RE-CROSS EXAMINATION BY MS. SELLERS

9 Q. minor 1 when you asked the questions did he give you
10 the answer?

11 A. Yes, sir. Yes, ma'am.

12 Q. You gave him the answer. Did y'all go over your
13 answers more than one time?

14 A. A few of 'um.

15 Q. A few of them. But there were just certain things he
16 wanted to go over with you, correct?

17 A. Yes, ma'am.

18 MS. SELLERS: No further questions. Thank you.

19 THE COURT: All right. You are finished. We are
20 going to let you step down. You can go back with your
21 family.

22 All right. Ladies and gentlemen, we are going to take
23 our break at this time. We are going to take our morning
24 break.

25 Please don't discuss the case. We will give you an
26 opportunity to step outside if you wish. Please enjoy your

1 break, and we will probably be on break for approximately
2 fifteen or twenty minutes.

3 Let's all remain where we are while our jury departs
4 the courtroom. Ladies and gentlemen please remain where you
5 are while our jury departs the courtroom.

6 (Whereupon, the jury departs the courtroom at
7 11:30 a.m.)

8 **THE COURT:** Court is in recess now for approximately
9 fifteen minutes.

10 (Whereupon, a recess was taken from 11:30 a.m.
11 until 11:40 a.m.)

12 **THE COURT:** All right. I am told the jury is back,
13 so please bring in the jury.

14 **MR. DANIEL:** I am going to go and get our next
15 witness.

16 **THE COURT:** All right. That will be fine.

17 (Whereupon, the jury enters the courtroom at 11:40
18 a.m.)

19 **THE COURT:** All right, ladies and gentlemen, welcome
20 back to the courtroom. I trust you had a nice break. As
21 you will recall, we are in the State's case. Please call
22 your next witness.

23 **MR. DANIEL:** Thank you, Your Honor. The State calls
24 minor 2

25 **THE COURT:** All right. Good morning.

26 **MISS GRAHAM:** Good morning.

1 **THE COURT:** Our clerk is going to place you under
2 oath. Please follow her instructions.

3 **CLERK OF COURT:** Can you put your left hand on the
4 Bible, and raise your right hand for me?

5 **WHEREUPON,** minor 2 -----

6 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

7 **MISS** Yes.

8 **CLERK OF COURT:** Could you sit right here for me?
9 Would you tell me your name, your full name?

10 **MISS** ----- minor 2 ' ' '.

11 **THE COURT:** Go ahead.

12 **MR. DANIEL:** Thank you, Your Honor.

13 **COMPETENCY EXAMINATION BY MR. DANIEL**

14 Q. Hey minor 2 how are you doing?

15 A. Good.

16 Q. Can you tell us your name again please?

17 A. minor 2 ' ' '.

18 Q. minor 2 how old are you?

19 A. Ten.

20 Q. Okay. Remember, you have to talk loud in here, okay?
21 Everybody in here has got to hear you. Remember this
22 is the jury, we talked about that. Everybody in here
23 has got to hear you, and everybody here has got to hear
24 you. Okay. And that is the microphone right there.

25 **THE COURT:** And, ma'am, why don't you move your chair

1 up just a little bit closer to that microphone, and you will
2 be comfortable, and we can all hear you.

3 MISS G I've got it.

4 Q. Okay. Tell me how old you are again minor2

5 A. Ten.

6 Q. When is your birthday?

7 A. December 21st.

8 Q. Do you know what year you were born?

9 A. 1998.

10 Q. Where do you go to school minor2

11 A. Clover. Crowder Street Elementary.

12 Q. Is that in Dillon?

13 A. (No response.)

14 Q. Where is that?

15 A. In Clover.

16 Q. What grade are you in?

17 A. Fifth.

18 Q. What are your teachers' names?

19 A. Ms. Cappermann and Ms. Vigers.

20 Q. What is that first one you said?

21 A. Ms. Cappermann.

22 Q. And Ms. Vigers?

23 A. (Affirmative response.)

24 Q. And what is your favorite subject?

25 A. Math.

26 Q. Are you good in math?

1 A. (Affirmative response.)

2 Q. Do you make good grades?

3 A. Yes.

4 Q. What grade were you in last year?

5 A. Fourth.

6 Q. And what school did you go to?

7 A. Crowder Street Middle School and ah, Ebinport.

8 Q. minor2 who lived in your house with you?

9 A. Amy, Phillip Graham, minor --

10 Q. Who is Phillip?

11 A. My dad.

12 Q. Okay. minor who?

13 A. minor Graham.

14 Q. Okay. Go ahead. Who else lives there?

15 A. , Candice and Larry.

16 Q. Okay. Do you have any brothers and sisters?

17 A. Yes.

18 Q. What are their names?

19 A. minor3 minor1 , y and

20 Q. Do you have any pets?

21 A. Yes, sir.

22 Q. What kind of pets?

23 A. Dogs.

24 Q. How many?

25 A. Six.

26 Q. What are their names?

1 A. Scrappy, Peter, Cheyenne, Lucy, Gabby, and Spade.

2 Q. minor2 is it good or bad to tell the truth?

3 A. Good.

4 Q. Is it good or bad to tell a lie?

5 A. Bad.

6 Q. If you were to go home and tell your dad Phillip a lie,
7 what do you think might happen to you?

8 A. I might get in trouble.

9 Q. If you were to go to school and tell your teacher a
10 lie, what do you think might happen?

11 A. I might get detention.

12 Q. If somebody tells a lie to the Judge, what do you think
13 might happen to them?

14 A. I don't really know.

15 Q. Would it be good or bad to do that?

16 A. Bad.

17 Q. In this courtroom is it right or wrong to tell the
18 truth?

19 A. Right.

20 Q. Is it right or wrong to tell a lie?

21 A. Wrong.

22 Q. What might happen if someone in this courtroom tells a
23 lie?

24 A. Um, I don't know?

25 Q. Would good things happen or bad things happen?

26 A. Bad.

1 Q. minor 2 can you tell us the truth about what happened to
2 you?

3 A. Yes, sir.

4 Q. I'm sorry?

5 A. Yes, sir.

6 MR. DANIEL: Your Honor, at this time I would offer
7 minor 2 as a competent witness.

8 THE COURT: All right. Any questions on the
9 competency of the witness?

10 MS. SELLERS: Nothing from the State --- from the
11 defense Your Honor.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION BY MR. DANIEL

14 Q. Okay. minor 2 do you know why we are here today?

15 A. To tell what happened to me, minor 1 and *minor 3*

16 Q. That's right. Speak up, Okay.

17 A. Okay.

18 Q. Say that one more time. Why are we here today?

19 A. To tell what happened to me, minor 3 and minor 1

20 Q. Okay. Do you know Jeffrey Caulder?

21 A. Yes.

22 Q. How do you know Jeffrey?

23 A. We --- Me, Kristina --

24 Q. Who is Kristina?

25 A. My mom.

26 Q. Why did you call her Kristina?

1 A. Because she wasn't acting like a mom.

2 Q. Because she what?

3 A. She doesn't act like a real mom.

4 Q. Okay. Tell me why you --- Tell me how you know
5 Jeffrey?

6 A. Um, we moved into uh the apartments down in Dillon and
7 Jeffrey moved in with us.

8 Q. How long did he live with you, do you remember?

9 A. Um, I don't --

10 Q. Was it a little bit of time or a long time?

11 A. A long time.

12 Q. What?

13 A. A long time.

14 Q. Okay. A long time. Make sure you speak up. minor 2
15 did Jeffrey ever hurt you?

16 A. Yes.

17 Q. Can you tell the jury some of the things that Jeffrey
18 did to you?

19 A. He ah -- He beat us. He would --

20 Q. Hold on, let's talk about the beatings. He beat you.
21 What did he beat you with?

22 A. Um, switches and belts.

23 Q. Did he ever leave marks on you?

24 A. Yes.

25 Q. Where were these marks?

26 A. On our legs. On our lower back and our butts.

1 Q. What kinds of marks would he leave?

2 A. Bruises, and scratches, and things.

3 Q. Did he ever make you bleed?

4 A. Yes.

5 Q. What would he beat you with?

6 A. Switches and belts.

7 Q. Talk loud Okay?

8 A. Okay.

9 Q. Switches and belts?

10 A. Yes.

11 Q. Can you describe one of the belts he might have used?

12 A. Um, a braided belt.

13 Q. Did he ever use another kind of belt?

14 A. Um, like a smooth belt, a long smooth belt.

15 Q. Okay. A few minutes ago or a minute ago I asked you to
16 tell us some of the things Jeffrey did to you, and you
17 said beatings; keep going, what else did Jeffrey do to
18 you?

19 A. He duct taped me and my brother minor3 together.

20 Q. He duct taped you and your brother minor3 together?

21 A. (Affirmative response.)

22 Q. Can you describe that to the jury?

23 A. He duct taped our arm around our waist and our leg
24 together.

25 MR. DANIEL: With the Court's permission, may minor2
26 stand up and show us where she is talking about?

1 THE COURT: She may, and please speak up.

2 MR. DANIEL: Stand up please.

3 A. He duct taped us right here, around here, and on the
4 legs.

5 Q. And he duct taped you to your brother minor 3

6 A. (Affirmative response.)

7 Q. Do you know why?

8 A. I think me and minor 3 were fussing one day.

9 Q. Y'all were fussing so he duct taped you together?

10 A. (Affirmative response.)

11 Q. How long did he leave you duct taped together?

12 A. Um, around four hours I think.

13 Q. Four hours duct taped together. Well, were you walking
14 around duct taped, or were you sitting down or what?

15 A. We were walking around.

16 Q. What if you had to go to the bathroom?

17 A. We would have to go with each other.

18 Q. Could this minor 2 have been just kind of a fun game? I
19 mean, could it have been just kind of y'all just joking
20 around?

21 A. No. I'm not sure.

22 Q. Was he mad at you when he duct taped you?

23 A. I don't know.

24 Q. Was it punishment?

25 A. Yes, it was.

26 Q. Was it fun for you to be duct taped to your brother?

1 A. No, sir.

2 Q. Four hours, right?

3 A. (Affirmative response.)

4 Q. Did it happen more than once?

5 A. (No response.)

6 Q. Okay. Tell us some other things that Jeffrey did to
7 you.

8 A. He would put duct tape over our mouth and rip it off,
9 and we would --

10 Q. Say that again, I think I hear the train coming, so you
11 are going to have to talk louder. Say that louder.

12 A. He put duct tape over our mouth and ripped it off.

13 Q. Why would he put duct tape over your mouth?

14 A. I don't know.

15 Q. When you say --- Who would he do that to?

16 A. Me, minor 3 and minor 1

17 Q. All three of you. He would put duct tape over your
18 mouth for what? Why?

19 A. I don't know.

20 Q. And he would rip it off?

21 A. Yes, sir.

22 Q. And did it hurt?

23 A. Yes, sir.

24 Q. Would anything happen to you when he would rip it off?

25 A. We would get bloody lips because of it.

26 Q. What else did he do minor 2

1 A. He would pick us up like right here and throw us onto
2 his bed.

3 Q. He would pick you up where?

4 A. Right here.

5 Q. By the throat or on your neck?

6 A. Like right here where it connects.

7 Q. And he would throw you?

8 A. On his bed.

9 Q. Was this a game? Was this a fun sort of a --- hey
10 let's throw people on the bed, or was it bad?

11 A. Bad I think.

12 Q. Was it for --- was it punishment, had you done
13 something wrong?

14 A. Ah, sometimes I think.

15 Q. So as punishment sometimes for doing something wrong he
16 might pick you up by your throat and throw you on the
17 bed?

18 A. Yes, sir.

19 Q. Did he do this throwing on the bed, picking up by the
20 throat, did he do that to all of you?

21 A. Yes, besides ---.

22 Q. I'm sorry, what?

23 A. Besides C e, yes.

24 Q. Okay. (is who?

25 A. My little sister.

26 Q. And is she the youngest of all of you?

1 A. Yes, sir.

2 Q. And you said he didn't do that to her?

3 A. No, sir.

4 Q. Did you ever see him hurt her?

5 A. They might like pop her a few times, but no.

6 Q. Who is C' e's daddy?

7 A. Jeffrey Caulder.

8 Q. Who is --- Is Jeffrey Caulder your daddy?

9 A. No.

10 Q. Is he *MINOR 3*'s daddy?

11 A. No.

12 Q. Is he *MINOR 1'S* daddy?

13 A. No, sir.

14 Q. So C' e is the only one that lived with you that
15 was actually his child?

16 A. Yes, sir.

17 Q. And he didn't mess with her?

18 A. No, sir.

19 Q. Tell me other things that Jeffrey did to you minor 2

20 A. Um, um, he would um whip us because they woke up around
21 lunch time.

22 Q. Okay. I'm sorry. You said --- who woke up around
23 lunch time?

24 A. Jeffrey and Kristina.

25 Q. Jeffrey and Kristina. They woke up around lunch time
26 and what?

1 A. Um, if like we would get up and get something to eat
2 something like that, they would lick us for it, because
3 we got up early and they got up late.

4 Q. So they would get up at lunch, and if you got up, and
5 your brother, and sister before them, they would whip
6 you for that?

7 A. (Affirmative response.)

8 Q. Were you doing something you should have been doing
9 when you were up like that?

10 A. Not really.

11 Q. You just woke up?

12 A. Yes, sir. And we went to go get something to eat.

13 Q. Because you were hung --- I'm sorry. You went to go
14 get something to eat?

15 A. Yes.

16 Q. When they woke up, would they let you eat?

17 A. Um, sometimes.

18 Q. So sometimes they didn't let you eat?

19 A. Yes, sir.

20 Q. So when would you finally get to eat?

21 A. Sometimes dinner, around dinner, or we would have like
22 a little snack.

23 Q. So this would happen in the morning, or they would wake
24 up at lunch, and I believe you said as punishment you
25 couldn't eat until the end of the day?

26 A. (No response.)

1 Q. Did you ever get in trouble for being hungry?

2 A. Um, not that I can remember, only that we got beat.

3 Q. I'm sorry, what?

4 A. Only that we got beat that was mainly it.

5 Q. You got beat for being hungry?

6 A. Yes, in the mornings.

7 Q. I'm sorry, what?

8 A. In the mornings.

9 Q. Talk louder, okay?

10 A. Okay.

11 Q. Say that again. In the mornings --

12 A. We would get in trouble because we would be hungry.

13 Q. You would get in trouble because you would be hungry.

14 What else minor2 Tell us some other things.

15 A. Um, he hogtied my brother minor3 to the bed and beat
16 him once, and he couldn't sit down the next morning.

17 Q. He hogtied your brother minor3 to the bed?

18 A. Yes, sir.

19 Q. Who did?

20 A. Jeffrey.

21 Q. And you said --- did you say beat him, is that what you
22 said?

23 A. (Affirmative response.)

24 Q. What did you say about the next day?

25 A. He couldn't sit down. He had to go to school, and he
26 couldn't sit down in the car.

1 Q. Why couldn't he sit down?

2 A. Because Jeffrey beat him so bad.

3 Q. What else minor 2

4 A. He --- We would usually do all the chores, because they
5 would be being lazy or something like that.

6 Q. You said you would usually do all of the chores?

7 A. (Affirmative response.)

8 Q. Tell me about all the times he hurt you.

9 THE COURT: Counsel, have her move a little closer,
10 please.

11 MR. DANIEL: minor 2 would you move right up on that
12 microphone, please.

13 CLERK OF COURT: Louder, louder.

14 MISS : Okay.

15 Q. Tell me about other things that he did?

16 A. He would like get mad at us because we would like leave
17 a cup or something behind a couch or stuff like that,
18 and then beat us until one of us told the truth.

19 Q. Is that something that happened one time?

20 A. (Affirmative response.)

21 Q. Tell me that little story.

22 A. Um, one of us left a cup behind um, the couch. We were
23 like moving around the furniture. And Jeffrey or
24 Kristina saw it, and they beat us --- Well Jeffrey beat
25 us over and over again until I said I did it, and they
26 said --- Kristina said, I thought you did. And I got

1 --- We all got beat once more, and then I got beat
2 again after that.

3 Q. Where did they beat you?

4 A. In the back room at the trailer?

5 Q. Where on your body did they beat you?

6 A. On our butts, and we would have like little streaks
7 from the belt on our back too.

8 Q. In that story, did Kristina beat you?

9 A. I don't think so.

10 Q. Did Jeffrey beat you?

11 A. Yes, sir.

12 Q. Tell us some other things?

13 A. Um, um, Jeffrey would beat us like for like throwing up
14 in the bed, and then they would make us clean it up.
15 Then we would. That was --

16 Q. He would beat you for throwing up? Were you throwing
17 up on purpose? Could you help it?

18 A. We had a stomach virus.

19 Q. And he beat you for throwing up in the bed.

20 A. Yes, sir.

21 Q. And then you said he made you clean it up?

22 A. Yes, sir.

23 Q. Did you ever get sick anywhere else?

24 A. Me and minor3 had a stomach virus, and I don't
25 remember why, but Jeffrey, he put us on the wall, and
26 me and minor3 went to the bathroom, and he would like

1 sometime --- he would beat us like every now and again
2 for it.

3 Q. For what?

4 A. For going to the bathroom.

5 Q. He would beat you for going to the bathroom?

6 A. (Affirmative response.)

7 Q. Is this when you were made to stand on the wall? You
8 just something about walls.

9 A. Yes, sir.

10 Q. Okay. Tell me about him making you, stand on the wall.

11 A. Um, I don't really remember what it was for, but me and
12 minor3 had a stomach virus that day, so we kept on
13 going to the bathroom over and over and he would beat
14 us for it.

15 Q. He beat you for going to the bathroom?

16 A. (No response.)

17 Q. Did you ever have to stand on the wall for anything?

18 A. I can't really remember a lot. But sometimes me and
19 minor3 would get in like fights and stuff, and he
20 would put us on the wall, or me and minor1

21 Q. And he would put you on the wall. What did you have to
22 do on the wall?

23 A. Stand there for like an hour or two maybe.

24 Q. Stand on the wall for an hour or two? Did he ever make
25 you do anything else while you were standing on the
26 wall?

1 A. Sometimes he would make us hold hand --- our hands out
2 straight.

3 Q. Can you show us what you mean by that?

4 A. Like this, this, and that.

5 Q. You would have to hold your arms out, like there, like
6 that?

7 A. (Affirmative response.)

8 Q. For how long?

9 A. Um ten fifteen minutes maybe.

10 Q. Did your arms ever get tired?

11 A. Yes, sir.

12 Q. What would happen if your arms fell?

13 A. Um, if we had like books in our hands, he would throw
14 the books at us or stuff like that.

15 Q. If you had books in your hands he would throw the books
16 at you? What do you mean books in your hands? When
17 would you have to hold books in your hands?

18 A. Um, sometimes we would have to hold books because, like
19 something that we did, or they would make us have like,
20 a little competition or something.

21 Q. A competition. They would make you have a competition?
22 Who would make you have a competition?

23 A. Jeffrey or Kristina.

24 Q. Okay. And when you would stand and hold books, can you
25 show me what you meant by that?

26 A. Do like this.

1 Q. And you would have books in your hands?

2 A. (Affirmative response.)

3 Q. Okay. And why would you hold books in your hands?

4 A. Um, we were doing like a little competition or
5 something.

6 Q. A competition. So it was a fun game?

7 A. Uh'huh, (Negative response.) I guess for them, but --

8 Q. What did you say?

9 A. Whoever dropped the books first --- Me, minor 3 and
10 minor would usually be in it, and the first to drop 'em,
11 the other one that still had books in their hands,
12 would get to throw them at 'um.

13 Q. Okay. Let's clear that up. You, and minor 3 and
14 minor would stand on the wall and hold books. And did
15 you say whoever the first one was to drop --

16 A. The first two.

17 Q. The first two who dropped their hands what would
18 happen?

19 A. The other one would get to throw the books at 'em.

20 Q. Did you want to throw books at your brother and sister?

21 A. (Negative response.)

22 Q. Did he make you throw the books at your brother and
23 sister?

24 A. Ever now and again he would.

25 Q. So you said this was a competition, was it a fun
26 competition for y'all?

1 A. No, sir.

2 Q. So who was the competition --- I mean, who was enjoying
3 it?

4 A. Kristina and Jeffrey.

5 Q. Did this happen a lot or a little bit, standing on the
6 wall?

7 A. A lot.

8 Q. What do you think the longest time you had to stand on
9 the wall was?

10 A. Um, at the apartments when me and minor3 had that
11 stomach virus.

12 Q. And about how long did you have to stand there --- The
13 longest time it happened, how long did you have to
14 stand on the wall?

15 A. I'm not sure.

16 Q. Was it a long time or a little bit of time?

17 A. A long time.

18 Q. A what?

19 A. A long time.

20 Q. When you were standing on the wall minor2 what if you
21 had to go to the bathroom?

22 A. We would ask, and sometimes they would say go ahead,
23 and sometimes they would say no.

24 Q. minor2 did anything ever happen with any food?

25 A. Me and minor were eating fries one morning, and me and
26 minor1 we got a hold of the ketchup, the mustard, and

1 the hot sauce, and we started like playing around with
2 it on the couch in the front room. And me and minor put
3 'um down, and went back to the bedroom, and went to
4 sleep, and Jeffrey woke up and saw it, and he asked us,
5 and there was like ketchup and mustard stuff on my and
6 *MINOR 1'S* clothes. He poured the rest of the hot sauce
7 down our throats, and he beat us.

8 Q. He what?

9 A. Beat us.

10 Q. He poured the hot sauce down your throat?

11 A. Yes, sir.

12 Q. Did Jeffrey do this or Kristina do this?

13 A. Jeffrey.

14 Q. What did you do?

15 A. We played with the hot sauce --

16 Q. No, I mean what did you do when he poured the hot sauce
17 down your throat?

18 A. We cried.

19 Q. Can you remember anything else he did to you? You told
20 us a lot, can you remember anything else?

21 A. Um, no, sir.

22 Q. Tell me about some of the things, and you have told us
23 a little bit of it. But, can you tell me about some of
24 the things that Jeffrey did to minor and minor 1

25 A. Um, minor 3 got an "F" and that is when he tied

26 minor 3 to the bed. He beat him for making an "F" on

1 his report card in math, and minor 3 doesn't do good
2 in math. So he --

3 Q. So he tied him to the bed for it?

4 A. Yes, sir.

5 Q. How long did he leave him there do you remember?

6 A. Um, no, sir.

7 Q. A few minutes ago you something about hogtying, is that
8 the same time he hogtied him?

9 A. Yes, sir.

10 Q. Do you remember anything about folding clothes or
11 anything?

12 A. Um, minor 3 got beat for folding a towel wrong before,
13 and um Jeffrey beat him for it.

14 Q. Do you remember anything with a knife?

15 A. Um, minor 3 told me and minor that --

16 MS. SELLERS: Objection, Your Honor that would be
17 hearsay?

18 THE COURT: I didn't hear what the entrance was.
19 Someone told someone, who said, who told?

20 MR. DANIEL: Can you say what you just said, just the
21 first part?

22 MISS GRAHAM: minor 3 told us.

23 MR. DANIEL: She said minor 3 told us.

24 THE COURT: All right. I am going to sustain that
25 objection. I believe there are better witnesses for that
26 evidence. I am going to sustain that. We are going to move

1 onto the next question.

2 MR. DANIEL: Thank you, Your Honor.

3 THE COURT: Go ahead.

4 Q. minor 2, would Jeffrey ever do these things to you in
5 front of his friends?

6 A. No, sir.

7 Q. Did you ever see Jeffrey hurt your mom?

8 A. Um, they got in bad arguments and he would throw stuff
9 at her sometimes.

10 Q. What about your mom, did your mom ever hurt you?

11 A. Yes, sir.

12 Q. Did she hurt you a lot?

13 A. Um, yes, sir.

14 Q. Can you tell us about some of the things that your mom
15 did to you?

16 A. She drug me down the hallway by my hair. I would
17 usually get carpet burns, and --

18 Q. -- She would -- Go ahead, I'm sorry.

19 A. She would beat us, beat me, and um.

20 Q. Did the dragging you by the hair, did that happen more
21 than one time?

22 A. It happened a lot.

23 Q. It happened a lot. Did your mom ever beat you too?

24 A. Yes, sir.

25 Q. Can you tell the jury about the differences in what
26 Jeffrey did to you versus what your mom did to you?

1 A. Jeffrey was worse.

2 Q. Jeffrey was worse?

3 A. Yes, sir.

4 Q. But your mom hurt you too?

5 A. (Affirmative response.)

6 Q. minor 2 why didn't you tell anybody about any of this?

7 A. I tried to once, and I went to my guidance counselor
8 and told 'em they were fighting, and she called
9 minor 3 down to her office, and minor 3 told her it
10 was all untrue.

11 Q. Why did --- Do you know why minor 3 said it was all
12 untrue?

13 A. Because he was scared.

14 Q. Scared of what?

15 A. That he would get beat when he got home.

16 Q. Were you scared?

17 A. Not really, but I was.

18 Q. You were?

19 A. Yes, sir.

20 Q. minor 2 were there ever any happy times when Jeffrey was
21 living with you?

22 A. Not unless I ever went over to my cousin --- actually
23 C _ e's little cousin and I went over to their
24 house, or they came over to ours.

25 Q. Did you ever do anything nice for Jeffrey?

26 A. We would make stuff for him sometimes.

1 Q. Like what?

2 A. Cards, stuff like that.

3 Q. Why did you make stuff for him?

4 A. Cuz it was like his birthday or father's day.

5 Q. minor2 who is David?

6 A. Someone that Kristina dated too.

7 Q. Did they date for a long time?

8 A. A little bit.

9 Q. Did David ever live with you?

10 A. Yes, sir.

11 Q. For a long time or a little bit of time?

12 A. A little bit of time.

13 Q. What?

14 A. A little bit.

15 Q. Did David ever hurt you?

16 A. He would spank us a few times.

17 Q. Did he ever do the things to you that Jeffrey did to
18 you?

19 A. No, sir.

20 Q. minor2 have you been in counseling for all of this?

21 A. Um --

22 Q. Did you ever see a counselor?

23 A. Yes, sir.

24 Q. Did it help?

25 A. Yes, sir.

26 Q. Are you happy now?

1 A. Yes, sir.

2 Q. minor2 how do you feel about your mom?

3 A. Um, I feel like she wasn't actually a real mother.

4 And, um, she didn't actually care enough for us, or she
5 would have let Jeffrey, and she wouldn't have done
6 those stuff.

7 Q. How do you feel about Jeffrey?

8 A. That he didn't really care enough for us either, or he
9 wouldn't have done those things, wouldn't have let
10 Kristina do 'em.

11 MR. DANIEL: Beg the Court's indulgence.

12 (PAUSE)

13 MR. DANIEL: One more question.

14 Q. minor2 what was life --- Was your life like living with
15 Jeffrey?

16 A. A black hole.

17 Q. What?

18 A. A black hole.

19 Q. What is a black hole?

20 A. Um, it is like something that you never see light in.
21 You never see light at the end of it. And um, we never
22 got --- I never thought that we were ever going to be
23 saved, and um, that was how it was.

24 MR. DANIEL: Beg the Court's indulgence.

25 Q. minor2 how many times have you met with me about this
26 case?

1 A. Maybe twice, maybe three times.

2 Q. Did we go over what this trial was going to be like?

3 A. Yes, sir.

4 Q. Did we come in the courtroom?

5 A. Yes, sir.

6 Q. Did you sit in that chair?

7 A. Yes sir, I think so.

8 Q. Did you get to sit in the Judge's chair?

9 A. Yes, sir.

10 Q. Did we go over the questions that I would be asking
11 you?

12 A. Yes, sir.

13 Q. Did I ever tell you what answers to give?

14 A. No, sir.

15 Q. Did I ever tell you to lie?

16 A. No, sir.

17 Q. What did I tell you to do?

18 A. To tell the truth.

19 Q. And is that what you have done here today?

20 A. Yes, sir.

21 MR. DANIEL: Thank you. I have no further questions.

22 THE COURT: The other lawyer is going to ask you some
23 questions. Cross examination.

24 MS. SELLERS: Thank you, Your Honor.

25 CROSS EXAMINATION BY MS. SELLERS

26 Q. Good afternoon minor 2 how are you?

1 A. I'm good.

2 Q. Let me ask you minor2 You were talking about a black
3 hole. You felt like you were in a black hole?

4 A. Yes, ma'am.

5 Q. Had you ever been in foster care before?

6 A. Yes, I have.

7 Q. Do you remember when you were in foster care?

8 A. Yes.

9 Q. Do you remember why?

10 A. Yes.

11 Q. Why do you think you were in foster care?

12 A. Uh, Kristina she kicked me across the floor, because I
13 kicked minor over, he was in a stroller I think.

14 Q. Okay. I am going to need for you to speak up a little
15 louder, if you would lean in a little closer.

16 **THE COURT:** Ma'am, before you answer that question,
17 pull your chair up a little closer, wherever it is
18 comfortable for you, and speak right into that microphone
19 and we will be able to hear you.

20 Go ahead and answer that question again, please ma'am.

21 A. Kristina, she kicked me across the floor for kicking
22 minor over. And, um, that's why.

23 Q. And who was living with you at that time?

24 A. Nanna had minor3 and they were going to meet

25 **MINOR 3'S** teachers, and minor was there, and Kristina
26 and me.

1 Q. And you didn't know Jeffrey at this time, did you?
2 Jeffrey was not living with you. You had never met
3 him.

4 A. (No response.)

5 Q. Could you tell me about foster care?

6 A. We stayed there for a year.

7 Q. A year?

8 A. Yes, ma'am.

9 Q. And did you like where you were at?

10 A. (No response.)

11 Q. Did you miss your mom?

12 A. Yes.

13 Q. And what did you miss about your mom?

14 A. Because um, I didn't really know the people where I
15 were, and I knew my mom, so.

16 Q. Was your dad around?

17 A. Um, --

18 Q. You never really talked with your dad?

19 A. I stayed with him, I think, till I was around three.

20 Q. Until you were three. And you are living with your dad
21 now, right?

22 A. (Affirmative response.)

23 Q. Do you like living with your dad?

24 A. (Affirmative response.)

25 Q. What do you like most about him?

26 A. I don't go through the same stuff I use to.

1 Q. Okay. Let's talk about some of that stuff. Would you
2 say that you all moved a lot?

3 A. Um --

4 Q. And you all didn't always live in Dillon did you?

5 A. (No response.)

6 Q. Where else have you all lived at?

7 A. I have lived at the beach, and Rock Hill, Dillon, Oak
8 Grove, um and Conway.

9 Q. In Conway. So you were at the beach twice, right?

10 A. Yes, ma'am.

11 Q. Do you remember who was living with you then?

12 A. My Nanna was when we were in Conway and at the beach.

13 Q. And was there any men --- any of your mom's boyfriends
14 living with you?

15 A. I think David.

16 Q. David. And did David hit you at all?

17 A. He would spank me sometimes, for like breaking a game
18 or something.

19 Q. Did he ever punish you?

20 A. No.

21 Q. Did he ever slap you?

22 A. No, ma'am.

23 Q. Did he ever yell at you?

24 A. No, ma'am.

25 Q. He never yelled at you?

26 A. Well, he did once, but that's because we had broke his

1 like favorite game that he would play ever now and
2 again.

3 Q. Do you remember if your mom worked at all?

4 A. She has. She has worked at Wal-Mart, Harbor Freight,
5 and I don't know what else.

6 Q. Would you say she worked for a little while or a long
7 time?

8 A. Um, um, I'm not very sure.

9 Q. You're not sure?

10 A. I'm not sure.

11 Q. Do you remember or do you know Jeffrey's mom?

12 A. Yes.

13 Q. Do you remember moving in with her?

14 A. (Affirmative response.)

15 Q. And who lived there with you all?

16 A. Tom, Wanda, C' re, Jeffrey, me, minor 3 and minor 1

17 Q. Okay. And did Kristina ever beat you at Wanda's house?

18 A. A few times.

19 Q. A few times. And when you got these beatings, how were
20 they?

21 A. Um, --

22 Q. What was done to you?

23 A. She drug me by the hair, and um, she would beat me in
24 her room.

25 Q. In her room. Do you remember when Jeffrey lost his
26 leg?

1 A. Um, um, they had a argument I think, and we went over
2 to Wanda's and he was home alone, so I'm not pretty
3 sure.

4 Q. And let me ask you. Can you tell me, where did you
5 live first? Was it the apartment or was it the
6 trailer? Can you give me the order of the houses that
7 you lived in?

8 A. Um, first after I moved out with my Grandma Edna, we
9 went to the um, apartments. Then we moved to the
10 trailer. Then we moved to um, Wanda's house.

11 Q. You moved to Wanda's house. The last time you were
12 with your mom, you were living in a motel, correct?

13 A. Um, yes, ma'am.

14 Q. And was Jeffrey living there?

15 A. (No response.)

16 Q. Who was living there with you?

17 A. A dude named Larry --- Larry Jacob.

18 Q. Was Larry's friend living there too? Was Scotty living
19 there?

20 A. (No response.)

21 Q. Where were y'all living at in a motel?

22 A. At the Latta Motel.

23 Q. At the Latta Motel. Was there just one motel room?
24 How many beds did it have in it?

25 A. Two. Me, minor 1 and minor 3 shared a bed and they
26 shared a bed.

1 Q. And where was C. e?

2 A. Uh, I think she was with Wanda.

3 Q. So C. e did not stay with you all, right?

4 A. Um, I'm not sure. I don't know if she was with us or
5 Wanda.

6 Q. But there was sometimes when C. ie was with Wanda
7 and Jeffrey, right?

8 A. Yes, ma'am.

9 Q. Did you all ever get sick in that motel room?

10 A. (No response.)

11 Q. Do you remember if minor 1 ever got sick in that motel
12 room, did he throw up?

13 A. No, he hit his head on the thing.

14 Q. He hit his head on the thing.

15 A. The towel bar on his head.

16 Q. Was he climbing on it?

17 A. He turned around and hit his head.

18 Q. Okay. Did any cigarette smoke make you sick?

19 A. (No response.)

20 Q. Do you remember --- You told Mr. Daniels that you went
21 to counseling? Do you remember how many times you went
22 to counseling?

23 A. Um, every other week.

24 Q. And do you remember talking to a Ms. Robin Griggs?

25 A. Um, I don't think so.

26 Q. Do you remember going to the Durant Center?

1 A. Yes, ma'am.

2 Q. Do you remember being video taped?

3 A. Um, yes, ma'am.

4 Q. And when you talked with Ms. Robin you told her the
5 complete truth, correct?

6 A. Yes, ma'am.

7 Q. You never told her anything about hot sauce did you?

8 A. Um, I think I did.

9 Q. You think you did?

10 A. I'm not sure.

11 Q. When you talked with your teacher at school, did you
12 tell her everything that was going on?

13 A. Um, I don't --- um, I told her Jeffrey --- And them got
14 in a fight, and she called minor 3 down to the office.
15 I didn't have time to tell her everything.

16 Q. So you didn't have time to tell her everything. And
17 that was Ms. Flowers, Ms. Fowler?

18 A. Ms. Foxworth.

19 Q. Ms. Foxworth. Now, you said Jeffrey spanked you?

20 A. Um, we were scared that he would.

21 Q. You were scared that he would? When he did spank you,
22 he spanked you basically on your behind?

23 A. Um, (Affirmative response.) In our lower back.

24 THE COURT: How about come right up on that
25 microphone, because it is a little hard to hear, okay?

26 MS. SELLERS: Are you okay? Do you need to take a

1 break?

2 **MISS** (I'm okay.

3 Q. When you got hit on your lower back, were you moving
4 around?

5 A. Um, sometimes, but not a whole lot.

6 Q. Not a whole lot. Let me ask you a question. When you
7 were made to hold books, was everybody made to hold
8 books?

9 A. Beside Cl ne, because Cl ne was not born yet.

10 Q. Except for C e, she wasn't born yet.

11 A. Yes, sir.

12 Q. Where were you living at when this happened?

13 A. I think we were at the apartments.

14 Q. And how long did you say you lived at the apartments?

15 A. A year.

16 Q. And was there any other boyfriend that lived with you
17 all?

18 A. (No response.)

19 Q. Did you meet any more of your mom's boyfriends?

20 A. (No response.)

21 Q. Did you tell your dad about what happened?

22 A. minor3 told something and I'm not sure, but I think
23 he --- I don't know what happened after that, but
24 minor3 tried telling him.

25 Q. When you were --- When you got back out of foster care,
26 did you meet anybody from DSS?

- 1 A. -- Um --
- 2 Q. Any of your social workers or case workers?
- 3 A. Um, I'm not sure.
- 4 Q. Did you ever talk with anybody?
- 5 A. Um, I don't know, but.
- 6 Q. Were there always a lot of people at your house?
- 7 A. There were two other girls. I slept in a room by
- 8 myself. And minor slept in a room with the foster care
- 9 lady.
- 10 Q. Do you remember Sherry Ward? Do you remember staying
- 11 with Sherry?
- 12 A. Yes, ma'am.
- 13 Q. Where was this at?
- 14 A. I don't remember. But, we --- it was like --- I don't
- 15 know. But we still went to Latta School at that time.
- 16 Q. You went to Latta School? And you got perfect
- 17 attendance one time didn't you? What were your grades
- 18 like?
- 19 A. Right now?
- 20 Q. Uh'huh.
- 21 A. I'm not doing too good in math.
- 22 Q. Not too good in math. But, before you were a honor
- 23 roll student, weren't you?
- 24 A. (Affirmative response.)
- 25 Q. How long have you been an honor roll student?
- 26 A. Since I started taking my medicine. I don't really

1 know when that was. But I use to get all "As" and
2 "Bs."

3 Q. Now, lets go back to when you stayed with Sharon and
4 Sherry. Who are they?

5 A. They are two girls that we lived with.

6 Q. How did you know them?

7 A. I think they were kin to Jeffrey or somebody. I don't
8 know who. I don't know who side they were on.

9 Q. You don't know whose side they were on?

10 A. No, ma'am.

11 Q. Who side are you on?

12 A. Um, I am on Kristina's side of the family.

13 Q. And Sherry and Sharon did they ever keep you?

14 A. -- Um --

15 Q. By themselves?

16 A. Yes, ma'am.

17 Q. Jeffrey never lived there did he?

18 A. (No response.)

19 Q. And did Kristina live there with you?

20 A. Yes, ma'am.

21 Q. Did you all share one bedroom?

22 A. Me minor 3 and minor did.

23 Q. Okay. And C he didn't live there did she?

24 A. Um, I think she did. I'm not very sure. I think she
25 was sleeping in the room with Kristina.

26 Q. With Kristina. And did you ever go and stay with your

1 Grandmother Edna?

2 A. Um, we visited her like one day after Jeffrey and
3 Kristina had a fight.

4 Q. Did you see your Grandmother Edna and your Papaw Gene
5 much?

6 A. (No response.)

7 Q. They didn't come around much?

8 A. My cousin Sara, use to come spend the night a few
9 times.

10 Q. And at that time --

11 **THE COURT:** Counsel, let me mention something.

12 Ladies and gentlemen of the jury box, can you hear? Are you
13 able to hear on the back? Can you hear? All right, very
14 good.

15 Q. Did you and your Grandma Edna talk about this case, or
16 talk about what was going on?

17 A. Um, yes, ma'am.

18 Q. Have y'all talked a lot about it?

19 A. (Affirmative response.)

20 Q. Have they told you anything?

21 A. Um --

22 Q. Not what they told you, but have they told you things?

23 A. Uh, about what?

24 Q. Have they told you about anything that is going on
25 today?

26 A. Um, they told us that we would be coming to court today

1 and testifying.

2 Q. Are you afraid to go back to Kristina?

3 A. (Affirmative response.)

4 Q. You don't want to go back to Kristina?

5 A. (No response.)

6 Q. Let me ask you. Who are you staying with while you are
7 in Dillon?

8 A. Um, I'm staying with my Grandma Edna and my Papaw Gene.

9 Q. Did you get a chance to talk with your brothers about
10 what was going on?

11 A. A little bit.

12 Q. Did anybody tell you what to say?

13 A. No, ma'am.

14 Q. Did anybody go over your answers with you, what you
15 were going to say?

16 A. Mr. Shipp asked us the questions yesterday. We went
17 over them to make sure like he wanted to know about --

18 Q. Could you repeat that for me?

19 A. He --- We went over the questions what he was going to
20 say yesterday.

21 Q. And you said to make sure? What were you making sure
22 of?

23 A. So we wouldn't be scared to come in front of everybody
24 or talk.

25 Q. But you haven't discussed it with your Grandma Edna?

26 A. Um, not really.

1 were on. What did you mean by side?

2 A. Like what family they were in.

3 Q. What?

4 A. What family they were in.

5 Q. Like what side of the family?

6 A. (Affirmative response.)

7 Q. Okay. There was talk about --- actually, there was a
8 lot of talk about other men, and other boyfriends, and
9 other people who lived with you, right?

10 A. (Affirmative response.)

11 Q. Or who were around, right?

12 A. (Affirmative response.)

13 Q. minor 2 did anyone other than Jeffrey ever pour hot
14 sauce down your throat?

15 A. No, sir.

16 Q. Did anyone other than Jeffrey ever duct tape your
17 mouth?

18 A. No, sir.

19 Q. Did anyone other than Jeffrey ever duct tape you to
20 your brother?

21 A. No, sir.

22 Q. Did anyone other than Jeffrey ever beat you for
23 throwing up?

24 A. No, sir.

25 Q. Did anyone other than Jeffrey ever make you stand on
26 the wall for hours at the time?

1 Q. What about Papaw Gene?

2 THE COURT: I can't hear those responses, counselor,
3 I cannot hear. Ma'am, how about put your mouth right to the
4 microphone, there you go. Just like that. Let's try that
5 and see how it goes.

6 MS. SELLERS: Are you Okay?

7 MISS 1: (Affirmative response.)

8 Q. And what about Papaw Gene?

9 A. Um, he's well good to us.

10 Q. He's good to you?

11 MS. SELLERS: Well, thank you C e, I'm sorry.

12 Thank you minor 2 I don't have any more questions for you.

13 MR. DANIEL: Briefly, Your Honor.

14 REDIRECT EXAMINATION BY MR. DANIEL

15 Q. minor 2 just a few questions. This air conditioner is
16 on and I want to make sure I heard you right. You said
17 that --- I think you said, and tell me if I am wrong.
18 That I went over the questions with you so you wouldn't
19 be scared, right? Is that right?

20 A. Yes, sir.

21 Q. Did I tell you what to say?

22 A. No, sir.

23 Q. Did I ever give you any answers to give in here?

24 A. No, sir.

25 Q. There was some talk about Shannon Ward, or Sharon Ward,
26 or somebody, and you were talking about what side they

1 A. No, sir.

2 Q. Did anyone other than Jeffrey ever make you --- ever,
3 ever beat you for being hungry?

4 A. No, sir.

5 Q. Did anyone other than Jeffrey and Kristina ever beat
6 you and leave marks on you?

7 A. No, sir.

8 Q. And make you bleed?

9 A. No, sir.

10 MR. DANIEL: I have no further questions. Thank you.

11 MS. SELLERS: Briefly, Your Honor.

12 THE COURT: All right.

13 RE-CROSS EXAMINATION BY MS. SELLERS

14 Q. minor2 duct tape on your mouth. When was the first
15 time you ever told somebody that? Is today the first
16 time you ever said that?

17 A. Um, ah, I don't think. I think we told our Grandma.

18 Q. You told your Grandma?

19 A. When ah --

20 Q. -- You didn't tell the counselors you spoke with?

21 A. Yes, ma'am.

22 Q. You did tell her? What about holding the books in your
23 hands, you didn't tell that to the counselor did you?

24 A. I'm not very sure.

25 Q. So today is the first time you have ever said that,
26 correct?

1 A. I'm not very sure.

2 Q. Okay. And you for the last couple of years you have
3 moved around quite a bit haven't you? And you haven't
4 always been in Dillon during this time have you? You
5 don't know exactly when what happened do you?

6 MR. DANIEL: Your Honor, I would object at this time.
7 I don't think this is proper re-cross?

8 THE COURT: Is there anything further?

9 MS. SELLERS: No, Your Honor. Thank you.

10 THE COURT: Very good. And you may step down.

11 All right. Ladies and gentlemen, we are going to take
12 our lunch break at this time. What I would ask you to do,
13 and lunch will be on your own. Whomever you have lunch
14 please don't discuss the case, even if it is with a fellow
15 juror. Be back in your jury room at 2:00, and we will
16 reconvene at 2:00.

17 All right. Let's all remain where we are while our
18 jury departs the courtroom. Have a nice lunch ladies and
19 gentlemen.

20 (Whereupon, the jury departs the courtroom at
21 12:47 p.m.)

22 THE COURT: All right. The jury is clear, and we
23 will now be in recess until 2:00.

24 (Whereupon, a lunch recess was taken from 12:47
25 p.m. until 2:10 p.m.)

26 THE COURT: Please be seated, ladies and gentlemen.

1 All right. We are told that the jury has returned, and we
2 are ready to proceed; so please bring in the jury.

3 (Whereupon, the jury enters the courtroom at 2:10
4 p.m.)

5 **THE COURT:** All right. Ladies and gentlemen welcome
6 back to the courtroom. I trust you had a nice lunch.

7 You will recall at the end of the morning session we
8 were in the plaintiff's case, the State's case; we remain
9 there.

10 Mr. Prosecutor, please call your next witness.

11 **MR. DANIEL:** Thank you, Your Honor. The State calls
12 minor 3. I will run and get him.

13 **THE COURT:** Thank you. Good afternoon. Please come
14 forward, and please follow our clerk's instructions.

15 **CLERK OF COURT:** How are you doing? Will you place
16 your left hand on the Bible and raise your right hand? Can
17 you do that?

18 **WHEREUPON,** minor 3

19 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

20 **MASTER** : I swear.

21 **CLERK OF COURT:** Okay. Come right here now. Would
22 you state your full name for the Court?

23 **MASTER** minor 3

24 **THE COURT:** Mr. , I am going to let you --- to
25 pull up a little bit there in your chair so you can be close
26 to that microphone. Speak right into that, and thank you.

COMPETENCY EXAMINATION BY MR. DANIEL

Q. Hi Buddy, how are you doing?

A. Good.

Q. What is your name?

A. minor 3

Q. minor 3 ?

A. Yes, sir.

Q. minor 3 how old are you?

A. I am twelve years old.

Q. When is your birthday?

A. January -- No, February 23rd, and I was born in 1997.

Q. 1997. Make sure you talk loudly enough so everybody can hear you, Okay?

A. Yes, sir.

Q. Everybody in here needs to hear you. Everybody up there needs to hear you, and everybody out here needs to hear you, okay?

A. Yes, sir.

Q. Do you go to school?

A. Yes, sir.

Q. Where do you go?

A. Latta Middle School.

Q. Latta Middle School. What grade are you in?

A. Seventh.

Q. Who are your teachers?

A. Ms. George, Coach Little, Ms. Lawrimore my music

1 teacher, Ms. Price my social studies teacher, and Mr.
2 Nobles my language arts.

3 Q. What grade did you say you were in?

4 A. The seventh.

5 Q. What grade were you in last year?

6 A. The sixth.

7 Q. What school did you go to last year?

8 A. Latta Middle School.

9 Q. Latta Middle School. minor 3 do you go by minor 3
10 or minor 3

11 A. minor 3

12 Q. do you have any brothers and sisters?

13 A. Yes, sir.

14 Q. How many do you have?

15 A. I have two sisters and one brother.

16 Q. What are their names?

17 A. minor 2 the oldest sister, minor my oldest brother, well
18 he's the youngest actually, and C e, she is the
19 youngest of them all.

20 Q. Do you have any pets?

21 A. My cousin does, and she kind of belongs to the whole
22 family.

23 Q. Is it a dog or what?

24 A. It is a dog named Calen. (Phonetic)

25 Q. His name is what?

26 A. Calen.

1 Q. minor3 is it good or bad to tell a lie?

2 A. It is bad to tell a lie.

3 Q. Is it good or bad to tell the truth?

4 A. It is good to tell the truth.

5 Q. If you were to tell a lie to your Grandma for example,
6 what do you think might happen?

7 A. I would get time out.

8 Q. If you were to tell your teacher a lie at school, what
9 do you think might happen?

10 A. I would get demerits and she wouldn't trust me anymore.

11 Q. If you were to tell or if somebody were to tell the
12 Judge a lie, what do you think might happen?

13 A. They could go to jail.

14 Q. Okay. When you are in this courtroom, is it right or
15 wrong to tell the truth?

16 A. It is right to tell the truth.

17 Q. minor3 do you think you can tell the truth about
18 what happened to you?

19 A. Yes, sir.

20 MR. DANIEL: Okay, Your Honor, I would submit

21 minor3 as a competent witness.

22 THE COURT: Any questions about the competency of our
23 witness?

24 MS. SELLERS: None from the defense.

25 THE COURT: All right. Then you may proceed.

26 MR. DANIEL: Thank you, Your Honor.

1 THE COURT: All right.

2 DIRECT EXAMINATION BY MR. DANIEL

3 Q. All right, minor3 do you know why you are here
4 today?

5 A. Yes, sir.

6 Q. Why?

7 A. Um, I am a witness against Jeffrey Caulder for an
8 abused child.

9 Q. Do you --- How do you know Jeffrey? Do you know
10 Jeffrey Caulder?

11 A. Yes, sir.

12 Q. How do you know Jeffrey?

13 A. He was dating my mother when I was --- when I got out
14 of foster care, when I was around five years old.

15 Q. And how old did you say you are now?

16 A. I am twelve.

17 Q. Did Jeffrey ever live with you?

18 A. Yes, sir.

19 Q. Do you know how long he lived with you?

20 A. Well, we moved off and on, but all together it was
21 about four or five years.

22 Q. A total you said about four to five years?

23 A. Yes, sir.

24 Q. minor3 did Jeffrey ever hurt you?

25 A. Yes, sir.

26 Q. Did your mother ever hurt you?

1 A. Yes, sir.

2 Q. What is her name?

3 A. Kristina Miller.

4 Q. Do you remember the first time Jeffrey ever hurt you?

5 A. Yes, sir.

6 Q. Can you tell the jury about what happened to you that
7 time?

8 A. Yes, sir.

9 Q. Okay.

10 A. I was coming home from a visit with my brother, my
11 sister, their real daddy named Phillip Graham. They
12 asked me how Jeffrey was and I told 'em at first,
13 because I thought he was a real nice man, because he
14 was at first. But he kind of drunk a lot.

15 MS. SELLERS: Objection, Your Honor.

16 THE COURT: On what basis?

17 MS. SELLERS: In terms of any type of behavior or any
18 type of things my client partakes in Your Honor, I don't
19 feel like that is relevant information as to whether or not
20 he was actually acting inappropriate in disciplining these
21 children.

22 THE COURT: Response?

23 MR. DANIEL: Your Honor, I think minor 3 can testify
24 as to what he saw, if he observed the defendant drinking,
25 and that is what he said. Also, the fact that minor 3 is
26 telling us why he believes Jeffrey was mean to him, I think

1 that is absolutely relevant.

2 THE COURT: I'm going to overrule your objection
3 counselor. You may go ahead and answer the question.

4 MR. DANIEL: Thank you, Your Honor.

5 A. And Jeffrey found out, and --

6 Q. Jeffrey found out what?

7 A. What I said, and called me a liar. And I was --- Me,
8 my brother, and my sister was beat for it, and after I
9 told him I did it, I was beat again until the brown
10 belt he was beating me with it broke and he taped it
11 together with big gray tape. And I was beat again.

12 Q. Did you say that your brother and sister were beaten
13 for this too?

14 A. Yes, sir.

15 Q. What are their names again?

16 A. minor 2 and minor 1

17 Q. So he beat them because of what you said to somebody
18 else?

19 A. Yes, sir.

20 Q. How badly did he beat you this time?

21 A. Till um, my butt was literally black and blue.

22 Q. Did you notice how badly he beat your brother and
23 sister at this time?

24 A. Yes, sir.

25 Q. How badly was that?

26 A. The same way.

1 Q. minor3 when Jeffrey lived with you, were there ever
2 any times when it was just Jeffrey at home with the
3 kids?

4 A. Yes, sir.

5 Q. Did this happen a little bit or a lot?

6 A. A lot.

7 Q. Would you say that he was in charge of you all a bunch?

8 A. Yes, sir.

9 Q. Okay. You just told the jury about one situation with
10 Jeffrey; can you tell the jury about some of the other
11 things that Jeffrey did to you?

12 A. Yes, sir.

13 Q. Okay.

14 A. There has been times where he has beat us for spilling
15 a glass of water by accident until we could not sit
16 down the next day, and that is no expression. I got
17 beat for dropping a glass one time, and couldn't sit
18 down the next day. The day that I told my mamma that
19 he beat me like that when the belt broke, she believed
20 me and told Jeffrey, and that night he unfolded a metal
21 cloth hanger and beat me across my legs with it.

22 Q. For telling your mom?

23 A. Yes, sir. And I told her again and he found out, and
24 called me a tattletale and beat me again. He's beat me
25 with belts, switches, all kinds of things, clothes
26 hangers, and has beat me for just little things that I

1 just could not help. For not folding the towel wrong
2 and got beat ungodly for it. I couldn't help it. And,
3 there has been other times too.

4 Q. Now, let's be honest here. Sometimes you probably
5 deserved a spanking didn't you?

6 A. Yes, sir.

7 Q. Sometimes you probably did something you shouldn't have
8 done and they were just punishing you, right?

9 A. Yes, sir.

10 Q. Were there times that you didn't do anything at all and
11 got beaten, anything?

12 A. Yes, sir.

13 Q. Can you tell the jury about any time you may have had
14 to stand on the wall?

15 A. Yes, sir.

16 Q. Tell them about that.

17 A. He has made me stay in a corner for --

18 Q. -- Who is he?

19 A. Jeffrey Caulder. With my nose on the wall for hours on
20 end.

21 Q. With your nose on the wall?

22 A. Yes, sir. And I had to hold my hands out just like
23 this for hours where I could not drop 'um. And, if I
24 did, I would have got beat for it and would have had to
25 start all over. He has had me hold stuff in my hands
26 where it may not --- it may be like pill bottles, and

1 empty cans but after a couple of minutes if you hold
2 your hands out like that it hurts a lot, because you
3 can't move 'um, if I moved, one-inch I got beat for it.
4 And I was supposed to stay like that for two to three
5 hours without moving. And it was tough. But, I wasn't
6 allowed to use the bathroom, if I did I would get beat
7 for that. And I never understood why.

8 Q. minor3 when he would beat you -- when Jeffrey would
9 beat you, would he leave marks?

10 A. Yes, sir.

11 Q. Where would these marks be?

12 A. Um, my behind, my legs, when he beat me with switches.
13 On my back, and my arms, and my legs, cause I would
14 resist, and put my arms and my legs in the way. And, I
15 --- and they wouldn't go away for like months, cause
16 they were so bad.

17 Q. When these beatings would happen --- How often would
18 these beatings happen?

19 A. Four or five times a day.

20 Q. A day?

21 A. Yes, sir.

22 Q. Would each time it happened, would he always leave
23 marks on you?

24 A. Yes, sir.

25 Q. What kind of marks?

26 A. Bruises, blood streak marks, switch strokes, and that's

1 about it.

2 Q. How long did you say he would make you stand on the
3 wall?

4 A. From two to three hours.

5 Q. And what did you say about having to go to the
6 bathroom? If you had to go to the bathroom, what?

7 A. I wasn't allowed to.

8 Q. You weren't allowed to go to the bathroom?

9 A. No, sir.

10 Q. Tell us some other things that he did.

11 A. Um, he had --- He used duct tape a couple of times.

12 Q. Tell us about those stories.

13 A. He'd duct taped my brother, and me, and my sister
14 together. And wherever my sister went, I had to go.
15 If she had to use the bathroom, I had to. If she had
16 to get something to drink, I had to walk with her. And
17 he would put duct tape on my mouth and rip it off where
18 blood would be running down my lips. And if I cried I
19 got beat for it. And I still don't understand why.

20 Q. minor 3 tell us how he would duct tape you to your
21 sister?

22 A. He duct tape my --

23 Q. -- You can stand up.

24 A. He would duct tape my --

25 Q. Talk loud, okay.

26 A. He'd duct tape my arm to her arm, and my leg to her leg

1 where I could only use --- where I could only use this
2 leg and this arm, and she could only use the opposite
3 side. And I had to go around like that for near about
4 the whole time of day. And it was hard, really hard.

5 Q. You can sit down.

6 A. But he thought it was funny, cause he laughed. Him and
7 my manna.

8 Q. He laughed?

9 A. Yes, sir.

10 Q. So did your mamma?

11 A. Yes, sir.

12 Q. What about when he put the duct tape over your mouth?

13 A. He would put the duct tape over my mouth, and press
14 against it, and rip it off, and my mouth would bleed.

15 Q. Who all did he do that to?

16 A. Me, my brother minor1 and my sister minor2

17 Q. Did that happen a lot or a little bit?

18 A. A lot.

19 Q. minor3 I know this is hard, but tell us about some
20 other things that he did to you?

21 A. He --- Well I had the stomach virus a couple of times
22 in the middle of the night and I threw up cause I
23 couldn't make it to the bathroom, and I was beat and
24 had to wash the clothes that I threw up on, and then I
25 was beat again.

26 He --- I was resisting getting beat one time and

1 he tied me with this exercise band, he called it being
2 hogtied to a bunk bed, and beat me, and left me there.
3 When my mamma walked by, I was scared to tell her --- I
4 just told her to leave me here, and she did, and I was
5 left there.

6 Q. Why did you tell her to leave you there?

7 A. I was scared.

8 Q. Scared of what?

9 A. Scared he might beat me again.

10 Q. You just said that he hogtied you and then you said he
11 tied you to the bed. Are those two different things?

12 A. No, sir. He hogtied me and at the end of the rubber
13 band, he tied a rope to it, and I was hogtied with the
14 piece, and the extra pieces he tied the rope to.

15 Q. Can you describe what you mean by hogtied? Can you
16 tell us what that is?

17 A. Yes, sir. It is where --

18 Q. You can stand up if you need to.

19 A. Yes, sir.

20 Q. Talk real loud, okay.

21 A. It's where my hands and feet were connected, and he had
22 me upside-down, and he tied my hands and my feet
23 together, and I was beat like that.

24 Q. Did he leave marks on you this time when he beat you?

25 A. Yes, sir.

26 Q. How long did he leave you tied like that?

1 A. I can't recall. It felt like three to four hours, and
2 I just kept quiet.

3 Q. You kept quiet?

4 A. Yes, sir.

5 Q. Why did you keep quiet?

6 A. Because I was scared. I would get beat for crying
7 sometimes because I wasn't allowed to cry.

8 Q. So you were hogtied and then --- tell me about him
9 tying you to the bed?

10 A. He --- The extra pieces off of the exercise band were
11 tied to the rope, and the rope was tied to the bed, and
12 I was left like that. It was a bunk bed. He tied me
13 to the top part and I was under the bottom part.

14 There was this one incident where he beat me over,
15 and over, and over, took me by my neck and threw me a
16 couple of times.

17 And then there was this knife that he had gave me,
18 he took it out, put it in my hand, and told me where to
19 stab him. He told me if I was man enough to do it. I
20 dropped the knife and couldn't do it.

21 Q. I'm sorry. He gave you a knife and told you to stab
22 him?

23 A. Yes, sir. But I couldn't do it.

24 Q. Do you know why he did that?

25 A. No, sir.

26 Q. When he would beat you, would you sometimes bleed?

1 A. Yes, sir.

2 Q. What about when you were hungry. Did you ever get in
3 trouble for being hungry?

4 A. Yes, sir. I would wake up and they were still in the
5 bed, and I would go and try to get something to eat
6 because I was hungry. And I would get beat and won't
7 get feed until the next day, all because I woke up at
8 like ten --- nine in the morning, and they didn't
9 usually get up till like around two.

10 Q. So they would beat you for waking up before them, and
11 then beat you for being hungry, and then you wouldn't
12 get food until the next day?

13 A. Yes, sir.

14 Q. What else minor 3

15 A. He --- He beat me for when C ne, my youngest sister
16 fell off the top bunk bed and got hurt, and he beat me
17 for that.

18 Me and minor 1 my brother, were looking for a toy in
19 *MINOR 2* 's dresser, and what he did was he saw us looking
20 for it, and we messed up some of *MINOR 2* 's clothes, and
21 we had to put on some of *MINOR 2* 's underwear. And I had
22 to put on a skirt, and minor 1 had to put on a dress, and
23 we had to walk around the house through it, and he was
24 laughing at us the whole entire time.

25 Q. Were you laughing?

26 A. No sir, I was crying.

1 Q. So this wasn't a game or anything?

2 A. No, sir.

3 Q. The duct tape thing, when he duct tape you and minor 2
4 was that a fun thing for you?

5 A. No, sir.

6 Q. Were y'all just playing around?

7 A. No, sir.

8 Q. Did anything ever happen with any kind of food?

9 A. Yes, sir.

10 Q. What was that?

11 A. There was this incident with hot sauce with my brother
12 and my sister. And minor 2 and minor were hungry and they
13 got a hold of --- they were eating cold fries and
14 ketchup, and they got a hold of the hot sauce bottle
15 and spilled a little drop on the couch and he --- and
16 he took --- and he beat 'um, but that wasn't enough.
17 He took the hot sauce and poured it down both of their
18 throats. I saw it, but I was scared to come out of my
19 room, because he had this motto, and it was one for
20 one, and one for all. That means is one of us got
21 beat, we all did. And I was scared to come out of my
22 room.

23 Q. Did you say that was his motto?

24 A. Yes, sir.

25 Q. And what was that motto again?

26 A. One for one, and one for all.

0-555

1 Q. Did he tell you that a lot?

2 A. Yes, sir.

3 Q. And tell us again what that meant?

4 A. If one of us got beat, all of us got beat.

5 Q. minor3 what happened with the cup?

6 A. He found a cup behind the couch and asked us whose it
7 were --- asked us whose it was, and none of us told on
8 so we all got beat over, and over, and over again. So
9 I finally lied and said it was mine, even though I knew
10 lying was wrong. minor2 and minor got so scared of him a
11 couple of times, that I took the blame for it. Nobody
12 knew it, but I lied. They knew it, but nobody else
13 did. But I lied and told him a couple of times it was
14 me, so they wouldn't get beat and I would, cause I
15 couldn't take it, them getting beat all the time.

16 Q. You did that a lot, stood up for your brother and
17 sister?

18 A. Yes, sir.

19 Q. Are you the oldest?

20 A. Yes, sir.

21 Q. What about C e, is she the youngest?

22 A. Yes, sir.

23 Q. Did you ever see Jeffrey do anything to Cheyenne?

24 A. No, sir.

25 Q. Who is C e's father?

26 A. Jeffrey.

1 Q. Is C the only child in the house who is related
2 by blood to Jeffrey?

3 A. Yes, sir.

4 Q. And you didn't see him, do nothing to her?

5 A. Never.

6 Q. You talked about being sick and throwing up.

7 A. Yes, sir.

8 Q. Did you ever get sick anywhere else?

9 A. Yes, sir. Coming home from school on the bus, I'd get
10 very sick on the bus and throw up, because I had to go
11 home for that day. I'd rather be at school than be at
12 home in the summer. To me the summer lasted too long.
13 Which most kids look forward to summer, but I don't. I
14 never did.

15 Q. Can you tell us about some of the things he did?

16 A. Yes, sir. There were times where he would want to beat
17 us and wake us up in the middle of the night, and told
18 us we had dreamed it, that none of it was real, but I
19 couldn't explain the marks all over me.

20 He's --- He --- they told me --- Him and my mamma
21 told us that if we ever told anybody, that DSS would
22 send --- put us back in foster care for the rest of our
23 lives, and that we were scared to tell ever anybody,
24 because nobody would believe us. We had to go home to
25 that ever day, and it would be a whole lot worse.

26 There were times I thought of suicide and running

1 away, but I wouldn't, because of my brother and my
2 sister were still there, and they had to live with that
3 man. I wouldn't be there to take up for 'um.

4 There's been --- He told us one time that he brung
5 us in his room and apologized for what he did, and told
6 us not to tell anybody, and that what he says stayed in
7 that room, and was never supposed to be told. That he
8 immediately did apologize, and --

9 Q. minor3 did your Mom, ever hurt you?

10 A. Yes, sir.

11 Q. Can you tell us about the things she did?

12 A. She would beat me with switches across the leg. It
13 wasn't as bad as Jeffrey, but it was --- it was near
14 about some of the same things. But she didn't beat me
15 as much as Jeffrey did. But she beat my sister minor2 a
16 lot. She has drug minor2 by her hair a block from
17 Jeffrey's sister-in-law, and beat her around, and
18 around, and around. And if minor2 said that she wanted
19 to live with her Daddy, Mamma would beat her, and was
20 going to pack her clothes, and send her to him. Just -
21 -- There wasn't --- It wasn't I don't think, as bad as
22 Jeffrey, but it was bad.

23 Q. minor3 did you ever see Jeffrey hurt your mom?

24 A. Yes, sir.

25 Q. What do you remember about that?

26 A. He would fight her a lot, and hit her in the face, and

1 she would do the same thing. The thing about it, we
2 always chose Jeffrey's side.

3 Q. You always chose Jeffrey's side?

4 A. Yes, sir.

5 Q. What do you mean by that?

6 A. When we --- Um --- When they were fighting, we always
7 took up for Jeffrey, because we were that afraid of
8 him.

9 Q. What would happen if you took your Mamma's side?

10 A. We were scared we would be beat. And the thing about
11 it, she didn't care. She --- sometimes she would laugh
12 when we got beat, and would just --- she didn't --- cry
13 --- cry baby.

14 Q. Did you ever go to church?

15 A. Yes, sir. I loved to go to church, but Jeffrey told me
16 one time when he was beating me, that I was a hypocrite
17 and hypocrites don't go to church.

18 Q. Do you know why he called you a hypocrite?

19 A. He --- He said that I was a liar and that going church
20 was being a hypocrite.

21 Q. Did you, and I may have asked you, but I'm going to ask
22 you again, just to make sure. Did you ever see marks
23 that Jeffrey left on minor and minor2

24 A. Yes, sir.

25 Q. Is there a worse thing that he did to you? The worst
26 thing that Jeffrey ever did to you, is there anything

1 that you can remember as to being the worst?

2 A. I would have to say the knife incident would be the
3 worst, because unlike the other beatings, he beat me
4 over, and over, and over again. Picked me up by my
5 neck and threw me against the wall. He just repeated -
6 -- it sounded like --- it felt like it was going on for
7 hours.

8 Q. The neck thing, throwing you. Did that happen a lot or
9 just some times?

10 A. Well it depended on what kind of mood he was in. If he
11 was in a mad mood, it would happen a lot. If he wasn't
12 in that bad of a mood, it wouldn't happen that much.

13 Q. The thing about the wall, when you had to stand on the
14 wall and hold things. How long do you think he made
15 you stand up there?

16 A. Two to three hours.

17 Q. And how many times would he make you stand on the wall,
18 let's say per week?

19 A. Usually it was really like twice a day.

20 Q. Did he ever beat you for no reason?

21 A. You could say that. He would try to make us think that
22 we had did something wrong, I guess just to beat us. I
23 think he got pleasure out of beating us.

24 Q. You think what?

25 A. I think he got pleasure out of beating us, because him
26 and my Mamma would always laugh when we went to crying.

1 And I just don't understand why.

2 Q. minor 3 would Jeffrey ever beat you in front of his
3 friends?

4 A. I don't think Jeffrey had too many friends. I think he
5 only had like two or three friends over. He never beat
6 us.

7 Q. Did he ever beat you?

8 A. Not in front of his friends, but he would in front of
9 his Mamma.

10 Q. What is his Mamma's name?

11 A. Wanda.

12 Q. Were there times when Jeffrey was alone with you kids?
13 Did that happen a lot?

14 A. Yes, sir.

15 Q. And were there a lot of times when he was responsible
16 for you guys?

17 A. Yes, sir.

18 Q. Did that happen a lot?

19 A. Yes, sir.

20 Q. minor 3 were there ever any happy times?

21 A. I don't think so.

22 Q. Did you ever do anything nice for Jeffrey?

23 A. Yes, sir.

24 Q. Like what?

25 A. On Father's Day, we would make him cards. On Christmas
26 Day, we would try to make him something.

1 Q. Why did you do that?

2 A. Trying to be nice to him.

3 Q. Why was it good to be nice to him?

4 A. We thought he might be nice to us in return.

5 Q. Was he?

6 A. No, sir.

7 Q. minor3 you talked a lot about your mom in some of
8 the stuff that she did. Compare for the jury the
9 difference in how your mom would treat you, and your
10 brother, and your sister, as opposed to how Jeffrey
11 would treat you?

12 A. My Mamma was very, very --- did very, very terrible
13 things to us. But compared to Jeffrey I don't think
14 there is --- I think he shoots right off the scale. I
15 think he is a whole lot worse than my Mamma.

16 Q. Do you remember how long he lived with you?

17 A. Four to five years.

18 Q. Four to five years?

19 A. Yes, sir.

20 Q. minor3 you are --- you certainly appear to be a
21 smart young man. Tell me, because one of the questions
22 that I have is, why didn't you tell anybody?

23 A. Because, if nobody believed us --- We had to go home to
24 that, and we were scared. We never --- I think we only
25 tried to tell somebody one time, and I covered up for
26 minor2 and I never told Jeffrey. Never.

1 Q. What was that about?

2 A. Ah --

3 Q. What happened there?

4 A. minor2 went to my guidance counselor, and I can't
5 remember what she was, but it was concerning Jeffrey,
6 my Mamma, but she asked me and --- and I said she was
7 just having a dream, because I was scared. I didn't
8 know what else to say.

9 Q. minor3 who is David?

10 A. David is --- was one of my Mamma's boyfriends.

11 Q. Did he ever live with you?

12 A. Yes, sir.

13 Q. How long was he around?

14 A. Just for a couple of months.

15 Q. Did he ever hurt you?

16 A. He beat me, but no where compared to Jeffrey.

17 Q. Did he beat you and laugh?

18 A. No sir, I don't think so.

19 Q. Did he beat you because you deserved to get a spanking?

20 A. I think so. I think the only thing that was kind of
21 wrong, David was --- he did a lot of illegal drugs
22 around us.

23 Q. Was anything that David did, or was what David did as
24 bad as what Jeffrey did to you?

25 A. No where compared to it.

26 Q. What?

1 A. Jeffrey was a whole lot worse than David. I don't
2 think David come no where near what Jeffrey did.

3 Q. Did anybody ever hurt you, and your brother, and your
4 sister the way that Jeffrey did?

5 A. I don't think so.

6 Q. Are you in counseling?

7 A. Yes, sir.

8 Q. How long have you been in counseling?

9 A. Probably since I've been with my Grandma Edna.

10 Q. Who do you see?

11 A. Right now I see Ms. Gaye.

12 Q. So have you seen her for weeks, or months, or years, or
13 what?

14 A. I've seen --- I've seen her just --- I saw her the
15 other day. I've been to her office the other day.

16 Q. But, have you been seeing her for a long time?

17 A. Yes, sir.

18 Q. Okay. Do you think you were better now than when you
19 first started counseling with Ms. Gaye?

20 A. Yes, sir.

21 Q. Who do you live with now?

22 A. I live with my Grandma Edna and my Papaw Gene.

23 Q. Are you happy now?

24 A. Yes, sir.

25 Q. minor3 what was your life like? If you had to sum
26 up your life for the jury when you lived with Jeffrey

1 and Kristina, it's fine to talk about Kristina. How
2 would you describe your life?

3 A. Like a very dark tunnel with no way out and never
4 ending. A road that never did ended. It was painful
5 all the time.

6 Q. minor3 have you talked with me about this case?

7 A. I've --- We've been over the questions you were going
8 to ask me?

9 Q. Have we meet about it?

10 A. Yes, sir.

11 Q. Did you come to my office?

12 A. Yes, sir.

13 Q. Did we come in the courtroom?

14 A. I think one time, yes sir.

15 Q. In those meetings, how many were there? How many times
16 did we meet?

17 A. About three or four times.

18 Q. Did I ever tell you what to say when you got in here?

19 A. Never. You just told me the questions you were going
20 to ask me.

21 Q. Have I ever told you to do anything other than tell the
22 truth in here?

23 A. No, sir.

24 Q. Did I tell you to tell the truth in here?

25 A. Yes, sir.

26 Q. Did I tell you not to lie in here?

1 A. Yes, sir.

2 Q. Have you told the truth about everything today?

3 A. Yes, sir.

4 Q. minor 3 how do you feel about your Mamma?

5 A. The only thing I can say about my Mamma is that she was
6 supposed to be, I guess you could say my protector, but
7 she did the opposite. I think it takes one thing to
8 have a child, but it takes a special person to be a
9 Mother.

10 Q. Was your Mom ever a Mother?

11 A. No, sir. I think she denied the things she was
12 supposed to be.

13 Q. How do you feel about Jeffrey?

14 A. I think --- What I think about Jeffrey is, him --- I
15 --- I think to him the character he will always be to
16 me is really --- I don't think Jeffrey has a heart. I
17 think that he doesn't care about no one but himself,
18 and I don't he ever will. I think he hates the whole
19 world.

20 MR. DANIEL: I don't have any further questions at
21 this time.

22 minor 3 please answer any questions that Ms. Sellers
23 has for you.

24 MASTER Okay.

25 THE COURT: Cross examination.

26 MS. SELLERS: May it, please the Court.

CROSS EXAMINATION BY MS. SELLERS

Q. Good afternoon, minor 3

A. Good afternoon.

Q. minor 3 could you demonstrate for me again how that hogtying thing?

A. Yes 'um. The way Jeffrey had me, he had my arms in the front, and my legs in the front tied together.

Q. Do you remember talking to a Ms. Griggs? Do you remember talking to someone at the Durant Center?

A. Yes, 'um.

Q. You demonstrated that a little differently for her didn't you?

A. No, ma'am.

Q. Are you sure you didn't have your hands in the back and your legs in the back? Do you remember that?

A. Yes, 'um.

Q. So it was in the back?

A. No ma'am, it was in the front.

Q. So you just --- So you were wrong that day when you spoke with her?

A. No, ma'am.

Q. You were just confused?

A. No, ma'am.

Q. Okay. And let me ask you now. You are living with your Grandma Edna now, right?

A. Yes, 'um.