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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

CHRISTOPHER TERRELL GILYARD,

APPELLANT

APPELLATE CASE NO. 2014-001714

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2013-GS-10-5833
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
CHRISTOPHER GILYARD	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

July 28, 2014
Charleston, South Carolina

VOLUME 1 (OF 3)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

DOCKET NO. 2013-GS-10-5833

STATE OF SOUTH CAROLINA)

vs.)

CHRISTOPHER GILYARD)

Defendant)

TRANSCRIPT OF RECORD

July 30, 2014

Charleston, South Carolina

VOLUME 2 (of 3)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

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State v Christopher Gilyard
Proceedings
July 30, 2014

1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MS. ELLIOTT: You asked if we were ready to
4 proceed? We are.

5 THE COURT: Is the defense ready to proceed?

6 MR. COCHRAN: Yes, Your Honor.

7 THE COURT: Does the State intend to introduce any
8 prior bad act direct evidence regarding the defendant?

9 MS. ELLIOTT: Your Honor, our response to that, I
10 asked Mr. Cochran to clarify what he meant by prior bad
11 acts. The evidence that we intend to enter we would not
12 consider to be prior bad acts. They were simply
13 interactions between the victim and the defendant that
14 illustrate the closeness and familiarity of their
15 relationship.

16 THE COURT: Is that between the dates you allege
17 July 1, 2012 and July 17, 2012 or prior to that?

18 MS. ELLIOTT: Judge, we don't have firm dates on
19 when those incidents occurred. They were over a span of
20 time; one of them being a pinky promise between the
21 defendant and the victim. There was an incident in which
22 in a playful manner he started striking her with a belt
23 and there were occasions in which he would ask her to
24 wash his hair. That would happen during his employment
25 and that span of time we believe started as early as mid

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1 May and went through the time of the indictment, Your
2 Honor. And I'm sorry; the other act I believe that he is
3 taking that up with is him allowing her to use his phone
4 when she was on restriction.

5 THE COURT: How are those prior bad acts I guess is
6 what I'm trying to figure out because none of that is
7 criminal in nature?

8 MR. COCHRAN: Yes, Your Honor, well ---

9 THE COURT: --- it's grooming behavior.

10 MR. COCHRAN: Well, if it's grooming then it's a
11 prior bad act.

12 THE COURT: Well, there are a lot of things that
13 are grooming that don't arise to the level of a crime but
14 in this specific case -- a crime.

15 MR. COCHRAN: And Your Honor, I would argue that
16 under the rule it doesn't have to arise to a crime. It
17 has to be a prior bad act against the defendant. And if
18 it is, its inadmissible character evidence. If it's not,
19 but ---

20 THE COURT: --- a prior bad act is something that
21 contemplates something that is approaching what we would
22 consider a violation of law that is not subject to a
23 conviction. That's generally what a prior bad act is.

24 MR. COCHRAN: And Your Honor, in this case ---

25 THE COURT: --- otherwise it's character and that's

State v Christopher Gilyard
Proceedings
July 30, 2014

1 a whole other ball game.

2 MR. COCHRAN: And Your Honor, from my talks with
3 the Solicitor this is -- one of these incidents is in
4 discovery and one is not. I'm not objecting to the pinky
5 promise that they are referring to. I don't object to
6 that coming in. I'm objecting to him the incidents where
7 he is playfully hitting the victim with a belt and an
8 incident when he is asking the victim to wash his hair or
9 instances where he is doing that. Your Honor, that is --
10 it's irrelevant unless it's being offered to show ---

11 THE COURT: --- well, I don't know if it's relevant
12 or not. I haven't heard any of the case yet so you will
13 have to make a contemporaneous objection. I can't rule
14 in a vacuum when I don't know anything about the case and
15 y'all do.

16 MR. COCHRAN: Yes, Your Honor.

17 THE COURT: So that would not be appropriate for me
18 to rule in advance on. So when I think of 404 (b)
19 evidence I'm thinking prior bad acts not the subject of a
20 conviction but subject to the conviction that are clear
21 cut in nature. These are not; I would assume the State
22 would argue that is res gestae and is part of a continuum
23 of behavior and part of a continuum of criminal
24 enterprise. I would have to hear it in its context. You
25 would have to make a contemporaneous objection.

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July 30, 2014

1 MR. COCHRAN: Yes, Your Honor.

2 THE COURT: Now the 16-3-659.1 proffer proof as
3 well as the motion to offer evidence. I assume the State
4 objects?

5 MS. ELLIOTT: We do, Your Honor.

6 THE COURT: I will hear those matters In-Camera at
7 the time that the witnesses are offered and make a
8 contemporaneous ruling.

9 MS. ELLIOTT: Yes, Your Honor.

10 THE COURT: But there is to be no reference to any
11 of this material during opening argument. And you all
12 are to make me aware prior to any questions being asked
13 on any of this subject matter that it is a matter that
14 needs to be taken up In-Camera. Is everyone clear from
15 the State?

16 MS. ELLIOTT: Your Honor, if he plans on asking the
17 victim it will be for us -- if you are inclined to allow
18 him to go into some of this we would go into it in our
19 direct of the first witness. So I don't know if now
20 would actually be the appropriate time to take that up.

21 THE COURT: Then you need to let me know at the end
22 of the testimony and I'll take it up In-Camera then. But
23 I'm not going to do it now because I still don't have any
24 point of reference in this case.

25 MS. ELLIOTT: Yes, Your Honor.

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1 THE COURT: I would feel equipped to make an
2 adequate ruling on the issue.

3 MS. ELLIOTT: Yes, Your Honor.

4 THE COURT: So if you want to do it that way at the
5 end after you've asked all the question on direct that
6 you want to ask you need to let me know that there is a
7 question of law and I'll take it up In-Camera. And then
8 I'll hear Mr. Cochran's cross-examination on those
9 questions and we'll go from there.

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State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 THE COURT: Now there is a motion to compel
2 production of evidence subject to disclosure. I assume
3 this is some form of a renewed Brady or Rule 5 motion?

4 MR. COCHRAN: It is, Your Honor. And I
5 specifically reference Riddle v Osmond [phonetic]. The
6 reason why I do this is because in a case like this where
7 statements and inconsistent statements are so important
8 to the defense the State has indicated to me obviously
9 that they have met with their witnesses including the
10 victim in preparation for trial.

11 And we have spoken numerous times over the course of
12 the last couple of weeks preparing for this case and in
13 each conversation a lot of times there is something new
14 that comes up. Like last time we spoke I found out about
15 this accusation that Mr. Gilyard would ask the victim to
16 shampoo him. I found out about another witness in the
17 conversation the week prior to that.

18 Your Honor, under Riddle [phonetic] all prior
19 statements that could be not just exculpatory but could
20 be potential impeachment evidence are required to be
21 disclosed. I just want the State to recognize their
22 continuing duty to disclose all these things that -- any
23 inconsistent statement, any potential impeachment
24 evidence that any witness, including the victim have
25 given them in the course of their discussions about

State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 discovery.

2 THE COURT: Would you like to respond?

3 MS. ELLIOTT: Yes, Your Honor. The State has
4 turned over and in fact we don't believe there have been
5 any inconsistent statements. As new information has come
6 up we have disclosed it to the defense and therefore we
7 have met our burden both under Brady and Rule 5.

8 THE COURT: Okay. Is there anything else before
9 we begin with opening instruction and opening arguments
10 from the State?

11 MS. ELLIOTT: No, Your Honor. The State is ready.

12 THE COURT: From the defense?

13 MR. COCHRAN: Your Honor, my only objection would
14 be I guess in thinking about my motion to offer evidence
15 under 16-3-659.1 my reading of the statute is that it has
16 to be a pretrial ---

17 THE COURT: --- it doesn't say when I have to do
18 it. It just says I have to have an In-Camera hearing.

19 MR. COCHRAN: Yes, Your Honor. And my only
20 objection would be that some of this does go toward
21 motive for bias, which should be things I should be able
22 to point out in my opening.

23 THE COURT: Openings should only be what the
24 evidence will show. You argue creditability of witnesses
25 at the conclusion of the case.

State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 MR. COCHRAN: Yes, Your Honor.

2 THE COURT: I can discern no prejudice to the
3 defendant. 16-3-659.1 requires that the court hold an
4 In-Camera hearing. It does not specify when that hearing
5 takes place. And in light of the fact that I asked for
6 these motions last week when I was in Columbia and I
7 asked for them again on Monday and I was not presented
8 them until about ten minutes ago I think in terms of
9 being efficient and court resources that it is
10 appropriate that I proceed in this manner.

11 Even though we had two lay witnesses who did not
12 come until about fifteen minutes ago but none the less
13 even if I had started at 11:00 when I finished my last
14 jury you all were not present yet. I believe you all
15 arrived around 11:15 or so and that still would not have
16 been sufficient time to have started any type of In-
17 Camera review of the material prior to the jury arriving
18 and not having to have them wait an extended period of
19 time.

20 But the statute requires that the court shall order
21 an In-Camera hearing to determine whether the proposed
22 evidence is admissible under subsection (1) but it does
23 not specify when that hearing must take place. An In-
24 Camera hearing is a hearing that takes place outside of
25 the presence of the jury where the court has argument, if

State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 necessary, and makes a contemporaneous ruling regarding
2 the admissibility of the testimony or the evidence.
3 Please bring in the jury for me Mr. Major and bring in
4 Mr. Varner, number 364 last; he is the Foreperson.

5 MS. HERRING-LASH: Your Honor, one of the -- of his
6 other motions is to sequester witnesses.

7 THE COURT: You know what? I wrote a note to
8 myself about that and I forgot. Is there any exception
9 from the State on that?

10 MS. HERRING-LASH: No, Your Honor. We only --
11 these family individuals here are not witnesses. The
12 mother and the daughter are in the other room.

13 THE COURT: I assume then that you agree with the
14 motion to sequester since it was your own motion, Mr.
15 Cochran?

16 MR. COCHRAN: Yes, Your Honor.

17 MS. HERRING-LASH: Your Honor, our case agent is
18 present.

19 THE COURT: And with the witnesses being
20 sequestered however I still need you all to have somebody
21 out there to get them expeditiously because I don't want
22 the jury to have to wait long periods of time for us to
23 locate folk who may be called as witnesses.

24 MS. HERRING-LASH: They are right there in this
25 little room.

State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 THE COURT: Perfect. Sometimes people go out there
2 and they get bored and they go to the bathroom and they
3 go downstairs.

4 MR. COCHRAN: And just for the record, Your Honor,
5 you have denied my motion for an In-Camera hearing?

6 THE COURT: I have not denied your motion. We're
7 going to have an In-Camera hearing. The statute does not
8 specify when that hearing has to take place.

9 MR. COCHRAN: And for the 404(b) evidence same
10 ruling?

11 THE COURT: I haven't heard anything that rises to
12 the level of prior bad act but I've instructed both of
13 you that none of that comes in without an In-Camera
14 hearing. But I don't have to have an In-Camera hearing
15 on 404 evidence.

16 MR. COCHRAN: Yes, Your Honor.

17 THE COURT: You have to make a contemporaneous
18 objection.

19 MR. COCHRAN: Yes, Your Honor.

20 THE COURT: My estimation of what I've heard so far
21 does not rise to the level of prior bad acts, but that
22 still doesn't eliminate your responsibility to make a
23 contemporaneous objection. But I'm still instructing the
24 State not to go into any of it without me hearing it In-
25 Camera.

State v Christopher Gilyard
Motion to Compel
July 30, 2014

1 MS. ELLIOTT: And Your Honor, that's why I was
2 clarifying exactly what ---

3 THE COURT: --- and not any mention in opening
4 argument until such time as I have been able to hear it
5 In-Camera.

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State v Christopher Gilyard
Jury Sworn
July 30, 2014

1 CLERK OF COURT: Do you swear or affirm that you
2 shall well and truly try, and a true deliverance make
3 between the State of South Carolina and the defendant at
4 the bar, whom you shall have in charge, and a true
5 verdict render according to the evidence and the laws so
6 help you God? If so, please say I do.

7 [Whereupon, all jurors say I do]

8 CLERK OF COURT: You may be seated.
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State v Christopher Gilyard
Opening Instructions to Jury
July 30, 2014

1 THE COURT: Ladies and gentlemen, you have been
2 selected for the case of the State of South Carolina
3 versus Christopher Terell Gilyard, indictment 2013-GS-10-
4 5833.

5 What I am now going to say to you will be intended
6 to serve as some preliminary instructions in this case so
7 that you will know how we will be proceeding in the trial
8 of this case. And again as I've indicated you have
9 notepads. Please put your juror number on that white
10 sticker and I will give you some instructions regarding
11 note taking near the conclusion of this instruction.

12 These are just preliminary remarks on procedure.
13 They are not what we call a charge on the law. Charge is
14 a legal term of ours that simply means instructions. So
15 when you hear me use the word charge and instructions
16 they are interchangeable terms. I will give you a charge
17 on the law in this case at the end of the case before you
18 retire to consider your verdict.

19 The defendant is charged by an indictment filed in
20 this court with the crime of Criminal Sexual Conduct with
21 a Minor 2nd degree, the elements of which I will explain
22 to you at the conclusion of the case. The indictment,
23 ladies and gentlemen, is simply the charging document.
24 In other words it is simply the document which contains a
25 charge or charges made against the defendant and it is

State v Christopher Gilyard
Opening Statement by Ms. Elliott
July 30, 2014

OPENING STATEMENT

BY MS. ELLIOTT:

Good afternoon ladies and gentlemen. In the process of this trial you're going to get to meet a little girl named Minor. She is 16 years old. She is about to start her junior year at High School. And at High School all the students there basically pick a trade that they are going to hopefully practice once they get out of high school. And Minor has elected to go into Cosmetology.

Well, the only place -- she doesn't just get to practice cosmetology at school. Her mother is the owner of Shear Beauty Salon, which is in West Ashley. It's basically kind of at the intersection of Sam Rittenberg and Orange Grove Road. She has been going to the salon with her Mom for years and years and years. As she got older she started helping out with towels, washing hair.

She also helps her mother at another position that she holds. Her Mom, Tralane, cuts hair at two local nursing home slash rehab centers. And so Minor will go with her often and wash the ladies hair and set it for them and help out and get a little practice. In the summer of 2012 Minor was 14 years old and that summer was a little different. She didn't get to go to the nursing homes all that much because her nephew, Nephew who

State v Christopher Gilyard
Opening Statement by Ms. Elliott
July 30, 2014

1 was three years old was visiting that summer. And Nephew
2 was exactly the kind of little boy you would expect a
3 three year old to be; he wasn't one to sit still. So the
4 nursing home invited him not to come back.

5 So what Tralane would do is she would take her
6 daughter Minor and her grandson, Nephew, and drop them off
7 at Shear Beauty when she would go to work at the nursing
8 home, which is usually about 11:00 in the morning. Now
9 they weren't there alone. There were two other employees
10 of Shear Beauty who were typically there. One, Angie
11 Fuller; she had been working there for years, and the
12 other person was the defendant, Christopher Gilyard.

13 Now Christopher Gilyard had only been working there
14 for a couple of months. He's a barber. Minor mother,
15 Tralane had met him when he had started cutting her
16 cousin's son's hair. She thought he did a good job,
17 invited him to start renting a booth there so he could
18 build up a clientele.

19 Minor and Mr. Gilyard for all intents and purposes
20 got along well. They would joke around, they were
21 friendly. In fact, he would every now and then let her
22 use his phone because Minor had gotten in a little
23 trouble, she was on restriction that summer and wasn't
24 allowed to use her phone. He would slip her his phone
25 and let her go on Facebook, social networking sites.

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Opening Statement by Ms. Elliott
July 30, 2014

1 They pinky swore they wouldn't tell her Mom; he covered
2 for her. As far as Minor knew Christopher Gilyard was a
3 good family friend.

4 Well, one particular day in July the morning started
5 as it normally did. It was we believe a Wednesday.
6 Tralane had to go to the nursing home to do hair so she
7 dropped Nephew and her daughter off at Shear Beauty and she
8 went about to do her job. When she left Angie and
9 Christopher Gilyard were present.

10 Well, as the day progresses Angie doesn't usually
11 work a full day on Wednesdays. She actually decided to
12 leave a little early. As Minor remembers it, it was
13 when the Soaps were on so it was a little bit after
14 lunch. So Angie leaves and it's just Nephew, Minor, and
15 the defendant present. Nephew is three so he's got to take
16 a nap. What they used to is set up a mat kind of in
17 front of a coffee table that they had in the salon for
18 him to take a nap on.

19 As he was drifting off to sleep Minor decided she
20 needed to use the restroom and the restroom is located in
21 the far back of the salon. First you have to go into
22 kind of a very narrow hallway, cut to the right, and then
23 it's right there on your left. Well, as she comes out of
24 the bathroom Christopher Gilyard is standing in front of
25 her. She thought it was a little odd but she just tries

State v Christopher Gilyard
Opening Statement by Ms. Elliott
July 30, 2014

1 to go around him but he stops her. He starts touching at
2 her chest and she starts to kind of push him away but he
3 doesn't back down. She goes to try and walk down the
4 hallway to get out and he pushes her to the ground and
5 starts reaching for her pants.

6 She's terrified. She wants to scream out and he
7 tells her shut the fuck up. He keeps going at her pants.
8 He says if you tell anyone I'll kill you. That's when
9 the defendant removes her pants, pulls down his own, and
10 vaginally raped the victim.

11 He gets up and goes to the bathroom. Minor thinks
12 that's where he ejaculated. Once he leaves she gets up,
13 still scared, still terrified, his words still ringing in
14 her head and she goes into the bathroom and she fixes
15 herself up. Her nephew is still there on the ground
16 sleeping.

17 As so she tries to calm herself down. She decides
18 she is going to just sit under one of the hairdryers and
19 let the warm air warm her up and just wait. She doesn't
20 know what to do; she's just 14. The defendant he starts
21 gathering his stuff and he heads out the door. But
22 before he leaves he reminds her if you tell anyone I'll
23 kill you. Minor believed him. She kept it secret that
24 day. She kept it secret as she saw her Mom and other
25 family members. She kept that secret that day, and the

State v Christopher Gilyard
Opening Statement by Ms. Elliott
July 30, 2014

1 next day, and the next day, and the next day. She kept
2 that secret as the defendant kept coming into work day
3 after day. She kept that secret with everybody going
4 about their daily life. It's almost a month later, a
5 month later, when Christopher Gilyard is now kind of not
6 been showing up at work for a while.

7 Her Mom starts calling him being like hey, why
8 aren't you here? One day Minor just can't keep it in
9 anymore and she said why? Why are you calling and
10 finding out if he is going to come back? Her Mom, using
11 mother's intuition, realizes that something is up so she
12 asked her what's going on. What's going on? Minor at
13 first says nothing, nothing. I just don't know why you
14 want him back. So her mother says well I already know so
15 you may as well tell me. And that's when Minor tells
16 the secret that she has held on to for weeks; how the
17 defendant raped her.

18 Ladies and gentlemen, those are the facts that bring
19 us here today in the State versus Christopher Gilyard.
20 The defendant has been charged with Criminal Sexual
21 Conduct with a Minor in the 2nd degree. Now at the end
22 of this trial the Judge is going to give you a full
23 instruction on the law, kind of like she already did, and
24 explain to you the law that you are to apply to the
25 facts. But I think it's good for us to have a little bit

State v Christopher Gilyard
Opening Statement by Ms. Elliott
July 30, 2014

1 of knowledge about what you're going to see and what the
2 State has to prove. As I said he's charged with Criminal
3 Sexual Conduct with a Minor in the 2nd degree.

4 The first element is a sexual battery. That can
5 include any of the following, which are sexual
6 intercourse, cunnilingus, phalacio, anal intercourse, or
7 any intrusion however slight of any part of a person's
8 body or of any object into the genital or anal openings
9 of another person's body.

10 Because this is CSC with a Minor in the 2nd degree
11 the victim must be 14 years old or younger and the
12 defendant has to be older than the victim. You will note
13 that force is not an element in this crime and consent is
14 not a defense.

15 Ladies and gentlemen, after you have heard all the
16 testimony in this case and seen the evidence I am
17 confident that you will return the only right verdict,
18 which is finding the defendant guilty of Criminal Sexual
19 Conduct with a Minor in the 2nd degree.

20 THE COURT: Mr. Cochran, you may proceed when you
21 are ready.

22 MR. COCHRAN: Thank you, Your Honor. May it please
23 the court?

24 THE COURT: Yes, sir.
25

State v Christopher Gilyard
Opening Statement by Mr. Cochran
July 30, 2014

1 OPENING STATEMENT

2 BY MR. COCHRAN:

3 On a summer afternoon in the middle of the day in a
4 salon that was open for business a 14 year old girl says
5 that she was sexually assaulted. That, ladies and
6 gentlemen, is the State's case in its entirety; that one
7 accusation.

8 Anybody who has ever been alone with a teenage girl
9 for any length of time could be sitting where Christopher
10 Gilyard is sitting today because of a story that a 14
11 year old girl told. She told the story of a violent
12 sexual assault that took place in the daytime in an open
13 business. People coming and going at this business but
14 nobody noticed anything was out of the ordinary on this
15 day.

16 Even though she says that this was a violent sexual
17 assault pushing her to the ground, holding her on the
18 ground, pinning her down, covering her face with his
19 hand, yelling at her, pulling her clothes off forcibly a
20 violent sexual assault takes place and then she gets up
21 and goes and sits under a hair dryer and stays in the
22 business with his man. People come and go; nobody
23 notices that anything is out of the ordinary. She wasn't
24 injured, she wasn't -- her clothes weren't torn, her
25 clothes weren't damaged. There was no sign that this

State v Christopher Gilyard
Opening Statement by Mr. Cochran
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1 happened. There was nothing that would ever indicate
2 that this had happened. The reason for that is that this
3 was a story. It was a story she told that could not be
4 supported by facts. It was a story she told that could
5 not be supported by the truth.

6 But once she told the story once and told it again,
7 and again, and again, and her mother, and police, and
8 investigators, and counselors were listening to her story
9 there was no turning back. There was no taking it back
10 at that point and here we are today with a story. The
11 entire State's case, a 14 year old girl's story that is
12 supported by not one factual truth; the reason it's not
13 supported by any facts is because her story is a lie and
14 Christopher Gilyard is innocent.

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1 THE COURT: Ladies and gentlemen, we're going to
2 take a very brief break for me to deal with that other
3 jury question after which we will resume. I anticipate
4 we will break at 1 o'clock for lunch just for your
5 planning purposes.

6 Please do not discuss the case and please leave --
7 you can sit your notepads because I have to bring my
8 other jury in, set them directly in front of you on the
9 -- and then those who are behind you if they could just
10 hand their pads to you so you could sit those right next
11 to your pad. Then when you come back in all you have to
12 do is give them to one another. Thank you for being so
13 accommodating and I appreciate your patience. If you
14 will go with the bailiffs for me please.

15 [Whereupon, the jury exits at 12:32 p.m.]

16 [Whereupon, the trial is in recess from 12:32 p.m.
17 until 12:40 p.m.]

18 THE COURT: Is the witness ready?

19 MS. HERRING-LASH: Yes, Your Honor.

20 THE COURT: You can get the jury, Mr. Sutler.

21 [Whereupon, the jury enters at 12:42 p.m.]

22 THE COURT: Thank you ladies and gentlemen, I
23 appreciate your patience. We will now resume testimony.
24 The State may proceed.

25 MS. ELLIOTT: The State calls Minor

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1 [Whereupon, Minor comes forward]

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]

4 CLERK OF COURT: If you could please state your
5 first and last name, spell both your first and last name
6 clearly and loudly into the microphone please.

7 THE WITNESS: Minor .

8 THE COURT: You may proceed.

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State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

1 Minor
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. ELLIOTT:
6 Q. Good afternoon Minor . How old are you?
7 A. Sixteen.
8 Q. And what's your date of birth?
9 A. .
10 Q. And where do you go to school?
11 A. Academy.
12 Q. I think you're going to need to speak up a little
13 bit louder. Can you do that for me? It's actually the
14 other microphone that is working today. So you said you
15 went to high school where?
16 A. Academy.
17 Q. And what grade are you about to start?
18 A. Eleventh.
19 Q. And at do they make you pick a trade in that
20 high school?
21 A. Yes.
22 Q. And what trade have you decided to go into?
23 A. Cosmetology.
24 Q. Do you get a lot of hands-on experience at school?
25 A. Yes, ma'am.

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

- 1 Q. Do you get hands-on experience anywhere outside of
2 school?
3 A. Yes, ma'am.
4 Q. Where is that?
5 A. At my Mother's salon.
6 Q. What's the name of her salon?
7 A. Shear Beauty.
8 Q. And how long have you been going and helping your
9 Mom out at the salon?
10 A. A long time basically.
11 Q. As long as you can remember?
12 A. Yes.
13 Q. And where is that salon located?
14 A. West Ashley.
15 Q. Does your Mom work anywhere other than just in that
16 salon?
17 A. Yes, ma'am.
18 Q. Where else does she work?
19 A. She works at a rehabilitation center down the street
20 from her salon.
21 Q. And do you know how often she works there?
22 A. Three days a week.
23 Q. Do you ever go there and help?
24 A. Yes, ma'am.
25 Q. What do you do when you're there?

State v Christopher Gilyard

Minor

-Direct Examination by Ms. Elliott

July 30, 2014

1 A. Sometimes I help her do hair and bring people back
2 and forth to her.

3 Q. Do you like to do that?

4 A. Sometimes.

5 Q. How often are you helping your Mom out at the salon?

6 A. When I'm not busy or whenever she needs me to.

7 Q. What about during the summer? How much time would
8 you say you spend there in the summer?

9 A. Like right now or before?

10 Q. Just in general. Actually, you know what? Let's
11 talk about the summer of 2012. How often were you going
12 to the salon with her?

13 A. Basically every day.

14 Q. Was anybody visiting and staying with your family
15 during that time?

16 A. Yes.

17 Q. Who?

18 A. My nephew.

19 Q. And what's his name?

20 A. Nephew .

21 Q. How old was Nephew then?

22 A. Three.

23 Q. And in the summer of 2012 how old would you have
24 been?

25 A. Fourteen.

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

- 1 Q. And so would he come to the salon with you?
- 2 A. Yes.
- 3 Q. Was he allowed to go to the nursing homes?
- 4 A. At first, but then no.
- 5 Q. Why wasn't he allowed to go back anymore?
- 6 A. Because he didn't behave.
- 7 Q. And so where would y'all go instead of going to the
- 8 nursing home?
- 9 A. To the main salon.
- 10 Q. I'm going to show you some pictures now, okay.
- 11 MS. ELLIOTT: May I approach, Your Honor.
- 12 THE COURT: You may.
- 13 Q. [Ms. Elliott] I'm going to show you what has been
- 14 admitted as State's exhibit 1.
- 15 [Whereupon, the witness is shown photograph]
- 16 Q. What is that?
- 17 A. The main salon.
- 18 Q. And you may have told me this. Do you know the
- 19 address?
- 20 A. 1209-B Sam Rittenberg Boulevard.
- 21 Q. And who all was working at Shear Beauty during the
- 22 summer of 2012?
- 23 A. My Mom, my aunt Angie, and Gillie [phonetic], well
- 24 Christopher.
- 25 Q. Do you know Christopher's full name?

State v Christopher Gilyard

Minor -Direct Examination by Ms. Elliott

July 30, 2014

- 1 A. Christopher Gilyard.
- 2 Q. But you called him Gillie?
- 3 A. Yes.
- 4 Q. Did everybody call him Gillie?
- 5 A. Yes.
- 6 Q. What does Angie do there?
- 7 A. She does hair.
- 8 Q. And how long has she been working there do you know?
- 9 A. For about ten years.
- 10 Q. And what did Gillie do there?
- 11 A. He is a barber.
- 12 Q. And do you know about how long he had worked there?
- 13 A. For a month.
- 14 Q. Do you see Gillie in the courtroom today?
- 15 A. Yes.
- 16 Q. Can you point him out and describe something that he
- 17 is wearing?
- 18 A. In the brown shirt.
- 19 Q. Is he wearing anything on his face?
- 20 A. Glasses.
- 21 Q. I'm going to show you what has been admitted into
- 22 evidence as State's exhibit 2.
- 23 [Whereupon, the witness is shown photograph]
- 24 Q. Where is that?
- 25 A. That's the room where Gillie used to work in.

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

- 1 Q. So this is just part of the salon?
2 A. Yes, ma'am.
3 Q. And this was where?
4 A. The room Gillie used to work in.
5 Q. Next I'm going to show you what has been marked as
6 State's 3.
7 [Whereupon, the witness is shown photograph]
8 Q. What does that show?
9 A. The common area.
10 Q. And where do the beauticians and stylists do the
11 hair? Can you point for me on the screen? It will make
12 a mark.
13 A. Right here [indicates].
14 Q. And in relation to knowing that that's where -- so
15 who would work in that section?
16 A. My aunt Angie and my Mom.
17 Q. And kind of draw for us a little bit where the line
18 where Gillie would be working.
19 A. Over this way [indicates].
20 Q. Can you clear that out for me?
21 [Whereupon, the witness complies]
22 Q. I'm going to show you two more pictures.
23 [Whereupon, the witness is shown photograph]
24 Q. Explain to me where that is in the salon.
25 A. That's by the front door.

State v Christopher Gilyard

Minor

-Direct Examination by Ms. Elliott

July 30, 2014

1 Q. Okay. And so Gillie's section would be where?

2 A. Right here [indicates].

3 Q. All right. And then for now one more; this is

4 State's exhibit 5.

5 [Whereupon, the witness is shown photograph]

6 Q. Where does that door go to?

7 A. The storage room and the bathroom.

8 Q. And are the storage room and the bathroom right off

9 that door? Is there a hallway back there?

10 A. Oh, yes ma'am.

11 Q. I'm going to show you one other thing. I'm going to

12 show you a calendar because you talked about that Gillie

13 hadn't been working there long.

14 [Whereupon, the witness is shown calendar]

15 Q. Can you see the dates on there well?

16 A. Yes, but just not the Sunday dates.

17 Q. Not the Sunday dates. Is the salon open on Sunday?

18 A. No.

19 Q. Then we won't worry about that. What days is the

20 salon open?

21 A. Tuesday through Saturday.

22 Q. Okay. So did Gillie start -- you think Gillie had

23 worked there about a month. Do you remember about what

24 month he started?

25 A. June.

State v Christopher Gilyard

Minor -Direct Examination by Ms. Elliott

July 30, 2014

1 Q. Okay. And so this is -- let me pull this down a
2 little bit so everyone can see -- this is July 2012. And
3 do you remember when Gillie stopped coming into work?

4 A. About the week of the 16th.

5 Q. About the week of the 16th. Now did he come into
6 work at all that week?

7 A. Not that I remember.

8 Q. Well, let's think about this. I know that there is
9 a family event in July. When is your step-father's
10 birthday?

11 A. The .

12 Q. Did you see him at all the week of your step-
13 father's birthday?

14 A. No, ma'am.

15 Q. Let's just mark those dates out. And how long
16 before your step-father's birthday was kind of the last
17 day that you saw him?

18 A. Maybe about two weeks.

19 Q. You think it was about two weeks?

20 A. Yes, like on the weekend of the 13th through the
21 15th.

22 Q. So you think the weekend of the 13th was the last
23 time that you saw him?

24 A. Uh Huh.

25 Q. So it could have been the 14th but it couldn't have

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

1 been the 15th?

2 A. No.

3 Q. But he worked that whole time before that?

4 A. [Nods head]

5 THE COURT REPORTER: Is that yes?

6 A. Yes, ma'am.

7 MS. ELLIOTT: Judge, at this time I think we have a
8 matter to take up.

9 THE COURT: Mr. Foreman and ladies and gentlemen, I
10 have a matter of law to take up with the attorneys that
11 is probably going to take us a few minutes so this may
12 well be an opportune time for us to break for lunch
13 because I have a verdict in my other case as well that I
14 need to deal with. So we're going to break until -- I
15 think that is probably going to take me about 30 minutes
16 to deal with in addition to this so we're going to break
17 until 2:30.

18 During the break please do not discuss the case
19 among yourselves. Please do not have any contact with
20 anyone in or about the courthouse when you return. You
21 will come directly to your jury room. And please don't
22 make any comments regarding your jury service on any
23 social networking sites. If you would put your notebooks
24 on the banister as you did before and we'll secure those
25 during the break. Again, we appreciate your patience.

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott
July 30, 2014

1 We do not take your time for granted. Yes, 2:30; we'll
2 see you at that time. Thank you so much. Have a good
3 lunch.

4 [Whereupon, the jury exits at 12:53 p.m.]

5 THE COURT: You may proceed.
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State v Christopher Gilyard
Minor -In-Camera-Direct Examination by Ms. Elliott
July 30, 2014

1 IN-CAMERA-DIRECT EXAMINATION
2 BY MS. ELLIOTT:
3 Q. How did you and Gillie get along?
4 A. Pretty well.
5 Q. What did you do with or for Gillie?
6 A. Sometimes I would wash his hair or clean up his
7 station area.
8 Q. Would he ask you to do those things?
9 A. Yes, ma'am.
10 Q. Would he ever give you anything in exchange for
11 that?
12 A. Money.
13 Q. What about phone usage?
14 A. Yes.
15 Q. Tell me about that. Were you allowed to use the
16 phone that summer?
17 A. [Unintelligible]
18 THE COURT REPORTER: I'm sorry; I didn't hear your
19 answer.
20 A. Oh, no ma'am.
21 Q. [Ms. Elliott] And how did it work out that he let
22 you use the phone?
23 A. Pinky swear.
24 THE COURT: I'm sorry; I couldn't hear you.
25 A. Pinky swear.

State v Christopher Gilyard
Minor -In-Camera-Direct Examination by Ms. Elliott
July 30, 2014

1 Q. [Ms. Elliott] Explain that to me. What were you
2 pinky swearing about?

3 A. That I could use the phone to check my Facebook or
4 any other social network that I use.

5 Q. And why was he pinky swearing to that?

6 A. Because ---

7 MR. COCHRAN: --- objection. Asked and answered.

8 THE COURT: We're In-Camera. Overruled.

9 A. I'm sorry; I got lost. What was the question again?

10 Q. [Ms. Elliott] Why did you have to pinky swear about
11 that?

12 A. Oh, because at the time I wasn't supposed to use it
13 so I asked him not to tell my Mom that I used the phone.

14 MS. ELLIOTT: Judge, that's the sum total of what I
15 was going to ask on those activities.

16 THE COURT: Any cross-examination on those
17 questions?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Is there still an objection to the
20 question?

21 MR. COCHRAN: Yes, Your Honor.

22 THE COURT: What's the basis of your objection?

23 MR. COCHRAN: Your Honor, my objection is that
24 those are prior bad acts and that they are inadmissible
25 character evidence of my client. The only reason that

State v Christopher Gilyard

Minor

-In-Camera-Direct Examination by Ms. Elliott

July 30, 2014

1 they could be relevant is to demonstrate that he was
2 acting inappropriately with the alleged victim and that
3 would constitute character evidence to show that he
4 sexually assaulted her in conformity with those prior
5 acts.

6 THE COURT: Would the State like to respond?

7 MS. ELLIOTT: Actually Judge before we get to --
8 I'm sorry; I did have one other question that I omitted.
9 I was going to ask her if there was ever a time that the
10 defendant hit her with a belt. I did leave out that line
11 of questioning.

12 THE COURT: Go ahead and ask the question.

13 Q. [Ms. Elliott] Was there ever a time where the
14 defendant hit you with a belt?

15 A. Yes.

16 Q. Tell me about that?

17 A. My Mom was telling him about something like --
18 something that I did; I forgot what it was about. And
19 he just got the belt and just started -- at first I
20 thought he was playing but then it actually started
21 hurting.

22 Q. But you said it started off as playful?

23 A. Yes.

24 Q. Where did he get the belt?

25 A. Off his pants.

State v Christopher Gilyard
Minor -In-Camera-Direct Examination by Ms. Elliott
July 30, 2014

1 MS. ELLIOTT: I'm sorry, Judge that is -- and I
2 think the only other question that might be germane to
3 that was...

4 Q. [Ms. Elliott] Was there ever a time that your Mom
5 didn't want you going into his room anymore?

6 A. Yes.

7 Q. And when was that?

8 A. Maybe about a couple of days after the hitting with
9 the belt thing.

10 Q. A couple of days after hitting with the belt.

11 MS. ELLIOTT: I'm sorry; Judge. That is the sum
12 total of it. But to respond to the ---

13 MR. COCHRAN: --- if I could? I'm sorry Your
14 Honor, could I just ask one question?

15 THE COURT: You may.

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State v Christopher Gilyard

Minor

-In-Camera-Cross-Examination by Mr. Cochran

July 30, 2014

1 IN-CAMERA-CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. Ma'am, was the incident with the belt where your
4 Mother did not want you to go into Mr. Gilyard's room was
5 that before or after he assaulted you?

6 A. Before.

7 Q. Thank you. No further questions.

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State v Christopher Gilyard
In-Camera-Proceedings
July 30, 2014

1 THE COURT: Any redirect as a result of that
2 question?

3 MS. ELLIOTT: No, Your Honor.

4 THE COURT: I thought you were going to ask the
5 other questions as well or are you not at that point?

6 MS. ELLIOTT: I'm not at that point. I can ask
7 them now if you want me to.

8 THE COURT: No, we can wait. Respond to his
9 objection.

10 MS. ELLIOTT: Judge, none of these things are
11 criminal activities. They simply -- I'm listing them to
12 show the closeness in relationship, the intimacy there.
13 They just simply don't fall under 404(b). They are not
14 criminal in nature. They are not in and of themselves
15 speaking as to his character.

16 THE COURT: The objection is overruled. This
17 testimony goes to the nature of the relationship between
18 the -- between Minor and Mr. Gilyard, their
19 interaction with one another in the hair salon. It does
20 not remotely rise to the level of character evidence or
21 him acting in conformity with it. It merely really is
22 about the continuum of their interaction and to some
23 extent is res gestae. Your motion [sic] is overruled.
24 The evidence is probative and it is not prejudicial to
25 the defendant. We'll break for lunch until 2:30. Have a

State v Christopher Gilyard
In-Camera-Proceedings
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1 good lunch. I'll see you all at that time.

2 MR. COCHRAN: Thank you, Your Honor.

3 THE COURT: You're welcome. And ma'am during this
4 break you cannot discuss your testimony with anyone. You
5 may step down.

6 [Whereupon, the witness exits the witness stand]

7 [Whereupon, court is in recess from 12:59 p.m. until
8 2:40 p.m.]

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State v Christopher Gilyard
Proceedings
July 30, 2014

1 THE COURT: Is the State ready to proceed?

2 MS. ELLIOTT: We are, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. COCHRAN: Yes, Your Honor.

5 MS. ELLIOTT: Would you like to have the witness

6 retake the stand ---

7 THE COURT: --- yes, if the witness would retake

8 the stand. I'll remind her she is still under oath.

9 Then again when you get to the point of the other

10 testimony if you could let me know that it needs to be

11 taken up In-Camera.

12 MS. ELLIOTT: Yes, Your Honor.

13 [Whereupon, the witness returns to the witness

14 stand]

15 THE COURT: Go ahead and get the jury for me,

16 please.

17 [Whereupon, the jury enters at 2:45 P.M.]

18 THE COURT: Ladies and gentlemen, I hope you had a

19 good lunch. We're now going to resume testimony. And

20 again, we appreciate your patience. The State may

21 proceed.

22 MS. ELLIOTT: Thank you, Your Honor.

23 THE COURT: You're welcome.

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State v Christopher Gilyard

Minor

-Direct Examination by Ms. Elliott (resumes)

July 30, 2014

1 DIRECT EXAMINATION (RESUMES)

2 BY MS. ELLIOTT:

3 Q. So Minor when we last left off I think you were
4 telling us who the two other beauticians in your Mom's
5 shop were. And who were they again?

6 A. My aunt Angie and Christopher.

7 Q. And how did you and Christopher get along?

8 A. Very well.

9 Q. Okay. What were some things that you guys either
10 did together or that you did for him?

11 A. Clean up his station or wash his hair.

12 Q. To clean up his station or wash his hair? Can you
13 speak up a little bit more for me?

14 MR. COCHRAN: And Your Honor, just objection for
15 the record.

16 THE COURT: It's already been noted.

17 MR. COCHRAN: Yes, Your Honor.

18 THE COURT: And I've already ruled
19 contemporaneously.

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: You may continue.

22 Q. [Ms. Elliott] Why would you be cleaning up his
23 station or washing his hair?

24 A. Because he asked me to and he had given me money for
25 it.

State v Christopher Gilyard
Minor -Direct Examination by Ms. Elliott (resumes)
July 30, 2014

1 Q. Did he ever let you do any other things?

2 A. Use his phone when I was on restriction.

3 Q. And tell me a little bit about that.

4 A. I was on punishment from my phone so I asked to use
5 his phone to go on Facebook or the other social networks.

6 Q. Who took your phone away?

7 A. My Mom.

8 Q. And was there ever any kind of pinky promise in
9 relation to that?

10 A. Yes.

11 Q. Tell me how that kind of worked out.

12 A. We made a pinky promise when I used the phone -- we
13 pinky swore that he wouldn't tell my Mom that I used the
14 phone to go on the social networks.

15 Q. Did anything ever happen with a belt?

16 A. Yes.

17 Q. Tell me about that.

18 A. My Mom was talking to him about something that I did
19 and he started to hit me with the belt. And at first I
20 thought it was playful but when it actually started to
21 hurt it just didn't sit well with me.

22 Q. But it started off playful?

23 A. Yes.

24 Q. And did there ever come a time where you Mom didn't
25 want you going into his little room?

State v Christopher Gilyard

Minor

-Direct Examination by Ms. Elliott (resumes)

July 30, 2014

1 A. Yes.

2 Q. And when was that?

3 A. After the belt incident.

4 Q. Was there ever a time when the only adult in the
5 salon with you was Gillie?

6 A. I'm sorry?

7 Q. Was there ever a time when the only other adult in
8 the salon was ---

9 MR. COCHRAN: --- objection to leading.

10 THE COURT: Rephrase. Leading.

11 Q. [Ms. Elliott] When you would go into the salon there
12 would normally be multiple people there, right?

13 A. Right. ---

14 MR. COCHRAN: --- leading. Objection.

15 THE COURT: You may proceed.

16 MS. ELLIOTT: Judge, may we approach?

17 THE COURT: Yes.

18 [Whereupon, an off the record bench conference is
19 held]

20 THE COURT: Proceed.

21 Q. [Ms. Elliott] When your Mom wasn't there what other
22 adults might you have been alone with in the salon?

23 A. Christopher or my aunt Angie.

24 Q. Okay. Tell me about a time where the only other
25 adult in the salon was Christopher.

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Minor -Direct Examination by Ms. Elliott (resumes)

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1 A. When it was just me and Christopher is what you're
2 saying?

3 Q. Possibly. What I care about is a time where it is
4 just Christopher -- Christopher was the only adult in the
5 salon.

6 A. Oh, okay. There was maybe a couple of times when it
7 was like that.

8 Q. Okay. Do you remember what month that might have
9 been?

10 A. July.

11 Q. Before or after July the 4th?

12 A. Both.

13 Q. Did an incident ever happen -- well, let's talk
14 about the incident that made you come to court today,
15 okay?

16 A. Okay.

17 Q. When did that happen?

18 A. I would say it was after the 4th of July.

19 Q. Do you remember what day of the week you think it
20 was?

21 A. I would say the 11th of July.

22 Q. So that's the date. Do you know what day of the
23 week that was?

24 A. Wednesday.

25 Q. Why do you think it was a Wednesday?

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Minor

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1 A. Because my aunt Angie didn't work on a Tuesday and
2 she always leaves early on Wednesdays. And there was a
3 certain T.V. show that came on -- well, I'm sorry; it's
4 been a long time but -- and my Mom used to go to the
5 nursing home on Wednesdays.

6 Q. And you kind of went into it a little bit. Tell me
7 about what time you think it was that Angie was leaving
8 and why you think it was that time?

9 A. It was in the afternoon because a certain T.V. show
10 came on around the time she was leaving.

11 Q. And who was in the store with you then?

12 A. Christopher and my nephew.

13 Q. And what was your nephew's name again?

14 A. Nephew .

15 Q. Remind me again how old he was?

16 A. Three.

17 Q. And what was ^{Nephew} doing around that time?

18 A. He was -- are you talking about when she left?

19 Q. About the time she left yes, what was he doing?

20 A. Probably eating I think.

21 Q. What happened as the afternoon progressed?

22 A. He was getting ready to take a nap and...

23 Q. Where would he nap in the store?

24 A. In the middle of the store where we have a little
25 table.

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1 Q. Okay. I'm going to show you what has been marked
2 or what has been admitted as State's exhibit 6.

3 [Whereupon, the witness is shown photograph]

4 Q. Can you see where ^{Nephew} would nap in that picture?

5 A. Yes. Do you want me to circle it?

6 Q. Yes, please.

7 A. Here [indicates].

8 Q. Now would he just sleep there on that carpet?

9 A. No, he would sleep on a mat.

10 Q. And we're looking at -- into the common area. Where
11 would the photographer of this picture have been
12 standing?

13 A. In the storage room.

14 Q. Storage room? Okay. I'm going to show you -- can
15 you clear off the mark please?

16 [Whereupon, the witness complies]

17 Q. I'm going to show you what has been admitted as
18 State's exhibit 8.

19 [Whereupon, the witness is shown photograph]

20 Q. What is that a picture of?

21 A. The right side of the storage room.

22 Q. And there is a doorway visible there. Where does
23 that lead?

24 A. To the common area.

25 Q. And there's a doorway right here [indicates]. Where

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1 does that lead?

2 A. The bathroom.

3 Q. I'll show you one more picture for now and that is
4 State's exhibit 7.

5 [Whereupon, the witness is shown photograph]

6 Q. What does that show?

7 A. The left side of the storage room.

8 Q. Just tell me what that is right there [indicates]?

9 A. That was the mat that Nephew slept on.

10 Q. That's still in the store today?

11 A. Yes.

12 Q. So Nephew you said was getting ready for a nap. While
13 he was getting ready for a nap what were you doing?

14 A. I was sitting in the dryer chair.

15 Q. What happened once Nephew fell asleep?

16 A. I was getting ready to put him on the mat but I was
17 unable to so when Christopher came back he sat Nephew down
18 for me. And when I went to go to the bathroom, I used it
19 and then when it was time for me to come out Christopher
20 was right there.

21 Q. Where was he?

22 A. In the doorsill of the bathroom opening.

23 Q. Did he say anything to you?

24 A. Not that I remember. He started touching me.

25 Q. Where did he start touching you?

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- 1 A. On my chest area.
- 2 Q. What did you do when that happened?
- 3 A. I told him to get off me. And then I got past him
- 4 and then I fell on the ground.
- 5 Q. Where were you trying to go?
- 6 A. Out to the common area.
- 7 Q. And you fell on the ground?
- 8 A. Well, I was pushed.
- 9 Q. What happened when you were pushed to the ground?
- 10 A. He flipped me over and then he started taking off my
- 11 blouse.
- 12 Q. Was he saying anything while he was doing that?
- 13 A. Not that I can remember.
- 14 Q. Okay. What happened then?
- 15 A. Once he started taking off my bottoms he started to
- 16 take off his.
- 17 Q. Did you say anything or try to do anything?
- 18 A. Well, I was scared and I was trying to stop him and
- 19 then he told me to shut the F up. And that's when I
- 20 didn't know what else to do.
- 21 Q. So he took off your pants and was trying to start to
- 22 take off his. Then what happened?
- 23 A. Then he peeped out to see if anybody was trying to
- 24 come to the store, into the store.
- 25 Q. What was he peeping out of?

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1 A. The door of the storage room.

2 Q. I'm going to show you what has been admitted as
3 State's exhibit 5.

4 [Whereupon, the witness is shown photograph]

5 Q. That's looking from the common room into that kind
6 of storage room hallway?

7 A. Yes.

8 Q. Where -- can you show us on there kind of where you
9 would have been on the other side of that wall?

10 A. Right here [indicates].

11 Q. And where was he peeking out of?

12 A. Right here [indicates].

13 Q. How was the door?

14 A. It was cracked.

15 Q. So you're on the floor and tell me about where your
16 clothes are?

17 A. I didn't know where they went because they were
18 thrown.

19 Q. Where was your top?

20 A. That was on.

21 Q. Okay. And what was thrown?

22 A. My shorts and my underwear.

23 Q. And what happened then?

24 A. Then Christopher took off his bottoms and then
25 that's when after peeping to see if anybody was coming

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1 that's when he started to have intercourse with me.

2 Q. Can you kind of define for us what intercourse is to
3 you?

4 A. Penis into my vagina.

5 Q. Do you know what made him stop?

6 A. I would say that he was ejaculating or about to.

7 Q. Why do you think that?

8 A. The way his hands were and he went to the bathroom
9 -- well, he rushed to the bathroom.

10 Q. What happened after that?

11 A. After he walked out I went to go try to find my
12 shorts and then I went to the bathroom to clean myself
13 up.

14 Q. And do you know where he was?

15 A. He went back to his station.

16 Q. When you got done in the bathroom what did you do?

17 A. I went back to the dryer I was sitting in.

18 Q. And did anything happen after you were sitting under
19 the dryer?

20 A. He was packing -- well, he got his stuff and he was
21 leaving.

22 Q. Did he say anything to you as he left?

23 A. You better not tell anybody.

24 Q. Did he say anything else?

25 A. I'll kill you.

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1 Q. When he left who was still in the store with you?

2 A. My nephew and then that's when a little bit after he
3 left Ashley and Timothy came and they brought sandwiches
4 to the shop.

5 Q. Who are Ashley and Timothy?

6 A. Timothy is my brother and Ashley is -- was his
7 girlfriend at the time.

8 Q. Did you tell them what had happened?

9 A. No.

10 Q. Did you tell anyone that day what happened?

11 A. No.

12 Q. Were you planning on ever telling anyone what
13 happened?

14 A. No.

15 Q. Did Christopher Gilyard ever come back to work after
16 that day?

17 A. Later that evening, yes.

18 Q. Did he ever come back any days after that?

19 A. Yes.

20 Q. And at some point did he ever stop coming to work?

21 A. Yes.

22 Q. And when did you say that was you thought?

23 A. Maybe after a week. A little bit after July 15th or
24 16th that's when I really never saw him after that.

25 Q. Did you ever end up telling anyone what happened?

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1 A. Yes.

2 Q. Who did you tell?

3 A. My Mom.

4 Q. What made you tell that day?

5 A. She told me that a friend ---

6 MR. COCHRAN: --- objection. Hearsay.

7 THE COURT: Sustained. Hearsay. She cannot say
8 what someone said. What she can say is what she did as a
9 result.

10 Q. [Ms. Elliott] Without saying what someone said to
11 you can you tell us why you told her that day?

12 A. She asked me ---

13 MR. COCHRAN: --- objection. Hearsay.

14 THE COURT: Sustained. Hearsay. She can say what
15 she said to her Mother. She cannot say what her Mother
16 said to her.

17 Q. [Ms. Elliott] What was going on that day with you
18 and your Mom?

19 A. We were coming back from school shopping.

20 Q. And were you in a building? Were you in a vehicle?
21 Were you outside?

22 A. When I told her?

23 Q. Uh huh.

24 A. In a vehicle.

25 Q. And how did she react to you telling her?

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1 A. She was angry and she spun around to go to his
2 house.

3 Q. She spun around physically or in the car?

4 A. In the car.

5 Q. And you said she went to his house?

6 A. Uh Huh.

7 Q. After she tried to go to his house where did she go?

8 A. To my cousin Shantae's house.

9 Q. And did you ever meet with officers?

10 A. Later that evening.

11 Q. Where was that?

12 A. At my Mom's salon.

13 Q. And did you have to go to L-C-C and meet with a
14 woman?

15 A. Yes.

16 Q. What about counseling? Did you ever go see a
17 counselor?

18 A. Yes, ma'am.

19 Q. Did you ever see a doctor?

20 A. Yes, ma'am.

21 Q. If your Mom hadn't asked you that night would you
22 ever have told her what happened?

23 A. No.

24 Q. Why not?

25 A. Because thinking of what I was told. I just didn't

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1 feel comfortable saying anything.

2 Q. What do you mean what you were told?

3 A. The I'll kill you part.

4 Q. And who told you that?

5 A. Christopher.

6 MS. ELLIOTT: Court's indulgence, Your Honor.

7 [Whereupon, Ms. Elliott and Ms. Herring-Lash confer]

8 MS. ELLIOTT: Judge, at this point we have a matter
9 of law.

10 THE COURT: Ladies and gentlemen, I have a very
11 brief matter of law to take up with the attorneys.
12 During this break please do not discuss the case and
13 please leave your notepads in your seats. We appreciate
14 your patience.

15 [Whereupon, the jury exits at 3:03 p.m.]

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1 THE COURT: You may proceed.

2 MS. ELLIOTT: Judge that will be the end of my
3 direct unless you grant his motion under the Rape Shield
4 Law.

5 THE COURT: I have no idea how I could or couldn't.
6 I don't know what the substance of the testimony is.
7 That's the purpose of an In-Camera hearing.

8 MS. ELLIOTT: Your Honor, it's my understanding
9 under the law that he has to make a showing that mainly
10 under the Berkeley County case that that was a false
11 allegation. That it is sufficiently similar and close in
12 time. That showing has not been made.

13 THE COURT: I have no idea what the testimony would
14 be. You asked that you be allowed to question her In-
15 Camera first because if the testimony was allowed you
16 wanted to elicit it. So I need to know what the
17 substance of the testimony is. That's the purpose of an
18 In-Camera hearing. I have no idea what it is. You
19 telling me what it is and what it actually is are two
20 different things. He filed an offer of proof as to what
21 he intended testimony to be. But I don't know that it is
22 going to develop that way.

23 MS. ELLIOTT: Judge, I don't believe the things in
24 his offer of proof he can really elicit through this
25 witness or any witness because he doesn't have the sexual

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1 partners to come forward to testify. He doesn't have --
2 I think the abortion issue is flat out not relevant and
3 he would have to make a showing that anything related to
4 the Berkeley case that that was a false accusation and I
5 don't think he has any witnesses to do that with either.

6 THE COURT: Would you like to respond?

7 MR. COCHRAN: Your Honor, there is a case that the
8 State cited in their preemptory motion, which indicates
9 that we have to prove that something is false if we are
10 intending to offer a false, prior false statement. The
11 only statement that we have that is false is a prior
12 statement that the alleged victim made in a Facebook
13 conversation to her friend. And that was regarding -- it
14 would be admissible impeachment evidence.

15 THE COURT: How would it be impeachment -- how
16 would it be relative impeachment evidence when the
17 underlying subject matter that you're talking about is
18 inadmissible?

19 MR. COCHRAN: Well, let's say for instance if it
20 was not, if it didn't have anything to do with prior
21 instances of sexual conduct it would come in as character
22 evidence of dishonesty.

23 THE COURT: No, the underlying offense that you
24 would have to refer to to make it germane is irrelevant
25 and inadmissible per statute. So you can't do an end run

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1 around the statute to make it admissible upon
2 creditability. That's like saying, and I'll use a civil
3 example that I had recently, where it would not have been
4 admissible if someone, if I remember the exact
5 circumstances, but the subject matter that they were
6 asking about was inadmissible. They asked him about it
7 in a deposition. They weren't exactly forthright about
8 it but it really didn't matter that they were forthcoming
9 or not forthcoming because the underlying question was
10 not admissible.

11 So you can't make something that is impermissible
12 permissible by then asking a question that might elicit
13 an inconsistent answer. Whether she lied or didn't lie
14 about a previous incident is not relevant in this case
15 and is not relevant on her creditability.

16 Whether she lied about your client would be
17 relevant. It would go to motive. It would go to bias.
18 It would go to prejudice. But the fact -- she could have
19 had 20 other cases it really doesn't matter. It doesn't
20 make more or less probable that this did or did not
21 happen.

22 MR. COCHRAN: And Your Honor, my response to that
23 would be that under State v Finley [phonetic] there is a
24 it's actually the statute sets out alternative source of
25 pregnancy or semen ---

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1 THE COURT: --- that's as it relates to
2 alternative. That's in the circumstance where the victim
3 is pregnant or had a child and the source of semen or
4 origin is not related to your client that exculpates your
5 client. That makes it relevant. Or if for example you
6 have a sheet and it has four or five different samples
7 then it's relevant where your client is one of the three
8 or four because then you get to talk about the other
9 seminal sample because it could well exculpate your
10 client.

11 It does not open an Pandora 's Box about anytime
12 someone would have been pregnant. It is very limited in
13 its scope and it is only relevant to your client in
14 interaction with your client. That's the only way it
15 becomes relevant or admissible.

16 MR. COCHRAN: And Your Honor, under State versus --
17 I agree with you -- under State v Finley [phonetic] and
18 under State v Lang [phonetic] they do provide for
19 additional circumstances since they are not specifically
20 set on the statute they provide for specific
21 circumstances where specific acts of sexual conduct are
22 admissible including impeachment, bias, prejudice, motive
23 ---

24 THE COURT: --- but you'd still have to prove to me
25 that it bears on those issues and I haven't heard

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1 anything thus far that it does. I don't know why the
2 Berkeley Case was dismissed. It could have been
3 dismissed for a myriad of reasons. It opens a Pandora's
4 Box that has a tendency to mislead this jury. It goes
5 off into a subject that is not relevant. I don't know
6 why the Berkeley County Solicitor dismissed it. I don't
7 know whether they felt they didn't have enough proof. I
8 don't know whether they felt like the case was just weak.
9 I don't know whether she recanted; I have no idea. But
10 none of that makes it relevant. I mean I don't know why
11 they dismissed that case.

12 MR. COCHRAN: And Your Honor in State v Lang
13 [phonetic] the victim in that case asserted on the stand
14 that he was heterosexual. The defendant was then -- the
15 Supreme Court of South Carolina then ruled that the
16 defendant was allowed to impeach him with specific acts
17 of prior sexual conduct ---

18 THE COURT: --- that's different ---

19 MR. COCHRAN: --- to show that he was homosexual.

20 THE COURT: That's not the same because in that
21 case there was a different set of circumstances
22 factually. It's not the same here. That's different.
23 That was impeachable because if somebody says I was raped
24 by someone and that's not possible because I'm
25 heterosexual and it turns out that they are not that

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1 bears on exculpating someone. It's not the same set of
2 circumstances. It's not factually analogous.

3 MR. COCHRAN: But what the case goes to show is
4 that impeachment evidence can be admissible even when it
5 implicates prior acts of sexual conduct. And in this
6 case specifically the Facebook statement. That was a lie
7 that the alleged victim told in the past. It happens to
8 implicate a specific act of prior sexual conduct but it
9 comes in under ---

10 THE COURT: --- I think that's a stretch. It's
11 imaginative but it's a stretch. It's not what that case
12 stands for and it's not what the proposition stands for.
13 If you had some evidence and on Facebook she says she
14 lied about your client, if you have some evidence from
15 Facebook where she says you know I had sex with another
16 boy on that day and there are two seminal samples and the
17 D-N-A proves or there is some D-N-A to prove there were
18 two other samples that would be relevant.

19 But her having had sex with someone else in the past
20 or making some representations about having sex with a
21 man in the past is not relevant or germane and that's
22 exactly why we have the Rape Shield statute because I'm
23 trying to figure out how you make that relevant and how
24 that exculpates your client and how that bears on her
25 creditability. Just because a woman -- and that's the

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1 whole purpose you have the Rape Shield statute. A woman
2 can have sex with 50 men; it doesn't mean the 51st one
3 she didn't tell no. Because if we allowed it in basically
4 what ends up happening is you attack the character of the
5 victim and you know you call it a bad word even though
6 it's very implied and it's very subtle but nevertheless
7 that's the import of it. And I'm just troubled by it
8 because I don't know why they dismissed the case in
9 Berkeley.

10 MR. COCHRAN: In this case, Your Honor, not getting
11 into why they dismissed the case but in this case it was
12 a case of consensual intercourse.

13 THE COURT: How old was he?

14 MR. COCHRAN: Nineteen.

15 THE COURT: How old was she?

16 MR. COCHRAN: Thirteen.

17 THE COURT: Can you consent in South Carolina for a
18 13 year old to have sex with a 19 year old?

19 MR. COCHRAN: No. So she ---

20 THE COURT: --- well then she could not have
21 consented.

22 MR. COCHRAN: So this was a case where she told
23 police she consented to the sex; it was not forcible.

24 THE COURT: It doesn't matter. Under the law of
25 strict liability she can't consent. I don't care if she

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1 stood up naked and said I want to have sex with you he
2 can't have sex with her in this state.

3 MR. COCHRAN: I agree, I agree Your Honor. And
4 either way it's illegal even if she consents.

5 THE COURT: She can't consent. In the law she
6 can't.

7 MR. COCHRAN: So she was raped.

8 THE COURT: Okay.

9 MR. COCHRAN: So that was a crime. Having
10 intercourse with that boy was a crime. A friend asked
11 her who that person was and she gave the name of a person
12 that was not the same boy. That means that she made a
13 false allegation of rape against a boy whose name she
14 used.

15 THE COURT: That's two little girls talking on
16 Facebook.

17 MR. COCHRAN: It's still an inconsistent statement.
18 It's still a lie ---

19 THE COURT: --- I don't think so. I think it's a
20 stretch. And I think you want to get in the fact that
21 she had another case in Berkeley that was dismissed. And
22 that's the whole purpose -- that's just an end run around
23 the Rape Shield statute. And I ---

24 MR. COCHRAN: --- I'll agree not to bring that up
25 to the jury.

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1 THE COURT: How could you not?

2 MR. COCHRAN: I would ask ---

3 THE COURT: --- there would be no other purpose she
4 would be discussing it.

5 MR. COCHRAN: May I proffer with the witness?

6 THE COURT: Yes, you can ask her the questions but
7 I still need to know what else -- you need to respond to
8 the remainder of the State's -- I can tell you an
9 abortion in 2012 is not relevant and is specifically
10 precluded by the Rape Shield statute unless it was an
11 abortion with your client.

12 MR. COCHRAN: Your Honor, may I proffer the witness
13 in terms ---

14 THE COURT: --- let me finish please and I will
15 allow you to make the proffer when the court gives you
16 permission to. But I have asked specifically that you
17 respond to certain things and I expect you to comply with
18 the court's directive. Other than there is other offer
19 of proof made in the document that you submitted to the
20 court other than the Berkeley -- the first allegation is
21 regarding an abortion which allegedly happened in April
22 of 2012.

23 MR. COCHRAN: Yes, Your Honor.

24 THE COURT: The next is some reference in therapy
25 notes to the Mother of the victim reporting that she was

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1 sexually active with two boys.

2 MR. COCHRAN: Yes, Your Honor.

3 THE COURT: The next deals with a case in Berkeley
4 County in 2011, which was dismissed by Berkeley County
5 Solicitor. In that case you allege she gave a sworn
6 statement in which she claimed to have had consensual
7 intercourse. Well, we've already resolved that; she
8 couldn't have consensual intercourse at 13 at least not
9 with a man who was 19. I'm still at a loss as to why
10 that would be relevant and that is specifically precluded
11 by the Rape Shield.

12 After the case was initiated the alleged victim
13 engaged in an online conversation with a classmate in
14 which the alleged victim gave a false statement as to the
15 identity of the man with whom she had sexual intercourse.
16 I have no way of judging the veracity of that. I don't
17 know the context of the conversation they were having and
18 I don't know that it was false the statement that she had
19 sex with this other man.

20 The other furthermore in meeting with the alleged
21 victim's therapist the Mother of the alleged victim made
22 a statement to the therapist that she believed the victim
23 had been pressured to lie as to the consensual nature of
24 the act in question in the prior case. The Mother of the
25 alleged victim made a statement to the therapist

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1 expressing the belief that the defendant in that case
2 engaged in non-consensual intercourse with the alleged
3 victim while the alleged victim was asleep. I'm at a
4 loss as to why any of that would be relevant and how that
5 serves to impeach the Mother. The defendant wishes to
6 offer evidence of this statement in an effort to impeach
7 the creditability of the Mother of the alleged victim.
8 How does that impeach? I guess I'm trying to figure out
9 how does that impeach her?

10 MR. COCHRAN: The -- in -- that goes to the same
11 2011 statutory rape.

12 THE COURT: I'm still trying to figure out how it
13 is inconsistent and how it is impeachment evidence.

14 MR. COCHRAN: The alleged victim in that case
15 indicated to law enforcement that she was awake and
16 engaged in sexual intercourse with the defendant in that
17 case. The Mother of the alleged victim when talking to a
18 therapist indicated to the therapist that it was forcible
19 intercourse while the alleged victim was asleep.

20 THE COURT: That might be her impression of what
21 happened.

22 MR. COCHRAN: And Your Honor, the only way she
23 could have gotten that impression ---

24 THE COURT: --- I don't know that.

25 MR. COCHRAN: Well, if she ---

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1 THE COURT: --- because she can't say where she got
2 it because it would be hearsay.

3 MR. COCHRAN: If she did have that impression it
4 would be a different impression from the alleged victim.

5 THE COURT: I don't think it matters. That's a
6 whole other case. It doesn't bear on her creditability
7 in this case. Any reference to an abortion in 2012 is
8 irrelevant. It is not probative. It has no material
9 value relevant to this case. It does make any issue of
10 consequence more or less probable and it is strictly
11 prohibited by the Rape Shield statute that being ---

12 MR. COCHRAN: --- may I make one brief argument ---

13 THE COURT: --- 16-3-659.1, I've heard -- I've
14 given you ample time to make argument and once the court
15 has ruled -- argument is to assist the court. I've given
16 you the opportunity to give me the basis for your
17 argument. I've heard it extensively and I'm not going to
18 do a volley back and forth once I've ruled on a specific
19 issue. And the issue has been preserved for purposes of
20 appellate review.

21 MR. COCHRAN: Just one briefly, Your Honor. I
22 don't believe I was heard specifically on the abortion
23 issue in terms of why I want to ---

24 THE COURT: --- you can tell me but I can't imagine
25 under any circumstances that it would be relevant or

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1 admissible.

2 MR. COCHRAN: Your Honor, the defense would like to
3 admit that evidence as a potential motive in this case
4 for the alleged victim to fabricate her allegations.

5 THE COURT: How? Her Momma would have had to take
6 her to do it. Well, technically she doesn't if the
7 Family Court gave her permission. And I don't know
8 whether that's what happened but if her Mother reported
9 it in her therapeutic notes then apparently she took her
10 to do it.

11 MR. COCHRAN: And because -- the argument from the
12 defense would be that because the alleged victim had an
13 abortion in the past that she would have been potentially
14 concerned with a pregnancy from sexual activity with
15 other boys and when she was -- when her Mother began
16 inquiring to her during the disclosure for this case the
17 motive to fabricate would have been that she was
18 concerned that she was pregnant and would make a rape, a
19 forcible rape allegation rather than admit that she was
20 having consensual sex with other boys and may be
21 pregnant.

22 And we would use that prior abortion to make that
23 argument, Your Honor. I would just argue that under
24 Finley the Supreme Court of South Carolina did allow the
25 use of a prior instance of sexual conduct to allow the

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1 defendant to put forth a potential motive and to give a
2 full and fair defense in his case. And in that case he
3 was essentially saying she is making this rape allegation
4 against me and she's making it up because she's worried
5 I'm going to tell everybody about her prior sexual act
6 with another person. And the court allowed him to make
7 that argument.

8 THE COURT: Would the State like to respond.

9 MS. ELLIOTT: Yes, Your Honor. Finley is clearly
10 distinguishable in that case in that one; I think because
11 he had to offer proof that the other sexual encounter did
12 in fact happen, which he cannot do. There is no evidence
13 supporting that she had any fear of pregnancy in this
14 case or what her Mother's response would have been to
15 said pregnancy.

16 MR. COCHRAN: And my only response to that, Your
17 Honor, would be that there was no evidence in the Finley
18 case that the girl would be concerned that he would be
19 outing her about her prior sexual conduct. He wasn't
20 required to prove that motive but he was allowed to put
21 that motive forward as a theory of his defense.

22 THE COURT: Finley is completed factually
23 antecedent to this case. I can see no analogous
24 situation. And the only reason you would want to
25 introduce an April 2012 abortion is to really attack her

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1 character and that's strictly prohibited by the Rape
2 Shield statute. I can discern no probative value in that
3 testimony. If I hear something during the development of
4 the cross-examination of the witness that potentially
5 could make it relevant on prejudice, motivation, or
6 otherwise, I, of course, will reconsider my ruling, but
7 it's the whole purpose of the Rape Shield statute is to
8 preclude that type of testimony and we know exactly why.
9 And based on what I've heard so far and what has been
10 presented in the proffer as well as what the State has
11 provided I don't think it was any secret to her mother
12 that she was sexually active.

13 So I can discern no reason why she would need to
14 hide it because apparently her Mother was discussing it
15 with your client. So I don't think there was anything to
16 hide or disclose at least not that I've heard thus far.
17 And if her Mother had already taken her for an abortion
18 her Mother is not -- what's the word I'm looking for -- I
19 would imagine she is a wise woman and would know that if
20 her child had sex once sufficiently to become pregnant
21 and had to terminate a pregnancy it is unlikely that she
22 is just going to stop having sex. At least that has been
23 my experience in life dealing in Family Court and now in
24 this court that if the child -- and that's the whole
25 purpose of what you're trying to present this testimony

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1 to say she is promiscuity. And if she was promiscuous
2 with these little boys then she was promiscuous with him
3 and then she had a reason to lie about it. And that's
4 really just an end run around Rape Shield and I'm just
5 not convinced. Now, if I hear something in the
6 development of the testimony that makes any of this
7 relevant or bear on her creditability I will reconsider
8 that decision.

9 But the entire purpose of Rape Shield is to
10 eliminate all other sexual activities unless they bear
11 directly on exculpating the defendant or bears directly
12 on creditability of the prosecuting witness. And I just
13 can discern under no circumstances that in April '12 --
14 it's an imaginative way that you've argued it to the
15 court but it really is not persuasive, not logically.

16 And as it regards the Mother's therapy notes about
17 two other boys I'd have to hear the Mother's testimony to
18 make a ruling on that as to whether that bears on her
19 creditability but at this point I haven't heard anything
20 that convinces me that it's probative on the issue of her
21 creditability.

22 The September 2011 Berkeley case I don't know how
23 you would even get into that without hearsay. You don't
24 have the other person she was talking to. I don't know
25 the context of the conversation that this took place in.

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1 I don't know whether it's a false statement or not. I
2 don't know whether she told her that she had sex with
3 another little boy and in fact had had sex with that
4 little boy. We're talking about two teenagers talking
5 online.

6 So I have no way of judging the veracity of that
7 conversation such that you would be able to ask her to
8 admit or deny it and then impeach her with it as an
9 inconsistent statement. So I don't know how you would
10 establish it without eliciting hearsay from her, which
11 you cannot or without making reference to another
12 prosecution in Berkeley County which I have no idea what
13 the status of it is or why they dismissed it.

14 MR. COCHRAN: And Your Honor ---

15 THE COURT: --- and I just don't know what the
16 context of their online conversation was. She might have
17 told her the truth that she had sex with this other boy.

18 MR. COCHRAN: May I proffer at that point?

19 THE COURT: I'm going to let you create a proffer
20 at the end of your testimony with her.

21 MR. COCHRAN: Okay. So an In-Camera proffer after
22 my cross-examination.

23 THE COURT: Uh Huh.

24 MR. COCHRAN: I would like to note for the record

25 ---

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1 THE COURT: --- but the rules require that you
2 provide an offer of proof pursuant to 16-3-659.1
3 subsection (2). And the court finds for the record that
4 the offer that you've made does not meet the burden of
5 proof required by case law. And the cases that you cited
6 are factually antecedent to this case.

7 In those cases the information did bear directly on
8 the person's creditability. This is no more than surmise
9 and speculation about what could or may have happened
10 regarding her sexual contact with other boys. And you
11 know as I've indicated the case law is very clear. I
12 don't care if she had sex with 40 little boys before she
13 encountered your client; it's not relevant.

14 MR. COCHRAN: And Your Honor, just for the record
15 my one argument in response would be the ---

16 THE COURT: --- well once the court has ruled there
17 is no further argument. I've already entertained the
18 argument. Argument is to aid the court in making a
19 decision. You already stated your basis for the record.
20 I'm not going to go -- I'm not an advocate. I'm not
21 going back and forth with you once I've ruled.

22 MR. COCHRAN: Yes, Your Honor.

23 THE COURT: All right. Are we ready to go
24 forward? Is the State ready to go forward?

25 MS. ELLIOTT: The State is, Your Honor.

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1 THE COURT: Is the defense ready to go forward?

2 MR. COCHRAN: Yes, Your Honor.

3 THE COURT: Does the State have any further
4 questions in direct examination for the witness?

5 MS. ELLIOTT: We have no further direct
6 examination, Your Honor.

7 THE COURT: Then we will begin cross-examination of
8 the witness. When you get to the questions that you want
9 to proffer Mr. Cochran let me know and then we'll take
10 that up In-Camera.

11 MR. COCHRAN: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 [Whereupon, the jury enters at 3:28 p.m.]

14 THE COURT: Thank you ladies and gentlemen. We
15 appreciate your patience. We will now resume with the
16 testimony of the witness. The State may proceed.

17 MS. ELLIOTT: The State has no further questions at
18 this time, Your Honor.

19 THE COURT: The defense may proceed.

20 MR. COCHRAN: Thank you, Your Honor.

21 THE COURT: You're welcome. You may proceed when
22 you're ready.

23

24

25

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1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. Minor , you say this happened in July of 2012,
4 correct?

5 A. Yes.

6 Q. And you told -- when you disclosed about this to
7 your Mother she called the police, right?

8 A. Yes.

9 Q. You didn't want her to call the police?

10 A. It didn't matter to me.

11 Q. Didn't matter to you whether or not she called the
12 police about this?

13 A. [Unintelligible]

14 Q. I'm sorry; you have to answer out loud.

15 A. Oh, no it didn't matter.

16 Q. And you told the responding officers that this
17 happened on July 11th, 2012, correct?

18 A. Yes.

19 Q. And you told Investigator Ambrose that this happened
20 on July 11th, 2012, correct?

21 A. Yes.

22 Q. And you told the counselor at the Lowcountry
23 Children's Center that this happened on July 11th, 2012,
24 correct?

25 A. Yes.

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1 Q. And you told your therapist that this happened on
2 July 11th, 2012, correct?

3 A. Yes.

4 Q. So you gave that as a specific day, correct?

5 A. Yes.

6 Q. And you didn't say maybe then, right?

7 A. No.

8 Q. You said it was definitely on that date, right?

9 A. Yes.

10 Q. And you're saying it's definitely maybe on that date
11 now, right?

12 A. Yes.

13 Q. Okay. So it might have been on a different day.

14 A. No.

15 Q. So you're saying it definitely is on July 11th now?

16 A. I mean I know it was a Wednesday for sure and I know
17 it was after the 4th of July, which was on a Wednesday
18 so.

19 Q. Okay. And there are four Wednesdays in July of
20 2012.

21 A. And he never -- he didn't show up on July 25th a
22 Wednesday so and then I haven't seen him in a week.

23 Q. Okay. So you came to the conclusion that it was
24 July 11th?

25 A. Yes.

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1 Q. And you think it as a Wednesday because that's when
2 Angie watched soap operas?

3 A. No. She left early on Wednesdays and that certain
4 show came on that day.

5 Q. Okay. And that was on at the salon when you were
6 there?

7 A. Yes.

8 Q. So you were watching T.V. while you were there?

9 A. Yes.

10 Q. And you remember what show was on?

11 A. Yes.

12 Q. And that was when you and Christopher were alone?

13 A. Yes.

14 Q. With Nephew .

15 A. Yes.

16 Q. And your Mother is gone for about an hour running
17 errands, correct?

18 A. Yes.

19 Q. And it might have been less than an hour, correct?

20 A. No.

21 Q. So it was exactly an hour?

22 A. It was either an hour or more.

23 Q. Okay. And you never told police that, correct?

24 A. I don't remember if I did or not.

25 Q. You never told L-C-C or any police officer or

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- 1 investigator that it was more than an hour, correct?
- 2 A. I don't remember.
- 3 Q. And you gave statements to all those people,
- 4 correct?
- 5 A. Yes.
- 6 Q. So your three year old nephew was in the store with
- 7 you and Christopher on that day, correct?
- 8 A. Uh Huh, yes.
- 9 Q. And that was after Angie left?
- 10 A. Yes.
- 11 Q. And Angie left after your Mother?
- 12 A. Yes.
- 13 Q. Okay. And when you spoke to the responding
- 14 officers you didn't tell them anything about Angie being
- 15 in the store, correct?
- 16 A. I don't remember.
- 17 Q. And you didn't tell Investigator Ambrose anything
- 18 about Angie being in the store, correct?
- 19 A. I probably did; I don't remember.
- 20 Q. And you didn't tell anyone at the Lowcountry
- 21 Children's Center about Angie still being in the store,
- 22 correct?
- 23 A. I don't remember.
- 24 Q. But either way Angie was in the store after your
- 25 Mother left, correct?

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- 1 A. Yes.
- 2 Q. Okay. How long was she there for?
- 3 A. I don't know because when I got there she was
4 already there so I didn't know how long she was there.
5 But the time when I came in she was there for like maybe
6 an hour or so and she left.
- 7 Q. So she was at the shop when your Mom left?
- 8 A. Yes.
- 9 Q. And she was there for about an hour after your Mom
10 left or less than an hour?
- 11 A. An hour maybe -- she was there for an hour after my
12 Mom left.
- 13 Q. She was there for an hour after your Mom left?
- 14 A. Uh Huh.
- 15 Q. And your Mom was gone for about an hour?
- 16 A. Yes.
- 17 Q. And this is on July 11th, 2012.
- 18 A. Yes.
- 19 Q. So Angie was there for pretty much the whole time
20 your Mom was gone?
- 21 A. Yes.
- 22 Q. So you and Christopher weren't alone that day?
- 23 A. I mean we were but she left like maybe the whole
24 incident -- I know she left before the incident; I know
25 that. But she wasn't there for a long time when I came

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1 there.

2 Q. But your Mom was gone for about an hour?

3 A. Yes.

4 Q. Okay. And Angie was there after your Mom left for
5 about an hour.

6 A. Yes.

7 Q. And your nephew was there the whole time.

8 A. Uh Huh, yes.

9 Q. He was about three years old at the time?

10 A. Yes.

11 Q. And you said he is pretty active little three year
12 old?

13 A. Yes.

14 Q. Hard to control?

15 A. Yes.

16 Q. Hard to get down for a nap?

17 A. No.

18 Q. No? He just falls right asleep?

19 A. He just lets me know when he's tired and he just
20 goes to sleep.

21 Q. Okay. And you said you put him down for a nap and
22 that was right by the coffee table, correct?

23 A. Yes.

24 Q. Okay. And that's ---

25 A. --- well I didn't put him down, Christopher did.

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1 Q. Okay. And you wanted your nephew to go down for a
2 nap at that point?

3 A. Yes.

4 Q. And then right after he goes down for a nap, right
5 after he lays down you go to the bathroom.

6 A. Yes.

7 Q. Okay. And then how long were you in the bathroom
8 for?

9 A. Maybe about five minutes.

10 Q. So your nephew had been down for a nap for about
11 five minutes and you come out of the bathroom, right?

12 A. Yes.

13 Q. And when you come out the bathroom you're in a
14 hallway in the storage room, correct?

15 A. Yes.

16 Q. Okay. And I'm holding up State's exhibit 5 for the
17 jury and for the witness. And this [indicates] is the
18 door to the storage area?

19 A. Yes.

20 Q. Okay. And this [indicates] is the coffee table?

21 A. Yes.

22 Q. Okay. And on this [indicates] opposite side of the
23 coffee table on the side where the door is is where your
24 nephew was laying down, correct?

25 A. Yes.

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1 Q. Okay. And you said that right here in this
2 [indicates] doorway is where you fell to the ground?

3 A. Yes.

4 Q. Okay. And you say that you come out of the
5 bathroom and you open the door and Christopher is
6 standing right there at the door.

7 A. Yes.

8 Q. And you try to get by him.

9 A. Yes.

10 Q. And you try to run away.

11 A. Yes.

12 Q. And you do get by him.

13 A. Yes.

14 Q. And you do run away.

15 A. I didn't specifically run but limped away.

16 Q. But you did get by him.

17 A. Yes.

18 Q. And you were trying to run.

19 A. Yes.

20 Q. And you did run.

21 A. Yes, basically.

22 Q. And I believe you had a cast on your foot or
23 something like that at that time.

24 A. Yes.

25 Q. Was it like a hard cast?

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- 1 A. No, it was like a little wrap thing.
- 2 Q. Okay. So like gauze? Or like a walking boot?
- 3 A. The little brown wrap thing.
- 4 Q. Okay. So kind of like a bandage?
- 5 A. Yes.
- 6 Q. But you weren't on crutches?
- 7 A. I was on crutches but I didn't really use them.
- 8 Q. Okay. So you could walk on your own?
- 9 A. Yes, by just limping.
- 10 Q. And you could run on your own?
- 11 A. I couldn't really run.
- 12 Q. But you said you tried to run away from him.
- 13 A. Yes, I tried to get away fast.
- 14 Q. Okay. And this is the bathroom door right here
- 15 [indicates]? I'm holding up State's exhibit 8. This is
- 16 the bathroom door right here [indicates]?
- 17 A. Yes.
- 18 Q. Okay. And then this is the storage area right here
- 19 [indicates], correct?
- 20 A. You mean like going the opposite way?
- 21 Q. Yes. Or right in front. And this [indicates] is
- 22 the door that goes back in the shop, correct?
- 23 A. Yes.
- 24 Q. Okay. And you ran to that door?
- 25 A. Yes.

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- 1 Q. Okay. And you fell down in front of that door?
- 2 A. Yes.
- 3 Q. Did you go through that door?
- 4 A. No.
- 5 Q. You didn't go into the shop?
- 6 A. Uh Uh.
- 7 Q. But you were in the doorway?
- 8 A. I wasn't in the doorway just like in front of the
- 9 doorway.
- 10 Q. And you fell because you were wearing this cast on
- 11 your foot because your foot was hurt?
- 12 A. Yes and I was pushed.
- 13 Q. Okay. Well, which is it?
- 14 A. [No response]
- 15 Q. You had an interview with your therapist at the
- 16 Medical University of South Carolina, correct?
- 17 A. Uh Huh.
- 18 Q. And you told them that you tried to run away from
- 19 Christopher, right?
- 20 A. Yes.
- 21 Q. And you said that you fell because you had a cast on
- 22 your foot, correct?
- 23 A. Yes.
- 24 Q. And you described it as a cast on your foot,
- 25 correct?

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1 A. Yes.

2 Q. Now you're saying it's a brown kind of like flexible
3 bandage that was wrapped around your foot?

4 A. Uh Huh. I didn't know what to call it.

5 Q. And you told them that that's what caused you to
6 fall, correct?

7 A. I don't remember that. If I said that I don't --
8 basically the kind of questions you're asking me I
9 honestly do not remember what I said because it was two
10 years ago. I can honestly say I only remember the
11 conversations I've had with those two over there
12 [indicates].

13 Q. So now two years later in 2014 the only thing you
14 really remember about this case is what you were talking
15 about the Solicitors with?

16 A. Yes, and a little bit of my conversations with any
17 other people.

18 Q. Like your Mom?

19 A. Her, the counselor.

20 Q. And I'm asking you about your conversation with your
21 counselor and whether or not you remember that
22 conversation. And do you remember telling her that you
23 were wearing a cast at the time?

24 A. Yes, bits and pieces. I remember telling her I had
25 a cast on my foot.

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- 1 Q. Okay. And you remember telling her that the cast
2 caused you to fall down when you tried to run away?
- 3 A. No, I don't remember telling her that.
- 4 Q. And now you're saying you were shoved down?
- 5 A. Because I was.
- 6 Q. And you got hurt?
- 7 A. My foot was hurting when I fell.
- 8 Q. Did anything else hurt when you fell down, when you
9 got shoved down to the ground?
- 10 A. Just -- not really. I just was in kind of shock.
- 11 Q. So it didn't hurt when you got shoved down to the
12 ground. You said that you screamed?
- 13 A. Yes.
- 14 Q. And you screamed while you were standing in this
15 doorway right here [indicates]? I'm holding up State's
16 exhibit 6 -- or while you were laying in this doorway?
- 17 A. Yes.
- 18 Q. You screamed, correct? And your three year old
19 nephew was laying right here [indicates], correct?
- 20 A. Yes.
- 21 Q. And you screamed?
- 22 A. Yes, but he -- the door was cracked so I don't...
- 23 Q. So the door was cracked open?
- 24 A. Yes.
- 25 Q. Okay. And he didn't wake up?

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- 1 A. No.
- 2 Q. And he didn't say anything to you.
- 3 A. No.
- 4 Q. Even though you were screaming in that doorway?
- 5 A. Yes. He didn't say anything.
- 6 Q. And you said that you screamed but you also say that
- 7 you were threatened by Christopher?
- 8 A. Yes.
- 9 Q. So you were prevented from screaming then?
- 10 A. I was screamed before and then he told me to shut
- 11 the F up.
- 12 Q. Okay. And when you were talking to Ms. Elliott
- 13 just now with the jury you didn't say anything about him
- 14 putting his hand over your mouth, right?
- 15 A. Right.
- 16 Q. And you're saying now that you screamed out loud,
- 17 right?
- 18 A. Yes.
- 19 Q. And then you stopped screaming because he threatened
- 20 you?
- 21 A. Yes and then ---
- 22 Q. --- and that's what you told to investigators and
- 23 police. But didn't you tell the people at Lowcountry
- 24 Children's Center that he forcibly put his hand over your
- 25 mouth to keep you from screaming?

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1 A. Honestly I cannot remember what I said -- I honestly
2 don't know.

3 Q. So he didn't put his hand over your mouth?

4 A. [No response]

5 Q. Do you need to take a moment?

6 A. [Nods affirmatively]

7 [Whereupon, the witness exits the witness stand and
8 leaves the courtroom]

9 THE COURT: Mr. Foreman, ladies and gentlemen,
10 we're going to take a very brief break. During the break
11 please do not discuss the testimony and please leave your
12 notepads in your seats.

13 [Whereupon, the jury exits at 3:42 p.m.]

14 THE COURT: Now, I understand she may be upset. I
15 understand that she is sixteen. You are to strictly
16 instruct her that she is never to unilaterally pop up
17 from a witness stand and leave this courtroom.

18 MS. ELLIOTT: Yes, Your Honor.

19 THE COURT: It's not television.

20 MS. ELLIOTT: Yes, Your Honor.

21 THE COURT: Okay. Handle it.

22 MR. COCHRAN: Your Honor, just to make my objection
23 contemporaneous. I do object to the witness's behavior.
24 It does affect ---

25 THE COURT: --- you can't control her behavior.

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1 She's upset and she's sixteen and I'm going to correct
2 it.

3 MR. COCHRAN: Yes, Your Honor. And my one argument
4 would be that her actually getting up and leaving the
5 courtroom does impede my client's ability to confront and
6 cross-examine her.

7 THE COURT: It doesn't because you're going to
8 resume cross-examination in just a moment as soon as she
9 dries those tears and collects herself.

10 MR. COCHRAN: Yes, Your Honor.

11 THE COURT: And it's not going to happen again.

12 MR. COCHRAN: Yes, Your Honor.

13 THE COURT: We'll all be at ease for about five
14 minutes.

15 MR. COCHRAN: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 [Whereupon, court is in recess from 3:44 p.m. until
18 3:56 p.m.]

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1 [Whereupon, the witness resumes the witness stand]

2 THE COURT: All right. So the record is clear
3 young lady in the middle of testimony you are not to
4 leave the stand until the court gives you permission. If
5 you have a problem or you're suffering from some duress
6 or you feel uncomfortable or you feel that you can't keep
7 it together, you need to let the court know. But do not
8 ever of your own steam leave this courtroom in that way
9 again. Are we on the same page?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you so very much. I'm going to
12 instruct the jury that they are to disregard the outburst
13 and to give it no consideration in their deliberations.
14 Is there any exception from the State?

15 MS. ELLIOTT: No, Your Honor.

16 THE COURT: From the defense?

17 MR. COCHRAN: No, Your Honor.

18 THE COURT: And then we will resume cross-
19 examination. Please get the jury.

20 [Whereupon, the jury enters at 3:58 p.m.]

21 THE COURT: Ladies and gentlemen, we appreciate
22 your patience. I instruct you that you should give
23 absolutely no consideration to the witness's last actions
24 in exiting the courtroom and you are to give absolutely
25 no consideration to that in your deliberations. You may

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1 proceed with cross-examination.

2 MR. COCHRAN: Thank you, Your Honor.

3 THE COURT: Yes, sir.

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Minor -Cross-Examination by Mr. Cochran (resumes)

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1 CROSS-EXAMINATION (RESUMES)

2 BY MR COCHRAN:

3 Q. Minor, I'm not trying to be mean to you. I hope
4 you please understand that. Let me ask you; do you
5 understand that this is a very important matter?

6 A. Yes.

7 Q. And we have to go through all these things very
8 thoroughly?

9 A. Yes.

10 Q. I'll move on from my last line of questioning
11 regarding whether or not you said that a hand was placed
12 over your mouth while you were assaulted. Do you have a
13 response now as to whether or not -- you're saying that
14 happened now?

15 A. I don't remember it. I honestly just don't
16 remember.

17 Q. And you said that you never got hurt while you were
18 being assaulted.

19 A. [No response]

20 Q. Did you get hurt?

21 A. Other than being assaulted, no.

22 Q. And he grabbed you and pushed you down?

23 A. Yes.

24 Q. You said you were not injured?

25 A. No, other than the pain from being pushed on my

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Minor -Cross-Examination by Mr. Cochran (resumes)
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1 foot. That was the only thing that was really hurting me
2 at the time.

3 Q. And you said this assault lasted about ten minutes,
4 correct?

5 A. Yes.

6 Q. So this assault lasted for ten whole minutes and you
7 were not injured?

8 A. I would say approximately ten minutes. I can't
9 really tell about ten minutes because I wasn't looking at
10 the time.

11 Q. Right.

12 A. But it just to me it felt like it was not that long
13 like just ten minutes to me.

14 Q. So it didn't feel like it took that long, the
15 assault?

16 A. No.

17 Q. It took about ten minutes you'd say and you didn't
18 have any visible injuries?

19 A. No.

20 Q. And after he assaulted you for ten full minutes you
21 got up and went under the hair dryer?

22 A. I grabbed my shorts and my underwear and I went to
23 the bathroom to clean myself up and then I went to the
24 dryer where I was sitting.

25 Q. Okay. And that's one of those hair dryers that you

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- 1 lower over your head ---
- 2 A. --- yes ---
- 3 Q. --- and you turned it on?
- 4 A. Yes, because I was cold.
- 5 Q. Because you were cold?
- 6 A. [Nods affirmatively]
- 7 Q. And now when you were -- when you fell down and you
- 8 were in this doorway [indicates]-- I'm showing State's
- 9 exhibit 6, and you were in this doorway [indicates] and
- 10 you fell on the ground and you said you screamed you said
- 11 that Mr. Gilyard peeked out the door?
- 12 A. Before the intercourse happened?
- 13 Q. Yes?
- 14 A. Yes, before that.
- 15 Q. He peeked out the door and -- peeking to see if
- 16 somebody was in there?
- 17 A. No, to see if like anybody was going to try to come
- 18 in from outside or going to knock on the door or
- 19 anything.
- 20 Q. Okay, because the shop is open, correct?
- 21 A. Yes. But the door was locked because at the time we
- 22 had a key you either had to unlock it for somebody to
- 23 come in or somebody who works in there had to have a key
- 24 to open the door.
- 25 Q. So he peeked out after he tackled you to the ground

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- 1 to check if there were customers at the door?
- 2 A. Yes.
- 3 Q. And there were no customers at the door?
- 4 A. No.
- 5 Q. And there's also a big window at the front of the
- 6 shop, right?
- 7 A. Right.
- 8 Q. And you can see through to this door, correct?
- 9 A. Yes.
- 10 Q. From the street, correct?
- 11 A. Yes. Well, from the parking lot.
- 12 Q. Parking lot. And you were on the ground at that
- 13 time when he peeked?
- 14 A. Yes.
- 15 Q. And you were on the ground at that time when he took
- 16 his pants off?
- 17 A. Yes.
- 18 Q. So he tackled you to the ground and took your shorts
- 19 off?
- 20 A. Yes.
- 21 Q. And he stood up?
- 22 A. He was on his knees.
- 23 Q. And he took his pants off?
- 24 A. Yes.
- 25 Q. Did you run away then?

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Minor -Cross-Examination by Mr. Cochran (resumes)

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- 1 A. No.
- 2 Q. You tried to run away before you were tackled?
- 3 A. Yes.
- 4 Q. And after you were assaulted you do not run away?
- 5 A. After I was assaulted I didn't.
- 6 Q. You got dressed and went to the hair dryer, right?
- 7 A. Yes.
- 8 Q. Ashley Whaley is your brother Timothy's girlfriend,
- 9 right, or was his girlfriend?
- 10 A. Yes.
- 11 Q. You said moments after Christopher left, which was
- 12 moments after he assaulted you, Ashley Whaley came to the
- 13 store?
- 14 A. Yes and my brother Timothy.
- 15 Q. Okay. Did they buzz in or did they have a key?
- 16 A. I opened the key -- I unlocked the door with the
- 17 key.
- 18 Q. So you unlocked the door for them and you spoke to
- 19 them?
- 20 A. Yes.
- 21 Q. Okay. And they gave you a sandwich?
- 22 A. I didn't have one. They just brought sandwiches
- 23 like for you to make yourself.
- 24 Q. Okay. Just to have at the shop?
- 25 A. Yes.

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- 1 Q. Okay. And they were there ten or fifteen minutes?
- 2 A. I don't recall how long they were there.
- 3 Q. Were they still there when your Mom got back?
- 4 A. Yes.
- 5 Q. How long were they there before your Mom got there?
- 6 A. I don't remember how long they were there. I guess
- 7 moments after they came my Mom came and then moments
- 8 after she came then Christopher came back from wherever
- 9 he went.
- 10 Q. So Christopher left and then came back to the store?
- 11 A. Yes.
- 12 Q. That same day?
- 13 A. Yes. Well, I remember -- I'm not sure; it could
- 14 have been another day --
- 15 Q. Do you think you might be mistaken?
- 16 A. I could be. I just remember one day he said -- he
- 17 came and left and he gave a reason.
- 18 Q. Well, if you had just been violently assaulted by
- 19 him and then your Mom and your brother came over you
- 20 would remember whether or not the person who assaulted
- 21 you came right back in as well wouldn't you?
- 22 A. Yes, he did come back.
- 23 Q. Okay. I thought you just said you weren't sure it
- 24 could have been another day.
- 25 A. No, I wasn't sure about the reason why he left and

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1 came back.

2 Q. And then Ashley and Timothy hung out at the store
3 after Christopher left?

4 A. Yes.

5 Q. And they hung out while he was there?

6 A. When he came back, yes.

7 Q. When he came back. But he wasn't there when Ashley
8 and Timothy came in?

9 A. No.

10 Q. So about a month after this happened you spoke with
11 police officers, right?

12 A. Yes.

13 Q. And you spoke with an L-C-C counselor, right?

14 A. Yes.

15 Q. And you spoke with Investigator Ambrose, right?

16 A. Yes.

17 Q. And you did not tell the responding officers about
18 Ms. Whaley or your brother coming to the shop right?

19 A. I don't remember if I did or I didn't.

20 Q. Okay. And you did not tell Investigator Ambrose
21 about Ashley Whaley or your brother coming to the shop
22 immediately after the assault?

23 A. I don't remember.

24 Q. And you also didn't tell the Lowcountry Children's
25 Center about them coming to the shop right after you were

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Minor

-Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 assaulted.

2 A. I don't remember.

3 Q. The first people you told about Ashley Whaley and
4 your brother Timothy coming to the shop immediately after
5 you were assaulted were the two Solicitors two years
6 after this happened, correct?

7 A. I wouldn't say they were the first people I told but
8 I do remember telling them that they were there.

9 Q. And your Mom asked you about why you were -- why
10 Christopher wasn't at work? I was confused about why --
11 she was asking you if something had gone on with
12 Christopher?

13 A. I think she did ask me something like that. She
14 asked me a question like that I said I don't know and...

15 Q. And she asked you repeatedly didn't she?

16 A. Yes. Are you talking about the day I told her about
17 what happened?

18 Q. Yes, ma'am.

19 A. Oh, I remember it was a couple of days when she
20 tried to call him so see why he hasn't been coming to
21 work.

22 It was maybe that week when I said I didn't see him
23 for that whole week why he didn't come and she asked him
24 about a birthday party or something and then another time
25 she called him and then I was like why are you worried

State v Christopher Gilyard

Minor -Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 about if he's coming or not.

2 Q. And she repeatedly asked you to tell her something
3 about Christopher, correct?

4 A. Yes.

5 Q. And Minor when you were younger you made two
6 complaints to the ---

7 MS. ELLIOTT: --- objection, Your Honor.

8 THE COURT: Approach.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: Sustained. Proceed.

12 Q. [Mr. Cochran] Minor, when Christopher confronted
13 you outside the bathroom door and you tried to run by him
14 and he was shoving you to the ground you had a
15 conversation with him didn't you?

16 A. Yes.

17 Q. You ---

18 MS. ELLIOTT: --- objection, Your Honor.

19 THE COURT: Basis?

20 MS. ELLIOTT: May we approach?

21 THE COURT: You may approach.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Proceed. And I expect there to be
25 order in the gallery or you will be removed. Proceed.

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Minor -Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 MR. COCHRAN: Thank you, Your Honor. Your Honor, I
2 have no more questions at this time..

3 THE COURT: Mr. Foreman, ladies and gentlemen I
4 have some very brief matters of law to take up with the
5 attorneys. During this break please do not discuss the
6 case and please leave your notepads in your seats. If
7 you would go with the bailiffs please.

8 [Whereupon, the jury exits at 4:13 p.m.]

9 THE COURT: Mr. Cochran, you may proceed with the
10 questions.

11 MR. COCHRAN: Thank you, Your Honor.
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State v Christopher Gilyard

Minor -In-Camera-Cross-Examination by Mr. Cochran

July 30, 2014

1 IN-CAMERA CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. Minor, you indicated you did have a conversation
4 with Mr. Gilyard while he was assaulting you?

5 A. Well, it wasn't necessarily a conversation. It was
6 a statement basically.

7 Q. Okay. And y'all discussed a prior case that you
8 had been involved in, right, in Berkeley County?

9 A. Yes, before the assault. Like before the day of it
10 maybe a week or so.

11 Q. So you didn't talk with Christopher on the day of
12 the assault about that case?

13 A. No, I only -- the only thing that I made about that
14 case was why would you do that knowing I already been
15 through a rape case before.

16 Q. And you said to him that you weren't trying to send
17 anybody to jail.

18 A. Right.

19 Q. And that was while he was assaulting you?

20 A. Right.

21 Q. Okay.

22 MR. COCHRAN: Your Honor ---

23 THE COURT: --- I'm sorry; I need to be clear as to
24 the answer and I'm not sure. I'm a lawyer and I had a
25 little difficulty following the way you answered that

State v Christopher Gilyard
Minor -In-Camera-Cross-Examination by Mr. Cochran
July 30, 2014

1 question. So I'm going to question her because I need to
2 be clear as to what was said when and when it was said.

3 MR. COCHRAN: Yes, Your Honor.
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State v Christopher Gilyard

Minor -In-Camera-Examination by the Court

July 30, 2014

1 THE COURT: Minor , you indicated that you spoke
2 with Mr. Gilyard a week prior to the assault regarding
3 the Berkeley case, correct?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Now I need to be clear. Did you tell
6 him during the assault that you didn't want to send
7 anybody to jail?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Now, what would be the State's
10 -- you need to ask all your questions actually and then
11 I'll hear argument.

12 MR. COCHRAN: Yes, Your Honor. I'm sorry; I'm
13 trying to recall what the other objection was to.

14 MS. ELLIOTT: DSS ---

15 THE COURT: --- DSS.
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State v Christopher Gilyard

Minor

-In Camera-Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 IN-CAMERA-CROSS-EXAMINATION (RESUMES)

2 BY MR. COCHRAN:

3 Q. Minor , back when you were younger DSS was
4 involved with your family on two separate occasions,
5 correct?

6 A. [No response]

7 Q. There was an instance where you went to school with
8 no socks do you remember that?

9 A. No.

10 Q. Okay. And DSS got involved because you didn't have
11 any socks and you told them that you didn't have any
12 socks at home?

13 A. I don't remember any of that.

14 Q. Okay. And there was another instance where you
15 told a family therapist that your parents -- that you had
16 peeked in your parent's room, saw them having sex and you
17 had also seen a pornographic movie with your brother and
18 that DSS became involved with your family because of
19 that.

20 A. I don't remember that.

21 Q. Okay. And you don't remember that those claims
22 were dismissed as unfounded?

23 A. I never -- I don't remember any of that. I don't
24 even know how old was I?

25 MR. COCHRAN: And Your Honor, the ---

State v Christopher Gilyard

Minor

-In Camera-Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 THE COURT: --- I'm not hearing argument. I need
2 you to ask all your questions.

3 MR. COCHRAN: That's all I have, Your Honor.

4 THE COURT: Does the State have any questions in
5 response to the questions asked of the witness for the
6 proffer?

7 [Whereupon, Ms. Elliott and Ms. Herring-Lash confer]

8 MS. ELLIOTT: Judge, we have no questions in regard
9 to the defense's questions of the witness.

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State v Christopher Gilyard
In Camera-Proceedings
July 30, 2014

1 THE COURT: What is the State -- does the State
2 have any exception to her testifying that she said to him
3 during the assault I'm not trying to send anybody to
4 jail.

5 MS. ELLIOTT: No, Your Honor. We don't -- we
6 believe that was a misunderstanding.

7 THE COURT: Okay. So you can ask that question.
8 That is without objection.

9 MS. ELLIOTT: Judge, we do think that needs to be
10 limited in scope?

11 THE COURT: Well, I think he's going to ask it the
12 same way he just asked it, which is did you say something
13 to him during the assault and then she can answer that
14 question consistent with her response In-Camera.

15 Now the next deals with DSS. And I'm trying to
16 figure out how any of that is relevant Mr. Cochran
17 because what you represented to the court at the bench is
18 that she made these reports and they were unfounded.
19 Based on what has been elicited from the testimony both
20 DSS involvements with her family are irrelevant.

21 MR. COCHRAN: Your Honor, just based on the
22 discovery that the State provided to me it was my
23 understanding that that was the case.

24 THE COURT: Well, it's not the case. Apparently
25 the school got involved for whatever reason but I'm still

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1 of the opinion even if she was the one who reported and
2 it was unfounded there are many reasons DSS 'unfounds' a
3 case. It doesn't mean there wasn't probable cause there.
4 It just simply means for whatever reason they decided to
5 handle it a different way.

6 MR. COCHRAN: Yes, Your Honor. And just for the
7 record I did confer with the State regarding those DSS
8 and they did confirm it. I'm not making this up.

9 THE COURT: I just don't know that it really
10 matters one way or the other. And it was apparently at a
11 time when she was much younger and so I cannot even
12 discern any temporal proximity to those claims that would
13 make it even germane or relevant to any issue of
14 consequence in this case.

15 MR. COCHRAN: Yes, Your Honor. And I would only be
16 offering them as an example of past untruthfulness.

17 THE COURT: Well, she isn't the one who reported
18 it. And because it's unfounded doesn't mean it wasn't
19 truthful. DSS unfounds cases all the time. I was on the
20 Family Court for five and half years. If I counted the
21 number of cases that they unfounded and still got
22 involved I couldn't even keep track. They have the
23 authority to unfound a case and put a treatment plan in
24 place and to assist the family. Often times that a part
25 of the negotiations to have it unfounded so the person

State v Christopher Gilyard
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1 doesn't have it on their record and it affects their
2 employability. So based on -- she doesn't really have
3 any recollection of any of these incidents. Apparently
4 it was when she was much younger and I can discern no
5 probative value of the testimony. It would have a
6 tendency to mislead the jury. It's not relevant. It
7 doesn't make any issue of consequence more or less
8 probable and it has no bearing on her creditability or
9 believability.

10 Could you bring in the jury so that Mr. Cochran
11 could ask his next question? Who would be -- I would
12 assume the State would have some rebuttal -- some
13 redirect and then who would be your next witness?

14 MS. ELLIOTT: Angie Fuller.

15 MR. COCHRAN: I do have one additional question to
16 that, Your Honor. I don't anticipate them objecting to
17 that. It was another statement regarding the L-C-C
18 interview.

19 THE COURT: And what is that statement?

20 MR. COCHRAN: It is a statement that was noted in
21 the CAFTA report ---

22 THE COURT: --- I need you to cut to the chase and
23 tell me what the statement is.

24 MR. COCHRAN: That the victim did not scream
25 because she was worried about waking up her nephew. I

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1 just want to ask her about that.

2 THE COURT: You can ask her that. I don't think
3 that's objectionable. The State does not object,
4 correct?

5 MS. ELLIOTT: No, Your Honor.

6 [Whereupon, the jury enters at 4:21 p.m.]

7 THE COURT: Ladies and gentlemen, we appreciate
8 your patience. We will now resume testimony. Mr.
9 Cochran, you may proceed.

10 MR. COCHRAN: Thank you, Your Honor.

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State v Christopher Gilyard
Minor -Cross-Examination by Mr. Cochran (resumes)
July 30, 2014

1 CROSS-EXAMINATION (RESUMES)
2 BY MR. COCHRAN:
3 Q. Minor , you spoke with a counselor at the
4 Lowcountry Children's Center, correct?
5 A. Yes.
6 Q. And when you spoke with the counselor at the
7 Lowcountry Children's Center they asked you about whether
8 there was -- whether you screamed or not during this
9 assault, correct?
10 A. [Unintelligible]
11 Q. And you told them ---
12 THE COURT REPORTER: --- I didn't hear her answer.
13 Q. [Mr. Cochran] I'm sorry.
14 A. I don't remember the question.
15 Q. And you informed the counselor at the Lowcountry
16 Children's Center that you did not scream and the reason
17 you didn't scream was because you didn't want to wake
18 your nephew up, correct?
19 A. I don't remember.
20 Q. And you said before that you had a conversation with
21 Mr. Gilyard while he was shoving you to the ground and
22 attacking you, correct?
23 A. Right.
24 Q. And you had mentioned to him that you weren't trying
25 to send anybody to jail.

State v Christopher Gilyard

Minor -Cross-Examination by Mr. Cochran (resumes)

July 30, 2014

1 A. Yes.

2 Q. And that was while he was -- while you were trying
3 to run away and he was shoving you down and holding you
4 down and undressing you and undressing himself you said
5 that?

6 A. Yes.

7 MR. COCHRAN: No more questions, Your Honor.

8 THE COURT: Any redirect of the witness?

9 MS. ELLIOTT: Yes, Your Honor.

10 THE COURT: You may proceed.

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State v Christopher Gilyard
Minor -Redirect Examination by Ms. Elliott
July 30, 2014

1 REDIRECT EXAMINATION

2 BY MS. ELLIOTT:

3 Q. Minor, tell us a little bit about what happened to
4 your foot. Why was your foot hurt?

5 A. A couple of days before the incident I was in my
6 room and cleaning up and then after that I had my glass
7 lamp on the floor and it was covered by a bunch of other
8 stuff and I didn't see it and I stepped on it and I got
9 cut.

10 Q. And you've told us already that -- how did that
11 injury kind of affect your mobility?

12 A. I couldn't really walk with my right foot.

13 Q. Could you run like you normally can?

14 A. No.

15 Q. You already told us that you went to see a
16 counselor. Do you remember how many times you went to
17 see a counselor?

18 A. At the I-O-P

19 Q. Wherever you went. I'm not quite sure where you
20 went.

21 A. You mean Ms. Megan [phonetic] and Nina [phonetic]?

22 Q. Yes.

23 A. Every Monday since -- the sessions was every Monday
24 between September and April.

25 Q. So you went several months?

State v Christopher Gilyard

Minor

-Redirect Examination by Ms. Elliott

July 30, 2014

1 A. Yes.

2 Q. And several Mondays in those months?

3 A. Yes.

4 Q. And did you talk about what happened to you?

5 A. Yes.

6 MS. ELLIOTT: Your Honor, pursuant to the Rule 106,
7 the rule of completeness...

8 THE COURT: I don't take speaking objections.

9 MS. ELLIOTT: May we approach?

10 THE COURT: Approach.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: You may proceed.

14 Q. [Ms. Elliott] Minor , Mr. Cochran was asking you a
15 lot of questions about what you told your counselors at
16 MUSC. Do you remember that?

17 A. Yes.

18 Q. Do you remember him asking you about the cast?

19 A. Yes.

20 Q. And whether or not you remembered saying that you
21 fell to the floor?

22 A. [No response]

23 Q. Do you remember Mr. Cochran asking you about ---

24 A. --- oh, yes ---

25 Q. --- falling to the floor. Do you remember telling

State v Christopher Gilyard
Minor -Redirect Examination by Ms. Elliott
July 30, 2014

1 your counselors that?

2 A. No.

3 Q. If you could see the records that they made of that
4 would that help you remember what you told the
5 counselors?

6 A. Yes.

7 MS. ELLIOTT: Your Honor, may I approach?

8 [Whereupon, the witness is shown documents]

9 Q. [Ms. Elliott] I want you to look over that and once
10 you've gotten to review the counselors notes you let me
11 know okay?

12 A. At the highlighted?

13 Q. I want you to review anything that you think would
14 help your remember what you told the counselors.

15 [Whereupon, the witness reviews documents]

16 A. May I ask you a question?

17 Q. No, you cannot ---

18 THE COURT: --- if she needs you to repeat the
19 question you may repeat the question.

20 MS. ELLIOTT: Well, I need that back.

21 [Whereupon, Ms. Elliott retrieves document from the
22 witness]

23 Q. [Ms. Elliott] So what did you tell the counselor
24 about how you fell down?

25 A. About being pushed because now when I -- we made a

State v Christopher Gilyard

Minor

-Redirect Examination by Ms. Elliott

July 30, 2014

1 story about how everything happened and so I told her how
2 I was pushed to the ground.

3 Q. And did you tell her anything about your mouth being
4 covered?

5 MR. COCHRAN: Objection.

6 THE COURT: Basis?

7 MR. COCHRAN: Leading.

8 THE COURT: Sustained. Leading.. Rephrase.

9 Q. [Ms. Elliott] What did you tell her about screaming
10 or making any noise?

11 A. I told her that I was screaming because I just
12 didn't want anything to happen.

13 Q. You described that when you were on the ground and
14 the defendant was on top of you that he was peeking out
15 the door. What were you doing during that time?

16 A. He had his hand on my stomach and I was just laying
17 there just crying.

18 Q. Could you get up?

19 A. No.

20 MS. ELLIOTT: Court's indulgence, Your Honor.

21 [Whereupon, Ms. Elliott and Ms. Herring-Lash confer]

22 Q. [Ms. Elliott] Describe for me when he pushed you
23 down what position you were in?

24 A. I was on my stomach when I got to the ground.

25 Q. Okay. And then what happened?

State v Christopher Gilyard
Minor -Redirect Examination by Ms. Elliott
July 30, 2014

1 A. And then I was flipped over.

2 Q. I'm going to show you what has been admitted as
3 State's 6.

4 [Whereupon, the witness is shown photograph]

5 Q. It may be hard to see on the screen. I'm actually
6 going to show you this picture. This is State's 6.
7 What's on the windows, the front windows?

8 A. Blinds and ---

9 Q. --- thank you very much.

10 MS. ELLIOTT: No further questions, Your Honor.

11 THE COURT: You may step down.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 THE COURT: You may call your next witness.

15 MS. HERRING-LASH: The State will call Angie
16 Fuller.

17 [Whereupon, Ms. Fuller comes forward]

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court]

20 CLERK OF COURT: Ma'am once seated if you could
21 please state your first and last name and then spell your
22 last loudly and clearly into the microphone, please.

23 THE WITNESS: Angela Fuller. Last name is F-U-L-L-
24 E-R.

25 THE COURT: You may proceed.

State v Christopher Gilyard
Angela Fuller-Direct Examination by Ms. Herring-Lash
July 30, 2014

1 ANGELA FULLER,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. HERRING-LASH:
6 Q. Ms. Fuller, where do you work?
7 A. 1209-B St. Andrews Boulevard -- Sam Rittenberg
8 Boulevard.
9 Q. And what is the name of that place?
10 A. Shear Beauty by Tralane.
11 Q. And by Tralane is that the owner?
12 A. Yes.
13 Q. What is her name?
14 A. Tralane Bell.
15 Q. And how long have you worked there?
16 A. Six years.
17 Q. Is that how long you've worked for Tralane or ---
18 A. --- no, we've worked together for about nine years
19 total but at that location six years.
20 Q. She had another location that you...
21 A. Yes.
22 Q. And is the way it works that you rent space or that
23 people who work there rent space from her?
24 A. Yes.
25 Q. And what hours and days do you work?

State v Christopher Gilyard
Angela Fuller-Direct Examination by Ms. Herring-Lash
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1 A. Presently?

2 Q. Back in 2012; the summer.

3 A. Back in 2012 I worked Tuesday through Friday. Hours
4 I pretty much worked 8 o'clock in the morning and
5 generally I'm done for the most part around 6:00, 5:00
6 sometimes. And I have a late day but I also have a
7 couple of early days. So it varies depending on my
8 clientele.

9 Q. Do you have any specific late or early day or does
10 it just vary from week to week?

11 A. It varies from week to week.

12 Q. And do you know Minor ?

13 A. Yes.

14 Q. And how do you know her?

15 A. I know her as being Tralane's daughter.

16 Q. Does she come to the shop?

17 A. Yes.

18 Q. And does Tralane work at the shop every day?

19 A. No.

20 Q. Does she have another job?

21 A. Yes.

22 Q. When does she go to that job?

23 A. Different days. The salon is closed on Mondays but
24 I am not certain of her work schedule.

25 Q. Does she go to the nursing homes in the morning or

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1 the afternoons or does it vary?

2 A. It varies.

3 Q. Do you know Mr. Gilyard?

4 A. Yes.

5 Q. And how do you know him?

6 A. From working at the salon.

7 Q. Do you remember about how long he worked there?

8 A. I would say about a year or under.

9 Q. And when was that?

10 A. 2012.

11 Q. And was there any day that or more than one day that
12 you left and Minor and Mr. Gilyard would have been left
13 alone at the shop?

14 A. Yes.

15 Q. Did that happen once or more than once?

16 A. Definitely once but I'm sure more than once.

17 MS. HERRING-LASH: Court's indulgence for a moment.

18 [Whereupon, Ms. Herring-Lash and Ms. Elliott confer]

19 Q. [Ms. Herring-Lash] Those are all the questions of
20 Ms. Fuller.

21 THE COURT: Any questions for the witness?

22 MR. COCHRAN: Yes, Your Honor. Thank you. May it
23 please the court?

24 THE COURT: You may proceed.

25

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1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. So there is no particular day when you leave work

4 early?

5 A. No particular day. It depends on my books, my

6 clientele.

7 Q. So how many clients you've got varies from day to

8 day?

9 A. For the most part.

10 Q. Okay. So there wouldn't be one particular day when

11 you always leave early?

12 A. No.

13 Q. And you said there is definitely one day at least

14 where Christopher and Minor were alone together?

15 A. Yes. I cannot recall how many times that has

16 happened but it has happened on occasions, yes.

17 Q. And you're saying it happened on at least one

18 occasion.

19 A. At least one, yes.

20 Q. But it was unusual?

21 A. What was unusual?

22 Q. For them to be just the two of them in the shop?

23 A. I have left when they've been alone on more than one

24 occasion.

25 Q. But you don't remember July 11th, 2012 in particular

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- 1 at this point in time?
- 2 A. No.
- 3 Q. You don't remember what day of the week that was?
- 4 A. No.
- 5 Q. Do you remember a three year old nephew staying at
- 6 the shop?
- 7 A. I'm sorry?
- 8 Q. Do you remember Minor three year old nephew; I
- 9 guess that would be Tralane's three year old grandson
- 10 staying at the shop?
- 11 A. He's visited I believe, yes. It was during the
- 12 summer. I believe it was during the summer ---
- 13 Q. --- and do you remember days in particular when it
- 14 would be just Christopher with the three year old and
- 15 Minor ?
- 16 A. No.
- 17 Q. You don't remember any day where you left the three
- 18 of them alone?
- 19 A. No.
- 20 Q. So you would say that never happened?
- 21 A. I would not -- I'm not sure that never happened. I
- 22 just don't remember when it happened.
- 23 Q. So that would not be a memorable event for you?
- 24 A. No.
- 25 MR. COCHRAN: No more questions, Your Honor.

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1 THE COURT: Any redirect of the witness?
2 MS. HERRING-LASH: No, Your Honor.
3 THE COURT: Any objection to the witness being
4 excused from the State?
5 MS. HERRING-LASH: No, Your Honor.
6 THE COURT: From the defense?
7 MR. COCHRAN: No, Your Honor.
8 THE COURT: Ma'am, you're excused.
9 [Whereupon, the witness is excused and exits the
10 witness stand]
11 THE COURT: The State may proceed.
12 MS. HERRING-LASH: The State would call Tralane
13 Bell.
14 [Whereupon, Ms. Bell comes forward]
15 [Whereupon, the witness is duly sworn by the Clerk
16 of Court]
17 CLERK OF COURT: Once seated ma'am, if you could
18 state your first and last name and then spell your first
19 and last name for the record.
20 THE WITNESS: Tralane Bell, that's T-R-A-L-A-N-E
21 B-E-L-L
22 THE COURT: You may proceed.
23
24
25

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Tralane Bell-Direct Examination by Ms. Herring-Lash
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1 TRALANE BELL,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. HERRING-LASH:
6 Q. Ms. Bell, before we begin with your testimony you're
7 holding your arm a bit gingerly. Can you tell us if
8 something happened to your arm recently?
9 A. Yes, I had an accident with my vehicle yesterday and
10 dislocated my shoulder.
11 Q. And that's why you're weren't able to really hold
12 your hand up.
13 A. Yes.
14 Q. Where do you live Ms. Bell?
15 A. On James Island.
16 Q. what?
17 A. .
18 Q. And who lives in the house with you?
19 A. My husband, my daughter, and my son, Timothy.
20 Q. And who is your daughter?
21 A. Minor .
22 Q. And what about your son?
23 A. My son is Timothy Mason.
24 Q. Do you have other children?
25 A. Yes, I have four kids.

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- 1 Q. What are their ages?
- 2 A. Twenty nine, twenty six, twenty four, and sixteen.
- 3 Q. And Minor is the sixteen?
- 4 A. Yes; and four grands.
- 5 Q. And what are the names and ages of your
- 6 grandchildren?
- 7 A. Nephew is five, Grandchild 1 [phonetic] is two, I have two
- 8 two-year olds, and Grandchild 2 [phonetic] is two as well, and
- 9 then Grandchild 3 is one.
- 10 Q. Grandchild 3 ? You may need to spell that.
- 11 A. She's my Grandchild 3 . Her name is Grandchild 3 [phonetic].
- 12 Q. And do any of your grandchildren stay with you for
- 13 extended visits during the summer?
- 14 A. Yes. I have Nephew -- I generally get him every
- 15 summer.
- 16 Q. And Nephew was the grandson?
- 17 A. Yes.
- 18 Q. And is he the one that was five?
- 19 A. Yes.
- 20 Q. And where do you work Ms. Bell?
- 21 A. Well, I have a beauty salon at 1209-B Sam Rittenberg
- 22 Boulevard. I've had Shear Beauty for approximately about
- 23 25 years. And I have a beauty salon inside Heartland
- 24 Rehabilitation Center, and I also have a beauty salon in
- 25 Savannah House on James Island.

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1 Q. And has Shear Beauty been at that exact address for
2 all those years?

3 A. No. It's been at that exact address for
4 approximately six years.

5 Q. And talking about that location you gave the
6 address. Do you know if that is in Charleston County?

7 A. Yes, it is.

8 Q. And how back -- let's talk about back in 2012. How
9 would people enter your salon?

10 A. I have an intercom system. We keep the door locked.
11 They have to speak through the intercom and if any one of
12 the stylists that we will unlock the door and let them
13 in.

14 Q. And did each stylist have their own key?

15 A. Yes. A key actually stayed in the door.

16 Q. And as far as the windows of your shop your shop has
17 windows to the sidewalk is that right?

18 A. Yes.

19 Q. And can you explain the condition of those windows
20 to the jury?

21 A. So the heat wouldn't come in and it would stay
22 cooler you could see out but you can't see in.

23 Q. Is it like tinted?

24 A. Yes, it's tinted.

25 Q. And do you have other people that work for you in

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1 your shop?

2 A. Yes.

3 Q. And how does that work out? Is it space or?

4 A. They rent a booth.

5 Q. And back in the summer of 2012 what other people did
6 you have working there?

7 A. At that time I had Angela Washington, myself, and
8 Christopher Gilyard.

9 Q. Is Angela Washington also known as Angela Fuller?

10 A. Yes, she got married.

11 Q. And Christopher Gilyard?

12 A. Yes.

13 Q. How did you meet Mr. Gilyard?

14 A. He was cutting -- well, she is my cousin but I got
15 legal guardian of her when she was twelve so I call her
16 my daughter, Cousin . He was going to her house
17 as well as everyone in Fairlawn [phonetic] cutting their
18 hair.

19 And she informed me how good he was and he was
20 working at a salon barber shop before and he started
21 coming over to my home cutting my son's hair who is an
22 artist. He was pretty good and I needed a barber because
23 the barber I had was no longer there.

24 Q. So Mr. Gilyard was a good barber?

25 A. Yes. He's an excellent barber.

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1 Q. And did he have days in particular that he worked or
2 how did that go?

3 A. Everybody pretty much came and went as they pleased.
4 They set their own hours, they work their own hours.

5 Q. Is it like they have their own customers and ---

6 A. --- yes. They book their own appointments, they
7 have their own...

8 Q. Do you know about -- do you know the age of Mr.
9 Gilyard when he started working with you?

10 A. Thirty one.

11 Q. And I'm just going to show you a picture of your
12 shop. I'll show you what has been in evidence as State's
13 exhibit number 2.

14 [Whereupon, the witness is shown photograph]

15 Q. Is that your shop?

16 A. Yes, it is.

17 Q. And in that picture does that reflect where Mr.
18 Gilyard had his barber chair?

19 A. Yes.

20 Q. And where is that?

21 A. That's was the barber's room separate from the
22 females. Generally most women don't want a male to see
23 them without their weave; like myself.

24 Q. And that's that black chair in that room?

25 A. Yes.

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- 1 Q. And that's where he would do his barbering?
- 2 A. Yes.
- 3 Q. And the other area you can kind of see there is the
- 4 common area as it goes around.
- 5 A. Yes, ma'am.
- 6 Q. Now your daughter, Minor does she come to the shop
- 7 with you?
- 8 A. Yes.
- 9 Q. And what is she studying in school?
- 10 A. She goes to trade high school. She is studying to
- 11 be a cosmetologist.
- 12 Q. So does she get to do some work alongside?
- 13 A. Yes. She shampoos for me and she works a lot with
- 14 me at the nursing home.
- 15 Q. So she did go to the other locations where you
- 16 worked.
- 17 A. Yes.
- 18 Q. Now back in the summer of 2012 I think you have said
- 19 that your grandson ^{Nephew} was staying with you?
- 20 A. Yes.
- 21 Q. And did he go to the nursing homes with you and
- 22 Minor also?
- 23 A. Yes.
- 24 Q. Did there come a time when y'all had to stop?
- 25 A. Yes.

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1 Q. What happened?

2 A. Well, he was a rambunctious two year old just
3 running about the place and they said he couldn't come
4 any more so.

5 Q. And what hours do you normally go to the nursing
6 homes?

7 A. Generally from 11:00 to 3:00.

8 Q. And are there particular days that you go to those
9 nursing homes?

10 A. Yes.

11 Q. What are they?

12 A. Tuesday, Wednesday, and Friday.

13 Q. And so Tuesday, Wednesday, and Friday generally it's
14 11:00 to 3:00?

15 A. Yes.

16 Q. And was that also back in the summer of 2012?

17 A. Yes.

18 Q. And did -- does Mr. Gilyard know Minor ?

19 A. Yes.

20 Q. Do you know where they met?

21 A. Initially at my home I believe when he was cutting
22 my son's hair when I saw his work; when I first got a
23 glimpse of his work.

24 Q. And did he also see her at the shop?

25 A. Yes.

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1 Q. And what interactions did you yourself observe
2 between the two of them?

3 A. Initially, it was ---

4 MR. COCHRAN: --- objection. My previous
5 objection. It was my previous objection that I made.

6 THE COURT: You need to tell me a basis.

7 MR. COCHRAN: May we approach?

8 [Whereupon, an off the record bench conference is
9 held]

10 THE COURT: The objection is overruled. Ma'am, you
11 may answer the question.

12 Q. [Ms. Herring-Lash] Do you remember the question?
13 What did you yourself observe?

14 A. Initially I observed he was paying her five dollars
15 to clean his common area.

16 Q. And that's that small area that we saw in the
17 picture?

18 A. Yes. And then it went to washing his hair and he
19 would give her money. And I wasn't comfortable with
20 that. And then -- there became a point where she was
21 under punishment and couldn't use the phones and he would
22 allow her to use his phone and Internet behind my back.

23 And I witnessed them doing a pinky swear and I
24 questioned her about it and he told me it was because he
25 was letting her use the phone. There was also a time

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1 when he was play spanking her with his belt or whatever
2 and she came to me and told me she was uncomfortable with
3 him playing with her like that ---

4 MR. COCHRAN: --- objection. Hearsay.

5 Q. [Ms. Herring-Lash] Just say what you ---

6 THE COURT: --- sustained. Hearsay. Ma'am, you
7 can only what you did as a result of the conversation.
8 You can't say what someone told you.

9 A. Well, I witnessed him spanking her with the belt and
10 then I did then say to him I was uncomfortable because of
11 what she had already endured. And being a parent
12 thinking I'm speaking to another mature adult thinking he
13 would understand and...

14 Q. Let me go back. What do you mean, the jury may or
15 may not know this, what do you mean by pinky swear?

16 A. They just pinky swore that it would be a secret
17 between the two of them.

18 Q. And the two of them did that together?

19 A. Yes.

20 Q. Now was there ever a day when Mr. Gilyard and Minor
21 ended up at the shop alone or were there days where that
22 occurred?

23 A. Yes.

24 Q. There were days?

25 A. Yes.

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1 Q. And was there a time when Mr. Gilyard stopped coming
2 to work?

3 A. Yes.

4 Q. And did you call him to find out about that?

5 A. Yes.

6 Q. And what did he say?

7 MR. COCHRAN: Objection. Hearsay.

8 THE COURT: Basis? I'm sorry; please approach.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: Overruled. You may proceed with the
12 instructions.

13 Q. [Ms. Herring-Lash] And what did he tell you about
14 coming back to work?

15 A. He said that it was his and his girlfriend their
16 birthday was the same day or week or whatever and he was
17 taking a week off to celebrate the birthday.

18 Q. And after his -- do you know when his birthday was?

19 A. I believe it was because my husband's
20 birthday is the .

21 Q. And you know it was the day before then?

22 A. I believe so.

23 Q. And did his birthday come and go?

24 A. Yes.

25 Q. And did he come back to work?

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- 1 A. No.
- 2 Q. Did you call him?
- 3 A. Repeatedly.
- 4 Q. And did there ever come a time when your daughter --
- 5 MR. COCHRAN: --- objection.
- 6 THE COURT: Basis?
- 7 MR. COCHRAN: May we approach?
- 8 THE COURT: Uh Huh.
- 9 [Whereupon, an off the record bench conference is
- 10 held]
- 11 THE COURT: Time limitation.
- 12 Q. [Ms. Herring-Lash] Was there a time when Minor
- 13 overheard you calling him?
- 14 A. Yes.
- 15 Q. And without saying anything that she said what was
- 16 her reaction?
- 17 A. She was very upset. She got so upset and I pulled
- 18 into the median and I said you're going to tell me what's
- 19 going on and you're going to tell me now.
- 20 Q. And why were you asking her these questions?
- 21 A. Because of her reaction. She was just really upset.
- 22 Q. And when you pulled over did she tell you about an
- 23 assault yes or no?
- 24 A. Yes, she did.
- 25 Q. And did she tell you where it had happened?

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- 1 A. Yes, she did.
- 2 Q. And where did she say it happened?
- 3 A. In the salon in the back where we go for our break
- 4 area and where the bathroom is.
- 5 Q. I'm going to show you what has been marked as
- 6 State's exhibit number 8 and admitted as State's number
- 7 8.
- 8 [Whereupon, the witness is shown photograph]
- 9 Q. What is this Ms. Bell?
- 10 A. That's where it took place.
- 11 Q. This is where she showed you?
- 12 A. Yes.
- 13 Q. What was her demeanor during this conversation?
- 14 A. She was afraid, threatened, she was afraid that ---
- 15 Q. --- you can't say anything she said. Just what was
- 16 her demeanor like when she was talking to you?
- 17 A. She was really upset.
- 18 Q. And you said she told you about an assault?
- 19 A. Yes.
- 20 Q. Were you able to figure out if he had in fact been
- 21 back to work after the assault?
- 22 A. Yes.
- 23 Q. And what did you do, or did you notice any changes
- 24 in her after the assault?
- 25 A. Yes ---

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1 Q. --- when he was back at work?

2 A. Yes.

3 Q. What did you observe?

4 A. She no longer went into his room where she used to
5 go in there all the time and hang out in there. In fact
6 she started sitting under the dryer with her headset and
7 with the dryer hood over her head.

8 She gained a lot of weight. And I blame myself --
9 well, I blame him because as a Mother...

10 Q. I know it's very hard. I know that you're trying
11 not to -- after she told you what did you do?

12 A. I had my -- I spin around and I headed straight to
13 his house.

14 Q. And when you got to his house did you find him yes
15 or no?

16 A. No, I did not. His girlfriend said he moved over to
17 another ---

18 MR. COCHRAN: --- objection.

19 THE COURT: Basis?

20 MR. COCHRAN: Hearsay.

21 THE COURT: Sustained.

22 Q. [Ms. Herring-Lash] What did you do? What did you do
23 next?

24 A. I went there and well, when she told me he wasn't
25 there ---

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Tralane Bell-Direct Examination by Ms. Herring-Lash
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- 1 Q. --- stop -- you can't say it. Just you didn't find
2 him ---
- 3 A. --- I didn't ---
- 4 Q. --- what did you do?
- 5 A. I went to Shantae's house and I dialed 911 for a
6 report and they said -- I guess its Berkeley County and
7 they said I had to do it in Charleston County. So I
8 then went back to my salon and waited for them come.
- 9 Q. So when you got back to your salon you called ---
- 10 A. --- I called the cops and a locksmith to change the
11 locks.
- 12 Q. And did they come?
- 13 A. Yes.
- 14 Q. And you said you also called a locksmith?
- 15 A. Yes.
- 16 Q. And when they came that evening were you and Minor
17 referred anywhere that evening to go?
- 18 A. No, we were not.
- 19 Q. Now the next day did another detective come out?
- 20 A. Yes.
- 21 Q. And did he talk with you?
- 22 A. Yes.
- 23 Q. And did he or did they refer you to the Lowcountry
24 Children's Center?
- 25 A. Yes.

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1 Q. And did you take Minor there?

2 A. Absolutely.

3 Q. And did you also take her to a doctor?

4 A. Yes.

5 Q. Now did you take her to your own doctor?

6 A. Yes, I did.

7 Q. And what did you have the doctor do when you took
8 her?

9 A. I had her tested for every S-T-D or anything. I had
10 her tested for everything.

11 Q. And did you take Minor to counseling?

12 A. Yes.

13 Q. Do you remember about how long that counseling
14 lasted?

15 A. For about three to six months. We went for quite a
16 bit.

17 MS. HERRING-LASH: Court's indulgence for a moment.

18 [Whereupon, Ms. Herring-Lash and Ms. Elliott confer]

19 Q. Ms. Bell, those are all the questions I have.

20 Would you like some water?

21 A. Yes, please.

22 Q. If you will now answer any questions that Mr.

23 Cochran has.

24 THE COURT: Mr. Cochran, you may proceed. Ma'am,

25 are you okay to proceed or you need a moment?

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1 THE WITNESS: I'm okay.
2 THE COURT: You may proceed.
3 MR. COCHRAN: Thank you, Your Honor.
4 THE COURT: You're welcome.
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Tralane Bell-Cross-Examination by Mr. Cochran
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1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. Your daughter initially told you that this happened
4 on July 11th, 2012 correct?

5 A. I'm not quite sure of the date. I mean,
6 approximately around that time I guess.

7 Q. You are one who initially called law enforcement,
8 correct?

9 A. Absolutely; that's my child.

10 Q. And you spoke with Investigator Niblock, correct?

11 A. I can't remember his name.

12 Q. Okay. You spoke with the responding officers ---
13 A. --- yes ---

14 Q. --- for the first call. And then you spoke with
15 another investigator the next day, correct?

16 A. Yes.

17 Q. Okay. And then you spoke with another investigator
18 later on, correct, who also interviewed Minor ?

19 A. I can't recall but I probably did, I guess.

20 Q. Do you remember an investigator interviewing Minor
21 you were present for?

22 A. Yes.

23 Q. And prior to that investigator there was another
24 investigator who took a statement from you, correct?

25 A. Yes.

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1 Q. Okay. And you specified when you spoke with him
2 that it happened on July 11th, 2012, correct?

3 A. To my recollection. I was trying to go back through
4 the dates and figure out the time span but I couldn't
5 from the date.

6 But to my recollection that was the best date I
7 could come up with when I knew I was running late getting
8 back to the salon.

9 Q. But that's not what you told the investigator. You
10 told the investigator that it happened on July 11th,
11 2012.

12 A. To my recollection at that time.

13 Q. And you also told the investigator that after July
14 11th, 2012 after the date that you thought your daughter
15 was talking about that Christopher Gilyard never came
16 back to work.

17 A. He never came back to work after his birthday. But
18 he ---

19 Q. --- but that's not what you told investigators.

20 A. Well, I can't recall but I know there may have been
21 a lapse in time or recollection at the time. I know he
22 didn't -- there was a point where he didn't come back.

23 Q. But when questioned specifically about the incident
24 by the investigator you said that he had not been back to
25 work since, correct?

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1 A. He had not been back since I made the report, no.
2 Now as far as the incident my recollection I'm not sure.
3 But I know he was back -- I just can't...

4 Q. The day before you spoke with that investigator you
5 also spoke with responding officers, correct?

6 A. Yes.

7 Q. And you told responding officers about this pinky
8 promise?

9 A. Yes.

10 Q. And you told Investigator Niblock the next day about
11 this pinky promise, correct?

12 A. Yes.

13 Q. And you told them that this pinky promise occurred
14 on the incident date, correct?

15 A. To my -- I can't recall. I know there was a pinky
16 promise made. I can't tell you the date; its a few years
17 later. I'm not ---

18 Q. --- when you were talking to them you were pretty
19 sure weren't you that the pinky promise ---

20 A. --- to my recollection, yes.

21 Q. That the pinky promise happened on the incident
22 date, correct?

23 A. Well, I wasn't aware that this incident happened
24 until I called, was calling him to come back to work. So
25 at that time I was trying to make my best recollection of

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Tralane Bell-Cross-Examination by Mr. Cochran
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1 when it occurred. At this time he had not been back to
2 work after his birthday when I made the call to report
3 the incident when I was finally told about the incident.

4 Q. And it's your information that his birthday is on
5 .

6 A. I believe -- I know it was sometime along there. It
7 was close to my husband's birthday because at that time I
8 mentioned them having something together.

9 Q. And you were implying in talking with responding
10 officers and the next day to the investigator that the
11 pinky promise had something to do with this assault that
12 you daughter was alleging.

13 A. Well, after him not coming back to work and me
14 finding out this happening to my daughter of course now
15 hindsight is 20/20 and I'm thinking this is what the
16 pinky promise had to have been about. I can't -- I don't
17 know ---

18 Q. --- and you were thinking that it was on the
19 incident day?

20 A. Yes.

21 Q. And you were thinking that the incident day was the
22 last time you saw Christopher.

23 A. That was not the last time I saw him.

24 Q. But that's what you told investigators.

25 A. Well...

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1 MS. HERRING-LASH: Your Honor, may we approach ---

2 A. --- you have to understand when I made the report
3 from that time to then it just...

4 THE COURT: You may complete your answer.

5 A. When I made the report a week after his birthday was
6 when I just found out about it. So I was trying to think
7 back my recollection the date and time may be off a
8 little.

9 But I do remember the pinky swearing and all that.
10 And of course, after finding out this happened well,
11 maybe that's what the pinky promise really was about; as
12 a parent you know thinking about it hindsight being
13 20/20.

14 THE COURT: Is there an objection?

15 MS. HERRING-LASH: Your Honor, it really wasn't an
16 objection. I just wanted to approach.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: You may proceed.

20 MR. COCHRAN: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 Q. [Mr. Cochran] But you found out later that this
23 pinky swear had absolutely nothing to do with this
24 assault that she was alleging, correct?

25 A. I still -- I can't say that.

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1 Q. Well, your daughter told you it had nothing to do
2 with that, correct?

3 A. May I have permission to speak freely?

4 THE COURT: Ma'am, you may answer the question and
5 then you may explain your answer.

6 A. Being a parent I don't know. Christopher said it
7 was about the cell phone and at the time when I
8 questioned my daughter I asked her that day. I didn't
9 know at that point. Now ---

10 Q. --- but Minor _ has continued to say that the pinky
11 swear had nothing to do with her alleged assault.

12 A. We never spoke anymore about it at that time. I
13 left it at that that particular day when I found out
14 about the incident. Now Christopher, I welcomed this man
15 into my home. He was a good barber and I needed a barber
16 ---

17 MR. COCHRAN: --- Your Honor, I object to her
18 responding ---

19 A. --- there was no reason for me ---

20 MR. COCHRAN: --- not responsive.

21 THE COURT: Ma'am, I need you to answer the
22 question yes or no and then you may explain your answer.
23 Ask the next question.

24 Q. [Mr. Cochran] The date you left the store you left
25 and Angie was still at the salon.

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1 A. I was not at the salon. I was at my other beauty
2 salon.

3 Q. Angie was at the salon with Christopher and Minor ?

4 A. Yes.

5 Q. And your grandson was there as well?

6 A. Yes. When I passed by Angie was still there so I
7 thought I had time to run do errands. I had to go to the
8 bank and the supply store. By the time I got back Angie
9 was gone and they were there together.

10 Q. You told investigators that you were gone from the
11 salon for about an hour; no more than an hour, correct?

12 A. Yes.

13 Q. And that Angie was there while you were gone for at
14 least part of the time while you were gone.

15 A. She left I guess -- she could have left a minute
16 after I passed by. I can't tell you that.

17 Q. But you left and then drove back by --

18 A. --- I never left. I went past. The other beauty
19 salon is two minutes away from that one.

20 Q. So you had not been Shear Beauty at all that day?

21 A. Not yet. Well, I was there that morning. I dropped
22 them off there and then I went straight to my other
23 salon.

24 Q. Okay. So you're at Shear Beauty.

25 A. I dropped them off and I went straight to my other

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1 job.

2 Q. Dropped who off? Dropped Minor and the nephew?

3 A. Yes.

4 Q. Okay. And then you left.

5 A. Yes.

6 Q. So you were there and you did leave?

7 A. Yes.

8 Q. And you were gone for about an hour before you got
9 back to Shear Beauty?

10 A. No.

11 Q. That's what you told Investigator Niblock that you
12 were gone for no more than an hour.

13 A. An hour from -- okay, I dropped them off that
14 morning. I got off from the nursing home at 3 o'clock.
15 I ran to the bank and ran errands.

16 It was about an hour before I got back to Shear
17 Beauty. I was gone for about an hour from passing by
18 Shear Beauty.

19 Q. And when you passed by Shear Beauty Angie was there.

20 A. Her car was there. By the time I got back she had
21 already left.

22 Q. And in that span of time was no more than an ---

23 A. --- it was about an hour, yes.

24 Q. And was Angie there when the shop opened?

25 A. Yes.

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1 Q. But you have no idea when Angie left, correct?

2 A. No.

3 Q. Let the record reflect that she indicated that that
4 was correct.

5 THE COURT: I think her answer was clear. The
6 court reporter was able to take it down and I heard it.
7 You may proceed with your next question.

8 Q. [Mr. Cochran] I think you just said when you ended
9 up coming back to the shop to pick Minor up Angie was
10 gone.

11 A. Yes.

12 Q. But Christopher was still there?

13 A. Yes.

14 Q. So it's your testimony that Christopher was still
15 there when you got back to Shear Beauty?

16 A. I believe he was, yes.

17 Q. And your son's ex-girlfriend, Ashley Whaley, was
18 there.

19 A. No, she wasn't there when I got there. But I was
20 told that she came by and brought Nephew and Minor lunch.
21 But they weren't there when I got there.

22 Q. So it's your testimony that Ashley ---

23 A. --- I can't -- I mean there were several times that
24 Ashley came ---

25 Q. --- we're talking about one day in particular.

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1 We're not talking about several days. Ashley Whaley it's
2 your testimony that she was not at the shop when you came
3 back that day.

4 A. Okay. Let me say this to you. If I'm not sure
5 exactly what day it happened and Ashley comes there
6 periodically with my son who is the mother of my
7 grandkids how can -- I can't tell you what date this was.

8 Q. Okay. Let's talk about that for a second.

9 A. But I can tell you the span of time.

10 Q. You can't tell us exactly what day this was, correct
11 that Minor _ is saying this happened. You cannot say with
12 any ---

13 A. --- I can narrow it down to the time that he has
14 been alone with her during this span of time of him not
15 showing up and me having this ---

16 Q. --- what's the span of time?

17 A. Between July 11th and 12th up until his birthday.

18 Q. So between July 11th ---

19 A. --- yes, and it was ---

20 Q. --- and ---

21 A. --- and I know it had to have been a Wednesday.

22 Q. Why is that?

23 A. Which is somewhere -- why is that?

24 Q. Yes?

25 A. Because this was the day, this particular day I

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1 can't remember what it was but it was something very
2 relevant that went on this day with my grandson.

3 Q. Something very relevant that went on with our
4 grandson but you can't remember today?

5 A. Two years ago ---

6 Q. --- but you remember that it was definitely, well
7 two years later you definitely remember it was a
8 Wednesday.

9 A. Yes.

10 Q. But you can't say ---

11 A. --- I only work at the nursing home Tuesday,
12 Wednesday and Friday and I know it wasn't a Friday
13 because I generally don't go back to the -- I don't work
14 the salon on Fridays. I only go back to the salon on
15 Tuesday and Wednesday.

16 Q. So it could have been Tuesday?

17 A. But it wasn't because Ashley didn't come by there
18 that Tuesday.

19 Q. So you remember two years later that Ashley did not
20 come by on Tuesday?

21 A. No, she did not.

22 Q. But you don't remember a whole lot of other stuff
23 but you remember that. You don't remember definitively
24 what day Minor is alleging this happened, correct?

25 A. Minor is alleging this happened?

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1 Q. Yes, correct?

2 A. I can just give you a time span. That's all I can
3 give you.

4 Q. So you can't remember a specific day but you can
5 remember that Minor started acting differently after a
6 specific day.

7 A. Yes, she did.

8 Q. And you can remember that Christopher Gilyard
9 stopped coming to work after a specific day.

10 A. Minor stayed in his room because he had Internet on
11 his phone.

12 Q. And you can't remember ---

13 A. --- and she didn't want to go in there anymore ---

14 Q. --- and you can't remember -- and you remember that
15 that happened after a specific day?

16 A. Wouldn't you notice if your child started acting
17 different?

18 Q. And what specific day was it?

19 A. Somewhere between the 11th, the 12th; somewhere
20 around that neighborhood ---

21 Q. --- 13th, 14th, 15th, 16th, 17th, 18th, 19th ---

22 A. --- no ---

23 Q. --- 20th, 21st, 22nd, 23rd, 24th, and 25th. That's
24 the span you gave. That's not a specific day.

25 A. [No response]

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1 Q. But you're saying to the jury that you were ---

2 A. --- in July ---

3 MS. HERRING-LASH: --- Your Honor, asked and
4 answered several times.

5 MR. COCHRAN: It hasn't been.

6 A. In July ---

7 THE COURT: --- for purposes ---

8 A. --- something ---

9 THE COURT: --- wait. Unless I ask for argument
10 there is to be none. If there is an objection I will ask
11 the basis of it. I will grant you this last question on
12 it. It has been asked and answered. Ma'am, you may
13 answer the question. Do you remember the question or do
14 you need it repeated?

15 A. In July something happened between -- the week of
16 the 11th something happened between this man and my
17 daughter.

18 Q. [Mr. Cochran] And you remember specifically that
19 Minor starting acting differently after a specific day.

20 A. Yes.

21 Q. But you can't tell the jury what specific day that
22 was.

23 MS. HERRING-LASH: Your Honor, objection.

24 THE COURT: Basis?

25 MS. HERRING-LASH: Asked and answered.

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1 THE COURT: Sustain. Proceed.

2 Q. [Mr. Cochran] So your testimony today is that
3 Christopher was at the shop when you got back that day?

4 A. I thought we already covered that.

5 THE COURT: Ma'am, answer the question.

6 A. Yes. No. Yes. I mean there were days that he was
7 there with my daughter. What day you want me to -- I
8 mean ---

9 Q. [Mr. Cochran] --- and you're saying that on the day
10 that we are talking about that we are all here for today
11 he was at the shop when you got back; that was your
12 testimony earlier.

13 A. To my recollection, yes.

14 Q. But you told Investigator Ambrose that when you got
15 back Angie and Christopher were both gone.

16 A. That particular day they both were.

17 Q. So you don't know is the answer.

18 A. There were days that he was there with my daughter
19 when I got there. And there were days that he had
20 already left.

21 Q. You took -- let me ask you this. You went to
22 confront -- your daughter makes a sexual assault
23 allegation to you and you went to confront Mr. Gilyard
24 before you called the police.

25 A. Yes.

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- 1 Q. And before you took her to a doctor.
- 2 A. Yes.
- 3 Q. And then you did call the police, correct?
- 4 A. Yes.
- 5 Q. And you did take her to a doctor?
- 6 A. Yes.
- 7 Q. Did you take her to a doctor that same day?
- 8 A. I took her to the doctor I believe the next day. I
- 9 made an appointment with my doctor --
- 10 Q. And it's your testimony that was the next day?
- 11 A. No, I can't say it was the next day. I know I took
- 12 her to the doctor to have -- it wasn't like a kit could
- 13 have been performed because it had already -- time had
- 14 already elapsed. So I made an appointment with my doctor
- 15 for her to be tested for everything under the sun.
- 16 Q. For S-T-D's.
- 17 A. Yes.
- 18 Q. Okay. Are you a nurse?
- 19 A. No.
- 20 Q. Okay. And you took her to the doctor to have her
- 21 tested for S-T-D's but you did not tell the doctor about
- 22 her allegation of sexual assault.
- 23 A. No.
- 24 Q. And he did not examine her; do a physical
- 25 examination in that regard because he was not aware of

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1 the allegation, correct? Yes or no?

2 A. No. Permission to speak freely?

3 THE COURT: Ma'am, you can explain your answer.

4 A. Okay. My daughter was statutory raped a year
5 before while she -- a year before an incident happened
6 with her. I was embarrassed. I just felt like because I
7 told him she was uncomfortable with him playing with her
8 like that being an adult he would understand. But he saw
9 -- to me I feel like he saw her as an easy target ---

10 MR. COCHRAN: --- Your Honor ---

11 A. --- so I was embarrassed to tell my doctor yet again
12 that this happened to her a second time. So no, I did
13 not.

14 MR. COCHRAN: I believe we have a matter of law,
15 Your Honor.

16 THE COURT: Approach.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: Continue.

20 Q. [Mr. Cochran] So you testified that you were
21 embarrassed. You were embarrassed or Minor was
22 embarrassed and that's why you didn't go over that with
23 the doctor?

24 A. I was embarrassed because I felt like I failed my
25 child. I trusted him. I accepted this man into my home

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1 and my business. I trusted this man with my child. I
2 was embarrassed.

3 Q. Well, let's talk about that for a second. You
4 testified that Christopher asked Minor to clean his
5 station and he would give her five bucks to clean his
6 station.

7 A. Yes.

8 Q. You said something about him getting a shampoo from
9 her?

10 A. Yes.

11 Q. And that's part of her job, right, was shampooing
12 people at the salon.

13 A. My customers for me. I paid her to do it for me,
14 not for him, not to shampoo him.

15 Q. And there was a belt slapping incident where he was
16 playing around with his belt.

17 A. Yes.

18 Q. Okay. And you said that on those three separate
19 occasions he made you feel uncomfortable.

20 A. She told me she felt uncomfortable.

21 Q. You also said that you were uncomfortable, correct?

22 A. I was sitting there and it was -- at the time I
23 didn't know that it bothered her like that.

24 Q. And you talked to him about it as well.

25 A. Yes, I did after having a conversation with my

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1 child.

2 Q. So you were uncomfortable about cleaning the station
3 and you actually told her not to go back in his station,
4 correct?

5 A. After he broke what I asked him not to let her use
6 his phone and he was sneaking behind my back allowing her
7 to use the Internet, which she was under punishment for.
8 He was doing it behind my back.

9 Q. So you were uncomfortable about cleaning his
10 station. You were uncomfortable about the phone. You
11 were uncomfortable about the shampooing. You were
12 uncomfortable about the belt.

13 And all of this occurred prior to the day you say
14 you left your daughter alone with him and that you
15 trusted him completely.

16 A. First of all initially I was not uncomfortable with
17 him -- with her going in there. But when I had the
18 conversation with him about the phone he said he wouldn't
19 do it anymore. And the incident with the belt I had -- I
20 wasn't uncomfortable with anything because I was there.
21 But once ---

22 Q. --- you saw ---

23 A. --- she made me -- yes, we were all there and
24 everybody was laughing and she came to me and she had a
25 problem so I addressed it. Now prior to her even saying

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1 anything I told him that she was not to use his phone
2 because she was under punishment. And I was told that's
3 why -- he said the pinky swear was about.

4 Q. Now you remember a specific span of time when Minor
5 says this happened, correct? I think we've been over
6 that pretty thoroughly.

7 And you said that on the day that she disclosed to
8 you she was visibly upset, right? Extremely upset,
9 correct?

10 A. Correct.

11 Q. And you could see just by looking at her how upset
12 she was, correct?

13 A. I was driving. She was so upset I spun in the
14 median so quick and we sat there and we talked and I made
15 a u-turn in the street and headed straight up ---

16 Q. --- because of how upset ---

17 A. --- a thirty minute drive after she told me what
18 happened.

19 Q. Because of how upset she was.

20 A. Yes.

21 Q. Because she's a teenage girl, right? I mean she's
22 got trouble controlling her emotions, correct?

23 A. If your thirteen year old child told you someone
24 sexually assaulted them you think you're going to ---

25 Q. --- I'm not talking about ---

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1 A. --- I wasn't even thinking rational ---

2 Q. --- I'm not talking about your emotions. I'm
3 talking about your daughter's emotions.

4 A. God had -- maybe God intervened that he wasn't there
5 because had he been there I would be in jail right now.

6 Q. Okay. Ma'am, I'm not talking about your emotions,
7 okay. I'm not asking about you. This isn't about you,
8 okay. I'm asking about your daughter and her emotional
9 state the day she disclosed to you. She was visibly
10 upset, correct?

11 A. Yes.

12 Q. She was a teenager at the time and she still is,
13 correct?

14 A. Yes.

15 Q. She had trouble controlling her emotions, correct?

16 A. She has no trouble controlling her emotions. Her
17 emotions affect my emotions so it is about me because
18 she's my child.

19 Q. She was extremely emotional.

20 A. She was afraid. She was afraid. She was
21 threatened. She was afraid.

22 Q. And you could see that on her face?

23 A. She told me.

24 Q. And you could see it on her face ---

25 A. --- she was crying. She was upset. She was crying.

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- 1 Q. And you don't remember any day in July of 2012 where
2 you came back to work and she was visibly upset.
- 3 A. No. Hindsight is 20/20. If I had paid more
4 attention I probably would have picked up on it but I...
- 5 Q. You picked up on it on the day of July 2012, right?
- 6 A. When she was crying and upset?
- 7 Q. Yes. You picked up ---
- 8 A. --- absolutely because she told me ---
- 9 Q. --- you picked up on it that day ---
- 10 A. --- but prior to that she was threatened not to tell
11 me because harm would be done to her and myself. So no,
12 I didn't notice. I got in there and I went to doing my
13 client's work, hair ---
- 14 Q. --- and she kept working. She kept working at the
15 store, correct?
- 16 A. No. She didn't work. I was working. I said I got
17 to work.
- 18 Q. Was she sitting under the dryer?
- 19 A. Yes, she probably was, yes..
- 20 Q. And she does that often?
- 21 A. Yes. She's anemic; she always sits under the dryer
22 with the dryer on.
- 23 Q. She's anemic so she sits under the dryer.
- 24 A. Yes, she does all the time.
- 25 Q. To stay warm.

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1 A. [Nods affirmatively]

2 Q. And you just testified on direct though that she
3 started sitting under the dryer and you thought that was
4 weird and now -- and you're saying that it was after this
5 incident took place that all of a sudden she started
6 sitting under the hair dryer all the time. But now
7 you're saying she was doing it all the time because she's
8 anemic.

9 A. She started telling me that's why she was under
10 there. Now my child started doing a lot of things. She
11 started wearing big baggy clothes.

12 She started just -- she started doing a lot of
13 things that was just out of character. I just didn't
14 pick up on it.

15 Q. But it wasn't a day that in July 2012 when you came
16 back to work and she was visibly upset. There was no day
17 in that month, correct?

18 A. All I can tell you is the day that she told me when
19 she saw that I was trying to get this man to come back to
20 work she lost her mind.

21 Q. But that was after he had been coming back for days
22 and days and maybe even weeks after this ---

23 A. --- he hadn't been back to work in over a week. He
24 hadn't been back to work. When I started -- when she
25 heard me calling him to come back to work, where are you

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1 at, when are you coming back to work she started saying
2 don't let him come back to work. I don't want him back.
3 She started crying. Why are you trying to make him come
4 back to work? I don't want him to come back.

5 So I pulled in a median and I was like what is going
6 on? Tell me what happened right now. You better tell
7 me.

8 MR. COCHRAN: Beg the court's indulgence.

9 [Whereupon, Mr. Cochran confers with his client]

10 MR. COCHRAN: No more questions, Your Honor, other
11 than my exceptions.

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 we've gone beyond 5 o'clock and we're going to take
14 advantage of this opportunity to take our evening recess.
15 During the break please do not discuss the case among
16 yourselves or with anyone else. Please don't do any
17 independent research on the Internet or watch, read, or
18 listen to any media accounts about this case.

19 We'll resume in the morning at 9:30. You will come
20 directly to your jury room. And please don't have any
21 contact with anyone in or about the courthouse as you
22 return. If you will, leave your notepads in your seats.
23 Actually if you would just pile them up on the banister
24 as you leave we will secure them during recess. Have a
25 good evening and we will see you in the morning at 9:30.

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1 [Whereupon, the jury exits at 5:29 p.m.]

2 THE COURT: Mr. Cochran, you may ask the questions
3 that you that I need to hear about and then I'll hear
4 from the State whether any of the questions are
5 objectionable. You may proceed.

6 MR. COCHRAN: Thank you, Your Honor.

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1 IN-CAMERA CROSS-EXAMINATION
2 BY MR. COCHRAN:
3 Q. Ms. Bell, and I'm not talking specifically about --
4 well, I am in a way, about the case from 2011 what you
5 referred to as the statutory rape case that involved
6 another boy and Minor having sex. You spoke with --
7 after the incident that we're here for now you took
8 Minor in to see a therapist, correct?
9 A. After the first incident?
10 Q. After the second -- after the incident with
11 Christopher ---
12 A. --- yes, yes.
13 Q. She was seeing a therapist at MUSC.
14 A. Yes, I-O-P.
15 Q. And you spoke with the therapist at MUSC regarding
16 the 2011 sexual assault as well, correct?
17 A. Yes.
18 Q. Okay. And in talking with them about that instance
19 that what you refer to as a statutory rape you indicated
20 to the therapist that -- let me say this. Minor has
21 always said that she had consensual sex.
22 A. Yes, she did. But to me as a parent she was a minor
23 and he was 19 and it was statutory rape. She cannot
24 consent to sex.
25 Q. Well, that's to the law too; that's not just you.

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1 But you also spoke with the therapist at MUSC about this
2 and you indicated to the therapist that you had a theory
3 about this case that the boy had climbed on top of Minor
4 while she was asleep and penetrated her while she was
5 asleep. And I understand that she can't legally consent
6 but it still ---

7 A. --- but she did like him and for her it was
8 consensual but for me that's not consent. She could not
9 consent.

10 Q. But you also indicated to the therapist that you
11 thought that the boy had penetrated her while she was
12 asleep, correct?

13 A. He climbed on top of her and started kissing her.
14 And she awoke and they had for her it was consensual sex
15 but for me its statutory rape so.

16 Q. Right. But you told the therapist at MUSC that he
17 had sex with her while she was sleeping. That he
18 penetrated her while she was sleeping, correct?

19 A. If she woke up and they started kissing I don't
20 think she could be asleep.

21 Q. Well, that's not what you told the MUSC therapist.

22 A. Sir, an eleven year old to me and a 19 year old as
23 far as I'm concerned she can't consent to sex so it's
24 statutory to me any way you cut it.

25 Q. But you'll admit that there is -- I understand that

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1 | there is no legal difference between whether she could
2 | consent or not.

3 | MR. COCHRAN: If I could approach, Your Honor.

4 | Q. [Mr. Cochran] But there is a difference between
5 | whether or not somebody engages willingly in sex and
6 | whether or not they are penetrated while they are asleep,
7 | no matter what their age is, right? There is a
8 | difference between those things.

9 | A. Well, I don't know. I know I've been asleep plenty
10 | of nights and my husband climbed on top of me and I
11 | started kissing him and we engaged. Is that rape?

12 | Q. Let me -- beg the court's indulgence.

13 | [Whereupon, Mr. Cochran confers with Ms. Elliott and
14 | Ms. Herring-Lash]

15 | MR. COCHRAN: I apologize, Your Honor.

16 | Q. [Mr. Cochran] If you look at the therapist notes
17 | would that refresh your recollection about what you told
18 | them?

19 | A. What I told them it doesn't -- what I told them and
20 | how I feel and what Minor feels was consensual and what
21 | I feel is statutory rape is two different things.

22 | Q. Okay. But I'm asking you what you told them. Can
23 | you recall what you told them?

24 | A. I know what Minor told me and to me it's statutory
25 | rape.

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1 Q. Okay.

2 A. And if that's the case then I get raped a lot.

3 Q. Do you recall what you told the therapist regarding
4 that incident?

5 A. You're asking me something from 2011?

6 Q. Right. And if you looked at the report would it
7 help your recollection?

8 A. It won't change how I feel. It was statutory rape.

9 Q. I'm not asking what you feel. I'm just asking what
10 you recollect telling the therapist.

11 A. It wouldn't change how I feel and what I think about
12 it.

13 MR. COCHRAN: Your Honor, may I review the report
14 with the witness?

15 THE COURT: I don't know that she has answered
16 inconsistently at this point. And I guess I'm at a loss
17 as to what you're trying to accomplish with your line of
18 questioning. She indicated that she told them that it
19 was initiated while her daughter was asleep. I don't
20 know if there is any appreciable difference between...

21 MR. COCHRAN: I'm sorry, I just didn't -- if Your
22 Honor ---

23 THE COURT: --- I don't know if it really makes a
24 difference in the grand scheme of things. I mean she
25 says that -- you gave her the opportunity to admit or

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1 deny it. She says I told them it was initiated while my
2 daughter was asleep. I don't know if it really makes a
3 difference whether she was knocked out asleep when it
4 happened, whether she initiated it while she was asleep;
5 I don't know that it really makes a difference.

6 Then you have a document that was created by
7 somebody else interpreting what she said. If you don't
8 have a recording I don't know exactly what she said in
9 that report ---

10 MR. COCHRAN: --- and Your Honor, just for the
11 record I mean it's the same document that the State
12 refreshed the victim's recollection with. So in fairness
13 I mean what this does ---

14 THE COURT: --- you can use the document to refresh
15 her memory. I just don't think it is going to change her
16 testimony.

17 MR. COCHRAN: If she is testifying ---

18 THE COURT: --- ma'am, if you will review the
19 document. Ask her the question and let's move it along;
20 it's 5:32.

21 Q. [Mr. Cochran] Ma'am, if you would just look at this
22 top paragraph.

23 [Whereupon, the witness is shown document]

24 A. I can't see it...

25 MR. COCHRAN: The witness has indicated she can't

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1 read this.

2 A. I mean I can't see it.

3 THE COURT: Do you need your glasses?

4 A. I don't have any with me but you could read it to
5 me.

6 THE COURT: Read it to her.

7 Q. [Mr. Cochran] [Reading] Ms. Bell reported a second
8 incident of sexual assault that was not reported by
9 Minor . She said that when Minor was 13 the 19 year old
10 friend of her father's wife's son climbed on top of
11 Minor around 3:00 or 4:00 a.m. while Minor was sleeping
12 at her Father's house and penetrated her.

13 THE COURT: Ask the question.

14 Q. [Mr. Cochran] Ms. Bell, do you deny saying that to
15 the therapist at MUSC?

16 A. Yes. He climbed on top of her and they had
17 intercourse, yes.

18 Q. So you do not ---

19 A. --- he started kissing her and they ---

20 Q. --- so that statement is ---

21 THE COURT: --- I don't think she understands your
22 question. Ma'am, what he is trying to ask you is what he
23 read to you consistent with what you told the therapist
24 or is that not what you told the therapist?

25 A. I told the therapist that Minor can't consent to

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1 sex. To me it's statutory rape. At the end of the day I
2 don't care if she consented, its statutory rape.

3 THE COURT: Okay. But that's not the question
4 that Mr. Cochran is asking, ma'am. What he is trying to
5 determine is did you tell the therapist what he just read
6 in that report ---

7 A. --- I told the therapist he climbed on top of her at
8 3:00 a.m. in the morning, they started kissing and they
9 had sex.

10 Q. [Mr. Cochran] But do you admit to making the
11 statement to the therapist leaving that kissing part out
12 saying that when Minor was 13 the 19 year old friend of
13 her Father's wife's son climbed on top of Minor around
14 3:00 or 4:00 a.m. while Minor was sleeping at her
15 Father's house and penetrated her. While Minor was
16 sleeping at her house and penetrated her.

17 A. She was sleeping at the house and they did have sex.
18 And she told me she liked it but she can't -- she can
19 like who she likes but I don't know what else you want me
20 say.

21 Q. You also indicated to the therapist that you believe
22 that her biological Father had pressured her into making
23 the statement that it was consensual?

24 A. She -- no one can make her -- even if she said it
25 was consensual she can't consent. That's the law. It

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1 doesn't matter; she can't consent.

2 Q. I understand that. Do you believe that your husband
3 or your ex-husband, or Minor Father, do you believe
4 that he pressured her into saying that it was consensual?

5 A. He may have, he may not have. I don't know. But I
6 know the law and she can't consent. Her Father is a
7 police officer and I'm sure he knows that she can't
8 consent. So for him to even pressure her he's a police
9 officer for 17 years; there is no way.

10 MR. COCHRAN: I have no more questions, Your Honor.

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1 THE COURT: Any questions from the State for the
2 proffer of the witness?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: And for what your purpose would you be
5 seeking to elicit this line of testimony, Mr. Cochran?

6 MR. COCHRAN: That Ms. Bell was saying to third
7 parties untrue statements about forcible sexual assault
8 with her daughter about a prior incident and that that
9 was a lie.

10 THE COURT: Would the State like to respond?

11 MS. HERRING-LASH: Yes, Your Honor. I don't think
12 that the word force was used here but I do think this
13 could possibly be very inartfully written by that third
14 party. Because when you read it what it says is when
15 Minor was 13 a 19 year old friend of her Father's
16 climbed on top of Minor around 3:00 or 4:00. But then
17 it says while Minor was sleeping at her Father's house.

18 Well, she was sleeping at her Father's house that
19 night. This statement the way it's written does not make
20 it clear whether Ms. Bell said he climbed on top of her
21 while she was asleep. What it says is while sleeping at
22 her Father's house and then penetrated her. I don't know
23 that she can answer why this therapist chose to write it
24 like that but it doesn't say -- I don't know what it
25 means because it is inartfully written. But when you

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1 read it, it could be either of two things; while she was
2 sleeping or while she was sleeping at her Father's house,
3 which is absolutely was her statement around 3:00 or 4:00
4 he came over to the couch she was on and they started
5 kissing and they had sex. I don't know that that is
6 different from this and I don't think -- and it's
7 irrelevant to what we're here about.

8 THE COURT: Anything further?

9 MR. COCHRAN: Your Honor, I would just say a
10 witness's character for truthfully is always relevant and
11 can be impeached through prior acts of dishonesty. And
12 the damage has already been done in terms of prejudice to
13 the State or the victim because she brought it up without
14 being prompted. And later in the report from MUSC it is
15 made clear what Ms. Bell is indicating to the therapist
16 because Ms. Bell says to the therapist that she believes
17 that Minor biological Father pressured Minor into
18 saying it was consensual.

19 It's clear from her statement to the therapist in
20 this document. If she wants to deny that she said that
21 that's fine. But in this document it is clear, the
22 document is clear that she is making the accusation that
23 this boy -- and I understand that she can't consent, but
24 in reality there is a difference between somebody
25 willingly having intercourse, no matter what age they are

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1 and them being penetrated while they are asleep.

2 THE WITNESS: He's a police officer.

3 MR. COCHRAN: So if she denies making that
4 statement that's fine. But the statements in the report
5 are clear. It is clear what she is saying and if the
6 victim is saying it is consensual and the Mother is
7 saying she is penetrated while she is asleep that is the
8 Mother lying to a third party with regards to her
9 daughter's sexual assault case. And this is the witness
10 who, she's a witness at the trial for one thing but she's
11 also the person who took the initial disclosure and who
12 contacted law enforcement. So it's absolutely relevant.

13 THE COURT: I've listened to the argument. I've
14 listened to the testimony. The court finds the testimony
15 is -- the line of questioning is inadmissible. One, it
16 is not inconsistent; therefore it is not subject to
17 impeachment. She does not deny that she made a statement
18 to the therapist that her daughter, a sexual act was
19 initiated with her daughter while she was asleep at her
20 Father's house.

21 And while I have listened very ardently to Mr.
22 Cochran's argument I have to just be direct because its
23 5:40 and it makes absolutely no sense to me. It's just
24 not logical. I don't follow it. It just doesn't make
25 sense and I don't know a flowery way to say that. And

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1 I've listened to you repeat it since we've started the
2 trial and I keep trying to figure out how it is probative
3 on creditability or truthfulness and it just doesn't
4 follow for me. And maybe -- I think your reading of it
5 its logical to you, but I've heard both you and Ms.
6 Herring-Lash read it to me and it's not an inconsistent
7 statement. And with the witnesses testimony she admitted
8 that she said to the therapist that this is how her
9 daughter reported to her that that had happened.

10 So really we're into another issue because it's
11 hearsay within hearsay what her daughter reported -- well
12 I guess conceivably it could be outcry. But her daughter
13 never reported it to her because she really didn't have a
14 problem with having sex with this 19 year old. But then
15 we come back to the end of this logic, which is it really
16 doesn't matter. She was underage, she couldn't consent
17 so it really doesn't matter what anybody said about
18 consent. She could not have consented to this act.

19 So really it doesn't matter where it happened or how
20 it happened. Having made that observation I would find
21 for the record as a matter of fact that the witness has
22 not answered inconsistently. She reported to the
23 therapist her belief as to how this incident happened.
24 And I agree with Ms. Herring-Lash; the statement could be
25 read several different ways. And that's the problem with

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1 reading someone else's interpretation of what someone
2 else said. So really unless you have the person here who
3 wrote the document we really don't know what that person
4 meant. Even though you can use an extraneous statement
5 to impeach someone you have to one) give them the
6 opportunity to admit or deny the statement, and it really
7 needs to have been a direct statement that they made.
8 Here you have a summary reported by someone else.

9 So I really don't know exactly what the totality of
10 the statement that was made to the therapist. But
11 nonetheless it is still my impression from having heard
12 the testimony and having the report read to the court
13 that her statement is not inconsistent.

14 She reported to the therapist that this sexual act
15 was initiated by the 19 year old while her daughter was
16 asleep at her Father's house. So it's not an
17 inconsistent statement. She did not provide an
18 inconsistent answer. But let's just say for argument
19 sake it is inconsistent.

20 I would still find that it is not probative, that it
21 is not relevant, and that it does not make any issue of
22 consequence in this litigation more or less probable.
23 But I stick with my initial evaluation, which was that it
24 is not an inconsistent statement therefore it is not
25 subject to be used to impeach her as an extraneous

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1 statement. In addition I find pursuant to Rule 403 that
2 it is not relevant, that it has no probative value, that
3 any probative value it has is substantially outweighed by
4 the danger of unfair prejudice. It has a substantial
5 likelihood of confusing the issues and misleading the
6 jury.

7 And it is a needless presentation of -- well, it's
8 not a needless presentation of cumulative evidence but
9 the bottom line is in the 2011 case she could not have
10 consented. In this case she could not have consented.
11 So to even introduce that within the jury's purview is
12 extremely confusing.

13 It presents before them very misleading concepts
14 that they will not be instructive on because she can't
15 consent as a matter of law. So it is not probative on
16 any issue. It is not a prior act of dishonesty. It is
17 not a prior inconsistent statement. And while it is a
18 creative argument it is not a logical one that the court
19 follows or finds probative on the issue.

20 Therefore, the motion or the seeking leave to pursue
21 this line of questioning is denied. The proffer is
22 created and if necessary the Appellate Court can review
23 it and do what they like with it. We are next on to the
24 -- what we will do then is we will adjourn for the
25 evening. Ma'am, you may step down. I'm strictly

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1 instructing you that you are not to discuss your
2 testimony with anyone.

3 [Whereupon, the witness exits the witness stand]

4 THE COURT: I assume Mr. Cochran that you had no
5 further questions of the witness or do you have further
6 questions of the witness?

7 MR. COCHRAN: No, Your Honor. But just for the
8 record I did want to say that in addition that I
9 understand your ruling and my only other argument was
10 that she opened the door ---

11 THE COURT: --- this is the last time I am going to
12 entertain you speaking after the court has ruled because
13 I gave you ample opportunity to give me all your basis
14 and this is not a volley.

15 MR. COCHRAN: Yes, Your Honor. And just that she
16 opened the door by bringing it ---

17 THE COURT: --- I heard that originally and I've
18 already ruled on it. And what you proffer was didn't
19 have to do with her in terms of opening any door, it's
20 with her daughter. And she is no longer a witness and
21 her daughter didn't open the door. You asked a question
22 of the witness which is -- you made it seem that she had
23 a nefarious motive to not telling the family doctor that
24 her daughter had been sexually assaulted. There are many
25 layers to that question. One) the testimony already was

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1 that she had been referred to L-C-C, which the police
2 would have already told her that her daughter would have
3 been subject to a forensic interview as well as an
4 examination. I don't think it's rational for somebody
5 then to subject their child for a second examination
6 especially by someone who is not a specialist who doesn't
7 have the ability to determine whether a month ago a child
8 had been sexually assaulted.

9 Her testimony was very limited. I took my child to
10 make sure and have her tested for every sexual disease or
11 sexually transmitted disease to be a reasonable parent.
12 You continued to ask her and pursue that line of
13 questioning again implying that she had some other
14 motivation in not telling the doctor. And in response to
15 that she said I didn't tell the doctor because I was so
16 embarrassed as a parent I felt that I had let my child
17 down not once but twice and that's why I didn't tell her
18 doctor.

19 I do not perceive that that is opening any door.
20 However, as I said before during the motions in limine,
21 as the testimony develops we will see if there is any
22 connection or any connections created that made anything
23 you proffered relevant but the door was not opened with
24 that answer and it was limited in its scope. It's
25 unfortunate that it was mentioned because I ruled that it

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1 should not be mentioned. But in light of the way the
2 question was posited I really in hindsight don't know how
3 else she could have responded to it because you implied
4 in your question that somehow she had something to hide
5 and that's why she didn't tell her doctor and so that was
6 her response.

7 But I do not -- in my ruling I think it's -- let's
8 just say for argument sake she had opened the door. It's
9 still not an inconsistent statement and is still not
10 relevant. All right. Have a good evening. I will see
11 you all at 9:30. Please make sure the court reporter has
12 all the exhibits.

13 [Whereupon, court is adjourned at 5:50 p.m.]
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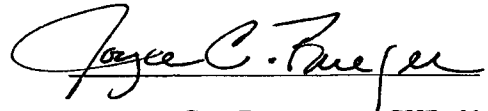
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Certificate of the Court Reporter
July 30, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 30th day of July, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 29, 2014



Joyce C. Rueger, CVR-M

Court Reporter

1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3) Case No. 2013-GS-10-5833
4)
5)
6)
7)
8)

9 B E F O R E:

10 THE HONORABLE DEADRA JEFFERSON

11

A P P E A R A N C E:

12

13 DEBBIE HERRING-LASH and SHANNON N. ELLIOTT
14 For the State

15 CHARLES COCHRAN and ANNIE ANDREWS
16 For the Defendant

17

18

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 (Trial continues from previous day.)

2 THE COURT: State ready to proceed?

3 MS. HERRING-LASH: We are, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. COCHRAN: We are, Your Honor.

6 THE COURT: Mr. Cochran, did you have any further
7 questions of the witness? I couldn't remember.

8 MR. COCHRAN: I was trying to remember myself.

9 MS. ELLIOTT: I thought you were done with cross
10 and proffered.

11 MR. COCHRAN: I believe Ms. Elliott was just saying
12 to me that we --

13 THE COURT: I think we completed the proffer. I
14 heard your arguments. I ruled on it. And I didn't know if
15 you had any further questions in cross-examination of the
16 witness.

17 MR. COCHRAN: I don't believe we did.

18 THE COURT: Redirect, is that where we were?

19 MS. ELLIOTT: Yes, Your Honor, I believe that's
20 where we were.

21 THE COURT: Okay. Anything before we proceed from
22 the State?

23 MS. HERRING-LASH: No, Your Honor.

24 THE COURT: From the defense?

25 MR. COCHRAN: No, Your Honor.

1 THE COURT: All right. Please bring in the jury.

2 And I appreciate y'all waiting while we did that.

3 THE COURT: After Ms. Bell, who is the State's next
4 witness.

5 MS. HERRING-LASH: Your Honor, the State's next
6 witness will be Ashley Whaley.

7 THE COURT: You have all your witnesses here
8 already?

9 MS. HERRING-LASH: I think that we have four -- no,
10 three here, and then we have two more coming at 10.

11 THE COURT: Okay.

12 Does the defense anticipate calling any witnesses?
13 I'm asking for scheduling purposes.

14 MR. COCHRAN: No, Your Honor.

15 (Whereupon, the jury returns to open court at 9:46
16 a.m.)

17 THE COURT: Good morning, ladies and gentlemen. I
18 hope everyone had a pleasant evening. We are now going to
19 resume with the examination of the witness. You may
20 proceed.

21 TRALANE BELL,

22 having been previous sworn, testifies as follows:

23 REDIRECT EXAMINATION

24 BY MS. HERRING-LASH:

25 Q. Ms. Bell, just a few questions. Do you know the

1 date when you reported this to the police?

2 A. I'm unsure.

3 Q. Okay. And just to go back and clarify, what days
4 did you work at the nursing home in 2012?

5 A. Tuesday, Wednesday, and Friday.

6 Q. And what hours did you work?

7 A. 11 to 3.

8 Q. And on those days, when did you -- did you go to
9 the shop and work first, or did you go to the nursing home
10 first?

11 A. The nursing home first.

12 Q. And that was Tuesday, Wednesday, and Friday?

13 A. Yes. Some occasion, I went to the shop first, but
14 rarely.

15 Q. And you were talking about Minor come becoming
16 upset and crying; when was that that? I don't mean the
17 time, but where were you all?

18 A. In the vehicle.

19 Q. At that point, what was she doing? Was she talking
20 to you?

21 A. No. I was making a phone call to Mr. Gilyard
22 trying to figure out why he wasn't coming to work.

23 Q. And that's what prompted your questioning?

24 A. Yes.

25 Q. And then she told you -- without saying what she

1 said, then she told you what occurred?

2 A. Yeah. Well, not exactly. When I was making those
3 calls, she just got frantic and really upset. And it
4 just -- it didn't feel right. It didn't sit right with me,
5 her behavior. And so I pulled in and I was like, what's
6 going on? She was like: Why are you making him come back;
7 don't let him come back.

8 Q. You can't say what she said.

9 A. I'm sorry.

10 Q. She eventually told you?

11 A. Yes.

12 Q. And was she upset at that point?

13 A. Extremely.

14 MS. HERRING-LASH: That's all the questions I have.

15 THE COURT: Any objection to the witness being
16 excused from the State?

17 MS. HERRING-LASH: No, Your Honor.

18 THE COURT: From the defense?

19 MR. COCHRAN: No, Your Honor.

20 THE COURT: Ma'am, you are excused. You may call
21 your next witness.

22 MS. HERRING-LASH: The State calls Ashley Whaley.

23 ASHLEY WHALEY,

24 having been duly sworn, testifies as follows.

25 THE CLERK: State your first and last name. Spell

1 your last name clearly and loudly into the microphone.

2 THE WITNESS: Ashley Whaley, W-h-a-l-e-y?

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Ashley, where do you live?

7 A. Charleston, South Carolina.

8 Q. And where do you work?

9 A. Kiawah Island.

10 Q. And do you have any children?

11 A. I do; two.

12 Q. And what are their names?

13 A. Grandchild 1 and Grandchild 3

14 Q. How old are they?

15 A. One and three.

16 Q. And who is their father?

17 A. Timothy Mason.

18 Q. And is Timothy related to Minor ?

19 A. Yes; brother.

20 Q. And do you know Minor ?

21 A. I do.

22 Q. How long have you known Minor ?

23 A. I've known Minor for about four years now.

24 Q. And did you and Timothy -- does Timothy visit with
25 your children sometimes?

1 A. He does.

2 Q. And have you and Timothy gone to his mother's shop
3 on occasions?

4 A. Yes.

5 Q. And do you recall going there on one occasion when
6 Mr. Gilyard and Minor were there?

7 A. I do.

8 Q. Were they alone?

9 A. Yes.

10 Q. Do you recall whether or not -- do you know Nephew?

11 A. I do.

12 Q. Was he there, or do you know?

13 A. He was there; he was sleeping.

14 Q. And where were they, Mr. Gilyard and Minor, when
15 you got there?

16 A. Minor was in the general area. Christopher was in
17 his area.

18 Q. His area was that little barber area?

19 A. Yes.

20 Q. And do you know what day this was?

21 A. Not exactly.

22 MS. HERRING-LASH: Court's indulgence for one
23 minute.

24 Those are all the questions I have, Ashley. You
25 will have to see if Mr. Cochran has any.

1 THE COURT: Any questions of the witness?

2 MR. COCHRAN: Yes, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir. You may proceed.

5 CROSS-EXAMINATION

6 BY MR. COCHRAN:

7 Q. You said you did not remember exactly what day, but
8 it was summer of 2012 that you went to the shop?

9 A. Correct.

10 Q. And do you remember like bringing food to the shop?

11 A. I do.

12 Q. So you brought sandwiches to the shop?

13 A. I did.

14 Q. Was that one occasion or more than one occasion
15 that you brought food to the shop?

16 A. That was that one occasion.

17 Q. That one occasion was the time you brought
18 sandwiches to the shop?

19 A. Yes.

20 Q. Okay. And it's your testimony that on that day in
21 the summer of 2012, when you brought sandwiches to the shop,
22 Christopher Gilyard and Minor and Nephew were all in
23 the shop?

24 A. Yes.

25 Q. Was this like in the afternoon?

1 A. It was between the hours and 3 and 5.

2 Q. And so you remember -- okay, between the hours of 3
3 and 5 in the afternoon. And when you got there with all of
4 the stuff, did you have a key? Did you have to unlock it?

5 A. No. Normally the door is unlocked, but if someone
6 knows or recognizes the car, they will go ahead and open the
7 door, and Minor did that.

8 Q. So Minor opened the door for you?

9 A. Yes.

10 Q. Did you like buzz in on the intercom?

11 A. No; she saw my car outside.

12 Q. And she came and let you in?

13 A. Yes.

14 Q. What was Christopher doing?

15 A. In his area on the phone.

16 Q. He was on the phone?

17 A. Yes.

18 Q. And Minor , you don't remember anything unusual
19 about Minor that day?

20 A. She was sitting in a chair next to where her mother
21 sits in the salon. She's always pretty quiet, but her head
22 was like hung a little.

23 Q. Her what?

24 A. Her head was hung low.

25 Q. And she was on the dryers? Was she on the dryers?

- 1 A. No, the salon chairs.
- 2 Q. Okay.
- 3 A. She was in the second chair from the window
- 4 starting from left to right.
- 5 Q. Did you speak with her?
- 6 A. I did.
- 7 Q. And you said she had been quiet before that day?
- 8 A. She's always quiet, but normally she will say, hi,
- 9 how are you doing, or pick up my daughter. She did that,
- 10 but she was still not being herself.
- 11 Q. So you had -- she was normally a quiet person?
- 12 A. Uh-huh.
- 13 Q. And she was being quiet that day?
- 14 A. She was being quieter than normal.
- 15 Q. And you spoke with her, though?
- 16 A. Uh-huh.
- 17 Q. And ^{Nephew} was still asleep?
- 18 A. Still asleep.
- 19 Q. Where was he sleeping?
- 20 A. On the floor to the right of the centerpiece table.
- 21 Q. Did you speak with Christopher at all?
- 22 A. I did. He came up to ask Timothy if Timothy could
- 23 make him a sandwich. And Timothy then told him, you can
- 24 make your own sandwich. And I made him one and watched him
- 25 eat it.

1 Q. So how long were you there for?

2 A. About 10, 15 minutes.

3 Q. Did you arrive with Timothy?

4 A. No. The salon was the meeting spot to pass my kid
5 off to Timothy.

6 Q. Did he leave with you?

7 A. Timothy?

8 Q. Yes.

9 A. No.

10 Q. Did he leave the same time as you?

11 A. No.

12 Q. So he stayed there?

13 A. Uh-huh.

14 Q. And was Tralane Bell there at all while you were
15 there?

16 A. No.

17 MR. COCHRAN: No more questions, Your Honor.

18 THE COURT: Any redirect?

19 MS. HERRING-LASH: No, Your Honor. We would just
20 ask the witness to be excused.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MS. ELLIOTT: No, Your Honor.

24 THE COURT: From the defense?

25 MR. COCHRAN: No, Your Honor.

1 THE COURT: Call your next witness.

2 MS. ELLIOTT: The State calls Sergeant Michael
3 Niblock.

4 MICHAEL NIBLOCK,
5 having been duly sworn, testifies as follows:

6 THE CLERK: State your first and last name, spell
7 your last loudly and clearly into the microphone please.

8 THE WITNESS: Michael Niblock, N-i-b-l-o-c-k.

9 DIRECT EXAMINATION

10 BY MS. ELLIOTT:

11 Q. Where do you work?

12 A. Charleston Police Department.

13 Q. How long have you been employed with the Charleston
14 Police Department?

15 A. About 18 1/2 years.

16 Q. What's your current position with the Charleston
17 Police Department?

18 A. I'm the detective sergeant in charge of the
19 white-collar crimes unit and the theft unit?

20 Q. How long have you been a detective?

21 A. Off and on, about half my career.

22 Q. What are your roles and responsibilities as a
23 detective?

24 A. To -- as a sergeant detective, to assign cases,
25 assess crime trends, and also assist when needed when the

1 caseload is too heavy, and other administrative duties, such
2 as time off, things like that.

3 Q. Were you a sergeant detective back in the summer of
4 2012?

5 A. I was.

6 Q. How did you become involved in this case?

7 A. I was the weekend day-shift duty detective.
8 There's -- any given weekend, there's -- during the day,
9 there's at least two detectives out working. And I happened
10 to receive a call in reference to responding to the incident
11 location.

12 Q. Would that have been a type of call that you, on a
13 normal weekday, would have responded to?

14 A. No, not unless extra assistance was needed.

15 Q. Did you respond to the scene?

16 A. Yes, I did.

17 Q. What's the address of the scene?

18 A. 1209 Sam Rittenberg Boulevard. I believe it's
19 Suite B.

20 Q. And is that in Charleston County?

21 A. Yes, it is.

22 Q. And what day did you respond?

23 A. It was on a Saturday. I believe it was the 18th of
24 July.

25 Q. And were you the first officer to respond to the

1 scene?

2 A. No. Some officers had responded the night before,
3 the Friday night.

4 Q. Would that have been the night of the initial
5 report?

6 A. That's correct.

7 Q. So the 17th?

8 A. Yes.

9 Q. Who did you meet at the store?

10 A. Tralane Bell.

11 Q. Was Minor there?

12 A. No, she was not.

13 Q. What was your purpose in going to the store that
14 day?

15 A. Just to get the basic story of when and where and
16 what had happened from the mother of the victim.

17 Q. Were you going to be the detective that followed up
18 on this?

19 A. No, I was not.

20 Q. Was a forensic unit ever called out to that
21 location?

22 A. No, no, ma'am, they were not.

23 Q. Why not?

24 A. Because it had been -- if I remember correctly,
25 about -- it was over a month, about five weeks since the

1 incident was to have been reported to have taken place. And
2 due to the time that had passed, as well as the person
3 possibly involved was -- worked at the shop, so, therefore,
4 he would have a right to be there.

5 Q. Did you refer the family for any services?

6 A. I advised them that the -- someone from special
7 victims unit would be in contact with them probably on
8 Monday in reference to getting an appointment with the
9 Lowcountry Children's Center to have Minor seen.

10 Q. Did you recommend that the victim's family go to
11 M.U.S.C. for what's commonly known as a sexual assault exam?

12 A. Yes.

13 Q. You referred them to --

14 A. No, I'm sorry, not M.U.S.C., Lowcountry Children's
15 Center.

16 Q. What's the protocol for a sexual assault exam?

17 A. Sexual assault exam is -- if it's an adult, it has
18 to be within five days of the incident occurring for a
19 sexual assault exam. If it's a child, it should be within
20 72 hours. And since we were way past that time, there was
21 no sexual assault exam performed.

22 Q. Who took over the case after you?

23 A. Detective Leslie Ambrose.

24 Q. And during the course of your investigation, did
25 you come to learn what Christopher Gilyard's date of birth

1 was?

2 A. Yes, I did.

3 Q. What was that?

4 A. It was

5 Q. Sir, I'm sorry, what was the date -- what date did
6 you respond to the salon?

7 A. August 18th.

8 MS. ELLIOTT: Thank you.

9 THE WITNESS: I believe I said July earlier, but it
10 was August.

11 MS. ELLIOTT: No further questions, Your Honor.

12 THE COURT: Any questions for the witness?

13 MR. COCHRAN: Yes, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir. You may proceed.

16 CROSS-EXAMINATION

17 BY MR. COCHRAN:

18 Q. It's your understanding there were two officers
19 that responded on the 17th, correct?

20 A. That's correct.

21 Q. So the day before you responded?

22 A. That's correct.

23 Q. And it's your understanding that those officers
24 interviewed the alleged victim in this case?

25 A. They spoke with her briefly, as far as I know.

1 Q. But is it your understanding that they did not have
2 her fill out a written statement?

3 A. That's correct.

4 Q. Or audio record her statement?

5 A. No.

6 Q. And when you spoke with Tralane Bell the next day
7 on the 18th, you audio recorded that statement, correct?

8 A. That's correct.

9 Q. You do that for a reason, correct?

10 A. Right.

11 Q. To preserve what she says specifically about the
12 incident, correct?

13 A. Correct.

14 Q. And you wrote a report detailing the interview that
15 you had with Ms. Bell, correct?

16 A. Yes, sir, just summarizing, basically.

17 Q. It's just a summary, but everything that you put in
18 the report is fair and accurate, correct?

19 A. As far as I know, yes, sir.

20 Q. And truthful?

21 A. Yes, sir.

22 Q. And you said that Minor was not at the salon
23 on the 18th when you arrived?

24 A. That's correct.

25 Q. So she did not witness the interview that you had

1 with Ms. Bell?

2 A. No, she did not.

3 Q. And on the day you interviewed Tralane Bell, she
4 gave you an incident date, correct?

5 A. That's correct.

6 Q. And she gave that incident date as July 11th, 2012?

7 A. Yes. Yeah, it was five weeks prior to me
8 responding, speaking with her.

9 Q. But she didn't tell you five weeks ago; she gave a
10 specific date?

11 A. Right, right, it just happened to be five weeks.

12 Q. And there were details about that day besides the
13 incident that she recalled, correct?

14 A. That's correct.

15 Q. And she relayed to you that specific day and the
16 incidents that occurred on that specific day, correct?

17 A. Yes, sir.

18 Q. She indicated to you that it occurred on July 11th,
19 2012, and that that was the last day that Christopher
20 Gilyard came to work, correct?

21 A. Yes, sir.

22 Q. She also told you that on the incident day, July
23 11th, 2012, she had gone to run errands, correct?

24 A. I believe so, yes, sir.

25 Q. And that she left with her daughter, a woman named

1 Angie Fuller, her three-year-old grandson, and Christopher
2 Gilyard in the shop, correct?

3 A. From what I remember, the daughter, the
4 three-year-old grandson, and, yes, and one other person were
5 in the shop when she left.

6 Q. One other person besides Mr. Gilyard, another woman
7 who worked in the shop?

8 A. Correct.

9 Q. And so she leaves all of them at the shop and she's
10 gone for no more than an hour?

11 A. Yes, sir, as far as I remember.

12 Q. Is it also your understanding through the
13 investigation --

14 MR. COCHRAN: Beg the Court's indulgence.

15 No more questions.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MS. ELLIOTT:

19 Q. Do you remember Ms. Bell telling you the defendant
20 had not been back to the shop in the week before his
21 birthday?

22 A. Yes. I know she says she (sic) was off for a week
23 in the recorded statement in reference to -- he and some
24 other person's, maybe his girlfriend's, birthday that entire
25 week.

1 Q. So he had been gone for a week prior to that?

2 A. Correct.

3 Q. And the defendant's birthday was what again?

4 A.

5 Q. Did you ask Ms. Bell how she knew the exact date?

6 A. I don't believe I did. That's just the date she
7 had told me.

8 Q. What was her demeanor like during the interview?

9 A. She was visibly upset.

10 Q. Was the shop open for business at that time?

11 A. I believe -- I remember there was someone in there
12 vacuuming, but I don't remember that any people were in
13 there getting their hair fixed.

14 MS. ELLIOTT: Nothing further, Your Honor.

15 THE COURT: Any objection to the officer being
16 excused from the State?

17 MS. ELLIOTT: None.

18 THE COURT: From the defense?

19 MR. COCHRAN: May I ask one more question?

20 THE COURT: Uh-huh, limited to redirect.

21 RECROSS EXAMINATION

22 BY MR. COCHRAN:

23 Q. You did not -- there was a three-year-old in this
24 case you said, and you did not refer that three-year-old to
25 LCC, correct?

Alexis Mannson - Direct by Ms. Herring-Lash

1 A. No.

2 MR. COCHRAN: Thank you, Your Honor.

3 THE COURT: Any questions from the State?

4 MS. ELLIOTT: No, Your Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MS. ELLIOTT: No.

8 THE COURT: From the defense?

9 MR. COCHRAN: No, Your Honor.

10 THE COURT: Sir, you are excused.

11 You may call your next witness.

12 MS. HERRING-LASH: The State would call Alexis
13 Mansson.

14 having been duly sworn, testifies as follows:

15 THE CLERK: State your first and last name, and
16 spell your last clearly into the microphone, please, ma'am.

17 THE WITNESS: Alexis Mannson, M-a-n-s-s-o-n?

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. HERRING-LASH:

21 Q. What is your educational background?

22 A. I have a bachelor's degree in child and family
23 development and a master's in social work.

24 Q. And what is your work background?

25 A. I've worked at the Dee Norton Lowcountry Children's

1 Center for the past 7 1/2 years.

2 Q. And what is the Dee Norton Lowcountry Children's
3 Center? Is it's a private not-for-profit child advocacy
4 center.

5 Q. What are your duties there?

6 A. I provide individual and family therapy for
7 children and families and I conduct forensic interviews.

8 Q. And in that capacity, did you see Minor ?

9 A. Yes, I did.

10 Q. When did you see him?

11 A. In August of 2012.

12 Q. And who referred her?

13 A. Law enforcement.

14 Q. And who accompanied her to her appointment?

15 A. Her mother and her stepmother.

16 Q. And did you interview Minor alone?

17 A. Yes, I did.

18 Q. And did she tell you about an assault?

19 A. Yes, she did.

20 Q. Did she tell you when it happened?

21 A. She did.

22 Q. When did she say?

23 A. About a month prior to her interview with me.

24 Q. And did she tell you where it had happened?

25 A. Yes, she did.

1 Q. And did you make any referrals?

2 A. I did, I made a referral.

3 Q. And what was that for?

4 A. For counseling for her.

5 MS. HERRING-LASH: Court's indulgence. That's all
6 the questions I have, Ms. Mansson. If you will answer any
7 Mr. Cochran may have.

8 THE COURT: Any questions for the witness?

9 MR. COCHRAN: Yes, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, sir. You may proceed.

12 CROSS-EXAMINATION

13 BY MR. COCHRAN:

14 Q. Ms. Mansson, as the forensic interviewer at LCC,
15 when you interview a child witness, you typically like to be
16 the first person to be interviewing that witness, correct?

17 A. That's the goal, the first official interview,
18 that's often the goal.

19 Q. So you would prefer that you interview the child
20 before law enforcement, correct?

21 A. That would be the preference, yes.

22 Q. And you videotaped these interviews?

23 A. Yes, I do.

24 Q. And you also make a report, a brief summary of the
25 interview that you have with the witness, correct?

1 A. Right. I do a written -- a brief written report
2 after my interview.

3 Q. And Minor did give you a narrative in terms of
4 what occurred, correct?

5 A. Yes, she did.

6 Q. And in that narrative, she did tell you that she
7 wanted to scream while she was being assaulted, but that her
8 nephew was sleeping, so she didn't, correct?

9 A. Yes.

10 MR. COCHRAN: Beg the Court's indulgence. I may
11 have misspoken. She told you that she wanted to scream, but
12 her nephew was sleeping, so she did not scream?

13 THE WITNESS: That's my -- that's what I recall.

14 MR. COCHRAN: Okay. Thank you. No more questions,
15 Your Honor.

16 THE COURT: Any redirect of the witness?

17 REDIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Just to follow-up on that narrative. Do you
20 remember what she told you about any threats that were made?

21 MR. COCHRAN: Objection.

22 THE COURT: Basis?

23 MR. COCHRAN: Outside the scope of cross.

24 THE COURT: I'm going to give her a little latitude
25 in reference to the last question you asked. I think that

1 makes it relevant in redirect.

2 BY MS. HERRING-LASH:

3 Q. Do you remember what she told you about any
4 threats?

5 A. Yes.

6 MR. COCHRAN: I also object; outside the scope of
7 time and place.

8 (Whereupon, a bench conference takes place off the
9 record.)

10 THE COURT: The objection is overruled. The State
11 is entitled to rehabilitate her witness, but it is limited
12 in scope to that last question asked on cross.

13 BY MS. HERRING-LASH:

14 Q. Did she make any statements to you about any
15 threats made to her?

16 A. Yes, she did.

17 Q. And was she threatened?

18 A. Yes, she was.

19 MS. HERRING-LASH: That's all the questions.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MS. HERRING-LASH: No, Your Honor.

23 THE COURT: From the defense?

24 MR. COCHRAN: No, Your Honor.

25 THE COURT: Ma'am, you are excused.

1 (Witness is excused.)

2 THE COURT: The State may proceed.

3 MS. ELLIOTT: The State calls Detective Leslie
4 Ambrose.

5 LESLIE AMBROSE,
6 having been duly sworn, testifies as follows:

7 THE CLERK: State your first and last name, and
8 spell your last loudly and clearly.

9 THE WITNESS: Leslie Ambrose, A-m-b-r-o-s-e.

10 DIRECT EXAMINATION

11 BY MS. ELLIOTT:

12 Q. Good morning, Detective Ambrose. Where do you
13 work?

14 A. Charleston Police Department.

15 Q. How long have you been with the Charleston Police
16 Department?

17 A. About ten and a half years.

18 Q. And what's your position with CPD?

19 A. I'm a detective in the special victims unit.

20 Q. How long have you been in that role?

21 A. About eight and a half years.

22 Q. And what are your duties and responsibilities as a
23 detective in special victims?

24 A. I investigate rapes, child abuse, domestic
25 violence, and missing persons.

1 Q. And was that the position you held in the summer of
2 2012?

3 A. Yes.

4 Q. How did you become involved in this case?

5 A. On Monday morning, I got assigned this case. I did
6 come in over the weekend.

7 Q. When you say Monday morning, do you know the date?

8 A. It would have been August the 20th of 2012.

9 Q. Did you respond to the scene?

10 A. Not when the call came in, later on I did. During
11 my investigation, I did go back to the beauty shop.

12 Q. But you didn't respond on the 17th or the 18th?

13 A. Correct.

14 Q. Is there a type of protocol you tend to follow in
15 these types of investigations?

16 A. Yes.

17 Q. What is that?

18 A. We meet with any witnesses. We see the scene. We
19 refer, if there need to be referrals, and then we get
20 warrants signed, if that is what needs to happen.

21 Q. And what witnesses did you meet with in this case?

22 A. I met with the victim, Minor. I met with her
23 mother, Tralane. I met with Angie Fuller.

24 Q. And when you met with Minor, do you know if that
25 was before or after the LCC interview?

1 A. It was after.

2 Q. What was Minor demeanor like when you were
3 meeting with her?

4 A. She was quiet but forthcoming when I asked
5 questions.

6 Q. And where did you meet with her?

7 A. At her home.

8 Q. Did she disclose to you a sexual assault?

9 A. She did.

10 Q. Did she tell you where it happened?

11 A. She did.

12 Q. Where did she tell you?

13 A. At her mother's beauty shop, Shear Beauty.

14 Q. During the course of your investigation, did you
15 come to know Christopher Gilyard's date of birth?

16 A. Yes.

17 Q. What is that date of birth?

18 A.

19 Q. I'm sorry, ?

20 A. I put . It's on the paper I'm looking at. May
21 have been .

22 Q. As a result of your investigation, how did you
23 close your file?

24 A. It was closed by arrest.

25 MS. ELLIOTT: Nothing further, Your Honor.

1 THE COURT: Any cross-examination of the witness?

2 MR. COCHRAN: Yes, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir. You may proceed.

5 CROSS-EXAMINATION

6 BY MR. COCHRAN:

7 Q. When you met with Angela Fuller, you audio recorded
8 her statement?

9 A. Yes, I did.

10 Q. And the statement of Tralane Bell had been audio
11 recorded prior to that date as well?

12 A. By Sergeant Niblock.

13 Q. And you interviewed Minor ?

14 A. I spoke with her. I didn't do a full interview
15 because she already had a full interview.

16 Q. You spoke with her?

17 A. Yes, sir.

18 Q. You took a statement?

19 A. Yes.

20 Q. And you decided to go forward with the interview
21 with Minor , who is the girl making the accusation in
22 this case, even though your tape recorder was running out of
23 batteries?

24 A. Correct, because her interview had been recorded.

25 Q. So you did not record what she told you that day?

1 A. Correct.

2 Q. But you did write a report, correct?

3 A. Yes, I did.

4 Q. And through your investigation, you found out that
5 there were two responding officers on the 17th of August,
6 correct?

7 A. I believe so.

8 Q. 2012. And Officer Gerton was one of those
9 responding officers, correct?

10 A. I don't remember.

11 Q. And the responding officer in this case did
12 interview the alleged victim, correct?

13 A. It's my understanding they did not do a full
14 interview. They have to get enough to find jurisdiction and
15 see what kind of crime occurred to write a report and to
16 refer out. They didn't do a full interview of the victim.

17 Q. You are the lead investigator on this case,
18 right?

19 A. Correct.

20 Q. So you have reviewed the reports, correct?

21 A. Yes.

22 Q. And interviews and statements from the alleged
23 victim, correct?

24 A. Correct.

25 Q. And responding officers did take a statement from

1 Minor , right?

2 A. They spoke with her. They did not get a formal
3 statement.

4 Q. They did speak with her?

5 A. Yes.

6 Q. They did not have her write down her statement?

7 A. They did not.

8 Q. And they did not audio record her statement?

9 A. Correct.

10 Q. And this was the first contact that law enforcement
11 or any person in an official capacity had with Minor ,
12 correct?

13 A. Correct.

14 Q. And you did not have Minor write her statement
15 down?

16 A. Correct.

17 Q. And you would have audio recorded it, but your --

18 A. My battery was dead in my recorder.

19 Q. It wasn't because it had been recorded previously,
20 it was because the battery was out; that's why you didn't
21 record it?

22 A. Right, and it had been recorded. We had her on
23 recording, video recording already.

24 Q. As the lead investigator, it's important to speak
25 with all relevant witnesses, correct?

1 A. Correct.

2 Q. Anybody who might have information that would be
3 helpful in your investigation, correct?

4 A. Correct.

5 Q. Anybody who might have been in a position to see or
6 hear something during the alleged crime, you would want to
7 speak with that person, correct?

8 A. Correct.

9 Q. Or have that person spoken to and interviewed,
10 correct?

11 A. Right.

12 Q. A three-year-old is somebody who is old enough to
13 be sent to the Lowcountry Children's Center to give an
14 interview, correct?

15 A. Not always, no.

16 Q. Sometimes?

17 A. Maybe. That's up to them, not to -- a lot of the
18 three years old, they don't interview.

19 Q. Have you ever sent a three-year-old to LCC?

20 A. I don't remember. I may have.

21 Q. If a three-year-old had pertinent information,
22 would you send them to LCC to be interviewed?

23 A. We would send them, and it would be up to them
24 whether they interview.

25 Q. But you would refer them?

1 A. Yes.

2 Q. And in this case, there was a three-year-old,
3 according to witnesses, according to Minor , that was
4 in the shop during this attack, correct?

5 A. Correct.

6 Q. And you did not send him to Lowcountry Children's
7 Center, correct?

8 A. Correct.

9 Q. And you did not speak with him yourself?

10 A. Correct.

11 Q. And it was your understanding from talking with
12 Minor and with her mother, that this three-year-old could
13 potentially have been at a vantage point to see or hear
14 something during this assault, correct?

15 A. No, not correct. According to both of them, he was
16 asleep the whole time.

17 Q. So if a witness tells you that another witness was
18 asleep, so he probably wouldn't have heard it, you just
19 don't bother to talk to that witness yourself?

20 A. Well, he was three, so I chose not to.

21 Q. But LCC interviewer would be trained in
22 interviewing somebody that's three years old, correct?

23 A. If they decide to see him.

24 Q. Tralane Bell was interviewed by you, correct?

25 A. I did speak with her.

1 Q. And she gave you an incident date in this case,
2 correct?

3 A. During my interview with her, I don't think she
4 had -- she did not give me an exact date.

5 Q. You signed off on an arrest warrant in this case,
6 correct?

7 A. Yes.

8 Q. And in that arrest warrant, you allege a specific
9 incident date, correct?

10 A. Correct.

11 Q. So from either Minor or Tralane, you received a
12 specific incident date in this case, correct?

13 A. Yes, during the course of the investigation, that's
14 the date that was listed, yes.

15 Q. July 11th, 2012?

16 A. Correct.

17 Q. And you listed that in the warrant that you swore
18 under oath was true and accurate according to your
19 investigation?

20 A. Correct.

21 Q. And when I say according to your investigation,
22 that essentially means according to your talks with Minor
23 and Tralane?

24 A. During my investigation, that would also include my
25 talks with other detectives and other conversations that I

1 would have, yes.

2 Q. And Minor told you that after the incident date,
3 Christopher came back to work, correct?

4 A. Yes, she did.

5 Q. And did you ask Tralane about that?

6 A. I don't believe so.

7 Q. When you spoke with Tralane, she said that on the
8 incident date, which was July 11th, 2012, that she had gone
9 to run errands, correct?

10 A. Correct.

11 Q. And so she left the salon to run errands?

12 A. Right. It said that she drove by the location
13 after she left to run errands.

14 Q. So she left to run errands and then drove back by,
15 but didn't go in?

16 A. Correct.

17 Q. And when she drove back by, she saw that Angie and
18 Christopher's cars were both there, correct?

19 A. Correct.

20 Q. And about an hour after she had left, Angie and
21 Christopher were both gone when she returned to the shop?

22 A. Correct, both -- yes.

23 Q. And you -- like you said during the course of your
24 investigation, you speak with other officers and you review
25 all the reports from interviews that they have with

1 witnesses, correct?

2 A. Correct.

3 Q. And the responding officers spoke with Tralane as
4 well, correct?

5 A. I believe so.

6 Q. And through the course of your investigation, you
7 learned about a pinky promise or pinky swear between
8 Mr. Gilyard and Minor ?

9 A. Yes.

10 Q. And it was your impression at the outset of this
11 investigation that that pinky swear occurred on the incident
12 date, correct?

13 A. Correct.

14 Q. And it was your impression that the incident date
15 was the last day that Christopher was at work?

16 A. At first, I believe so, yes.

17 Q. And that would have been based on your
18 conversations with Tralane Bell, correct?

19 A. And Officer -- you know, other interviews like
20 Sergeant Niblock did, yes.

21 Q. Interviews with Tralane?

22 A. Yes, that was one of them.

23 Q. You spoke with Minor about the incident in the
24 salon, correct?

25 A. Yes.

1 Q. And you did obtain some details from her regarding
2 that incident, correct?

3 A. Yes, sir.

4 Q. And during that conversation, you discussed with
5 her whether or not she screamed, correct?

6 A. Yes.

7 Q. And she informed you that she did not scream
8 because she was threatened, correct?

9 A. She said she tried to scream, but Christopher told
10 her "shut the fuck up", was her words.

11 Q. So that was the stated reason she gave you for not
12 screaming, correct?

13 A. Yes.

14 Q. And she also said that Christopher pushed her down,
15 correct?

16 A. She did.

17 Q. And you would also want to talk to witnesses who
18 may have had contact with a victim who is alleging something
19 like this; you would want to speak with anybody who had
20 contact with her immediately after, correct?

21 A. I mean, it depends. This has been a month, I mean,
22 over a month. I wasn't going to be able to speak to
23 everybody she had contact with.

24 Q. Contact with on that day?

25 A. Right.

1 Q. At or around the incident, you would want to speak
2 with witnesses, correct?

3 A. Right.

4 Q. So if somebody came into the salon immediately
5 after the incident and had interaction with both the person
6 who you are investigating and the alleged victim, you would
7 want to speak with that person, correct?

8 A. Correct.

9 Q. And Minor never told you about a girl named Ashley
10 Whaley, correct?

11 A. Correct.

12 Q. She never told you that she came in right after
13 this incident, correct?

14 A. Correct.

15 Q. And her brother, Timothy, she never told you that
16 he came in right after this incident, correct?

17 A. Correct.

18 Q. And you spoke with Christopher Gilyard, correct?

19 A. Yes, sir.

20 Q. And when you speak with somebody who you are
21 investigating for something like this, you will sit them
22 down and audio record their statement, correct?

23 A. Correct.

24 Q. And you are trained in investigation and
25 interrogation or, I guess, suspect interviews, correct?

1 A. Correct.

2 Q. And there are certain techniques you use when you
3 are interviewing somebody like this, right?

4 A. Yes.

5 Q. That you are trained to use, correct?

6 A. Right.

7 Q. And when you are talking to a person who you
8 suspect of a crime, you are actually allowed to lie to that
9 person, correct?

10 A. Some, yes, probably.

11 Q. You are allowed to indicate to that person that you
12 have more evidence than you actually have to try to get them
13 to admit to something, correct?

14 A. You are allowed to, to an extent.

15 Q. And in this case, you employed that tactic, didn't
16 you?

17 A. I don't remember telling him we had anything we
18 didn't have.

19 Q. You didn't tell him you had anything you didn't
20 have, but you did tell him -- you did inquire to him why his
21 semen would be at the barber shop, correct?

22 A. I asked him if it would be.

23 Q. And you said you were asking why, why it would be
24 if you found his semen at the barber shop, correct?

25 A. Yes, if his semen was there, why would it be. I

1 would have to listen at the interview of him.

2 Q. When you are interviewing him, you are trying to
3 get him to admit to something, correct?

4 A. Yes, if he did it.

5 Q. And you didn't have any semen from the barber shop,
6 correct?

7 A. Correct.

8 Q. But you still brought that up in your interview
9 with him, correct?

10 A. I asked him would it be there, yes, I did.

11 MR. COCHRAN: No more questions, Your Honor. Thank
12 you.

13 THE COURT: Any redirect of the witness?

14 MS. ELLIOTT: Yes, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MS. ELLIOTT:

18 Q. Mr. Cochran asked you about what Tralane told you
19 about her movements on the day that she believed the assault
20 happened. And I believe he had you say that she said she
21 had left the shop. Did she clarify which shop she had left?

22 A. What she had told me is she drove by Shear Beauty
23 after she had left to run an errand. She was gone that day,
24 so she drove by Shear Beauty when she saw both the cars
25 there, and then she came back to Shear Beauty about an hour

1 later. But I don't know where she was before that time.

2 Q. Before the drive-by? Why wasn't there any semen at
3 the barber shop that was found?

4 A. There wasn't any found because we didn't have our
5 crime scene go because it had been so long since the
6 incident happened.

7 Q. He asked you that your impression at the beginning
8 of this investigation was that the assault occurred on the
9 last day that Mr. Gilyard came to work; did that impression
10 ever change?

11 A. Minor did tell me that he came back another day
12 after the incident happened. She said she had contact with
13 him on a day that he came back to work.

14 Q. Did you ever ask her specifically if anyone else
15 ever came into the store the day of the assault?

16 MR. COCHRAN: Objection.

17 THE COURT: Basis?

18 MR. COCHRAN: Hearsay.

19 THE COURT: Repeat the question.

20 MS. ELLIOTT: I'm asking if she --

21 THE COURT: I asked you to repeat the exact
22 question.

23 BY MS. ELLIOTT:

24 Q. Did you ever ask Minor if anyone ever came into
25 the store after the assault?

1 THE COURT: Overruled. It requires a yes or no
2 answer.

3 THE WITNESS: No, I did not ask her.

4 BY MS. ELLIOTT:

5 Q. You said you had been working at special victims
6 for eight and a half years?

7 A. Almost, yes.

8 Q. In these types of cases, is it typical to know the
9 exact date of an assault when an assault is not immediately
10 reported?

11 A. It's normal to not have an exact date, especially
12 for a child.

13 MS. ELLIOTT: Nothing further, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused?

16 MS. ELLIOTT: None from the State.

17 THE COURT: From the defense?

18 MR. COCHRAN: May I ask one question, Your Honor?

19 THE COURT: Limited to redirect.

20 RECROSS-EXAMINATION

21 BY MR. COCHRAN:

22 Q. But you did have an exact date?

23 A. In the beginning, the date was given.

24 Q. And you put it in the arrest warrant?

25 A. Yes.

1 Q. And the arrest warrant you signed under oath?

2 A. Yes.

3 Q. July 11th, 2012?

4 A. Yes.

5 MR. COCHRAN: No more questions.

6 THE COURT: Any questions from the State as a
7 result of Mr. Cochran's questioning?

8 MS. ELLIOTT: No, Your Honor.

9 THE COURT: Any objection to the witness being
10 excused from the State?

11 MS. ELLIOTT: None.

12 THE COURT: From the defense?

13 MR. COCHRAN: No, Your Honor.

14 THE COURT: Ma'am, you are excused.

15 (Witness is excused.)

16 THE COURT: Mr. Foreman, ladies and gentlemen, we
17 are going to take a brief restroom break. During the break,
18 please do not discuss the case, and please leave your note
19 pads in your seats.

20 (Whereupon, the jury leaves open court at 10:34
21 a.m.)

22 THE COURT: We will be at ease for about ten
23 minutes.

24 (A recess transpired.)

25 THE COURT: Is the State ready to proceed?

1 MS. ELLIOTT: We are, Your Honor.

2 MR. COCHRAN: Yes.

3 (Whereupon, the jury returns to open court at 10:47
4 a.m.)

5 THE COURT: Ladies and gentlemen, we will now
6 resume testimony. The State may proceed.

7 MS. HERRING-LASH: State would call Dr. Don Elsey.

8 DONALD ELSEY,
9 having been duly sworn, testifies as follows:

10 THE COURT: State your full name for the record,
11 spelling your last name for the court reporter.

12 THE WITNESS: Donald Edwards Elsey, E-l-s-e-y.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MS. HERRING-LASH:

16 Q. Dr. Elsey, what is your educational background?

17 A. I have a bachelor's in psychology and sociology. I
18 have a graduate degree in clinical counseling. I have a
19 doctorate in early and middle childhood development.

20 Q. What is your work background?

21 A. I have been working in the mental health field for
22 approximately 25 years. I work at the Dee Norton Lowcountry
23 Children's Center currently.

24 Q. And what do you do there?

25 A. I'm the director of clinical services.

1 Q. And do you supervise other workers there, other
2 counselors?

3 A. I supervise all of the clinical staff in our
4 center.

5 Q. Do you also do supervision for counselors in the
6 community?

7 A. I do. I'm a licensed professional counselor
8 supervisor, so I supervise both at my office and other
9 professionals in the community.

10 Q. Do you have any professional certificates?

11 A. I am a licensed professional counselor and a
12 licensed professional counselor supervisor.

13 Q. And professional affiliations?

14 A. I'm a former president of the South Carolina
15 Professional Society on Abuse of Children, and our agency is
16 still a member of the American Professional Society on Abuse
17 of Children.

18 Q. Have you had any training in the area of child
19 sexual abuse?

20 A. I have.

21 Q. And would you explain briefly the training that you
22 attended and that you've been a trainer at?

23 A. Okay. I've been trained in a number of
24 evidence-based treatments for children, such as trauma
25 focus, cognitive behavioral therapy. I've been trained in

1 working with children with sexual behavior problems. I've
2 been trained in a number of different forensic techniques
3 for children who -- when there are concerns about their
4 safety.

5 Q. Have you also provided training for other people?

6 A. I've provided training throughout the state and
7 some national training.

8 Q. And how many children have you seen where there
9 was -- if you can put a number on it -- a concern for sexual
10 abuse?

11 A. Approximately 6,000 forensic interviewing.

12 Q. And have you been qualified as an expert in the
13 area of child sexual abuse dynamics?

14 A. Yes, ma'am.

15 Q. And how many times and in what courts?

16 A. Approximately 200 times in family court and general
17 sessions court and in federal court and in civil court.

18 MS. HERRING-LASH: Your Honor, at this time I would
19 offer Dr. Elsey as an expert in the dynamics of child sexual
20 abuse.

21 THE COURT: Any objections or questions?

22 MR. COCHRAN: Yes, Your Honor.

23 THE COURT: You may proceed.

24 MR. COCHRAN: Your Honor, I do not have --

25 THE COURT: I wanted to know if you had any

1 questions in the nature of voir dire of the witness?

2 MS. ELLIOTT: Oh, I thought you said any objection.

3 THE COURT: I said questions.

4 MR. COCHRAN: No questions from me, Your Honor.

5 THE COURT: Please approach.

6 (Whereupon, a bench conference takes place off the
7 record.)

8 THE COURT: Any objections to the doctor's
9 expertise?

10 MR. COCHRAN: No, Your Honor.

11 THE COURT: Admitted without objection. You may
12 proceed.

13 BY MS. HERRING-LASH:

14 Q. Dr. Elsey, what is delayed disclosure?

15 MR. COCHRAN: Objection.

16 THE COURT: Basis?

17 MR. COCHRAN: Not an area of expertise.

18 THE COURT: He is qualified in the dynamics of
19 child sex abuse. I think clearly it is within the ambit of
20 his expertise. Overruled.

21 BY MS. HERRING-LASH:

22 Q. You may answer.

23 A. That's when there's a period of time between an
24 incident happening and the child telling about that
25 happening.

1 Q. Is that a common phenomenon seen by professionals
2 in your area?

3 A. It is. Certainly where I work and the children
4 I've seen and the research is very clear that often there's
5 a delay, often a significant delay, between the child
6 telling about something that happened to them.

7 Q. So there is research in this area?

8 A. There is.

9 Q. And what is the research?

10 A. There's a lot of research articles out there. For
11 example, 2000, right here at the Medical University, they
12 surveyed -- it was just from women all over the country. In
13 that particular survey, a quarter of the women had never
14 told anybody until the survey, and half had been five years
15 since it had happened and they told somebody. So that's a
16 local research study that was national.

17 Q. And have you found this phenomenon of delayed
18 disclosure to be true in your clinical practice?

19 A. Yes, ma'am.

20 Q. Do you see adults that have delayed --

21 A. I run a group for adult males who have sex abuse as
22 children. And I always ask someone who joined my group how
23 long between something happening and telling. It's about 20
24 years for the people that come to my group. And that's just
25 males.

1 Q. What are some of the main reasons that children do
2 not tell immediately?

3 A. Based on the number of research articles, being
4 embarrassed about talking about this, it involves talking
5 about private parts in the body. They are also scared to
6 talk about it. They think they may be in trouble, think
7 they may have done something wrong. Oftentimes, they don't
8 want to get the person who hurt them in trouble because it's
9 someone they've known or even loved. Sometimes they don't
10 tell because they don't know it's wrong, depending on the
11 age of the child. Of course, there's fear in reprisal if
12 they do tell.

13 Q. What do you mean by reprisal?

14 A. They may get in trouble. Someone they love may be
15 bad at them. They may have been threatened to go to foster
16 care if they tell. Actually, that has happened, so there is
17 reality to that.

18 Q. If a child is threatened, would that also have an
19 impact?

20 A. Yes. I thought I said threatened to tell. If they
21 tell, someone won't believe them; if they tell, they will
22 get hurt, that type of thing.

23 Q. And what percentage of children that you have seen
24 that have told immediately?

25 MR. COCHRAN: Objection.

1 THE COURT: I'm sorry. I didn't hear the entirety
2 of the question. Would you please repeat it?

3 MS. HERRING-LASH: What percentage that he has seen
4 of children, that he's seen, have told immediately?

5 THE COURT: Basis of the objection?

6 MR. COCHRAN: Relevance.

7 THE COURT: Overruled. You may answer the
8 question.

9 THE WITNESS: I would say under 5 percent.

10 BY MS. HERRING-LASH:

11 Q. And are young children or teenagers more likely or
12 less likely, or does age have any factor in the disclosure?

13 A. Age is one of the factors. Teenagers are a bit
14 more likely to tell sooner than a younger child. Another
15 factor is, is this someone the child knew; is it a stranger?
16 Kids tend to tell a little sooner based on research. If
17 it's someone they know in their area of trust, they tend to
18 tell not as soon.

19 Q. Is there also a phenomenon seen in your profession
20 called grooming?

21 A. Yes, ma'am.

22 Q. And what is that?

23 A. Grooming is befriending a child, gaining the trust
24 of a child for inappropriate reasons.

25 Q. And is that common?

1 A. It is common, yes.

2 Q. And what are some of the factors that may prompt a
3 child to tell?

4 A. They may feel safe. The person who was hurting
5 them may be away that particular time, moved out of the
6 house, for example, or may have moved away. They may have
7 had a course in school where they learned that it's okay to
8 tell. They may have someone that they trust who says we can
9 talk about anything. They may be protecting somebody else.
10 We have a lot of children who protect their younger sibling
11 because they don't want it to happen to them.

12 Q. And does the fact that someone questioned them
13 sometimes prompt them to tell?

14 A. Yes, someone just asking the question: Has it
15 happened to you?

16 Q. Is there any common behavioral or emotional
17 reaction to a sexual assault?

18 A. There's a range of reactions to an assault.
19 Certainly, we have children who show no reaction whatsoever.
20 We have children who have serious mental health issues based
21 on what happened to them. So there's a range. There's a
22 perception that when this happens to a child, they are going
23 to be distraught and upset. As I mentioned, kids don't tell
24 right away. So by the time they do tell, they, on some
25 level, prepared themselves to be able to talk about this in

1 a different way initially.

2 Q. So I guess the fact when -- you were saying that
3 often a child doesn't tell right away?

4 A. Correct.

5 Q. They may not display any behaviors that would cause
6 those around them --

7 MR. COCHRAN: Objection, leading.

8 THE COURT: Sustained; leading. Rephrase.

9 BY MS. HERRING-LASH:

10 Q. Have you had instances where a child continues to
11 be around the assailant and does not tell?

12 A. Absolutely. We've had situations where the child
13 purposely goes back to that person's house because, again,
14 it's someone they trust. It's someone the family trusts.
15 We've had some kids who think the parent knows it's
16 happening and thinks it's okay to go back to them. So that
17 is not uncommon for children to go back to someone,
18 unfortunately, harming them.

19 Q. Would their actions to or reactions to that person
20 necessarily change?

21 A. Sometimes they can change. Sometimes they can
22 change being scared of them. Sometimes they can change
23 almost wanting to go back over there. Again, there's a lot
24 of dynamics around that because of the grooming process.
25 This child may feel special. They may have been treated

1 special. And they are going back to someone that we would
2 all think clearly they should not be going back to.

3 Q. As far as the presentation, what is meant by flat
4 affect?

5 A. That means the presentation is very plain. It's
6 very calm. It's not real agitated. It's not real sad.
7 It's very flat or plain or calm.

8 Q. And do you see that in people who have been
9 traumatized?

10 A. Absolutely.

11 Q. And why would somebody who has been through trauma
12 be flat?

13 A. A number of reason. As I mention earlier, people
14 don't tell for a long time. So by the time they do tell,
15 they are like, whoa, it's over. So they are actually
16 feeling better about it. The people who loved them are very
17 upset, but the child is actually feeling better.

18 Another reason is kids have had to learn how to
19 deal with this and they don't want people to know. As I
20 mentioned earlier, they are embarrassed, they are scared, so
21 they don't want any kind of -- let people figure out this is
22 going on, so they may take that attitude.

23 A third is, quite often, by the time children get
24 to a place like court, they've had treatment. And one of
25 the primary areas of treatment to help kids handle their

1 what's called affect modulation. So when they are in
2 school, they are not freaking out, or they are not
3 daydreaming about what happened to them, they can focus on
4 other things. So time, treatment, all those can make that
5 affect be very calming.

6 Q. Is sometimes the disclosure itself something that
7 prompts emotional reaction?

8 A. Yes.

9 Q. Can you explain what that means?

10 A. Ask me that question again.

11 Q. The disclosure itself prompts an emotional
12 reaction?

13 A. The disclosure from the child?

14 Q. Yes.

15 A. Yes. A lot of children have said they've been
16 holding this inside, and maintain that flat affect and they
17 maintain the status quo. And when they finally are able to
18 tell, then it could be like a relief for them. A lot of
19 times, children don't tell for awhile because they either
20 don't have parental support or they don't feel like they
21 have parental support. So when a child finally is able to
22 tell and get that parental support, get that support by
23 someone they care about, it's like a burden -- I mean,
24 child -- many children have told me it's a burden lifted off
25 and they are happy to get that off their chest

1 Q. Can there be an emotional reaction?

2 A. Absolutely.

3 Q. What differences -- I know there are many emotional
4 reactions. What are some of the ones that you have seen?

5 A. We've had children come to us and talk about
6 horrible things happening with a smile on their face because
7 it's over for them. It's not over for the system, but it's
8 over for them. We certainly have had children come up who
9 have not had treatment and they kind of relive it, which is
10 another symptom of stress, is reliving it over and over
11 again, which is why a lot of kids need treatment for that.

12 Q. And is sometimes the first disclosure crying?

13 A. Yes, absolutely.

14 Q. And I think you had said that if the child has been
15 holding it in, when they finally tell, that can be like an
16 eruption.

17 MR. COCHRAN: Objection, leading.

18 THE COURT: Sustained; leading. Rephrase.

19 BY MS. HERRING-LASH:

20 Q. What may be a reaction after having held it in for
21 awhile?

22 A. Again, it's a range of reactions. Some children
23 tell very commonly, as I mentioned earlier. Others tell
24 like you expect them to, by being real emotional, tearful,
25 crying, upset, screaming. Also when they tell, how others

1 react is very important. If they are met with, I'm glad you
2 told us about that, we are going to take care of this, they
3 react well. If they are told, we don't believe this, they
4 have very different reaction.

5 MS. HERRING-LASH: Court's indulgence.

6 THE COURT: Yes, ma'am.

7 BY MS. HERRING-LASH:

8 Q. Dr. Elsey, is there also a phenomenon that you deal
9 with called recantation?

10 A. Yes, ma'am.

11 Q. And is that --

12 MR. COCHRAN: Objection.

13 THE COURT: Basis?

14 MR. COCHRAN: Relevance.

15 THE COURT: I'll give it a little latitude.

16 Overruled.

17 BY MS. HERRING-LASH:

18 Q. Is that common or uncommon?

19 A. It does happen. It doesn't happen most of the
20 time, but it certainly does happen in child abuse.

21 Q. And what is recantation?

22 A. That is when a child has disclosed something
23 happened and they, for some reason, take it back.

24 Q. So that does happen sometimes?

25 A. It does happen.

1 MS. HERRING-LASH: Those are all the questions.

2 THE COURT: Any cross-examination of the witness?

3 MR. COCHRAN: Thank you, Your Honor. May it please
4 the Court.

5 THE COURT: Yes, sir. You may proceed.

6 CROSS-EXAMINATION

7 BY MR. COCHRAN:

8 Q. You did not have any direct involvement in this
9 case, correct?

10 A. I supervised the therapists who did -- who was
11 involved in this case, so I only had that level of
12 contact.

13 Q. You did not have direct contact with Minor
14 in this case, correct?

15 A. That's correct.

16 Q. And, basically, what you are testifying to today is
17 that a delayed disclosure can be true, correct?

18 A. Yes.

19 Q. And a delayed disclosure can also be false,
20 correct?

21 A. That's correct.

22 Q. And there is no behavior of a victim or alleged
23 victim that would indicate truthfulness or indicate that
24 their allegation was false, correct?

25 A. There's no behavior that's diagnostic of those

1 things. There's behaviors that can bring it to people's
2 attention to ask more questions about it.

3 Q. And a delayed disclosure is not diagnostic either,
4 is it?

5 A. That's correct.

6 Q. And you said that when they disclose, they might
7 have a flat affect, correct?

8 A. Correct.

9 Q. Or they might have an extremely emotional one,
10 correct?

11 A. Correct.

12 Q. So it could be anything?

13 A. Yes, sir.

14 MR. COCHRAN: No more questions, Your Honor.

15 THE COURT: Any redirect?

16 MS. HERRING-LASH: No, Your Honor. We would just
17 ask that he be excused.

18 THE COURT: Any objection to the witness being
19 excused from the State?

20 MS. HERRING-LASH: No, Your Honor.

21 THE COURT: From the defense?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: Sir, you are excused.

24 (Whereupon the witness is excused.)

25 THE COURT: State may proceed.

1 MS. ELLIOTT: Your Honor, at this time the State
2 rests.

3 THE COURT: Mr. Foreman, ladies and gentlemen, the
4 State has rested their case. There are brief matters of law
5 I need to take up with the attorneys. During this break,
6 please do not discuss the case. And please leave your note
7 pads in your seats.

8 (Whereupon, the jury leaves open court at 11:04
9 a.m.)

10 THE COURT: The State has rested. Are there any
11 motions?

12 MR. COCHRAN: Your Honor, the defense would renew
13 all motions and objections previously made and move for a
14 directed verdict in this case.

15 THE COURT: What's the basis of the motion?

16 MR. COCHRAN: Your Honor, the defense would move
17 for a directed verdict in this case on the basis that there
18 is no evidence that Christopher Gilyard committed this crime
19 other than a statement from the alleged victim, and that
20 there is no corroborating evidence and that, in fact, there
21 is factual evidence that is directly contrary, in defense's
22 opinion, to her statement. And on that basis, we would
23 argue that there is no evidence to convict Mr. Gilyard other
24 than the victim's statement. And we would move for a
25 directed verdict on that basis.

1 THE COURT: Would the State like to respond?

2 MS. ELLIOTT: Your Honor, the victim's statement,
3 we think that there has been evidence supporting
4 corroborating her statements. And the case law is
5 sufficient that her statements are sufficient to carry this
6 passed directed verdict -- viewing the burden -- or I'm
7 sorry, the standard of review is viewing evidence in the
8 light most favorable to the nonmoving party, which is the
9 State. She has testified as to where it happened, when it
10 happened, and that there was penetration, Your Honor, and
11 that it was, in fact, the defendant who committed the
12 assault. And we've also put up ample evidence that he had
13 opportunity.

14 THE COURT: Anything further from the defense?

15 MR. COCHRAN: Your Honor, my only other point would
16 be the contradiction between the arrest warrant in this
17 case, it was a sworn affidavit, and the indictment in this
18 case, one alleging a specific day as an incident date. The
19 other alleging a span of time, Your Honor, and that that
20 does not give my client adequate notice to defend himself,
21 and that we would move that --

22 THE COURT: Little late for that, isn't it? You
23 should have done that before the jury was sworn.

24 MR. COCHRAN: Yes, Your Honor. We would move that
25 the discrepancy between those two documents would be

1 indicative that there is no evidence that this happened on a
2 specific date or within that span of time, which is what the
3 State has sought to prove.

4 THE COURT: The State have anything further? You
5 get the last word since you have the burden of proof.

6 MS. ELLIOTT: Only that the victim did testify as
7 to the span of time.

8 THE COURT: Starting backwards with the defense's
9 first argument, even if the -- that argument had been made
10 prior to the swearing of the jury, the Court would find that
11 the indictment is sufficient on its face. The indictment is
12 simply a notice document as to what you need, what you are
13 charged with and what you need to defend, and it more than
14 amply meets that requirement.

15 Any discrepancies and facts of matters to be argued
16 to the jury is not for the Court to assist or to resolve, as
17 the Court is not the fact finder. In considering the
18 evidence in the light most favorable to the State, the Court
19 is required to look at the -- is not required to look at the
20 weight of the evidence but is required to look at whether
21 there's direct or substantial circumstantial evidence
22 reasonably tending to prove the defendant's guilt. Again,
23 it is not the Court's prerogative to weigh the evidence.
24 And the State does not have to prove its case to the
25 exclusion of every other reasonable hypothesis.

1 I find there is direct and substantial
2 circumstantial evidence reasonably tending to prove the
3 defendant's guilt. He is charged with criminal sexual
4 conduct in the second degree pursuant to 16-3-655. The
5 State must prove beyond a reasonable doubt that the
6 defendant engaged in a sexual battery with the victim. We
7 all know the definition of a sexual battery. And there has
8 been testimony of vaginal intrusion.

9 And then the State must prove beyond a reasonable
10 doubt one of two categories of ages of the victim, that
11 being that the victim was at least 11 years old, but not
12 more than 14 years old at the time of the battery, or that
13 the victim was less than 16, but at least 14, and that the
14 defendant was either in a position of familial, custodial,
15 or official authority to coerce the victim to submit or that
16 the defendant was older than the victim.

17 If I understand the testimony correctly, she was 13
18 years old at the time of this incident and, therefore, the
19 State would have met the element, the first prong of the
20 statute, which is that she was at least 11 but not more than
21 14 at the time of the sexual battery.

22 In addition, Code Section 16-3-651 is very clear
23 that the testimony of a victim in a sexual assault does not
24 have to be corroborated, that the victim means the person
25 alleged to have been subjected to criminal sexual conduct,

1 and their testimony need not be corroborated in order for
2 the State to meet its burden of proof. Any contradictions
3 in statements, any inconsistencies in statements, are
4 factual matters to be argued to the jury. Again, it's not
5 for the Court to decipher or to sift through and act as fact
6 finder. Therefore, the motion for directed verdict is
7 denied as there is direct testimony in the form of the
8 victim in this case, Minor , who testified that the
9 defendant committed a sexual battery upon her. And under
10 the law, she cannot consent. So that is not an issue.

11 And, again, pursuant to statute, her testimony does
12 not have to be corroborated. But there is also substantial
13 circumstantial evidence tending to prove his guilt where
14 there's testimony regarding the surrounding and intended
15 circumstances of this alleged sexual assault. Therefore,
16 there's direct and substantial circumstantial evidence
17 reasonably tending to prove the defendant's guilt. And the
18 motion is denied. The Court's stands on its previous ruling
19 regarding any other motions that were contemporaneously made
20 and ruled upon.

21 Now, is there any record the State would be seeking
22 to introduce to impeach Mr. Gilyard's credibility?

23 MS. ELLIOTT: Yes, Your Honor. He has two prior
24 burglary convictions that were based on --

25 THE COURT: I need to know what dates they were.

1 MS. ELLIOTT: The conviction date is --

2 THE COURT: And what level of burglary?

3 MS. ELLIOTT: They were both burglary seconds,
4 nonviolents, or that's what he pled down to, and 3/18/04.

5 And the other conviction date was 7/15/02, but the penalties
6 -- he was put on --

7 THE COURT: When did confinement end?

8 MS. ELLIOTT: He was put on probation for three
9 years, Your Honor, which would have carried that conviction
10 date to or the span of time into 2015.

11 THE COURT: On both of them?

12 MS. ELLIOTT: I'm sorry. The other conviction date
13 was 2004. And he actually was sentenced to ten active
14 years.

15 THE COURT: And when did that -- when was he
16 released?

17 MS. ELLIOTT: I do not have his exact release date,
18 Your Honor.

19 THE COURT: Do you know when he was released?

20 MS. ELLIOTT: I have the sentencing form and --

21 THE COURT: He was actually sentenced on 3/18/04 to
22 10 years?

23 MS. ELLIOTT: Yes, Your Honor.

24 THE COURT: Would have done 65 percent of it, if it
25 is a nonviolent.

1 MR. COCHRAN: He was released in 2007, Your
2 Honor.

3 THE COURT: So count 10 years from then.

4 MS. ELLIOTT: Your Honor, he also has a possession
5 of a stolen motor vehicle from 2008 that we would argue
6 would be probative as well.

7 THE COURT: Does that involve a theft?

8 MS. ELLIOTT: Your Honor, I think it is the State's
9 argument that because it's a stolen vehicle, that that
10 speaks to his --

11 THE COURT: Has to involve -- case law is very
12 clear. You have to prove that a theft was involved, which a
13 theft being the determining factor on whether it's a crime
14 of dishonesty. Even in a receiving stolen goods, you have
15 to prove that somehow a person had some involvement in the
16 theft. It just doesn't come in any more just because it
17 involves a theft.

18 MS. ELLIOTT: Then, Your Honor, under those
19 circumstances, we would simply seek to admit the two
20 burglary convictions.

21 THE COURT: Please stand and raise your right hand
22 for me.

23 (Whereupon, the defendant is sworn.)

24 THE COURT: Sir, state your full name for the
25 record.

1 THE DEFENDANT: Christopher Gilyard, ma'am.

2 THE COURT: Is your middle name Terell?

3 THE DEFENDANT: Yes.

4 THE COURT: Sir, I'm now going to explain to you
5 certain of your rights. If you do not understand anything
6 that I say, please let me know. If you want me to explain
7 anything in more detail, please let me know. Do you
8 understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: We have now reached the stage of the
11 trial where you may present your defense. You have the
12 right to claim the protections given to you by the Fifth
13 Amendment to the Constitution of the United States. And
14 that amendment reads: No person shall be compelled in any
15 criminal case to be a witness against himself.

16 This means that you cannot be required to testify
17 in this case. You have the right to testify; however, no
18 one can make you testify. This is a personal right and no
19 one can waive this right except you. If you decide to
20 testify, you will be subject to the same rules that govern
21 other witnesses, and you may be examined and cross-examined
22 on any relevant issue in this case.

23 In addition, if you have any convictions involving
24 dishonesty or false statement or for crimes punishable by
25 imprisonment for more than one year, and this Court

1 determines that the probative value of admitting this
2 evidence outweighs its prejudicial effect to you, the
3 solicitor will be able to introduce your record to attack
4 your credibility.

5 If you decide to testify, this decision on your
6 part must be made freely, voluntarily, and intelligently,
7 with knowledge of the protections given to you by the Fifth
8 Amendment, and the consequences of your decision to testify.

9 If you decide not to testify, I will instruct the
10 jury that they cannot give the fact that you did not testify
11 any consideration whatsoever, that there's to be no
12 prejudice to you because you did not testify, and they are
13 not to draw any inferences from you not testifying. In
14 fact, they will be instructed that you have no burden of
15 proof in this case, that the burden of proof remains on the
16 State to prove each and every element of the offense they
17 charged you with, and that the fact that you did not testify
18 cannot be discussed in any manner whatsoever in jury
19 deliberations. It is left entirely up to you whether or not
20 you testify. You may speak with your attorney, your family
21 members, friends, or anyone else, but the final decision is
22 yours.

23 Sir, do you understand your rights as I've just
24 explained them to you?

25 THE DEFENDANT: Yes, ma'am, I do.

1 THE COURT: Do you have any questions about what
2 I've just explained to you?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Have you had adequate time to speak
5, with your attorneys about whether you should or should not
6 testify?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you need to speak with them any more
9 at this time?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. We will take a short recess. If
12 y'all could take him into the room so Mr. Cochran and
13 Ms. Andrews -- so that y'all can speak with him.

14 (Whereupon, the defendant is not present.)

15 MR. COCHRAN: Your Honor, I apologize. In terms of
16 the two burglary convictions, since the State has not
17 offered proof of the theft

18 THE COURT: We will bring him back in so we can
19 clarify that, so you can have a fully informed discussion
20 with him.

21 MR. COCHRAN: I apologize.

22 THE COURT: That's okay. I really should have
23 asked that question.

24 (Whereupon, the defendant is present.)

25 THE COURT: What's the nature of the burglaries?

1 MS. ELLIOTT: In the first incident, he entered a
2 residence and stole an Xbox.

3 THE COURT: Which date is that?

4 MS. ELLIOTT: Date of incident or date of
5 conviction?

6 THE COURT: I need to know which one correlates to
7 which conviction.

8 MS. ELLIOTT: Conviction date was 3/18/04, and this
9 was he broke into a residence and stole an Xbox, Xbox games
10 and T-shirts. The estimated amount was \$390 for what was
11 stolen.

12 The other one, which was the conviction date of
13 2002, that he entered -- kicked in a residence and stole --
14 just removed several items that did not belong to him.

15 THE COURT: Okay. I believe they met -- I assume
16 they have certified convictions that they can share with
17 you, but they have met the requirement for those to be
18 impeachable defenses.

19 MR. COCHRAN: Yes, Your Honor.

20 THE COURT: We will be at ease for a few moments.

21 (A recess transpired.)

22 (Whereupon, the defendant is present.)

23 MR. COCHRAN: Your Honor, my client has decided he
24 does not want to testify.

25 THE COURT: I will have to finish questioning him.

1 I will remind you you are still under oath.

2 Have you had adequate opportunity to discuss with
3 your lawyer whether you should or should not testify?

4 THE DEFENDANT: Yes, ma'am, I did.

5 THE COURT: And I've allowed you just about --
6 well, I gave you as much time as you needed, but you've been
7 with your lawyer for about ten minutes, correct?

8 THE DEFENDANT: Correct.

9 THE COURT: And do you have any more questions that
10 you need to ask of him regarding your right to testify?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Do you need to talk with him any more at
13 this time?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: And, sir, do you wish to testify?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: You may take your seat.

18 Does the defense have any other witnesses that it
19 would be seeking to or any other evidence that it would be
20 seeking to go forward in the presentation of the defense?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: Does defense rest?

23 MR. COCHRAN: Yes, Your Honor.

24 THE COURT: And are there any motions now that the
25 defense has rested?

1 MR. COCHRAN: Your Honor, we would again renew all
2 motions and objections previously made and renew our motion
3 for directed verdict.

4 THE COURT: And would the State like to respond?

5 MS. ELLIOTT: Your Honor, we have no additional
6 argument other than the arguments we made in the first
7 motion for directed verdict.

8 THE COURT: The Court stands on its previous ruling
9 and incorporates all those previous rulings into the record
10 for the purpose of time and brevity.

11 What I think we should do, since I didn't know we
12 were going to finish this soon, I did not order lunch for
13 the jury. So I'm thinking maybe that we should take an
14 early lunch break and then resume with closing arguments and
15 instruction. It's still tourist season, takes a minute for
16 them to eat, 1:15. What am I thinking? I'm thinking it's
17 twelve o'clock. I've done that once before. I sent a jury
18 for two hours, two and a half hours. So I miscalculated the
19 time. And I came back to court and they weren't here. And
20 my clerk was, you gave them two and a half hours. And I
21 said, why didn't you say something? Why don't we do until
22 quarter to one, that gives them an hour and 15 minutes. Is
23 that acceptable to the State?

24 MS. ELLIOTT: Yes, Your Honor.

25 THE COURT: To the defense?

1 MR. COCHRAN: Yes, Your Honor.

2 THE COURT: And what I will do, Mr. Cochran, when
3 the jury comes back in, I will allow you to rest in their
4 presence, and we will break for lunch and then resume with
5 closing. And before y'all leave for lunch, if you could
6 make sure the court reporter has all of the exhibits.

7 MS. ELLIOTT: Yes, Your Honor.

8 THE COURT: And Mr. Cochran has preserved last
9 argument since he presented no evidence, correct?

10 MS. ELLIOTT: Yes, Your Honor.

11 MR. COCHRAN: Yes.

12 THE COURT: Please bring in the jury.

13 Actually, I should probably give them until one
14 o'clock.

15 MS. ELLIOTT: We have no problem with that, Your
16 Honor.

17 MR. COCHRAN: No objection.

18 (Whereupon, the jury returns to open court at 11:32
19 a.m.)

20 THE COURT: The defense may proceed.

21 MR. COCHRAN: Your Honor, the defense rests.

22 THE COURT: Mr. Foreman, ladies and gentlemen, both
23 the State and the defense have rested their cases. We have
24 now reached the stage of the trial where we will have
25 closing arguments and the Court's instruction. I still have

1 some matters of law that I need to take up with the
2 attorneys. It's probably going to take us another 15 or 20
3 minutes before we can break. Instead of having you wait, we
4 are going to take an early lunch recess. We will need you
5 to return at one o'clock, at which time we will have closing
6 argument, instruction, and at that time you will be allowed
7 to begin to deliberate regarding this case.

8 While you've heard all of the evidence, you have
9 not heard the arguments of counsel or the Court's
10 instructions, so it is absolutely essential that you have no
11 discussion about this case among yourselves or with anyone
12 else. When you return to the courthouse, again, please
13 don't have any contact with anyone you do not recognize to
14 be a fellow juror, in other words, they have a juror sticker
15 on. And please don't make any comments regarding your jury
16 service on any social networking sites. In addition to
17 that, if there are any media accounts about this case,
18 please strictly guard yourselves not to watch, read, or
19 listen to any of those accounts, and don't do any
20 independent research on the internet.

21 We will see you at one o'clock. Have a great
22 lunch. If you would leave your note pads in your seats.

23 (Whereupon, the jury leaves open court at 11:34
24 a.m.)

25 THE COURT: I will give the jury a general

1 instruction regarding their responsibility and my
2 responsibility, how they are to judge witness credibility
3 and believability. I will give them a general instruction
4 on expert witness testimony and a general instruction on the
5 direct and circumstantial evidence from State v. Grippon, as
6 well as the general instruction that the charge, the arrest,
7 and the indictment are not evidence, as well as on the
8 presumption of innocence.

9 I will then give Victor v. Nebraska on reasonable
10 doubt. I will then give a general instruction regarding the
11 defendant not testifying. I will then give the elements of
12 16-3-655 -- give me one moment. I need to look up that
13 statute.

14 It is my understanding it is alleged that the
15 victim was 13 years old at the time of the incident?

16 MS. ELLIOTT: No, Your Honor; she was 14.

17 THE COURT: I miscalculated. What I would be
18 instructing would then be the elements of 16-3-655(b)(2),
19 which is engaging a sexual battery with a victim who is 14
20 years of age or less, but who is at least 11 -- no, I'm
21 sorry, I read the wrong one. At least 14 years of age --
22 what is this?

23 MS. ELLIOTT: Judge, we think technically on the
24 law, the 14 falls under both those subsections.

25 THE COURT: It does, actually. I'm sorry I'm

1 talking slow. There's a typo in my -- 16-3-655(b): A
2 person is guilty of criminal sexual conduct with a minor of
3 second degree if the actor engages in sexual battery with
4 the victim who was 14 years of age or less, but who is at
5 least 11 years of age.

6 And then the second section, which is: The actor
7 engages in a sexual battery with the victim who is at least
8 14 years of age, but who is less than 16, and the actor is
9 in a position of familial, custodial or official authority
10 to coerce the victim to submit or is older than the victim.
11 And so it would be an "or", yeah, "or".

12 And, of course, I will define a sexual battery.
13 And I will also instruct consent, willingness, indifference,
14 or ignorance on the part of the minor, if any, as to what
15 has taken place does not in any way affect the charge of
16 criminal sexual conduct with a minor because an unmarried
17 woman under the age of 14 cannot legally consent to sexual
18 intercourse.

19 I will then instruct 16-3-651. 16-3-657, which is
20 the testimony of the victim need not be corroborated. And
21 that 16-3-651 defines victim to mean the person alleging to
22 have been subjected to criminal sexual conduct. And then I
23 will instruct on the form of the verdict, which will either
24 be guilty or not guilty. And I will have that form for
25 y'all to look at momentarily.

1 Are there any exceptions to the charge as proposed
2 from the State?

3 MS. ELLIOTT: None, Your Honor.

4 THE COURT: From the defense?

5 MR. COCHRAN: Your Honor, we object to the charge
6 that the testimony of the victim need not be corroborated.
7 I understand that the statute is clear. I believe that
8 reading that statute as an instruction to the jury
9 essentially tells the jury that the State's case is
10 adequate. And in a case like this, that is extremely
11 important. And I believe that that instruction is
12 prejudicial in a case like this.

13 I would also object to the instruction on consent,
14 because consent was never alleged.

15 THE COURT: I think it's the law. And I can't
16 leave the jury with the misapprehension that the child could
17 consent.

18 MR. COCHRAN: Yes, Your Honor.

19 THE COURT: And that's part of our standard
20 instruction, but I will note your objection. Also, case law
21 provides that 16-3-657 and 16-3-651 are accurate statements
22 of law and appropriately instruct them. I cannot allow you
23 to argue to the jury that there's a lack of corroboration,
24 because it doesn't have to be corroborating under state law.
25 So that would be a misapprehension to the jury. It would be

1 inaccurate. And, again, the Court's responsibility is to
2 make sure that the jury has the accurate law by which to
3 find facts and apply the law.

4 So under these circumstances, it would not be a
5 statement of -- a comment on the facts, because I will
6 instruct them that they are the sole finders of the facts
7 and of the credibility of all witnesses, as well as me not
8 having an opinion on the facts.

9 Are there any other exceptions to the instructions
10 as proposed from the State?

11 MS. ELLIOTT: None, Your Honor.

12 THE COURT: From the defense?

13 MR. COCHRAN: No, Your Honor.

14 THE COURT: All right. Please make sure all the
15 evidence is in place. If you need any technology, please
16 make sure you make Sam aware of it before we resume, and try
17 it out or do what you need to do before we go to lunch. And
18 we will start back promptly at one o'clock.

19 (Luncheon recess was taken).

20 THE COURT: Is the State ready to proceed?

21 MS. ELLIOTT: We are, Your Honor.

22 THE COURT: Is defense ready to proceed?

23 MR. COCHRAN: Yes, Your Honor.

24 THE COURT: Are you going to use technology?

25 MS. ELLIOTT: I have a Powerpoint.

1 THE COURT: Did you test it out?

2 MS. ELLIOTT: We did.

3 (Whereupon, the jury returns to open court at 1:10
4 p.m.)

5 THE COURT: Ladies and gentlemen, I hope that y'all
6 had a pleasant lunch recess. As I explained before we broke
7 for lunch, both the State and the defense have rested their
8 case. The next part of the process is closing arguments and
9 the Court's instructions. I would ask that you give the
10 attorneys your undivided attention.

11 You may proceed.

12 MS. ELLIOTT: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MS. ELLIOTT: Good afternoon, ladies and gentlemen.
15 When I started, we started out this case, I talked to you a
16 little bit about the law, about what the charge of criminal
17 sexual conduct with a minor in the second degree is. You've
18 gone through this case now and heard all of the evidence and
19 the testimony. As I said, the judge is going to give you a
20 full instruction, fully explain all of the law. And if
21 anything I'm about to tell you conflicts with anything the
22 judge says, you are to defer to the judge.

23 But criminal sexual conduct with a minor in the
24 second degree requires that the State prove beyond a
25 reasonable doubt that there was sexual battery, which in

1 this case would have been sexual intercourse. The victim
2 told you how the defendant penetrated her vagina with his
3 penis. The victim has to be 14 years or younger.

4 In the summer of 2012, Minor was 14 years old.
5 And the defendant is older than the victim. He was born in
6 , and at that time would have been 31.

7 What we do not have to prove is that there was
8 force. Consent is not a defense.

9 The judge will also instruct you that the victim's
10 statement does not have to be corroborated. And what that
11 means is, despite what CSI has taught us or what Law and
12 Order has taught us, we don't need 15 eyewitnesses. We
13 don't need DNA.

14 I think Mr. Cochran and I would agree this is a
15 case that comes down to credibility, the credibility of
16 Minor and what she told you happened to her on July
17 11th, 2012.

18 Now, you will get an indictment back in the jury
19 room that has a span of time. And I think we all understand
20 why that happened. I think it spans from July 1st through
21 the 17th. Because Minor waited about five weeks to tell
22 anyone what happened to her. And so we've had to
23 reconstruct what exact day it was, which she knows is it was
24 a Wednesday, and we narrowed it down. We do believe it, in
25 fact, happened on July 11th. But don't let that nonclarity

1 on the exact date could what happened.

2 Remember that all people, they process information
3 differently. What sticks for one person may not stick for
4 another. An example I like to use is with my boyfriend.
5 We've been dating for a couple of years now. And if you
6 were to separate us and ask us what was the date of our
7 first date, I'm going to be able to tell you that it was a
8 Sunday, and I will be able to tell you what restaurant we
9 went to. And I will be able to tell you what I wore and
10 what he had to eat and what I had to eat.

11 He is a date's person. He will be able to tell you
12 the date that we went on our first day, the day it was, the
13 restaurant. He will be able to tell you what time we were
14 supposed to meet and how late I was.

15 Everybody processes that information differently.
16 It doesn't mean that it's not credible, or that you can't
17 trust it. You just have to look at all of the circumstances
18 surrounding it.

19 Minor believes that it was July 11th because she
20 believes it was a Wednesday. That's one of the days that
21 her mom works at the nursing home. And that would have been
22 a reason that she and her nephew would have been left at
23 Shear Beauty. That's also a day that Angie usually left
24 early. And as she remembered, Angie left earlier that day,
25 about the time that the soap opera went on, leaving just her

1 and Christopher Gilyard in Shear Beauty.

2 Now, Shear Beauty was open for business. But Shear
3 Beauty being open for business does not mean it had an
4 open-door policy. You couldn't just come and go from the
5 business. They kept the door locked at all times. If
6 someone wanted to come in, they had to come to the door and
7 get buzzed and get recognized, and someone had to physically
8 walk up and open the door.

9 On July 11th, Minor had been dropped off at the
10 store. It was a normal day. It wasn't anything that was
11 standing out to anyone. Christopher was there doing his
12 job. Angie was there doing her job.

13 When Angie left, Minor thought the day was going
14 to continue in a normal way. She had grown to trust
15 Christopher Gilyard. He was a friend of hers. He paid her
16 money to clean his little section of the shop. He paid her
17 money to wash his hair. When she was on restriction, he let
18 her use his phone and go on Facebook. And I think we all
19 know how important Facebook and social media is to teenagers
20 today. She trusted him. He even offered to help her with
21 Nephew. He put him down for his nap.

22 She didn't expect what was going to happen in this
23 hallway. Minor then goes into the bathroom. And when she
24 comes out, she's confronted by Christopher Gilyard. But not
25 the kind, friendly Christopher Gilyard she had gotten used

1 to. This man was different. He started groping at her and
2 grabbing her. She tried to push him away. She tried to get
3 away from him. In this narrow hallway, she tried to get
4 from that -- you can see the sliver of a light from the
5 bathroom out into the main area.

6 Like she told you, she had an injured foot. It was
7 slowing her down. And he was still grabbing at her, pulling
8 at her. And he put her on the floor. She lands on her
9 stomach and he flips her over. Then he starts going for her
10 pants.

11 How much fear is running through her head? How
12 many thoughts are going through her mind at this moment?
13 This was Gilly. Why was Gilly doing this? She tries to
14 scream out: Shut the fuck up.

15 Her nephew is just feet away. He starts undoing
16 her pants and pulling them down. And then he sits up,
17 pulling her down with one hand and looks out that door to
18 see if anyone is coming. He looks out through the tinted
19 windows that also have blinds on them. No one can see in,
20 but he makes sure no one else is coming. And there are two
21 people that could just walk in, that's Angie who already
22 left, and Tralane, who he understands that her schedule, she
23 doesn't get off until 3 and sometimes she runs errands
24 afterwards. He knows her schedule.

25 MR. COCHRAN: Objection.

1 THE COURT: Basis?

2 MR. COCHRAN: Not supported by testimony.

3 THE COURT: Please approach.

4 (Whereupon, a bench conference takes place off the
5 record.)

6 THE COURT: Objection is overruled. It is within
7 the ambit of the facts, both direct and circumstantially.
8 You may proceed.

9 MS. ELLIOTT: Christopher Gilyard is with one hand
10 holding down Minor as he looks to make sure that no
11 one is at the window or trying to get in. Then he finishes
12 taking down his pants and he penetrates her vagina with his
13 penis. And he stands up and finishes up in the bathroom,
14 leaving her there in the dark looking for her pants,
15 possibly even stepping over as he walks back out to the
16 common area.

17 Minor is terrified. She's scared to death. When
18 she was laying there, she just wanted it to stop. "I'm not
19 trying to send anybody to jail," saying what she could to
20 try to make it stop. She goes to the bathroom and she
21 cleans herself up. And she limps back into the common area
22 to wait. Someone will be coming eventually.

23 Christopher Gilyard starts gathering his stuff and
24 he goes to leave, but not before he warns her: You tell
25 anyone about this and I will kill you. Minor continues to

1 sit there, still watching him as he's leaving.

2 Ashley comes in later. Her brother comes in later.
3 Her mother comes in later. She keeps it secret. She
4 believes his threat. She's a scared 14-year-old.

5 Ladies and gentlemen, what else was she to do when
6 she was in that narrow hallway? Where else was she to go?
7 If she could have gotten away, how could she have scooped up
8 her nephew with her injured foot and got to that locked door
9 and out before Christopher Gilyard stopped her? She
10 couldn't. She had no option but to behave the way that she
11 did.

12 Now, the defense is going to get the last close in
13 this case, so I can only guess or anticipate what he might
14 say to you, because of the questions that he asked. We've
15 talked a little bit about the dates. Let's talk about this
16 delayed disclosure.

17 Dr. Elsey told you that it's very common for
18 teenagers and children and victims of sexual assaults not to
19 tell right away. That complicates things for us. That
20 makes nailing down the exact date of an assault difficult
21 because most people don't write it down on a calendar. It
22 wasn't until August 17th that Minor felt safe enough
23 to tell her mother what had happened to her. And since that
24 time, they have all tried to piece together what happened
25 exactly that day, figure out exactly who was where when.

!

1 Minor has the best memory of it because that
2 was a traumatic day for her. But on cross, the defense kept
3 asking her questions about what she had told other people.
4 There is a world of difference between remembering an event
5 and remembering what you -- all the intricate facts that you
6 told all the people about that event. Think about your last
7 vacation, when you came back and people wanted to hear about
8 it, even when you wanted to talk about it, you are probably
9 going to highlight parts for one person and highlight parts
10 for another. That doesn't mean you are being untruthful.
11 You are just telling what's popping into your mind at that
12 moment.

13 And that delayed disclosure makes it very difficult
14 for Tralane and for Angie and for Ashley to really say
15 exactly what they were doing day. They got up there and did
16 the best they could based on what they remember and what
17 their normal habits were.

18 The defense has also asked a lot of questions about
19 the scream, the statements of she screamed, she tried to
20 scream, she didn't want to wake up her nephew. Those are
21 not mutually exclusive; none of them are. She's laying on
22 the ground with a man on top of her. She's probably making
23 some noise. She's probably trying to scream, but he at this
24 point -- at some point definitely said: Shut the fuck up.
25 She's scared. She has no power in this situation. She

1 knows her nephew is there. She doesn't want to wake him up,
2 because what happens when he wakes up and walks in on us?
3 He can't help her. He can't protect her. This is a guy who
4 is raping her. What is he going to do with the
5 three-year-old. She wants to keep him safe too. None of
6 those statements contradict each other. They actually all
7 work together.

8 You are the sole judges of credibility in this
9 case. The judge will instruct you of that. And credibility
10 is something that you judge every day. Somebody is walking
11 down the street and asks you, hey, do you have a dollar?
12 You evaluate whether you think this is someone in need or
13 someone just trying to scam you. You have children, you
14 evaluate, I didn't break the lamp. These are all skills
15 that we all have. We look at people's body language, their
16 openness when they are talking to us, their demeanor, their
17 mannerisms.

18 We also look for any motives or reasons for bias or
19 reasons to lie. You need to ask yourselves, did Minor
20 Minor have any of those? In his opening, the defense tried
21 to indicate that Minor started making up this story and now
22 she just can't go back on it, she can't come back. But Dr.
23 Elsey tells you, kids recant, I've had a kid recant on the
24 stand.

25 Minor had to tell responding officers what

1 happened to her. She had to tell Leslie Ambrose what
2 happened to her. She then had to tell LCC counselors what
3 happened to her. She also, by my count, went through eight
4 months of therapy. I think she told us she went to therapy
5 from September through April, almost every Monday. There's
6 some holidays. So I'm going to give you a rough estimate of
7 about 30 sessions that she processed this and went through
8 this. At any point, she could have said it didn't happen,
9 but she hasn't. She came in here and sat on that stand and
10 told you about the worst day of her life, 14 total
11 strangers, not counting the rest of us.

12 And then she was subjected to a cross-examination.
13 What was her demeanor like up there? Was she rude? Was she
14 combative? When she didn't know an answer, did she make
15 something up wildly, or did she say, I just don't remember?
16 What was she like?

17 Ladies and gentlemen, in this case, you really only
18 have two choices: One, you can believe that on a day in
19 July, the defendant, Christopher Gilyard, who had only ever
20 been perfectly nice to Minor , given her money, snuck her a
21 phone when her mother didn't want her to, that he, in that
22 hallway, forced her to the ground and raped her, and he
23 threatened to kill her if she told anyone; or, you have to
24 believe that Minor is a liar and a manipulator, so
25 much so that not only is she willing to drag this man in on

1 charges, but that when she told her mother about what
2 happened and her mother was going to kill him, when she had
3 a gun in her car, whipped her car around and drove to his
4 house looking to kill him, she was going to stay silent? Is
5 that the little girl you saw on that stand, that she would
6 have let all that go by? No, ladies and gentlemen, the
7 defendant is guilty beyond a reasonable doubt.

8 A reasonable doubt is when you are firmly convinced
9 of that. There are few things in life you will ever know
10 beyond any doubt. But I am confident that you all now know
11 beyond a reasonable doubt, the defendant raped Minor .

12 THE COURT: Mr. Cochran, you may proceed.

13 MR. COCHRAN: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. COCHRAN: How can a person defend himself
16 against a story that is so all over the place? When did
17 this happen? Was it on a specific day, July 11th, 2012,
18 like the detectives swore to under oath in her affidavit;
19 or, was it door a span of time, like Tralane Bell testified
20 and as is put in the indictment in this case that you will
21 be considering? When did it happen?

22 Sorry, Chris, we can't tell you when you did this,
23 but you did it. How does he defend himself against that
24 besides to just deny it? And why give a specific date at
25 the outset and then back away from that? Minor and Tralane

1 clearly, when they talk to responding officers and two
2 separate investigators and the Lowcountry Children's Center,
3 gave a specific day that this happened. And why now go back
4 on that and say, maybe it happened on that day, but it
5 definitely happened within this span of two weeks?

6 Well, it's because now they know that their story
7 is getting tested against the facts. Their story is getting
8 tested against the truth, and they don't want to commit
9 themselves to specific allegations that can be tested.

10 Was it a Wednesday? Solicitor just talked to you
11 about that. That you should believe Minor that it was a
12 Wednesday. We are not sure what day. We think it was the
13 11th, but we are sure it was a Wednesday. And Minor told
14 you why she's sure it was a Wednesday, because Angie Fuller
15 was at work that day, but she left early, and Angie Fuller
16 always left early on Wednesday. You heard that from Minor
17 and Tralane.

18 But then Angie Fuller took the stand. She took the
19 stand herself, having not heard their testimony, and was
20 specifically asked: Is there a specific day of the week
21 when you leave early? No, there is no specific day of the
22 week when I leave work early.

23 The reason Minor told you she was sure that it was
24 a Wednesday was a lie. It was untrue. That's because
25 Minor is lying. Lies evolve. They change, and they

1 expand. How do you defend yourself against a lie that's
2 evolving, changing, and expanding? All you can hope is that
3 the truth will expose itself in the face of this lie.

4 The truth is that this was a salon during the day.
5 It was open for business. That was the only time they could
6 have ever possibly be alone, was in that setting. The truth
7 is that there was no injury. There was no sign of a
8 struggle. There was no torn or damaged clothing, not a hair
9 out of place, despite her claim that there was a violent
10 sexual assault and struggle that lasted for ten minutes.

11 I asked her repeatedly, because I wasn't trying to
12 trick her, I wasn't trying to trip her up, I asked her
13 repeatedly: Were you injured during this assault? Were you
14 hurt during this assault? Oh, well, my foot hurt. If you
15 are tackled to the ground, flipped over, your clothes
16 forcibly removed, and you are violently raped for ten
17 minutes, you are going to be hurt in places other than your
18 already-injured foot. But that's her story to you that she
19 expects you to believe completely and totally, beyond any
20 reasonable doubt, the truth that on that day she had
21 contact, she says right after she was violently assaulted,
22 contact with at least three people: Her brother, who is an
23 adult; his girlfriend, who is an adult; and her mother,
24 moments after this violent sexual assault, and not one of
25 them remembers anything that would indicate that something

1 bad had happened to her that day.

2 Ashley Whaley says she was more quiet than usual.

3 A girl who is already quiet and already just sits by herself

4 underneath a hair dryer was more quiet than usual. But her

5 mom didn't notice that. Her mother, who testified that her

6 daughter's emotions are also her emotions, that she can see

7 when something is wrong with her daughter, completely

8 inconsistent with this statement that Ashley Whaley comes up

9 with on the stand, never having told that to anybody before.

10 Was she alone with Christopher? What day did this happen?

11 If it happened on that day, were they ever alone? How long

12 were they alone for? What time of day were they alone?

13 What were the circumstances that led to them being alone?

14 The mother dropped her off at the shop, was at the

15 shop. Angie was at the shop when the shop opened, according

16 to Tralane. The mother left. Tralane was still there. And

17 I spoke with Minor on the stand about that: How long was

18 your mother gone? About an hour.

19 Tralane also testified, gone no more than an hour.

20 Okay, Minor, how long after your mother left was Angie

21 still at the store? How long did she remain in the store

22 after your mother left? About an hour.

23 Now, when she said that, I was thinking the same

24 thing that you were probably thinking. So, were you ever

25 alone with this guy on this date that you say this happened?

1 And I wasn't trying to trip her up. That's why I continued
2 to ask her: So you are sure Angie was there at the shop for
3 an hour after your mom left? Yes. And your mom was gone
4 for an hour? Yes.

5 Were they ever even alone on that day? Forget
6 about which day it happened. Her lies were expanding. They
7 were changing. They were evolving.

8 The scream, why is the scream important? The
9 scream is important because you will be able to take those
10 pictures back with you. It looks like it's about 15 feet at
11 most from where she's saying she's being violently sexually
12 assaulted to where her three-year-old nephew is sleeping.
13 Did you scream or didn't you scream? Yes, I screamed.
14 Okay. You told the police that you were going to scream,
15 but that he threatened you and somehow this verbal threat
16 kept you from screaming. You were going to scream. You
17 told other people, your counselors, that he put his hand
18 over your mouth, but she didn't testify to or she didn't
19 tell police, violently attack you, putting his hand over
20 your mouth to keep you from screaming, so you didn't scream;
21 or was it what she told the LCC interviewer, that she was
22 going to scream, but she decided not to on her own because
23 she didn't want to wake up her three-year-old nephew?

24 Nobody is expecting that the three-year-old nephew
25 is going to come to her rescue, but it's important because

1 he potentially could have been a witness. Three-year-olds
2 can talk. Three-year-olds can see and hear and tell people
3 what they saw and heard. And he could have been taken to
4 the Lowcountry Children's Center and interviewed on video
5 and given his account of what happened that day. But he was
6 never contacted by law enforcement and he was never sent to
7 the Lowcountry Children's Center. And he certainly wasn't
8 called to the stand.

9 While we are on that topic, where was Timothy
10 Mason, her older brother who is an adult, who had contact
11 with her right after this supposedly happened? On the day
12 when her demeanor started to change, according to her
13 mother, what about her brother? Where is he? They lived
14 together. He had contact with her moments afterwards, and
15 he doesn't get called to the stand?

16 Minor clearly had never had her story tested
17 according to facts and according to the truth. And you can
18 listen to what the expert said about how children with delay
19 disclosure and how any kind of behavior is normal. Could be
20 totally calm, poker face, could be screaming and crying,
21 everything is normal. Everything indicates a sexual assault
22 to them. You got to learn, as a juror, first hand about
23 Minor . You got to see yourself how she handles her
24 emotions, whether she is capable of just giving you a poker
25 face, or whether, when her story is tested, when her

1 inconsistencies are pointed out to her, when she is asked
2 questions, whether she calmly answers them or whether she
3 walks away from the problem. You got to see that
4 first-hand.

5 And they want you to believe -- they're speaking
6 out of both sides of their mouth. They want you to believe
7 that on that day, she had a poker face. Nobody could see
8 that anything was wrong with her. Her mother couldn't see
9 that anything was wrong with her. Her brother didn't see
10 that anything was wrong with her. Ashley didn't see that
11 anything was wrong with her, nothing. She wasn't crying.
12 She wasn't reacting in any way. That's normal, they want
13 you to believe.

14 And then they want you to also believe that on the
15 day she discloses to her mother, she's going why, she's
16 crying, she's screaming, she's exploding with emotion on
17 that day. But how was she on the stand? How was she on the
18 stand? Was she somebody who could control herself, or did
19 she try to walk away from the questioning?

20 Her mother was a driving force in this case. Her
21 mother repeatedly asked her, like the State said in her
22 opening statement to you: You better tell me that
23 Christopher did something because I already know; tell me
24 what he did. He didn't do nothing. Tell me what he did.
25 Repeatedly, prying some kind of disclosure out of her. And

1 then gives a explosive reaction when she finally says, he
2 had sex with me. An explosive reaction. Gets a gun. Turns
3 her car around. Do you think the daughter is going to
4 retract that statement after that? Do you think the
5 daughter is going to retract that statement after police
6 show up, take her statement down? She talks to -- she's
7 taken to a counselor to have an interview videotaped and
8 then interviewed again by an investigator? When is she
9 going to take this back? How realistic is that?

10 Her mother, the driving force in this case, when
11 her mother had contact with law enforcement, she gave them a
12 specific day. She told them that on that specific day,
13 Christopher did not return to work after the incident. She
14 said it happened on July 11th, I know it happened on July
15 11th, because Christopher didn't come back to work after
16 that day and that's suspicious, because he was hiding from
17 what he did.

18 Turns out, complete fabrication, total 100 percent
19 lie, a lie that was exposed by her own daughter who said,
20 yeah, Christopher came back maybe that day, but definitely
21 the next day, day after, continued to work there.

22 But she wanted him to sound sinister when she was
23 making those accusations. You heard Detective Ambrose say
24 to you: Yeah, my interpretation from the investigation in
25 the beginning and talking to Tralane Bell is that he never

1 came back after he did this.

2 The pinky swear, it was obvious to Ambrose that
3 this pinky swear had something to do with this, that the
4 pinky swear was a swear, a promise not to tell that he had
5 just had sex with her, that it happened on the incident day.
6 These are claims that were made at the beginning of the
7 case. It became clear it was 100 percent fabrication of a
8 lie that had nothing to do with that. It had to do with her
9 borrowing his cell phone or cleaning up his station, and the
10 mom didn't want him to do that. The mom didn't feel
11 comfortable with that, but she also felt 100 percent
12 comfortable with leaving him alone with her. Speaking out
13 of both sides of her mouth the entire time she was
14 testifying, not committing to any specific allegations.
15 Yes, no, maybe, I don't recall, that was throughout her
16 testimony.

17 And they want you to believe that he was grooming
18 Minor with this pinky swear and cell phone. And these
19 other things, the belt slapping incident that the mother was
20 present for, she admitted to you on the stand, I was there
21 for it. All of this grooming, grooming is happening under
22 adult supervision with everybody around, everybody
23 interacting during it?

24 There was no turning back from this lie after she
25 told her mom the lie. She told police the lie. She told

1 investigators the lie. She told the counselors the lie.
2 There was no turning back. It had gotten too big. She
3 played this like it was a game. But this is not a game.
4 This is Christopher's life. This is his life. And all he
5 can say is, I didn't do it.

6 Even when he's interrogated by police, even when
7 they trick him, try to indicate to him that they've got
8 evidence that they don't have, all he can do is deny it and
9 hope that through all of these lies, the truth is going to
10 show its face. The truth is going to show that Minor
11 is lying and Christopher Gilyard is innocent.

12 THE COURT: During this trial, ladies and
13 gentlemen, you and I have certain duties to perform. As the
14 trial judge, it is my responsibility to rule upon or pass
15 upon the admissibility of evidence which has been offered
16 during the trial. You are to consider only the competent
17 evidence that is before you. And you are to disregard and
18 disabuse from your mind any testimony stricken from the
19 record in this case during the progress of this trial, if
20 there has been any. You are to consider only the testimony
21 which has been presented from the witness stand, together
22 with any exhibits which have been made a part of the record
23 in this case.

24 I also have the additional duty to charge or
25 instruct you on the law applicable to this case. As the

1 presiding judge, I'm the sole judge of the law of this case.
2 And it is your duty as jurors to accept and apply the law as
3 I now state it to you. If you have a preconceived idea as
4 to what the law is or what the law ought to be in a case or
5 in this case, and it should not agree with what I now tell
6 you the law is, you are obligated under the oath which you
7 have taken to abandon this preconception on your part,
8 because you are sworn to accept the law and apply the law
9 precisely as I now state it to you.

10 In every case tried in this court before a jury,
11 the jury becomes the sole and exclusive judges of the facts.
12 you, the jury are the judges of the facts in this case.
13 This Court is the judge of the law. The constitution of our
14 state has declared that a trial judge should not intimate,
15 state, comment upon, or make any statement to a trial jury
16 about the facts in a case. Since you, the jury are the sole
17 judges of the facts in this case, you are not to infer
18 anything from what I've said during the progress of this
19 trial in ruling upon the admissibility of evidence or
20 otherwise, or anything that I say now to you during the
21 course of this instruction, that I have any opinion about
22 the facts. The law does not allow me to have an opinion
23 about the facts.

24 This is a matter solely for you, the jury, to
25 determine. As jurors then, it is your duty, as I have

1 instructed you, to determine the effect, the value, the
2 weight, and the truth of the evidence presented during this
3 trial. Necessarily, you must assess the credibility of
4 witnesses who have testified in this case. Credibility is
5 simply a legalistic term which means believability. It
6 becomes your duty as jurors to analyze and to evaluate the
7 evidence and determine that evidence which convinces you of
8 its truth.

9 Some of the things you may consider as you decide
10 whether or not to believe a witness's testimony about a
11 particular matter include: What was the manner and
12 appearance of the witness who testified? Was he or she
13 straight-forward or hesitant in answering? Was the
14 testimony of a witness consistent or inconsistent? How did
15 the witness come to know the facts that he or she testified
16 to, or what was his or her ability to know these facts? Is
17 there some reason a witness would want to give testimony
18 which would help or hurt one side or the other? In other
19 words, was the witness biased or prejudiced? And was the
20 testimony of a witness strengthened or weakened by other
21 testimony or evidence?

22 I further instruct you that in determining the
23 question of the credibility or believability of witnesses
24 who have testified, you may believe one witness as against
25 several witnesses or several witnesses as against one

1 witness. You may believe a part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. If you have a good and sound reason, you
4 may believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety. You may
6 consider the demeanor of a witness, that is, the appearance
7 and manner of the witness from the witness stand. You can
8 believe as much or as little of each witness's testimony as
9 you think proper.

10 You have but one objective, ladies and gentlemen,
11 to seek the truth regardless of its source. Our rules of
12 evidence ordinarily do not permit witnesses to testify to
13 opinions or conclusions. An exception to this rule exists
14 for witnesses we call expert witnesses. A witness who by
15 their education, training, and experience has become an
16 expert in some art, science, or profession, or calling may
17 state an opinion as to relevant and material matters in
18 which the witness claims to be an expert and may also state
19 the reasons for that opinion. You should consider any
20 expert opinion received in evidence in this case like any
21 other evidence. Give it the weight you think it deserves.

22 If you decide that the opinion of an expert is not
23 based on sufficient education and experience, or if you
24 conclude that the reasons given in support of the opinion
25 are not sound or that the opinion is outweighed by other

1 evidence, you may disregard the opinion entirely.

2 An expert witness's testimony is to be given no
3 greater weight than that of other witnesses simply because
4 the witness is an expert. Further, you are not required to
5 accept an expert's opinion even though it is not
6 contradicted.

7 Ladies and gentlemen, there are two types of
8 evidence which are generally presented during a trial,
9 direct evidence and circumstantial evidence. Direct
10 evidence is the testimony of a person who asserts or claims
11 to have actual knowledge of a fact, such as an eyewitness.

12 Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of a fact.

14 The law makes absolutely no distinction between the
15 weight or value to be given to either direct or
16 circumstantial evidence, nor is there greater degree of
17 certainty required to circumstantial evidence than of direct
18 evidence. You should weigh all of the evidence in this
19 case. After weighing all of the evidence, if you are not
20 convinced of the guilt of the defendant beyond a reasonable
21 doubt, you must find the defendant not guilty. Conversely,
22 if you are convinced of the guilt of the defendant beyond a
23 reasonable doubt, then you must find him guilty.

24 I instruct you that the fact that the defendant was
25 arrested, charged, and indicted is not evidence in this case

1 and cannot be considered by you as evidence of guilt in this
2 case, nor does it create any presumption or inference of
3 guilt. This document, ladies and gentlemen, is simply the
4 formal written instrument which contains a charge or charges
5 made against a defendant. It's simply serves as the formal
6 documentation by which the case is processed or brought into
7 this court.

8 The defendant has pled not guilty to the
9 indictment. And this plea casts the burden on the State to
10 prove the defendant guilty, because a person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove himself innocent. I instruct you,
13 Mr. Foreman, ladies and gentlemen, that it is a cardinal and
14 important rule of the law of evidence that the defendant in
15 a criminal trial, no matter what the seriousness of the
16 charge made against him may be, will always be presumed to
17 be innocent of the crime for which he is indicted unless his
18 guilt has been proven by evidence satisfying you of that
19 guilt beyond a reasonable doubt.

20 This presumption of innocence does not cease when
21 you retire to deliberate, but it accompanies the defendant
22 from the time of his appearance throughout the trial until
23 you reach a verdict in this case. Our Supreme Court has
24 said that the presumption of innocence is like a robe of
25 righteousness placed about the shoulders of the defendant.

1 And it remains with him and assigns him to that class of the
2 innocent until that presumptive robe of righteousness has
3 been stripped from his person by evidence satisfying you of
4 that guilt beyond a reasonable doubt.

5 Ladies and gentlemen, the presumption of innocence
6 is not a mere legal theory. It is not just a legal phrase.
7 It is a substantial right to which every defendant is
8 entitled unless you, the jury, are satisfied from the
9 evidence of his guilt beyond a reasonable doubt.

10 The State has the burden of proving the defendant
11 guilty beyond a reasonable doubt. Some of you may have
12 served as jurors in civil cases where you were told that it
13 is only necessary to prove that a fact is more likely true
14 than not true, such as by the greater weight or the
15 preponderance of the evidence. In criminal cases, the
16 State's proof must be more powerful than that. It must be
17 beyond a reasonable doubt. Proof beyond a reasonable doubt
18 is proof that leaves you firmly convinced of the defendant's
19 guilt. There are very few things in this world that we know
20 with absolute certainty. And in criminal cases, the law
21 does not require proof that overcomes every possible doubt.

22 If based on your consideration of the evidence, you
23 are firmly convinced that the defendant is guilty of the
24 crime charged, you must find the defendant guilty. If, on
25 the other hand, you think there is a real possibility that

1 the defendant is not guilty, you must give him the benefit
2 of that doubt and find him not guilty.

3 I instruct you and emphasize that the fact that the
4 defendant did not testify is not a factor to be considered
5 by you in any way in your deliberation and in your
6 consideration on the question of the guilt or innocence of
7 the defendant. It must not be considered by you in any
8 manner whatsoever. A defendant has the constitutional right
9 to remain silent. And the assertion of this right must not
10 be considered by you in your deliberations. I repeat, under
11 your oath, you are to draw no conclusion whatsoever from the
12 fact that the defendant in this case did not testify. The
13 fact that this defendant did not testify should not be
14 discussed in any manner whatsoever during your jury
15 deliberations. The burden of proof, as I have stated to
16 you, is on the State. The defendant is not required to
17 prove his innocence. The burden of proof remains on the
18 State to prove guilt beyond a reasonable doubt.

19 The defendant is charged with second degree
20 criminal sexual conduct with a minor. The State must prove
21 beyond a reasonable doubt that the defendant engaged in a
22 sexual battery with the victim. A sexual battery is sexual
23 intercourse, cunnilingus, fellatio, anal intercourse, or any
24 intrusion, however slight, of any part of a person's body or
25 of any object into the genital or anal openings of another

1 person's body, except when the intrusion is accomplished for
2 medically recognized treatment or diagnostic purposes.

3 The State must then prove beyond a reasonable doubt
4 that the victim was at least 11 years old, but not more than
5 14 years old at the time of the sexual battery, or that the
6 victim was less than 16 years old, but at least 14 years
7 old, and that the defendant was either in a position of
8 familial, custodial, or official authority to coerce the
9 victim to submit or that the defendant was older than the
10 victim.

11 Consent, willingness, indifference, or ignorance on
12 the part of the minor, if any, as to what was taking place
13 does not in any way affect the charge of criminal sexual
14 conduct with a minor, because an unmarried woman under the
15 age of 14 cannot legally consent to sexual intercourse.

16 I further instruct you that South Carolina Code
17 Section 16-3-657 provides that the testimony of the victim
18 need not be corroborated.

19 I further instruct you that Code Section 16-3-651
20 defines victim to mean the person alleging to have been
21 subjected to criminal sexual conduct.

22 Ladies and gentlemen, there are two potential
23 verdicts in this case. You don't have to try to write this
24 down because the verdict form goes into the jury room with
25 you. There's absolutely no significance whatsoever to the

1 order in which I state these potential verdicts. It is
2 simply that one must be stated first.

3 And it reads as follows: As to indictment Number
4 2013-GS-10-5833, we, the jury, by unanimous consent, find
5 the defendant guilty of criminal sexual conduct with a
6 minor, second degree; or not guilty. Again, there's
7 absolutely no significance whatsoever to the order in which
8 I state these potential verdicts. It is simply that one
9 must be stated first.

10 Ladies and gentlemen, your verdict must be a
11 unanimous one, which means that all 12 of you must agree in
12 order to reach a verdict.

13 Mr. Foreman, when the jury has reached a verdict,
14 it is your responsibility to fill out the verdict form, to
15 sign and date the form, and knock on the door and advise the
16 bailiffs that the jury has reached a verdict. Also, if the
17 jury has any questions during deliberations, it is your
18 responsibility to write out those questions and follow the
19 same procedure in notifying the bailiffs.

20 Ladies and gentlemen, if you have any questions
21 during deliberations, please know that there will be a delay
22 in our response. There's a procedure that we have to follow
23 in answering your questions. So if you have a question,
24 know that there will be a delay because we have to follow
25 that procedure before answering you.

1 Again, ladies and gentlemen, your verdict must be a
2 unanimous one, which means that all 12 of you must agree.
3 I'm going to ask that you return to your jury room. Please
4 do not yet begin your deliberations. I have some brief
5 matters of law that I need to take up with the attorneys
6 that may require further instruction or clarification of an
7 instruction.

8 If there's no further instruction, we will send in
9 the evidence, your note pads, and at that time, we will
10 excuse the alternates.. If you would go with the bailiffs
11 please, and please leave your note pads in your seats, and
12 do not yet begin your deliberations.

13 (Whereupon, the jury leaves open court at 1:59
14 p.m.)

15 THE COURT: Any exceptions from the State?

16 MS. ELLIOTT: None, Your Honor.

17 THE COURT: From the defense?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Can you all make sure everything is in
20 place for me. And, Mr. Major, if you could take the two
21 alternates' notebooks and sit them on the banister for me
22 please and then collect all the other notebooks to be taken
23 back, and then bring the alternates out for me to excuse
24 them. There are two alternates. I need you to take both of
25 those back.

1 (Whereupon, the jury deliberates at 2:02 p.m.)

2 (Whereupon, the alternates are present.)

3 THE COURT: We thank you both for your time and
4 attention to this case. We know being an alternate is
5 thankless, but it's such a very vital function to the system
6 in the event we had another juror become ill or
7 incapacitated and was unable to proceed with jury
8 deliberations. You are welcome to hang around with us if
9 you would like and see how jury deliberations turn out. We
10 can put you in one of our multi-purpose rooms, but you are
11 welcome to leave if you would like as well. The bailiffs
12 will destroy your notes for you. They do it routinely, so
13 you can just leave the notebooks on the end of the banister
14 and they will destroy those as soon as you leave. You are
15 welcome to discuss this case if you would like, but I would
16 ask that you not do that until after Friday when the entire
17 panel, venire, is dismissed.

18 And by the same token, you don't have to discuss
19 the case if you don't like. But oftentimes, lawyers will
20 contact you because they would like to know how they could
21 do things better and for the benefit of a layperson's
22 perspective on a case.

23 If you need a work excuse, you can get that on the
24 first floor on the circuit side of the courthouse. Any of
25 the deputy clerks at any of the windows can give you a work

1 excuse. Otherwise, we will mail those to you along with
2 your checks. I hope it's been an educational experience for
3 you. And you are excused with the Court's profound thanks.

4 (Whereupon, the alternates are excused.)

5 THE COURT: The record should reflect that the jury
6 commenced deliberations at 2:02. We will be at ease.

7 (Whereupon, the jury has a question at 2:30 p.m.)

8 THE COURT: We have a question from the jury and it
9 reads as follows: During Tralane's testimony, she mentioned
10 Minor was involved in a statutory rape one year prior; is
11 this statement admissible?

12 Second question: What type of statutory rape?

13 My response will be as follows: Mr. Foreman,
14 ladies and gentlemen, all of the evidence in this case has
15 been presented to you. The Court cannot answer factual
16 questions. You must consider -- you must only consider the
17 testimony in evidence that has been submitted into the
18 record for purposes of your deliberations. You cannot
19 conduct your own independent investigation or fact finding
20 outside of the evidence and testimony presented to you
21 during the course of this trial. You are not to speculate
22 or draw any inferences or conclusions from this response to
23 your inquiry during your deliberations.

24 If you desire to have the testimony of any witness
25 replayed or rehear any portions of the law, please advise

1 the bailiffs and we will accommodate your request
2 immediately.

3 I will then also instruct them that in response to
4 their first question, it is for them to determine the
5 effect, value and weight of any testimony offered by Tralane
6 Bell. And it is for them to give it the effect, value and
7 weight they determine it should receive as the fact finders.

8 I will then also instruct them that pursuant to
9 South Carolina Code Section 16-3-659.1, which we commonly
10 refer to as the rape shield statute, that they are not to
11 consider evidence of specific instances of the victim's
12 sexual conduct, opinion evidence of the victim's sexual
13 conduct, and reputation evidence of the victim's sexual
14 conduct in any of -- in their deliberations and in any
15 manner whatsoever, or on the guilt or innocence of the
16 defendant.

17 Is there any exception to the Court proceeding as
18 proposed from the State?

19 MS. HERRING-LASH: No, Your Honor.

20 THE COURT: From the defense?

21 MR. COCHRAN: Yes, Your Honor.

22 THE COURT: Okay. What's your exception?

23 MR. COCHRAN: My first objection is to renew my
24 objections in terms of admitting the --

25 THE COURT: It's a little late for that now.

1 You've already reviewed it. I've already ruled on it. All
2 the evidence has been submitted.

3 MR. COCHRAN: Your Honor, additionally, I object to
4 instruction on the rape shield statute.

5 THE COURT: They are clearly considering whether
6 she was raped before as to whether she could in some way --
7 it just can't be considered. I allowed it in, although it
8 was spontaneously uttered in response to a question in the
9 way you structured it. You in some ways are the architect
10 of your own dilemma in the way you asked the question of the
11 witness and she provided you an answer which I don't know if
12 the State prepped their witness or not, but she should not
13 have mentioned previous statutory case in Berkeley. But,
14 nevertheless, they can consider that on her credibility.
15 And so they can consider her testimony in its totality and
16 give it whatever weight they determine it should have. But
17 I'm not going to leave them with the impression that somehow
18 they can consider whether she was a victim of a statutory
19 rape in Berkeley County, because they can't. Under the law
20 they are prohibited from doing that.

21 MR. COCHRAN: And I would -- my response would be
22 that because I was not allowed to offer any of my proposed
23 evidence, they should not be instructed on the rape shield
24 statute. It was not admitted for that purpose. And it
25 wasn't stricken from the record. It was not objected to by

1 either party. And the jury was not told to disregard it.

2 THE COURT: Actually, it was objected to. Y'all
3 asked to approach the bench after, and I ruled
4 contemporaneously with it. But, again, you are the
5 architect of your own dilemma to some extent. You elicited
6 the answer. And you could not preclude the State's witness
7 from explaining why she did what she did when you gave the
8 impression somehow that she had some nefarious motive in not
9 having reported it to the family doctor.

10 MR. COCHRAN: But I also, at the bench conference,
11 was instructed not to continue any questioning --

12 THE COURT: Because I already ruled in-camera on
13 the admissibility. It wouldn't be proffered. And I stand
14 by that previous ruling. It wasn't relevant. The door was
15 not open. She did not answer inconsistently.

16 Okay. Is there anything before we proceed with
17 responding to the jury from the State?

18 MS. ELLIOTT: No, Your Honor.

19 THE COURT: From the defense?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: I assume you have no exception to the
22 factual inquiry response that I'm providing to the jury?

23 MR. COCHRAN: Not --

24 THE COURT: That the Court can't answer factual
25 questions.

1 MR. COCHRAN: Correct.

2 THE COURT: And that they can weigh Ms. Bell's
3 testimony, it's for them as the fact finder to weigh it
4 however and give it what value, effect or weight they decide
5 it should receive?

6 MR. COCHRAN: Yes, Your Honor.

7 THE COURT: You can get the jury for me please.

8 I may not call it the rape shield statute. I may
9 say to them they are prohibited from South Carolina law
10 considering any evidence of -- from considering any specific
11 instances of the victim's sexual conduct, evidence of the
12 opinion -- opinions of the victim's sexual conduct or
13 reputation of the victim's sexual conduct.

14 Is there any exception from the State? I'm just
15 going to leave out rape shield and all that other stuff.

16 MS. ELLIOTT: No, Your Honor.

17 THE COURT: From the defense, other than what
18 you've already stated for the record?

19 MR. COCHRAN: No, Your Honor. Are you going to
20 instruct them on the reason?

21 THE COURT: I'm just going to leave out -- no, I'm
22 just going to leave out any mention of rape shield. I'm
23 just going to say -- I'm going to leave out the code
24 section. Just going to say under South Carolina law, you
25 are prohibited from considering the following.

1 MR. COCHRAN: Is that in response to the question,
2 the specific question of whether or not it's admissible?

3 THE COURT: No. That's in specific response to
4 what type of statutory rape.

5 MR. COCHRAN: Okay. So it's a two-part question:
6 Was it admissible and what type of statutory rape?

7 THE COURT: What type of statutory rape was the
8 second question.

9 MR. COCHRAN: I guess just subject to my previous
10 objection.

11 THE COURT: It's noted.

12 (Whereupon, the jury returns to open court at 2:39
13 p.m.)

14 THE COURT: Ladies and gentlemen, we received your
15 note and I am responding as follows, the first question was:
16 During Tralane's testimony, she mentioned Minor was
17 involved in a statutory rape one year prior; is this
18 statement admissible?

19 I respond as follows to that question: As I've
20 instructed, you are the finders of the facts in this case.
21 It is for you to determine the effect, value and weight of
22 any testimony that has been offered in this case.

23 In regard to the first question, I also further
24 instruct you that all of the evidence in this case has been
25 presented to you. The Court cannot answer factual

1 questions. You must only consider the testimony in evidence
2 that has been submitted into the record for the purposes of
3 of your deliberations. You cannot conduct your own
4 independent investigation or fact finding outside of the
5 evidence and testimony presented to you during the course of
6 this trial.

7 You are further instructed that you are not to
8 speculate or draw any inferences or conclusions from this
9 response to the inquiry during your deliberations. If you
10 desire to have the testimony of any witness replayed or
11 rehear any portions of the law, please advise the bailiffs,
12 and I will accommodate your requests immediately.

13 In response to your second question: What type of
14 statutory rape? I instruct you as follows: Under South
15 Carolina law, you cannot consider specific instances of the
16 victim's sexual conduct, opinion evidence of the victim's
17 sexual conduct, and reputation of the victim's sexual
18 conduct in making a decision in this case and in your
19 deliberation of this matter on the guilt or innocence of the
20 defendant. Under South Carolina law, those matters cannot
21 be considered.

22 If you have any further questions, please let us
23 know, and I will accommodate your request immediately. If
24 you would go with the bailiffs please.

25 (Whereupon, the jury leaves open court at 2:41

1 p.m.)

2 THE COURT: Any exceptions from the State?

3 MS. ELLIOTT: None.

4 THE COURT: From the defense, other than what we've
5 already articulated for the record?

6 MR. COCHRAN: No, Your Honor.

7 THE COURT: All right. Now I meant to do this
8 earlier and I got sort of sidetracked, and I'm going to go
9 ahead and do it now while we have this moment. Did your
10 client serve -- how much previous time has your client
11 served?

12 MR. COCHRAN: He's been incarcerated since July
13 26th of 2012.

14 THE COURT: And my other question is, were there
15 any plea offers extended to the defendant prior to the
16 commencement of trial?

17 MS. ELLIOTT: There was, Your Honor.

18 THE COURT: What was that plea offer?

19 MS. ELLIOTT: We offered to allow him to plead to
20 criminal sexual in the third degree, 0 to 10.

21 THE COURT: Was there any recommendation?

22 MS. ELLIOTT: No, there was not.

23 THE COURT: When did that expire?

24 MS. ELLIOTT: I will need to find that e-mail. His
25 last schedule plea date was May 22nd, and that's typically

1 my expiration date.

2 THE COURT: 5/27 of what year?

3 MS. ELLIOTT: This year.

4 THE COURT: Mr. Cochran, did you fully explain to
5 your client the scope of the State's offer?

6 MR. COCHRAN: Yes, Your Honor.

7 THE COURT: Do you believe he understood the scope
8 of their offer?

9 MR. COCHRAN: Your Honor, I believe we were under
10 the impression that it was a CSC third of a minor, the lewd
11 act variety, 0 to 15.

12 MS. ELLIOTT: That wasn't the offer.

13 THE COURT: Did you explain it to him?

14 MR. COCHRAN: Yes, Your Honor.

15 THE COURT: Okay. Did you fully explain the offer
16 to your client?

17 MR. COCHRAN: Yes, sir.

18 THE COURT: Did he accept or reject the offer?

19 MR. COCHRAN: He rejected the offer.

20 THE COURT: Did he do that with or against your
21 advice?

22 MR. COCHRAN: He did that according to his own
23 decision. I did not instruct him.

24 THE COURT: And it's not a trick question. I'm
25 asking for PCR purposes just out of abundance of caution. I

1 usually do this at the beginning, but because we are
2 finishing another trial and trying to catch up with time, I
3 overlooked doing it at the beginning.

4 I find because I guess maybe because I do a
5 disproportionate share of PCRs, that I like to help my other
6 colleagues. I like to have contemporaneous record what
7 actually took place than somebody trying to figure out what
8 happened a year later. So, again, it's not a trick
9 question. So if you could repeat your answer for me in
10 response to whether he did it with or against your advice.

11 MR. COCHRAN: Your Honor, he did it with my advice.

12 THE COURT: Okay.

13 MR. COCHRAN: And I would add one other thing. The
14 State did, I believe, tell me that she would be seeking
15 active time in that offer.

16 MS. ELLIOTT: No.

17 MR. COCHRAN: I'm sorry, I might be thinking of a
18 different case.

19 THE COURT: Okay. But the State -- they were going
20 to leave it open.

21 MR. COCHRAN: There was no recommendation.

22 THE COURT: All right.

23 Sir, if you will stand for me, I will remind you
24 you are still under oath. State your name for the record.

25 THE DEFENDANT: Christopher Gilyard.

1 THE COURT: And, Mr. Gilyard, did your attorney
2 fully go over the offer with you?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Did you understand it?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And did you accept or reject the offer?

7 THE DEFENDANT: I rejected the offer.

8 THE COURT: And did you do that freely and
9 voluntarily and of your own will?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Did you feel you were forced in any
12 way?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: And were you suffering from any mental
15 disabilities or under the influence of any drugs or alcohol?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Okay. Thank you, sir. You may take
18 your seat.

19 All right. I will have the note marked as a
20 Court's exhibit and we will await further instruction from
21 the jury.

22 (Court's Exh. 1, Jury Note, was marked for
23 identification.)

24 MR. COCHRAN: My client indicated he wants to put
25 something additional on the record. He's telling me that

1 during our last meeting on the -- and this is why I spoke,
2 what I was speaking of before, during our last meeting, he
3 is saying that I advised him it was 0 to 15.

4 THE COURT: Okay.

5 MR. COCHRAN: With sex offender registry. Sex
6 offender registry, there's no difference there. But it's my
7 recollection from our talks -- I don't recall the specific
8 numbers, whether it was 10 or 15. I know that there's one
9 CSC third degree that's 0 to 10; one CSC third degree that's
10 10 to 15, which is the lewd act. And that in our
11 discussions, he did indicate to me that he would not plead
12 to anything that he didn't do, including this case.

13 THE COURT: Okay.

14 MR. COCHRAN: And that if prison time and sex
15 offender registry were on the table, then there was an
16 absolute rejection to any plea that implicated those two
17 possibilities.

18 THE COURT: So, basically, he told you,
19 irregardless of the range of penalty, that as long as
20 registry was involved and as long as it involved something
21 he didn't do, he was not going to plead guilty?

22 MR. COCHRAN: Yes, Your Honor, and if there was any
23 potential for prison time.

24 THE COURT: Which, of course, you couldn't
25 guarantee.

1 MR. COCHRAN: Correct.

2 THE COURT: Okay. Sir, I will be glad to hear from
3 you.

4 THE DEFENDANT: Mr. Cochran sums it up, summed
5 everything up.

6 THE COURT: So you thought it was 0 to 15?

7 THE DEFENDANT: I thought it was 0 to 15. She
8 mentioned 0 to 10. I never heard that offer. So I just
9 wanted to make it clear that I was offered 0 to 15.

10 THE COURT: But would you have pled guilty to this
11 0 to 10?

12 THE DEFENDANT: No, ma'am, not at all. But I would
13 have liked to know what my offers been before I started my
14 trial.

15 THE COURT: Does that in any way change your
16 posture?

17 THE DEFENDANT: No, not at all.

18 THE COURT: I just want to make sure for the
19 record. All right. Perfect. Thank you.

20 (Whereupon, the jury has another note at 2:48 p.m.)

21 THE COURT: The jury has sent another note. And it
22 reads as follows: Can we relisten to Minor testimony
23 (victim)? Signed by the foreperson.

24 I've had the court reporter queue up the testimony.
25 She will go into the jury room with the tape with the

1 bailiff, at which time she will replay the testimony. Any
2 exception from the State?

3 MS. ELLIOTT: No, Your Honor.

4 THE COURT: From the defense?

5 MR. COCHRAN: Is that only one replay, Your Honor?

6 THE COURT: That's as many as they ask for.

7 MR. COCHRAN: My only objection would be I ask the
8 they do it only once.

9 THE COURT: We will follow whatever directive the
10 jury gives the court reporter. They will be instructed that
11 they are not to deliberate while they are relistening. She
12 will begin at the beginning of the testimony. Of course,
13 she will omit any in-camera hearings or anything that's off
14 the record, and then we will play it through. If the jury
15 asks to hear it again, it will be played again, but she will
16 follow their directions.

17 MR. COCHRAN: Yes, Your Honor.

18 THE COURT: Anything further before I send in the
19 court reporter and the bailiff, from the State?

20 MS. ELLIOTT: No, Your Honor.

21 THE COURT: From the defense?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: The note will be marked as a Court's
24 exhibit.

25 (Court's Exh. 2, Jury note requesting victim's

1 testimony be played back, was marked for identification.)

2 THE COURT: I instructed the court reporter, my
3 notes reflect that her testimony was from 12:40 to 12:55 and
4 then her testimony picked up again 2:42 to 2:46. Some
5 portion of that were in-camera hearings and off-the-record
6 proceedings. The previous court reporter, for whatever
7 reason, did not designate when those begin and end, so I
8 directed the court reporter to make that determination
9 before she replays the testimony for the jury, so that she
10 will be able to know where it starts, when it ends, when to
11 stop the tape, and when to pick back up the recording after
12 the in-camera hearings.

13 MR. COCHRAN: And they will be allowed to listen to
14 direct and cross?

15 THE COURT: Uh-huh, they are going to listen to the
16 testimony in the totality. They will just not hear the
17 in-camera portion of it.

18 MR. COCHRAN: I would like to amend my objection of
19 the rehearing the victim's testimony. I object to that
20 rehearing of the victim's testimony.

21 THE COURT: I don't think you have any basis for
22 that. If they've asked for it, I have to comply with what
23 they've requested. I will note your exception for the
24 record.

25 MR. COCHRAN: Thank you, Your Honor.

1 (Whereupon, the jury has a note at 5:25 p.m.)

2 THE COURT: We have another note from the jury.

3 And it reads as follows: The jury is not unanimous.

4 I'm going to give them an Allen charge and have the
5 note marked as a Court's exhibit. Any exception from the
6 State?

7 MS. ELLIOTT: No, Your Honor.

8 THE COURT: From the defense?

9 MR. COCHRAN: No. We object to an Allen charge and
10 move for a mistrial.

11 THE COURT: We note your objection. It's in the
12 Court's prerogative to give the first Allen charge. It's
13 then in the jury's prerogative whether they desire to have
14 further instruction. And that is pursuant to 14-7-1330 as
15 well as the State vs. Robinson and George E. Buck vs. The
16 South Carolina Department of Transportation. And the
17 statute provides that when a jury, after doing thorough
18 deliberation, upon any cause returns into court without
19 having agreed upon a verdict, the Court may state the
20 evidence or any part of it and explain to it the law
21 applicable to the case and may send it out for further
22 deliberation. But if it returns a second time without
23 having agreed upon a verdict, it shall not be sent out again
24 without its own consent unless it shall ask for the Court
25 some further explanation of the law.

1 So pursuant to the first subpart of the statute,
2 it's within the Court's discretion as to whether the jury
3 shall receive additional instruction; however, if it returns
4 a second time undecided, the Court will then make inquiry of
5 the foreperson to make inquiry of the jury as to whether any
6 additional instruction would be beneficial to them. And
7 then we will abide by their decision.

8 Now, I'm also going to instruct them that they have
9 the ability to go home, that they are not held hostage at
10 the courthouse. I'm not inclined to order pizza for them
11 at this time of night. And with the torrential rain going
12 on as well as the flash flood warnings, it is probably about
13 two hours until we get pizza anyway. If they desire to go
14 home this evening, I'm going to adjourn for the evening and
15 have them return in the morning. But I will let them make
16 that assessment and come back to us and let us know whether
17 they want to go home or whether they want to continue.

18 Is there any exception from the State?

19 MS. ELLIOTT: None, Your Honor.

20 THE COURT: From the defense?

21 MR. COCHRAN: No, Your Honor.

22 (Court's Exh. 3, Jury note stating they are not
23 unanimous, was marked for identification.)

24 THE COURT: Please bring in the jury.

25 (Whereupon, the jury returns to open court at 5:30

1 p.m.)

2 THE COURT: Thank you very much. Mr. Foreman,
3 ladies and gentlemen, I received your note regarding your
4 lack of unanimity. And in that regard, I'm going to give
5 you an additional instruction. And there's some very brief
6 comments that I will share with you in that regard. As I
7 have already explained to you, you are the sole judges of
8 the facts and the evidence in this case. As the judge, as
9 I've already explained, I'm not permitted to have an opinion
10 regarding the facts in this case, nor do I have any opinion
11 regarding the facts in this case, nor am I permitted to even
12 give you a hint as to any of the factual matters in this
13 case. And certainly, could give you no hint as to what
14 verdict you ought to bring in this case.

15 It is my duty to state the law of the case as I
16 have done, and it is your duty to deliberate as you have
17 been doing. I can say this, that when a matter is in
18 dispute, it is not always easy for two men to agree or two
19 persons to agree or two men or two women to agree. And when
20 12 must agree, it becomes obviously correspondingly more
21 difficult. But it is important that litigation and this
22 litigation be ended if it may be ended without a single one
23 of you doing violence to your own conscience. No juror is
24 expected to give up an opinion based on reasoning
25 satisfactory to himself or herself merely for the purpose of

1 being in agreement. And I want to be clearly understood on
2 that point.

3 You are not called often to try cases. There are
4 49 circuit judges whose work it is to try cases from day to
5 day throughout the year. And it is very unusual, almost
6 unheard of, for a jury to go out and promptly return with a
7 verdict. This is what would happen if a jury normally was
8 in agreement to begin with. At the same time, we usually
9 are able to get a verdict. What that means is that it is
10 normal for jurors to disagree at first, but the fact that we
11 normally get a verdict also means that after reasonable
12 persons lay aside all extraneous matters and determine to
13 decide a case on the basis of the law and the evidence, they
14 do come to a common understanding and are able to write a
15 verdict.

16 It has never been intended that the verdict of a
17 jury should be the verdict of any one person. On the other
18 hand, the verdict of the jury is the collective reasoning of
19 all persons put together. And that is why we have a jury,
20 so that we may have the benefit of collective thought and
21 collective reasoning. It becomes your duty to tell the
22 other jurors how you feel about the case and why you think
23 as you do. And I'm sure that you have been doing that. On
24 the other hand, it becomes the other juror's duty to
25 exchange views with you. And you should listen to each

1 other and give to the other's thought such meaning as you
2 think it should have. And so to some degree, it can be said
3 that jury service is a matter of give and take.

4 If you do not agree on a verdict, it just means
5 that at some future term of court before some other judge
6 perhaps, that some other jury will sit where you are, the
7 same participants will come, and the same lawyers probably
8 will come, and they will ask basically the same questions.
9 And presumably and probably, they will get much the same
10 answers. And we will go through the whole process again.
11 And I have no reason now to think that any other 12 citizens
12 of Charleston County will be more capable of solving this
13 controversy than the 12 of you.

14 And so I'm going to ask you at this time to
15 deliberate further and see if you can reach a verdict in
16 this case. I want to close this additional instruction,
17 however, with this added instruction, by reminding you again
18 that while it is important that litigation be ended, it
19 should be ended in the form of a verdict by no juror doing
20 violence to his or her own conscience. No juror is expected
21 to give up an opinion based on reasoning satisfactory to
22 himself or herself merely for the purposes of being in
23 agreement.

24 With that added instruction, I'm going to ask you
25 to retire and deliberate further. However, I'm also

1 instructing you that you are not held hostage at the
2 courthouse for the evening. If y'all would like to go home
3 for the evening and resume your deliberations in the
4 morning, please let the foreperson know so that he can --
5 then we will bring him into the courtroom so he can let us
6 know that.

7 The only option for dinner is pizza. And I don't
8 know if y'all -- I don't know. Does that room have windows?
9 I can't remember. As you know, it has been torrentially
10 raining. There's a flash flood warning that just ended a
11 few moments ago. And so probably for us to get pizza will
12 be over two hours. So I don't know if -- I don't know that
13 I've ever -- well, I don't know, I guess you could be really
14 hungry and two hours would be worth the wait for pizza. I'm
15 not sure. But I imagine y'all don't want to wait that
16 length of time for pizza. So I want you all to know you
17 have the opportunity to go home if you would like, if you
18 desire to do that, and resume your deliberations in the
19 morning. Just let your foreperson know. And once y'all
20 reach that decision, just knock on the door and let the
21 bailiffs know. And at that time, we will adjourn and I will
22 let y'all go home in the evening and we can resume in the
23 morning at 9:30 with your deliberations, if you desire to do
24 that. If you will go with the bailiffs please.

25 (Whereupon, the jury leaves open court at 5:36

1 p.m.)

2 THE COURT: Any exceptions from the state?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: From the defense?

5 MR. COCHRAN: Just my previously stated objection.

6 THE COURT: Noted and overruled. We will be at
7 ease.

8 (A recess transpired.)

9 (Whereupon, the jury has a note at 6:12 p.m.)

10 THE COURT: We have a note from the jury. It reads
11 as follows: Can we have a copy of the juror deliberation
12 instructions? Signed by the foreperson.

13 And I am responding to them as follows:

14 Mr. Foreman and ladies and gentlemen of the jury, our
15 procedures do not allow a copy of the jury charge to be
16 given to you. If there is a specific instruction that you
17 would like given again or the entire instruction, please
18 advise the bailiff, and I will accommodate your request
19 immediately.

20 Is there any exception from the State?

21 MS. ELLIOTT: No, Your Honor.

22 THE COURT: From the defense?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: We will have it marked as a Court's
25 exhibit. And the bailiff will take it into the jury and we

1 will await further instructions.

2 (Court's Exh. 4, Jury question and answer by the
3 judge, was marked for identification.)

4 (Whereupon, jury continues deliberations.)

5 (Whereupon, the jury has a note at 6:22 p.m.)

6 THE COURT: We have two notes. One: Can we resume
7 deliberations in the morning?

8 Which the answer to that is yes, and I will send
9 them home.

10 And the second note is: We would like to have
11 wording on circumstantial and direct evidence.

12 And I can't make out this next word, something of
13 innocence, can you repeat when we resume. So I will get
14 clarity from the foreperson as to exactly what it is they
15 want me to reinstruct, what that word is that I can't read
16 his handwriting. And then I will reinstruct them in the
17 morning as they have requested.

18 Any exceptions from the State?

19 MS. ELLIOTT: None, Your Honor.

20 THE COURT: From the defense?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: Please bring in the jury.

23 (Court's Exh. 5, Jury Note requesting recessing
24 for the evening, was marked for identification.)

25 (Court's Exh. 6, Jury Note requesting wording on

1 circumstantial and direct evidence, as marked for
2 identification.)

3 (Whereupon, the jury returns to open court at 6:25
4 p.m.)

5 THE COURT: Ladies and gentlemen, I received your
6 first note, which is about adjourning and resuming in the
7 morning. And certainly the Court will abide by that
8 request. And we will adjourn shortly and you will resume in
9 the morning at 9:30.

10 The second note, there is a word I hate to admit I
11 can't read part of your writing. I just need to know, it
12 says: We would like to have wording on circumstantial and
13 direct evidence. And then what's that next word? Do you
14 need me to show it to you?

15 THE FOREPERSON: Shroud of innocence.

16 THE COURT: Shroud of innocence, can you repeat
17 when we resume?

18 THE FOREPERSON: Yes.

19 THE COURT: I will reinstruct as you have requested
20 in the morning. And we will do that at 9:30 when you resume
21 as well. During this break, it is absolutely essential that
22 you not discuss this case among yourselves or with anyone
23 else. Jury deliberations should be conducted only in the
24 jury room among your 12. And it might seem innocent to
25 discuss what you have been discussing with someone else, but

1 to do that requires you to draw conclusions and to process
2 the information that you have heard, and that by its very
3 nature is deliberations. And you are bound by your oath to
4 only do that in your jury room among the 12 of you.

5 Also, when you return to the courthouse in the
6 morning, you will return directly to your jury room just as
7 you have been doing. Please don't have any contact with
8 anyone in or about the courthouse. That instruction is even
9 more important now that you have begun your deliberations
10 regarding this case. Also, please do not watch, read, or
11 listen to any media accounts about this case. That includes
12 anything in the newspaper, radio, television, or on the
13 internet. And do not do any independent research on the
14 internet, as well as making any comments regarding your
15 status on any social networking sites.

16 If you would leave your note pads, you can actually
17 leave your note pads in the jury room. If you want to leave
18 them stacked on the end of the banister, the bailiff will
19 take them back into the jury room, and we will secure it
20 along with the evidence over the evening. And when you
21 return to your jury room in the morning, the evidence as
22 well as your note pads will be in the jury room. And as
23 soon as all 12 of you arrive, then we will resume and I will
24 reinstruct you, and then you can begin your deliberations.

25 Have a great evening. If anybody needs any

1 assistance getting to the garage, please let the bailiffs
2 know and we will accommodate you. And we will see you in
3 the morning at 9:30.

4 (Whereupon, the jury leaves open court at 6:27
5 p.m.)

6 THE COURT: Any exceptions from the State?

7 MS. ELLIOTT: None, Your Honor.

8 THE COURT: From the defense?

9 MR. COCHRAN: No, Your Honor.

10 THE COURT: Have a good evening.

11 (Whereupon, the proceedings adjourn for the
12 evening.)

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 9th day of September, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

DOCKET NO. 2013-GS-10-5833

STATE OF SOUTH CAROLINA)

vs.)

CHRISTOPHER GILYARD)

Defendant)

TRANSCRIPT OF RECORD

August 1, 2014

Charleston, South Carolina

VOLUME 3 (of 3)**B E F O R E:**

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

A P P E A R A N C E S:SHANNON ELLIOTT, ESQ.
DEBBIE HERRING-LASH, ESQ.
Attorneys for the StateCHARLES COCHRAN, ESQ.
Attorney for the DefendantJOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

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PROCEEDINGS

THE COURT: You may be seated.

[Whereupon, the court reviews documents]

THE COURT: Okay. The jury's note from yesterday read we would like to have wording on circumstantial and direct evidence, shroud of innocence. Can you repeat when we resume.

I am going to reinstruct them on State v Grippon, which is direct and circumstantial evidence, on the presumption of innocence, which is a general instruction, and on Victor v Nebraska, which is reasonable doubt. I think that would cover what they indicated on yesterday prior to leaving. Is there any exception from the State?

MS. ELLIOTT: No, Your Honor.

THE COURT: From the defense?

MR. COCHRAN: No, Your Honor.

THE COURT: Please bring in the jury.

[Whereupon, the jury enters at 9:46 a.m.]

THE COURT: Good morning ladies and gentlemen. I hope you all had a pleasant evening.

State v Christopher Gilyard
Reinstruction to Jury
August 1, 2014

REINSTRUCTION TO JURY

THE COURT: In response to your note I am going to reinstruct you as follows: There are two types of evidence which are generally presented during a trial; direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in this case. After weighing all the evidence if you are not convinced of the guilt of the defendant beyond a reasonable doubt you must find the defendant not guilty. Conversely, if you are convinced of the guilt of the defendant beyond a reasonable doubt then you must find him guilty.

The defendant has pled not guilty to the indictment and that plea casts the burden on the State to prove the defendant guilty because a person charged with committing a criminal offense in South Carolina is never required to

State v Christopher Gilyard
Reinstruction to Jury
August 1, 2014

1 prove himself innocent. I instruct you, ladies and
2 gentlemen, that it is a cardinal and important rule of
3 the law of evidence that the defendant in a criminal
4 trial no matter what the seriousness of the charge made
5 against him may be will always be presumed to be innocent
6 of the crime for which he is indicted unless his guilt
7 has been proven by evidence satisfying you of that guilt
8 beyond a reasonable doubt.

9 The presumption of innocence does not cease when you
10 retire to deliberate but it accompanies the defendant
11 from the time of his appearance throughout the trial
12 until you reach a verdict in this case. Our Supreme
13 Court has said that the presumption of innocence is like
14 a robe of righteousness placed about the shoulders of the
15 defendant and it remains with him and assigns him to that
16 class, the innocent, until that presumptive robe of
17 righteousness has been stripped from his person by
18 evidence satisfying you of that guilt beyond a reasonable
19 doubt.

20 Mr. Foreman and ladies and gentlemen, the
21 presumption of innocence is not mere legal theory. It is
22 not just a legal phrase. It is a substantial right to
23 which every defendant is entitled unless you, the jury,
24 are satisfied from the evidence of his guilt beyond a
25 reasonable doubt. The State has the burden of proving

State v Christopher Gilyard
Reinstruction to Jury
August 1, 2014

1 the defendant guilty beyond a reasonable doubt. Some of
2 you may have served as jurors in civil cases where you
3 were told that it is only necessary to prove that a fact
4 is more likely true than not true, such as by the greater
5 weight or preponderance of the evidence. In criminal
6 cases the State's proof must be more powerful than that.
7 It must be beyond a reasonable doubt.

8 Truth beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty and in criminal cases the law does not require
12 proof that overcomes every possible doubt.

13 If based on your consideration of the evidence you
14 are firmly convinced that the defendant is guilty of the
15 crime charged you must find the defendant guilty. If on
16 the other hand you think there is a real possibility that
17 the defendant is not guilty you must give him the benefit
18 of that doubt and find him not guilty.

19 Ladies and gentlemen, that will conclude the
20 additional instruction. If you need anything further
21 please do not hesitate to let us know and we will
22 accommodate your request immediately. If you will go
23 with the bailiff's you can resume your deliberations.

24 [Whereupon, the jury exits at 9:51 a.m.]

25 THE COURT: Any exceptions from the State?

State v Christopher Gilyard
Reinstruction to Jury
August 1, 2014

1 MS. ELLIOTT: None, Your Honor.

2 THE COURT: From the defense?

3 MR. COCHRAN: No, Your Honor.

4 THE COURT: All right. We'll wait for further
5 instructions.

6 [Whereupon, the jury continued their deliberations]

7 [Whereupon, court is in recess]

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State v Christopher Gilyard
Proceedings
August 1, 2014

1 THE COURT: Yes, sir?

2 MR. COCHRAN: Your Honor, Ashley Pennington just
3 brought something to my attention that I was actually
4 unaware of. I had not read a relatively new case State v
5 Logan [phonetic] which addresses jury charges on direct
6 versus circumstantial evidence. I just want to put on
7 the record an objection to the charge for circumstantial
8 evidence ---

9 THE COURT: --- I think you have to make a
10 contemporaneous objection and we've past that point. If
11 there is something that you would like for me to read you
12 had ample time for jury charges to have submitted them
13 and you did object to the jury charge.

14 MR. COCHRAN: Yes, Your Honor.

15 THE COURT: I'm not aware that State v Grippon has
16 been overruled. There are some more convoluted
17 circumstantial evidence charges that can be given and are
18 permissible but I think they are incredibly convoluted
19 and hard to understand so I don't use them.

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: But there is direct and circumstantial
22 evidence there are just two types of evidence and one is
23 not -- does not have a higher requirement than the other.
24 But I try to keep it simple. I'll be glad to hear
25 anything that you have to say but I think we're past the

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1 point for you to take exception because you should have
2 made a contemporaneous objection. And if you wanted the
3 court to consider a charge you should have submitted it
4 at the appropriate time and I would have been glad to
5 have looked at it.

6 MR. COCHRAN: Yes, Your Honor. I guess just for
7 the record I would want to put on the record what my
8 requested charge would be.

9 THE COURT: I think we're way past that time.

10 MR. COCHRAN: Yes, Your Honor. But if I could just
11 put the language on the record it is ---

12 THE COURT: --- I think you can just cite the case.

13 MR. COCHRAN: Yes, Your Honor. Well, it's State v
14 Logan.

15 THE COURT: What's the opinion number?

16 MR. COCHRAN: It's opinion number 2-7-2-9-6.

17 THE COURT: What's the date?

18 MR. COCHRAN: And it is filed August 14, 2013. It
19 is State v Clarence Logan.

20 THE COURT: Anything from the State?

21 MS. ELLIOTT: No, Your Honor. I think you've
22 already made your ruling that it is untimely. This case
23 is over a year old. He had ample opportunity to raise
24 this issue in the initial charging phase.

25 THE COURT: The court would find you know we have

State v Christopher Gilyard
Proceedings
August 1, 2014

1 an error preservation system. You're required to make a
2 contemporaneous objection at the time the matters are
3 submitted. We had a charge conference, which took place
4 prior to closing argument. I gave both parties an ample
5 opportunity to have submitted proposed charges.

6 And I am very lenient and liberal regarding that and
7 I would have considered anything you submitted. And I
8 can't say whether I would or would not have given it
9 because I didn't have the opportunity to review it.
10 However, I read the Advance Sheets when they come out
11 every week. As a matter of fact I make it a point to
12 read them as soon as they are published. And I'm not
13 aware of Logan changing anything in the prevailing law.

14 MR. COCHRAN: Yes, Your Honor.

15 THE COURT: So I would stand by -- I'm going to go
16 back to my office and review it one more time because I
17 do read them sort of fast because court is going on.
18 It's not we have the opportunity to just sit in our
19 office and read. I would like that luxury but it's not
20 one that is afforded to me, although I'm not complaining.
21 I will review it and if there is something that I think
22 is appreciably different or that I think needs to be
23 supplemented I certainly will bring it to y'all's
24 attention.

25 MR. COCHRAN: Thank you, Your Honor.

State v Christopher Gilyard
Proceedings
August 1, 2014

1 THE COURT: You're welcome. We'll await further
2 instructions from the jury.

3 [Whereupon, court is in recess]

4 THE COURT: You may be seated. During the break I
5 took the opportunity to review again State v Clarence
6 Logan, which is an almost year old case. And if it had
7 been requested earlier I may have considered it, but it
8 wasn't and we were well past the instruction stage of the
9 case and there were no objections interposed prior to
10 that.

11 Having made that observation I can see no
12 appreciable difference between what is cited in the Logan
13 case and what the court instructed. And in fact our
14 court, being the Supreme Court in the Logan case
15 specifically said that there is no error in charging
16 State v Grippon or Cherry that they are both still valid
17 circumstantial evidence charges.

18 In addition to that and it is a lengthy opinion and
19 I read pertinent parts of it and tried to scan it as
20 quickly as I could. This case is very different from the
21 Logan case. And what the Supreme Court focused on in its
22 opinion was when the State's case really relies solely
23 almost on circumstantial evidence in seeking a
24 conviction. This case is completely factual inapposite
25 because the real crux of this case is eyewitness

State v Christopher Gilyard
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1 testimony. That being the direct testimony of the victim
2 in this case who was bold enough to articulate what she
3 contends happened to her on this particular incident. So
4 in this case in particular what the jury really is
5 looking at is the creditability and believability of
6 direct evidence; not substantial circumstantial evidence,
7 which would reasonably tend to prove a defendant's guilt.

8 In addition to that the Supreme Court emphasized
9 that the court does not have to use the language to the
10 exclusion of every other reasonable hypothesis. And just
11 like any other jury charge you have to read it in its
12 totality. You don't read it in segments. And the one
13 the Supreme Court focused on which is valid in almost
14 every criminal jury charge at every juncture the court
15 reminds the jury that the State is not relieved of its
16 burden irregardless of the type of proof it provides.

17 That they have the duty to prove the defendant's
18 guilt beyond a reasonable doubt, that he has no burden
19 that he doesn't have to speak, he doesn't have to do
20 anything that the burden remains on them to prove each
21 and every element of the offense that they have charged
22 him with beyond a reasonable doubt. And so when State v
23 Grippon is read in connection with a valid reasonable
24 doubt charge, which Victor v Nebraska is clearly approved
25 by our courts there really is no error. So while it is

State v Christopher Gilyard
Proceedings
August 1, 2014

1 some discretionary language that the defense could have
2 requested there really -- it's almost cumulative to some
3 extent because it just repeats what is repeated at least
4 five or six times in the court's instruction regarding
5 the State's burden of proof. And in this case the State
6 did not rely solely on circumstantial evidence. As a
7 matter of fact that's probably -- if I had to look at a
8 whole pie being ten tenths maybe half of the tenth was
9 circumstantial. Nine tenths of their case was direct
10 evidence; that being of the victim, Minor .

11 So the court would note your exception Mr. Cochran
12 but would find that it is not timely. I would note again
13 however for the record that if it had been timely made I
14 would have considered it. I really don't know at this
15 point because hindsight is 20/20 how I would have --
16 whether I would have incorporated the language and we
17 have no way of knowing whether the State would have
18 objected to incorporating the language or not.

19 But the instruction that the Supreme Court cites is
20 the exact language from Grippon, which is direct and
21 circumstantial evidence, how each is proven, there being
22 no distinction between the weight or value to be given to
23 them but it simply emphasizes that when the State is
24 relying on circumstantial evidence all the circumstances
25 must be consistent with each other and when taken

State v Christopher Gilyard
Proceedings
August 1, 2014

1 together point conclusively to the guilt of the accused
2 beyond a reasonable doubt. If these circumstances merely
3 portray the defendant's behavior as suspicious the proof
4 has failed. The State has the burden of proving the
5 defendant guilty beyond a reasonable doubt. This burden
6 rests on the State regardless of whether the State relies
7 on direct evidence, circumstantial evidence, or some
8 combination of the two.

9 And very clearly although worded differently my
10 instruction says about the same thing. So I just wanted
11 you all to know that I had reviewed that in the interim.
12 We have a jury verdict. Is there anything from the State
13 before we proceed regarding the verdict?

14 MS. ELLIOTT: No, Your Honor.

15 THE COURT: From the defense?

16 MR. COCHRAN: No, Your Honor.

17 THE COURT: Please bring in the jury.

18 [Whereupon, the jury enters at 10:28 a.m.]
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State v Christopher Gilyard
Verdict
August 1, 2014

1 VERDICT

2 THE COURT: Mr. Foreman, is it correct that the
3 jury has reached a verdict?

4 THE FOREPERSON: Yes.

5 THE COURT: If you would give the verdict form to
6 the bailiff for me please.

7 [Whereupon, the verdict form is given to the bailiff
8 and then provided to the court]

9 THE COURT: Sir, if you would stand for publication
10 of the verdict.

11 [Whereupon, the defendant stands]

12 CLERK OF COURT: In the State of South Carolina in
13 the County of Charleston in the Court of General Sessions
14 for the Ninth Judicial Circuit the State of South
15 Carolina versus Christopher Terell Gilyard. As to
16 indictment number 2013-GS-10-05833 we, the jury, by
17 unanimous consent find the defendant guilty of Criminal
18 Sexual Conduct with a Minor 2nd degree. Signed Mr.
19 Foreperson, August 1, 2014.

20 Mr. Foreperson and ladies and gentlemen of the jury,
21 if this is your verdict if you would please indicate so
22 by raising your right hand.

23 [Whereupon, all jurors raise their hand]

24 CLERK OF COURT: Please let the record reflect that
25 all jurors have raised their hand.

State v Christopher Gilyard
Verdict
August 1, 2014

1 THE COURT: Is there any request to poll the jury
2 from the State?

3 MS. ELLIOTT: No, Your Honor.

4 THE COURT: From the defense?

5 MR. COCHRAN: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, if you would give
7 the Clerk your attention.

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State v Christopher Gilyard
Polling of the Jury
August 1, 2014

1 POLLING OF THE JURY

2 CLERK OF COURT: Ladies and gentlemen whenever I

3 call out your juror number if you would please raise your

4 hand to signify that that is you. I am going to ask you

5 two questions. Please respond to each question verbally.

6 Starting with the Foreperson. Juror number 364 is this

7 your verdict? MR. VARNER: Yes.

8 CLERK OF COURT: Is this still your verdict?

9 MR. VARNER: Yes.

10 CLERK OF COURT: Thank you. Juror number 333. Is

11 this your verdict?

12 MR. SPAIN: Yes.

13 CLERK OF COURT: Is this still your verdict?

14 MR. SPAIN: Yes.

15 CLERK OF COURT: Thank you. Juror 351. Is this

16 your verdict?

17 MR. THORPE: Yes.

18 CLERK OF COURT: Is this still your verdict?

19 MR. THORPE: Yes.

20 CLERK OF COURT: Thank you. Juror number 169. Is

21 this your verdict?

22 MS. HUTCHINSON: Yes.

23 CLERK OF COURT: Is this still your verdict?

24 MS. HUTCHINSON: Yes.

25 CLERK OF COURT: Thank you. Juror 249. Is this

State v Christopher Gilyard
Polling of the Jury
August 1, 2014

1 your verdict?

2 MS. MORINELLI: Yes.

3 CLERK OF COURT: Is this still your verdict?

4 MS. MORINELLI: Yes.

5 CLERK OF COURT: Thank you. Juror 232. Is this
6 your verdict?

7 MR. MCKNIGHT: Yes.

8 CLERK OF COURT: Is this still your verdict?

9 MR. MCKNIGHT: Yes.

10 CLERK OF COURT: Thank you. Juror 87. Is this
11 your verdict?

12 MR. EISEMAN: Yes.

13 CLERK OF COURT: Is this still your verdict?

14 MR. EISEMAN: Yes.

15 CLERK OF COURT: Thank you. Juror 127. Is this
16 your verdict?

17 MR. GILLIARD: Yes.

18 CLERK OF COURT: Is this still your verdict?

19 MR. GILLIARD: Yes.

20 CLERK OF COURT: Thank you. Juror 224. Is this
21 your verdict?

22 MS. MAZYCK: Yes.

23 CLERK OF COURT: Is this still your verdict?

24 MS. MAZYCK: Yes.

25 CLERK OF COURT: Thank you. Juror 180. Is this

State v Christopher Gilyard
Polling of the Jury
August 1, 2014

1 your verdict?

2 MR. JOHNSON: Yes.

3 CLERK OF COURT: Is this still your verdict?

4 MR. JOHNSON: Yes.

5 CLERK OF COURT: Thank you. Juror 148. Is this
6 your verdict?

7 MR. HARTLEY: Yes.

8 CLERK OF COURT: Is this still your verdict?

9 MR. HARTLEY: Yes.

10 CLERK OF COURT: Thank you. Juror 185. Is this
11 your verdict?

12 MS. JONES: Yes.

13 CLERK OF COURT: Is this still your verdict?

14 MS. JONES: Yes.

15 CLERK OF COURT: Your Honor, the jury has been
16 polled and the verdict stands.

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State v Christopher Gilyard
Proceedings
August 1, 2014

1 THE COURT: Mr. Foreman and ladies and gentlemen,
2 we thank you for your time and your attention to this
3 case. I hope that jury service has been educational for
4 you and you've learned that it's nothing like what you
5 see on television. I hope you know how very vital you
6 are to the system.

7 Our system is the only kind of its type in the world
8 where twelve people, ordinary citizens, listen to the
9 facts of a case, determine what the facts are, apply the
10 law to those facts and render verdicts. South Carolina
11 is one of the busiest states in the nation with over
12 5,000 case filings per Judge per capita. We have 49
13 Circuit Judges who travel throughout South Carolina and
14 hear both civil and criminal jury trials as well as
15 nonjury matters and appeals and other nonjury matters.

16 Charleston is one of the busiest circuits in the
17 state probably Columbia and Greenville are only -- we all
18 probably run neck and neck depending on the month. But
19 we generally have four trial courts operating every week
20 with the exception of holidays; two civil and two
21 criminal. So I hope you know how very valuable you are
22 to us. We could not do what we do without you being
23 willing to donate your time to us. You can discuss this
24 case if you would like. The lawyers often will contact
25 you. It is very beneficial to them to have a lay

State v Christopher Gilyard
Proceedings
August 1, 2014

1 person's perspective on a case and how it went and how it
2 was tried and how they can do things better. You are
3 welcome to discuss the case with them if you would like
4 but if you don't want to you don't have to. And if
5 someone should make you feel uncomfortable please advise
6 the Clerk's office so that we can take the appropriate
7 action to protect your privacy.

8 You may stay for sentencing if you would like. If
9 you want to please let the bailiffs know and you can
10 remain in the jury box. If you do not want to stay of
11 course you don't have to and you certainly are excused
12 and you are free to leave.

13 If you need a work excuse you can get that on the
14 first floor on the Circuit Court side of the courthouse.
15 Any of the deputy clerks at the window can give you a
16 work excuse otherwise we will mail those to you along
17 with your checks.

18 I hope that you all have a wonderful weekend and
19 you're excused with the court's profound thanks. If you
20 would like to remain for sentencing please let the
21 bailiffs know. I'll hear post trial motions and
22 sentencing in a moment.

23 [Whereupon, the jury is excused and exits at 10:34
24 a.m.]

25 THE COURT: As I understand it Mr. Gilyard's record

State v Christopher Gilyard
Proceedings
August 1, 2014

1 he has -- and I need the years again -- well, I have them
2 right here. He has a Burglary 2nd Non Violent March 18th
3 of 2004 for which he received ten years in the State
4 Department of Corrections, is that correct?

5 MS. ELLIOTT: Yes, Your Honor.

6 THE COURT: And a Burglary 2nd Non Violent, for
7 which he received a conviction date of 7/15/02, is that
8 correct?

9 MS. ELLIOTT: Yes, Your Honor.

10 THE COURT: And a Possession of a Stolen Motor
11 Vehicle from 2008, correct?

12 MS. ELLIOTT: Yes, Your Honor.

13 THE COURT: Does he have any other record?

14 MS. ELLIOTT: He does, Your Honor. In '02 he has a
15 Resisting Arrest. In '08 he has another Resisting
16 Arrest. In 2010 an Unlawful Carrying. And, Your Honor,
17 I ---

18 THE COURT: --- Unlawful Carrying of a Weapon?

19 MS. ELLIOTT: Yes, Your Honor. The rap sheet also
20 indicates that he has a 2012 Giving False Information to
21 Police.

22 THE COURT: Is that your understanding of your
23 client's record, Mr. Cochran?

24 MR. COCHRAN: Yes, Your Honor.

25 THE COURT: And when was he -- he was released from

State v Christopher Gilyard
Proceedings
August 1, 2014

1 confinement in 2007 from the Department of Corrections,
2 is that correct?

3 MS. ELLIOTT: I believe that was the representation
4 he made earlier, Your Honor. That seems right for what
5 he would have been sentenced for '04.

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State v Christopher Gilyard
Post-Trial Motions
August 1, 2014

1 POST-TRIAL MOTIONS

2 THE COURT: Mr. Cochran, are there any post-trial
3 motions?

4 MR. COCHRAN: Your Honor, I would just renew my
5 motion for a directed verdict. Renew all motions and
6 objections previously made. And request for a new trial,
7 Your Honor.

8 THE COURT: Would the State like to respond?

9 MS. ELLIOTT: Your Honor, we would incorporate all
10 our prior responses and objections to Mr. Cochran's
11 request. There is no legal basis for a new trial to be
12 granted in this case.

13 THE COURT: I'll mark all the motions renewed and
14 heard and I will rely on my previous rulings and
15 incorporate those verbatim into the record. And as I
16 understand it Criminal Sexual Conduct with a Minor 2nd
17 has a maximum sentence of 20 years, is that correct?

18 MS. ELLIOTT: Yes, Your Honor.

19 THE COURT: It's also classified as violent and
20 most serious?

21 MS. ELLIOTT: Yes, Your Honor.

22 THE COURT: It also requires that he register and
23 be evaluated prior to release for the Sexually Violent
24 Predator Program.

25 MS. ELLIOTT: Yes, Your Honor.

State v Christopher Gilyard
Post-Trial Motions
August 1, 2014

1 THE COURT: Is that your understanding, Mr.
2 Cochran?

3 MR. COCHRAN: Yes, Your Honor.

4 MS. ELLIOTT: Your Honor, we have the sentencing
5 sheet.

6 THE COURT: If you could let Mr. Cochran look at
7 it. And I need you all to double check the CDR codes and
8 everything because my Clerk is not here today and I don't
9 have anybody to double check that for me.

10 MS. ELLIOTT: I'll pull that up now, Your Honor.

11 THE COURT: Actually I have it here. I just need
12 you to -- Mr. Cochran, have you had an opportunity to
13 review it?

14 MR. COCHRAN: Yes, Your Honor.

15 [Whereupon, the court reviews documents]

16 THE COURT: Everything looks correct.

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State v Christopher Gilyard
Sentencing
August 1, 2014

SENTENCING

THE COURT: Anything further from the State regarding sentence?

MS. ELLIOTT: Your Honor, the State would just point out that given the defendant's record, the fact that he has a history of entering homes, seems to have a tendency for taking what he wants without concern for other people we think that a substantial prison sentence is in order for the defendant. Your Honor, the victim's Mother would also like to address the court.

THE COURT: Sure. I will be glad to hear from her. Yes, ma'am if you will state your name for the record?

MS. BELL: Tralane Bell.

THE COURT: Yes, ma'am?

MS. BELL: I would just like to address the court to say that I trusted this young man in the past.

THE COURT: I need you to speak up for me, please.

MS. BELL: I really trusted him and had I known his past criminal background I would not have had him in my salon.

THE COURT: Is there anything further you would like to share with the court?

MS. BELL: No, Your Honor.

THE COURT: Anything further from the State?

MS. ELLIOTT: Judge, while I know it's not a

State v Christopher Gilyard
Sentencing
August 1, 2014

1 conviction I do think it's important for the court to
2 know that he does currently have pending an Unlawful
3 Carrying. That is what he was incarcerated for on
4 7/25/12 because the warrant in this case was not served I
5 believe until late August, early September.

6 THE COURT: So he still has that charge pending?

7 MS. ELLIOTT: Yes, Your Honor.

8 THE COURT: Do y'all plan to pursue that or y'all
9 going to nol pros it or does he want to plead to it
10 because it's only a year isn't it?

11 MS. ELLIOTT: Yes, Your Honor. He's maxed out his
12 sentence on that.

13 THE COURT: What does he want to do with that Mr.
14 Cochran because it's going to be a hold on him?

15 MR. COCHRAN: He and I have not discussed it.

16 THE COURT: Do you want to talk to him right quick
17 because he's maxed it out; we might as well deal with it.

18 [Whereupon, Mr. Cochran confers with his client]

19 MR. COCHRAN: He doesn't want to plead to it today.

20 THE COURT: Okay. Well, that's his choice. Just
21 make sure he's aware there is going to be a hold on him.

22 MR. COCHRAN: Yes, Your Honor.

23 THE COURT: Do you represent him on that?

24 MR. COCHRAN: Yes, Your Honor.

25 THE COURT: Okay. I guess I'm a little confused

State v Christopher Gilyard
Sentencing
August 1, 2014

1 as to why you want to leave it out there pending.

2 MR. COCHRAN: I assumed it would be dismissed if
3 there was a conviction in this case.

4 THE COURT: What do y'all plan to do with it?

5 MS. ELLIOTT: Your Honor, my greatest concern is if
6 I dismiss he can get his gun -- he has possessory
7 interest in his gun. I think the conversation will be if
8 he relinquishes the gun we possibly will dismiss it.

9 THE COURT: Are y'all willing to forfeit the
10 weapon?

11 MR. COCHRAN: Yes.

12 MS. ELLIOTT: Then we'll dismiss it.

13 THE COURT: Anything further from the State?

14 MS. ELLIOTT: Nothing further, Your Honor.

15 THE COURT: Mr. Cochran, I'll be glad to hear from
16 you.

17 MR. COCHRAN: Thank you, Your Honor. May it please
18 the court?

19 THE COURT: Yes, sir?

20 MR. COCHRAN: Mr. Gilyard has been incarcerated for
21 two years awaiting trial in this case. There were two
22 speedy trial motions in this case. He has ---

23 THE COURT: --- I assume bond was set wasn't it?

24 MR. COCHRAN: There was a bond, Your Honor. He was
25 unable to meet that bond.

State v Christopher Gilyard
Sentencing
August 1, 2014

1 THE COURT: How much was it?

2 MR. COCHRAN: 250,000.

3 THE COURT: Okay.

4 MR. COCHRAN: Your Honor, since he's been
5 incarcerated him and I have met numerous times over the
6 last two years. We've gotten to know each other very
7 well. He and I have had a very good working relationship
8 preparing for this case. He's been very patient, a very
9 reasonable client. And Your Honor, he has maintained his
10 innocence since day one since he got interrogated by the
11 police. And it wasn't admissible at trial but I believe
12 that his interview with police was extremely compelling.

13 THE COURT: Well, it was admissible if he -- how is
14 it inadmissible if nobody ever sought to admit it?

15 MR. COCHRAN: Well, I don't think we would have
16 been able to admit it, Your Honor.

17 THE COURT: Okay.

18 MR. COCHRAN: And it's a very compelling denial to
19 this charge. And even though they tried different
20 interrogation techniques on him and it's difficult to
21 mitigate for a client when you believe he's innocent. He
22 doesn't have anything on his record to indicate this.
23 I've heard no character evidence in preparation for this
24 trial that would indicate that he would ever have done
25 anything like this. And you know I find it difficult

State v Christopher Gilyard
Sentencing
August 1, 2014

1 like I say mitigate post-trial. It's not what we usually
2 do. We're used to doing it when somebody is pleading
3 guilty. But we'd ask that you give him credit for the
4 time that he has done. And we would ask for a minimal
5 sentence in this case, Your Honor. It's zero to 20 years
6 and there is no minimum on this case. We would ask for
7 something in the range of ten years or less. And Your
8 Honor, my client would like to speak.

9 THE COURT: Sure. Before he does that though let
10 me ask the State, what is your position regarding Mr.
11 Cochran and his client's request for a minimum sentence
12 of ten years or less? As I understand it you all made an
13 initial offer in this case, is that correct, to a CSC 3rd
14 zero to ten?

15 MS. ELLIOTT: We did, Your Honor. I think the --
16 our greatest concern was whether or not the victim was
17 going to be able to have the strength to testify. That
18 was the great conciliation that we were going to give is
19 to avoid her literally facing the cross-examination that
20 she did suffer. This has been very traumatic for her.

21 In fact I will tell you Judge the first time she
22 came into my office we didn't have a meeting. She just
23 sat on my couch and sobbed. This has had a massive
24 impact on her. She's also had to sit through all the
25 pretrial and attacks on her character during that

State v Christopher Gilyard
Sentencing
August 1, 2014

1 process. This has been very difficult. And Your Honor
2 it did not come out at trial and I'm sure that unless --
3 and I would not have brought it up had Mr. Cochran not
4 mentioned that there is nothing in his history that would
5 indicate this kind of behavior.

6 There is in discovery the fact that he was
7 aggressive with her cousin, Shantae, offered to not make
8 her pay for her son's haircuts if she would have sex with
9 him. Now she was a grown woman and was able to rebuff
10 him but I think it indicates that he is the man that
11 thinks that he can get what he wants no matter what.

12 And I think that's what he did with a 14 year old
13 girl in the back of her Mother's salon. And I think that
14 that speaks to his character and speaks to his risk for
15 potential re-offending. And that's why I think that
16 something higher than ten years is appropriate. He's
17 already been given a ten year sentence and it did not
18 curb his criminal behavior.

19 THE COURT: Yes, sir?

20 MR. COCHRAN: Your Honor, my only response to that
21 would just be that if they felt that a max of a ten would
22 have been appropriate then it shouldn't really be changed
23 now. And my client would like to address the court.

24 THE COURT: Sure. I'll be glad to hear from you,
25 sir.

State v Christopher Gilyard
Sentencing
August 1, 2014

1 THE DEFENDANT: May it please the court?

2 THE COURT: Yes, sir?

3 THE DEFENDANT: Judge Jefferson?

4 THE COURT: Yes, sir?

5 THE DEFENDANT: I would like to just tell the court
6 that criminal sexual misconduct that's not who I am. I
7 never committed the crime. You know Judge I know my
8 record is not the best record but you know I have been
9 rehabilitating myself since those crimes have occurred.
10 They occurred in residences that I actually lived in.

11 So I actually didn't never commit a burglary with
12 somebody. It was between a girlfriend. We had some
13 misunderstandings, and she locked me out. I went in to
14 retrieve some stuff that I needed. Since I have been
15 incarcerated in Charleston County Detention Center I have
16 completed the DAODAS program. I completed the Crime
17 Impact, which is the Turning Leaf program since I've been
18 there.

19 THE COURT: I'm sorry; I didn't hear the last part
20 of what you said you did.

21 THE DEFENDANT: Crime Impact, which is the Turning
22 Leaf program. That's a program that is set up as
23 outpatient now but it was inpatient at the Charleston
24 County Detention Center. I have a great history, a work
25 history. I've been a barber for over 14 years; a

State v Christopher Gilyard
Sentencing
August 1, 2014

1 licensed barber. I was currently before I started
2 working at Ms. Tralane's beauty salon I was currently
3 owned my own barber shop. But due to renovation problems
4 that led me to move to the next one.

5 You know, I would just like you to consider my
6 innocence. You know, I never committed a crime like this
7 to the young lady. I have a 17 year old daughter myself.
8 I'm not what they assume me to be. I just ask that when
9 you do your sentence that you consider everything I've
10 said, Judge. Thank you.

11 THE COURT: You're welcome, sir. Anything further
12 from the defense?

13 MR. COCHRAN: No, Your Honor.

14 [Whereupon, the court reviews documents]

15 THE COURT: How old is your client Mr. Cochran?

16 MR. COCHRAN: Thirty two, Your Honor.

17 THE COURT: Sir, if you would stand for sentencing.

18 [Whereupon, the defendant stands]

19 THE COURT: Sir, I find it appropriate that you be ,
20 sentenced to the State Department of Corrections for a
21 period of 13 years. You will get credit for any time
22 that you have served to be calculated and applied by the
23 Department of Corrections pursuant to 24-13-40. Do you
24 need any -- does he need any treatment he conveyed to
25 you?

State v Christopher Gilyard
Sentencing
August 1, 2014

1 MR. COCHRAN: No, I do not believe he has a drug
2 problem, Your Honor.

3 THE COURT: Thank you very much.

4 MR. COCHRAN: Thank you, Your Honor.

5 THE COURT: Thank you all very much.

6 MS. ELLIOTT: Thank you, Judge.

7 THE COURT: Hope y'all have a great weekend. Could
8 y'all make sure the court reporter has all the exhibits?

9 MS. ELLIOTT: Yes, Your Honor.

10 [Whereupon, the jury trial concludes at 11:00 a.m.]

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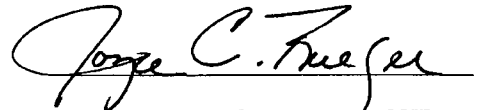
State v Christopher Gilyard
Certificate of the Court Reporter
August 1, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 1st day of August, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 29, 2014



Joyce C. Rueger, CVR-M.

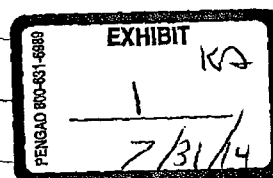
Court Reporter

During Tralane's testimony she mentioned Trave was involved in a Statutory Rape 1 year prior, is this statement admissible?

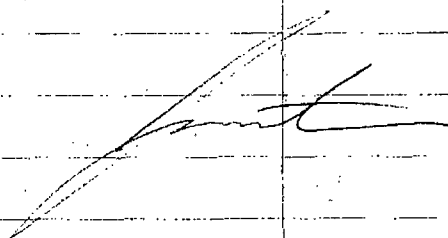
~~- what type of statutory rape?~~

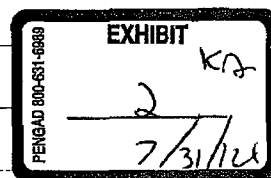
- what type of statutory rape?

[Signature] (foreman)

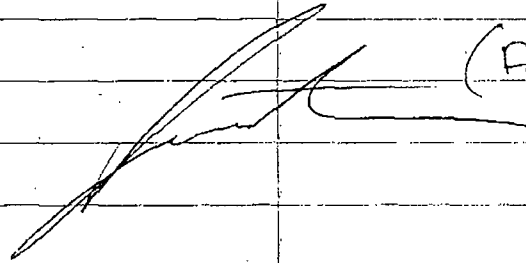


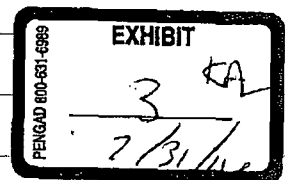
Can we re listen to
T. Mason's Testimony?
(Victim)

 (Foreman)

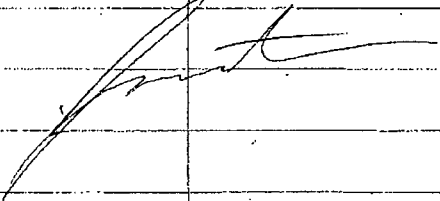


The Jury is not
Unanimous.

 (Foreman)



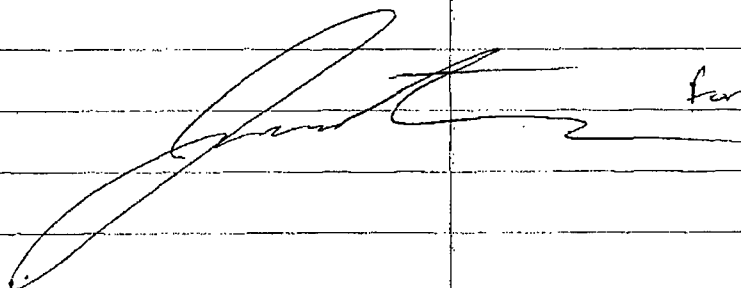
Can we have a copy of
the Juror Deliberation instructions?

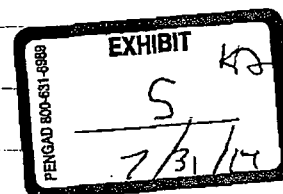
 Foreman



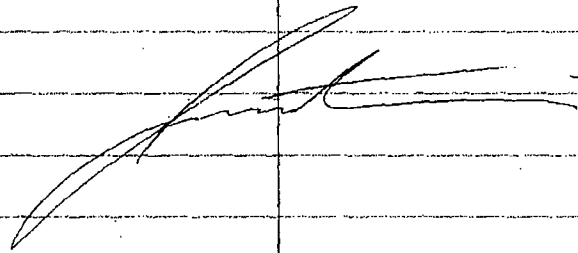
Mr. Foreman, Ladies and Gentlemen of the jury our procedures do not allow a copy of the jury charge to be given to you. If there is a specific instruction that you would like given again or the entire instruction please advise the Bailiff(s) and I will accommodate your request immediately.

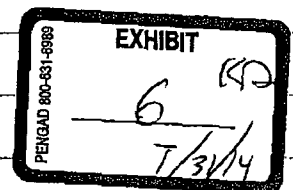
We would like to have
wording on circumstantial & direct
evidence, showed or ~~and~~ innocence, can you
repeat when we resume?

 Peronne



Can we Resume deliberation
in the morning?

 foreman



WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1213468

ARREST WARRANT NUMBER

2012A1010900236

DATE OF ARREST

September 19, 2012

ACTION OF GRAND JURY

TRUE BILL*[Signature]*
Foreperson of Grand Jury
Date:

ACTING FOREPERSON

SEP 10 2013

VERDICT

*Guilty**[Signature]*
Foreperson of Petit Jury*8/1/14*
Date:

INDICT

DOCKET NO. 2013GS1005833

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

CHRISTOPHER TERELL GILYARD

DOB:

B/M

Indictment for

Criminal Sexual Conduct With A Minor,
2nd Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

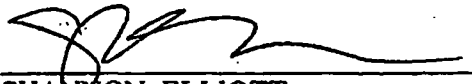
INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct With A Minor, 2nd Degree

That CHRISTOPHER TERELL GILYARD, date of birth _____, did in Charleston County between July 1, 2012 and July 17, 2012, engage in sexual battery upon Minor _____, date of birth _____, to wit: sexual intercourse. This is in violation of Section 16-3-655(B) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SHANNON ELLIOTT
ASSISTANT SOLICITOR

COUNTY OF Charleston
 STATE VS.
Christopher Terell Gilyard
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS# _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2013GS1005833
 A/W#: 2012A1010900236
 Date of Offense: 7/11/2012
 S.C. Code § : 16-03-0655(B)
 CDR Code #: 0396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Criminal Sexual Conduct w/ Minor 2nd Degree, 11-14

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 78731
Elliott, Shannon SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 13 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voo. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: Jay Meyer

SCCA/217 (03/2011)

Presiding Judge [Signature]

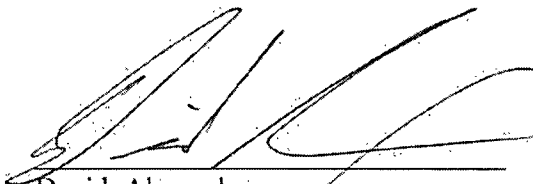
Judge Code: 2128

Sentence Date: 8/1/2014

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 11th, 2015

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 11th, 2015


David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
SEP 11 2015
SC Court of Appeals