

ORIGINAL

RECEIVED
DEC 31 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDREW ANTONIO CLEMONS,

APPELLANT

APPELLATE CASE NO. 2013-001951

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit
PO Box 8002
100 S. Main Street
Anderson, SC 29622-8002
(864) 260-4046

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (May 13-15, 2013)	1
OPENING STATEMENT BY MS. REEVES	4
OPENING STATEMENT BY MR. THOMASON	7
TESTIMONY	
TELFIA JOHNSON	
Direct Examination by Ms. Reeves	11
Cross-Examination by Mr. Thomason	23
MINOR	
Direct Examination by Ms. Reeves	28
Direct Examination by Ms. Reeves (continued)	40
Cross-Examination by Mr. Thomas	46
T'AJA J.	
Direct Examination by Ms. Reeves	51
Cross-Examination by Mr. Thomason	56
JONATHAN WHITE	
Direct Examination by Ms. Reeves	58
Cross-Examination by Mr. Thomason	61
MEGAN OVERTON	
Direct Examination by Ms. Reeves	67
MELISSA PARTAIN	
Direct Examination by Ms. Price	72
Cross-Examination by Mr. Thomason	77
Redirect Examination by Ms. Price	78
Re-cross Examination by Mr. Thomason	78
SALLIE CARTER, M.D.	
In-Camera Direct Examination by Ms. Reeves	87

STACY GIANIODIS	
Direct Examination by Ms. Price.....	123
Cross-Examination by Mr. Thomason	134
Cross-Examination by Mr. Thomas (continued).....	139
SALLIE CARTER, M.D.	
Direct Examination by Ms. Price.....	142
Cross-Examination by Mr. Thomason	168
MINOR	
Re-Cross Examination by Mr. Thomason	172
DIRECTED VERDICT MOTION.....	174
CLOSING ARGUMENT BY MS. REEVES.....	185
CLOSING ARGUMENT BY MR. THOMASON.....	203
CHARGE ON THE LAW	215
VERDICT	234
MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT	237
SENTENCING TRANSCRIPT (September 12, 2013).....	239
INDICTMENTS	242
CERTIFICATE OF COUNSEL.....	246

State of South Carolina

County of Anderson

In the Court of General Sessions

State,

Plaintiff,

-vs-

Andrew Antonio Clemons,

Defendant.

2011-GS-04-1977

2013-GS-04-569

May 13-15, 2013

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Kristin W. Reeves, Esquire
 Lauren D. Price, Esquire
 Assistant Solicitors for 10th Judicial Circuit
 Attorneys for the State

Scott Thomason, Esquire
 Attorney for the Defendant

Renee H. Tollison
 Circuit Court Reporter

1 I assume we have a victims' advocate here today?

2 MR. THOMASON: Well, apparently, Ms. Johnson is
3 going to be the first witness called, so I don't really
4 ---

5 THE COURT: You don't have a problem with that?

6 MR. THOMASON: I don't really have a problem
7 with that.

8 THE COURT: Okay. All right. Very good.
9 Anything further from the State then before we go
10 forward?

11 MS. REEVES: No, sir.

12 THE COURT: Mr. Thomason, from the Defense?

13 MR. THOMASON: Not at this time, Judge. As you
14 know, once we get a little bit further into the thing, in
15 the trial, as far as the medical and exhibits and things
16 like that, we're going to have some things to talk about
17 at that point.

18 THE COURT: All right. Well, you know, we met
19 last Thursday about this video. Have y'all resolved the
20 contents of the videos?

21 MS. REEVES: We have. The contents, yes.
22 They're still being redacted as we speak, so we have not
23 had official distribution of that yet.

24 THE COURT: And do you agree with that?

25 MR. THOMASON: I agree with that. What I don't

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Pretrial Motions

29

1 agree with is them being just -- the State saying, okay,
2 now they're appropriately redacted, before I get an
3 opportunity to look at them to make that determination.

4 THE COURT: Absolutely. He has a right to look
5 at them before you put them up.

6 MS. REEVES: Absolutely.

7 THE COURT: It will just make life a lot easier
8 for everybody. Okay. Anything else at this stage? I
9 want to bring the jury in and let them go and just tell
10 them, you know, some of my standard opening remarks. But
11 anything I need to deal with before we do that?

12 MS. REEVES: Well, after they're gone, we'll
13 address his absence, correct? And that ---

14 THE COURT: Well, we're going to address that
15 when I give the opening charge to the jury. Right now
16 I'm just going to tell them they can't speak about it
17 with anybody. They can't talk about it amongst
18 themselves. And if anybody tries to talk to them about
19 it, they're to let me know.

20 MR. THOMASON: I guess to preserve the record I
21 should renew my motion that I made at the pre-trial last
22 Thursday, and that is a motion to elect between which of
23 these charges the State wants to go forward with.

24 THE COURT: All right. I'm going to deny your
25 motion. I looked at the statute again under the new

1 maybe at the end of the day for tomorrow.

2 THE COURT: Good. Sounds like a winner.

3 MS. REEVES: And I'll be right back.

4 (WHEREUPON, court stood at recess for a short
5 break.)

6 THE COURT: All right. Ms. Reeves, are you
7 ready to proceed for the State?

8 MS. REEVES: Yes, sir.

9 THE COURT: Mr. Thomason, are you ready?

10 MR. THOMASON: Yes, sir.

11 (WHEREUPON, the jury entered the open court at
12 approximately 1:59 p.m.)

13 THE COURT: Ms. Reeves?

14 MS. REEVES: Thank you, Judge. May it please
15 the Court?

16 THE COURT: Yes, ma'am.

17 OPENING STATEMENT

18 BY MS. REEVES:

19 Molesting a child. That's what the Defendant,
20 Andrew Clemons, is charged with, and that's what this
21 case is about. That child was eight-year-old MINOR

And the Defendant in this case was her
23 stepfather. She was eight when her stepfather decided to
24 touch her sexually. She is now ten, and she's going to
25 take the witness stand and tell you how he touched her

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Opening Statement by Ms. Reeves

50

1 and with what part of his body and what he made her touch
2 his body with on her body.

3 This happened on more than one occasion. And
4 afterwards she's going to tell you how the Defendant had
5 her pray with him.

6 You are also going to hear from her sister who's now
7 nine years old who, when she came into the house on one
8 occasion, she saw her sister coming out of the bedroom,
9 out of her father's bedroom and her mother's bedroom.
10 And she only had a shirt on. And the Defendant was
11 behind her, was behind the victim.

12 Along with the victim, MINOR and her sister,
13 T'Aja, you're going to hear from several other witnesses.
14 You're going to hear from their mother. You're going to
15 hear from a forensic interviewer who conducted an
16 interview of the girls in her forensic capacity or in her
17 professional capacity. And you're also going to hear
18 from the doctor who examined the victim MINOR

19 To convict the Defendant, I must prove to you, as
20 you heard from the Judge, beyond a reasonable doubt. And
21 I must prove to you that the Defendant committed two
22 acts, two charges. The first is criminal sexual conduct
23 with a minor in the first degree, and the second is lewd
24 act upon a child. I must prove to you that these
25 incidents occurred between December 1st of 2009 and

1 August 31st of 2010. I don't have to prove that these
2 acts occurred on a specific day or date during that time
3 frame. And I'm allowed to do that because children are
4 developmentally a little bit different from us, and they
5 can't generally remember the date or the time that
6 something happened. So I can prove to you that these
7 incidents occurred between certain dates.

8 I do, however, have to prove the evidence or the
9 elements of the crimes to you. The first is criminal
10 sexual conduct with a minor in the first degree. The
11 Judge is going to instruct you exactly what that charge
12 reads at the end of this trial. But I want you to keep
13 in mind as you hear the evidence that that charge
14 basically means that the Defendant committed sexual acts
15 on a child under eleven years old. And those sexual acts
16 included a penetration, however slight, of any part of
17 the body.

18 Now, different examples, of course, are sexual
19 intercourse. But those are also attempted or anal --
20 excuse me -- anal intercourse or fellatio or cunnilingus.
21 Another charge is lewd act on a child. And that
22 basically means sexual touching, like rubbing or
23 masturbating.

24 Now, I know that the frank discussion of body parts
25 and sexual acts can make everyone feel uncomfortable,

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Opening Statement by Mr. Thomason

52

1 especially as they relate to children. But
2 unfortunately, they are crimes, and they are committed.
3 And that is what the Defendant in this case is charged
4 with committing.

5 So at the end of this case, after you've heard all
6 of the evidence, I will ask that you find the Defendant
7 guilty of criminal sexual conduct with a minor in the
8 first degree and lewd act. Thank you.

9 THE COURT: Mr. Thomason, does the Defense wish
10 to have an opening statement?

11 MR. THOMASON: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, sir.

14 MR. THOMASON: Good afternoon. And y'all can
15 say good afternoon.

16 THE JURORS: Good afternoon.

17 OPENING STATEMENT

18 BY MR. THOMASON:

19 You know, my name is Scott Thomason. I've worked
20 with the Public Defender's office here in Anderson. That
21 means that I defend those who can't otherwise afford to
22 defend themselves. A lot more folks out there than you
23 would think. I like to say we don't just defend poor
24 folk; we defend po' folk.

25 It also occurs to me that during this whole jury

1 selection process, I mean, we basically herd you guys in
2 here like cattle. Like you come stand up there, like
3 we're bidding on you like a prize bull or something like
4 that, and ask you all kinds of personal questions.

5 So, as I said, my name's Scott Thomason. I was born
6 and raised here all my life. My daddy's Glenn and my
7 sister's Nancy Jo. I go to First Baptist Church, and
8 I've got a black lab named Beaufort. And that's about
9 all you need to know about me.

10 This is just -- you know, when you read the charges
11 off on a case like this, everybody just kind of, ugh.
12 But you know, you have to look at it and use the same
13 approach intellectually as if it were a larceny or a DUI
14 or a spitting on the sidewalk. These charges are way,
15 way more serious than those. But in your mind, when
16 you're determining what the facts are, you should not
17 allow yourself to be prejudiced because of the simple
18 nature of the charges. In other words, just because the
19 charges are heinous, it does not reflect on the
20 Defendant's innocence or guilt.

21 Now, you're probably all sitting there wondering,
22 where's the Defendant? Well, the answer to that question
23 truthfully - -- and I'm just going to tell you -- I don't
24 know. And you should not concern yourself with that.
25 The Defendant has the right not to testify. And the

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Opening Statement by Mr. Thomason

54

1 Judge will tell you that that is the right that every
2 American citizen has, and it is a right that you all
3 have. It's a right everybody has. And the fact that
4 somebody does not testify in their own behalf cannot be
5 used against them. It's human nature to think otherwise,
6 but you're just -- I'm sorry. You're just going to have
7 to suspend human nature for a little bit because you just
8 cannot hold that fact against him. The fact that he's
9 not here, you can't hold that against him. Because even
10 if he was, he wouldn't have had to testify anyway. So
11 just put those things out of your head and we'll move on.

12 Now, you know, I'm not going -- I'm not a mind
13 reader, and I can't tell you who all's going to testify
14 and who's not. But I anticipate there to be a couple of
15 children testifying in this case. And ladies and
16 gentlemen, I just want to tell you right now that that is
17 the absolute hardest part of my job is having to cross-
18 examine a child. I mean, I'm a human being. And I don't
19 like having to do it, but it has to be done. It's the
20 way the American justice system works, and it's my job.
21 And I take my job very seriously.

22 I will only get to speak directly to you twice
23 during this trial, and this is one of them. So I really,
24 really hope y'all pay attention. And I really appreciate
25 the fact that y'all came up here today and volunteered

1 your -- well, you didn't volunteer really. But you
2 fulfilled your civic duty and came up here today and were
3 willing to serve on this jury, and I do want to show my
4 appreciation for that. And I will try to not run off at
5 the mouth any more than necessary. I'm usually a man of
6 very few words.

7 But I do again -- because it's that's important. I
8 do again want to remind you that the fact that Mr.
9 Clemons, the Defendant, whether he's here or whether he
10 testifies, that cannot hold any sway in your decision-
11 making on the facts. The facts are going to come from
12 the witness stand and through the evidence and exhibits
13 presented.

14 Now, you will be chosen to weigh those facts. And
15 the Judge will talk to you more at the end of the trial
16 about how you weigh them. And I expect at some point
17 during the trial I may have to stand up and say,
18 objection, or Ms. Reeves may have to stand up and say,
19 objection. And we'll have to ask you to leave the room
20 for a minute. It's not because we're trying to hide
21 something from you. It's just because the only way you
22 can have a fair trial is for only admissible evidence to
23 come in.

24 There's two kinds of evidence. Some's admissible
25 and some's not admissible. And sometimes the parties or

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Direct Examination by Ms. Reeves

56

1 the prosecuting attorney and I will disagree as to what
2 those are. So if there is an objection and y'all have to
3 go out, please just don't think we're trying to hide
4 anything. It's not that at all. It's just the way it
5 works.

6 And the Judge is right. This is not Law and Order.
7 This is not -- you know, it's just going to be kind of
8 long and slow. But hopefully we'll move through it as
9 quickly as possible and cause everybody as little pain as
10 possible.

11 So thank you very much for listening to me. And I
12 will be talking with you again one more time. And
13 unfortunately, the next time I talk to you, I'm going to
14 have a lot more to say. So thanks.

15 THE COURT: Would you call your first witness,
16 please, ma'am?

17 MS. REEVES: Yes, sir. The State calls Telfia
18 Johnson.

19 **TELFIA JOHNSON,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. REEVES:

23 Q. Ms. Johnson, where did you graduate from high
24 school?

25 A. From T.L. Hanna in 2002.

- 1 Q. And did you go on to college?
- 2 A. Yes. I went to Tri-County Technical College with a
3 degree in Licensed Practical Nursing December 2011.
- 4 Q. And do you work now?
- 5 A. Yes.
- 6 Q. Where?
- 7 A. I work for Greenville Health Systems. I work at the
8 medical center in Powdersville in the urology and surgery
9 department.
- 10 Q. And you said for the Greenville Hospital System in
11 Powdersville. But what did you say, urology and what
12 else?
- 13 A. I work for the Greenville Hospital System, but it's
14 their office -- they have a medical center in
15 Powdersville. And I work in the urology and surgery
16 department.
- 17 Q. And how long have you worked there?
- 18 A. I've worked there since January of this year.
- 19 Q. And do you work anywhere else?
- 20 A. Yes. I work at Diamond Health and Rehab in
21 Simpsonville.
- 22 Q. And is that full-time?
- 23 A. It's as needed.
- 24 Q. And how long have you worked there?
- 25 A. Since January of 2012. And before then, I worked --

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Direct Examination by Ms. Reeves

58

- 1 I was going to school, so I was working at Wendy's.
- 2 Q. Are you married?
- 3 A. Yes, to Byron Johnson.
- 4 Q. And when did you get married?
- 5 A. November 2012.
- 6 Q. Do you have any children?
- 7 A. Yes. I have four.
- 8 Q. And what are their names and ages?
- 9 A. MINOR she's ten; T'Aja J. , she's
- 10 nine; [REDACTED], he's six; and [REDACTED] (phonic)
- 11 [REDACTED], he's five.
- 12 Q. And who is MINOR father?
- 13 A. Jonathan White.
- 14 Q. And when is her birthday?
- 15 A. Her birthday's [REDACTED] [REDACTED].
- 16 Q. And is Mr. White part of her life?
- 17 A. Yes. He sees her when he wants.
- 18 Q. Who is the father of your other three children?
- 19 A. Andrew Moochie Clemons.
- 20 Q. When did you start seeing the Defendant? And I'm
- 21 sorry you said, Andrew who Clemons?
- 22 A. Moochie.
- 23 Q. And is that a nickname of his?
- 24 A. Uh-huh (affirmative). We call him Moochie.
- 25 Q. So when did you start seeing Moochie?

- 1 A. Well, I've know him since I was like fifteen. But
2 we didn't actually start dating until I was nineteen.
3 And that was in November of 2002 after MINOR was born.
4 And I had T'Aja -- I got pregnant with T'Aja January of
5 2003, and I had her in October of 2003.
- 6 Q. And is the Defendant your age?
- 7 A. No. He's four -- when I first met him he was four
8 years older than me.
- 9 Q. And did you ever live with him?
- 10 A. Yes. We lived together on-and-off.
- 11 Q. What was the most recent time that he started living
12 with you?
- 13 A. December 2009, mid-December.
- 14 Q. And where was that?
- 15 A. [REDACTED]
- 16 Q. And is that in Anderson County?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And in mid-December, you said, of 2009 is
19 when he came to live with you again?
- 20 A. Yes.
- 21 Q. And how old was MINOR at that time?
- 22 A. She was seven then.
- 23 Q. In December of 2009, were you in school?
- 24 A. Yes, ma'am. I was going to Tri-County Tech during
25 that time, but I was also working too.

1 Q. And where were you working then?

2 A. I was working at Magnolia's full-time rotating
3 between first and second, and then I was also working
4 part-time for Interim. But I only worked at Magnolia's
5 for a little bit because they don't work around my school
6 schedule, so I had to go full-time at Interim.

7 Q. What kind of work did you do at Magnolia's?

8 A. Med tech and care giver.

9 Q. And how about at Interim Health Care?

10 A. Did home health care.

11 Q. Where did your children go during the day while you
12 were at work back in, let's say, December 2009?

13 A. Well, the girls were in school, and the boys went to
14 daycare.

15 Q. When did you normally get home?

16 A. It'd be after five.

17 Q. What did the girls do after school?

18 A. They rode the bus home from school, and Moochie
19 would be there with them until I got home with the boys.

20 Q. And so you picked -- you said you came home with the
21 boys; is that right?

22 A. When I would get off of work, I would go by the
23 daycare and pick them up, and then we would go home.

24 Q. Was the Defendant working in December of 2009?

25 A. No, ma'am.

1 Q. And in 2010?

2 A. He wasn't working at all.

3 Q. How long did you live with the Defendant at [REDACTED]

4 [REDACTED]?

5 A. We lived together through mid-August of 2010. And I
6 kicked him out when all this ---

7 Q. Can you describe the house for me on [REDACTED],
8 what the bedroom situation was like?

9 A. Yes, ma'am. Me and Moochie shared a room, the boys
10 shared a room and MINOR and T'Aja shared a room.

11 Q. And can you describe the furniture in the girls
12 room?

13 A. They had bunk beds.

14 Q. And how about the furniture in the living room?

15 A. We had a long couch, included the sofa, a love seat
16 short couch and a TV, coffee table and end tables.

17 Q. You mentioned a TV. Did you have any other devices
18 that you could watch movies on or anything?

19 A. Uh-huh (affirmative). We just had a little portable
20 DVD player.

21 Q. Do you still have that portable DVD player?

22 A. No. When I kicked him out with his stuff, I gave
23 all his stuff to Camilia White.

24 Q. Without saying what anyone else said, when did you
25 become aware that something had happened to MINOR

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Direct Examination by Ms. Reeves

62

1 A. Well, in January of 2011, I heard the girls in their
2 room arguing. I was in the kitchen cooking. And they
3 ran in there, and T'Aja said that she wanted ---

4 Q. Wait. Let me stop you right there. Don't say what
5 anybody else said. But again, can you describe -- there
6 was an incident that you became aware?

7 A. Yes. They were arguing, and she wanted to tell me
8 something about what she seen between MINOR and her
9 father.

10 Q. How did you feel after you heard what she said?

11 A. A cold feeling ran through me because I just felt
12 like it wasn't good, what she was about to say.

13 Q. And what, if anything, did you do next?

14 A. I told T'Aja to leave out of the kitchen so I could
15 talk with MINOR alone.

16 Q. And again, without saying what MINOR told you,
17 did you have a conversation with her about what T'Aja was
18 talking about?

19 A. Yeah. But she kept going around in circles, and she
20 really wouldn't come out and tell me. And while she was
21 trying to tell me, T'Aja kept coming in, trying to butt-
22 in and basically try to say, you know, that that's not
23 basically what was said. She was trying to correct
24 Jonashja.

25 Q. Did this help MINOR

- 1 A. No.
- 2 Q. In what way?
- 3 A. She still wasn't telling me anything much of nothing
- 4 at all.
- 5 Q. How old were MINOR and T'Aja?
- 6 A. At that time?
- 7 Q. Yes.
- 8 A. Seven and eight.
- 9 Q. And you were referring -- do MINOR and T'Aja have
- 10 nicknames?
- 11 A. Yes.
- 12 Q. They're shortened names. What are they?
- 13 A. T'Aja is 'Aja, and MINOR is MINOR
- 14 Q. Did you bring this up again with MINOR ?
- 15 A. When I picked her up from school the next day, I
- 16 tried to ask her about it again. And she told me --
- 17 well, we talked about it inside of the car and then at
- 18 home.
- 19 Q. And without saying what she said, did she give you
- 20 at that time some more details?
- 21 A. She gave me enough details to know that I needed to
- 22 try to get her checked out, but she didn't really go deep
- 23 into it.
- 24 Q. What, if anything, did you do after you spoke with
- 25 her?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Direct Examination by Ms. Reeves

64

- 1 A. I called her father, and we scheduled her an
2 appointment at Dr. Syad.
- 3 Q. Do you remember when that appointment was?
- 4 A. It was January the 28th, 2011.
- 5 Q. And who is Dr. Syad?
- 6 A. That's their pediatrician.
- 7 Q. Did you go to that appointment?
- 8 A. Yes, ma'am.
- 9 Q. And who was with you?
- 10 A. Me and MINOR father and MINOR
- 11 Q. What did you want Dr. Syad to do?
- 12 A. Just to make sure that she was okay.
- 13 Q. What kind of an exam did -- were you present for the
14 exam?
- 15 A. Yes. Me and John both were in the room.
- 16 Q. And what kind of exam did Dr. Syad perform?
- 17 A. Just a basic visual exam. She didn't use any
18 equipment.
- 19 Q. And what was your understanding of her exam?
- 20 A. She told me that she couldn't rule in or out
21 anything, but that she did not think that there was any
22 penetration because she was still crescent-moon shaped.
- 23 Q. And what, if anything, did the doctor recommend you
24 do after that with MINOR
- 25 A. She gave me two numbers to contact a counselor.

- 1 Q. Did you follow up with that?
- 2 A. Yes. I called one of them, and they were no longer
3 accepting Medicaid. And then the other one, mental
4 health, referred me to Mr. McClellan at school. And he
5 doesn't always work on site. He rotates between the two
6 schools. I left numerous messages for him, but he would
7 never call back. And when I finally got in contact with
8 him, he explained to me that he wouldn't be beneficial
9 for MINOR because he worked more with behavior issues.
- 10 Q. And at some point, did DSS become involved in this?
- 11 A. Yes. Not too long after I had talked to Mr.
12 McClellan, they had put a note on my door -- it was like
13 a card -- telling me to contact -- that was on a Friday.
14 It was like February the 18th.
- 15 Q. And do you know how DSS got to be involved?
- 16 A. Uh-huh (affirmative). Me and a friend of mine -- I
17 believe that she called them. We had a falling out when
18 she had called them.
- 19 Q. You said that the Defendant had moved out in mid-
20 August of 2010; is that right?
- 21 A. Uh-huh (affirmative).
- 22 Q. And had he had any contact with MINOR or any of
23 you after that?
- 24 A. Not after that point.
- 25 Q. And when DSS was involved, did you cooperate with

1 them?

2 A. Yes.

3 Q. And once they got involved, was MINOR referred
4 anywhere?

5 A. To Foothills Alliances to do a forensic interview,
6 and then she was able to start counseling.

7 Q. Did you -- were you able to watch that interview?

8 A. No.

9 Q. And at some point later, did you have a conversation
10 with her, a more in-depth conversation with MINOR
11 about what happened to her?

12 A. Well, I never really bring it up to her. But she
13 would -- if she talk about it, I would listen, you know.
14 But I never brought it up to her.

15 Q. And again, without saying all of what she may have
16 told you, did she tell you when something had happened to
17 her?

18 A. Around her birthday that summer when she was turning
19 eight.

20 Q. And did she happen to tell you where something had
21 happened to her?

22 A. In the living room twice on both the long couch and
23 the short couch and in my bedroom.

24 Q. And that was at what house?

25 A. [REDACTED] [REDACTED].

1 Q. After MINOR told you this information, how did
2 that make you feel?

3 A. I had a lot of -- a lot of mixed emotions about it.
4 I was angry with him because I, you know, would leave her
5 there for him to watch them while I work and go to
6 school. And then I was angry with myself because I felt
7 like, you know, I was not there to protect her. And now
8 there's nothing that I could do about it. And I felt
9 like I put my school and work in front of them and wasn't
10 really paying attention to what was going on at home. I
11 felt guilty.

12 Q. At eight years old, had you had a conversation with
13 MINOR about her body?

14 A. No. I would just tell her, you know, not to let
15 anybody touch her chest or her butt, but nothing like
16 that.

17 Q. Nothing about what, specific?

18 A. Yeah, nothing that specific.

19 Q. Did you ever have a conversation with the Defendant
20 concerning what had happened to MINOR

21 A. Uh-huh (affirmative).

22 Q. And what did he say?

23 A. He just said that it did not happen all the way like
24 what she said, and he had wanted to talk with her, but I
25 wouldn't let him speak with her.. And he told me to just

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Cross-examination by Mr. Thomason

68

1 ask them what they used to pray about.

2 Q. Nothing further right now, Ms. Johnson.

3 THE COURT: Cross-examination?

4 MR. THOMASON: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. THOMASON:

7 Q. Ms. Johnson, just to clarify -- do you need a
8 minute, or are you okay?

9 A. I'm fine.

10 Q. All right. Just to clarify the behavior alleged
11 that my client, Andrew Clemons, committed -- and I'm
12 going to call him Andrew, okay? I just frankly ...

13 THE COURT: Can the jury hear?

14 MR. THOMASON: Can y'all hear me? I'm sorry.

15 THE COURT: I think you need to come up a
16 little bit.

17 MR. THOMASON: I'm usually accused of being too
18 loud.

19 Q. The alleged behavior or the events that are in
20 question that Mr. Clemons is being charged with were
21 supposed to have been taken place between December 9th
22 and August 10th -- I'm sorry. August 9th '09 -- December
23 9th, '09 and August 10 of '10?

24 A. Yes, sir.

25 Q. And you alleged that you only found out about it in

- 1 January of '11?
- 2 A. Yes, sir.
- 3 Q. And you also, I believe, said that your youngest
- 4 daughter was the one that brought this to your attention,
- 5 not ---
- 6 A. It was T'Aja, his daughter, that brought it to my
- 7 attention.
- 8 Q. And through -- again, not saying what anybody else
- 9 told you. But did you discover what age MINOR was when
- 10 this happened to her?
- 11 A. Did I discover it when she told me about it?
- 12 Q. Yes.
- 13 A. Yes.
- 14 Q. And what ---
- 15 A. It was around -- she was turning -- her birthday is
- 16 June the 12th, 2002, and it was around that time when she
- 17 was turning eight years old, that summer.
- 18 Q. Okay. So did you come to find out that this alleged
- 19 conduct occurred when she was eight years old?
- 20 A. Uh-huh (affirmative). When she was turning eight
- 21 around the time of her birthday.
- 22 Q. Okay. So really then you can -- and she turns --
- 23 her birthday is June the ---
- 24 A. 12th.
- 25 Q. --- 12th?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfla Johnson - Cross-examination by Mr. Thomason

70

1 A. 2002.

2 Q. Okay. So now we're really only talking about from
3 June of 2010 to August of 2010, if she was turning eight
4 years old, because that's when she would have been
5 turning eight years old?

6 A. Uh-huh (affirmative).

7 Q. Okay. So December 9th, 2009, would have been
8 approximately six months before she turned eight years
9 old, correct?

10 A. Yes. But he was in the home with her at the time.

11 Q. I understand. You -- how best to characterize this.
12 You and Mr. Clemons did not always have the most -- you
13 guys had a fairly rocky relationship. Would that be fair
14 to say?

15 A. Correct.

16 Q. And from time to time, you would get mad at him or
17 he would get mad at you, and y'all would split up and get
18 back and split up and get back and that sort of thing?

19 A. Yes, sir.

20 Q. When you found out -- and when you -- again, not
21 saying what anybody told you. But upon when you -- at
22 the end of the conversation when you had been told what
23 you had been told by T'Aja or MINOR and so forth and
24 so on, did you realize that that behavior or those
25 allegations being made were criminal?

- 1 A. Was it criminal?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. Did you know they were crimes?
- 5 A. Yes.
- 6 Q. But you did not report them to the police?
- 7 A. I took her to the doctor, and I was looking for Dr.
- 8 Syad -- you know, at that moment at that time I really
- 9 didn't know what to do, and that's why I took her to the
- 10 doctor. And when I took her to Dr. Syad, I basically was
- 11 looking for her for guidance. And she gave me those two
- 12 numbers. And based on what she said, I took the
- 13 information and did what she told me to do.
- 14 Q. And Dr. Syad said that there was no penetration,
- 15 didn't she?
- 16 A. She said that she couldn't rule it in or out, but
- 17 she did not think that there was any penetration because
- 18 she was still crescent-moon shaped.
- 19 Q. All right.
- 20 A. But she did give the number for counseling and the
- 21 two numbers to contact to get MINOR some counseling.
- 22 Q. Okay. Well, when in fact did law enforcement get
- 23 involved?
- 24 A. After -- whenever I went and spoke with the lady
- 25 that Monday at DSS, then she contacted the law

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Telfia Johnson - Cross-examination by Mr. Thomason

72

1 enforcement.

2 Q. So you mentioned that one of your emotions that you
3 felt after having those conversations was anger.

4 A. Uh-huh (affirmative).

5 Q. And yet you did not pick up the phone and call 9-1-1
6 and report a crime?

7 A. No, I did not report a crime, but I did take her to
8 the doctor. And I was using -- based on what Dr. Syad
9 said -- and I expected -- I thought she was telling me
10 basically what to do. You know, she told me to call the
11 counselor, and that's what I did. And I felt also if we
12 were in there and it felt like it need -- you know, if
13 anything went wrong that she would have told me, you
14 know, well, you need to go contact the police or she
15 would have contacted the police while we were there.

16 Q. But that's just speculation on your part?

17 A. I mean, yeah, because I've never been in that
18 situation before.

19 Q. I understand. I believe that's all I have for you,
20 Ms. Johnson. Thanks so much.

21 THE COURT: Redirect?

22 MS. REEVES: No, sir.

23 THE COURT: Thank you, ma'am.

24 THE WITNESS: Uh-huh (affirmative).

25 THE COURT: If you'd call your next witness,

1 please?

2 MR. THOMASON: May we approach?

3 (WHEREUPON, a bench conference was held off the
4 record.)

5 THE COURT: Would you call your next witness,
6 please, ma'am?

7 MS. REEVES: Thank you, Judge. The State calls
8 Jonashja White.

9 MINOR

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. REEVES:

13 Q. MINOR how old are you?

14 A. Ten.

15 Q. And where do you go to school?

16 A. Whitehall.

17 Q. And what grade are you in now?

18 A. Fifth.

19 Q. And when is your last day of school?

20 A. June 6th.

21 Q. I thought you might know that date. And who are
22 your teachers right now?

23 A. My homeroom teacher is Ms. Mezza, my E.L.A. teacher
24 is Ms. Jacobs and my science teacher is Ms. Truman.

25 Q. Do you have a nickname that you go by?

1 A. MINOR

2 Q. And do you have any brothers and sisters?

3 THE COURT: Could you push that mike up a
4 little bit further?

5 Do you mind helping her with that microphone?

6 Do you mind speaking a little bit closer to that
7 microphone, sweetheart? There we go.

8 A. I have one sister and two brothers.

9 Q. And what are your brothers' names?

10 A. Andrew and Izia.

11 Q. And how old they?

12 A. Andrew is six and Izia is five.

13 Q. And you said you had one sister?

14 A. (Nodded head up and down in the affirmative.)

15 Q. And what's her name?

16 A. T'Aja.

17 Q. And how old is she?

18 A. Nine.

19 Q. And can you tell me if it's good or bad to tell the
20 truth?

21 A. Good.

22 Q. And is it good or bad to tell a lie?

23 A. Bad.

24 Q. And if I said that the sky is purple, is that a
25 truth or a lie?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

75

1 A. Lie.

2 Q. And what happens to someone if they tell a lie?

3 A. They get in trouble.

4 Q. And in the courtroom is it good or bad to tell a
5 lie?

6 A. Bad.

7 Q. And can you tell the truth today about what
8 happened?

9 A. Yes, ma'am.

10 THE COURT: Any issues regarding this witness'
11 competency to testify?

12 MR. THOMASON: I don't have any, Your Honor. I
13 believe she's competent to testify.

14 THE COURT: Very good. You may proceed.

15 MS. REEVES: Thank you, Judge.

16 Q. How do you know Andrew Clemons?

17 A. Because he's my sister and brothers' dad.

18 Q. And does he have a nickname or something else you
19 call him?

20 A. Yes, ma'am.

21 Q. What is that?

22 A. Moochie.

23 Q. And did Moochie used to live with you?

24 A. Yes, ma'am.

25 Q. Where?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

76

1 A. On [REDACTED].

2 Q. And did Moochie ever touch you in a way that you
3 didn't like?

4 A. Yes, ma'am.

5 Q. And did this happen once or more than once?

6 A. More than once.

7 Q. And do you remember how it started?

8 A. Yes, ma'am.

9 Q. Can you tell us about that?

10 A. It started in the house in the bathroom. He walked
11 into the bathroom.

12 Q. What else happened after that?

13 A. He said, oops, sorry, and walked back out.

14 Q. Then what happened?

15 A. When I came out of the bathroom, I was in my room.

16 And my sister and him was in the living room watching TV.

17 And so I went in the living room with them. And they

18 both were sitting in a chair together. And she asked me

19 did I want to sit with them? And I went and sat with

20 them. And so my sister fell asleep and he took her and

21 put her on her bed, and it was just me and him in the

22 living room.

23 Q. And then what happened?

24 A. And then he -- we were still watching TV. And then

25 he went over to the short couch and told me to come over

1 to the short couch. And he made me pull down my clothes,
2 and he pulled down his clothes.

3 Q. And what clothes did he have you pull down on you?

4 A. My panties and my pants.

5 Q. And what clothes did he pull down on him?

6 A. His sweat pants.

7 Q. And what happened after that?

8 A. He made me touch his private parts, and he touched
9 my private parts.

10 Q. What did he touch your private parts with?

11 A. His private parts.

12 MR. THOMASON: I'm sorry. His what?

13 THE COURT: Would you repeat that, please? And
14 speak up a little bit.

15 Q. What did he touch your body with?

16 A. His private parts.

17 Q. And where on your body did he touch?

18 A. My private parts between my legs.

19 Q. Did you see his private part?

20 A. Yes, ma'am.

21 Q. What did it look like?

22 A. It was -- it was brown, and it kind of felt hard.

23 Q. And you said this happened where?

24 A. In the living room.

25 Q. How was he -- you said in the living room, and I

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

78

- 1 think you said on the couch; is that right?
- 2 A. Yes, ma'am.
- 3 Q. How was he on the couch?
- 4 A. He was laying down.
- 5 Q. And was he laying on his stomach or his back?
- 6 A. Back.
- 7 Q. And how were you on the couch?
- 8 A. I was -- I was like -- I was like on my back on top
- 9 of him.
- 10 Q. And you said that he touched your private part with
- 11 his private part; is that right?
- 12 A. Uh-huh (affirmative).
- 13 Q. And where exactly?
- 14 A. You talking about where he was touching his private
- 15 part on mine? It was between my legs.
- 16 Q. And was he touching skin or something else?
- 17 A. Skin.
- 18 Q. And when he was touching you, what was he doing?
- 19 A. He was moving me.
- 20 Q. You said moving you?
- 21 A. Uh-huh (affirmative).
- 22 Q. How was he moving you?
- 23 A. Like back and forth.
- 24 Q. What was he -- what part of your body was he holding
- 25 or touching to move you?

- 1 A. My waist.
- 2 Q. With his -- what was he using, his hands?
- 3 A. His hands.
- 4 Q. Do you remember another time something else
- 5 happened?
- 6 A. Yes, ma'am.
- 7 Q. And tell us about that.
- 8 A. It was my mom's bedroom. And he made me touch his
- 9 private parts with my hands. And that's the time when my
- 10 sister had seen me run out of the room with only a shirt
- 11 on. And that time he had made me take off my clothes
- 12 too.
- 13 Q. He had made you what?
- 14 A. Take off my pants and my underwear.
- 15 Q. And did you say that he -- what did he make you do
- 16 in the bedroom?
- 17 A. Touch his private parts with my hands.
- 18 Q. And what do you remember about that?
- 19 A. He just put my hands on his private part and rubbed
- 20 them up and down.
- 21 Q. So he put your hands on him; is that right?
- 22 A. Yes, ma'am.
- 23 Q. And then what happened?
- 24 A. He just -- it really -- he had his hands on top of
- 25 my hands and moving them up and down.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

80

1 Q. Is there anything else you remember about that?

2 A. Yes, ma'am. Something came out.

3 Q. Something came out of where?

4 A. His private part.

5 Q. Do you remember what that was like?

6 A. Not really.

7 Q. Was it pee?

8 MR. THOMASON: I think she's already said she
9 didn't know, Your Honor.

10 THE COURT: All right. I'll give you a little
11 bit of leeway.

12 Q. Was there another time that you might remember
13 something else happening?

14 A. Yes, ma'am.

15 Q. Can you tell us about that?

16 A. It was again on the short couch. And he had me
17 touching his private parts again. And my sister had
18 tried to come in the front door, but he had locked it.
19 And he had opened the back door, and he had the screened
20 door locked. And then when they came back in -- my
21 sister and my friend down the street, when they came back
22 in there to get me, he ran me in my room. And he had put
23 the covers over me and he had let them in.

24 Q. So you had been with Moochie on the short couch?

25 A. Yes.

1 Q. And you said your sister and your friend had come to
2 the door; is that right?

3 A. Yes, ma'am.

4 Q. And what had been happening on the couch, on the
5 short couch?

6 A. He was making me touch his private parts.

7 Q. And then when your sister came to the door, what
8 happened?

9 A. She first knocked on the front door, and he yelled
10 and told them to go around to the back. And so he had
11 took me in my room and put the covers over me. And then
12 he went to the back door and unlocked the screen.

13 Q. I'm going to back you up a little bit and ask do you
14 remember on the short couch what -- you had said that he
15 was making you touch his private part with your hand; is
16 that right?

17 A. Uh-huh (affirmative).

18 Q. Do you remember how he was on the couch?

19 A. Yes, ma'am.

20 Q. How was he on the couch?

21 A. He was -- he was just sitting up and his back was to
22 the back of the couch.

23 Q. And what were his clothes like?

24 A. They were halfway down to his knees.

25 Q. And how were you on the couch?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

82

1 A. I was -- I wasn't on the couch. I was kind of on
2 the floor and he had my hands on his private part.

3 Q. And then you said that he took you to your room; is
4 that right?

5 A. Yes, ma'am.

6 Q. And you said he covered you; is that right?

7 A. Yes.

8 Q. Why did he cover you?

9 A. I guess he wanted them to think I was asleep.

10 Q. How were your clothes?

11 A. I had all my clothes on.

12 Q. Was there ever a time that you remember Moochie
13 showing you anything?

14 A. Yes, ma'am.

15 Q. Can you tell us about that?

16 A. It was a ---

17 MR. THOMASON: Your Honor, I'm going to --
18 excuse me. I'm going to make an objection here. I think
19 what ---

20 THE COURT: All right. Just one second.

21 Mr. Foreman, ladies and gentlemen of the jury, it's
22 probably a good time now for you to take a brief break
23 anyway. If you'd go back to your jury room, I'd
24 anticipate probably ten to fifteen minutes. If you need
25 anything, let the bailiff know, okay, sir?

1 (WHEREUPON, the jury exited the open court at
2 approximately 2:47 p.m.)

3 THE COURT: All right. State your objection on
4 the record, please.

5 MR. THOMASON: If it please the Court. Your
6 Honor, as I mentioned at the pre-trial on Thursday, I
7 would object to any mention of any sort of pornography
8 coming in. There has been no -- he's not charged with
9 sexual exploitation of a child or showing -- or anything
10 having to do with pornography. It has nothing to do with
11 what he is being actually charged with, which is either
12 performing criminal sexual conduct or performing a lewd
13 act. And both of those involve some sort of touching,
14 not a showing of a video. I feel like under 402 or 403
15 that it's just more prejudicial than probative to talk
16 about -- that's what I anticipated, what I think she was
17 getting ready to say.

18 THE COURT: Right. And you're right. You did
19 bring this motion up last Thursday when we were doing
20 pre-trial... I overruled it then. I overrule it now. I
21 think it's part and parcel of what this little girl can
22 testify to as to what she went through with this
23 Defendant. And it was just part of what he was engaged
24 in allegedly with her. But I will note your objection
25 for the record.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

84

1 Let's take a ten-minute break. Now, you can't talk
2 to anybody your testimony including your mama, including
3 the State's witness or anybody during the break, okay?

4 THE WITNESS: Yes, sir.

5 THE COURT: But you're free to get down, but
6 just don't speak with anybody, okay?

7 THE WITNESS: Okay.

8 THE COURT: All right. Thank you.

9 We'll be in recess until two o'clock [sic].

10 (WHEREUPON, court stood at recess for a short
11 break.)

12 MS. REEVES: Judge, may I approach? I need to
13 get you to change the date on this.

14 THE COURT: On the bond?

15 MS. REEVES: Yes, for the 12th. Today is the
16 13th.

17 (Off record discussion)

18 (WHEREUPON, State's Exhibit Number 1 and 2 were
19 marked for identification only.)

20 THE COURT: All right. Mr. Thomason, are you
21 ready to proceed?

22 MR. THOMASON: Yes, Your Honor.

23 THE COURT: All right. Ms. Reeves, are you
24 ready?

25 MS. REEVES: Yes, sir.

1 THE COURT: Would you bring the jury in?
2 (WHEREUPON, the jury entered the open court at
3 approximately 3:05 p.m.)

4 THE COURT: Ms. Reeves, are you ready?

5 MS. REEVES: Yes, sir.

6 THE COURT: You may proceed.

7 MS. REEVES: Thank you.

8 DIRECT EXAMINATION

9 CONTINUED BY MS. REEVES:

10 Q. MINOR right before the break, I had asked you if
11 Moochie ever showed you anything, and you said yes. Can
12 you tell us about that, please?

13 A. He showed me this movie on his DVD player thingy.

14 Q. What was the DVD player thingy?

15 A. It was like a little TV screen.

16 Q. And would it play movies?

17 A. Uh-huh (affirmative).

18 Q. Speak up. What's that?

19 A. Yes, ma'am.

20 Q. And what did he show you?

21 A. It was people on there doing what he was doing to
22 me, but they were older.

23 Q. And how were they dressed?

24 A. Some of them had clothes on, but some of them
25 didn't.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

86

- 1 Q. Do you remember a time that he showed this to you?
- 2 A. Yes, ma'am.
- 3 Q. Where were you?
- 4 A. We were in -- I think we were in my mama's bedroom.
- 5 Q. What happened? What else do you remember?
- 6 A. That's all.
- 7 Q. Do you remember a time -- I think you said that he
- 8 put his private part on your private part?
- 9 A. Yes, ma'am.
- 10 Q. Did he ever put his private part somewhere else on
- 11 your body?
- 12 A. Yes, ma'am.
- 13 Q. Where?
- 14 A. My mouth.
- 15 Q. Tell me about that.
- 16 A. He just -- he would have his hands on my head, and
- 17 he had my hands on his private parts.
- 18 Q. You said he touched his private part to your mouth?
- 19 A. Yes, ma'am.
- 20 Q. Did he put his private part in your mouth?
- 21 A. Yes, ma'am.
- 22 Q. And what was he doing? You said he had his hand on
- 23 your head?
- 24 A. Yes, ma'am.
- 25 Q. What was he doing?

- 1 A. He just moved my head up and down.
- 2 Q. Do you remember if anything happened or came out of
- 3 his private part?
- 4 A. Yes, ma'am. I don't know what it was.
- 5 Q. But something came out; is that right?
- 6 A. Yes, ma'am.
- 7 Q. And where did it go when it came out?
- 8 A. It went in my mouth, but I spit it out.
- 9 Q. Was there ever a time that he touched his private
- 10 part to another private part on your body?
- 11 A. No, ma'am.
- 12 Q. Did he ever try to touch his private part on your
- 13 bottom or on your butt?
- 14 A. Not that I can remember.
- 15 Q. Do you remember another time that he showed you the
- 16 videos?
- 17 A. Yes. He showed it to me twice.
- 18 Q. And you described one. Can you describe the other
- 19 one?
- 20 A. It was the same thing.
- 21 Q. Was it the same video or a different video?
- 22 A. I believe it was a different video, but ...
- 23 Q. Did he say anything when he showed this to you?
- 24 A. No, ma'am.
- 25 Q. You said there was a time that you remember your

1 sister seeing you. Can you tell us about that?

2 A. My sister, she had -- she was walking down the
3 hallway. And she -- he had heard her walking down the
4 hallway. And so he told me to get out, and he had told
5 me to run in my room. So I run in my room, and I only
6 had my shirt on. So she saw me and asked me why did I
7 come out of my mom's room with only a shirt on.

8 Q. And do you remember what you said?

9 A. I just was trying to change the subject.

10 Q. Do you remember another time that may have been on a
11 weekend or maybe when your mom wasn't there again?

12 A. No, ma'am.

13 Q. And where was your mom when Moochie was doing this
14 to you?

15 A. I think she was at work.

16 Q. What time of day? Do you remember?

17 A. After school.

18 Q. And so who would have been at your house after
19 school?

20 A. Me and my sister.

21 Q. And who else?

22 A. Moochie.

23 Q. And where was your sister?

24 A. Most of the time whenever we got home, we'd go
25 outside and play. And then sometimes I had to stay in

1 the house.

2 Q. When Moochie had you put your hands on his private
3 part, did that happen once or more than once?

4 A. Once.

5 Q. And I'm going to show you what's been marked as
6 State's Exhibit 1 and 2. Can you tell on State's Exhibit
7 1 what that's a picture of?

8 A. A girl.

9 Q. Does she have any clothes?

10 A. No, ma'am.

11 Q. And when you were telling us that Moochie put his
12 private part on your private part, can you point on the
13 girl what your private part was?

14 A. (Indicating)

15 MS. REEVES: Please let the record reflect that
16 the witness pointed to the vagina.

17 Q. Anywhere else?

18 A. Here.

19 MS. REEVES: And she also pointed to the mouth.

20 THE COURT: And let the record so reflect.

21 Q. I'm going to show you State's Exhibit Number 2.
22 What is this a picture of?

23 A. A boy.

24 Q. Does he have any clothes on?

25 A. No.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Direct Examination by Ms. Reeves

90

1 Q. And when you referred to Moochie's private part
2 touching you, can you point to that?

3 A. (Indicating)

4 MS. REEVES: Let the record reflect the victim
5 is pointing to the penis.

6 THE COURT: So reflected.

7 Q. Anywhere else?

8 A. He touches his hand on my waist, but that's it.

9 THE COURT: Can the jury hear okay? I mean,
10 that's my concern. Is the jury be able to hear? Okay.

11 Q. Do you remember how old you were when Moochie did
12 these things to you?

13 A. Seven.

14 Q. And did it only happen when you were seven?

15 A. I think so.

16 Q. And do you remember what grade you were in?

17 A. Second.

18 Q. Did Moochie ever tell you what to say about what he
19 was doing to you?

20 A. He told me not to tell anyone or I would get in very
21 big trouble and he would get in very big trouble.

22 Q. Do you remember anything else he may have told you?

23 A. We prayed.

24 Q. You prayed? Can you tell us about that a little
25 bit?

1 A. He would call my sister in there. And we'd all pray
2 together, and we would just ask God to forgive us of our
3 sins. And that's it.

4 Q. Did you tell your mom what Moochie was doing to you?

5 A. I didn't. My sister did.

6 Q. Can you tell us about that?

7 A. Well, me and my sister, we were arguing. And
8 whenever we get mad at each other, we tell on each other.
9 And we were arguing. What, I don't remember about. And
10 so she went in the kitchen and told my mama.

11 Q. Why didn't you tell your mom before then?

12 A. Because I was scared I'd get in trouble.

13 Q. Just one second, okay? Nothing further.

14 THE COURT: All right. Cross-examination?

15 MR. THOMASON: May it please the Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. THOMASON:

19 Q. Is it okay if I call you MINOR

20 A. MINOR

21 Q. Yes.

22 THE COURT: She said MINOR

23 Q. MINOR I'm sorry. MINOR you said that all of
24 the things that Mr. Clemons did to you, you were seven
25 years old?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
MINOR - Cross-examination by Mr. Thomason

92

1 A. Yes, sir.

2 Q. Okay. Can you tell us when your birthday is?

3 A. [REDACTED].

4 Q. [REDACTED]

5 A. Yes, sir.

6 Q. All right. So you've got a birthday coming up in
7 about a month, don't you?

8 A. Yes, sir.

9 Q. Now, when you said that he put his private part
10 between your legs, you meant like there, correct?

11 A. Yes, sir.

12 Q. And I hate to use these words. But he did not put
13 his private part inside your -- what was the word we
14 used? If I were to ...

15 MR. THOMASON: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 Q. If I were to draw a circle around there, what would
19 be your word for that private part?

20 A. Penis.

21 Q. Okay. Can I write penis beside there?

22 A. (Nodded head up and down in the affirmative.)

23 Q. Okay. And on the girl picture, if I put a circle
24 there, what would you call that?

25 A. A vagina.

MINOR - Cross-examination by Mr. Thomason

1 Q. Okay. And if I put a circle around that private
2 part, what would you call that?

3 A. Butt.

4 Q. Okay. Thank you for making that clearer.

5 Now, when you said he touched your private part with
6 his private part, you didn't say that he put his private
7 part inside of your private part; is that correct?

8 A. Yes, sir.

9 Q. So he did not put his penis in your vagina?

10 A. Yes, sir.

11 Q. He did not?

12 A. He didn't.

13 Q. Okay. And he did not put his penis inside your
14 butt?

15 A. He did not.

16 MR. THOMASON: One moment.

17 Q. MINOR were there any milestones or holidays or
18 brothers' and sister's birthdays that might be able to
19 help you narrow down exactly when the things that you
20 said happened happened?

21 A. No, sir.

22 Q. Okay. Well, can you tell us -- how about the first
23 time? Would that -- could you maybe narrow that down a
24 little bit for us? Was it hot outside or cold or ---

25 A. It was between there.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
~~MINOR~~ - Cross-examination by Mr. Thomason

94

1 Q. I'm sorry?

2 A. Sometimes it would be hot; sometimes it would be
3 cold.

4 Q. Well, would you say it was like springtime? Were
5 there leaves on the trees?

6 A. I don't remember.

7 Q. Okay. Do you ever watch sports?

8 A. Yes, sir.

9 Q. Do you remember what sports they were playing at
10 that time of year when it first started happening, when
11 it first happened?

12 A. No, sir.

13 Q. Okay. Well, if they all happened when you were
14 seven, then that means the last one had to happen before
15 your birthday in 2010; is that right?

16 A. Yes, sir.

17 Q. Because that's when you would have turned eight ---

18 A. Yes, sir.

19 Q. --- on June the 12th?

20 A. Yes, sir.

21 Q. Okay. Do you remember going into a room with a lady
22 and making a video with her sometime later on?

23 A. No.

24 Q. You don't remember that?

25 A. Making a video with her?

1 Q. Well, the -- when you went into the -- do you
2 remember Ms. Stacy where they took you ---

3 A. Is she the woman who interviewed me?

4 Q. Yes. Yes. Do you remember that?

5 A. Yes, sir.

6 Q. Okay. Now, I'm going to be -- they're going to play
7 some of that interview or that interview. And then I'm
8 going to be asking you some more questions after that,
9 okay?

10 A. Yes, sir.

11 Q. All right. Well, I think that's all I have for you
12 right now. So thank you very much.

13 THE COURT: Redirect?

14 MS. REEVES: No, sir.

15 THE COURT: You may step down.

16 For the record, we had a bench conference. Mr
17 Thomason requested that without losing his status as far
18 as closing goes, that he be allowed to bring some
19 questions up about the video. At this point, based on
20 the preparation of that video, I told him that I would
21 put that on the record and that would be the ruling of
22 the Court.

23 MS. REEVES: Can you remind her that she's
24 still under oath then and ---

25 THE COURT: Yes, ma'am.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
T'Aja J. - Direct Examination by Ms. Reeves

96

1 And MINOR you are still under oath. And right
2 now, until I excuse you, you may not speak with anybody
3 about your testimony. You're free to talk to other
4 people about other things, but you can't talk about your
5 testimony, okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: If anybody tries to talk to you
8 about your testimony, you need to let me know and let me
9 know who it is so I can talk to them, okay?

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you, ma'am.

12 All right. Please call your next witness.

13 MS. REEVES: Yes, sir. The State calls T'Aja
14 J.

15 T'AJA J.

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. REEVES:

19 Q. T'Aja, how old are you?

20 A. Nine.

21 Q. And what school do you go to?

22 A. Whitehall.

23 Q. And what grade are you in?

24 A. Third.

25 Q. And what is your favorite subject?

- 1 A. Math.
- 2 Q. And do you have some brothers and sisters?
- 3 A. Yes, ma'am.
- 4 Q. How many brothers do you have?
- 5 A. Two.
- 6 Q. And do you have a sister named MINOR
- 7 A. Uh-huh (affirmative).
- 8 Q. Can you tell me if it's good or bad to tell the
- 9 truth?
- 10 A. It's good.
- 11 Q. And can you tell me if it's good or bad to tell a
- 12 lie?
- 13 A. It's bad to tell a lie.
- 14 Q. And if I said that the ceiling in this room was
- 15 bright red, is that the truth or a lie?
- 16 A. A lie.
- 17 Q. And what happens to someone when the tell lie?
- 18 A. They get in more trouble.
- 19 Q. And in this courtroom, is it good or bad to tell a
- 20 lie?
- 21 A. It is bad.
- 22 Q. Can you tell the truth today?
- 23 A. Yes, ma'am.
- 24 Q. What's your daddy's name?
- 25 THE COURT: Let me ask him a question.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
T'Aja J. - Direct Examination by Ms. Reeves

98

1 Any issue of competency to testify?

2 MR. THOMASON: Not at this time, Your Honor.

3 THE COURT: Okay. Go ahead.

4 Q. What's your daddy's name?

5 A. Moochie.

6 Q. And he used to live with you?

7 A. No.

8 Q. Did he ever live with you?

9 A. Uh-huh (affirmative).

10 Q. And where was that? Do you remember where you
11 lived?

12 A. Uh-huh (affirmative).

13 Q. Where?

14 A. [REDACTED].

15 Q. And do you remember when you lived on [REDACTED]
16 and something happened between your daddy and MINOR

17 A. Yes, ma'am.

18 Q. What do you remember?

19 A. That when we was outside she had said that she
20 wanted to go inside and play with my dad. And then when
21 I went in there, I had asked for something to drink. And
22 then I saw MINOR with her panties on and her shirt on.

23 Q. Where was she when you saw her?

24 A. She was running from my dad's room to our room.

25 Q. And where was your dad?

1 A. Coming out of his room.

2 Q. So MINOR had been in there with him; is that
3 right?

4 A. Uh-huh (affirmative).

5 Q. And you saw your sister wearing what again?

6 A. Her panties and her shirt.

7 Q. And where did she go?

8 A. Into her room.

9 Q. Was that your room too?

10 A. Uh-huh (affirmative).

11 Q. And then what happened after that? Do you remember?

12 A. My mom came. And he said that -- MINOR had
13 slipped on some pants and came out of the room.

14 THE COURT: I'm going to stop you right quick.
15 Can the jury hear this witness okay?

16 MR. THOMASON: I'll be honest. I'm having a
17 little trouble hearing her.

18 THE COURT: Okay. You're free to get up and
19 move around.

20 And so I don't keep interrupting the flow of this,
21 if you can't hear, please just raise your hand, okay? If
22 you'll just pay attention. I just don't want to keep
23 interrupting. I'll make sure you do.

24 Thank you. You're doing fine. If you would speak
25 directly into the microphone, sweetheart. I know this is

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
T'AjaJ. - Direct Examination by Ms. Reeves

100

1 not what you normally do. But just if you'd try to do
2 that for us, we'd appreciate it.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 Q. You said that -- tell us again what you remember.

6 A. That I was outside and MINOR said that she was
7 going to play with my dad. And then when I came in the
8 house, I asked for something to drink. And then I saw
9 MINOR with her panties on and a shirt.

10 Q. And then you said something about your mom coming
11 home; is that right?

12 A. Uh-huh (affirmative).

13 Q. And where was MINOR when your mom came home?

14 A. In her room.

15 Q. And what was she doing?

16 A. She was putting on some pants.

17 Q. Do you remember how old you were when you saw that?

18 A. No.

19 Q. And did you tell your mom what you saw?

20 A. Uh-huh (affirmative).

21 Q. Was it right after it happened?

22 A. Uh-huh (affirmative).

23 Q. Or was it sometime a little bit later?

24 MR. THOMASON: I believe she just answered
25 that, Your Honor.

1 THE COURT: Overruled.

2 A. It was a little bit later.

3 Q. Was your dad still living with you when you told
4 your mom what had happened?

5 A. No.

6 Q. What do you remember about when you told your mom
7 what you saw?

8 A. I told her that I had saw my sister and they was
9 coming out of my mom's room, and I saw her with her
10 panties on and her shirt.

11 Q. And what was your mom doing when you told her that?

12 A. She was in the kitchen.

13 Q. And do you remember why you told her?

14 A. Because I thought it was wrong.

15 Q. Nothing further.

16 THE COURT: Cross-examination?

17 MR. THOMASON: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. THOMASON:

21 Q. T'Aja?

22 A. Uh-huh (affirmative).

23 Q. T'Aja, what time did that -- at that -- what grade
24 were you in when you say you saw MINOR come running out
25 of the room, the bedroom?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
T'Aja J. - Cross-examination by Mr. Thomason

102

1 A. I think I was in first grade.

2 Q. What time did you get out school when you were in
3 first grade?

4 A. Two thirty.

5 Q. Okay. And it may not have been the same time every
6 single day. But usually about what time was it when your
7 ~~mama~~ came home?

8 A. I don't remember.

9 Q. Would it be light outside still, or would it be
10 dark?

11 A. Uh-huh (affirmative).

12 Q. It would still be light outside?

13 A. (No verbal response)

14 Q. And you only saw this happen one time?

15 A. Uh-huh (affirmative).

16 Q. But you never saw, you never saw him touch her in
17 any way?

18 A. (Shook head side to side in the negative)

19 Q. Did she ever tell you he touched her in any way?

20 A. She ---

21 Q. I'm talking about right then?

22 A. No.

23 Q. Okay. I think that's all I have for you, T'Aja.

24 Thank you so much.

25 THE COURT: Redirect?

1 Just one second, sweetheart.

2 MS. REEVES: No, sir.

3 THE COURT: All right.

4 Thank you. Now you may step down.

5 Call your next witness, please.

6 MS. REEVES: Thank you, Judge. The State calls
7 Jonathan White.

8 JONATHAN WHITE,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. REEVES:

12 Q. Mr. White, are you married?

13 A. Yes, ma'am.

14 Q. To whom?

15 A. Samantha White.

16 Q. And where do you work?

17 A. Sargent Metal.

18 Q. And what do you do for that -- for Sargent Metal?

19 A. Drive a forklift.

20 Q. And do you have a daughter?

21 A. Yes, ma'am.

22 Q. And what's her name?

23 A. MINOR

24 Q. And how old is she?

25 A. She ten.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Jonathan White - Direct Examination by Ms. Reeves

104

- 1 Q. Do you see her a good bit?
- 2 A. Yes, ma'am.
- 3 Q. Do you have any other children?
- 4 A. No, ma'am.
- 5 Q. Who is MINOR mother?
- 6 A. Telfia Johnson.
- 7 Q. Do you know Andrew Clemons?
- 8 A. Yes, ma'am.
- 9 Q. And who is he?
- 10 A. That's the father of her other kids.
- 11 Q. At some point did you become aware that something
- 12 had happened to Jonashja?
- 13 A. Yes, ma'am.
- 14 Q. And how did you find out?
- 15 A. Her mama called me. She called me one afternoon.
- 16 Q. And what, if anything, did you do after you found
- 17 out this information?
- 18 A. I took her to the doctor the next day.
- 19 Q. And who -- what kind of doctor did you take her to?
- 20 A. Took her to her doctor.
- 21 Q. Did you end up taking her anywhere else?
- 22 A. Yes. To the -- I think it was the health care, the
- 23 health care place.
- 24 Q. And what happened to MINOR there?
- 25 A. Well, they ran more tests on her, and she went

1 through therapy and everything else.

2 Q. Did she have an interview?

3 A. Yes, ma'am.

4 Q. Did you later have a conversation -- were you able
5 to watch that interview?

6 A. No, I wasn't able to watch it.

7 Q. Did you later have a conversation with your daughter
8 about what had happened to her?

9 A. Yeah, briefly.

10 Q. And without saying all of what she told you, did she
11 tell you when something had happened to her?

12 A. Yes. Finally, she told me what happened.

13 Q. Did she tell you how old she was?

14 A. I'm thinking it was -- she was maybe like seven.

15 Seven, seven and a half, I think.

16 Q. And had it happened to her once or more than once?

17 A. It happened more than once.

18 Q. And did she tell you where it happened to her?

19 A. No. We really didn't get into too much detail. I
20 didn't want to know too much. I just know it happened.

21 Q. No further questions.

22 THE COURT: Cross-examination?

23 MR. THOMASON: May it please the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. THOMASON:

2 Q. Mr. White, you have said -- and I just didn't catch
3 it. When were you told or made aware of these
4 allegations against Mr. Clemons?

5 A. I can't remember that exact date, but ...

6 Q. Just get it as close as you can for me.

7 A. She ten now. I know -- all I know is she was like
8 seven and a half. She was like seven and half. It's
9 been some years. I can't remember exactly what date.

10 Q. Okay. And where did this -- where did the
11 information come from? Who made you aware?

12 A. Her mama.

13 Q. Her mother? Ms. Telfia?

14 A. Yeah.

15 Q. All right. And how long after that did you take her
16 to the doctor?

17 A. The next day, I believe. Yeah.

18 Q. That was Dr. Syad?

19 A. Syad.

20 Q. And do you remember Dr. Syad's findings?

21 A. I believe she -- I believe -- I remember her saying
22 that she had -- it looked like she had been touched, so
23 she had to go -- she referred her to another doctor so
24 they can do further tests on her.

25 Q. But she also said everything looked pretty normal

1 down there, that she had not been penetrated, didn't she?

2 A. That's what -- that's what the further tests was
3 for, I think. She said there was ---

4 Q. No. I'm just talking about what Dr. Syad said.

5 A. Yeah.

6 Q. Okay. Okay. Suffice it to say that all of your
7 knowledge about any of these events and questions are
8 secondhand? In other words, they've been told to you by
9 others. You have no firsthand knowledge of anything that
10 happened, correct?

11 A. Yeah. I have firsthand knowledge at the doctor.

12 Q. Well, no. I'm saying ---

13 A. You talking about the event, what happened?

14 Q. Yes.

15 A. Oh, yeah, it was secondhand.

16 Q. All right, sir. So everything you know was told to
17 you?

18 A. Yeah.

19 Q. All right, sir. Thank you very much.

20 THE COURT: Redirect?

21 MS. REEVES: No, sir.

22 THE COURT: May Mr. White be excused?

23 MS. REEVES: Yes, sir.

24 THE COURT: Any objection?

25 MR. THOMASON: No, sir.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Jonathan White - Cross-examination by Mr. Thomason

108

1 THE COURT: Okay. Thank you, sir. You may be
2 excused.

3 MS. REEVES: Judge, the next witness is on her
4 way. Sorry, we went quicker than I anticipated.

5 THE COURT: Okay.

6 MS. REEVES: So she's on her way. It should
7 not -- I don't think it should take more that hopefully
8 ten to fifteen minutes.

9 THE COURT: Okay. All right. Mr. Foreman,
10 sometimes trying cases is like herding cats. The best
11 made plans, no matter how you make them, you just
12 sometimes have to wait. And this is one of those times.
13 If you'd go back to your jury room. Do you have
14 everything you need back there?

15 MR. FOREMAN: I think so.

16 THE COURT: Okay. Again, if you need anything,
17 Buck will let you know. He'll take care of you. If
18 you'd go back to your jury room, please, sir.

19 (WHEREUPON, the jury exited the open court at
20 approximately 3:39 p.m.)

21 THE COURT: We'll be in recess. Let me know.

22 MS. REEVES: Yes, Judge.

23 (WHEREUPON, court stood in recess for a short
24 break.)

25 MS. REEVES: Judge, I was going to mention for

1 timekeeping purposes and -- you know, what do we need
2 today and tomorrow. I was going to mention that I have
3 two more witnesses to call today that I think we can
4 easily fit in in the next thirty minutes maybe.

5 THE COURT: All right.

6 MS. REEVES: So what I was going to propose --
7 that would leave Stacy Gianiodis, the forensic
8 interviewer, and Dr. Carter. What I was going to suggest
9 is perhaps we come in in the morning but maybe the jury
10 stay out for a little bit so we can do those housekeeping
11 matters like perhaps in-camera Dr. Carter's testimony.
12 Make sure -- that will give us time this evening to watch
13 the forensic interviews, make sure that we can play them
14 without issue. And then take all of that -- those
15 matters up in front of you tomorrow morning instead of
16 the jury waiting.

17 THE COURT: So you would have them come in
18 about ten?

19 MS. REEVES: Like ten, ten-thirty maybe.

20 MR. THOMASON: Maybe eleven.

21 MS. REEVES: He's mumbling eleven.

22 MS. REEVES: So I don't know how long, you
23 know, it will take. But ---

24 THE COURT: Are your tapes done?

25 MS. REEVES: Yes, they are done. And Mr.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Jonathan White - Cross-examination by Mr. Thomason

110

1 Thomason has copies. But of course, neither of us have
2 watched them.

3 THE COURT: So you'll have to look at those
4 this evening. Okay.

5 MS. REEVES: We're actually going to watch them
6 together, make sure they can play in here.

7 THE COURT: Oh, are you? All right. Well,
8 good. I mean, I'm fine to do whatever. I mean, it's not
9 a big deal to me.

10 MR. THOMASON: I just thought that it would
11 make sense for us to watch them together so that, you
12 know, we don't have to sit there and compare notes again
13 tomorrow.

14 THE COURT: I can't hear you, my man.

15 MR. THOMASON: I'm sorry. Usually -- like I
16 say, usually I'm accused of being too loud. We thought
17 we would watch them together so that if any disagreements
18 as to their redactions were found, then we would be, you
19 know, right there on top of it together.

20 THE COURT: Okay.

21 MR. THOMASON: We wouldn't have to sit there
22 and write times down and all of that.

23 THE COURT: I mean, how long do you think that
24 Dr. Carter's testimony is going to take?

25 MS. REEVES: I don't think very long. I really

1 don't. It should not take very long. It's just the
2 questions that we have. Of course, how long we argue is
3 may be more appropriate. So ...

4 THE COURT: Okay. That's fine.

5 MS. REEVES: Okay.

6 THE COURT: That's certainly fine with me.

7 MS. REEVES: Good. So then I thought once --
8 then those are the last two. We can hit the ground
9 running after that.

10 THE COURT: Now, who's your next witness?

11 MS. REEVES: Next is Megan Overton. Megan
12 Overton.

13 THE COURT: Megan Overton?

14 MS. REEVES: Yes, sir.

15 THE COURT: Okay. And you have two more that
16 you propose to put up today after Ms. Overton?

17 MS. REEVES: Megan and one more. So two total.

18 THE COURT: I got you. Okay. Well, we should
19 be able to get that done the way they're going now.

20 MS. REEVES: Yes.

21 THE COURT: Are you ready to proceed, Mr.
22 Thomason?

23 MR. THOMASON: Yes, sir.

24 THE COURT: Are you ready?

25 MS. REEVES: Yes, sir.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Megan Overton - Direct Examination by Ms. Reeves

112

1 THE COURT: You can bring the jury in.

2 (WHEREUPON, the jury entered the open court at
3 approximately 4:06 p.m.)

4 THE COURT: Call your next witness, please.

5 MS. REEVES: Thank you, Judge. The State calls
6 Megan Overton.

7 **MEGAN OVERTON,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. REEVES:

11 Q. Ms. Overton, where do you work?

12 A. Anderson County DSS.

13 Q. And what does DSS stand for?

14 A. Department of Social Services.

15 Q. And how long have you worked there?

16 A. Since October 2008.

17 Q. And what is the general role of the Department of
18 Social Services?

19 A. To protect children and families.

20 Q. And what is your position with them now?

21 A. My current position is I'm in an intake role. I
22 take the reports as they're called in or as someone walks
23 in to make a report.

24 Q. And what is -- what was your position or was that
25 your position back in February 2011?

- 1 A. No, it wasn't.
- 2 Q. What was your position back then?
- 3 A. I was a child protective service investigator.
- 4 Q. And what were your duties and responsibilities as an
- 5 investigator?
- 6 A. To investigate reports that had come in of abuse and
- 7 neglect.
- 8 Q. And did you have a time frame for that?
- 9 A. When a report comes in, we have forty-five days to
- 10 -- that is allotted to us to investigate. Now, if we
- 11 need further time to gather further information to talk
- 12 to someone, to get results to come in, we can get
- 13 extensions.
- 14 Q. And at the end of that time frame, whether it's
- 15 forty-five days or after an extension period, what
- 16 decision do you have to make?
- 17 A. We either indicate the case which means that there
- 18 was a finding of some form of abuse or neglect, or if we
- 19 don't enough, we unfound the case which means -- and that
- 20 closes the case.
- 21 Q. As an investigator, did you receive a referral
- 22 regarding MINOR
- 23 A. I did.
- 24 Q. And when did you receive that?
- 25 A. February 18th, 2011.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Megan Overton - Direct Examination by Ms. Reeves

114

1 Q. And how did that referral come to you?

2 A. After the report is called in or ever how the
3 report's made, it's written up by the intake worker. And
4 that's given to the supervisor, and the supervisor makes
5 that decision if DSS is going to be involved or not. So
6 it was handed to me at that point, so that meant DSS was
7 involved.

8 Q. And what, if anything, did you do after receiving
9 that?

10 A. I investigated the case.

11 Q. And what were the steps to that?

12 A. You make, you know, contact going out to the homes,
13 talking to the people involved, the parties involved.

14 Q. Did you make any other referrals?

15 A. It was referred to law enforcement.

16 Q. And did you -- you went to the home. Is that what
17 you said?

18 A. That's correct.

19 Q. Did you ever meet with MINOR mother?

20 A. I did.

21 Q. And can you tell us about that?

22 A. I met her in my office. And she came up and we
23 discussed the allegations of the report and talked about
24 those.

25 Q. And how did she seem?

1 A. She seemed -- I mean, she was cooperative. You
2 know, once we talked about the allegations concerning her
3 daughter, that's what ...

4 Q. Had she already taken any steps before you got
5 involved?

6 A. She had. She had taken her daughter to the doctors.

7 Q. And what, if anything, did you do at the end of that
8 meeting?

9 A. After we met, I did put a safety plan in place. And
10 that safety plan was just that, you know, she would
11 continue to try to find counseling for her daughter at
12 that time.

13 Q. And what happened next? Or what, if anything,
14 happened with Jonashja?

15 A. She -- well, I forgot the -- I did refer the case to
16 law enforcement, and then that's when a forensic
17 interview was set up in place.

18 Q. And I think you said you visited her home?

19 A. I did visit her home.

20 Q. And what did you find there?

21 A. The home was clean. It was well organized. The
22 kids like to talk to me about their Easter eggs they had
23 gotten. They showed me their rooms. And you know, when
24 we go out to the home, we're, you know, looking for that
25 the basic needs are being met, that the kids are safe in

1 their home and, you know, their needs are being provided.

2 Q. Did you find out at that point who MINOR
3 biological father was?

4 A. Yes. That's Mr. White.

5 Q. And was he involved in her life?

6 A. He is involved.

7 Q. Was Andrew Clemons having contact with the family
8 during this time?

9 A. Not when I had the case, no.

10 Q. And were -- all of the allegations that initially
11 came in, did those prove or turn out to be valid?

12 A. Well, which ones are you talking, like ---

13 Q. When you received this report or this referral from
14 the intake, did you have any concerns or anything that
15 you later found through your investigation that were
16 untrue?

17 A. Not the allegations concerning MINOR

18 Q. And at the end of your investigation period, what,
19 if anything, did you do?

20 A. At the end of the investigation, we staffed -- I
21 staffed my case with a supervisor. And through that we
22 came to the decision that we were going to indicate Mr.
23 Clemons for sex abuse.

24 Q. And then what happens to the case after that?

25 A. After our case is indicated with DSS, it moves on to

1 the treatment portion of the case.

2 Q. And how long can that portion last?

3 A. That can last up to a couple of years to six months.

4 It depends on how -- depending on what the allegations

5 are for that particular family and how the parents

6 cooperate and so forth.

7 Q. No further questions.

8 THE COURT: Cross-examination?

9 MR. THOMASON: The Defense would have no
10 questions for this witness, Your Honor.

11 THE COURT: May she be excused?

12 MS. REEVES: Yes, sir.

13 MR. THOMASON: No objection.

14 THE COURT: Thank you. You're excused.

15 Call your next witness, please.

16 MS. PRICE: Your Honor, the State calls Melissa
17 Partain to the stand.

18 **MELISSA PARTAIN,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. PRICE:

22 Q. And thank you, Sergeant Partain. By whom are you
23 employed currently?

24 A. AnMed Health.

25 Q. Okay. And did you retire from another employment

1 source?

2 A. I'm retired, will be two years in June, from
3 Anderson Police Department.

4 Q. Okay. And when you retired from law enforcement,
5 what was your title with them?

6 A. I was a detective sergeant.

7 Q. And other than currently enjoying retirement, what
8 is it that you do for AnMed?

9 A. I'm a guest ambassador.

10 Q. A guest ambassador?

11 A. Yes.

12 Q. Okay. What were your duties and responsibilities
13 when you were a sergeant investigator?

14 A. I investigated child abuse and elder abuse.

15 Q. And as an investigator, did you ever receive a
16 report involving MINOR

17 A. I did.

18 Q. Was the investigation originally referred to you, or
19 was it handed off to you by somebody else?

20 A. It was handed to me by another detective, Scott
21 Kelly, who initially took the report and faxed the report
22 to Child Adolescent Center Foothills Alliance and then
23 gave it to me.

24 Q. Did you ever interview MINOR yourself?

25 A. No, I did not.

- 1 Q. Do you know if an interview of MINOR was ever
2 conducted?
- 3 A. Not by law enforcement.
- 4 Q. Was she referred to any groups that would have
5 conducted an interview by law enforcement?
- 6 A. We usually try not to interview the children that
7 have been allegedly abused. We let a forensic interview
8 take place at the Child Adolescent Center. So that's
9 where she was interviewed.
- 10 Q. Okay. And that's where she was interviewed?
- 11 A. Correct.
- 12 Q. And law enforcement requested that that be done?
- 13 A. Right.
- 14 Q. And you said it took place where precisely?
- 15 A. At the Child and Adolescent Center Foothills
16 Alliance on Calhoun Street.
- 17 Q. Foothills Alliance?
- 18 A. Right.
- 19 Q. And who performed that interview? Do you know who
20 ---
- 21 A. Sallie [sic] Gianiodis.
- 22 Q. Say that again?
- 23 A. Sal -- Stacy Gianiodis.
- 24 Q. Without telling us what MINOR said, did she make
25 a disclosure during that interview concerning sexual

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Direct Examination by Ms. Reeves

120

1 abuse that had been committed against her?

2 A. She did.

3 Q. And through your investigation, were you able to
4 determine when and where this abuse likely occurred?

5 A. It occurred in Anderson County.

6 Q. And when?

7 A. In 2009, '10.

8 Q. Okay. Was a forensic interview also conducted on
9 T'Aja White?

10 A. There was.

11 Q. And for what purpose?

12 A. To make sure she was or was not a victim and also,
13 make sure -- see if she was a potential witness.

14 Q. A witness to?

15 A. To the sister's alleged allegations.

16 Q. Okay. And when and where did T'Aja's interview
17 occur?

18 A. At the Child and Adolescent Center.

19 Q. Who conducted that interview?

20 A. Stacy Gianiodis.

21 Q. Do you know if a medical exam was ever performed on

22 MINOR

23 A. Yes, ma'am.

24 Q. Okay. Where did that take place?

25 A. It also took place at the Child and Adolescent

- 1 Center.
- 2 Q. Okay. Do you know who performed that exam?
- 3 A. Dr. Sallie Carter.
- 4 Q. What else did you do as part of your investigation?
- 5 Did you obtain any statements from anyone?
- 6 A. From the mother, Telfia Johnson.
- 7 Q. Okay. Through all of the investigation that you
- 8 were involved in, were you able to identify a suspect in
- 9 this case?
- 10 A. We did. After extensive investigation, follow-up
- 11 and interviews, we finally came up with Andrew Clemons,
- 12 known to us as Moochie.
- 13 Q. Okay. Did you at any point try to speak with Mr.
- 14 Clemons?
- 15 A. We did. We went out to his father's house. We went
- 16 out and tried to locate him through cousins and
- 17 relatives. We also made phone calls to him and talked
- 18 with him and tried to set up interview times, which the
- 19 dates we set up or the times we set up. He never showed
- 20 up.
- 21 Q. Okay. How old would Andrew Clemons, the Defendant,
- 22 have been during the alleged incident dates?
- 23 A. I believe he was about twenty-nine.
- 24 Q. And as a result of your investigation, did you bring
- 25 any charges against this Defendant?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Cross-examination by Mr. Thomason
Melissa Partain - Redirect Examination by Ms. Reeves

122

1 A. We did.

2 Q. And what were those charges?

3 A. Criminal sexual conduct in the first degree.

4 Q. Aside from testifying today, did you have any
5 further involvement in this case?

6 A. No, ma'am, I have not.

7 Q. Okay. One moment, please. Okay. Thank you,
8 Sergeant Partain. Please answer questions that Mr.
9 Thomason may have for you at this time.

10 A. Yes, ma'am.

11 MR. THOMASON: May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. THOMASON:

14 Q. You just mentioned an extensive investigation. But
15 I mean, you said that you never talked to the child and
16 you never took a statement from the child, the victim,
17 that is, or the witness; is that correct?

18 A. That's correct.

19 Q. And that's what you consider to be extensive?

20 A. Yes, sir, it is.

21 Q. Okay. Thank you very much.

22 MS. PRICE: Brief redirect, Your Honor.

23 THE COURT: In response.

24 MS. PRICE: Yes, sir.

25 REDIRECT EXAMINATION

1 BY MS. PRICE:

2 Q. Sergeant Partain, is the reason that those
3 interviews were not conducted by yourself because other
4 members of law enforcement or other agencies had those
5 responsibilities?

6 A. That's correct. And also to keep the traumatized
7 child from experiencing any more trauma than she has to,
8 we facilitated one location so she will only have to do
9 this one time. And I went and I witnessed this, and the
10 forensic interviewer was there.

11 Q. And was this a typical sexual assault investigation?

12 A. Yes, it was.

13 Q. Thank you. No further questions.

14 RECCROSS-EXAMINATION

15 BY MR. THOMASON:

16 Q. I didn't say that an extensive investigation didn't
17 take place; it's just you pretty much didn't do it.
18 Other people did.

19 A. That's correct. I observed.

20 Q. Thank you.

21 THE COURT: Thank you. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Foreman, I have some scheduling
24 matters. Would you take your jury to the jury room for
25 one second, please?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Recross-examination by Mr. Thomason

124

1 (WHEREUPON, the jury exited the open court at
2 approximately 4:20 p.m.)

3 THE COURT: Let me say this to the State.

4 You're going to clarify or I'm going to clarify with the
5 jury this idea of forensic interview, okay?

6 MS. REEVES: Yes, sir.

7 THE COURT: You have given the misimpression to
8 this jury that that's something that has some kind of cut
9 above. And it doesn't. And it's not going to go to the
10 jury with that impression. I'm not talking about you,
11 Officer. I'm talking about the whole line of
12 questioning. You said in your opening statement forensic
13 interviewer in their professional capacity, and it's been
14 going on the whole trial. And I'm going to correct it or
15 you're going to correct it, okay?

16 MS. REEVES: Yes, sir.

17 THE COURT: And I'm going to give you
18 forewarning. Okay? Because that is not the case. I
19 read the criminal case again. They're very, very
20 limited. And I tell you what. I about stopped you
21 myself. That was totally not in accordance with the
22 criminal -- now, I shouldn't say totally. It goes up to
23 the corner and passes it. Okay? Now, that being said
24 and done, are you done for the day?

25 MS. REEVES: Yes, sir.

1 THE COURT: Okay. I want y'all to review those
2 videos, get those resolved. If you have any problem, I'm
3 going to be downstairs. We're going to bring the jury in
4 here in just a second, and we'll be in recess. And you
5 can do that. Just one second.

6 I don't mean to fuss at you because I know it's new
7 ground. And you have a hard type of case to try. But
8 you know, I brought up this to you last week. Criminal
9 is clear, very clear. Okay? So it needs to be made
10 clear to the jury that this person -- and I'm sure she's
11 very good in what she does -- is not an expert.

12 MS. REEVES: Yes, sir.

13 THE COURT: Okay?

14 MS. REEVES: Absolutely.

15 THE COURT: All right. Would you bring the
16 jury in?

17 (WHEREUPON, the jury entered the open court at
18 approximately 4:23 p.m.)

19 THE COURT: All right. Mr. Foreman, for
20 scheduling purposes, let me tell you where we are. We
21 have some matters we're going to take up for the
22 remainder of the afternoon, so we're going to excuse the
23 jury. We have some other matters that we will get into
24 in the morning before you get here. So we're going to
25 ask the jury to be in its jury room at about ten fifteen.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Recross-examination by Mr. Thomason

126

1 And then we'll get you back in the courtroom as soon as
2 we can. Do you have everything you need for the night?

3 MR. FOREMAN: I believe so.

4 THE COURT: Okay. If each of you would, leave
5 your notes in the jury room. And let me remind you not
6 to speak amongst yourselves or with anybody else. And
7 please do not engage in any independent jury research,
8 okay? But I'm going to excuse you for the evening.
9 Thank you. See you in the morning.

10 (WHEREUPON, the jury exited the open court at
11 approximately 4:25 p.m.)

12 THE COURT: All right. Anything from the
13 State?

14 MS. REEVES: No, sir.

15 THE COURT: Okay. From the Defense?

16 MR. THOMASON: No, sir.

17 THE COURT: All right. We'll be in recess
18 until nine o'clock in the morning.

19 MS. REEVES: Yes, sir.

20 THE COURT: Okay. Be ready to go. Let me know
21 what y'all want to do about how you intend to -- you
22 don't have to tell it to Scott or Mr. Thomason. I just
23 want to know what it is you're going to plan on doing to
24 make sure the jury understands the status of a forensic
25 examiner, okay?

1 MS. REEVES: Yes, sir.

2 THE COURT: If you would. You don't have to
3 tell me now.

4 MS. REEVES: Okay. Well, I'm just making sure
5 that -- I mean, I am not going to offer her as an expert.
6 I'm going to go through the ---

7 THE COURT: The innuendo that's been going
8 throughout this trial is that they have some kind of
9 special status and special abilities, and ---

10 MS. REEVES: But I can ask her about her
11 training, right? I mean, that she ---

12 THE COURT: Let me just tell you, I'm
13 forewarning you right now. If you step over the line,
14 which I felt like you did today ...

15 I felt like you did.

16 MS. PRICE: Sir, I ---

17 THE COURT: No, ma'am, I'm not going to ask you
18 anything. I'm just telling you what I think. I'm going
19 to stop it, and I'm going to tell them they're like any
20 other witness that appears in this courtroom, and their
21 testimony is not entitled to any higher consideration
22 than anyone else. Okay? So I'm just trying to ---

23 MS. REEVES: Okay.

24 THE COURT: I tried to tell you last week about
25 it.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Recross-examination by Mr. Thomason

128

1 MS. REEVES: Yes, sir.

2 THE COURT: All right. But I agree that you
3 should be able to talk to them about their background.

4 MS. REEVES: Right. You know, that's all I'm
5 going to do. Her experience, her training to do it and
6 how often she's done it.

7 THE COURT: I'm just going to remind you the
8 Cromer case. I read it again thoroughly, thoroughly at
9 lunchtime. There is a list of dos and don'ts in there.
10 Okay? And just please stay in line with that.

11 And listen, I never -- you've got an uphill battle
12 with these kind of cases. I understand. However, if we
13 go too far afield on these cases, it's going to be a
14 problem for everybody, including, you know, the Court,
15 and you ---

16 MS. REEVES: No, I understand.

17 THE COURT: --- would have to try the case
18 again. That's what I'm trying to avoid. Okay?

19 MS. REEVES: I understand. I'm trying to walk
20 that line and not come anywhere near it. So ...

21 THE COURT: Well, I mean, your definition and
22 mine of near are obviously two different things.

23 MS. REEVES: Yes.

24 THE COURT: But all that being said, you need a
25 little reign to go try your case.

1 MS. REEVES: Yes, sir.

2 THE COURT: All right. We're done. We'll be
3 in recess until the morning. Okay?

4 MS. REEVES: Thank you.

5 THE COURT: Thank you.

6 (WHEREUPON, court stood in recess for the day at
7 approximately 4:28 p.m.)

8 **May 14, 2013**

9 (WHEREUPON, court convened and the following
10 proceedings were had commencing at approximately
11 9:15 a.m.)

12 THE COURT: All right. Let me put this on the
13 record. I met with the attorneys before coming into the
14 courtroom today. I had stated on the record yesterday
15 that because of comments in the opening and because of
16 testimony we received during the trial there was
17 impression or innuendo that the forensic examiner is an
18 expert. And I know when we've dealt with that in the
19 past, they have been qualified as experts. But because
20 of the Cromer case, that's no longer the case. And I
21 actually told Ms. Reeves that I thought what I was going
22 to do was if they didn't make clear to the jury that
23 she's not an expert in the law ...

24 And this no -- are you here? Is that you back
25 there?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Melissa Partain - Recross-examination by Mr. Thomason

130

1 MS. GIANIODIS: Yes, sir.

2 THE COURT: I certainly mean no personal
3 dispersion to you.

4 MS. GIANIODIS: I understand.

5 THE COURT: Okay. But that I was going to make
6 clear to the jury that she is not an expert. I thought
7 about that over the evening, and I really am not smart
8 enough, I don't believe, to be able to address that issue
9 on the record without somehow tainting the evidence. But
10 I have reviewed with the attorneys the prohibitions, for
11 lack of better terms, or the guidelines or guidance
12 that's spelled out in a criminal case and what is
13 acceptable and what is not acceptable for forensic
14 examiner testimony. And I'm just reminding them that we
15 need to stay close to the mark on that. Okay? And I
16 know that's not an easy task.

17 But that being said, I'm not going to tell the jury
18 this person is not an expert because I don't see how I
19 can do that. And I think Ms. Reeves' comment to me is
20 that we intend just to treat her like any other witness
21 is probably the appropriate way to deal with it.

22 Further, I mentioned and I brought it up to the
23 attorneys -- they said they didn't feel like it was a
24 problem. But I feel like out of an abundance of caution
25 -- we have Dr. Carter who's going to testify today. Is

1 Dr. Carter here?

2 MS. REEVES: Yes, sir, I think she was -- yeah.

3 THE COURT: Dr. Carter, let me ask you this.

4 DR. CARTER: Yes.

5 THE COURT: Have I ever been -- my name is

6 Lawton McIntosh. Have I ever been involved in any

7 litigation with you back when I was a lawyer.

8 DR. CARTER: Not that I'm aware of.

9 THE COURT: Okay. And I'm not aware of it
10 either. But for some reason, I have some impression I
11 had. We checked it and I didn't come up with it. I was
12 telling the attorneys that it was involving a real estate
13 matter.

14 DR. CARTER: Yeah. I know what the connection
15 is, but it doesn't have really to do with me.

16 THE COURT: That's what I thought too, but I
17 wanted to make sure that I disclosed that to make sure
18 that nobody had a problem with me continuing on. My
19 memory, if it is in fact you -- of course, I can't tell
20 you that it is -- it was involving a house that was put
21 on a lot allegedly in contravention to some deed
22 restrictions. But it has nothing to do with your
23 professional career or anything like that. It wouldn't
24 -- it certainly wouldn't -- it wouldn't impact on my
25 ability to be fair and impartial in this case. I just

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

132

1 wanted to make sure that, you know, out of an abundance
2 of caution I disclosed that if, in fact, that was you.
3 I'm not sure it is or not.

4 DR. CARTER: I don't recall those
5 circumstances.

6 THE COURT: Well, then obviously I'm just
7 mistaken then. And I just wanted to be, out of an
8 abundance of caution, safe about that.

9 Okay. With all of that being said and done, then
10 the idea this morning is we had a pre-trial Thursday when
11 we were going over the forensic examiner's interview and
12 redaction of that tape. Ms. Reeves indicated that she
13 had some testimony that she intended to elicit from Dr.
14 Carter, and she described it. And I just wanted to see
15 it before we got it out in front of the jury to see, you
16 know, how far we're going to go with it. I just wanted
17 to see it in-camera before we went further with it so I
18 could rule on it. Okay?

19 MS. REEVES: Yes, sir.

20 THE COURT: At this point, let's bring Dr.
21 Carter around, swear her and let's do that, please.

22 **SALLIE CARTER, M.D.,**

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 IN-CAMERA DIRECT EXAMINATION

25 BY MS. REEVES:

1 Q. Dr. Carter, we're going to -- I'm going to ask you a
2 few questions basically without the jury being present so
3 hopefully we can talk a little bit freer. But we're
4 going to go through what your testimony hopefully will
5 later be. So what is your position currently?

6 A. I'm a physician at the Anderson Oconee Pickens Child
7 and Adolescent Mental Health Center. And for the last
8 ten years I've done the child sexual abuse exams for
9 Foothills Sexual Trauma Center.

10 Q. Okay. And what is your undergraduate degree?

11 A. Psychology. That was a long time ago.

12 Q. Where was that from?

13 A. Mercer University.

14 Q. And do you have a master's?

15 A. I do.

16 Q. From where?

17 A. Yale Divinity School.

18 Q. And when did you decide to go to medical school?

19 A. When I was about twelve.

20 Q. Where -- what medical school did you go to, and when
21 did you graduate?

22 A. I went to the Medical College of Georgia in Augusta,
23 and I graduated in 1986.

24 Q. And did you do a residency?

25 A. I did an internship at Emory University Affiliated

1 Hospitals which included Grady Memorial Hospital and a
2 pediatric residency at Yale New Haven Hospital in New
3 Haven, Connecticut.

4 Q. And after your residency, what did you do?

5 A. I came to Anderson.

6 Q. And where did you work?

7 A. I had a private practice for about eleven or twelve
8 years, and then it became the practice, the teaching
9 practice, for the Family Practice Program, the pediatric
10 practice. And then about nine and a half or ten years
11 ago, I left that and went to work at the Anderson Oconee
12 Pickens Department of Mental Health.

13 Q. So in your own practice, you said it became a
14 training practice; is that right?

15 A. Yes. It was a large pediatric practice. And so the
16 pediatric aspect of the family medicine training, that's
17 where they rotate through, and that's where, you know,
18 the patient load comes from.

19 Q. And what patients -- what type of patients did you
20 see while you were in your own practice?

21 A. I've always seen primarily the Medicaid population,
22 but it was children, you know, down from -- I guess the
23 oldest person I would see would be, say, twenty-one or
24 twenty-two if they have pediatric-type problems. And
25 then, of course, for about thirteen years, I was the

1 director of the newborn nursery. So I saw preemies and
2 newborns. A thousand a year about.

3 Q. A thousand a year. And as part of them being your
4 patients, did you have to perform exams on them?

5 A. Yes.

6 Q. Including vaginal exams on the female children?

7 A. Well, vaginal inspection or external inspection,
8 because we don't typically do a speculum exam or any sort
9 of internal exam on newborns or young children.

10 Q. And during that practice, did you treat children
11 that may have been victims in sexual assaults?

12 A. Yes.

13 Q. You mentioned also doing some work with the Child
14 Advocacy Center?

15 A. Yes.

16 Q. And that's been for the last ten years?

17 A. Yes.

18 Q. And what are your duties and responsibilities there?

19 A. I see children for genital exams. So I mean, I do a
20 full pediatric exam, but primarily it's for genital exams
21 and documentation.

22 Q. And how many sexual assault exams would you say you
23 perform on children in about a month?

24 A. Oh, in a month it's probably anywhere from three to
25 nine. It's a wide range because some months we don't

1 have as many referrals as other months.

2 Q. So how many exams would you say you've done in a
3 year?

4 A. Well, in a year?

5 Q. Or in the last ten?

6 A. Usually, about fifty. It averages out to about
7 fifty.

8 Q. Did you receive any specialized training to perform
9 these sexual assault exams?

10 A. Yes.

11 Q. What type?

12 A. There's an organization nationwide -- I'm sorry, I
13 may not -- I'm going to stumble on the name of it. I
14 can't remember the name. But at any rate, all that they
15 do is train physicians to do exams for sexual abuse and
16 sexual assault. And I've had both the basic and the
17 advanced course. And one of those I did in Minneapolis,
18 St. Paul/Minneapolis. You know, they're like sister
19 cities or twin cities. And the other was in -- at
20 Scottish Rite in Atlanta.

21 Q. Have you previously been qualified as an expert in
22 the area of child sexual assault examinations?

23 A. I have.

24 Q. And do you know how many times approximately?

25 A. Somewhere between thirty-five and fifty is a pretty

1 good guess, I guess.

2 MS. REEVES: At this point in the trial, we'd
3 offer her as an expert in the area of child sexual
4 assault exams.

5 THE COURT: The area is child sexual assault
6 ---

7 MS. REEVES: Examination.

8 THE COURT: --- examination? All right.

9 Mr. Thomason, do you wish to voir dire this witness
10 with regard to her expertise?

11 MR. THOMASON: No, sir.

12 THE COURT: Do you stipulate that Dr. Carter is
13 an expert in the area of child sexual assault
14 examinations?

15 MR. THOMASON: Yes, sir.

16 THE COURT: Okay. Very well. Then she'll be
17 stipulated to be an expert in that area.

18 MS. REEVES: Excellent. Now, for the jury, I'd
19 like for them to hear her qualifications.

20 THE COURT: Yeah. I mean, all of this has been
21 in-camera. You're going to have to do it again. But you
22 know, for the purposes of the record, she's an expert.
23 Okay.

24 MS. REEVES: Thank you. If it's okay, I would
25 go on because the question of the photographs that Dr.

1 Carter took of my victim were raised at an earlier
2 hearing. So I'd like for you to hear her testimony on
3 that.

4 THE COURT: Yes, ma'am.

5 MS. REEVES: In addition, I think we're -- now,
6 that you've qualified her, I think that we still need to
7 make sure that -- as to what she's going to talk about is
8 her specific findings of the exam. We want to make sure
9 that those are reliable and allowable.

10 THE COURT: Just one second. That's not your
11 client back there, is it?

12 MR. THOMASON: No.

13 THE COURT: Okay.

14 MR. THOMASON: I don't know who he is.

15 THE COURT: Okay. I just wanted to be safe.

16 All right. Go ahead.

17 Q. Dr. Carter, did you perform an examination on

18 MINOR

19 A. I did.

20 Q. And when did you perform it?

21 A. I would need to have a copy of the record to see the
22 date on it.

23 Q. Let me pass you your -- pass up your report to you.

24 A. This is dated in my handwriting April the 4th, 2011.

25 Q. Okay. And how old was MINOR when you performed

1 the examination on her?

2 A. Her date of birth at that time was June the 12th,
3 2002, so she would have been just shy of nine years of
4 age. She would have been eight years old.

5 Q. Okay. Can you describe what type of exam you
6 normally perform on MINOR

7 A. As I indicated to you, I do a typical pediatric
8 examination. Oh, you've given me two records. The other
9 one is apparently a sibling or possibly a sibling. I do
10 a typical pediatric examination. I did one on Monday on
11 a similar-aged child. I evaluate the eyes, ears, nose
12 and throat, the neck to make sure if there aren't any
13 enlarged lymph nodes or enlarged thyroid. The lungs, the
14 heart, the abdomen, checking for masses or tenderness or
15 any abnormality of the spine. The extremities and then
16 the genitalia, which is done with a colposcope. And a
17 colposcope is a medical device that -- it's kind of like
18 a telescope. It gives magnification, and it also has a
19 digital camera on it so that I can record digitally the
20 images that I'm viewing.

21 Q. And so how does this colposcope aid in your
22 examination, a genital examination?

23 A. Well, it just gives a lot higher resolution than the
24 naked eye. And I've done plenty of exams with the naked
25 eye, but you can't -- you know, they're small structures.

1 The younger the child, the smaller the structures. And
2 so it magnifies everything up to about twenty times
3 normal. And as I say, it has a digital camera on it so
4 that the images can be recorded and reviewed for closer
5 inspection.

6 Q. And did you use that colposcope on MINOR in your
7 exam?

8 A. I did.

9 Q. What were your findings in MINOR exam?

10 A. There were no abnormalities on physical exam except
11 for the genital area where she had an absent posterior
12 hymen. I could see clearly into the vagina, and I was
13 not able to document transections or scars because when
14 there isn't any hymen left, you don't have that tissue to
15 see scars on.

16 Q. So can you describe what a hymen is generally?

17 A. A hymen is a thin, in a young child, almost
18 translucent piece of mucus membrane that's shaped
19 generally -- generally, it's described as being shaped as
20 annular or concentric, concentric being, you know, only
21 partially around the vaginal opening and annular being
22 almost completely around the vaginal opening. And it
23 usually, in a young child, hides the opening of the
24 vagina. It's just a little piece of mucus membrane
25 tissue that's there at birth and is present even in

1 mature females, but takes on a different appearance after
2 puberty or during and after puberty.

3 Q. And so what would be significant in regards to
4 MINOR findings?

5 A. Well, in an eight-year-old who -- rarely we will see
6 an eight-year-old who has started her menstrual cycle and
7 has estrogenized tissues, but that would be rare. That
8 would be the exception. In this case, this child was
9 prepubertal, clearly prepubertal. And the absence of the
10 hymen was significant.

11 Q. And so in your expert opinion, what could -- is this
12 an injury?

13 A. Something caused the tissue to be torn and to
14 recede, to become, basically become mucus membrane tissue
15 like the rest of the tissue. Typically, in that age
16 child, in a prepubertal child, we would see
17 unestrogenized tissue. That is the hormone estrogen has
18 not acted on the tissue so that it looks kind of pale and
19 sometimes very vascular, sometimes almost translucent.
20 You can almost see through it. A very thin little rim of
21 tissue which is intact, smooth and -- you know, it can ..

22 There are various other abnormalities that you can
23 see in hymens. For instance, some children, some girls
24 have imperfect hymens. There is no vaginal opening
25 whatsoever and that procedure has to be dealt with. Now,

1 that condition has to be dealt with medically. In some
2 children we see what was called a septate hymen or a
3 hymen with, you know, more than one opening. There are
4 some variations on the theme. But it's kind of like
5 noses. Nearly everybody has one.

6 Q. And so is the absence of a hymen something that you
7 can be born with, one of those abnormalities that you
8 were speaking of?

9 A. Well, again, seeing a thousand newborns a year
10 roughly, you know, a half or sixty percent would be
11 females, I have never seen that nor have I seen it
12 recorded in the medical literature.

13 THE COURT: What was that that you've never
14 seen, Doctor?

15 THE WITNESS: Absence of a hymen.

16 THE COURT: Oh, okay.

17 Q. And so ---

18 THE WITNESS: Congenital abnormality.

19 THE COURT: Got you.

20 Q. So what is this absence of a hymen consistent with?

21 A. Well, I didn't say that it was an absent hymen. I
22 said it was an absent posterior hymen.

23 Q. Sorry.

24 A. Meaning that there was residual tissue, kind of
25 around the edges, but nothing posterial. And that's

1 typically where injuries appear in penetrating type. You
2 know, that's typically where abnormalities appear after
3 penetrating injuries.

4 Q. Okay. I am going to -- did you -- as part of your
5 examination, you stated that your colposcope has a
6 digital camera attached; is that correct?

7 A. It does.

8 Q. And did you take some images during your exam of

9 MINOR

10 A. I did.

11 (WHEREUPON, State's Exhibit Number 3 was marked for
12 identification only.)

13 Q. Dr. Carter, I'm going to show you what's been marked
14 as State's Exhibit Number 3. Can you tell me what this
15 is a picture of?

16 A. This is a picture of a prepubertal child's, female
17 child's, genital exam with an absent posterior hymen.

18 Q. Is that from MINOR exam?

19 A. Well, it doesn't have a name on it. But I have
20 reviewed these pictures on the computer, and this appears
21 to be MINOR exam.

22 Q. Okay. And again, what are you looking at in her in
23 that picture?

24 A. I see a small amount of hymen laterally and none
25 posteriorly, and the light shines directly into the

1. vagina.

2. THE COURT: Would you mind defining for me what
3. you mean by posteriorly and laterally, please?

4. THE WITNESS: Oh, yes. That's a great
5. question. Because children can be examined in different
6. positions. And in this case, posteriorly means nearest
7. the anus. I mean, it's a typical female lithotomy
8. position so that the urethra, the anterior and the
9. perineum, which is the tissue that's cut during child
10. birth for the episiotomy, it's posteriorly, and then the
11. anus is even further back than that. And I suppose you
12. could say inferior because you're talking about, you
13. know, up and down. But generally, we refer to it
14. posteriorly.

15. THE COURT: And laterally would be to the
16. sides?

17. THE WITNESS: Yes.

18. THE COURT: Okay. I got you. Thank you.

19. Q. And I think you've already described how this might
20. differ from that of a normal child of this age?

21. A. Yes.

22. (WHEREUPON, State's Exhibit Number 4 marked for
23. identification.)

24. Q. Okay. So now I'm going to show you what's been
25. marked as State's Exhibit Number 4 in preparation for

1 this case. Would you tell me what that is a picture of?

2 A. Yes. This is a similar aged child, same colposcope,
3 same position, but a dramatically different picture
4 because this is a normal hymen.

5 Q. And what would you characterize as a normal hymen
6 again, please?

7 A. Well, again, usually you're not -- I usually use
8 this, Your Honor, to say that it's a piece of tissue
9 that's shaped like that, but much thinner. It's mucus
10 membrane, and it's like the mucus membrane inside your
11 mouth or inside your nose. It's moist and sometimes so
12 thin it's translucent. It's very, very smooth in
13 appearance, and it usually covers a large part of the
14 opening of the vagina so that you can't see directly into
15 the vagina. And it's normally there in children.

16 THE COURT: Okay.

17 Q. Dr. Carter, that's about it.

18 THE COURT: All right. Mr. Thomason, what, if
19 any, objections would you have to the admission of any of
20 these photographs, exhibits 3 or 4, or the related
21 testimony to those photographs, please, sir?

22 MR. THOMASON: Well, first of all, Your Honor,
23 yesterday in MINOR testimony, she testified that he
24 never penetrated either her anus or her vagina. She said
25 that out of her own mouth. So you know, I don't know why

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

146

1 we really need this testimony at all. Because if she's,
2 out of her own mouth, saying he never put anything inside
3 me, then why are we -- how could he have possibly caused
4 whatever has been caused?

5 THE COURT: So you're saying it's not probative
6 to the facts in this case, I guess. Is that what you're
7 saying?

8 MR. THOMASON: Yes, sir.

9 THE COURT: Ms. Reeves, I do recall the child
10 testifying yesterday that there was no penetration either
11 vaginally or anally, if I'm not mistaken. I think that
12 orally there was some different testimony.

13 MS. REEVES: Yes, sir.

14 THE COURT: But the other two, I think that she
15 said that it did not occur.

16 MS. REEVES: Yes, sir. And I think her
17 forensic interview is a little bit different. What she
18 remembered on the forensic interview was that he did try
19 to put his private part or his wee wee, I think she said,
20 between her butt. So there is -- the interview on the
21 tape is a little bit different than what she testified to
22 yesterday. However ---

23 THE COURT: Well, let me ask you this.
24 Assuming -- and I seem to recall that there was some
25 testimony to that regard on the tape, but that was

1 anally, not vaginally; is that correct?

2 MS. REEVES: Well, that's going to kind of be
3 my argument. I mean, I had the mom testify that she
4 didn't know what her anatomy was. And so she knows that
5 he was rubbing his penis between her legs, but -- I'm
6 going to argue that she doesn't even know that she has
7 two openings down there other than bathroom functions.
8 And so we have this injury that is consistent with
9 penetration. And there's been no other reported injury
10 that she's suffered, so how -- like a bike accident or
11 falling on a fence or something to that degree. So how
12 else did this penetrating injury get there other than
13 when he was rubbing, he penetrated however slight.

14 Part of my other questions that I didn't ask Dr.
15 Carter that we intend to do at trial was would this --
16 would a penetration of the vagina -- would that hurt,
17 would that bleed? Some of those things that didn't
18 happen to MINOR but could still cause this injury.

19 THE COURT: Say that again, please.

20 MS. REEVES: I was going to ask Dr. Carter if
21 causing an absent posterior hymen consistent with
22 penetration, would hurt or would bleed a person. And I'm
23 anticipating her answer to be no because MINOR said,
24 you know, on the interview that it did not hurt. It did
25 not bleed. Her mother asked her that. So she may not

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

148

1 know if this penetration occurred however slight. It
2 could be something that occurred and she didn't know.
3 All she knew was that there was rubbing. She's eight.
4 She doesn't know what he's doing with his penis on her
5 private part.

6 THE COURT: Well, let me ask you this, Dr.
7 Carter. Clearly, Dr. Carter is an expert in the field.
8 I mean, there's no question. Can you say to a reasonable
9 degree of medical certainty that some type of intrusion
10 caused the hymen not to be present in this specific case?

11 THE WITNESS: Yes, something caused the hymen
12 not to be present. And that would be certainly
13 consistent with a penetrating type of injury. Now, other
14 types of injuries can cause hymenal damage and urethral
15 damage. And I've seen other types of injuries cause
16 damage in the genital area, and I could comment on some
17 of those.

18 And I'll also say, Your Honor, that I could comment
19 on the -- both the literature and my own personal
20 experience of children's understanding and memory of and
21 you know, way of dealing with things they are unfamiliar
22 with in the genital area. They don't really have a
23 language to describe what happened, as the D.A. has
24 suggested. And a lot of times their testimony is
25 incomplete. There's a certain percentage of young

1 teenagers who are pregnant who report they've never had
2 intercourse at all of any kind, you know. And so unless
3 there are a lot of virginal conceptions out there, we
4 have a problem.

5 THE COURT: And I hear you. Here's the concern
6 I have and I think that is being raised, is that you're
7 introducing a certain degree of speculation into this
8 case, I believe, from what you're saying and what Dr.
9 Carter is saying. And what I -- and you correct me,
10 please. And I want you to feel free to. But what you're
11 saying is that the absence of this child's hymen in this
12 case could have been caused by a physical intrusion?
13 That normally it would be there in a child of her age
14 because that's what you see in the population based on
15 your experience and the literature. But you can't say to
16 a reasonable degree of medical certainty that the event
17 that this gentleman is being charged for caused the
18 absence to occur. Is that ---

19 THE WITNESS: That is exactly right. And a lot
20 of times I even write that -- well, in fact, I wrote in
21 this one it's consistent with a penetrating injury. But
22 if there are other types of injuries, for example, a
23 child who falls on a fence post or something like that.

24 THE COURT: Bicycle? Would a bike ---

25 THE WITNESS: Yeah, a bicycle. It depends on

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

150

1 what -- like if it was the handlebar, you know, a hoe, a
2 rake lying out in the yard, one of those stiff pointed
3 rakes, you know. There's just all sorts of injuries. I
4 saw a child once who had fallen on the faucet of the tub.
5 And you know -- so there's just all sorts of things that
6 can cause genital injuries. And so although I can say
7 that it is consistent with penetration, I cannot tell you
8 what caused the injury.

9 MS. REEVES: But she can tell you, as part of
10 her exam ...

11 Correct me, Dr. Carter, if I'm wrong.

12 THE COURT: It was not there.

13 Q. You asked if she has had any other types of injuries
14 to her vaginal area?

15 A. We do ask. Not in those words but, yes, we
16 interview generally the parents about the types of
17 injuries the children have had. Surgeries, injuries.

18 THE COURT: Mr. Thomason, I'll be glad to hear
19 you further.

20 MR. THOMASON: Yes, sir. Well, you know,
21 expanding on a theme that I initially brought up, we
22 don't know the who, what or when of this injury. We
23 can't -- we don't have any testimony that's going to say
24 that it was not caused by some other source, that it's
25 any more likely than Mr. ---

1 THE COURT: Well, you know, going back -- let
2 me -- go ahead. I'm sorry.

3 MR. THOMASON: Well, another point I was going
4 to make is that this bit about not knowing your body -- I
5 mean, on the tape she was eight years old. And she says
6 specifically, he rubbed it on my butt. And she
7 specifically says, he did not put it in my butt. She
8 never even mentions vagina at all in the tape. She is
9 now two years older. And she testified from that witness
10 stand yesterday after two years -- which I'm sure she has
11 been educated about her body. If she wasn't educated
12 about it then, she sure is now. And she testified that
13 he never put anything inside her. He never penetrated
14 her. So in addition to that, what's going to follow are
15 these horrifying -- well, to me they're horrifying --
16 pictures of little girls' vaginas. And then they're even
17 going to try to put in pictures of other little girls'
18 vaginas ---

19 THE COURT: She just put two pictures in. One
20 of the victim and one of a comparison showing the hymen
21 present, one not present.

22 Is that correct?

23 MS. REEVES: Yes, sir.

24 MR. THOMASON: Well, you know, I don't care,
25 you know, the ---

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

152

1 THE COURT: Well, let me -- here's what I was
2 driving at a minute ago. I was looking at the case of
3 Graves versus C.A.S. Medical Systems. And as you guys
4 know or show know, in the last couple of years the
5 Supreme Court has given several pronouncements about
6 becoming experts -- or not becoming experts -- about
7 expert testimony and the judge's job as being the
8 gatekeeper. And number one, you have -- number -- is the
9 information that is sought to be put forth something that
10 would be the subject of expert testimony in that it's not
11 -- it's helpful to the jury understanding the facts of
12 the case. And for a lack of better terms, it's not
13 something that's subject to everyday knowledge and common
14 understanding of the lay person. Okay? And I know
15 that's not the -- it says if scientific, technical or
16 other specialized knowledge will assist the trier of fact
17 to understand the evidence or determine the fact at
18 issue. Well, clearly, it falls -- that testimony falls
19 within that, correct?

20 MR. THOMASON: I don't have any problem ---

21 THE COURT: Well, hold on. Hold on.

22 MR. THOMASON: I'm sorry.

23 THE COURT: Just do you agree with me that the
24 subject of Dr. Carter's testimony is something that is
25 appropriate for an expert to testify to? In other words,

1 if it's scientific, technical or other specialized
2 knowledge that will assist the trier of fact understand
3 the facts. Let me just say this. It is. Okay?

4 Number two, she has been qualified as an expert by
5 your own stipulation.

6 MR. THOMASON: Yes, sir.

7 THE COURT: Okay. So the only other part that
8 I look at, number one -- or number three in this analysis
9 is whether what she says is reliable. Okay? I guess
10 going into that probative to our facts in this case, she
11 says based on her experience, based on the literature and
12 in her common experience, that that is something that's
13 present and not present. So I guess the issue for me is
14 under the facts of this case, are there sufficient facts
15 and evidence or will there be sufficient facts and
16 evidence that would lead this not to be mere speculation
17 but is probative to the issue before the jury for their
18 determination. Is that a fair statement?

19 MR. THOMASON: Well, I think you are going to
20 rule that it's a fair statement.

21 THE COURT: Well, no, I'm not. I want you to
22 tell me where I'm wrong.

23 MR. THOMASON: I just ---

24 THE COURT: Let me tell you. I have a tendency
25 to agree with you. But at the same time, you know, this

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

154

1 is an important case. And so -- for both sides. And so
2 thus far, the child unequivocally testified yesterday
3 that no penetration occurred. My memory -- and it's
4 certainly not exact -- of the video, was that there was
5 anal penetration, if I recall. I don't know otherwise,
6 but ---

7 MS. REEVES: No. I think that's a fair
8 characterization that he -- that in the video she says
9 that he tried to stick it in my butt cheeks or between my
10 butt. Now, where I would tell you is that I think he is
11 inserting his penis from a posterior position. But where
12 he's headed -- you know, what I mean? Like we're
13 assuming it's anal just because he is going into her
14 butt. But then again, we don't really know.

15 THE COURT: Well, that is exactly the issue.
16 And that is we don't really know.

17 MS. REEVES: Right.

18 THE COURT: And does that not lead us to mere
19 speculation in this case?

20 MS. REEVES: Right. And I would argue no. I
21 think it is an element that I have to prove, and I think
22 that based on what the child is going to testify to in
23 her interview and what Dr. Carter can say is that she's
24 just not clear. And there could have been a penetration
25 however slight that she is not clear on. That she

1 doesn't know the difference. She doesn't even know that
2 she has two orifices to enter from. So he is putting his
3 penis from behind, through her butt cheeks but still
4 between her legs. And that's what she testified to on
5 the stand anyway. That he put his penis between her legs
6 and was rubbing on her vagina. So was there a
7 penetration however slight that she was unaware of at
8 eight? Even if she knows now at ten what body parts she
9 has, she's remembering incidents that happened two and a
10 half years ago. She doesn't remember hurting
11 necessarily, but that does not rule out that there was a
12 penetration however slight.

13 MR. THOMASON: I just don't see how you get
14 around the speculation argument. I just -- she testified
15 -- it's on the video -- that he put it between my butt
16 cheeks, but he didn't put it in -- he didn't put it in my
17 butt. That much I will -- I went and I watched -- I got
18 up at four o'clock this morning, and I went over to my
19 office and I watched these things three times this
20 morning already. And I know that's what she says. He
21 did not put it in my butt. He put it between my butt
22 cheeks and he moved me up and down.

23 MS. REEVES: And again, the statute reads --
24 moved me up and down. And the statute reads that it is a
25 penetration of any part of the body or orifice. So he's

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

156

1 ---

2 THE COURT: At this point, the child testified
3 that there was an oral intrusion anyway. So you've met
4 the elements for your case for the jury.

5 MS. REEVES: Yes, sir.

6 THE COURT: My concern ...

7 And Dr. Carter, please, this is certainly no
8 dispersion of you.

9 ... is that what she's saying -- I was looking at it
10 from a reliability part from the experts under the Graves
11 case. But as I sit here and listen to it, what I keep
12 coming up with is whether or not it's probative to
13 anything in the evidence and whether or not its
14 significantly more prejudicial than probative under 403.
15 And I will tell you right now that I believe it probably
16 is more prejudicial than probative based on what I've
17 heard and what's in evidence at this stage. Okay?

18 THE WITNESS: Could I make one comment?

19 THE COURT: Please.

20 THE WITNESS: Which I really don't know that
21 it's going to be pertinent to your ruling.

22 THE COURT: Yes, ma'am.

23 THE WITNESS: But in general in child sexual
24 abuse allegations, ninety-five percent of exams are going
25 to be normal, no matter.

1 THE COURT: Right.

2 THE WITNESS: Now, of course, you have to look
3 at the realm of abuse. It could be oral. It could be --
4 you know, it could be this. It could be that. It could
5 be other types of sexual abuse. But in general ninety-
6 five percent of the exams are normal. So here's one
7 that's clearly abnormal. What do you do with that? And
8 secondly, with regard to the child's forensic testimony,
9 which I have not heard -- but I will say that for a child
10 to comment that he put it between my butt cheeks and
11 rubbed up down may be the very best description that she
12 can give because that would not be unusual for an eight-
13 year-old not to know that there was a vaginal opening.

14 THE COURT: How long is the child's testimony?

15 MS. REEVES: The DVD? The whole thing, I
16 think, was forty-two minutes. Now, you understand ---

17 THE COURT: The child's?

18 MS. REEVES: --- it's not cut. It's just
19 muted. So it's still forty-four minutes. But we've just
20 redacted those -- I mean, muted those parts.

21 MR. THOMASON: If you were to fast forward
22 through, it would probably be more like thirty minutes
23 maybe?

24 MS. REEVES: If you wanted to watch it again

25 ---

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

158

1 THE COURT: No. Here's what I'm thinking. And
2 I'm going to ask Dr. Carter if she'd do this. Would you
3 mind viewing the child's testimony?

4 THE WITNESS: No. And again, I didn't comment
5 on this when I was asked about the exam. But I generally
6 like to go into these exams blind, without knowing what
7 the allegations are.

8 THE COURT: Sure.

9 THE WITNESS: So I examined this child without
10 any preconceived notion of what I'm supposed to find.
11 And -- you know, whether it's a lewd act or whether it's
12 oral sex or whatever. And so I haven't heard her
13 testimony. And at the time I examined her, I was
14 unaware. In fact, I was unaware until your discussion
15 this morning what the child reported.

16 THE COURT: Well, Mr. Thomason, I'm going to
17 ask Dr. Carter ...

18 If you're willing, obviously.

19 ... to view that.

20 The reason being whether there's sufficient evidence
21 on that tape to warrant the findings that she's
22 testifying about in the courtroom. Otherwise, right now,
23 it seems like a bit of speculation. But if she feels
24 like, based on her professional opinion that there's
25 sufficient facts on that tape to warrant, maybe it may

1 change my mind. I don't know.

2 I mean, guys, I'd like to be perfect over here, and
3 I'm not. And I think that's probably the safest course
4 to do. So I'm going to ask that she do that now.

5 Do you mind doing that, Dr. Carter?

6 THE WITNESS: No.

7 THE COURT: Are you sure?

8 THE WITNESS: No. I am sure.

9 THE COURT: Okay. I'm going to do that. I'm
10 going to take a break. I'm going to go look up some more
11 stuff too while I'm here, while we're waiting. I'm going
12 to send word, if there's no objection from the lawyers,
13 that we're viewing some things in here and it'll be a few
14 minutes later than we anticipated. Any problem with
15 that?

16 MS. REEVES: No, sir.

17 THE COURT: I'm not ruling yet, Mr. Thomason.
18 I'm just trying to get my arms around it, okay?

19 MR. THOMASON: I understand.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibits Number 5 and 6 were
22 marked for identification after which court stood at
23 recess.)

24 THE COURT: I guess, based on your review of
25 the video, do you have a medical opinion or do you have

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

160

1 an opinion to a reasonable degree of medical certainty
2 that this event related by this child is most likely one
3 of the causes of the lack of the hymen being present?

4 THE WITNESS: I can't speak to that because
5 there wasn't enough information in her description to
6 really determine. What did surprise me about the video
7 -- and it was the first time I had seen it -- was that
8 there were multiple occasions, and there were -- was
9 genital, male genital, contact from the rear and male
10 genital contact from the front. But there just wasn't
11 enough description to determine whether or not there was
12 penetration. And that's very hard for a child to, you
13 know, know, you know, at what point the penis crosses the
14 line to the vagina or the anus to really be able to tell
15 us.

16 The other thing I didn't know was about the use of
17 the pornographic material in these episodes.

18 THE COURT: Right.

19 THE WITNESS: So it certainly does seem that
20 there was a pattern of -- there was primisity (phonic)
21 with regard to this that I was not aware of previously
22 which I think does increase the likelihood that there was
23 penetration. If someone has groomed a child and feels
24 free to perpetrate sexual acts on a child multiple times,
25 including ejaculation multiple times, it does seem to me

1 that it increases likelihood that there was penetration.

2 But there was no description of that.

3 THE COURT: So Doctor, I guess what I'm asking,
4 I mean, is if any opinion you would have as to the lack
5 of the hymen, its presence in this particular child,
6 related to the event or events that this gentleman is
7 charged with, would that just be speculation on your
8 part?

9 THE WITNESS: No. I think it would be more
10 than speculation. And I guess that's what I was trying
11 to say.

12 THE COURT: Okay.

13 THE WITNESS: You have a pattern of events
14 which are, you know, inappropriate for an adult taking
15 sexual liberties with a child. You have a child that's
16 really unable to articulate the full, the full -- unable
17 to describe the extent of the acts. In fact, you have a
18 child who was able to say, when other children showed her
19 a video of, quote, school girls doing something nasty on
20 the video, there were men and women without their clothes
21 on, and they were hunching. But then she could not
22 proceed to say what -- describe what hunching was. So
23 either you have a child who was just unable to go further
24 in terms of the description or who simply didn't know how
25 to describe -- didn't have the words and concepts to

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

162

1 describe what she saw.

2 THE COURT: But your opinion is that the events
3 related, regardless of her lack of description of more
4 particularized intrusion, could have been the cause of
5 the lack of the hymen's presence in this child?

6 THE WITNESS: Yes, because I think we have a
7 situation where a person repeatedly engaged in sexual
8 activity with a child. I mean, it started with kissing
9 her and proceeded to drawing her under the covers and on
10 top of him. And on a number of occasions -- and the
11 child says maybe five occasions -- there was sperm, is
12 what she said. And so, you know, again, this is a
13 pattern of events with an adult male taking -- engaging
14 in sexual activity with an eight-year-old child which
15 leads me to think that there was every opportunity for
16 there to be penetration.

17 THE COURT: All right.

18 Mr. Thomason, I mean, you're going to have to give
19 me some particularized objections for me to consider.

20 MR. THOMASON: All right, sir. Number one,
21 this child, out of her own mouth yesterday -- this is one
22 of many, this is one of several -- out of her own mouth
23 yesterday said that she was not penetrated except for
24 orally.

25 THE COURT: Stand up.

1 MR. THOMASON: On the video that I went and
2 watched Dr. Carter watch, the child describes ---

3 THE COURT: Let me interject something here.

4 MR. THOMASON: Certainly.

5 THE COURT: What are you -- your argument is
6 there's not sufficient facts in the record for her to
7 give that opinion in this case?

8 MR. THOMASON: There's just -- I'm not saying
9 there's not sufficient -- I'm saying that there are
10 absolutely contradictory facts. The child says, he
11 rubbed it on my butt, but he didn't put it in me, in my
12 butt. And then she points on the drawing, on the
13 anatomical drawing, points, he put it between my legs, my
14 thighs. Right here. And she points to that on the
15 picture. She doesn't point up here. She points down
16 here.

17 She said, it didn't hurt. You've got to be kidding
18 me that that's not going to hurt an eight-year-old child.
19 I mean, if he's -- and so if you've got the child saying
20 that she wasn't penetrated, how is it anything other than
21 speculation that she -- by this Defendant. How in the
22 world is it anything other than speculation that she was?
23 And that ...

24 Of course, there's the 403 argument that it's more
25 prejudicial than probative. And the case that you just

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

164

1 cited a moment ago, you know, about the -- to a medical
2 certainty. And there's just no way that you can get to a
3 medical certainty that the child was penetrated when
4 she's saying that she wasn't and even demonstrated that
5 she wasn't?

6 THE WITNESS: May I respond to that?

7 THE COURT: Yes, ma'am.

8 THE WITNESS: My view of the video -- and I
9 looked on the times for this. It's seventeen minutes and
10 oh nine seconds into it. My feeling -- what I jotted
11 down was that she said, in front and pointed to the
12 genital area on the pictures that were displayed as
13 opposed to between the legs. The child said, in front.
14 And I thought she pointed to the genital area. I would
15 have to review the video again.

16 THE COURT: But -- and let me make sure I'm
17 clear on one thing, okay?

18 THE WITNESS: Okay.

19 THE COURT: Excuse me, Dr. Carter.

20 THE WITNESS: Uh-huh (affirmative).

21 THE COURT: Although you can't say to a hundred
22 percent that these events caused the lack of the hymen, I
23 believe from what you're telling me that from a
24 reasonable degree of medical certainty, that you could
25 say that they could most probably be one of the causes of

1 the lack of the hymen; is that correct?

2 THE WITNESS: Well, if there was penetration,
3 yes.

4 THE COURT: Okay.

5 Scott, I'm going to let that come in. I understand
6 your objection. However, that's the kind of information
7 that experts can look at in forming their opinion. Going
8 back over, at first when I heard this Friday or Thursday
9 last week, I was concerned about a reliability aspect of
10 what the doctor's testimony anticipated would be. But
11 looking at it -- and I'm going to let you be heard --
12 clearly, the topic is subject to expert testimony because
13 it assists the trier of fact. Number two, the doctor's
14 been stipulated to be an expert in child sexual assault
15 examinations.

16 MR. THOMASON: Yes, sir.

17 THE COURT: And number three, she said that
18 based on her view of the evidence, she can't say one
19 hundred percent that this caused it, but to a reasonable
20 degree of medical certainty it could be one of the causes
21 for the lack of the hymen. At this point, then that goes
22 to its weight, not its admissibility. Okay? That's the
23 way I view it. Okay?

24 I understand your objection. I want you to place
25 your objection on the record. If I'm incorrect, somebody

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - In-camera Direct Examination by Ms. Reeves

166

1 will correct me. But that's going to be my ruling. But
2 go ahead so you are protected on the record. Go ahead
3 and give me your objections to it, if you would. And
4 maybe you didn't hear me. Go ahead and put your
5 objection on the record.

6 MR. THOMASON: Oh, you want me to do it now?
7 Oh, I'm sorry.

8 THE COURT: That's all right. I know you're
9 disdained. But go ahead.

10 MR. THOMASON: I object to the introduction of
11 Dr. Sallie Carter's testimony not because she's not an
12 expert, but because her testimony is going to be more
13 prejudicial than probative because the victim or alleged
14 victim, herself, has stated that she was not penetrated
15 by this Defendant. And that is about as simple as I can
16 make it. She has said it in the videos. She has said it
17 on the witness stand. And that's as simple as I can make
18 it.

19 THE COURT: All right. Now, from the State,
20 you will need to make sure that the proper questions are
21 asked for this to come in the record, okay? If not, then
22 it will be excluded, okay?

23 MS. REEVES: Yes, sir.

24 THE COURT: All right.

25 Now, Dr. Carter, thank you. I'm going to ask that

1 you take a seat in the stands. That way they can call
2 you back to the witness stand when it's appropriate for
3 the testimony in this case, okay?

4 (WHEREUPON, the witness stepped down from the
5 witness stand.)

6 Now, are you ready to proceed?

7 MS. REEVES: Can we just have five minutes, two
8 minutes really, to make sure that we're asking her -- now
9 that she's spoken, to make sure that we're asking her
10 what we need to ask her?

11 THE COURT: Okay.

12 (Off record discussion)

13 MR. THOMASON: Oh, I'm sorry, Your Honor. I
14 would like to add to my objection that it also includes
15 the argument that it is, at best, speculative.

16 THE COURT: Yes, sir.

17 (Off record discussion)

18 THE COURT: Are y'all ready?

19 MS. REEVES: Yes, sir.

20 THE COURT: All right.

21 Mr. Thomason, are you ready?

22 MR. THOMASON: Yes, sir.

23 THE COURT: Would you bring the jury in,
24 please, sir?

25 (WHEREUPON, the jury entered the open court at

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Direct Examination by Ms. Reeves

168

1 approximately 11:15 a.m.)

2 THE COURT: Good morning, ladies and gentlemen
3 of the jury. First, let me thank you for your patience.
4 I can assure you we started at nine o'clock this morning.
5 And sometimes things are not as quick as we'd like them
6 to be. Remember, I told you that trials are sometimes
7 slow and methodical, and you just had evidence of that.
8 But thank you for your patience. And I believe what we
9 did today will alleviate some other time that you may be
10 down. Okay.

11 Is the State ready to proceed, Ms. Reeves?

12 MS. REEVES: Yes, sir.

13 THE COURT: Mr. Thomason?

14 MR. THOMASON: Yes, sir.

15 THE COURT: Would you call your next witness,
16 please?

17 MS. PRICE: Your Honor, the State calls Stacy
18 Gianiodis to the stand.

19 **STACY GIANIODIS,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. PRICE:

23 Q. Thank you. And who do you work for?

24 A. Foothills Alliance Child Advocacy Center.

25 Q. And what is your current position with them?

- 1 A. Forensic interviewer.
- 2 Q. How long have you been in that position?
- 3 A. I began my employment there in April of 2009, and
- 4 I'm still employed there.
- 5 Q. And what are some of the duties and responsibilities
- 6 associated with being an interviewer?
- 7 A. I conduct an interview of children when there's been
- 8 allegation or a reported abuse. I also participate in
- 9 the multi-disciplinary team meeting following the
- 10 interview as well as a care giver conference following
- 11 the meeting.
- 12 Q. Are you a licensed social worker in South Carolina?
- 13 A. Yes, I am.
- 14 Q. And what educational background do you have?
- 15 A. I have a bachelors in social work from the State
- 16 University of New York at Albany as well as my masters in
- 17 social work from the State University of Maryland at
- 18 Baltimore.
- 19 Q. What is a forensic interview?
- 20 A. A forensic interview is a neutral fact-finding
- 21 interview when there's been an allegation or a report of
- 22 abuse. It is an opportunity for the child to express
- 23 what may or may not have happened to them in their own
- 24 words.
- 25 Q. And do you have to have specialized -- specific

1 training to conduct that interview? Or do you have any
2 training?

3 A. I do have.

4 Q. In conducting those interviews?

5 A. Yes.

6 Q. Okay. What type of training?

7 A. I've completed the Child First Training which is a
8 training that focuses on the appropriate ways to
9 interview a child to use open-ended and non-leading
10 questions.

11 Q. Okay. And how many interviews have you conducted?

12 A. I've conducted over nine hundred interviews.

13 Q. Can you give me interview of -- an overview of your
14 interview style?

15 A. Sure. The first part of the interview is rapport
16 building. In other words, just talking with the child,
17 trying to give them a sense of being comfortable in the
18 room. Just talking about things in general that
19 interests them. Also using that time to assess the
20 child's developmental skills or communication skills and
21 vocabulary.

22 Q. And what information are you provided with before an
23 interview typically?

24 A. Just basic demographic information.

25 Q. Is the interview recorded?

1 A. Yes.

2 Q. Is the child informed that the interview is being
3 recorded?

4 A. Yes.

5 Q. Is anyone else present in the room other than
6 yourself and the child while the interview's taking
7 place?

8 A. Not in the room.

9 Q. Why is that?

10 A. Because it's made so the child is more comfortable,
11 that they're just having to speak to one person. The
12 interview is being observed via the live feed from the
13 camera.

14 Q. Okay. So someone else is observing from another
15 area?

16 A. Yes.

17 Q. Okay. Can you describe the room where the interview
18 is conducted?

19 A. Sure. It's a small room. There's two chairs in the
20 room, one for myself and one for the child. There is a
21 small table between the two chairs and a large pad of
22 paper just to write down the basic information that the
23 child may provide during the interview.

24 Q. Okay. And what type of questioning format do you
25 use when questioning a child?

1 A. I use open-ended, non-leading questions. I'm
2 encouraging the child to use free recall as well as
3 narrative responses.

4 Q. How do you determine a child's knowledge of their
5 anatomy during your interview?

6 A. Typically, I use the anatomical drawings. I use
7 those so the child can identify different parts on the
8 female and male drawings and tell me what words they use
9 for those parts so that we have a common understanding of
10 what those parts are called.

11 Q. Did you have an occasion to meet with MINOR
12 White?

13 A. I did.

14 Q. Where did her interview take place?

15 A. The Child Advocacy Center.

16 Q. And when did that occur?

17 A. I interviewed MINOR on March 28, 2011.

18 Q. Do you know how old she was at the time of that
19 interview?

20 A. She was eight years old.

21 Q. Was her interview recorded?

22 A. Yes.

23 Q. I'm showing you what's been marked as State's
24 Exhibit 5. Can you tell me what this is?

25 A. That's the interview of MINOR.

1 Q. Okay. And how do you know?

2 A. I watched it earlier today.

3 Q. Okay. And have you made any markings to indicate
4 that this is the copy you've reviewed?

5 A. Yes. I initialed a copy.

6 Q. Okay. Thank you. When you reviewed it, was it a
7 true and accurate representation or depiction of your
8 interview with MINOR

9 A. It is. There are some areas that have been muted,
10 which is my understanding was agreed upon through the
11 Court.

12 Q. Okay.

13 MS. PRICE: Your Honor, at this time the State
14 would move to admit State's Exhibit Number 5, please.

15 THE COURT: Mr. Thomason, subject to already
16 raised issues?

17 MR. THOMASON: I'm going to have an issue for
18 that, for the ---

19 THE COURT: All right. Mr. Foreman, would you
20 take your jury back to the jury room right quick?

21 THE FOREMAN: Yes, sir.

22 (WHEREUPON, the jury exited the open court at
23 approximately 11:22 a.m.)

24 THE COURT: Mr. Thomason, address the -- no --
25 we're going to put it on the record. Put it on the

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Direct Examination by Ms. Reeves

174

1 record, please, sir.

2 MR. THOMASON: Okay. Your Honor, I would
3 object to the introduction of these forensic interviews.
4 I understand that they are done in most cases these days.
5 But they are cumulative. They are not the best evidence.
6 They are not -- they are not -- they can be overly -- the
7 word I'm searching for has suddenly dropped out of my
8 head -- bootstrapping. That's still not the word. I'm
9 objecting to the introduction of these tapes because we
10 have a live witness here to testify as to what happened
11 and the events that took place.

12 THE COURT: All right. What is the code
13 section, Ms. Reeves?

14 MS. PRICE: Your Honor ---

15 THE COURT: It's § 19-23 ---

16 MS. PRICE: § 17-23-175, sir.

17 THE COURT: § 17-23-125?

18 MS. PRICE: § 175.

19 MR. THOMASON: I would ---

20 THE COURT: That statute still is the law even
21 though the Cromer case has limited a lot of what is
22 admissible. I'm going to note your objection that you
23 stated on the record now and also last week. And I
24 assume that those would be repeated today. I'm going to
25 overrule your objection.

1 MR. THOMASON: All right, sir.

2 THE COURT: Yes, sir.

3 Would you bring the jury in, please?

4 MR. THOMASON: Bolstering was the word I was
5 looking for.

6 THE COURT: Bolstering and vouching.

7 (WHEREUPON, the jury entered the open court at
8 approximately 11:24 a.m.)

9 THE COURT: All right.. Counsel?

10 MS. PRICE: Your Honor, once again, the State
11 would move to admit State's Exhibit Number 5 into
12 evidence.

13 THE COURT: It will be admitted.

14 MS. PRICE: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit Number 5 was admitted
16 into evidence.)

17 Q. Did you also conduct an interview of T'Aja J.

18 A. Yes, I did.

19 Q. When did you conduct that interview?

20 A. I interviewed T'Aja on April 14, 2011.

21 Q. And how old was she at the time of that interview?

22 A. Seven years old.

23 Q. Okay. Was her interview also recorded?

24 A. Yes.

25 Q. I'm showing you what's been marked as State's

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Direct Examination by Ms. Reeves

176

1 Exhibit Number 6. Are you familiar with this exhibit?

2 A. Yes.

3 Q. Okay. What is it?

4 A. That is a recorded interview of T'Aja that I watched
5 earlier today and initialed.

6 Q. Okay. And that's how you can be certain, your
7 initials?

8 A. Yes.

9 Q. And when you watched it earlier today, was it a true
10 and accurate representation of the interview that you
11 initially did with her?

12 A. Yes. Again, certain parts of it are muted, which is
13 my understanding agreed upon through the Court.

14 MS. PRICE: Your Honor, at this time, the State
15 would seek to move State's Exhibit 6 into evidence.

16 THE COURT: Admitted based on the same ---

17 MR. THOMASON: I'm ---

18 THE COURT: I understand.

19 MR. THOMASON: I'm not going to make them get
20 up and leave again. Same objection, same reasons.

21 THE COURT: All right. It'll be admitted
22 subject to objections.

23 MS. PRICE: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit Number 6 was admitted
25 into evidence.)

1 Q. Did you at any time leave the room during your
2 interview with T'Aja?

3 A. Yes.

4 Q. And why did you leave the room during your interview
5 with her?

6 A. During the interview, I leave near the end of the
7 interview to take a break to consult with the other
8 observers to determine if there's any additional
9 questions or to clarify any questions that I needed to
10 ask the child.

11 MS. PRICE: Your Honor, at this time, the State
12 would ask for permission to publish State's Exhibits 5
13 and 6 to the jury and ask that you please give them the
14 limiting instruction agreed to by the parties earlier.

15 THE COURT: All right. That will be granted.

16 Ladies and gentlemen, just to let you know, these
17 videos have been reviewed with the Court and counsel.
18 And they've been edited with oversight by the Court,
19 which means that certain aspects of it would be muted and
20 you'll not hear them because I've held that they're not
21 admissible. But certain other aspects will be presented
22 to you. So when you hear or don't hear something, that's
23 because they have been edited. Okay?

24 You may go ahead and publish your videos, please.

25 MS. PRICE: Thank you, Your Honor.

1 (WHEREUPON, State's Exhibit Number 5 was published
2 for the jury.)

3 Q. When you stepped out of the room to ask if you had
4 missed anything, which you testified to earlier, who did
5 you consult with?

6 A. At that time I consulted with Malika (phonic) Queen,
7 our Child Advocacy Center advocate.

8 Q. Was anyone else observing?

9 A. Not that time, no.

10 Q. Parents aren't allowed to observe?

11 A. No.

12 MS.. PRICE: Your Honor, we're now playing
13 State's Exhibit Number 6.

14 THE COURT: Okay.

15 (WHEREUPON, State's Exhibit Number 6 was published
16 for the jury.)

17 Q. After conducting the interviews, and aside from
18 coming to court to testify today, have you had any
19 further involvement in this case?

20 A. No.

21 Q. Thank you. Please answer questions that Mr.
22 Thomason may have for you at this time.

23 A. Okay.

24 THE COURT: Just one second, Mr. Thomason.

25 Mr. Foreman, let's take a quick break and it will

1 probably be about ten minutes.

2 MR. THOMASON: I don't have but one question.

3 THE COURT: Oh, really?

4 MR. THOMASON: Yes.

5 THE COURT: Okay. Then go right ahead, and
6 then we might go ahead and break for lunch after that.

7 All right. Go ahead.

8 CROSS-EXAMINATION

9 BY MR. THOMASON:

10 Q. I know I'm going to butcher your name. Gianiodis?

11 A. Gianiodis.

12 Q. Gianiodis. Ms. Gianiodis, I know that you weren't
13 watching just now basically because it's physically
14 impossible the way you're seated.

15 A. Correct.

16 Q. But you have gone back and watched these videos at
17 some point in time, right?

18 A. Yes, that's correct.

19 Q. All right. When the first video was being played of
20 the -- of MINOR you took out the anatomical drawings?

21 A. Okay.

22 Q. And you had her point to what body part had touched
23 what body part?

24 A. Yes.

25 Q. Could you please answer for me what body part, the

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Cross-examination by Mr. Thomason

180

1 third body part -- she identified what she call the wee
2 wee first?

3 A. Okay.

4 Q. Then the butt on the female?

5 A. Yes.

6 Q. And then what was she identifying on the third body
7 part? I mean the second body part on the female?

8 A. On the female on the anatomical drawing? She
9 indicated the upper leg and vaginal area.

10 Q. Well, she didn't -- I mean, you put your ink pen
11 there. And I don't mean to be -- but you put your pen
12 about right there in the video? Yes? No?

13 A. From my recollection, she indicated the upper area
14 and vaginal area -- upper leg and vaginal area.

15 Q. Well, it was the thighs and not the -- she indicated
16 the thighs, did she not?

17 A. She indicated that area, up and down, in between her
18 legs.

19 Q. She didn't put that pen on that vagina, did she?

20 MS. PRICE: Your Honor, I'm going to object.
21 This is asked and answered.

22 THE COURT: Overruled. Ask the question.

23 Q. Do you know what I'm asking?

24 THE COURT: Go ahead.

25 Q. She did not put her hand on the drawing of the

1 vagina, did she?

2 A. In my recollection -- again, as you pointed out, I
3 didn't just watch it at this point ---

4 Q. Would you like for me to show it to you again?

5 A. You could. My recollection is that she -- at that
6 point, that might have been what she pointed to. But in
7 her interview, she talked about him putting his penis up
8 and down in between her legs in the vaginal area.

9 Q. I never heard her say vaginal area. Did you?

10 A. She indicated on the anatomical drawings.

11 Q. Well, we may have to watch that again when you can
12 see it when we get back.

13 MR. THOMASON: That's all my questions for now.
14 I did not expect that answer. So if you want to take a
15 break now, that's ...

16 THE COURT: Okay. Mr. Foreman, we're going to
17 go ahead and have a lunch break now. I'm going to ask
18 that you be back in your jury room by two o'clock. And
19 then we'll resume testimony at that stage. Okay, sir?
20 And I remind everyone not to speak with anyone or amongst
21 themselves about this case.

22 (WHEREUPON, the jury exited the open court at
23 approximately 12:47 p.m.)

24 THE COURT: All right. Mr. Thomason, are you
25 asking that I not excuse this witness because you want to

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Cross-examination by Mr. Thomason

182

1 cross-examine her further?

2 MR. THOMASON: I do want to show her that
3 portion of the forensic video.

4 THE COURT: I want it -- let me just tell you.
5 I want it teed up to the place where it needs to be.

6 MR. THOMASON: Yes, sir. Because I don't want
7 to sit and watch it all playing again.

8 THE COURT: Okay.

9 MR. THOMASON: It's just that one little ...

10 THE COURT: All right. Ms. Gioniodis, if you
11 would, would you remain with us until we come back from
12 lunch break? You're under oath, so you may not speak
13 with anyone about your testimony during your lunch break,
14 okay?

15 THE WITNESS: Okay.

16 THE COURT: All right. Thank you very much.
17 We'll be in recess until two o'clock.

18 (WHEREUPON, court stood at recess for a lunch
19 break.)

20 THE COURT: Mr. Thomason, have you gotten the
21 video to the place where you want it to be?

22 MR. THOMASON: Yes, sir. We've got it cued up
23 and I believe ready to go.

24 THE COURT: Okay. And my law clerk says you
25 were going to speak with me with regard ---

1 MR. THOMASON: Well, I wanted to do it on the
2 record with Kristin because we had talked about that the
3 -- I believe we talked about this in the pre-trial. We
4 certainly have talked about it before. You were going to
5 allow me to recall the victim or have the victim come
6 back to the stand ---

7 THE COURT: As part of the State's case without
8 losing your right to close if, in fact, it remains that
9 way throughout this trial, right? Yeah. That's right.

10 MR. THOMASON: And we were just deciding when
11 we were going to do that. And I think I'm just going to
12 wait until Ms. Stacy finishes.

13 THE COURT: Ms. Stacy? Okay.

14 MR. THOMASON: I can't say that last name.

15 THE COURT: Gianiodis.

16 MR. THOMASON: I just cannot say it. And then
17 Dr. Carter, I thought I'd just wait until after Dr.
18 Carter if it suits everybody.

19 MS. REEVES: I told him it's his choice. He
20 can either do it at the end of Ms. Gianiodis or the end
21 of Dr. Carter. And he said he'd like to do it at the end
22 of Dr. Carter. That's fine.

23 THE COURT: All right. Is the State ready to
24 proceed?

25 MR. THOMASON: Yes, sir.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Cross-examination by Mr. Thomason

184

1 THE COURT: Mr. Thomason, are you ready
2 otherwise to proceed?

3 MR. THOMASON: Yes, sir.

4 THE COURT: Would you bring the jury in?
5 (WHEREUPON, the jury entered the open court at
6 approximately 2:10 p.m.)

7 THE COURT: Ms. Gianiodis, would you come back
8 around, please, ma'am?

9 Actually, do you want her to stand down there, Mr.
10 Thomason, so she can review?

11 MR. THOMASON: Yes, sir. That way both the
12 jury and the witness can see.

13 THE COURT: Ms. Gianiodis, you're still under
14 oath, okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Very good.

17 MS. REEVES: Are you ready?

18 MR. THOMASON: Yeah.

19 (WHEREUPON, a portion of State's Exhibit 5 was
20 published.)

21 MR. THOMASON: All right. That wasn't -- I
22 want to play it again.

23 CROSS-EXAMINATION

24 CONTINUED BY MR. THOMASON:

25 Q. All right. Well, just before we start, as you

1 recall, we were talking about the anatomical drawings.

2 Do you recall that?

3 A. Yes.

4 Q. That line of questioning. And what I'm doing here
5 is I'm going to replay that portion where she points out
6 the portion of her anatomy.

7 MR. THOMASON: DVD, play. DVD, play.

8 Lauren?

9 (WHEREUPON, a portion of State's Exhibit Number 5
10 was published.)

11 Q. Okay. You can go back up there.

12 (WHEREUPON, the witness resumed the witness stand.)

13 Q. So your exact words was front part of your legs?

14 A. During the interview, yes.

15 Q. So she did not point to the vagina; she pointed to
16 the front part of her legs?

17 A. Then she went to the upper thigh and vaginal area.

18 Q. All right. Well, the butt would be the vaginal area
19 too, wouldn't it? I mean, it's right in there pretty
20 close?

21 A. I'm sorry. Is that a question?

22 Q. Yes.

23 A. Yes.

24 Q. Isn't the butt close to the vaginal area?

25 A. A person can put their penis on her butt and also be

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Stacy Gianiodis - Cross-examination by Mr. Thomason

186

1 right there at the vaginal area.

2 Q. All right. Have you -- of course you were in the
3 room for the entire interview, and so you were there.

4 And you have watched the video that has not been edited,
5 right?

6 A. That's correct.

7 Q. Did she ever mention anything about oral sex to you?

8 A. She did not.

9 Q. And you asked her several times, is there anything
10 else you need to tell me. Is there anything else I need
11 to know about, anything else that's important? And her
12 response was?

13 A. She didn't have anything else to add at that time.

14 Q. Okay. That's all I have. And your -- one last
15 thing. Your forensic exam -- your interview was done on
16 March 28th of '11; correct?

17 A. Correct.

18 Q. Okay. That's it.

19 THE COURT: Any redirect?

20 MS. REEVES: Your Honor, may we approach?

21 THE COURT: Sure.

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

24 MS. PRICE: Nothing further from the State,
25 Your Honor.

1 THE COURT: All right. May this witness be
2 excused?

3 MR. THOMASON: Yes, sir.

4 MS. PRICE: No objection from the State.

5 THE COURT: Thank you, ma'am. You may be.
6 excused.

7 Would you call your next witness, please, ma'am?

8 MS. PRICE: Your Honor, the State calls Dr.
9 Sallie Carter.

10 **SALLIE CARTER, M.D.,**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. PRICE:

14 Q. Dr. Carter, by whom are you employed?

15 A. South Carolina Department of Mental Health.

16 Q. And what's your position with them?

17 A. I'm a physician at the Child and Adolescent Mental
18 Health Center in Anderson.

19 Q. How long have you been there?

20 A. Ten years.

21 Q. And where did you get your training, starting with
22 undergraduate and ---

23 A. Well, my undergraduate was at Mercer University in
24 Macon, Georgia. And then I have a master's degree from
25 Yale Divinity School and my medical training at the

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

188

1 Medical College of Georgia in Augusta.

2 Q. And what year did you graduate from medical school?

3 A. 1986.

4 Q. Did you do a residency?

5 A. I did.

6 Q. Where was that?

7 A. I did my internship at the Emory Grady Program,

8 Emory University, Grady Hospital in Atlanta, and my

9 pediatric residency at Yale University, New Haven

10 Hospital in New Haven, Connecticut.

11 Q. And following your residency, where did you take
12 your career?

13 A. I came to Anderson.

14 Q. And what did you do here in Anderson?

15 A. I had a private practice in Anderson for about
16 eleven or twelve years. And then that practice became
17 the teaching practice, pediatric teaching practice, for
18 the AnMed Hospital. And after about six years or so, I
19 left and took the position at the Department of Mental
20 Health.

21 Q. What type of patients did you see in your practice
22 which eventually became a teaching practice?

23 A. For at least twelve years, maybe more, I was the
24 director of the newborn nursery. And I saw thousands of
25 newborns a year as the physician for those infants,

1 including premature and sick infants. And then I saw
2 regular ambulatory pediatric patients and pediatric
3 inpatients during those years.

4 Q. And when you're saying, pediatric, what age range
5 are we talking?

6 A. Well, newborn to whenever they're not typical
7 pediatric problems. In other words, I could treat a
8 twenty-one-year-old for acne or typical pediatric and
9 adolescent problems, but I usually wouldn't see a twenty-
10 one-year-old for a adult-type problems like, you know,
11 typical adult diseases, hypertension or multiple
12 sclerosis or lupus or, you know, various other typically
13 adult problems.

14 Q. In your former practice and currently, do you do
15 genital inspections on those patients?

16 A. Well, as a course -- as a pediatrician I did that in
17 the newborn nursery all the time. And then in young
18 children, that's part of the typical pediatric exam. And
19 then, of course, when I've seen children for urinary
20 tract infections or other genital type complaints. But
21 then since I've been at -- well, for the last ten years,
22 I've been a physician for the child sexual assault part
23 of the Foothills Sexual Trauma Center. So for ten years,
24 I've been doing pediatric sexual abuse exams.

25 Q. Can you tell me a little bit more about what your

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

190

1 duties consist of with the Child Advocacy Center?

2 A. I see children who are referred there for possible
3 sexual assault.

4 Q. Approximately how many sexual assault exams would
5 you say you've performed per month?

6 A. Typically, per month it's -- there's a range. You
7 know, there might be as few as two or three, and there
8 might be as many as eight, maybe nine.

9 Q. So in a year, how many?

10 A. Usually about fifty.

11 Q. Okay. Did you receive any specialized training to
12 perform child sexual assault examinations?

13 A. I did.

14 Q. What would that be?

15 A. There are particular training programs. I had a
16 basic course in Minneapolis-St. Paul, and then an
17 advanced course at Scottish Rite Children's Hospital in
18 Atlanta.

19 Q. Is that nationally recognized?

20 A. Oh, yes.

21 Q. Have you previously been qualified in court as an
22 expert in child sexual assault examinations?

23 A. I have.

24 Q. Approximately how many times?

25 A. At least thirty-five times.

1 MS. PRICE: Your Honor, at this time the State
2 moves that Dr. Carter be declared an expert in child
3 sexual assault examinations.

4 THE COURT: Mr. Thomason?

5 MR. THOMASON: I have previously stipulated
6 that, and I don't have an objection to it now.

7 THE COURT: Okay.

8 All right. Ladies and gentlemen of the jury,
9 normally a witness is limited in their testimony to what
10 they see, they saw, they smelled, they heard. Basically
11 your senses. They're not allowed to give their testimony
12 [sic] as a general rule. However, a witness because of
13 their education or experience may become specialized or
14 have specialized knowledge in certain areas. If they are
15 an expert in a particular area, they are allowed to give
16 their opinions under our rules of court.

17 Now, in this case it has been stipulated that Dr.
18 Carter is an expert in the field of child sexual assault
19 examination. What that simply means is she'll be allowed
20 to give her opinion in that area. Her testimony is like
21 any other testimony in this case. You may accept it, you
22 may reject it or do with it what you think is appropriate
23 based on the facts.

24 Very well. You may proceed.

25 MS. PRICE: Thank you, Your Honor. May it

1 please the Court.

2 Q. Dr. Carter, did you perform an examination of

3 MINOR

4 A. I did.

5 Q. Do you recall when that occurred?

6 A. The record in my writing states it was April the
7 4th, 2011.

8 Q. And how old was she when you performed that exam?

9 A. She was eight.

10 Q. Could you describe exactly what was entailed in the
11 type of exam that you gave her?

12 A. I did a full pediatric evaluation, really a head-to-
13 toe evaluation. Eyes, ears, nose, throat, neck, heart,
14 lungs, abdominal, extremities. And then I do a very
15 careful genital inspection. In doing the genital
16 inspection, I use a medical -- piece of medical equipment
17 called a colposcope. And a colposcope is a piece of
18 equipment used usually by OB/GYNs or female cancer
19 doctors to evaluate the cervix. But for our purposes, we
20 use it to magnify and examine the genital area and any
21 lesions that we might see. It can magnify the -- you
22 know, what you can see with the naked eye, it can magnify
23 it up to about twenty times. It's also equipped with a
24 digital camera so that we can take images and come back
25 and review them later.

1 Q. Is there any additional lighting that you use?

2 A. Yes. It comes with a high-powered light. That's
3 part of the equipment is the lighting.

4 Q. Is there anyone in the room with you when the
5 examination occurs?

6 A. Yes. I have a nurse who -- I would have to look
7 through and see if she was present on the day of this
8 exam. And I can tell you that just in a moment. In
9 this particular case, the nurse was there, Pam Parker.
10 And the child's parents were there. And sometimes other
11 people are there like the director of the Child Advocacy
12 Center. But in this case, the only additional people
13 there in addition to me and the child were both parents
14 and the nurse, Pam Parker.

15 Q. Did you use your colposcope in the exam of MINOR

16 A. Yes.

17 Q. Aside from special lighting, is there any additional
18 positioning you do?

19 A. Well, in the -- children can be examined in
20 different positions. A very young child, say two, is
21 often evaluated in a frog-like type position, with the
22 soles of the feet together. Now, this is speaking of
23 little girls. Little boys are generally evaluated in the
24 standing position. But little girls are evaluated
25 sometimes in a frog-leg position, very often in what's

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

194

1 called a lithotomy position, which is the typical
2 position for female genital examinations with the feet in
3 stirrups. Or sometimes there's what we call a knee-chest
4 position, or a chest on the table position where the
5 child is viewed from -- with the knees down and the
6 buttocks up.

7 Q. Do you recall what positioning you used in this
8 exam?

9 A. Yeah. She was in a typical lithotomy position, feet
10 in the stirrups.

11 Q. What were your findings during MINOR exam?

12 A. She had a normal physical exam with the exception of
13 the genital area. The posterior portion of the hymen was
14 absent. That is an abnormal finding in the exam.

15 Q. You said the posterior hymen. Can you start by
16 telling me what the posterior is, and then tell us what a
17 hymen is.

18 A. Yes. I suppose it should be inferior, but the
19 typical description was posterior. With the child lying
20 flat on her back and her knees elevated with her feet in
21 the stirrups or holders, the posterior is the portion of
22 the hymen that's closest to the anus.

23 Q. And what is the hymen?

24 A. Oh, the hymen is a little bit of mucus membrane
25 that's either -- and I often show people that it's like

1 between my thumb and forefinger. It's just a little
2 slender piece of tissue. And in young children it's just
3 so, so thin that it's almost transparent. You know, you
4 can almost get the feeling that you can see through it.
5 And it can be crescentic, like a part of moon, or it can
6 be almost full round or circumferential little rim of
7 tissue that is present in almost all females. I've never
8 -- there are some abnormalities of the hymen that we see
9 sometimes, but it's usually on the order of too much, not
10 too little.

11 Q. Would a hymen allow for penetration? Does it have
12 an opening to it?

13 A. Well, actually, one of the abnormalities that we
14 rarely see is a hymen that doesn't have an opening. It's
15 called an imperforate hymen. And that's one of the
16 reasons we evaluate little girls as part of a physical
17 exam because we do want to pick up on that. That's a
18 problem that has to be dealt with from a medical point of
19 view. Sometimes we'll see a hymen that has more than one
20 opening, like there's an little extra piece of tissue
21 down the middle. And you know, there are variations.
22 But absent is not a variation that is typical or that is
23 described, I guess.
24 Q. What would cause -- in your opinion, what might
25 cause an absent hymen if it's not a variation?

1 A. Well, you know, what we typically see is some sort
2 of injury that has caused the hymen to be torn or worn or
3 absent.

4 Q. Would it hurt or necessarily -- would a child
5 necessarily have a feeling or have felt the injury when
6 the hymen was broken?

7 A. It depends on the type of the injury. I have seen a
8 child who had -- who was struck by a car and a pelvic
9 fracture. And the blow was so great that there was
10 tearing in the female area where the hymen is and the
11 urethra. So I mean, you know, you can have terribly
12 traumatic injuries, but the child is not going to say it
13 hurt because the other injuries were so great that those
14 were the least of her worries. So you know, it depends
15 on the circumstances.

16 Q. Would there always be bleeding?

17 A. Typically, there would be bleeding, yes.

18 Q. Okay. Would you -- did you see scaring in
19 Jonashja's exam?

20 A. No.

21 Q. Would you always have scaring in an instance like
22 this?

23 A. No.

24 Q. So -- but you would say that what you found was
25 atypical?

1 A. Yes. In fact, the literature in the child sexual
2 abuse arena shows that when little girls who are clearly
3 traumatized, clearly have had a penetrating injury in a
4 report of sexual abuse can have a tear of the hymen and
5 then can be evaluated six months later, reevaluated six
6 months later, and have no apparent scar or abnormality.
7 So these tissues do heal. But variably, not all the
8 time.

9 Q. Dr. Carter, did you -- you said you had a digital
10 camera on your colposcope?

11 A. Yes.

12 Q. Do you do that to capture images during your exam?

13 A. Yes.

14 Q. Did you capture any images of MINOR during your
15 exam?

16 A. Yes.

17 Q. How did you do that?

18 A. You aim the colposcope and press the shutter button.

19 Q. Okay. Dr. Carter, without showing the jury, just
20 looking at it yourself right now, are you familiar with
21 what I am presenting you?

22 A. Yes, I am.

23 Q. And what is it?

24 A. Well, this is one of the images from MINOR exam
25 that I took on the date that we've been discussing.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

198

1 Q. And you captured that image with your colposcope?

2 A. Yes.

3 MS. PRICE: Your Honor, at this time the State
4 would move State's Exhibit Number 3 into evidence.

5 THE COURT: Subject to my prior rulings, Mr.
6 Thomason, anything in addition?

7 MR. THOMASON: Well, subject to your prior
8 rulings, I guess -- well, just to keep the record, I'm
9 going to that object to that picture being allowed into
10 evidence.

11 THE COURT: It'll be admitted subject to
12 objection.

13 MS. REEVES: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit Number 3 was admitted
15 into evidence.)

16 Q. And Dr. Carter, have you examined children that you
17 would say had a typical normal exam?

18 A. Yes.

19 Q. In your practice?

20 A. Yes. In fact, ninety-five percent of children's
21 exams, when they are referred for a child sexual abuse
22 exam, about ninety to ninety-five percent of them are
23 normal.

24 Q. And during those exams, have you also captured
25 images using your colposcope?

1 A. Right. I do.

2 MR. THOMASON: Okay. This time I'm really
3 objecting. They're trying to introduce a photo ---

4 THE COURT: Stop for a second. Hang on.

5 Would you take the jury out, please?

6 (WHEREUPON, the jury exited the open court at
7 approximately 2:35 p.m.)

8 THE COURT: All right. When we object, let's
9 do the formalities properly, okay?

10 MR. THOMASON: I'm sorry. I apologize.

11 THE COURT: All right. Go ahead.

12 MR. THOMASON: I strongly object to the
13 introduction of this photograph. This photo has no
14 relevance in this case. It's not involving anybody in
15 this case.

16 THE COURT: What exhibit number is this?

17 MS. PRICE: Your Honor, this is exhibit number
18 4.

19 THE COURT: Number 4?

20 MS. PRICE: Yes, sir.

21 THE COURT: So this was not introduced in the
22 in-camera hearing?

23 MS. PRICE: Yes, sir, it was.

24 THE COURT: Okay. Which number ---

25 MS. PRICE: It was one of the two pictures that

1 you reviewed.

2 THE COURT: I didn't review them, but they were
3 introduced at the in-camera hearing?

4 MS. PRICE: Yes, sir.

5 THE COURT: Okay.

6 MS. PRICE: Oh, no. We did not move them into
7 evidence at that time, Your Honor.

8 THE COURT: Okay. Let me see something.

9 MS. PRICE: We ---

10 THE COURT: I was thinking it was 5 and 6?

11 MS. PRICE: No, sir..

12 THE COURT: No. That's video -- the videos,
13 okay. All right. These are the photographs of the non
14 -- of the hymen that's in place, and the other picture is
15 the lack of the hymen; is that correct?

16 MS. PRICE: Yes, sir.

17 THE COURT: Okay.

18 Mr. Thomason, any objection beyond what you've
19 stated in the in-camera?

20 MR. THOMASON: Well, just that it's showing
21 another vagina. And in my opinion it's irrelevant, it's
22 prejudicial. For 403 purposes, it's more prejudicial
23 than probative. It doesn't -- you know, I'm sure
24 everybody's vagina is different. And you know, they're
25 -- you know, they're more the same than different, but

1 everybody has their differences.

2 THE COURT: All right. I'm overruling that.

3 And let me just say this, however. I've already told the

4 State. Subject to the proper foundational questions

5 being laid in this case. Okay? If not, I'm going to

6 strike it out.

7 MS. PRICE: Yes, sir.

8 THE COURT: Okay. Very good. Would you bring

9 the jury back in.

10 Excuse me. Mr. Thomason, anything further?

11 MR. THOMASON: No, sir. No. Thank you for

12 asking.

13 (WHEREUPON, the jury entered the open court at

14 approximately 2:39 p.m.)

15 THE COURT: All right. Counselor?

16 MS. PRICE: Thank you, Your Honor.

17 Q. Dr. Carter, as part of your preparation for this

18 case, did you review some materials?

19 A. I did.

20 Q. And without showing that to the jury, just reviewing

21 that yourself again, are you familiar with what I've

22 presented you with?

23 A. Yes. This is another image using the same

24 colposcope and the same exam procedure in a same-aged

25 child with a normal hymen.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

202

1 Q. And did you review that photograph in preparation
2 for the case today?

3 A. Yes.

4 MS. PRICE: Your Honor, at this time the State
5 would seek to move State's Exhibit Number 4 into
6 evidence.

7 THE COURT: It will be admitted subject to
8 objection. Go ahead.

9 MS. PRICE: And, Your Honor, and 3 as well.

10 THE COURT: Same ruling.

11 MS. PRICE: Thank you.

12 (WHEREUPON, State's Exhibit Number 4 was admitted
13 into evidence.)

14 Q. Dr. Carter, if you wouldn't mind stepping down in
15 front of the jury and bringing State's Exhibits Number 3
16 and 4 with you.

17 (WHEREUPON, the witness stepped down from the
18 witness stand.)

19 Q. Would you mind, using these exhibits, showing the
20 jury the difference that you observed between the two?

21 A. You know, in the past, I've used a white board or a
22 paper to demonstrate. But basically what I usually tell
23 people is that a piece of hymenal tissue is kind of like
24 this. It should be very smooth. And in young children
25 it's just very, very thin. It's mucus membrane like the

1 membrane inside of your mouth or inside of your nose.

2 It's red, very vascular, heals very quickly. It's very
3 moist, very elastic. Just normal healthy tissue.

4 And to give you a frame of reference, this is the
5 hymen on a normal eight-year-old child. And you can see
6 here it's just very smooth. It's very white looking.

7 After -- during and after puberty, it becomes much more
8 red and vascular and kind of wavy, you might say. It's
9 just a much more abundant piece of tissue. But in a
10 young child, it just stretches smoothly and it's kind of
11 light-colored. And it's just normal, healthy looking
12 tissue. That's all there is to it.

13 This is the abnormal exam which, as you can see
14 here, shows a -- it's a different magnification. That's
15 a larger magnification than this is. But this is what
16 they printed up for me. But this basically shows just an
17 absence of the tissue posteriorly so that with the
18 colposcope we can look directly into the vaginal opening.
19 And you just don't see that healthy kind of light-colored
20 tissue. This is a white child. This is a dark-skinned
21 child. But basically the mucus membrane's all the same
22 color in everybody, no matter what the color of our skin.
23 It should be red and pink and moist and healthy looking,
24 just the way this one is. So it's different in this
25 particular picture.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

204

1 Q. And you were talking about where the posterior is?

2 A. Yeah, I think I've demonstrated that. This is what
3 we're calling posterior because it's closer to the anus.
4 The same thing here. Rather than a nice smooth rim of
5 tissue, there's just not much there. Not -- virtually,
6 you know, a very, very thin rim of hymen present here.

7 Q. Dr. Carter, after reviewing your file and
8 photographs, in your expert opinion, can you tell us
9 whether or not your findings are consistent with a
10 penetrating injury?

11 A. That is what I wrote, that this was consistent with
12 a penetrating injury. However, I did refer that other
13 injuries to the female genital area can occur. And you
14 know, of course, if you have a physical abnormality, you
15 can't always look back without any facts and say exactly
16 what caused it unless there's a pattern. You know, if
17 there's a pattern like a brand type burn, yes, you can
18 look at that and, you know, somebody branded 'B' on that
19 child or that cow or whatever it was, you know, that was
20 branded. But without a pattern, you can just say well,
21 there's an injury, but we don't know what caused it.

22 On the other hand, if we have a child giving a
23 specific explanation or statement, it can suggest what
24 caused the injury pattern that we see.

25 Q. Did you have an opportunity to watch the interview

1 of Jonashja?

2 A. Yes, about two hours ago. I had not seen it prior
3 to that.

4 Q. Based on your review of that video and your exam --
5 in conjunction with your exam, would the type of injury
6 you see here be consistent with her allegations?

7 A. I was actually more concerned after hearing the
8 forensic interview and more convinced ---

9 MR. THOMASON: Your Honor, I'm going to object.
10 I don't know that it's worthy of taking the jury out or
11 not, but ---

12 THE COURT: State your objection.

13 MR. THOMASON: The allegations were that there
14 was no penetration basically.

15 THE COURT: All right. Overruled.

16 Q. Dr. Carter, please continue.

17 A. When we have an injury, we also have a history that
18 goes along with the injury. And in this particular --
19 and when I do these exams, I do not obtain a history from
20 a child because I want to go to the exam as a blank
21 slate. I don't want to bring any, what do you call it,
22 pre -- presumption to the exam. I want to go at it as
23 if, you know, I didn't know a thing about this child. I
24 was just doing a normal exam. And then if I see
25 something, I can call it normal or abnormal, not based on

1 what I have heard, but only based on what I see.

2 So in this case, I really didn't have any history.

3 I described what I saw and I had not heard the forensic

4 interview until the Judge asked me to listen to it about

5 two or three hours ago. And after listening to the

6 interview, I was more concerned because what you -- what

7 the child -- although the child did not have perhaps the

8 language and give the detail that would completely

9 describe how the injury occurred, the child did draw a

10 picture of a person who groomed her for sexual activity

11 or sexual abuse. The person had kissed her while she was

12 sleeping, kissed her on the lips while she was sleeping,

13 invited her under her blanket with him. You know, are

14 you cold? Come get under the blanket, et cetera, et

15 cetera, et cetera. And then a child who said this

16 happened multiple times. And she did report that there

17 was skin-to-skin contact, male genital contact on her

18 what she called her butt and male genital contact on her

19 front. And it happened a number of times, and it

20 happened in the presence of pornographic media. And you

21 know, it just -- the pattern is ---

22 MR. THOMASON: Your Honor, I'm going to object

23 to that.

24 A. --- that the child was groomed ---

25 THE COURT: Just one second, please.

1 MR. THOMASON: There's been -- pornographic has
2 not been used. I believe the testimony was that I saw a
3 video of two naked people kissing. Well, I mean, I
4 watched the Voyages and Game of Thrones last night, and
5 there was ---

6 THE COURT: Just one second.

7 MR. THOMASON: --- there was ---

8 THE COURT: Just stop.

9 Mr. Foreman, will you take your jury back to the
10 jury room?

11 (WHEREUPON, the jury exited the open court at
12 approximately 2:47 p.m.)

13 THE COURT: All right. When I ask for an
14 objection, I want the objection. I don't want this
15 rambling ---

16 MR. THOMASON: I'm sorry.

17 THE COURT: I want the objection stated on the
18 record. I'm going to ask you again. I want both sides
19 to state their objection based on the rules of evidence,
20 and I don't want these talking objections. I'm not going
21 to do it anymore. Okay?

22 MR. THOMASON: I'm sorry.

23 THE COURT: All right.

24 MR. THOMASON: My objection is that I don't
25 believe that the characterization of two naked people

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

208

1 kissing is pornographic. That's on TV everyday.

2 THE COURT: That's not -- I'm going to overrule
3 that objection. The testimony from the doctor was that
4 they had pornographic videos or videos shown to the child
5 is what I just heard her say. That's what the child
6 said, and that's what the video said. Okay? And that's
7 not a proper objection here. Okay? If you want -- I'm
8 not trying to beat up on you.

9 MR. THOMASON: No, sir.

10 THE COURT: But number one, I want the record
11 clear and to understand what the objection's about. And
12 especially -- when we have the jury in here, let's not do
13 the speaking thing. Say -- you know, if it's hearsay or
14 something along those lines to give me enough information
15 so I can tell you whether or not.

16 MR. THOMASON: I'm sorry.

17 THE COURT: That's okay. I mean, we've all
18 been around before. Anything further on your objection,
19 Mr. Thomason?

20 MR. THOMASON: No, sir. That was it.

21 THE COURT: Okay. Tell him to bring the jury
22 back in, please.

23 (WHEREUPON, the jury entered the open court at
24 approximately 2:51 p.m.)

25 THE BAILIFF: The jury said they're having a

1 hard time hearing Scott.

2 THE COURT: Okay. Mr. Thomason, the jury needs
3 you when you speak up to ---

4 MR. THOMASON: Yes, sir.

5 THE COURT: And let me tell everybody on the
6 jury, if at any time during this case if you can't hear
7 any aspect of this case either from a witness'
8 perspective, an attorney's perspective or from me, raise
9 your hand so I can address that immediately, okay? Thank
10 you.

11 Go ahead.

12 MS. PRICE: Thank you, Your Honor.

13 Q. Dr. Carter, please continue if you recall where you
14 were.

15 A. Well, I do recall. And you know, to answer the
16 objection, I used to work for ---

17 THE COURT: No, ma'am. No, ma'am. You will
18 not answer the objection. I answer the objection.

19 THE WITNESS: Yes, sir.

20 THE COURT: If you will respond to the
21 question, please.

22 THE WITNESS: All right.

23 THE COURT: Thank you.

24 A. I did comment that there was sexually explicit
25 videotape which the child described as naked people

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

210

1 kissing. And later she commented on a similar videotape
2 and said they were hunching. And then she couldn't
3 really describe what hunching was. But my point was that
4 this -- that my -- based on my knowledge -- and I've been
5 evaluating these cases for ten years. And of course, a
6 lot of people say to me, why would you ever want to do
7 that, and isn't that awful and doesn't it worry you at
8 night and all this sort of stuff. It doesn't because I'm
9 in a helping sort of role.

10 The child reported that there was sexually explicit
11 material played at least some of the time when the
12 individual was involving her in sexual activity. And she
13 indicated that this happened a number of times. And she
14 indicated that it was at his invitation that she get
15 under the blanket with him, that she do this. She
16 indicated that he had taken her pants down, you know. So
17 that when you put that report by an eight-year-old child
18 together with an abnormal genital exam, to me in my
19 professional opinion, that's like saying one and one is
20 two or two and two is four. I wasn't there. I didn't
21 see it. But I have a lot of experience in this area.

22 Q. Thank you, Dr. Carter. You may take the stand
23 again.

24 (WHEREUPON, the witness resumed the witness stand.)

25 Q. You briefly said that she couldn't come up with the

1 words really to hunching, or couldn't come up with a
2 description. Could you explain developmentally in your
3 experience if children are able to describe the things
4 that have happened to them the way that an adult would be
5 able to?

6 A. Typically, they're not, you know. And I work with
7 children all of the time, and I've been doing it for --
8 you know, I've been doing it in Anderson since 1989.
9 Children have to learn the language of emotion, and they
10 have to learn the language of sexual activity. And so if
11 you take a child that hasn't learned, you know, the right
12 words and the right description and the right function,
13 for example, of body parts, they don't have a very good
14 way to describe sometimes the things that happen to them.

15 Q. Now, when a child describes what's happened to them,
16 is that -- what is that considered? What is that called?
17 Do you have a word for it in your profession?

18 A. No, I can't -- I'm not sure that I know what you're
19 asking.

20 Q. Okay. Let me rephrase. Is a report of abuse from a
21 child a process?

22 A. Very often it is.

23 Q. Does it necessarily always occur all at once?

24 A. No.

25 Q. Would it be considered abnormal for various portions

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Direct Examination by Ms. Reeves

212

1 of an abuse process to come out gradually?

2 A. That is often the case.

3 Q. You mentioned other things could cause a hymen to be
4 broken or absent. Did you see anything in reviewing

5 MINOR medical history that you think would or could
6 have resulted in this injury to her?

7 A. I did not. I'm going to just flip back through
8 these pages that her mother completed. But the sorts of
9 history that we like to know are whether the child had
10 has a history of urinary tract infections or perhaps a
11 urological procedure or some other, you know, some other
12 injury or abnormality that would explain an abnormal
13 finding. And in this review of the information given to
14 me at that time, there's no record that she had any
15 surgical procedure or injury to the genital area.

16 Q. Based on the allegations of the victim and the
17 video, in your professional opinion and your experience,
18 would the victim have necessarily known the difference
19 between actual penetration and attempted penetration?

20 A. At the age of eight, it would be -- it would be
21 really hard to say whether an eight-year-old could really
22 put into words the experience of vaginal penetration.

23 Now, you know, some -- you can have adults who explain,
24 well, was it like this or was it like that, and so on and
25 so forth, but that might be leading the child and trying

1 to entice some sort of a report from the child. And we
2 certainly don't want to do that. So we ask very open-
3 ended questions. And the child may not really be able to
4 give enough detail or all the detail that we would like
5 to hear. You do have to be -- and again, referring to
6 the video which I just saw two or three hours ago, you do
7 have to both watch the child and listen to the child
8 because they will tell you things in their moments of
9 silence or when they point to pictures, you know, as well
10 as when they speak with their mouths.

11 MS. PRICE: One moment, Your Honor.

12 THE COURT: Yes, ma'am.

13 Q. Dr. Carter, thank you. Please answer any questions
14 that Mr. Thomason has for you at this time.

15 THE COURT: Cross-examination?

16 MR. THOMASON: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. THOMASON:

19 Q. Dr. Carter, given your testimony, can you beyond a
20 -- or to a reasonable medical certainty say that these
21 injuries were caused by the Defendant in this case?

22 A. I can't say a who, Your Honor. I don't even know
23 the Defendant. I don't know the Defendant in this case.

24 Q. I understand.

25 A. I don't see a Defendant.

1 Q. Right. And would you be able to tell any individual
2 unless they had left something behind, some forensic
3 evidence such as fluid or DNA or something like that?

4 A. No. Only based on the child's testimony.

5 Q. Can you tell to a degree of medical certainty if --
6 I believe you termed it as a penetrating injury?

7 A. What we typically say and the way we write things
8 up, that it is consistent with a certain type of injury.

9 Q. Okay.

10 A. And I said this was consistent with penetration.

11 Q. What else is it consistent with?

12 A. Well, it is the most consistent with penetration.
13 If a child has a traumatic vaginal injury, for example,
14 being hit by a car or falling on a tree limb, falling
15 astride a tree limb or astride a fence or, God forbid,
16 falling on a rake with rigid teeth sticking up or
17 something like that, we could see an injury. But
18 typically there's a history consistent with the injury
19 that we see. I've seen children that have fallen on tub
20 faucets and children that have fallen on tree limbs and
21 bicycle -- bicycle handlebars are another bad -- but if
22 there's history consistent with the injury, then we say
23 well, you know, that's consistent with falling on a fence
24 rail or a tree limb or something like that. It's
25 consistent with the history given by the child.

1 In other types of child abuse -- I have dealt not
2 only with child sexual abuse but child physical abuse.
3 And again, if we see a child who has a -- who has a head
4 injury and the child is too young to give a history and
5 the parent says, well, they fell off the top bunk, and we
6 know that a fractured skull didn't likely occur in that
7 means, then we say, well, it's not consistent with the
8 history given by the parents or it is consistent, you
9 know, in some cases depending on the circumstances. So
10 all I can say is the injury that I saw is consistent with
11 a penetrating vaginal injury.

12 Q. The same question except I'm changing it to who and
13 what now to when. Can you ---

14 A. Now, this was not an acute injury. Therefore, I
15 mean, it occurred some -- presumably some weeks to months
16 earlier because it was completely healed. There wasn't
17 any fresh bruising, any swelling. You know, wasn't any
18 sign that it was a recent, as in the last two weeks was a
19 recent injury.

20 Q. Dr. Carter, I believe that's all I have for you.
21 And I also wanted to thank you for having me over at your
22 office last week and showing me your machine.

23 THE COURT: All right. Redirect?

24 MS. PRICE: Thank you, Your Honor. No
25 redirect.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Sallie Carter M.D. - Cross-examination by Mr. Thomason

216

1 THE COURT: May Dr. Carter be excused?
2 MS. PRICE: Please.
3 THE COURT: Mr. Thomason?
4 MR. THOMASON: No objection.
5 THE COURT: Doctor, excuse me for barking at
6 you like that.
7 THE WITNESS: Oh, no ...
8 THE COURT: Would you call your next witness?
9 MS. REEVES: Your Honor, I believe at this time
10 the Defense had asked that we have some redirect. So at
11 this time we call MINOR
12 THE COURT: Come around.
13 THE COURT: Let me ask you -- may I ask you
14 something, please? Do you remember when the Clerk gave
15 you an oath earlier this week?
16 THE WITNESS: Yes, sir.
17 THE COURT: Do you remember you said you will
18 tell the truth?
19 THE WITNESS: Yes, sir.
20 THE COURT: You're still under that oath. Do
21 you understand?
22 THE WITNESS: Yes, sir.
23 THE COURT: Thank you.
24 Mr. Thomason?
25 MR. THOMASON: May it please the Court.

1 THE COURT: Yes, sir.

2 MINOR

3 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

4 RECROSS-EXAMINATION

5 BY MR. THOMASON:

6 Q. MINOR I really hate to put you back on the
7 stand, but I have to.

8 THE COURT: I think you need to speak up.

9 MR. THOMASON: I'm sorry. Let me get a little
10 closer. I don't want to ...

11 THE COURT: Would you repeat what you said?

12 Q. I said I'm sorry that I had to put you back on the
13 witness stand.

14 MINOR we've seen the interview tapes that were
15 made today. And why did you not mention the oral sex
16 that you earlier testified to in those -- when you were
17 doing the interview?

18 A. I don't know.

19 Q. I'm sorry?

20 A. I don't know.

21 Q. You don't know?

22 A. (Shook head back and forth in the negative)

23 Q. Okay. Well, that's a perfectly good answer. I
24 don't know is a perfectly good answer. When did you
25 first tell anybody?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Janashja White - Recross-examination by Mr. Thomason

218

1 A. I told my counselor that I was talking to.

2 Q. Was that a long time ago, or was it -- how long ago
3 has that been?

4 A. I think it was sometime last year.

5 Q. Okay. Well, do you remember the interviewer asking
6 you several times was there anything she needed to know
7 and should you -- did you have anything else you should
8 be telling her about? And you said, no, several times.
9 Do you remember that?

10 A. Yes, sir.

11 Q. Well, one of those times, either then or now, you
12 weren't telling the truth. Which time was it?

13 A. Neither times.

14 Q. Okay. Well, I'm not going to -- I'm not going to
15 pressure you any more. I just wanted to get that out.
16 Thank you so much. Okay?

17 MS. REEVES: No, sir.

18 THE COURT: Any further witnesses from the
19 State?

20 MS. REEVES: Nothing further, Judge. The State
21 rests.

22 THE COURT: Okay. Mr. Foreman, ladies and
23 gentlemen of the jury, the State advises that it is
24 resting. What that simply means is that it has put up
25 all of the witnesses they intend to call in their case in

1 chief. I have now a few things I need to take care of.
2 It's a little early, but let's go ahead and take an
3 afternoon break, and we'll bring you back out here after
4 we get through. Okay?

5 Take the jury back to the room.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:09 p.m.)

8 THE COURT: All right. Any motions?

9 MR. THOMASON: Your Honor, I would move for a
10 directed verdict. The State has failed to put forward
11 enough evidence for any reasonable jury to convict on the
12 criminal sexual conduct charge. Well, actually, both
13 charges.

14 THE COURT: Okay, sir. I'm going to deny that
15 motion. Obviously, I know that that's no grand surprise.
16 But there is existence of evidence in the record from
17 which they could find that there was oral penetration,
18 although more arguably potentially some type of
19 penetrating intrusion in the vaginal area based on the
20 evidence from Ms. Gianiodis and the witness or victim
21 herself and Dr. Carter. So it's up to the jury to
22 decide.

23 That being said, I assume that you're not going to
24 put up any evidence?

25 MR. THOMASON: No, sir. The Defense rests as

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Janashja White - Recross-examination by Mr. Thomason

220

1 well.

2 THE COURT: Okay. Very well. I'm going to
3 pull my charges out and then we'll have a charge
4 conference. Okay?

5 MS. REEVES: Yes, sir.

6 THE COURT: And we'll be in recess until that
7 time.

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

10 THE COURT: Let me ask the attorneys. My
11 normal practice is if we're going to be giving a case to
12 a jury after four, I send them home.

13 MR. THOMASON: Sir?

14 THE COURT: My practice is if the case is going
15 to go to the jury after four o'clock, I'll send them home
16 and then charge them in the morning.

17 MR. THOMASON: Okay.

18 THE COURT: And I'm sure they probably want to
19 get on with other things, but at this stage it's three-
20 thirty. And by the time we finish the charge conference,
21 it's going to be well after, so I'd just as soon send
22 them home. Any problem from the State?

23 MS. REEVES: No, sir.

24 MR. THOMASON: None.

25 THE COURT: Can you bring the jury in real

1 quick, please, sir?

2 While he's getting them, look up -- do you have your
3 computer? Do you have your computer, Ms. Reeves?

4 MS. REEVES: Do I have my computer?

5 THE COURT: Yeah.

6 MS. REEVES: No, but I can get one.

7 THE COURT: Well, I just wanted y'all to pull
8 up § 16-3-655, what the statute is. It's a special
9 interrogatory we have to ask.

10 MS. REEVES: I have my old fashioned book.

11 THE COURT: Ma'am?

12 MS. REEVES: I have my old fashioned statute
13 book.

14 THE COURT: Oh, good.

15 (WHEREUPON, the jury entered the open court at
16 approximately 3:32 p.m.)

17 THE COURT: All right. Ladies and gentlemen.

18 The State has rested. The Defense has rested as well.

19 So what that means is as of this -- we've passed the
20 presentation of the evidence phase of the case.

21 Remember, I told you each case has five phases. The next
22 phase would be the closing arguments by the attorneys. I
23 would then charge you on the law, and then you'd be
24 allowed to begin your deliberations.

25 Because of the hour of the day, by the time the

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge Conference

222

1 arguments are finished and I charge you on the law, it
2 would be very close to five o'clock. I don't like for
3 juries to have to start deliberating that late hour of
4 the day. So I'm going to excuse you for the rest of the
5 afternoon. I'm going to ask that you be back in your
6 jury room at nine-thirty, and we'll proceed with closing
7 arguments and the charge of the law at that time. Okay?

8 And also, if you'll leave notes in the jury room.
9 And still the precaution please don't speak with anybody
10 or yourselves about this case. I'll excuse you for the
11 day. Thank you very much.

12 (WHEREUPON, the jury exited the open court at
13 approximately 3:34 p.m.)

14 THE COURT: All right. Any exceptions or
15 additions from the State as to my instructions?

16 MS. REEVES: No, sir.

17 THE COURT: Mr. Thomason?

18 MR. THOMASON: No, sir.

19 THE COURT: Okay. I have -- my clerk is
20 getting the verdict form ready. But the first degree
21 criminal sexual conduct with a minor charge is extremely
22 short, and so is the lewd act on a minor. Let me just
23 pass that out. I'm going to give the absent defendant
24 charge at another location, but it's the same one I gave
25 -- why don't y'all look at that and see if you have any

1 objections.

2 MS. REEVES: Judge, do you need the definition
3 of minor when the ages are given in lewd act? Because
4 the actor has to be over fourteen and the victim has to
5 be under sixteen.

6 THE COURT: Let me see.

7 MR. THOMASON: That's okay.

8 MS. REEVES: Option. I'm just saying ...

9 THE COURT: I don't think you do.

10 MS. REEVES: Okay.

11 THE COURT: If you have the exact ages that
12 they have to establish for the Defendant and the minor,
13 in this case under eleven or sixteen and under or under
14 sixteen and under, I don't think -- I think a definition
15 of a minor would be confusing because -- I tell you what
16 -- have you ever tried to run up a definition of a minor?

17 MS. REEVES: Yes. It's kind of narrow.

18 THE COURT: I mean, they're all over the place.

19 MS. REEVES: Yeah.

20 THE COURT: So I ...

21 What's your thoughts about it?

22 MR. THOMASON: I'm fine the way you've got it.

23 THE COURT: Okay. I'm going to -- if you want
24 me to do it -- I'm probably not going to. But if you'll
25 prepare me one, I'll look at it. I don't have one off-

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge Conference

224

1 the-top-of-my-head that I use.

2 MS. REEVES: Well, I mean, my opinion would be
3 just leave it out. Don't substitute anything, but leave
4 it out because the definition of a minor is within the
5 statute. I don't think an additional one needs to be
6 given.

7 THE COURT: So is there any aspect of this
8 charge that you have an objection to?

9 MS. REEVES: The definition of the minor, the
10 first sentence. A minor is anyone under the age of
11 eighteen. Isn't that what it reads?

12 THE COURT: Oh, excuse me.

13 Let me ask you, Scott.

14 MR. THOMASON: Yes, sir?

15 THE COURT: It seems confusing to me if it says
16 you're under eighteen, then it says you've got to prove
17 he's under sixteen. If I just strike out, a minor is
18 under the age of eighteen years old -- which this is
19 under the lewd act. And it would go, next the State must
20 prove that the Defendant willfully and lewdly committed
21 or attempted a lewd or lascivious act on or with the body
22 or its parts of a child under the age of sixteen years,
23 et cetera, et cetera, et cetera.

24 MR. THOMASON: Did you ever bring out how old
25 he was?

1 MS. REEVES: Yeah.

2 THE COURT: Do you have any problem with me
3 striking out eighteen? You put eighteen and then
4 sixteen. It seems a little bit confusing to me, I agree.

5 MR. THOMASON: That's fine. The simpler the
6 better.

7 THE COURT: Okay. I'm sorry. I looked
8 straight at it. And I knew you were looking at me like I
9 was being stupid.

10 MS. REEVES: Well, I thought we were together,
11 but -- no, it just seems unnecessary.

12 THE COURT: All right.

13 (Off record discussion)

14 MS. REEVES: The other thing that we might need
15 to discuss is in the specifics of the CSC with a minor
16 first. The jury is going to have to have a finding.

17 THE COURT: All right. I've got that on the
18 verdict form.

19 MS. REEVES: Okay.

20 THE COURT: And let me do this. We're going to
21 go back on the record because I cut you off before you
22 had an opportunity to finish doing your directed verdict
23 motion. I apologize for that. But you had -- I didn't
24 realize I didn't let you finish. You have some other
25 grounds that you want to assert?

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge Conference

226

1 MR. THOMASON: If it please the Court. I've
2 only got a couple or three. When do you want me to make
3 them?

4 THE COURT: Let's go ahead and do it now. I
5 thought we'd finished. But let's go ahead and get that
6 out of the way before we go into the charge conference.

7 MR. THOMASON: Your Honor, at this time, if it
8 please the Court, I would like to finish my directed
9 verdict motion on the following. First of all, there was
10 not a proper foundation laid for Dr. Sallie Carter's
11 testimony.

12 THE COURT: What, as to causation?

13 MR. THOMASON: Yes.

14 THE COURT: Okay.

15 MR. THOMASON: Further, as to the admission of
16 the forensic videotapes, I still believe they're
17 cumulative and bolstering. And also the child victim
18 changed her testimony from the videos to the -- onto the
19 witness stand. And that's about all I can think of.

20 THE COURT: Okay. Let me make sure I
21 understand. As to the Dr. Carter testimony, you're
22 saying that there wasn't a proper foundational question
23 laid by the State in order for her to give her testimony
24 as to cause of the missing hymen in this case; therefore,
25 that leaves the jury to look to ---

1 MR. THOMASON: That's correct.

2 THE COURT: --- just engage in speculation.

3 MR. THOMASON: And is speculation. It would be
4 causation speculation.

5 THE COURT: All right. I'm going to note your
6 objection. Any further grounds?

7 MR. THOMASON: No, sir. I think that covered
8 about everything.

9 THE COURT: Let me just say this. That was a
10 big concern of mine in the case. I did some research on
11 it. As we all know, you know, in order to prove
12 causation in a medical case, you've got to say to a
13 reasonable degree of medical certainty or something along
14 those lines. But there's no magic words that you have to
15 say. And I think it was -- it was an Anderson County
16 case, Scoggins versus McClellion, which is 468 12 S.E.2d.
17 It said it's enough if the testimony judicially impressed
18 that the opinion represents his professional judgment as
19 to the likely one among the possible causes.

20 MR. THOMASON: Who versus McClellion was that?

21 THE COURT: Sir?

22 MR. THOMASON: Who versus McClellion?

23 THE COURT: Scoggins, S-C-O-G-G-I-N-S. It's
24 468 S.E.2d 12, which is a 1996 case. I think that was
25 actually Judge Macaulay's. And anyway, under the test

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge Conference

228

1 set forth in that -- and they cite other cases -- I think
2 that their -- although it wasn't the strongest, quite
3 candidly, that she, Dr. Carter, did ultimately get around
4 to saying that in her professional opinion it's
5 consistent with this type of injury. And I think that's
6 enough to take it to the jury for their decision to make
7 a -- for them to make a culpability call. And you
8 certainly are free to argue that, as you well know.

9 All right. That being said, here's the proposed
10 verdict form. The question -- I have two special
11 interrogatories because it just seems to make sense. But
12 the way I read the definition of sexual battery, which
13 would include the oral side of things -- excuse me. But
14 the question that the statute requires doesn't go into
15 that. So you can have a sexual battery even though the
16 jury doesn't find one of these other factors. So that's
17 why I was asking on the verdict form, number one, do you
18 find that the State established by proof beyond a
19 reasonable doubt that the Defendant committed a sexual
20 battery upon the victim? Okay. No or yes. If you
21 answered yes to number one, then you go to question
22 number two. Did the sexual battery involve sexual
23 intercourse, anal intercourse or intrusion by an object.
24 And I believe those are the requirements that I have to
25 bring out in the statute. Okay. Then I just say go to

1 sir?

2 THE BAILIFF: Yes, sir.

3 THE COURT: All right. Would you bring the
4 jury in, please, sir?

5 (WHEREUPON, the jury entered the open court at
6 approximately 9:39 a.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen
8 of the jury, good morning.

9 THE JURY: Good morning.

10 THE COURT: We have concluded the presentation
11 of the evidence phase of this case. The next phase we'll
12 get into will be the closing arguments by the attorneys.
13 Then I will charge you on the law. After I charge you on
14 the law, I'll send you back to your jury room. You're
15 still not to begin your deliberations until I go over
16 with the attorneys whether or not I misstated something
17 or omitted to say something I should have in my charge to
18 you. Once we have that clarified, then you'll receive
19 word from the bailiff and the verdict form and the
20 exhibits that you may begin your deliberation. Okay?

21 All right. Mr. Reeves?

22 MS. REEVES: Thank you, Judge. May it please
23 the Court?

24 THE COURT: Yes, ma'am.

25 CLOSING ARGUMENT

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

241

1 BY MS. REEVES:

2 At the beginning of this trial, I told you that this
3 case was about a child being molested, and that child was
4 MINOR You heard her testimony twice basically.
5 You heard her on the stand, now ten years old, talk about
6 how she's about to finish the fifth grade. You heard her
7 talk about her family and her family members who she
8 lives with now.

9 And you also heard her talk about her stepfather,
10 someone that she used to live with. His name is Andrew
11 Clemons, but she knows him as Moochie. You heard her
12 tell you about the fact that he touched her in a way that
13 she didn't like. She described several incidents on the
14 stand to you as well as on the video that you saw.

15 And I told you at the beginning of this trial that I
16 apologized that we were going to have to discuss in very
17 frank terms body parts, specific body parts and sexual
18 acts as they related to children. And you heard why.

19 You heard that MINOR had to go through and tell
20 you how Moochie touched her. From the stand she
21 described how he put his penis between her legs, how he
22 held her by the waist and moved her up and down on him,
23 how her bottom touched the front of his private. How he
24 had taken his clothes off, how he had taken her clothing
25 off. At some point she did say he left his boxers on,

1 but, again, she said he put his penis through the hole in
2 his boxers so their skin could come into contact. And he
3 touched his private part, his penis, to the skin of her
4 vagina.

5 He showed her a video, in fact, of what he wanted
6 her to do on a little small portable DVD player of people
7 without their clothes on. And then she said this is what
8 -- he was showing me what to do.

9 You also heard her say that he made her put her hand
10 on his penis and then put his hands around hers and made
11 her move them up and down until something came out. And
12 it felt hard. A ten-year-old is telling you this. How
13 does she know that unless she did it.

14 She also told you that he made her put her mouth on
15 his penis. She told you that he held her by her little
16 ponytail on the back of her head and moved her head up
17 and down, and again, until something came out that went
18 in her mouth. And she had to spit that out.

19 You heard her tell you that on the stand. And then
20 you heard her again in the video and how she again
21 described how he held her by her waist and moved her up
22 and down. That he kissed her first, that he went -- when
23 he thought she was asleep on the couch and he kissed her
24 on the lips.

25 And then she described another time that he put his

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

243

1 penis between her legs from the back going near her butt.
2 So again, skin touched. And again showed her a video of
3 what he wanted her to do.

4 She talked about how his penis touched the skin of
5 her butt and what it looked like. And she pointed to the
6 picture in the video and said, his penis looked like that
7 only it was a little bit bigger.

8 She described another time too where he put his
9 penis between her legs when he was on top of her. And
10 she even demonstrated on the video. She turned around
11 and hiked her leg up on the chair to say he got on top of
12 her that way. His penis was between her legs on her
13 skin, and he was moving up and down. And again, that's
14 when she described that something came out because he
15 told her to go wash up. Take a shower or bath. Go clean
16 up.

17 You heard in the interview trying to -- MINOR
18 trying to explain how many times this happened to her.
19 She said, well, I think it was maybe five or six. But if
20 you listen closely, she said, I really don't count
21 anymore.

22 Again, she describes another time of putting her
23 hands on his penis and that he ejaculated -- those are
24 not her words, those are my words -- but her words, she
25 said something came out maybe three times. She is

1 talking about and describing sexual acts that happened to
2 her.

3 And no, she didn't get it all out on the video. She
4 got some out on the stand too. But it's a process. Just
5 like any other traumatic event in your life like a car
6 wreck, right after it happens, you're going to maybe only
7 tell the essential details. You know, I had my blinker
8 on. I was going to turn right, and all of a sudden
9 somebody hit me. The essentials. It's not until later
10 when you've had time to really sit and understand that,
11 oh, yeah, well, you know what, I was about to turn right.
12 But when I saw them, there was actually a car behind the
13 car that hit me that hit them first. And those details
14 kind of evolve as your memory works through and you kind
15 of understand. That's what happens with any of us, with
16 any adults, even children too. But children are at a
17 limited advantage because -- especially in dealing with
18 sexual instances because they don't even know what's
19 going on. They don't understand it themselves, and now
20 they're having to come and explain it to us.

21 Not to mention these incidents happened two and a
22 half years ago. So imagine the difficulty in describing
23 your last sexual encounter to a room full of people,
24 strangers, and to members of your own family. That's
25 what we asked MINOR to do at ten. Describe things

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

245

1 that happened to you at eight years old. And not only
2 that, two years ago I want you to be able to describe
3 what you were wearing, what that other person was wearing
4 and the exact positions that he made you get into. If
5 you leave out some details, I think everyone's going to
6 understand why. That's a lot to remember and a really
7 embarrassing topic to discuss. Not to mention the fact
8 that she was eight years old. It happened more than one
9 time, so which time are you talking about? Which time do
10 you want me to tell you about? I'll try to do it the
11 best I can. That's what we asked her to do.

12 Like I said in the beginning of this trial too,
13 children have a really difficult time remembering
14 details. If you've ever talked to -- or dates that
15 something happened. If you've ever talked to a child and
16 tried to, you know, say, oh, this is going to happen next
17 weekend, they really have no idea what you mean by next
18 weekend or time in any way.

19 I have a three-year-old son, and he is significantly
20 younger than the children that testified here during this
21 trial. But he still has really no concept of time. I
22 can take him to the zoo, and something significant will
23 happen at the zoo. He really likes the monkeys. And if
24 they're really loud, you know, he will remember that the
25 monkeys were really loud. But if I asked him, was that

1 the time that we went this weekend, or was that weekend
2 before when we went with your grandmother, he can't tell.
3 He can just say that the monkeys were loud. This is the
4 developmental stages of children and how they progress to
5 have the memories of when something occurred.

6 So again, are there going to be some inconsistencies
7 in her memory from something that happened two, two and a
8 half years ago, whether it happened when she was seven or
9 eight? Of course. But that's why, again, I have a time
10 frame that we believe, based on what her mother said,
11 this Defendant, Andrew Clemons, was living in the home
12 between December, mid-December, of 2009 and August of
13 2010. During that time, MINOR would have been seven
14 and eight years old. And that's consistent with what
15 she's told you.

16 Then you heard from her nine-year-old sister T'Aja.
17 You heard her describe pretty much the same thing she
18 said up here as she did on the video. She was outside.
19 They were all outside playing. MINOR got hot and
20 wanted to go inside, play with her dad. And this is
21 T'Aja's dad she's talking about, Andrew Clemons. So when
22 T'Aja comes in to get a drink and ask for a drink, she
23 sees her sister with her shirt on coming out of her dad
24 and her mom's bedroom. And the Defendant is also in
25 there, and he's behind her.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

247

1 That was significant enough for her to remember that
2 and tell her mom about it later. Because she told you on
3 the stand she knew it wasn't right. She saw her sister
4 running out of that bedroom and run into their room and
5 get under the covers because she didn't have any pants
6 on. I believe in the video she says no pants or panties,
7 because she pointed on the picture to the fact that she
8 saw her sister's bottom.

9 She also said that she has this memory of when they
10 told their mom and how their mom was in the kitchen. And
11 she tried to tell her mom what she saw. And then
12 MINOR was saying, no, that's not right. My pants just
13 slipped. My pants slipped on the dresser, because you
14 heard T'Aja say that in the video..

15 And then if you remember, their mom Telfia Johnson
16 said, yeah, but what was being said, what MINOR was
17 saying didn't really make sense. I mean, how could her
18 pants slip off on the dresser? That's the inconsistency,
19 I think, that the mom was trying to point out, that
20 MINOR version wasn't really making sense. And then
21 you heard from T'Aja on the video when she was saying her
22 pants slipped off.

23 But regardless this is what she saw. She saw
24 MINOR running out of the room with no pants on and
25 running into their bedroom and hiding under the covers.

1 And Moochie was in the bedroom.

2 You heard from their mom Telfia Johnson, and she
3 told you who Moochie was, who Andrew Clemons was. He was
4 her boyfriend and the father of her three younger
5 children. You heard her tell you that they used to live
6 together on Queen Drive in Anderson County. You heard
7 her tell you that they lived in this house. They had a
8 bedroom. The girls shared a room. The boys shared a
9 room. All of these things match up with what MINOR
10 told you and T'Aja told you about how the house was set
11 up.

12 You heard the mom talk about how -- again, how he
13 lived there from December of 2009 to August of 2010. You
14 heard her remember when T'Aja told and MINOR telling
15 the details as well or reluctantly telling the details.
16 All of them seem to have this same memory of mom being in
17 the kitchen, T'Aja running in to tell on her sister, and
18 then MINOR coming in and having a conversation with
19 her mom later.

20 You remember that what MINOR told Ms. Johnson was
21 significant enough for her to take her to the doctor.
22 And she took her to the doctor, and the doctor said, you
23 just need to follow up with some counseling. So she was
24 listening to the professionals, and she was trying to
25 find her some counseling.

1 You also heard her say that DSS got involved. And
2 that really turned out to be probably the best thing
3 because DSS got involved and reported it to law
4 enforcement. After that, of course, MINOR received
5 her medical exam and was set up for some counseling.

6 The mom again remembers having this conversation
7 with MINOR to corroborate and matching what MINOR
8 said. This happened around her eighth birthday. It
9 happened at different places within the house. In the
10 living room and in her own bedroom, the mom's bedroom,
11 Moochie's bedroom.

12 She also told you how angry she was and how she had
13 mixed emotions and she felt pretty guilty about this. I
14 think that's pretty standard.

15 You heard from MINOR dad, Jonathan White. You
16 heard that he really tried not to have too much
17 conversation with his daughter about the details. He
18 understood this to have happened more than once when she
19 was about seven to seven and a half. But again, he
20 didn't ask her about it. He didn't want to know the
21 details.

22 Then you heard from Ms. Overton from DSS. And she
23 said that once she got involved, she met with the mom,
24 she met with MINOR She went to their home, found out
25 that the mom may not have really known what to do in the

1 beginning but followed every step along the way after
2 that.

3 Detective Sergeant Partain told you that this was a
4 typical sexual assault examination -- or investigation.
5 She said that she let other professionals do their jobs.
6 She let the victim have a medical exam. She let the
7 child get interviewed. And once she gathered all that
8 information, then she went to talk to the mother about
9 who was in the home during this time. And the victim
10 says that Mr. Clemons is the one that did this, and the
11 mom corroborated those details. So Detective Sergeant
12 Partain did her job in terms of gathering the information
13 that was necessary.

14 And then she told you that she tried to speak to the
15 Defendant, and he never showed up for his appointments.
16 So all of those details corroborated what MINOR told
17 in her original telling of what happened to her.

18 And so the Judge is going to instruct you in a
19 minute what the law is. And he's also going to tell you
20 that a victim in a sexual assault case, her testimony
21 need not be corroborated. What that means is a victim
22 can come in here by herself with no other witnesses and
23 say, this person sexually assaulted me. You don't have
24 to have any witnesses because there usually aren't any.
25 Don't have to have any DNA. Don't have to have any other

1 corroborating evidence to support her story.

2 But luckily in this case we do. No, nobody saw it.

3 The Defendant made sure of that. But he came close. We

4 have T'Aja that almost witnessed something. We have a

5 mom to corroborate those details and how old she was and

6 when it happened and where it happened and her dad.

7 We had the interviewer testify, Ms. Gianiodis. She

8 said that it's her job to interview children. She's done

9 over nine hundred interviews with children. And what she

10 does is she asks non-leading, non-suggestive questions to

11 let the children tell if they have anything to tell at

12 all.

13 You watched the video. You saw in your own words

14 what MINOR -- I mean, their own words -- what MINOR

15 and T'Aja have to say.

16 You also heard from Dr. Carter, how she did an exam

17 on the victim in this case. That her findings were a --

18 absence of a posterior hymen. She told you that this is

19 -- in her experience, that this is never something she's

20 seen somebody be born with. It is consistent with a

21 penetrating injury.

22 She also showed you some pictures of the victim's

23 hymen as well as another girl of the same age and the

24 comparison of what her hymen was. I'm not going to show

25 you those pictures again right now. You'll have them in

1 the jury room if you care to look at them. It's up to
2 you. It was just for comparison because we're talking
3 about a part of the body, the hymen, that there are a lot
4 of myths about. That even if you have one, you may not
5 have ever even seen it. It is a part of the body that
6 usually goes unseen, especially -- and even the doctor
7 testified or talked to you about the fact that she had to
8 use a colposcope in this exam to really view it clearly.

9 So not only, you know, she took these pictures, she
10 examined, but you will have those pictures, if you care
11 to look at them, for comparison.

12 The victim had no hymen posteriorly, at the bottom.
13 The doctor told you that that's consistent with
14 penetration. And the Judge will instruct you that the
15 law says penetration however slight.

16 So the doctor also went on to tell you that this
17 victim, MINOR wasn't really able to put into words
18 the significant detail that we all want. When was it?
19 Did his penis go into your vagina? Did that happen? She
20 might not know.

21 And the doctor told you it might not hurt. And an
22 injury like falling on something, on an object would
23 obviously bleed. She talked about that. But this type
24 of injury may not bleed. This type of injury may not
25 hurt at all. Women's bodies are made to have babies.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

253

1 She said that the hymen is stretchy. That skin is
2 stretchy. So this penetration, however slight it might
3 have been, however -- whatever rub happened as he's
4 putting his penis between her legs, that penetration
5 could have occurred and MINOR wouldn't even know it.
6 And even if she did know it, would she be able to put
7 that into words to tell you? Because again her mom told
8 you that they had never had a discussion about anatomy.
9 At eight years old, you focus on bathroom functions, not
10 anatomy, not vaginas. There's no need to get that
11 specific at that age.

12 Dr. Carter also talked about on the video how the
13 Defendant had felt comfortable enough and invited the
14 victim to be with him multiple times. So there was
15 multiple opportunities for him, not just one, but
16 multiple times, multiple opportunities for him to have
17 penetrated her. And she thought that was very
18 significant in her opinion.

19 She also told you how children need a language, that
20 sex is foreign to them. That's kind of what I've been
21 saying. They don't know how -- children don't know how
22 to speak about it because it's all new to them. It's
23 being learned. They're being shown what to do, either by
24 the Defendant putting his hands on her hands, his hand on
25 the back of her head, or showing her a video. This is

1 what I want to do.

2 You saw MINOR not even be able to describe really
3 what it felt like. Or when she saw the other video with
4 her cousins about hunching, she couldn't really describe
5 that. She didn't have the language to even know what
6 that was.

7 You also heard her talk about what the girls at
8 school had called sperm. And she thought that might have
9 been what it was that came out of his penis. But this
10 was happening to her, and she didn't even have a word for
11 it. The girls at school had to tell her that that was
12 sperm. I don't think she was telling them what was going
13 on at home, but just, you know, that word had come up.

14 The doctor also told you that this could have
15 happened -- you know, it did happen multiple times, and
16 there could have been a penetration and MINOR didn't
17 know about it. And what she said was in her opinion, one
18 and one is two. Those were her words.

19 Adults rule children's lives. Adults tell children
20 when they can eat, when they need to go to bed, when they
21 need to get up. All of those mundane things all
22 throughout the day every day. Adults tell children what
23 to do. And for a rule-follower, if an adult tells you
24 what to do, you do it. The adult was Andrew Clemons. He
25 told MINOR what to do. He told her where to put her

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Ms. Reeves

255

1 hands, where to put her body, where to put her clothes.
2 He was in charge. And she was a rule-follower. She did
3 what he told her to do.

4 Perpetrators like that have to be nice to their
5 victims. They want them to come back. If they were mean
6 or violent or hurtful, a child would go running to tell,
7 first of all. And then they wouldn't want to come back
8 to them. But they lived in the same house. So he's
9 going to be nice to her because he wants her to come
10 back. He's going to pray with her to forgive their sins
11 or his sin so she comes back, so she won't run and go
12 tell her mother.

13 MINOR has no reason -- I don't believe you've
14 heard one -- to make this up. In fact, she had more of a
15 reason not to tell at all. She told you she was scared,
16 scared that she might get into trouble. She told you
17 that they prayed together, so she probably thought this
18 was her sin. She told you that she was embarrassed, that
19 one of her friends at school had told some of the other
20 little boys. And when they asked her about it, she said,
21 no, that's not true because she was embarrassed and she
22 didn't want them to know.

23 This was a family member. At eight years old or
24 even at ten year's old she's thinking, how is this going
25 to affect my family if I tell what my step-daddy is doing

1 to me.

2 You also heard her on the videotape describe, why
3 are you here to talk today. Because me and my sister's
4 dad did something very bad. It wasn't just him. It was
5 her. Me and my sister's dad did something very bad. Her
6 fault.

7 And not to mention he threatened her. Don't tell
8 anybody, or you're going to get in very big trouble. And
9 do you want to get taken away? That's what she said on
10 the video. She has more of a reason not to tell. And in
11 fact, she didn't. Her sister did. And even when
12 confronted with it, she still didn't want to really tell.
13 Many, many reasons why this happened in December and
14 August of 2010 and we didn't even hear about it or her
15 mother didn't hear about it until March of 2011. What
16 reason would she have to tell?

17 My job is to prove to you beyond a reasonable doubt
18 that Moochie, Andrew Clemons, committed criminal sexual
19 conduct with a minor in the first degree. The Judge will
20 tell you what the law is at the end. But as I told you
21 in the beginning, it is when someone engages in a sexual
22 battery with a child under eleven years old. The sexual
23 battery can be sexual intercourse, anal intercourse. But
24 it also can be oral sex, what we refer to cunnilingus,
25 which is oral sex on a female. Or fellatio, which is

1 oral sex onto a male.

2 In this case, it's pretty clear. MINOR described
3 the Defendant made her perform oral sex, fellatio, on
4 him. She also told her counselor about it. She may not
5 have said it on the video, but she did tell her counselor
6 about it.

7 Sexual intercourse. Again, victim really couldn't
8 say. But we have medical evidence. We know that her
9 hymen was absent posteriorly. I can't say that word. At
10 the bottom. We know that it was absent. We heard the
11 doctor tell you that.

12 You also saw her demonstrate, again, how he put his
13 leg up and got on top of her, put his penis against the
14 skin of her vagina and rubbed up and down. There could
15 have been penetration, and again, the law reads, however
16 slight. She may not know. It may not have hurt.

17 It is also my job to prove to you beyond a
18 reasonable doubt that a lewd act was committed on her.
19 And again, that's rubbing or touching. And the Judge is
20 going to give you the crazy language that it's a lewd or
21 lascivious act, done to gratify the lusts or passions of
22 the actor, the Defendant. And basically that means, it's
23 fancy language to say rubbing or touching in a sexual
24 way. And boy did he ever. Put his hands on her -- put
25 her hands on his penis, kissed her, made her rub him.

1 Again, the Defendant is in charge of when and where.
2 He's the adult. He says when we're going to do these
3 things. He says who's home at the time. He says no
4 one's going to see these things. We're not going to
5 leave any evidence behind. And I'm going to threaten
6 her. He's going to threaten her not to tell.

7 Based on the evidence that you've heard, the only
8 thing that the Defense can point to are inconsistencies.
9 That's it. This isn't a who done it. It's how much did
10 they do? That's it. How much did they do? We know who
11 did it. She told you who did it. Andrew Clemons did
12 this. How much did he do? That's the only question you
13 have to answer. Of course, there are going to be
14 inconsistencies. Whether she was seven or eight or what
15 exactly happened. But again, try to describe a sexual
16 act that happened to you two, two and a half years ago,
17 and get every detail right. And maybe you told that
18 story two, two and a half years ago, so you'd better get
19 every detail right again now or we're going to imply or
20 say that you're not telling the truth because of
21 inconsistencies. Those are completely understandable.
22 Again, it's not who done it. We don't have to figure out
23 who. We just have to figure out how far he went with an
24 eight-year-old.

25 The Judge is going to tell you that the evidence

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

259

1 must leave you firmly convinced of the Defendant's guilt.
2 He's also going to charge you that reasonable doubt is a
3 doubt that would make a reasonable person hesitate to
4 act.

5 The evidence in this case is not just firmly
6 convincing, but it's overwhelming. The Defendant engaged
7 in sexual battery with MINOR who was under
8 eleven years old. He also committed a lewd act on her
9 body to gratify his own lusts or passions. You have no
10 reason to hesitate. Find him guilty of both charges.

11 Thank you.

12 THE COURT: All right. Mr. Thomason?

13 MR. THOMASON: Thank you. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 CLOSING ARGUMENT

17 BY MR. THOMASON:

18 Good morning. As I told you on Monday morning, I
19 would only have two opportunities to talk to you
20 directly. And this the second and final one. I don't
21 expect to talk to you for a very, very long time. So
22 let's get started.

23 Last night I sat at the kitchen table with a notepad
24 and trying to develop a closing argument. And every time
25 I did, it sounded like I was writing a speech. So I just

1 -- after a while, I just stopped. And I said, I'm just
2 going to go talk to those folks.

3 And you know, everybody in this courtroom or most of
4 the people in this courtroom have a job to do. Ms.
5 Reeves' job is to prosecute. The Judge's job, as he
6 described to you, is sort of a referee. The court
7 reporter's job is to take down everything that's said.
8 My job is to defend the Defendant, Mr. Clemons. And I
9 intend on doing my job to the best of my ability because,
10 as an officer of the Court, that's what I have sworn to
11 do. And that's what I intend to do.

12 If you take offense to anything that I may say to
13 you, please blame it on me. Do not take it out on the
14 Defendant. Because in the course of my talk with you
15 this morning, I may say some things that you might not
16 like. I just ask you that you hold me accountable for
17 those things and not Mr. Clemons.

18 I guess we should start off with the eight-hundred-
19 pound gorilla in the room. And that is where is Mr.
20 Clemons? Well, I told you Monday I don't know, and today
21 I still don't know. However, the Judge is going to tell
22 you in no uncertain terms, in a very vigorous fashion,
23 that it does not matter, that you cannot take that into
24 account in your deliberations and in your -- and when
25 y'all are working this thing out back in the jury room,

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

261

1 that cannot be considered. I know that it's human nature
2 sometimes that something like that might enter your mind,
3 but I'm telling you, you're just going to have to get
4 over that.

5 The same goes for Mr. Clemons' failure to testify in
6 this case. I probably would not have had him testify
7 anyway. He's already, by having this trial, said, I am
8 not guilty. I did not do this. And that's about all he
9 could have said from the witness stand as well.

10 And yeah, Ms. Reeves accurately predicted that what
11 I was going to do is point out some of the
12 inconsistencies in the State's case. There were many.
13 And I'm not going to go through every little single thing
14 that there was, but I think there are some that need to
15 be pointed out.

16 I think one aspect of this case that I find
17 interesting is that the first indictment for criminal
18 sexual conduct first degree was indicted in November of
19 2011, and the indictment for the lewd act -- I'm sorry --
20 December of 2011 for the criminal sexual conduct. The
21 indictment for the lewd act was only a month ago. And in
22 fact, today is -- it was April 6 of '13. So actually
23 less -- one day short of a month ago.

24 Why is that? Well, it's the Defense's position that
25 when they indicted on the criminal sexual conduct, the

1 State had not thoroughly gone through the facts of the
2 case. And as time rolled on, they discovered that they
3 were lacking an element to prove a crime that's a
4 criminal sexual conduct. And that element is
5 penetration. So the State goes back and gets another
6 indictment for lewd act which does not require
7 penetration.

8 MINOR on the witness stand yesterday -- or
9 Monday, I'm sorry -- told you that he did not put
10 anything inside her vaginally, anally, but she did say he
11 did so orally. Well, the first time that the Defense
12 heard anything about any kind of oral sex was about a
13 week or so before the second indictment was reached. So
14 until six -- let's say, six weeks ago, I knew nothing
15 about any allegation of oral sex. I've never been given
16 a medical report, a police report, a forensic report, any
17 kind of report with -- alleging oral sex.

18 You watched the forensic interview. And she does
19 not mention it there. I would think -- and after having
20 been asked on several occasions, is there anything else
21 you need to tell me, is there anything else you need to
22 tell me, she still does not bring it up.

23 Now, you will also have the DVDs back in the jury
24 room with you should you care to view them again. And
25 the time line is just all over the place. I mean, first

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

263

1 of all, the indictments say that the behavior happened
2 between December of '09 and August of '10. Well, that's
3 about ten months that I've got to defend. I mean, if you
4 rob a bank, you prove that the guy robbed the bank on
5 such and such day. I've got to -- my -- it's very
6 difficult to defend someone every day and account for
7 them every day for ten months. It's just -- it's almost
8 a year.

9 It was all over the place about when it was
10 disclosed to Mama for the first time. The last possible
11 time it could have happened would have been August of '10
12 because that's when Mr. Clemons left the home, and then
13 Mama is not told until March of '11. So this business
14 that they ran and told soon after the events occurred, it
15 is simply not true.

16 Now, I know and I recognize that children have a
17 different sense of time and have a different -- and a lot
18 of things Ms. Reeves said are true, and the Defense will
19 concede that. But when does it get to be -- when does it
20 get to be so many inconsistencies that it leaves a
21 reasonable doubt in your mind? To me, just the fact that
22 she mentions -- she doesn't mention oral sex on the video
23 when it would have been much fresher in her mind and then
24 mentions it here today or -- sorry -- Monday, I feel like
25 that's reasonable doubt right there as to the criminal

1 sexual conduct charge.

2 The doctor's testimony, while she testified that
3 there was an injury down there, she could not give the
4 who and with what and the when. And frankly, that's a
5 lot of speculation. We don't use speculation. We use
6 facts.

7 Now, this behavior -- it's May of '13 now. And this
8 is supposed to have happened in August of -- I'm sorry --
9 December '9 to August '10. If you don't believe that
10 these children have not been going over their testimony
11 all this time, then -- you've got a right to believe
12 that. But it seems to me that they knew this was coming
13 to court, they knew this was going to happen, and the
14 stories still are not straight.

15 Now, the -- look, I don't think that it's
16 appropriate for an eight-year-old girl to see any video
17 of people naked kissing. But just because you see people
18 naked kissing doesn't necessarily make it pornography. I
19 mean, you can see that on basic cable every night. It
20 might not show the parts, but the -- and on cable, it
21 does frankly. So the characterization of -- I don't know
22 what she saw. And the other allegation when she said she
23 saw things like that were when she was with her cousins
24 and that people were hunching. Now, we still never got a
25 clear definition from her of what hunching was. I kind

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

265

1 of have a good idea, but it's not my place to say.

2 But when you start adding all these things up, and
3 especially -- again, just to drive this home, they go get
4 an indictment in '11, and then two years later in '13 go
5 run and get another indictment on the eve of trial. Why
6 do you think that is? I mean, it's because they said,
7 oops, we're missing an element here. We don't have the
8 penetration element. We'd better go get us an indictment
9 that'll cover that. So that's my opinion of why that
10 second indictment was ever even filed. Y'all might
11 disagree. But you know, why wait two years to go get
12 another indictment and then not tell Defense counsel
13 about any oral sex until six weeks before trial? When I
14 asked her yesterday who did she tell about it, she said
15 her counselor and sometime last year. Well, her
16 counselor would have had a legal duty to report that to
17 DSS, law enforcement, somebody. So you know, this should
18 have been -- this information should have been in my file
19 last year sometime, not a month before the trial.

20 The fact that T'Aja saw MINOR running across the
21 room followed by Mr. Clemons is, in and of itself, just
22 that. She saw her -- now, T'Aja said she didn't have no
23 panties on. MINOR said she did. On the video if you
24 watch it again, T'Aja says they were both giggling when
25 they were running across the room.

1 And again, just the -- it's very difficult to defend
2 a person when you cannot break it down and have some sort
3 of meaningful time line that's just not all over the
4 board. I mean, the reason that we put y'all on this jury
5 is because we thought y'all had the common sense and
6 plain, everyday life experience of people representative
7 in the community. And so don't leave that in your chair
8 when you go back to the jury room. We want you to use
9 your common sense. But I feel like that common sense
10 would say that after this long and this much time having
11 passed between when the charges were filed and until we
12 got to this room here, that they should have been able to
13 get together a better picture of who did what when and
14 who told what when and just a more clear picture.

15 Why did -- even the reasons for telling were all
16 over the board. T'Aja testified from the stand that she
17 went and told because -- told her mom because she thought
18 it was wrong. Well, MINOR testified that she told
19 because they would get in arguments and T'Aja would
20 threaten to tell or say something. So even that, you
21 know, they don't even agree on that from the witness
22 stand.

23 I would urge you -- and you don't have to watch the
24 whole things. But I would just leave you with the idea
25 that by the State's own actions in this last-minute

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

267

1 indictment was to kind of cover their rear-end in case
2 they couldn't make their case on the first charge. And
3 that's -- the first charge, criminal sexual conduct, that
4 requires some form of penetration. That's the key to the
5 whole thing is penetration. And she said right there on
6 that witness stand that he did not put anything in my
7 rear-end. He did not put anything in my front-end other
8 than between her thighs. And we're just now hearing
9 about oral sex six weeks before the trial?

10 I mean, it's just -- the subject matter of these
11 cases is horrible. I mean, and if -- I personally don't
12 have any children. But I certainly like children and
13 empathize with those who do. And the thought of one
14 being abused or molested is repugnant to me. But again,
15 it goes back to having to prove your case.

16 Now, I don't think they've proved criminal sexual
17 conduct in the first degree. If they thought -- and they
18 wouldn't have run and got that second indictment at the
19 last minute if they really thought that, which casts a
20 lot of doubt to me on the second indictment. I mean, if
21 you can't -- I don't know any reason that MINOR would
22 have to make this up and tell a lie about this. But then
23 again, that's all it is is I don't know, and neither do
24 you.

25 And so Mr. Clemons is right now cloaked in a what.

1 they used to call the shroud of innocence. And you're
2 going to go back there and you're going to make the
3 decision as to his guilt or innocence.

4 I do want to point out that the forensic interview
5 lady, Ms. Gianiodis -- I can't ever say that right -- she
6 is not an expert. She is no more of an expert than y'all
7 are on any matter that she testified to here. She was
8 not qualified as an expert, so you should treat her
9 testimony just like any other witness. I feel like the
10 doctor -- now, she was qualified as an expert which means
11 she can give her opinions. Well, they're still opinions.
12 They're not -- everything she testified to were not
13 facts. And when you're an expert, you're allowed to give
14 an expert opinion. That's what the difference between a
15 lay witness and an expert witness is, is an expert can
16 give an expert opinion.

17 Well, the Defense would just submit to you that it
18 is too speculative to -- because she cannot say with a
19 degree of medical certainty that Mr. Clemons caused these
20 injuries or caused the injury or when they were caused or
21 even if somebody else caused them.

22 And as I said, this is my last time that I'm going
23 to get to speak to y'all, so I'm trying not to leave
24 anything out. So if you'll just bear with me one second.
25 And I think I've pretty much hit the high points.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Closing Argument by Mr. Thomason

269

1 I think you really need to take a look at that
2 business about those indictments because that is just
3 very, very fishy to me. And I'm saying that with all --
4 I really believe that. They thought they were missing an
5 element to prosecute successfully a criminal sexual
6 conduct. So they ran on the eve of trial and got another
7 one on a different charge and did not tell the Defense
8 anything about oral sex until about six weeks before the
9 trial. So I have been for two years preparing for a
10 charge that I feel like I have successfully defended
11 because I just don't believe that business with oral sex.
12 I think she would have told somebody before now or before
13 then. I just don't believe it. But they had to have
14 that element.

15 And I think that casts doubt on the lewd act charge
16 as well which is -- and again, you must find Mr. Clemons
17 guilty beyond any reasonable doubt. I'm not going to say
18 any doubt at all. I guess you could doubt if the sun's
19 going to come up tomorrow, but it doesn't go that far.

20 But the Judge is going to instruct you on the law.
21 It's probably going to be kind of long and kind of
22 boring. Kind of like me, I guess. But I really want you
23 to listen. I hope you've listened to what I've said
24 today. And I really want you to think about the
25 difference in times between those two indictments because

1 I don't think it's fair that I was only informed about
2 the missing element six weeks before we come to court.
3 And I think he should certainly be found guilty [sic] on
4 the criminal sexual conduct. And I think that that is
5 enough to shed reasonable doubt on the charge of lewd
6 act.

7 Thank you for listening to me. I'm going to go sit
8 down, and the Judge can take it from here.

9 THE COURT: All right. Mr. Foreman, we've been
10 going for about an hour. Let's take a brief break, about
11 ten minutes. I'll bring you back in here and charge you
12 on the law. If you'll take a break now, please.

13 (WHEREUPON, the jury exited the open court at
14 approximately 10:37 a.m.)

15 THE COURT: All right. We'll be in recess
16 until ten till.

17 (WHEREUPON, court stood at recess for a short
18 break.)

19 THE COURT: All right. If you'd just man those
20 doors, Mr. Bailiffs, I'd appreciate it, okay?

21 THE BAILIFF: All right, sir.

22 MS. REEVES: May I make a request?

23 THE COURT: Just one second. Yes.

24 MS. REEVES: Oh, no. The jury's already on
25 their way in.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

271

1 THE COURT: No, they're not. What's your
2 request?

3 MS. REEVES: Were you going to mention again to
4 them that the indictment is not evidence?

5 THE COURT: (No response)

6 MS. REEVES: Were you going to mention again to
7 them that the indictment is not evidence?

8 THE COURT: Uh-huh (affirmative).

9 (WHEREUPON, the jury entered the open court at
10 approximately 10:55 a.m.)

11 THE COURT: Thank you, Buck.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 again, I'm going to give you a charge on the law. I'm
14 going to send you back to your jury room, go over with
15 the attorneys whether or not I made a mistake or I
16 omitted something, and then we'll send you back word that
17 you may begin your deliberations.

18 The alternates, when I send the jury back, I'm going
19 to ask that the bailiff put them in the grand jury room.
20 And I'll talk to you in just a little bit, okay?

21 CHARGE

22 BY THE COURT: With that being said, now that you've
23 heard all the evidence and you've heard the arguments of
24 the attorneys, ladies and gentlemen, the law requires
25 that I instruct you on the law that applies to this case.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

272

1 This charge will be in three parts. The first part will
2 be the general rules that define and control your duties
3 as jurors. The second aspect will be the substantive law
4 that applies to this case, i.e., what the State must
5 prove in order to make out the charges against the
6 Defendant. The third will be some considerations for
7 your deliberations. And then, Mr. Foreman, I'm going to
8 go over the verdict form with you, okay, sir?

9 Now, let me remind you before we go into the charge
10 that under the laws of this state, a defendant may be
11 tried even if the defendant does not attend trial. But
12 the fact that the Defendant is not present may not be
13 considered against the Defendant in any manner
14 whatsoever.

15 Now, Mr. Foreman, in your deliberations, what that
16 simply means you are not to allow discussion of the
17 Defendant's absence from trial, okay, sir?

18 Now, you are the finders of the facts. And I told
19 you that at the beginning of this case. And you're to
20 determine what those facts, i.e. what verdict you are to
21 reach, by considering all the evidence that you heard in
22 this case. You must apply the law as I give it to you
23 now. You must not and you shall not be considered with
24 what you think it should be, what you want it to be, but
25 what it is. If I am incorrect in the law as I give it to

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

273

1 you, then I will be corrected.

2 You also shall not be influenced by any personal
3 likes, any dislikes, opinions, prejudice or undue
4 sympathy you may have for one side or the other. What
5 that simply means is that you are to decide this case
6 solely on the evidence that's been placed before you in
7 accordance with the law as I give it to you now. In
8 fact, when you took your oath at the beginning of this
9 trial, you agreed to do just that.

10 Also, in following my instructions, you must follow
11 all of them. You can't pick out the ones that you like
12 and apply those and ignore the ones that you may not
13 like. They're all equally important.

14 And again, I remind you that if I have done or said
15 anything throughout the course of this trial that seems
16 to indicate to you how you are to find facts, i.e. the
17 verdict you're supposed to make, I'm going to ask you and
18 I'm also to instruct you to disregard that. I can assure
19 you I have no opinion. Our state constitution does not
20 allow any trial judge to have an opinion of the facts,
21 nor may I make a comment on the facts.

22 You and you alone are the judges of the facts in
23 this case. And you decide what those facts are by
24 evaluating and weighing the evidence and the testimony
25 that you heard here in this courtroom.

1 Now, there's no way for you to weigh evidence in the
2 literal sense. I cannot give you a set of scales for you
3 to use to stack the evidence on. It is entirely a mental
4 process that you must go through. And you evaluate and
5 weigh the evidence simply by using your good common sense
6 and sound judgment in accordance with the law as I give
7 it to you now.

8 Now, there are things that are considered evidence,
9 and there are things that are not evidence. Let me tell
10 you what is evidence. The sworn testimony from witnesses
11 from this witness stand is evidence. It doesn't matter
12 if it's on direct examination or cross-examination or
13 some continuation of either one of those. That is
14 evidence. Also, any exhibits that I have allowed to come
15 into evidence in this case is evidence. That is the only
16 true evidence that you have before you in this case.

17 Certain things, on the other hand, are not evidence.
18 For example, arguments and statements by these attorneys
19 is not evidence. They've not been sworn. They've not
20 come up on the witness stand and be subject to direct and
21 cross-examination. I'm not minimizing what their job is
22 and what they say because it's important. It is designed
23 to help you understand what the facts are in this case,
24 what the issues are in this case and the law is.
25 However, when you begin your deliberations, if you

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

275

1 remember the facts other than or in a way different than
2 these attorneys or either of them have told you, then
3 your memory of those facts will control in your
4 deliberations.

5 With that point, I remind each of you that the fact
6 that a fact or a note may appear in somebody's trial
7 notes that you've been taking during this trial and
8 somebody's memory may be in conflict, the notes do not
9 trump somebody's memory. That's why you have
10 deliberations. If there's a difference in your
11 collective memories, you'll just have to hash that out so
12 you can come to a finding on that issue.

13 Also, ladies and gentlemen, the questions and
14 objections by the lawyers is not evidence. Attorneys
15 have a duty to their clients in every case to object
16 anytime that they see something or feel like they see
17 something that is improper.

18 Now, Mr. Foreman, the fact that there has been an
19 objection or that I've allowed you to see my ruling on
20 that objection also would not be proper for your
21 consideration or your discussion during your
22 deliberations. Okay, sir?

23 Now, anything, finally, ladies and gentlemen, that
24 you have heard while court is not in session is not
25 evidence. In South Carolina we recognize two types of

1 evidence. The first type is pretty simplistic, and that
2 is called direct evidence. This is direct evidence. It
3 is testimony of a person who asserts or claims to have
4 actual and direct knowledge of a fact, such as an
5 eyewitness. For example, if I were sitting on a railroad
6 -- at a sidewalk and I saw a car run a red light and I
7 testified that I saw that car run a red light, that would
8 be direct evidence.

9 The other type of evidence we have in South Carolina
10 is called circumstantial evidence. This is a little more
11 tricky, so listen closely. Circumstantial evidence is
12 proof of a chain of facts and circumstances from which
13 you can find that another fact exists although that fact
14 has not been proven directly. To give you an example, if
15 each of you were to go to bed at night and you were to
16 have a fresh sheet of snow in your front yard. If you
17 were to wake up in the morning and you see tracks in that
18 snow, you may reasonably infer that someone or something
19 walked through your yard during the night although you
20 did not see that person or thing walk through your yard
21 directly.

22 Now, the law makes absolutely no distinction between
23 the weight or value that you, the jury, may give either
24 direct or circumstantial evidence. You are entitled to
25 consider both kinds of evidence. There's not a greater

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

277

1 degree of certainty required for circumstantial evidence
2 to be heard or considered by you in this case; however,
3 the inference that you draw in your circumstantial
4 evidence may not be speculative or surmise or conjecture.
5 Okay?

6 With that being said, after weighing all the
7 evidence, direct and circumstantial, as you deem it to be
8 proper, if you're not convinced of the guilt of this
9 Defendant, it will be your job to find him not guilty.

10 Now, in deciding what the facts are, you must decide
11 which testimony that you wish to believe and which
12 testimony you wish not to believe. That is what we call
13 in the law determining the credibility of the witnesses.
14 You have a right to disbelieve all or part of any
15 witness' testimony. You may believe all of any witness'
16 testimony. In making this determination of the
17 credibility of the witnesses, you may, but you're not
18 required to, take into consideration the following
19 factors. You may ask yourself was the witness able to
20 hear or see or know about the things that they testified
21 about. You may ask yourself how well was the witness
22 able to recall and describe the things that they
23 testified about. What was their manner or demeanor while
24 they're on the stand? You can consider whether or not
25 the witness had a desire to help or hurt one side or the

1 other. Did they have an interest in the outcome of this
2 case or any bias or prejudice concerning any party or any
3 issue involved in this case. You can consider how
4 reasonable the witness' testimony was considered in light
5 of all the evidence presented and whether that witness'
6 testimony had been contradicted by what that witness had
7 said or done at another time or by testimony of other
8 witnesses or by any other evidence.

9 Mr. Foreman, ladies and gentlemen of the jury, those
10 are some but certainly not all the factors you may
11 consider in making this determination of credibility of
12 the witnesses. And I'll tell you that you do not check
13 your common sense at the door when you're sworn in, and
14 you shouldn't in this case. You should use those things
15 that in your day-to-day lives that you find indicative of
16 truthfulness or indicative of lack of truthfulness when
17 you make this determination of credibility.

18 In deciding the credibility or believability of the
19 witnesses, you can believe as much or as little of any
20 witness' testimony as you think proper. You can believe
21 all or part or none of any witness' testimony. But what
22 you certainly may not do in deciding credibility is add
23 up the number of witnesses that may have testified for
24 one side or the other of this case because it doesn't
25 matter to you from where the truth comes from, but your

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

279

1 sole truth is to try to determine what the facts are
2 based on the evidence presented to you in this courtroom.

3 Also, you have heard testimony of persons described
4 as experts. Persons who by education or experience or a
5 combination of both who have become an expert in a
6 particular field may state their opinion on matters in
7 that field and also state their reasons for that opinion.
8 I'll tell you that expert opinions should be judged just
9 like any other testimony in this case. You may accept
10 it. You may reject it and give it as much weight as you
11 think it deserves considering the witness' education,
12 their experience, the reasons for their opinion and all
13 the other evidence in this case.

14 Now, ladies and gentlemen, I'll remind you again
15 that these indictments against the Defendant is not
16 evidence in this case that can be considered by you of
17 the Defendant's guilt. It does not raise an inference or
18 a presumption of the Defendant's guilt. Those are simply
19 the mechanisms by which the State of South Carolina
20 brings the Defendant before a jury such as yourselves for
21 a trial and a determination of guilt or innocence.

22 Also, Mr. Foreman, each indictment stands on its
23 own. In other words, it is a separate and distinct
24 offense. You must decide each indictment separately
25 based on the evidence and the law applicable to it --

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

280

1 applicable to that indictment uninfluenced by your
2 decision as to the other indictment. The Defendant may
3 be convicted or acquitted on all or both the indictments
4 or any combination of the above. The point being, each
5 one must be separately considered by you. And at the end
6 of the day once you make your decision, you'll be asked
7 to write that down on the verdict form. And I'll go over
8 that with you.

9 In fact, in this case, the Defendant has pled not
10 guilty to both of these indictments. That, in this
11 sense, puts the burden on the State of South Carolina to
12 prove his guilt by evidence beyond a reasonable doubt.
13 And I'll tell you that a person charged with committing a
14 criminal offense in South Carolina is never required to
15 prove himself innocent. I charge you that it is an
16 important rule of law that a defendant in a criminal
17 trial, no matter what the seriousness of the charge may
18 be, will always be presumed innocent of the crime for
19 which the indictment or indictments have been issued
20 unless guilt has been proven by evidence satisfying you,
21 the jury, of that guilt beyond a reasonable doubt.

22 The presumption of innocence, ladies and gentlemen,
23 does not end when you begin your deliberations. It
24 accompanies the Defendant throughout this trial until
25 you, the jury, reach a verdict of guilt based on evidence

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

281

1 satisfying you of guilt beyond a reasonable doubt. The
2 presumption of innocence, it is said, is like a robe of
3 righteousness that's been placed around the shoulders of
4 the Defendant that remains there until it has been
5 stripped from the Defendant's shoulders by evidence
6 satisfying you of guilt beyond a reasonable doubt.

7 Further, the presumption of innocence is not just a
8 mere legal theory. It's not just a legal phrase. It is
9 a substantial right which every defendant is entitled
10 unless you, the jury, are satisfied from the evidence of
11 guilt beyond a reasonable doubt.

12 So that leads us to, what is a reasonable doubt. A
13 reasonable doubt is the kind of doubt that would cause a
14 reasonable, sincere, honest and conscientious person to
15 hesitate to act in an important matter in their own
16 affairs. Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the Defendant's guilt.

18 Ladies and gentlemen, there are very few things in
19 this world that we know with absolute certainty. And in
20 criminal cases, the law does not require proof that
21 overcomes every possible doubt. If, based on your
22 consideration of the evidence, you are firmly convinced
23 that the Defendant is guilty of the crime or crimes for
24 which he has charged, then you must find the Defendant
25 guilty. On the other hand, if you think there is a real

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

282

1 possibility that the Defendant is not guilty, you must
2 give the Defendant the benefit of the doubt and find him
3 not guilty.

4 A reasonable doubt may arise from the evidence or
5 from the lack of the evidence. And I further instruct
6 you that a Defendant is entitled to every reasonable
7 doubt that may arise in the case. Now, what that simply
8 means is this. That if upon any issue of fact essential
9 to a conviction and a verdict of guilt of the offense for
10 which he has been charged, if you have any reasonable
11 doubt as to how that issue should be resolved, it will be
12 your duty to resolve that issue in favor of the
13 Defendant.

14 Also, ladies and gentlemen, in order to establish
15 criminal liability, criminal intent is required to be
16 proven beyond a reasonable doubt. For example, the
17 mental state required to be proven by the State for a
18 particular crime might be purpose, intent, knowledge,
19 recklessness, or criminal negligence.

20 Criminal intent must be proven by the State beyond a
21 reasonable doubt. Criminal intent is always a matter
22 that must be determined by you, the jury, from the
23 circumstances shown to exist around the situation. There
24 is no way to prove mathematical -- oh, excuse me.
25 There's no way to prove intent to a mathematical

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

283

1 certainty. There's no way that medical science can
2 dissect a person's brain to determine what they had in
3 mind. So the law says that criminal intent may be
4 inferred from the circumstances shown to have existed.
5 And that is how you make a determination of whether or
6 not the element requiring intent is present. It is not
7 necessary to establish intent by direct and positive
8 evidence, but intent may be established by inference in
9 the same way as any other fact, taking into consideration
10 the acts of the parties and all the circumstances of the
11 case.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It is up to you to determine what the
14 Defendant intended to do based on the circumstances shown
15 to have existed. Criminal intent can arise from action
16 or a failure to act. It may arise from negligence,
17 recklessness, or an indifference to duty or to the
18 consequences that is considered by the law to be
19 equivalent to criminal intent.

20 Finally, ladies and gentlemen, and Mr. Foreman, I
21 instruct you and emphasize that the fact that the
22 Defendant did not testify is not a factor to be
23 considered by you in any manner in your deliberations.
24 It would be improper for you to allow the jury to discuss
25 the fact the Defendant did not testify because the State

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

284

1 at all times has the burden of proof in this matter.

2 Now, ladies and gentlemen, those are the rules that
3 define and control your duties as jurors. The next
4 aspect of my charge would be the substantive law that
5 applies to criminal sexual conduct with a minor first
6 degree and also lewd act upon a minor.

7 The law for criminal sexual conduct with a minor age
8 eleven or under is found at code section § 16-3-655, and
9 this is what it is. The Defendant is charged with first
10 degree criminal sexual conduct with a minor. The State
11 must prove beyond a reasonable doubt that the Defendant
12 engaged in a sexual battery with the victim.

13 A sexual battery is sexual intercourse, cunnilingus,
14 fellatio, anal intercourse, or any intrusion, however
15 slight, of any part of a person body or of any object
16 into the genital or anal openings of another person's
17 body except when the intrusion is accomplished for
18 medically recognized treatment or diagnostic purposes.

19 The State must then prove beyond a reasonable doubt
20 that the victim was less than eleven years old at the
21 time of the sexual battery. Consent, willingness,
22 indifference or ignorance on the part of the minor, if
23 any, as to what was taking place does not in any way
24 affect the charge of criminal sexual conduct with a minor
25 because an unmarried woman under the age of fourteen

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

285

1 cannot legally consent to sexual intercourse.

2 Also, ladies and gentlemen, I charge you that the
3 testimony of the victim need not be corroborated in
4 prosecutions under this code section which is § 16-3-655.

5 Next is the law of lewd act on a minor which is
6 found at § 16-15-140. The Defendant is charged with
7 committing a lewd act on a minor. The State must first
8 prove beyond a reasonable doubt that the Defendant was
9 over the age of fourteen. Next, the State must prove
10 that the Defendant willfully and lewdly committed or
11 attempted a lewd or lascivious act on or with the body or
12 its parts of a child under the age of sixteen years with
13 the intent to arouse, appeal to or gratify the lust,
14 passions or sexual desires of the Defendant or the child.

15 Willfully means voluntarily and intentionally with
16 the specific intent to do something the law forbids.

17 Lewd means obscene, lustful, indecent or lecherous.

18 Lascivious means tending to incite lust, lewd, indecent,
19 obscene or tending to deprave the morals and respect to
20 sexual relations.

21 Ladies and gentlemen, that is the substantive law
22 that applies in this case, and that leads me to the final
23 aspect of my charge. And that is some thoughts about
24 your deliberations.

25 Let me say this, that first, you don't serve as

1 jurors to be partisans or advocates for one side of the
2 case or the other. In fact, you were chosen by both
3 sides because they believed that you could be fair and
4 impartial and base this case solely on the evidence and
5 according to the law as I give it to you. And again,
6 when you took your oath, you agreed to do just that.
7 That means in your deliberations you should use your
8 experiences in life, your good common sense and your
9 sense of logic and reason. And you apply those to the
10 facts as you find them to be and according to the law as
11 I give it to you now, and ultimately to reach a verdict
12 which speaks the truth in this matter.

13 And to say something about deliberations,
14 deliberations is defined as this. It is a careful
15 consideration weighing up with a view to a decision.
16 Now, I'll submit to you that regardless of what you may
17 think about the judicial system or the criminal justice
18 system, that the genius of our system is it allows twelve
19 men and women such as yourselves from twelve different
20 backgrounds, from different perspectives and life
21 experiences to sit through a trial, to listen to the
22 evidence, to listen to the arguments and the law, and to
23 go back and to ultimately reach a verdict in this matter.

24 And we call them deliberations for a reason. You
25 are to consider all the evidence very carefully and

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

287

1 deliberately and discuss it with one another in a calm,
2 thorough and courteous manner. Remember, you're not
3 partisans or advocates for one side, favoring one side or
4 the other. You are judges, judges of the facts. And
5 your sole interest in this case is to find truth from the
6 evidence you heard in this courtroom.

7 Now, ladies and gentlemen, I'd ask you and then
8 charge you to listen to the views of your fellow jurors.
9 Consider their points and their points of view. Talk
10 through and discuss all of the evidence. And remember,
11 if you're doing it deliberately, you're not in a big
12 hurry. And you shouldn't be today. This is the State's
13 and the Defendant's only day in trial.

14 Now, when you go back and begin your deliberations,
15 in order for your verdict to stand, it must be unanimous.
16 With that being said, each of you must decide this case
17 for yourself, but you should only do so after you have
18 impartially considered all of the evidence, you've fully
19 discussed it with your fellow jurors and listened to
20 their views and points of view. Don't be afraid to
21 change your opinion if the discussion persuades you to do
22 so. On the other hand, do not change your opinion just
23 to reach a unanimous decision.

24 Now, Mr. Foreman, if at any time the jury has any
25 questions or has any need to communicate with the Court,

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

288

1 I'm going to ask that you write it down, that you sign
2 your name to the piece of paper that you write it down
3 on. You knock on the door. Our bailiff will get it.
4 I'll receive it here in the courtroom and we'll respond
5 accordingly. Okay?

6 Certain things will not be with you in the jury
7 room. The indictments will not go back there with you.
8 The videos, because of the technology we have here, if
9 you want to review those, we'll bring all of you back out
10 here and let you view it here in the courtroom. Okay,
11 sir?

12 Now, once you reach a verdict, you must sign the
13 form. The verdict options that you have is this. And
14 the options have to come in some order, so do not give
15 any meaning or any weight to the order that these appear
16 in. But your first option is: We, the jury, unanimously
17 find under indictment number 2011-GS-04-1977, criminal
18 sexual conduct with a minor under eleven years of age,
19 first degree, that the Defendant is, (A) not guilty or
20 (B) guilty. Once the jury reaches a unanimous decision
21 you check the applicable line by the options. Okay, sir?

22 Then you go to the next charge. And that is: We,
23 the jury, unanimously find under indictment 2013-GS-04-
24 569, lewd act, commit or attempt to commit a lewd act
25 upon a child, that the Defendant is not guilty or guilty.

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Charge by the Court

289

1 Once the jury has come to a decision on that, you'll sign
2 the form. You'll fold it over and crease it. Knock on
3 the door. We'll receive your verdict back in the jury
4 [sic] room. Okay, sir?

5 Now, I'm going to send you back to your jury room
6 now. I'm going to ask the two alternates to go in the
7 Grand Jury ...

8 Buck, make sure you show them where that is.

9 Do not begin your deliberations yet because I need
10 to make sure that I haven't misstated the law or omitted
11 something. We'll send word back shortly that we need you
12 back here in the courtroom or you may begin your
13 deliberations. Okay, sir? Thank you.

14 (WHEREUPON, the jury exited the open court at
15 approximately 11:25 a.m.)

16 THE COURT: Thank you, Buck.

17 Any additions or exceptions from the State?

18 MS. REEVES: No, sir.

19 THE COURT: From the Defense?

20 MR. THOMASON: No, sir.

21 THE COURT: Other than as stated about the
22 verdict form and all of that?

23 MR. THOMASON: Well, yeah. Right.

24 THE COURT: Okay. Again, let me thank the
25 lawyers for your preparation and presentation in this

1 matter. It's always helpful when we have prepared
2 lawyers. It makes my job easier. But thank you. That
3 being said, I'm going to give the verdict form to the
4 bailiff. Would y'all double-check the exhibits and make
5 sure they have all of them? Once they do, would you tell
6 them to begin their deliberations?

7 I'm going to go excuse the two alternates.

8 (WHEREUPON, the verdict form and exhibits were
9 delivered to the jury to begin deliberations at
10 approximately 11:26 a.m. after which court stood at
11 recess awaiting the verdicts of the jury.)

12 THE COURT: All right. Guys, we have a
13 verdict. Let me get this in.

14 Is the State ready?

15 MS. REEVES: Yes, sir.

16 THE COURT: Mr. Thomason?

17 MR. THOMASON: Yes, sir.

18 (WHEREUPON, the jury entered the open court at
19 approximately 11:56 a.m.)

20 THE COURT: Mr. Foreman, I am advised the jury
21 has reached a verdict; is that correct?

22 MR. FOREMAN: Yes, sir.

23 THE COURT: Is it unanimous?

24 MR. FOREMAN: Yes, sir.

25 THE COURT: Would you pass it to the bailiff,

State v. Andrew Antonio Clemons 2011-GS-04-1977, 2013-GS-04-569
Verdicts

291

1 please, sir?

2 THE CLERK: If it pleases the Court?

3 THE COURT: Yes, sir.

4 THE CLERK: This is in the Court of General
5 Sessions in the State of South Carolina, the County of
6 Anderson. The case of the State of South Carolina versus
7 Andrew Antonio Clemons, this is the verdict form. We,
8 the jury, unanimously find, under indictment number 2011-
9 GS-04-1977, criminal sexual conduct with a minor under
10 eleven years of age, first degree, that the Defendant is
11 guilty. We, the jury, unanimously find under indictment
12 number 2013-GS-04-00569, lewd act, commit or attempt to
13 commit a lewd act upon a child, that the Defendant is
14 guilty. Dated May 15th, 2013, signed by the Foreman.

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 of the jury, if that was your verdict in the jury room
17 and if that your verdict now, would you please raise your
18 right hand?

19 (WHEREUPON, all jurors' right hands were raised.)

20 THE COURT: Let the record reflect that all
21 twelve raised their right hands.

22 Okay. Ladies and gentlemen, the Court is never
23 concerned about your verdict, but it is concerned to
24 watch that you stay engaged throughout a trial. Y'all
25 did that. And for you coming here and doing your civic

1 duty for Anderson County and the State, I thank you.

2 Before I excuse you, Mr. Foreman, I need you to sign a

3 little bit on these indictments for me. And I would like

4 to meet with you very briefly in your jury room. Your

5 Clerk will have any statements you may need as far as

6 your employers. And you'll have those available to you

7 before you're excused. If you'd go back to your jury

8 room now, please, sir.

9 (WHEREUPON, the jury exited the open court at

10 approximately 11:58 a.m.)

11 THE COURT: Would you be checking with your

12 victims to see if they want to say anything else other

13 than -- I don't want to hear a rehash of what I've heard.

14 But if they want to add anything else, I'll be glad to

15 hear from them.

16 MS. REEVES: Sure.

17 THE COURT: Okay. I'll be back in just one

18 second.

19 (WHEREUPON, court stood at ease.)

20 THE COURT: Do the victims have anything

21 further they'd like to add?

22 MS. REEVES: They do not. They just wanted to

23 say thank you for the process and your time.

24 THE COURT: Okay. Would you tell me the record

25 of Mr. Clemons, please?

1 MS. REEVES: I will. He has a 1999 assault and
2 battery and discharging a firearm and a shoplifting; a
3 2000, P.W.I.D. crack and a proximity charge, as well as
4 resisting arrest; 2002, driving under suspension; 2004,
5 failure to stop; 2005, entering after warning and simple
6 possession of marijuana; 2008, C.D.V. and ABHAN; 2012,
7 prowling. He has a 2010 federal conviction for
8 possession of crack and a 2013 failure to stop, second
9 offense, for which he was currently doing weekend time.

10 THE COURT: And I think I sentenced him to
11 that; is that correct?

12 MR. THOMASON: That's correct, Your Honor.

13 THE COURT: All right. Mr. Thomason, I'll be
14 glad to hear from you if you have anything further you'd
15 like to add.

16 MR. THOMASON: Yes, sir. I would like to make
17 a motion for a judgment notwithstanding the verdict.

18 THE COURT: For a new trial?

19 MR. THOMASON: A new trial, yes, sir. A new
20 trial rather than -- I base that on all my previous
21 objections and the fact that no reasonable jury could
22 have convicted my client with the facts presented by the
23 -- or evidence presented by the Solicitor.

24 THE COURT: And I assume that's inconsistent
25 with your directed verdict motion as well?

Verdicts

1 MR. THOMASON: Yes, sir.

2 THE COURT: I'm going to deny that motion.

3 MR. THOMASON: Yes, sir.

4 THE COURT: Do you have the sentencing sheets?

5 Since he is not here, what I'll do is just issue the
6 sentence and then seal it. And when he's finally caught
7 and apprehended, then we'll open them up. So I will not
8 announce them today, okay?

9 We've issued a bench warrant on this; is that
10 correct?

11 MS. REEVES: Yes, sir.

12 THE COURT: All right. Thanks. Thanks to the
13 attorneys. Thank you for the family and the witnesses
14 for being here and the victims' advocate. And it is
15 sealed.

16 MS. REEVES: Thank you, Judge.

17 THE COURT: Yes, ma'am.

18 MR. THOMASON: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 (WHEREUPON, the trial ended at approximately 12:09
21 p.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF GENERAL SESSIONS
	)	2011-GS-04-01977
STATE OF SOUTH CAROLINA,	)	2013-GS-04-00569
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
ANDREW ANTONIO CLEMONS,	)	
	)	DATE: SEPTEMBER 12, 2013
DEFENDANT.	)	ANDERSON, SOUTH CAROLINA

SENTENCE UNSEALED

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

A P P E A R A N C E S:

KRISTIN W. REEVES, ATTORNEY AT LAW
ATTORNEY FOR THE STATE

G. SCOTT THOMASON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

PROVIDED FOR: SCCID - LORIE NE FRENCH

FOR COPIES CONTACT: JO RICE
jrice@sccourts.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 THE COURT: So, in May of this year we had a trial, in
2 absence, of Mr. Clemons. Is that correct?

3 MS. REEVES: Yes, sir.

4 MR. THOMASON: Yes, sir.

5 THE COURT: All right. Mr. Clemons, I've already
6 sentenced you. I'm just going to read the sentence. There
7 is nothing to be said.

8 (Judge McIntosh opens sealed envelope),

9 For the charge of lewd act or attempted lewd act on a
10 minor under Indictment 2013-569, the sentence is 15 years.
11 It is to be concurrent with Indictment 2011-1977, criminal
12 sexual conduct with a minor with a victim under eleven, and
13 the sentence is 25 years, concurrent. That is the
14 sentence. Good luck to you.

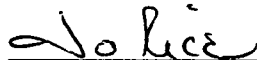
STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON September 12, 2013, TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 26TH DAY OF September, 2013.



JO RICE

OFFICIAL COURT REPORTER

DOCKET NO. 2011GS04 01977

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

DEC 06 2011
Term

THE STATE

vs.

Andrew Antonio Clemons

KWR

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 11 years of age- First Degree

SC Code: 16-03-0655(A)(1)
CDR Code: 0385

WITNESSES

M Partain, Anderson Police Dept.

ARREST WARRANT NUMBER

1723721

TRUE BILL
ACTION OF GRAND JURY

DEC 6 2011

Foreperson

Foreperson of Grand Jury

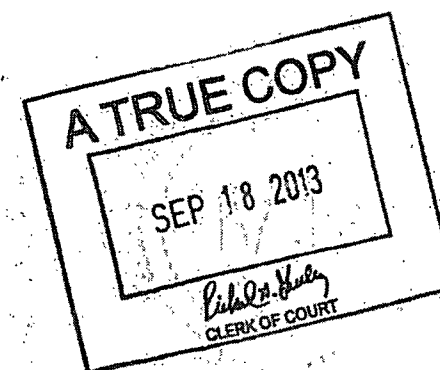
Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 5-13-13



STATE OF SOUTH CAROLINA)

INDICTMENT

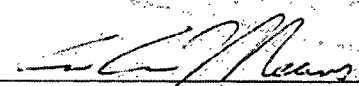
COUNTY OF Anderson)

At a Court of General Sessions, convened on DEC 06 2011, the Grand Jurors of Anderson County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years of age- First Degree

That **Andrew Antonio Clemons** did in Anderson, South Carolina between **December 1, 2009 and August 31, 2010**, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: whose date of birth is [REDACTED]. This is in violation of 16-3-655(A)(1) 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.


ASSISTANT SOLICITOR

WITNESSES

M Partain, Anderson Police Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

APR 16 2013

Term

ARREST WARRANT NUMBER

DIRECT INDICTMENT

REFERENCE WARRANT #1723721

THE STATE

VS.

Andrew Antonio Clemons

ACTION OF GRAND JURY

TRUE BILL

APR 16 2013

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

X *[Signature]*

Cruity

X Foreperson of Petit Jury

Date: 5-15-13

KWR

Indictment for

Sex / Lewd Act, committing or attempting lewd
act upon child.

SC Code: 16-15-0140

CDR Code: 2468

A TRUE COPY

SEP 18 2013

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

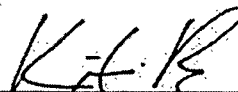
INDICTMENT

At a Court of General Sessions, convened on APR 16 2013, the Grand Jurors of Anderson County present upon their oath:

Sex / Lewd Act, committing or attempting lewd act upon child

That **Andrew Antonio Clemons**, who is over fourteen years of age, did in Anderson, South Carolina, between December 1, 2009 and August 31, 2010, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of [REDACTED] whose date of birth is [REDACTED] with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of the child. This is in violation of 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

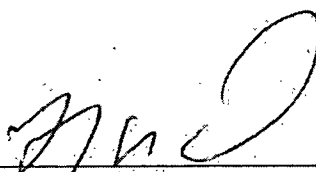


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 31st, 2014



Robert M. Dudek
Chief Appellate Defender

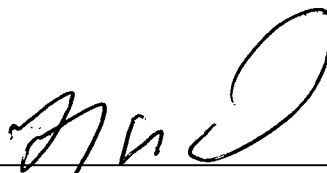
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 31st, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
DEC 31 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

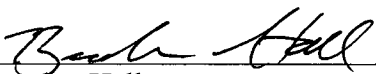
ANDREW ANTONIO CLEMONS,

APPELLANT

APPELLATE CASE NO. 2013-001951

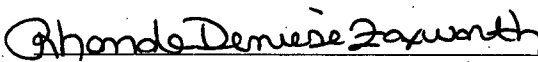
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of December, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 31st day of December, 2014.

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