

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

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Kristi Lea Harrington, Circuit Court Judge

NOV 09 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GERALD BARRETT,

APPELLANT

APPELLATE CASE NO. 2013-002158

RECORD ON APPEAL

DAVID ALEXANDER  
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

WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

ISSAC MCDUFFIE STONE, III  
Solicitor, Fourteenth Judicial Circuit  
Post Office Box 2226  
Beaufort, SC 29901  
(803) 943-3580

Attorneys for Respondent

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**A P P E A R A N C E S**

For the State:

**MARY CONCANNON**  
**BENJAMIN SHELTON**  
Fourteenth Circuit Solicitor's Office  
P.O. Box 1880  
Bluffton, South Carolina 29901

For the Defendant:

**TRACI CAMPBELL**  
Attorney at Law  
P.O. Box 525  
Beaufort, South Carolina 29901

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Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

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1           The above-styled cause came on for hearing on  
2   the 20th day of May, 2013, at 10:00 a.m., before Judge  
3   Kristi Lea Harrington, presiding over the General  
4   Sessions Court for the County of Beaufort, when the  
5   following proceedings were had and entered of record, to  
6   wit:

7                           PROCEEDINGS

8                           VOLUME I OF IV

9           (Defendant is present with his counsel.)

10          THE COURT: All right, Counsel. For my  
11   benefit, give me your name.

12          MS. CONCANNON: Mary Concannon.

13          MR. SHELTON: Ben Shelton.

14          THE COURT: Good morning, Mr. Shelton.

15          MR. SHELTON: Good to see you.

16          MS. CAMPBELL: Good morning. Hi, I'm  
17   Trasi Campbell. And that's T-r-a-s-i.

18          THE COURT: And, Ms. Campbell, you represent  
19   Mr. Barrett?

20          MS. CAMPBELL: I do, your Honor. This is  
21   Gerald Barrett, Jr.

22          THE COURT: And I understand that you are  
23   asking for a continuance; is that correct?

24          MS. CAMPBELL: That is correct, your Honor.  
25   I'll be happy to place that on the record at this time

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1 if you would like.

2 THE COURT: I'd be happy to hear from you.

3 MS. CAMPBELL: Thank you, your Honor. I've  
4 been representing Mr. Barrett since he was incarcerated  
5 on these charges, your Honor, which is, eight, nine  
6 months now. Last Thursday, four or five days before  
7 trial, I was -- a packet of information was dropped off  
8 at my office by the State of South Carolina. And in  
9 that packet of information and through a phone call with  
10 the Solicitor, Ms. Concannon, it divulged to me at that  
11 point she intended to introduce or to try to introduce  
12 evidence of Child Sexual Assault Accommodation Syndrome.  
13 Upon receipt of that packet of information from the  
14 State, I began conducting research Thursday, Friday,  
15 over the weekend, and it has come to my attention that I  
16 believe, based on what I found, that if I do not request  
17 that the State provide an expert for Mr. Barrett on  
18 those -- on that particular issue, that I will be  
19 ineffective. So I am requesting a continuance to allow,  
20 basically, the State to provide an expert for  
21 Mr. Barrett on -- on that particular issue alone. It is  
22 highly contested; it is highly debated. There are some  
23 research articles that, you know, label it and put it in  
24 the area of junk science, and there are others that find  
25 some credibility to it. And with no counter argument,

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1 I'm sort of left, in my opinion, being ineffective for  
2 Mr. Barrett. Thank you.

3 THE COURT: All right. Ms. Campbell, if I  
4 exclude that testimony, are you prepared to go forward?

5 MS. CAMPBELL: I am.

6 THE COURT: All right. Let me hear from you.

7 MS. CONCANNON: Thank you, your Honor. The  
8 State is prepared to go forward. We did hand over that  
9 information to Ms. Campbell on Thursday. I would like  
10 to add that, in the State's opinion, it is not grounds  
11 for a continuance. It is well established in the area  
12 of child sexual abuse cases. It's from the inception  
13 of --

14 THE COURT: Tell me how the information was  
15 presented.

16 MS. CAMPBELL: I received information from  
17 Kendra Twitty, who is -- I'm going to attempt to qualify  
18 as an expert in counseling child sexual abuse victims.  
19 And she provided me with a brief synopsis of the child  
20 sexual --

21 THE COURT: How did she get involved in the  
22 case?

23 MS. CONCANNON: She is with Hope Haven of the  
24 Lowcountry, which conducts forensic interviewing in the  
25 counseling of the child sexual victims.

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1 THE COURT: Has she been involved in this case?  
2 This is a 2012 case; is that correct?

3 MS. CONCANNON: She was the actual forensic  
4 interviewer on Minor , the 14-year-old victim in  
5 this case.

6 THE COURT: Had she -- had you provided  
7 information regarding the videotape of the interview and  
8 all of that prior to Thursday?

9 MS. CONCANNON: Yes, your Honor.

10 THE COURT: All right. So this would, in  
11 essence, be a supplemental report; is that --

12 MS. CONCANNON: Yes, your Honor. The videotape  
13 was provided earlier on in this case. And when I met  
14 with Ms. Twitty, she was able to provide me with it. I  
15 can hand you a copy of what we're mentioning if you  
16 would like.

17 THE COURT: What is the essence of the  
18 testimony?

19 MS. CONCANNON: She is going to testify, in  
20 which I had told Ms. Campbell, as to the mental effects  
21 that children who are victims of child sexual abuse  
22 suffer such as delayed reporting, who they report to,  
23 why they choose to report to these sort of individuals,  
24 different affects regarding, not Minor in particular,  
25 just general -- generalized what -- regarding these

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1 victims.

2 THE COURT: And has she testified in this court  
3 before? Has she been qualified as an expert before in  
4 Beaufort County?

5 MS. CONCANNON: Yes, your Honor.

6 THE COURT: I am not from Beaufort County, so I  
7 am not familiar with your advocacy centers and who may  
8 testify. So that's important for me to know.

9 Ms. Campbell, you were aware that she was the  
10 forensic interviewer?

11 MS. CAMPBELL: I am aware that Ms. Twitty  
12 served as the forensic interviewer in this case. As  
13 your Honor knows, I did file my motion to disallow  
14 Kendra Twitty's qualification as an expert and the use  
15 of the term "forensic interviewer" and any testimony  
16 from Twitty that does not fall squarely within the  
17 ruling in Kromah. And that would be a motion, I assume,  
18 that we would hear if we were continuing this matter.

19 So based on Kromah and based on the -- the  
20 written report from Kendra Twitty that in no way  
21 references Child Sexual Assault Accommodation Syndrome,  
22 I would have no way of knowing that the State intended  
23 to elicit that type of testimony from this particular  
24 person. There was no -- no information at all that that  
25 particular information was sought from that witness.

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1 THE COURT: What was the basis of her interview  
2 with the victim?

3 MS. CAMPBELL: Well, Minor , at the time,  
4 was 14. Kendra Twitty interviewed her at Hope Haven.  
5 And I watched the video, and I've read the -- the report  
6 from Kendra Twitty. And it is an outline of the  
7 allegations in the case. It is a repetition of the same  
8 story that was given repeatedly to -- at the initial  
9 disclosure, at the interview with law enforcement. And  
10 everything particularly remained the same, obviously,  
11 except that the times -- or the time of the one incident  
12 bounced around. But there's nothing in here --

13 THE COURT: All right. Are you familiar with  
14 Ms. Twitty?

15 MS. CAMPBELL: I know of her. I have never  
16 been involved in a case with her in terms of taking a  
17 case to trial with her.

18 THE COURT: You were aware that she was the  
19 forensic interviewer in this case?

20 MS. CAMPBELL: I am aware of that, yes.

21 THE COURT: And, Ms. Campbell, you are aware  
22 of, basically, what a forensic interviewer does and  
23 their qualifications?

24 MS. CAMPBELL: I am aware of forensic  
25 interviewers. I'm aware of Ms. Twitty and her work in

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1 previous cases. And I have not tried a child sexual  
2 assault case subsequent to Kromah. And so in light of  
3 that, my thinking and my perspective and the way I am  
4 dealing with the case has changed, and Ms. Twitty.

5 THE COURT: All right. Counsel, let me hear  
6 from you.

7 MS. CONCANNON: I would just like to add in  
8 response to Ms. Campbell's reference to Kromah, it was  
9 never in the State's intention to attempt to get  
10 Ms. Twitty qualified as -- in the field of forensic  
11 interviewing. We know there's case law out there  
12 against that.

13 In the supplement that I provided for  
14 Ms. Campbell, it does state case law in which courts  
15 have allowed forensic interviewers to be qualified as  
16 experts in the field of child sexual abuse counseling  
17 and treatment. And I do have a copy of that case for  
18 your Honor if you would like to look at it.

19 THE COURT: You may -- you may approach. Tell  
20 me what her qualifications are that you believe she can  
21 be qualified as an expert.

22 (Document is handed to the Judge.)

23 MS. CONCANNON: Thank you.

24 Ms. Twitty has expertise -- well, as of  
25 May 1st of this year, she's conducted 986 forensic

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1 interviewers -- interviews of children ranging from 3 to  
2 17 years old. She has expertise in trauma, focus  
3 cognitive behavioral therapist, as well as a child  
4 forensic interviewer, crisis intervention specialist.  
5 She has a master of arts in clinical psychology from  
6 Georgia School of Professional Psychology where she had  
7 a 3.6 GPA. She also has a bachelor of science *magna cum*  
8 *laude*, Ithaca College in New York. She has been a  
9 licensed -- she's a licensed professional counselor here  
10 at the Hope Haven of the Lowcountry. Her professional  
11 experience ranges from forensic interviewer/counselor,  
12 in which she is specialized in interviews, does reports,  
13 assessments to the officials who are investigating and  
14 alleged child sexual abuse. She has provided expert  
15 testimony in child abuse in civil, criminal, and federal  
16 court hearings. She conducts trauma assessment to  
17 provide evidence-phased, trauma-focused, cognitive  
18 behavioral therapy to victims of trauma and sexual abuse  
19 and substance abuse. She has been, since 2010, a  
20 clinical supervisor and counselor in Bluffton at  
21 MindStream Academy. She has also -- she is a social and  
22 emotional learning coordinator. She's had that position  
23 from 2009 to 2010 at Charter School here in Beaufort.  
24 She's a part-time daily therapist in Hope Haven,  
25 forensic interviewer and counselor, and that is where

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1 she does specialized interviews making allegations of  
2 sexual and/or physical abuse. She does the written  
3 reports and assessments to officials. She provides  
4 continuing education, training on mandated reporting of  
5 signs and symptoms of abuse, and breaking the silence to  
6 professionals in the field of education and childcare.  
7 She has assessed and provided treatment to the victims  
8 of trauma sexual abuse and the like, and she does joint  
9 victim as well as family counseling for these victims of  
10 child sexual abuse.

11 THE COURT: All right. What training has she  
12 specifically received as -- with respect to interviewing  
13 children of child sexual assault?

14 MS. CONCANNON: Okay. Her training is as  
15 follows: National Child Protection Training Center,  
16 emergent issues in the forensic interviewing. That was  
17 in Columbia -- these are her certificates that she has  
18 completed -- as well as Finding Words Advanced Course  
19 from the Children's Loss Center, forensic interviewing  
20 and advanced level training, the National Children's  
21 Alliance Academy of Investigative Interviewing,  
22 Professional Response Child Abuse Conference, Darkness  
23 to Light, Fifth Annual National Conference, South  
24 Carolina Prevention of Child Abuse, Sexual Development  
25 and Sexually Reactive Behaviors in Children. She

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1 presented in that four years, as well as sexually  
2 problematic adolescence training. Her training goes  
3 back to 2000 and is continued up until 2012, it looks  
4 like.

5 THE COURT: Ms. Campbell, are you asking  
6 for -- what are you asking for specifically?

7 MS. CAMPBELL: I'm specifically --

8 THE COURT: Is it a continuance for the entire  
9 case, a continuance to review, opportunity to speak with  
10 the witness; what is it that you're requesting?

11 MS. CAMPBELL: I am specifically asking for a  
12 continuance to obtain the services of an expert in the  
13 field of Child Sexual Assault Accommodation Syndrome,  
14 which is the specific evidence that the State seeks to  
15 introduce through Kendra Twitty that I was informed of  
16 on Thursday -- last Thursday.

17 I would point out that we're ready to go  
18 forward in every other respect, as I was on Wednesday  
19 when I forwarded, you know, my motions and I was ready  
20 to go. This added a different layer to it. I had to do  
21 my research. As I did it, it says to me right here that  
22 I am ineffective if I do not request an expert to  
23 counter the evidence that the State seeks to introduce.  
24 And so that is what I'm doing on behalf of my client.  
25 It would give me an opportunity to obtain the services

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1 of an expert, to speak with that expert, and have them  
2 testify at Mr. Barrett's trial.

3 And -- and the basis for this is, is that, as  
4 far as I can tell, a number of courts, two Florida cases  
5 in particular, have overturned convictions where Child  
6 Sexual Assault Accommodation Syndrome was introduced as  
7 evidence in that case. It's a very -- it's a very  
8 dangerous type of testimony to put in without me being  
9 allowed to counter it with a professional myself.

10 THE COURT: Solicitor, tell me what child  
11 accommodation syndrome is.

12 MS. CONCANNON: Your Honor, it goes into the  
13 mental trauma that child victims of sexual abuse could  
14 suffer and, do suffer -- do suffer. It just shows that  
15 it's the most frequent observed behaviors that these  
16 victims partake in and represent and what the sexual  
17 abuse does for them in the mental aspect. For example,  
18 it looks at behavioral characteristics such as the  
19 secrecy; the helplessness these children suffer;  
20 entrapment; accommodation; delayed, conflicted, and  
21 unconvincing disclosure; as well as retraction, which  
22 are things that are common in all child sexual abuse  
23 cases. And it goes back to at least 1983 when this  
24 study came out.

25 MS. CAMPBELL: May I speak, your Honor?

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you. One of the things  
3 that I was able to -- to discover in my research over  
4 the weekend about this is that Roland Smith [sic] did  
5 put forth this position in 1983. And since that time,  
6 basically the Courts are looking at it and saying the  
7 accommodation syndrome does not obviously detect sexual  
8 abuse. It makes the assumption that abuse has occurred  
9 and it -- and then attempts to explain the child's  
10 reactions to it. And so the accommodation syndrome, not  
11 proving abuse, and it -- it doesn't constitute  
12 substantive evidence. And that is very problematic when  
13 the State is seeking to put in front of the jury a  
14 person who is going to be testifying from the position  
15 that abuse occurred. And even though the State says,  
16 Well, we're not going to make it specific to <sup>Minor</sup>, you  
17 can't deny that that's the interpretation the jury would  
18 take from that testimony. Thank you, your Honor.

19 THE COURT: All right. When is the -- when do  
20 you plan to have the expert testify?

21 MS. CONCANNON: Ms. Twitty was going to be here  
22 this afternoon to handle this as a pretrial matter. Her  
23 actual testimony, I would hope, tomorrow.

24 THE COURT: All right. I am not -- at this  
25 point, I am not granting your motion for a continuance

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1 based upon the fact that she was named as the  
2 interviewer. It may be that, based upon when she comes  
3 in for the other pretrial matters related to the  
4 videotape and some of the other testimony, that I will  
5 make a determination otherwise; but at this point, we  
6 are going forward on this matter. Note your exception  
7 to my ruling for the record.

8 Anything further before we begin -- before I  
9 begin qualification?

10 MS. CONCANNON: Not from the State.

11 MS. CAMPBELL: Just one further matter, your  
12 Honor, in terms of the discovery. Additionally, the  
13 State provided on Thursday jail phone calls to the  
14 Defense in the neighborhood of hundreds of hours worth  
15 of listening that I would need to do to that -- to those  
16 calls. And the State indicates to me that they've  
17 listened to all of them. Obviously, I was occupied, for  
18 my client, investigating this issue that was given to me  
19 on Thursday, and this discovery was dumped at the office  
20 also on Thursday. And I will tell you for the record,  
21 I've not listened to the jail phone calls. I've not had  
22 time.

23 THE COURT: All right. Do you plan to use the  
24 jail --

25 MS. CONCANNON: I plan to use the one phone

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1 (The Judge steps off the bench at 1:31 p.m.)

2 (Lunch recess.)

3 **PRETRIAL MATTERS**

4 THE COURT: Whenever you are ready,  
5 Ms. Campbell.

6 MS. CAMPBELL: Thank you, your Honor. Your  
7 Honor, at this time, on behalf of my client, I would  
8 make a Motion to Quash the three indictments in this  
9 case. I'll be referring to my handwritten motion during  
10 my argument to the Court briefly here, and then I'll be  
11 making my motion. And the three indictments from August  
12 23rd, 2012, Defendant's exhibits, along with my copies  
13 of the three indictments from March 28th, 2013,  
14 Defendant's exhibits, and then the last exhibit the  
15 Defendant would put into the record of this case is a  
16 copy of the -- dated February 20th, 2013, Notice of  
17 Defendant's Alibi to cover the times stated in the three  
18 original indictments.

19 The Defendant alleges in this case, that the  
20 State of South Carolina, upon notice of his alibi,  
21 amended the indictments to reflect different dates. We  
22 would contend that these indictments that we are here on  
23 today are not sufficient as to -- and good as to date  
24 and time because the State has essentially moved the  
25 date and prevented Mr. Barrett from presenting fully a

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1 defense in this case. The original indictments, your  
2 Honor, were handed down August 23rd, 2012. As the  
3 record will reflect, we gave notice of alibi in February  
4 2013. The first indictment, 2012-1631, stated that the  
5 offense occurred on March 19th; not "on or about," but  
6 March 19th. That day, and that day alone, he was on  
7 notice to defend against. In the kidnapping indictment,  
8 2012-1632, it stated, "on or about March 19th, 2012,"  
9 which gave a little bit more leeway. And then the last  
10 indictment, 2012-1633, simply had no date at all.

11 The Defendant was provided discovery by the  
12 State of South Carolina. And in that discovery, is a  
13 very clear, handwritten statement by Minor . And  
14 in that statement, pursuant to questioning by Kendra  
15 Twitty of Hope Haven and being interviewed in this case,  
16 she wrote that the offense occurred two days after  
17 Saint Patrick's Day. And we would contend that Saint  
18 Patrick's Day is a little bit like Christmas Day or New  
19 Year's Day; these are days that everybody knows when  
20 they are. They don't float around. It's -- Saint  
21 Patrick's Day is March 17th; Christmas, December 25th;  
22 New Year's Day, January 1st.

23 So if you are told by Minor that she was  
24 sexually assaulted -- as the investigator was -- two  
25 days after Saint Patrick's Day, then you obtain warrants

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1 for March 19th, which he did. The warrants in this case  
2 directed the Defendant to March 19th as the day upon the  
3 allegation.

4 As we proceeded to trial and we prepared our  
5 defense, we sent notice to the State. And as we were  
6 coming up to the term of court where we were to have our  
7 trial, I, as Mr. Barrett's defense counsel, received a  
8 telephone call from the Assistant Solicitor Patrick Hall  
9 that indicated he was fleshing out the victim's story  
10 and that it would appear to him that the date was, in  
11 fact, Saint Patrick's Day parade on Hilton Head. And  
12 with that information, he was going to seek amending the  
13 indictments. I cautioned him that I had grave concerns  
14 about that action; that I felt that the change in her  
15 statement, I suppose, should have been documented in  
16 some manner. It has not been done to date, that I'm  
17 aware of, to corroborate her changing the date  
18 subsequent to the solicitor's fleshing out of her story.

19 The Solicitor's Office then took the  
20 indictments to another grand jury and changed the dates  
21 based on a statement from Shawn Ward who indicates in  
22 sort of a re-interview, although he was highly  
23 intoxicated on Hilton Head Island's Saint Patrick's Day,  
24 that he had some memory of Mr. Barrett being at his home  
25 that evening.

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1           There has been, to my knowledge, no  
2 re-interview of Minor           in terms of pinning her  
3 down on a different date. And even if there were at  
4 this point, Mr. Barrett argues to this Court that  
5 this -- these actions taken subsequent to his notice of  
6 alibi deny him of due process, fairness, and justice in  
7 this courtroom. And he seeks the remedy of quashing  
8 these indictments and full dismissal with prejudice for  
9 the actions taken subsequent to his notice of alibi by  
10 the State of South Carolina, and we feel that it would  
11 be only fair and just and equitable remedy for the  
12 Defendant at this point in these proceedings.

13           And if I may, your Honor, I would like to  
14 approach and mark my exhibits for Mr. Barrett at this  
15 time with the court reporter. I've got them pre-marked.

16           THE COURT: You may.

17           MS. CAMPBELL: And for the record, the Motion  
18 to Quash the Indictments is Defendant's Exhibit 1.

19           The 16 -- excuse me, 2012-1631, True Bill date  
20 August 23rd, 2012, Defendant's Exhibit 2.

21           2012-1632, True Bill date August 23rd, 2012,  
22 Defendant's Exhibit 3.

23           2012-1633, Defendant's Exhibit 4, True Bill  
24 date August 23rd, 2012.

25           Defendant's Exhibit 5, 2012-1631, True Bill

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1 date March 28th, 2013.

2 Defendant's Exhibit 6, 2012-1632, True Bill  
3 date March 28th, 2013.

4 True bill -- excuse me, Defendant's Exhibit 7,  
5 2012-1633, True Bill date March 28th, 2013.

6 And last is Defendant's Exhibit 8, which is  
7 Defendant's Notice of Intention to Offer Alibi Defense  
8 pursuant to Rule 5.

9 Thank you, your Honor.

10 (Defendant's Exhibit Nos. 1-8 marked for  
11 identification.)

12 THE COURT: Ms. Concannon?

13 MS. CONCANNON: Thank you, your Honor. The  
14 State would respectfully disagree with Ms. Campbell's  
15 motion. The indictments were amended by a finding from  
16 the grand jury which are secret proceedings. And the  
17 only allegations that have been altered in the  
18 indictment or amended is the date that the offense  
19 occurred. It now gives an on or about date which also  
20 encompasses the original date. Ms. Campbell stated that  
21 initially my victim indicated that it happened on  
22 St. Patrick's Day. Well, to a 14-year-old girl that has  
23 been sexually assaulted, she equated St. Patrick's Day  
24 with when it was celebrated. And the Hilton Head parade  
25 happened to fall on a Sunday; and the year of this

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1 Hilton Head parade, it was on a Sunday, the 19th, after  
2 Saint Patrick's Day. She did not even know that Saint  
3 Patrick's Day was a specified day. She equated it with  
4 when it was celebrated. And for a criminal sexual  
5 assault case regarding the one that we have at bar  
6 today, the date is not an element of the offense  
7 charged.

8           The factual allegations did not change at all.  
9 It was always the same place, the same victim, the same  
10 sort of sexual battery. The only thing that did -- was  
11 amended was the day and how it's a range instead of a  
12 specific date. I do have a case law, State v. Wade,  
13 that specifically touches on sex crimes and how date is  
14 not an element of the offense charged. I do not have a  
15 prepared formal written memo for you. I just received  
16 Ms. Campbell's today, but I can prepare one for you.

17           THE COURT: Anything further?

18           MS. CONCANNON: Nothing further from the State,  
19 your Honor.

20           MS. CAMPBELL: Your Honor, could I reply  
21 briefly?

22           THE COURT: You may.

23           MS. CAMPBELL: Thank you. In terms of  
24 the -- the -- of Minor ' date situation, the original  
25 allegations placed this encounter occurring two weeks

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1 right before the end of school, which is two months  
2 from Saint Patrick's Day. And -- and then, as I said,  
3 subsequent to this interview and the effort to pin down  
4 precisely a date, in her own handwriting, subsequent to  
5 this detailed interview, they decide upon two days after  
6 Saint Patrick's Day. Regardless, that's March 19th, and  
7 that's the date we prepared nine months -- eight to nine  
8 months to defend against. And to then move the date --  
9 still again, no discovery to the Defendant as to the  
10 victim's version of moving the date, just this  
11 Shawn Ward person -- we feel is unfair and unjust.  
12 Thank you, your Honor.

13 THE COURT: All right. As you know, an  
14 indictment is a notice document. The purpose is to  
15 state with sufficient certainty and particularity to  
16 enable the Court to know what judgment to pronounce and  
17 for the Defendant to know what he is called upon to  
18 answer and whether he may plead or what happens if there  
19 should be a conviction and whether it apprises the  
20 Defendant of the elements of the offense that are  
21 intended to be charged. The test is utilized to  
22 determine the sufficiency of an indictment. And we'll  
23 just use the analogy that it's an overly broad time  
24 period since there was -- the original indictments  
25 indicated a one-day time frame and now there's a March

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1 11th through March 19th.

2           Is the time a material element of the offense  
3 and whether the time period covered by the indictment  
4 occurred prior to the return of the indictment by the  
5 grand jury? Based upon the information that has been  
6 presented from the State as to why the time frame had  
7 been changed from a particular date, while I understand  
8 the analogy to Christmas that it is a particular date, I  
9 am not convinced that Saint Patrick's Day, because it is  
10 typically celebrated on different days when there is a  
11 celebration of a parade or something of that nature, not  
12 always celebrated on March 17th. As to a 14-year-old,  
13 I'm not sure that that understanding should be imputed  
14 to indicate that perhaps the State has done something to  
15 obviate your alibi witness.

16           Based upon the testimony -- or the indication  
17 that why it was amended, the fact that it was amended  
18 approximately two months ago, I deny your Motion to  
19 Quash the indictments.

20           MS. CAMPBELL: Thank you, your Honor. Shall I  
21 proceed to the next motion?

22           THE COURT: Let's see what we have -- a Motion  
23 to Quash indictments and then a Motion to Sequester  
24 Witnesses. Any objection?

25           MS. CONCANNON: Not to sequester witnesses,

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1 your Honor.

2 THE COURT: Motion to Sequester Witnesses is  
3 granted.

4 MS. CONCANNON: I did want to add one thing for  
5 the record, your Honor. My apologies. The parade was  
6 the 11th. So Saint Patrick's Day was the 17th. The  
7 initial date was the 19th. I just wanted to correct  
8 myself on the record. I had said the parade was the  
9 19th, but the parade was the 11th.

10 THE COURT: Which is what you amended your  
11 Indictment to be?

12 MS. CONCANNON: Right. When I spoke, I said  
13 the 19th.

14 THE COURT: All right. Thank you.

15 All right. Ms. Campbell, the next one that I  
16 have on your list pertains to a -- pertains to the list  
17 that you had filed is the use of the video evidence.

18 MS. CAMPBELL: Thank you, your Honor. It's my  
19 understanding after speaking to the prosecution that  
20 they are not intending to introduce the video evidence  
21 in this case, and, therefore, that motion would not be  
22 necessary.

23 MS. CONCANNON: And Ms. Campbell's correct. We  
24 don't intend to use the forensic interview.

25 THE COURT: The video?

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1 MS. CONCANNON: The video, correct.

2 THE COURT: Thank you. So are you withdrawing  
3 that motion, Ms. Campbell?

4 MS. CAMPBELL: I would withdraw. It will not  
5 be necessary.

6 THE COURT: Thank you.

7 MS. CAMPBELL: The next motion, if I may, would  
8 be -- would relate to the State's intended use of 404(b)  
9 Lyle evidence.

10 THE COURT: All right.

11 MS. CAMPBELL: And I believe that the State  
12 would be in a position to put up what they intend --

13 THE COURT: I just want to see what is  
14 remaining because I anticipate that's going to be a  
15 lengthy one.

16 MS. CAMPBELL: The other motions that I have  
17 relate to Kendra Twitty. And I did file the written  
18 motion. I provided the State with a copy of that -- my  
19 objections to that. And then the qualification of  
20 Kristin Dalton as an expert, I would have a motion on  
21 that. And then --

22 THE COURT: Do you plan to qualify Ms. Dalton  
23 as an expert?

24 MS. CONCANNON: I do. Not --

25 THE COURT: In what area?

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1 MS. CAMPBELL: Your Honor, the next motion  
2 on -- on my anticipated pretrial motion list is the  
3 Motion to Disallow the Qualification of Kendra Twitty as  
4 an Expert and to disallow the use of the terminology  
5 "forensic interviewer." And I -- I did take that,  
6 additionally, to disallow her testimony in its entirety.  
7 I rely on my motion -- handwritten motion that I  
8 prepared and submitted to your Honor.

9 I'm not really sure the best way to handle this  
10 except that I do -- I do believe the State intends to  
11 have her testify outside the parameters of Kromah and --  
12 which would be more than date, time, and circumstance of  
13 the interview; any personal observations of the child's  
14 behavior or demeanor; and a statement as to events that  
15 occurred within the interviewer's personal knowledge. I  
16 think it's fair to say Kromah cautions all of us when it  
17 comes to this terminology of someone being qualified as  
18 a forensic interviewer and that it is a misnomer. And  
19 if the State is going to try to put Kendra Twitty on the  
20 stand and have her qualified as an expert, we object to  
21 that. And we object to the use of the term "forensic  
22 interviewer." Thank you.

23 MS. CONCANNON: Thank you, your Honor. The  
24 State does not intend to qualify her as an expert as a  
25 forensic -- in forensic interviewing. We are cognizant

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1 of the Kromah case. We know you can't do that.

2 I handed up earlier State v. Shumpert which  
3 indicates that Kendra Twitty -- the Court in that case  
4 allowed the expert, who happened to also be a forensic  
5 interviewer, to be qualified as an expert in child  
6 sexual abuse counseling and treatment or a child's  
7 sexual abuse trauma recovery.

8 Ms. Twitty, she is here as well for any  
9 testimony that the Court may need for pretrial matters.  
10 She does not intend to testify specifically about  
11 Minor . She intends to testify -- to testify about her  
12 findings in her field as an expert regarding children  
13 who are victims of trauma and sexual abuse cases.

14 THE COURT: How does that not fall into what  
15 Kromah warned against?

16 MS. CONCANNON: In Shumpert, they weren't  
17 qualified as forensic --

18 THE COURT: That's wasn't my question.

19 (Respite.)

20 THE COURT: So you're going to call her, and  
21 she's not going to testify as to the results of her  
22 findings?

23 MS. CONCANNON: She is not going to be specific  
24 to Minor interview and her interactions with Minor --

25 THE COURT: What's the relevance to her

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1 testimony?

2 MS. CONCANNON: Well, Minor will be able to  
3 testify as to what she did after the sexual abuse  
4 occurred. And Kendra's testimony is just shows -- it  
5 is the State's intention to have Kendra testify that  
6 different patterns of behavior are commonplace in child  
7 sexual abuse victims.

8 THE COURT: You're objecting to that testimony,  
9 Ms. Campbell?

10 MS. CAMPBELL: I am objecting to it, your  
11 Honor. Again, I -- I've read Kromah again, and -- and I  
12 have a firm belief that if Ms. Twitty wants to testify  
13 as a child sexual abuse counseling and trauma expert,  
14 that's not relevant to this case. That what she did in  
15 this case was she interviewed Minor . And the  
16 parameters of that interview are limited by Kromah, and  
17 she is now limited to saying that the time and date and  
18 the circumstances of her interview, what she observed  
19 about Minor ' behavior or demeanor, and she has no  
20 personal knowledge of the allegations, so --

21 THE COURT: Well, you would agree that  
22 Kromah -- that list -- Kromah specifically says that  
23 they're not supposed to be -- intended to be exhaustive.

24 MS. CAMPBELL: Right.

25 THE COURT: All right.

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1 MS. CAMPBELL: We would submit that talking  
2 about the fact that -- I believe it would sound  
3 something like this: You know, in my experience, and,  
4 you know, child sexual abuse victims will delay  
5 reporting. And they delay reporting because of A, B, C,  
6 and D. And then because they delay reporting, you know,  
7 it doesn't mean you shouldn't believe them.

8 And that sounds like vouching. I mean, that  
9 sounds like making -- supporting up or bolstering the  
10 fact that it's okay. She waited five months. That's  
11 okay because every other child abuse victim -- or many  
12 don't report immediately. She --

13 THE COURT: But shouldn't she be allowed to  
14 testify as to, perhaps, some of the reasons why sexual  
15 abuse victims don't immediately disclose without talking  
16 about whether or not it impacts their credibility? I'm  
17 assuming that's what you want, Counsel?

18 MS. CAMPBELL: That is what I'm asking -- oh,  
19 I'm sorry.

20 MS. CONCANNON: Yes, your Honor.

21 THE COURT: That is what -- what you want to  
22 limit her testimony to.

23 MS. CONCANNON: She is capable of testifying to  
24 reasons some children react the way they do regarding --  
25 after they are a victim of the sexual assault. Those

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1 are included, but aren't limited to, the secrecy, the  
2 delayed disclosure, who they confine their disclosure  
3 to, as well as any conflicting testimony such as the  
4 dates. In this issue, she's just going to talk about  
5 the mental effect that the sexual abuse can have on  
6 child sexual abuse victims, as well as any retraction  
7 that could possibly take place in these cases.

8 THE COURT: Well, is she going to testify that  
9 this particular victim suffered that trauma, and that's  
10 why she's delayed reporting?

11 MS. CONCANNON: She's testifying as an -- if  
12 she's deemed an expert, as a general opinion.

13 THE COURT: Has she interviewed the child?

14 MS. CONCANNON: She did interview Minor when  
15 this initially happened.

16 THE COURT: And based upon her interview, was  
17 she able to base her observation upon her personal  
18 observation of the child?

19 MS. CONCANNON: I'm confused with your  
20 question. Regarding the interview or --

21 THE COURT: Where is she -- she's just drawing  
22 inferences out of --

23 MS. CONCANNON: Based on her --

24 THE COURT: -- Textbooks?

25 MS. CONCANNON: Based on her dealings with

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1 900-and-some-odd interviews she's done, the training  
2 that she has been to, the lectures, and the continued  
3 education that she has gone to.

4 THE COURT: Why can't she testify as to her  
5 personal observation and based upon that personal  
6 observation and her understanding, based upon the  
7 demeanor of the child, that this is consistent with her  
8 understanding as an expert of why the child may have not  
9 disclosed in a timely fashion?

10 MS. CONCANNON: The State had initially just  
11 intended on using her as a general -- as the general  
12 category, staying away from Minor specific interview  
13 because of Kromah. I know that Kromah gave out  
14 some -- some things that the forensic interviewer could  
15 testify to. But I believe that State v. Shumpert is  
16 more on key, allowing her to testify to the child sexual  
17 abuse counseling and treatment and how those children  
18 react.

19 THE COURT: But isn't Kromah a more recent  
20 case?

21 MS. CONCANNON: Yes, your Honor. This was --  
22 Shumpert is '93.

23 THE COURT: So would you agree that Kromah  
24 is more up-to-date and now gives a guideline and  
25 articulates, perhaps limits, the general testimony of an

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1 expert without personal observation of the child?

2 MS. CONCANNON: Yes.

3 THE COURT: Then why are we having this  
4 discussion?

5 Ma'am, I do not know who you are in the purple  
6 on the front row, but I am not calling out any one of  
7 you on the front row again. I find nothing funny about  
8 what is going on at all. I do not need an explanation.  
9 I have observed the four of you throughout the testimony  
10 of the two previous witnesses, and I find it very  
11 inappropriate, very inappropriate. This individual is  
12 facing very serious charges, and I want everyone in this  
13 courtroom to understand the serious nature. If you  
14 can't conduct yourself accordingly, then you need to  
15 leave the courtroom. Please take the sunglasses off  
16 your head. Thank you.

17 MS. CONCANNON: Your Honor, could I have one  
18 minute, please?

19 THE COURT: You can take all the time you need.

20 (Respite.)

21 MS. CONCANNON: The State's understanding of  
22 Kromah is that Kendra Twitty would not be able to  
23 testify to bolster the credibility of Minor . She could  
24 not testify regarding that. We have no intention of  
25 asking questions or eliciting any testimony regarding

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1 the truthfulness of Minor testimony. She can, though,  
2 lend credibility to her allegations, and that is where  
3 the child sexual Abuse Accommodation Syndrome comes in  
4 and that's where the general findings of child sexual  
5 abuse victims comes into play with her expertise in  
6 those. We have no intention of her speaking  
7 specifically to the credibility of Minor, and I think  
8 that's where maybe I got confused over why it's a  
9 generalized testimony as opposed to specifics.

10 THE COURT: All right. Anything further?  
11 Anything further?

12 MS. CONCANNON: She's not going to give an  
13 opinion as to whether she believes Minor was telling  
14 the truth or not telling the truth.

15 MS. CAMPBELL: Your Honor, and just so the  
16 record is clear, I believe this is sort of a companion  
17 situation here as it occurs to me now, that this is the  
18 Child Sexual Assault Accommodation Syndrome testimony  
19 that they're trying to -- to elicit from Kendra Twitty,  
20 the interviewer at Hope Haven, and I put on the record  
21 earlier, that we -- we objected to that. And the basis  
22 for that objection's already on the record. We were  
23 only notified of it Thursday. We have not had time to  
24 prepare. We feel that if that is the -- going to be the  
25 situation, if she's going to be qualified as an expert,

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1 as the State says, child sexual abuse counseling and  
2 trauma, which means she wants her to testify about  
3 accommodation syndrome, then we do object. And not only  
4 just on Kromah, but because we -- we haven't had the  
5 opportunity to obtain our own expert. Thank you, your  
6 Honor.

7 THE COURT: Your response to that?

8 MS. CAMPBELL: Thank you, your Honor. I  
9 think my focus mainly on Shumpert was because that  
10 was an expert in the field of child sexual abuse  
11 counseling. Kromah focuses on forensic interviewing.  
12 Kendra Twitty's purpose of testimony is not to testify  
13 specifically to the truthfulness of Minor . That was  
14 never our intention. Our intention is her observations  
15 followed by the generalities that she's observed in her  
16 training, her day-to-day life as a counselor of sex  
17 abuse victims.

18 THE COURT: All right.. And that is the  
19 testimony that Ms. Campbell is objecting to that was not  
20 presented, so let me hear you on that.

21 MS. CONCANNON: Regarding the child sexual  
22 Abuse accommodation Syndrome?

23 THE COURT: Yes.

24 MS. CONCANNON: Kendra Twitty would just  
25 testify regarding this. It's been around since the

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1 1980s. The gist deals with the behavioral patterns that  
2 are consistent in victims -- child victims of sexual  
3 abuse. It talks about their retraction, their secrecy,  
4 who they disclose to, when they disclose, delayed  
5 disclosure, just any behavioral mental aspects that come  
6 along that have been seen in numerous victims of child  
7 sexual abuse.

8 THE COURT: What about not providing the  
9 testimony or the information to the Defense until two  
10 days before trial?

11 MS. CONCANNON: I actually gave it to  
12 Ms. Campbell on Wednesday. It -- it's the State's  
13 opinion that this is just a general-held argument that  
14 these counselors would testify to. It's not some new  
15 smoking gun that we just came up with. It's been around  
16 since the early '80s. It's commonly testified to  
17 regarding child victims of sexual abuse consistent with  
18 delayed reporting, retraction, who they disclose to,  
19 when they disclose, why they disclose, and any sort of  
20 helplessness or secrecy that may follow their -- the  
21 actual sexual abuse.

22 THE COURT: All right. She's outside?

23 MS. CONCANNON: She is.

24 THE COURT: All right. Let me hear -- and I  
25 just want to -- a very -- as to what you just stated,

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1 that's all I want to hear about.

2 MS. CONCANNON: Okay.

3 THE COURT: Thank you.

4 THE DEPUTY CLERK OF COURT: Please raise your  
5 right hand, and put your left hand on the Bible.

6 (The oath is administered by the Deputy Clerk  
7 of Court, and the witness answers as follows:)

8 THE WITNESS: I do.

9 THE DEPUTY CLERK OF COURT: Please be seated.

10 THE BAILIFF: State your full name and spell  
11 your last name for the court reporter. And speak right  
12 into the microphone.

13 THE WITNESS: My name is Kendra Twitty. Did  
14 you say spell it?

15 THE COURT: Spell your last name.

16 THE WITNESS: It's T-w-i-t-t-y.

17 MS. CONCANNON: Thank you, your Honor. Would  
18 you like Ms. Twitty to briefly go through her background  
19 prior to getting into --

20 THE COURT: Do you have any objection as to her  
21 qualifications as an interviewer and --

22 MS. CAMPBELL: For the purposes of this  
23 hearing, no. We can proceed with her being qualified.  
24 She's -- interviews these children all the time at Hope  
25 Haven. Primarily concerned with this accommodation

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1 syndrome --

2 THE COURT: All right. I heard her background  
3 earlier today, so you agree that, in essence, that's the  
4 background?

5 MS. CAMPBELL: I agree.

6 THE COURT: For the purposes of this hearing?

7 MS. CAMPBELL: Correct.

8 THE COURT: We're here -- you're on the  
9 stand for just a very limited purpose, all right,  
10 depending on what happens in my ruling. We're going  
11 to go through your qualifications, but I understand, in  
12 a very general sense, what your background is. We're  
13 here just about the child accommodation syndrome. All  
14 right?

15 MS. CONCANNON: Thank you, your Honor.

16 KENDRA TWITTY,

17 having been first duly sworn by the Deputy Clerk of  
18 Court to tell the truth, the whole truth, and nothing  
19 but the truth, was examined and testified upon her oath  
20 as follows:

21 DIRECT EXAMINATION

22 BY MS. CONCANNON:

23 Q Ms. Twitty, can you briefly tell the Court your  
24 knowledge about the Child Sexual Abuse Accommodation  
25 Syndrome; how long you've known about it, and the

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1 general characteristics of what it involves?

2 A Sure. I -- in my trainings as a counselor  
3 working with children with sexual abuse, was trained  
4 first on the Child Sexual Abuse Accommodation Syndrome  
5 starting in 2000. And so for the 13 years that I've  
6 been working with children, the accommodation syndrome  
7 is something that I have taken into consideration.  
8 Pretty much, it's a way of adults understanding --  
9 understanding what children go through when they're  
10 sexually abused and how children handle themselves  
11 in an abnormal situation.

12 Q What are some of the characteristics associated  
13 with victims of child sexual abuse?

14 A There's five associations as far -- or phases  
15 or components: secrecy is one; helplessness is one;  
16 entrapment and accommodation is one; delayed disclosure  
17 on -- delayed disclosure, nonconflicting or unconvincing  
18 disclosure; and retraction or recantation would be one  
19 as well. And I'm -- I may be missing -- no. I think  
20 that's it.

21 Q In your experience, are all victims of child  
22 sexual abuse, do all of them have these characteristics?

23 A Not necessarily.

24 Q Do some of them have a combination of them?

25 A Absolutely. I would say that in my experience

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1 with working with victims of sexual assault or child  
2 abuse, is that the delayed disclosure, the recantation,  
3 and the secrecy has been something that I had to -- work  
4 with children.

5 Q Those three would be the most common  
6 characteristics you see?

7 A Yes. Well, entrapment and accommodation as  
8 well, because while children are being sexually abused  
9 they -- and they don't tell right away, they accommodate  
10 with other things in their life. They may over excel in  
11 things or they may have behavior outbursts and get --  
12 turn to substance abuse, cutting, other behaviors that  
13 are -- whatever they're doing to accommodate the abuse  
14 that's happening to them.

15 Q Did you have to go through special training  
16 just specifically for Child Sexual Abuse Accommodation  
17 Syndrome?

18 A No. Not just specifically for the  
19 accommodation syndrome.

20 Q Was it touched on in other trainings you have  
21 attended?

22 A Absolutely, yes.

23 Q Is it something that is discussed in your field  
24 reg- -- common?

25 A Yes.

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1 Q Is it common?

2 A It is kind of the most common research  
3 that -- that the Children's Law Center or -- the common  
4 training that the Children's Law Center has been doing  
5 for the past 13 years that I've, on and off, have been  
6 to some of their trainings, so. . .

7 Q Are some of these characteristics something  
8 that a layperson would be able to recognize or know  
9 about?

10 A Yes.

11 Q Have you testified regarding this syndrome  
12 previously?

13 A I may have. And I took a little hiatus from  
14 this profession as far as forensic interviewing and  
15 working with Hope Haven. So in 2000- -- between 2004  
16 and 2006, I may have talked about the child abuse  
17 accommodation syndrome in court. And I'm not sure if it  
18 was family court or criminal court.

19 Q But you have testified about it before?

20 A Yes, ma'am.

21 Q Okay.

22 MS. CONCANNON: Beg the Court's indulgence?

23 THE COURT: Take your time.

24 Q (By Ms. Concannon) You mentioned earlier  
25 that laypeople could possibly identify some of these

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1 elements. What are some of the things that only your  
2 specialized knowledge has allowed you to pick up on and  
3 observe in these children?

4 A I guess I would -- I don't know -- really know  
5 how to answer that. Can you be more specific?

6 Q I'll try to rephrase it. You have specialized  
7 knowledge regarding this specific syndrome; correct?

8 A It's not really a syndrome.

9 Q Characteristics?

10 A Right, yeah. Characteristics, I guess you  
11 could say.

12 Q Okay. So you --

13 A But I believe that I could explain those  
14 characteristics to a layperson because it's basically  
15 walking them through what it's like to be a child that  
16 is living with child sexual abuse.

17 Q And you've gained the ability to explain to a  
18 layperson these symptoms, these characteristics, through  
19 your training, your experience, education?

20 A Yes. I do it every day.

21 Q Okay. Is there any way a layperson could  
22 possibly pick up on these as you do?

23 A Yes.

24 Q But it's your training and experience that make  
25 it --

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1           A     It's something that the layperson doesn't  
2 really think about and -- because sexual abuse is  
3 something we don't want to even -- well, sexual abuse, I  
4 find, in my professional opinion, is something that's  
5 taboo, and something that is not easily talked about.  
6 It's uncomfortable. People find that when children are  
7 sexually abused, well, they should tell right away  
8 because something happened, and it was wrong. And so  
9 we -- I explain to adults that children -- there's many  
10 reasons why children don't tell right away. There's  
11 many reasons why people -- why children keep it a  
12 secret. There's many reasons why children tell and  
13 then take it back quickly and recant. So I think that  
14 that's where my education and experience can come in to  
15 explain.

16           Q     Okay. So for a layperson, they may recognize  
17 these symptoms but may not necessarily recognize them as  
18 sexual abuse?

19           A     Absolutely.

20           Q     Your expertise and training has made you  
21 recognize them as part of sexual abuse with children?

22           A     That's correct.

23           MS. CONCANNON: I have nothing further for this  
24 witness.

25           MS. CAMPBELL: May it please the Court?



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1           A     If that's what I'm called for.

2           Q     That's what you said this testimony would be,  
3 you would be educating them?

4           A     Well, this -- this -- a child sexual Abuse  
5 Accommodation Syndrome doesn't necessarily mean that  
6 the child was sexually abused. If the child makes a  
7 disclosure and is having some symptoms that a  
8 professional may see fit into one of the five categories  
9 then, yes, that's how I would help educate someone.

10          Q     And would you also testify and admit that there  
11 are studies that -- well, are you familiar with the  
12 studies that show that many times a failure to disclose  
13 is indicative of just lying about the assault having  
14 even occurred?

15          A     I'm sure there's many studies that say that,  
16 but I know that there are more studies that I have  
17 researched that say that children do commonly deny in  
18 the beginning. I don't know if you look at lying as  
19 denying.

20          Q     And so you would take the position, the  
21 question about that, that there's more studies on your  
22 side of the fence than on the other; right?

23          A     No, I'm not saying that.

24          Q     And isn't it true that in -- that in the  
25 sexual -- Child sexual Abuse Accommodation Syndrome,

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1 what you look at are these peculiarities that develop  
2 like bed-wetting or acting out or some, you know, major  
3 change in the sociodevelopment of this child, chronic  
4 behavioral abnormalities; right?

5 A That -- those behaviors can be from divorce,  
6 bullying, not -- or a lot of other issues, not  
7 necessarily just child sexual abuse.

8 MS. CAMPBELL: Okay. I think that's all I  
9 have, your Honor.

10 THE COURT: Is that all you have?

11 MS. CAMPBELL: That's all I have.

12 MS. CONCANNON: Thank you, your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MS. CONCANNON:**

15 Q Ms. Campbell stated that those can be  
16 indicative of other aspects at home; correct?

17 A Correct.

18 Q But they're also indicative of child sexual  
19 abuse?

20 A That is correct.

21 MS. CONCANNON: I have nothing further for this  
22 witness.

23 THE COURT: Ms. Campbell?

24 MS. CAMPBELL: I have no further questions for  
25 her.

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1 THE COURT: You may step down. Thank you.  
2 Do you have any other witnesses that I need to  
3 consider?

4 MS. CONCANNON: Not regarding Ms. Twitty's  
5 testimony.

6 THE COURT: All right. Any arguments?

7 MS. CAMPBELL: I'll be happy to argue, or would  
8 you like --

9 THE COURT: Is there anything else that I need  
10 to --

11 MS. CAMPBELL: I do have a brief argument, your  
12 Honor.

13 THE COURT: All right. Briefly.

14 MS. CAMPBELL: That -- you know, most of the  
15 time, your Honor, when courts are confronted with a  
16 Child sexual Assault Accommodation Syndrome, they will  
17 allow, in a very limited way, for the State to use it as  
18 a rehabilitation tool, not as substantive evidence in  
19 the case in chief. There's -- there's clearly a -- the  
20 situation where Ms. Twitty is going to -- want to  
21 testify about --

22 THE COURT: Define "rehabilitation tool."

23 MS. CAMPBELL: Perhaps, in the research that  
24 I've done, if -- if -- there was some indication that  
25 maybe -- maybe subsequent to cross-examination, that

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1 there needed to be some effort on the State's part to  
2 rehabilitate their witness, that some states have  
3 allowed it for that limited purpose, to explain why  
4 there was the delay in reporting if that was the subject  
5 of the cross-examination. But most states have held  
6 that it is inadmissible evidence and that it is  
7 pseudoscience and that it should not be allowed in -- in  
8 the case in chief certainly. And we just continue to  
9 object to that. Thank you, your Honor.

10 MS. CONCANNON: Thank you, your Honor. The  
11 State would argue that pursuant to State v. Shumpert as  
12 in combination with Kromah, which is more recent, that  
13 she should be able to testify in the field of sexual  
14 abuse regarding the -- and in the combination of Child  
15 Sexual Abuse Accommodation Syndrome as it is a -- she's  
16 an expert in that field, and it's her specialized  
17 knowledge that gives rise to indicate that those  
18 particular characteristics could be indicative of child  
19 sexual abuse. Not always, but sometimes.

20 THE COURT: Anything further, Ms. Campbell?

21 MS. CAMPBELL: No, your Honor.

22 THE COURT: Just so I'm clear, because I still  
23 have missed the link, she did the forensic interview?

24 MS. CONCANNON: Yes, your Honor.

25 THE COURT: And when did the -- when was the

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1 forensic interview done in relation to the incident?

2 MS. CONCANNON: Roughly five months later.

3 THE COURT: Okay. Why can she not -- why is it  
4 that you're not going to ask her the question  
5 specifically as to the delayed reporting of this -- of  
6 the victim and you want her to talk in general terms  
7 that a layperson can understand?

8 MS. CONCANNON: In my opinion, that would just  
9 be bolstering the credibility of Minor already -- who  
10 will have already testified. Minor can testify as to  
11 what she did, what happened to her after the assault.  
12 Kendra Twitty is just testifying generalized --

13 THE COURT: You plan to call the victims first?

14 MS. CONCANNON: Yes.

15 THE COURT: All right. I'm going to withhold  
16 my ruling until I hear the testimony from the victim.  
17 All right.

18 All right. That will also give you some  
19 time -- we're going to -- as I understand it, we're  
20 done with the motions. So she's here, and that will  
21 give you an hour or so that if you wanted to speak with  
22 Ms. Twitty concerning that, since you were just given  
23 that information on Wednesday, Ms. Campbell.

24 MS. CAMPBELL: Yes, ma'am.

25 THE COURT: Did we address all of the motions?

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1 MS. CAMPBELL: I'm checking them off, your  
2 Honor.

3 THE COURT: Mr. Shelton, make sure Ms. Twitty  
4 doesn't leave until --

5 MR. SHELTON: Yes, I'll go check on her.

6 THE COURT: -- Ms. Campbell has an opportunity  
7 to speak with her.

8 MR. SHELTON: Thank you, your Honor.

9 MS. CAMPBELL: If I could, your Honor, I did  
10 have a motion on there about Kristin Dalton, who is the  
11 certified nurse practitioner. I would like to know from  
12 the State that the -- the type of expert they seek to  
13 have her qualified as. I do have her *curriculum vitae*  
14 from the State and some reports that she intends to rely  
15 on in her testimony. And I'd like to clarify that.  
16 That's all.

17 MS. CONCANNON: Just for the physical trauma of  
18 child sexual abuse, I've provided regarding the -- the  
19 hymen, the trauma that the body experiences with child  
20 sexual abuse, and she'll testify that she's one of 16  
21 nurses that does this in the state of South Carolina  
22 regarding specifically child sexual abuse --.

23 THE COURT: Wait. What are you going to  
24 qualify her as expert in?

25 MS. CONCANNON: In the physical aspects of

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1 child sexual abuse. The physical trauma on the body of  
2 a child for child sexual abuse.

3 THE COURT: All right. Does that answer your  
4 question, Ms. Campbell?

5 MS. CAMPBELL: It answered my question, your  
6 Honor.

7 THE COURT: All right. Do we need anything  
8 further regarding that matter?

9 MS. CAMPBELL: Not at this moment.

10 THE COURT: All right. I think all of  
11 the -- all the other motions have been addressed. You  
12 understand my rulings as to Ms. Twitty, Ms. Campbell?

13 MS. CAMPBELL: I do understand the ruling, your  
14 Honor. And at this time, if I may approach the court  
15 reporter, I would like to mark my written motion on  
16 Ms. Twitty.

17 THE COURT: Thank you.

18 MS. CAMPBELL: And I have presented that to the  
19 court reporter, Defendant's Exhibit 9, which is my  
20 motion referenced: Kendra Twitty and the Child Sexual  
21 Assault Accommodation Syndrome Testimony.

22 (Defendant's Exhibit Number 9 is marked for  
23 identification.)

24 THE COURT: All right. Anything further?

25 MS. CONCANNON: Not from the State, your Honor.

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1 MS. CAMPBELL: Not from the Defense.

2 THE COURT: All right. What are we doing as to  
3 bond?

4 MS. CAMPBELL: Well, he's in jail.

5 THE COURT: He's to remain in custody? No need  
6 to address bond?

7 MS. CAMPBELL: I don't think there's any reason  
8 to address that.

9 THE COURT: All right. Just making sure.

10 All right. See you at 9:00 a.m.

11 COURT IN ADJOURNMENT, at 4:05 p.m.

12 (End of Volume I of IV. Day two of the trial  
13 to commence tomorrow, May 21, 2013, at 9:00 a.m.)

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REPORTER'S CERTIFICATE

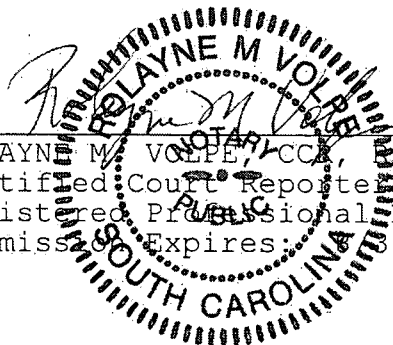
STATE OF SOUTH CAROLINA )  
 ) ss.  
COUNTY OF BERKELEY )

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR,  
and Registered Professional Reporter, RPR, do hereby  
certify that the transcript of the foregoing  
proceedings, **VOLUME I OF IV**, accurately reflects the  
events that occurred before me to the best of my ability  
at the time and place set out on the caption hereto, the  
witnesses having been duly cautioned and sworn, or  
affirmed, to tell the truth, the whole truth, and  
nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,  
related to, nor employed by any of the parties to the  
action in which these proceedings were taken or to any  
attorney or counsel employed by the parties hereto, nor  
financially interested, directly or indirectly, in the  
outcome of this action.

CERTIFIED AND SIGNED on this 17th day of February,  
2014.

ORIGINAL

  
ROLAYNE M. VOLPE, CCR, RPR  
Certified Court Reporter and  
Registered Professional Reporter  
Commission Expires: 02/2021

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Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA ) GENERAL SESSIONS COURT  
COUNTY OF BEAUFORT ) FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina, )  
Plaintiff, ) Case Nos: 2012-GS-07-1631  
vs. ) 2012-GS-07-1632  
GERALD THOMAS BARRETT, JR., ) 2012-GS-07-1633  
Defendant. )

ORIGINAL

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TRANSCRIPT OF JURY TRIAL  
VOLUME II OF IV  
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON  
ON MAY 21, 2013

---

ROLAYNE M. VOLPE, CCR, RPR  
Court Reporter for the State of South Carolina at Large  
Post Office Box 342  
Summerville, South Carolina 29484

A P P E A R A N C E S

For the State:

**MARY CONCANNON**  
**BENJAMIN SHELTON**  
Fourteenth Circuit Solicitor's Office  
P.O. Box 1880  
Bluffton, South Carolina 29901

For the Defendant:

**TRACI CAMPBELL**  
Attorney at Law  
P.O. Box 525  
Beaufort, South Carolina 29901

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Official Court Reporter for the State of South Carolina

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3	<u>State's Exhibit:</u>		
4	Nos. 1 through 6		178
5	No. 11		257
6			
7	<b>DESCRIPTION</b>	<b>I. D.</b>	<b>ADMITTED</b>
8	<u>Defendant's Exhibit:</u>		
9			
10	<b>DESCRIPTION</b>	<b>I. D.</b>	<b>ADMITTED</b>
11	<u>Court's Exhibit:</u>		
12	No. 1	326	
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1 seek to have him remain under my subpoena that, you  
2 know, was issued and he complied with yesterday and I'd  
3 like to extend it through the end of the trial.

4 THE COURT: All right. You are still under  
5 subpoena, and the Rule of Sequestration has been  
6 invoked. Thank you.

7 MR. PATRICK HALL: Thank you, your Honor.

8 THE COURT: You may return -- is your office in  
9 this courthouse?

10 MR. PATRICK HALL: I'm here all week.

11 THE COURT: That wasn't my question. Is your  
12 office in this courthouse? Do you have offices in this  
13 courthouse?

14 MR. PATRICK HALL: Yes, we do.

15 THE COURT: All right. Is that where you will  
16 be?

17 MR. PATRICK HALL: I will actually be in the  
18 other courtroom, in Courtroom 3 -- in the back of  
19 Courtroom 3.

20 THE COURT: All right. Thank you.

21 MR. PATRICK HALL: Thank you.

22 MS. CAMPBELL: That's all I have.

23 THE COURT: Thank you.

24 Anything before we bring in the jury?

25 MS. CONCANNON: The State did have one

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1 follow-up question. Minor is here, and she will  
2 testify. In her forensic interview, many times she's  
3 been asked to speak about -- she's good until she gets  
4 to the actual incident. She kind of breaks down a  
5 little bit, and she's had to write it out in the past.  
6 Will the Court allow her, if in the -- in the event that  
7 happens, she's not able to get the words out, would she  
8 have permission to write out what happened?

9 MS. CAMPBELL: I would object to that.

10 THE COURT: All right. Let's see -- let's hope  
11 that doesn't happen and deal with it when it happens.  
12 All right?

13 MS. CONCANNON: Thank you, your Honor.

14 THE COURT: Is she going to be present during  
15 openings?

16 MS. CONCANNON: No, ma'am. She will just be in  
17 for her testimony.

18 THE COURT: All right. Let's bring in the  
19 jury.

20 THE BAILIFF: Yes, ma'am.

21 (Respite.)

22 THE BAILIFF: The jurors are ready to enter,  
23 your Honor.

24 THE COURT: All right. Please bring them  
25 in.

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1 Ladies and gentlemen, I do have my own laptop  
2 on the bench. One of the questions a juror always asks  
3 is, What are you doing on your laptop? Trust me, I am  
4 not surfing Facebook or playing Words With Friends or  
5 anything of that nature. I am researching law and  
6 communicating regarding this case and other cases that  
7 may be on the docket.

8 Ladies and gentlemen, thank you again for  
9 accepting this responsibility, jury service. Please  
10 give your strict attention.

11 Madam Solicitor.

12 MS. CONCANNON: Thank you, your Honor. May it  
13 please the Court?

14 **OPENING STATEMENTS**

15 **BY MS. CONCANNON:**

16 South Carolina uses a term criminal sexual  
17 conduct to refer to various sexual assaults. But to  
18 a 14-year-old girl, she may not know what those words  
19 mean. The first word that comes to her mind is rape.  
20 That's the word that Minor used to describe what  
21 that man there did to her. Minor was 14 years old the  
22 day that her life was shattered. She was a child in  
23 every sense of the word. She should be worried about  
24 school and the gossip and maybe homework she may have or  
25 tests or just school -- common worries a 14 year old

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1 should have. She should not be haunted by the pain and  
2 the fear that she carries with her on a daily basis  
3 because of that man, Gerald Barrett.

4           The Defendant was a family friend. He knew  
5 Minor     It was somebody that she should have been able  
6 to trust. But his true colors came out around Saint  
7 Patrick's Day of last year. There was more than meets  
8 the eye to Gerald Barrett. And on Saint Patrick's Day,  
9 in Minor    bed, in Minor    bedroom, he held her down. He  
10 forced her 14-year-old arms to the bed. She could not  
11 move. She had nowhere to go. She was restrained there.  
12 She was confined there. He hovered his adult man body  
13 over her. He removed her underwear and forced her, 14  
14 years old, to have sex with him.

15           This happened in a place where Minor called  
16 home, a place she should have felt safe, a place where  
17 she shouldn't have to worry about things like this. It  
18 happened on the night around Saint Patrick's Day. The  
19 grown-ups were outside having a good time, and Minor was  
20 inside watching TV, like any other 14 year old would.

21           Defendant's first assertion of control occurred  
22 downstairs. Minor was on the couch watching TV, and  
23 Gerald Barrett came in. He sat on the couch next to  
24 her. She felt just a little creeped out. She didn't  
25 like it. Too close for comfort. She moved to a chair

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1 in the den. He followed. He got next to her on the  
2 chair, and skin-to-skin contact, he took his grown hands  
3 and groped, first, her 14-year-old breasts; and,  
4 secondly, he took his adult male hands, stuck them down  
5 her 14-year-old body and fondled and groped her vaginal  
6 area.

7 He wasn't done. Minor went upstairs to her  
8 bedroom, a place that she should have been safe, she  
9 should have felt safe. Couple of hours later, she hears  
10 somebody walking up the stairs. She looks over, and  
11 it's Gerald Barrett, Jr., standing in her bedroom.

12 He's there to assert his final control. He  
13 gets on top of her; he places all of his weight down on  
14 top of her. He's a grown man on top of a 14-year-old  
15 little girl. He holds her arms down; he pins her to her  
16 own bed. She cannot go anywhere. She is stuck there.  
17 She is confined there. She cannot escape. She can't  
18 even get a noise to scream. So she closes her eyes, and  
19 she tries to survive.

20 Her worst nightmare is coming true. And she  
21 suffered what quite possibly will be the worst moment  
22 she will ever suffer in her entire life. He ripped her  
23 innocence from her and stole something from her that she  
24 will never be able to get back, and Minor may never be  
25 the same.

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1           Now, through the duration of this trial you're  
2 going to hear different testimony and different  
3 witnesses will testify and different evidence will be  
4 presented. And I ask you to pay attention to what they  
5 have to say. And you're also going to hear from Minor  
6 herself. And she's going to take you back to that  
7 night. She's going to take you to the den downstairs  
8 where his initial attack occurred, and then she's going  
9 to take you to her bedroom, where he pinned her down and  
10 forced her, 14 years old, to have sex with him.

11           Now, I'm confident, after you hear all this  
12 testimony and all this evidence is presented, that you  
13 will not hesitate to find that Defendant, Gerald  
14 Barrett, Jr., first, guilty of lewd act for his initial  
15 attack on Minor downstairs, where he groped and fondled  
16 her body, but also of criminal sexual conduct with a  
17 minor in the second degree -- Minor was 14 years -- as  
18 well as kidnapping, for his final assertion of control,  
19 where he pinned her down and forced her, 14 years old,  
20 to have sex with him against her will. You will not  
21 hesitate to find him guilty, just as he did not hesitate  
22 to rip her innocence right from under her. Thank you.

23           THE COURT: Ms. Campbell.

24           MS. CAMPBELL: May it please the Court, your  
25 Honor?

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1 this officer right here, talked to Minor investigated  
2 this case, preparing this case for today, for you. And  
3 you will ask yourselves, as we proceed, what did the  
4 Government do to prepare this case for you? Because  
5 Mr. Barrett -- Gerald Barrett, just like you, and you,  
6 and me, we can't do that. We don't have to do that. We  
7 shouldn't have to do that, and we certainly can't do  
8 that. All the man can say is: I'm innocent. I did not  
9 do this.

10 So we say to ourselves, Well, where's the  
11 proof? What are the facts? What's the evidence in this  
12 case? And I'll tell you. While, perhaps riveting, what  
13 Ms. Concannon had to say is in no way evidence of  
14 anything. It's not evidence that anything happened at  
15 all. The evidence in this case, as her Honor has told  
16 you, will be right there in that chair from the  
17 witnesses that come into this courtroom and take that  
18 Bible and put their hands on it and swear to tell you  
19 and everybody else the truth today. Regardless of  
20 anything else, anybody says, the only evidence that you  
21 can take is from that witness stand.

22 And I'm going to ask you to do something that's  
23 probably a little hard. Because, you know, when you  
24 work on a case, you talk to people about it, and you go  
25 through your thoughts on it, and probably a lot of you,

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1 when you sat out there and you heard the Judge read the  
2 Indictments in this case, you felt uneasy. You had a  
3 little feeling in your stomach, like, oo, hmm, that's a  
4 bad case. And what you have to do is to take that  
5 feeling, justifiable, though, and leave that at that  
6 door. Because you can't bring that feeling in here.  
7 That passion, that uneasiness, that flinching has got to  
8 stay there. It's your oath to leave it there.

9           And what I'll ask you to do, in place of that  
10 cringe or that uneasiness, is to bring into this  
11 courtroom three things with you: I'm going to ask you  
12 to bring your respect, which I believe you all have,  
13 your respect for this Judge and her rules that she gives  
14 you; I'm going to ask you to use your will power, each  
15 and every individual one of you --

16           Because you're not a group. Each one of you  
17 sits in your own chair, with your own mind, and your own  
18 heart.

19           -- and I'm going to ask you to use your  
20 judgment and your discerning abilities to listen to what  
21 people say to you, and make a decision as to what you  
22 believe, individually, about that testimony, and ask you  
23 to discern and to see what you've been given and what  
24 you have not been given.

25           And the third thing I will ask you is to take a

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1 solemn oath that at this moment you honestly presume  
2 that Gerald Barrett is an innocent man. And if you can  
3 picture, as you should at this moment, that there -- you  
4 know the Olympic torch, there's a torch of innocence, of  
5 light, that is over him right now, and what I'm going to  
6 do, and what I'm asking you to do is, if I took that  
7 torch, that innocence that every single man deserves  
8 when he sits in that chair, and I'm going to break it up  
9 into 12 pieces. And I'm going to give each and every  
10 one of you a piece of that torch of innocence, and I'm  
11 going to ask you to hold onto it. And you're going to  
12 hold it high, and you're going to carry it throughout  
13 this trial. And you know what? Even when this trial  
14 is over, the Judge is going to tell you that you're  
15 going to take that torch, that innocence that we all  
16 abide by, and you're going to put it in the jury room  
17 with all of you. And nobody is going to put that torch  
18 out.

19           The only way that that torch can be  
20 extinguished is if you, individually, say to yourself,  
21 that's the torch I'm given, and I'm putting it out. And  
22 the reason I'm putting it out is because the state of  
23 South Carolina has proven to me, beyond reasonable  
24 doubt, that Gerald Barrett is guilty. And you say to  
25 yourself at that point, and you know why I'm putting

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1 that torch of innocence out? Because I have no  
2 hesitations whatsoever. And the Judge will tell you  
3 reasonable doubt is the kind of doubt that would make a  
4 reasonable person hesitate to act.

5 I'm going to have a chance to speak to you one  
6 more time, just the two of us, you know, here. And I'm  
7 going to say to you, when we finish this trial, that  
8 there is no proof. I believe that when we finish, that  
9 the doubts that will be in your mind will far surpass  
10 reason, and that you will carry back into here, into  
11 this courtroom, each one of you, that torch of  
12 innocence, that torch of light, and you will say, to  
13 this courtroom: No, you have not met your burden, state  
14 of South Carolina.

15 I thank you, on behalf of my client, for your  
16 duty here today, and I appreciate your time this  
17 morning. Thank you.

18 THE COURT: Call your first witness.

19 MS. CONCANNON: Thank you, your Honor. State  
20 calls Mary Grossnicklaus.

21 THE DEPUTY CLERK OF COURT: Would you place  
22 your left hand on the Bible and raise your right hand.

23 (The oath is administered by the Deputy Clerk  
24 of Court, and the witness answers as follows:)

25 THE WITNESS: I do.

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1 THE DEPUTY CLERK OF COURT: Please be seated.

2 State your name and spell it for the Court, please.

3 THE WITNESS: My name is Mary Grossnicklaus.

4 THE COURT: Spell your last name.

5 THE WITNESS: G-r-o-s-s-n-i-c-k-l-a-u-s.

6 THE COURT: Your witness.

7 MS. CONCANNON: Thank you, your Honor.

8 **MARY GROSSNICKLAUS,**

9 having been first duly sworn by the Deputy Clerk of  
10 Court to tell the truth, the whole truth, and nothing  
11 but the truth, was examined and testified upon her oath  
12 as follows:

13 **DIRECT EXAMINATION**

14 MS. CONCANNON:

15 Q Good morning. May I call you Mary?

16 A Yes.

17 Q Thank you. Do you know Minor ?

18 A Yes.

19 Q How do you know her?

20 A She is my stepgranddaughter.

21 Q When you say stepgranddaughter, how is she your  
22 stepgranddaughter?

23 A My son -- my son married Brandace. She had

24 Minor Minor was, I think, three when they married.

25 Q Okay. So you've -- Minor has been in your life

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- 1 since she was three years old?
- 2 A Yes.
- 3 Q Did she ever live with you?
- 4 A Yes.
- 5 Q Does she live with you now?
- 6 A No.
- 7 Q Do you know who she lives with now?
- 8 A Tyreed Lucas (phonetic), her father.
- 9 Q Her father?
- 10 A Yes.
- 11 Q Do you remember last early spring?
- 12 A Yes.
- 13 Q Okay. Would Minor ever go to Aiken with  
14 you?
- 15 A Yes. Each time I would pick up my other  
16 granddaughters, Minor would usually come spend the  
17 weekend with me.
- 18 Q Were there any of those trips that stick out in  
19 your mind today?
- 20 A Yes. The trip that we -- when I picked them up  
21 for spring break last year, when Minor disclosed to me  
22 what had happened to her.
- 23 Q Did she say where anything had happened?
- 24 A Yes. She said it happened when they -- her --  
25 she was living with her brother at Shawn's.

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- 1 Q Okay. Do you know where Shawn lived?
- 2 A No, I'm not familiar with Bluffton. She gave  
3 me the name of the street, Pine-something -- Pine  
4 Forest, maybe, but I'm not familiar with this area.
- 5 Q Bluffton?
- 6 A Yes.
- 7 Q Did she say when it would have happened?
- 8 A She said around Saint Patrick's Day.
- 9 Q Okay. And how long after Saint Patrick's Day  
10 was this conversation?
- 11 A Saint Patrick's Day would have been in March.  
12 This would have been April.
- 13 Q Okay. With that information, what did you do?
- 14 A After she disclosed to me, we talked about it.  
15 And I contacted her father, first and foremost, to let  
16 him know what she had told me. And then -- that would  
17 have been on a Monday evening, because I picked up the  
18 girls on a Friday. So it was Monday evening Minor and I  
19 had that chat, and we called her father. And then  
20 Tuesday, I contacted law enforcement here in Beaufort  
21 County.
- 22 Q Okay. So just one more time again. When did  
23 Minor say it happened?
- 24 A Around Saint Patrick's Day.
- 25 Q And where did she say?

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1 Sheriff Glass that you were going to call Minor mother,  
2 with no mention of calling her dad; right?

3 A No. I would not have called her mother.

4 Q Okay. So when Deputy Sheriff Glass says, Mary  
5 stated she contacted Minor ' mother and advised her of  
6 the situation, well, Deputy Sheriff Glass is just lying?

7 A No. What happened was, I contacted Tyreed, and  
8 Tyreed contacted Brandace. Brandace then called me,  
9 yes. But I contacted Tyreed first. Brandace contacted  
10 me.

11 Q And Deputy Sheriff's Glass' report, that  
12 indicates you set the date and the time one to two weeks  
13 prior to the conclusion of school, he must be lying  
14 about that too?

15 A Ma'am, I can't recall. That was a year ago.

16 Q Okay. So if he wrote it down in his report,  
17 when it was happening, and his recollection was taking  
18 place at that time, in preparation of the trial, what he  
19 wrote down might, in fact, be more accurate than what  
20 you can remember; right?

21 A It may, yes, ma'am.

22 MS. CAMPBELL: Thank you. I have nothing  
23 further for her.

24 MS. CONCANNON: Just a brief follow-up. Thank  
25 you, your Honor.



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1 MS. CAMPBELL: Okay. Thank you.

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

3 Call your next witness.

4 MS. CONCANNON: The State calls Shawn Ward.

5 THE DEPUTY CLERK OF COURT: Would you place  
6 your left hand on the Bible and raise your right hand  
7 for me, please.

8 (The oath is administered by the Deputy Clerk  
9 of Court, and the witness answers as follows:)

10 THE WITNESS: I do.

11 THE DEPUTY CLERK OF COURT: Please be seated.  
12 State your name and spell it for the Court, please.

13 THE WITNESS: Shawn Ward, S-h-a-w-n W-a-r-d.

14 SHAWN WARD,

15 having been first duly sworn by the Deputy Clerk of  
16 Court to tell the truth, the whole truth, and nothing  
17 but the truth, was examined and testified upon his oath  
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. CONCANNON:

21 Q Shawn, where do you live currently?

22 A Pine Forest Drive, Bluffton.

23 Q Is that -- I'm sorry?

24 A In Bluffton.

25 Q Is that where you lived in March of last year?

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1           A     Yes.

2           Q     Okay. In March of last year, who lived there

3 with you?

4           A     Brandace Smith, Minor           , T.           and

5 S.           were there on visitations occasionally.

6           Q     Who are T.           and S.           ?

7           A     Those are Brandace's other daughters.

8           Q     Brandace is Minor           mom?

9           A     Yes.

10          Q     And did Minor           and Brandace live with you full

11 time during that time?.

12          A     Yes.

13          Q     Did Minor           have her own bedroom there?

14          A     Yes.

15          Q     Okay. Where was this bedroom?

16          A     It was upstairs. Kind of like a loft area and

17 then a bedroom off of the loft.

18                MS. CONCANNON: Okay. Permission to approach,

19 your Honor?

20                THE COURT: You may.

21                MS. CAMPBELL: Your Honor, may I see what the

22 Solicitor has? I haven't seen these. May I have a

23 moment?

24                THE COURT: You may.

25                (Document are handed to Ms. Campbell.)

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1 MS. CONCANNON: Permission to approach?

2 THE COURT: You may approach.

3 Q (By Ms. Concannon) Shawn, I'm going to show  
4 you a couple of marked State's Exhibits, 1 through 6.  
5 Do you recognize these pictures?

6 (Document is handed to the witness.)

7 A Yeah. These are all pictures of my house.

8 Q Those are pictures of your house?

9 A Uh-huh.

10 Q I'm going to ask you specifically about State's  
11 Exhibit 6. What is that a picture of?

12 A That's the entrance to the bedroom upstairs,  
13 standing in the loft area at the top of the stairs.

14 Q And whose bedroom was this in March of last  
15 year?

16 A That was Minor s'.

17 MS. CONCANNON: Permission to publish these to  
18 the jury and admit into evidence?

19 THE COURT: Any objection?

20 MS. CAMPBELL: I have no objection.

21 THE COURT: All right. State's 1 through 6  
22 into evidence without objection. You may publish.

23 MS. CONCANNON: Thank you, your Honor.

24 (State's Exhibit Nos. 1 through 6 are admitted  
25 into evidence.)

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1 THE COURT: You can pass them one at a time if  
2 there's no reason for them to stay in the packet.

3 (State's Exhibit Nos. 1 through 6 are published  
4 to the jury at this time.)

5 Q (By Ms. Concannon) Shawn, do you know  
6 Gerald Barrett, Jr.?

7 A Yes.

8 Q Do you maybe know him by another name?

9 A Yes.

10 Q What would you know him as?

11 A Bubba.

12 Q Okay. Do you see him in the courtroom today?

13 A Yes.

14 Q Could you point him out, please?.

15 A Sitting in the middle of the table to the left  
16 there.

17 MS. CONCANNON: Thank you. Let the record  
18 reflect that the witness pointed out the -- identified  
19 the Defendant.

20 THE COURT: It will.

21 Q (By Ms. Concannon) We're going to go back  
22 to the spring of last year. Do you remember the time  
23 surrounding Saint Patrick's Day?

24 A Yes.

25 Q You were still living at this house you

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1 currently live at?

2 A Yes.

3 Q Does anything significant stand out in your  
4 head regarding that time, a day?

5 A The Saint Patrick's Day Parade.

6 Q And what did you do on -- where was this  
7 parade?

8 A It was Coligny, South End, Hilton Head.

9 Q Hilton Head. Okay. Who was at this parade  
10 with you?

11 A It was me, Brandace, Minor , T. , S.  
12 and then, of course -- that was who was with our  
13 immediate party, but there was several people there,  
14 friends and other people that we know.

15 Q Did y'all stay at the parade the whole time  
16 that the -- the duration of the parade?

17 A Yeah.

18 Q What happened after the parade?

19 A We listened to some music, some bands, one at  
20 New York City Pizza, and then over to Wild Wings to the  
21 outdoor stage.

22 Q And after y'all did that, where did you go?

23 A After that, we went home.

24 Q And who was with you when you went home?

25 A It was me, Brandace, and T.

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1 Q Okay. When you got back to your house, did  
2 anybody else come over, or was anybody else already  
3 there?

4 A Yeah. We had a few friends over. That was  
5 what we told people, to come on over after. We were  
6 going to have a fire and have some drinks. Yeah, we had  
7 people over.

8 Q Were you drinking this day?

9 A Yes.

10 Q Were you drinking beer, or liquor?

11 A Beer.

12 Q Beer. Do you remember, maybe, how many beers  
13 you had that day and into the night?

14 A Throughout the whole day? Maybe eight beers.

15 Q Were you drunk?

16 A No.

17 Q Do you remember every part of the night?

18 A Not every part of it, but. . . Just because it  
19 was a year ago, you know.

20 Q Because it was longer?

21 A Yeah.

22 Q Not because of your intoxication?

23 A Right.

24 Q Okay. Was the Defendant at this get-together?

25 A Yes.

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1 Q You saw him there?

2 A Yes.

3 Q Did Minor stay at the house that night?

4 A Yes.

5 Q Did the Defendant spend the night that  
6 night?

7 A Yes.

8 Q How do you know that?

9 A Well, because he asked me if he could spend  
10 the night, and he had to work in the morning. It was  
11 getting late. And I said, yeah, you can stay on the  
12 couch.

13 Q Okay. Had you met the Defendant prior to this  
14 day?

15 A Yes.

16 Q Do you know how many times you, maybe, had met  
17 him before?

18 A I couldn't give you an exact number, but just a  
19 handful of times.

20 Q A handful of times.

21 How were you introduced to him?

22 A Through Brandace and her daughters, as a friend  
23 of their families'.

24 Q Okay. Was there anytime in the night that you  
25 ever remember the Defendant being alone with Minor or

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1 being with Minor

2 A There was people there. I'm -- there could  
3 have been -- I don't want to say for sure, because there  
4 was a lot of in and out, and I don't know at any point  
5 that they were alone. But we were all there and in  
6 and out from inside to outside. So I really can't say  
7 that -- I can't particularly remember a point, standing  
8 out, where he was alone with her.

9 Q Were -- the adults that were there, were they  
10 mainly inside of the house, or outside of the house?

11 A It was a little bit of both.

12 Q All right.

13 A We had a fire going. So we were in and out.

14 Q Fire?

15 A Fire outside.

16 Q Okay.

17 A So it was out by the fire, back in the house,  
18 you know.

19 Q Okay.

20 A Front porch.

21 Q Okay. But you remember Minor being there. Did  
22 Minor spend the night that night?

23 A Yes.

24 Q Did you ever take Minor to school while you --  
25 while her mother and her lived with you?

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- 1           A     Yeah.
- 2           Q     Frequently? Occasionally?
- 3           A     Occasionally.
- 4           Q     Occasionally. Okay.
- 5           A     Because she -- she caught the bus at Old South  
6 usually.
- 7           Q     Okay.
- 8           A     But that was early. So if we were running late  
9 or -- I worked on the island. So I had to drive right  
10 by the high school. So those were the days that I would  
11 take her to school.
- 12          Q     When she couldn't catch the because?
- 13          A     Yeah, for whatever reason. If it was running  
14 late that morning.
- 15          Q     But you had taken her to school before?
- 16          A     Yeah.
- 17          Q     Okay. And do you remember Bubba specifically  
18 being there that night?
- 19          A     Yes.
- 20                MS. CONCANNON: Okay. Beg the Court's  
21 indulgence?
- 22                THE COURT: Take your time.
- 23                (Ms. Campbell speaks with Mr. Shelton off the  
24 record.)
- 25                MS. CONCANNON: I have no further questions for

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1 this witness at this time.

2 THE COURT: Ms. Campbell.

3 MS. CAMPBELL: Thank you, your Honor.

4 CROSS-EXAMINATION

5 **BY MS. CAMPBELL:**

6 Q Mr. Ward, back in, gosh, maybe July of 2012,  
7 when Minor first accused Gerald of this act, isn't it  
8 true nobody interviewed you? You didn't talk to any  
9 police about this, did you?

10 A Not at that time.

11 Q Okay. This -- this horrific criminal sexual  
12 conduct -- this rape that was supposed to have taken  
13 place in your home; right?

14 A Yes.

15 Q Right?

16 A Yeah.

17 Q Not a single police officer discussed those  
18 allegations with you; right?

19 A Not at that time --

20 Q Not at that time.

21 A -- that you're speaking about.

22 Q The pictures that you identified as being of  
23 your home.

24 A Uh-huh.

25 Q The bed in Minor room, that's where Minor

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1 slept; right?

2 A Right.

3 Q That would be the bed where this sexual assault  
4 is supposed to have taken place; right?

5 A Right.

6 Q Okay. And sometime in March of 2013, this  
7 officer here, this Investigator Adams, he came out to  
8 your house; right?

9 A Yes.

10 Q Okay. And then, and only then, he interviewed  
11 you about these allegations; right?

12 A Yes.

13 Q Okay. And you let him into your house; right?

14 A Yes.

15 Q You let him walk around your house?

16 A That's right.

17 Q You let him take pictures of your house?

18 A Uh-huh.

19 Q And you let him take pictures of the bed where  
20 the sexual assault was supposed to take place; right?

21 A Right.

22 Q Prior to March, 2013, not a single officer had  
23 come to your house to look at that bed; right?

24 A Right.

25 Q Okay. Now, you remember in March, 2013, when

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1 Investigator Adams came to talk to you, he asked you to  
2 make him a written statement; right?

3 A Yes.

4 Q And, Mr. Ward, you were honest when you made  
5 that written statement, weren't you?

6 A Yes.

7 Q And you were telling the truth?

8 A Yes.

9 Q And so do you remember that in your written  
10 statement, that you said that y'all had been partying  
11 all day. It's Saint Patrick's Day and parade, and best  
12 you can remember, somebody else took Brandace's three  
13 girls back to your house in Bluffton. Someone took the  
14 girls back to the house; right?

15 A Yeah.

16 Q You don't know who that was; right?

17 A (Moves head from side to side.)

18 Q Okay. And you also said that about an hour or  
19 two later, you and Brandace wound back up at the house;  
20 right?

21 A Right.

22 Q Okay. And the girls were already there; right?

23 A Two of the girls.

24 Q Minor was there; right?

25 A Yes.

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1 Q Okay. And after y'all got back, basically you  
2 just moved the party to your house in Bluffton; right?  
3 There was a party?

4 A If you want to call it that, yeah.

5 Q Now, let's just clear up this school situation  
6 right now. Because you live in Bluffton, but -- but  
7 Minor was going to school on Hilton Head?

8 A Yes.

9 Q Normally if you live in Bluffton, you don't go  
10 to school on Hilton Head, do you?

11 A Not usually.

12 Q Okay. You -- you went to bed that night, you  
13 say, Mr. Ward, about midnight; right?

14 A Right.

15 Q And you say you slept all through the night.  
16 You never heard a single thing; right?

17 A That's right.

18 Q Not a disturbance, nothing; right?

19 A That's right.

20 Q And you say you got up about 6:30 in the  
21 morning, you got yourself dressed, and you went to work;  
22 right?

23 A Yep.

24 Q Okay. You made it very clear that you did not  
25 take Minor to school that morning; right? You went to

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1 work?

2 A Yeah.

3 Q Okay. You made it clear to this officer,  
4 when he interviewed you in March of 2013, that Minor  
5 according to you, was missing her boyfriend, Ce. ,  
6 back in Aiken; didn't you?

7 A Excuse me? Repeat that.

8 Q You told Investigator Adams that Minor was  
9 missing her boyfriend, Ce. , back in Aiken; right?

10 A During that time?

11 Q Yes. While she was living with you in  
12 Bluffton.

13 A Yes. She was, in the beginning, missing him,  
14 yeah.

15 Q Would it be fair to say that you were  
16 Brandace's support -- financial support during that  
17 spring 2012?

18 A Not completely, no.

19 Q Did you pay the bills at that house?

20 A Not all of them.

21 Q Did you pay the rent?

22 A We put our money together and paid the bills as  
23 needed.

24 Q When you came back to your house after the  
25 festivities of Saint Patrick's Day 2012, I guess, Hilton

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1 Head parade, after you finished work that day, did you  
2 see any signs in the bedroom or the bathroom, or  
3 anywhere like that, that there was -- were bloodstains,  
4 or sheets that had been discarded, or any signs that  
5 someone had been sexually assaulted and bled profusely?  
6 Did you see anything like that, Mr. Ward?

7 A No, not downstairs. But I didn't go upstairs.  
8 I didn't usually go up there.

9 MS. CAMPBELL: May I approach?

10 THE COURT: You may.

11 Q (By Ms. Campbell) Mr. Ward, I'm going to show  
12 you what's been marked State's Exhibit No. 6, if I may.

13 A All right.

14 Q And you've already said that is a photograph of  
15 the bed that Minor was sleeping in when she made the  
16 allegation that Mr. Barrett sexually assaulted her;  
17 correct?

18 A Actually, no. That is a bed that I've moved up  
19 there since. There was a bed in that same spot.

20 Q Oh, really? Where is that bed now?

21 A I'm not sure.

22 Q You don't know where that bed is?

23 A No.

24 Q Okay: And then why would you let Officer Adams  
25 take a photograph of a bed and lead him to believe that

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1 was the bed she was assaulted in?

2 A No.

3 Q Why would you do that, Mr. Ward?

4 A He asked to take pictures of the room and  
5 everything there. I don't believe the comment -- the  
6 conversation came up, was that the exact bed.

7 Q Okay.

8 A It was more to take pictures of the area.

9 Q It was what?

10 A To take pictures of the area that --

11 Q The area.

12 A -- she stayed in.

13 Q He wanted to see where the assault occurred;  
14 right? And you led him to this room, and he took a  
15 photograph of this room; right?

16 A Yeah. But that's the room the assault  
17 allegedly occurred in.

18 Q Right. So if Officer Adams thought this was  
19 where it took place, he just assumed that; right?

20 A I don't understand what you're saying.

21 Q What I'm saying, Mr. Ward --

22 A He asked if he could take some pictures.

23 Q Right.

24 A Okay. And I said: Of course, whatever you  
25 want to do.

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1 Q Right.

2 A You want to take pictures, take pictures. So  
3 he asked: Is this where she stayed?

4 Yeah, she stayed up the stairs.

5 Okay. This is the room?

6 Yes.

7 Is that where the bed was located?

8 Yes.

9 So those are the kind of questions. I just let  
10 him do his job.

11 Q That would lead Officer Adams to believe -- and  
12 thank you for helping us along with that -- that that  
13 was the bed. Thank you.

14 A All right.

15 MS. CAMPBELL: Just one second, your Honor,  
16 please?

17 That's all I have for this witness. Thank  
18 you.

19 THE COURT: Ms. Concannon?

20 MS. CONCANNON: Thank you, your Honor.

21 **REDIRECT EXAMINATION**

22 **MS. CONCANNON:**

23 Q Just a couple of follow-up questions, Shawn.  
24 That day, roughly a little over a year ago, around Saint  
25 Patrick's Day of last year, you don't remember if you

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1 took Minor to school that day, do you?

2 A Yeah. I don't remember, because I've took her  
3 occasionally, and I can't -- being such a long time ago,  
4 I can't remember about that morning, if I took her to  
5 school or not.

6 Q Do you know exactly what days you took her to  
7 school?

8 A Exactly what days?

9 Q Uh-huh.

10 A No.

11 Q This night that we were speaking of, you  
12 remember Gerald Barrett asking you for permission to  
13 spend the night?

14 A Yes.

15 MS. CONCANNON: I have no further questions.

16 MS. CAMPBELL: May I approach, your Honor?

17 THE COURT: You may.

18 **REXCROSS-EXAMINATION**

19 **BY MS. CAMPBELL:**

20 Q Mr. Ward, I'm going to hand you a copy of your  
21 statement that you gave to Investigator Adams on March  
22 16th, 2013. And I'm going to ask you to read the  
23 sentence that begins right here: I got up.

24 A Okay. I got up at 6:30 to 7:00 a.m. to go to  
25 work and cannot recall if I saw him in the morning or

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1 not.

2 Q Okay. And you made the statement that you got  
3 up 6:30, 7 o'clock, to go to work, and you gave that  
4 statement to Officer Adams in March 2013; correct?

5 A Yes.

6 MS. CAMPBELL: That's all I have.

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

8 Call your next witness.

9 MS. CONCANNON: Thank you, your Honor. State  
10 calls Minor

11 THE DEPUTY CLERK OF COURT: Would you place  
12 your left hand on the Bible and raise your right hand.

13 (The oath is administered by the Deputy Clerk  
14 of Court, and the witness answers as follows:)

15 THE WITNESS: Yes.

16 THE DEPUTY CLERK OF COURT: Please be seated.  
17 State your name and spell it for the Court, please.

18 THE WITNESS: What do I say?

19 THE COURT: I need you to state your full name  
20 and spell your last name.

21 THE WITNESS: Minor (phonetic)

22

23 MS. CONCANNON: Thank you, your Honor.

24

Minor

25 having been first duly sworn by the Deputy Clerk of

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1 Court to tell the truth, the whole truth, and nothing  
2 but the truth, was examined and testified upon her oath  
3 as follows:

4 **DIRECT EXAMINATION**

5 BY MS. CONCANNON:

6 Q Minor , how old are you?

7 A Fifteen.

8 THE COURT: I need you to speak up, Minor

9 THE WITNESS: Fifteen.

10 Q (By Ms. Concannon) You're 15? When is your  
11 birthday?

12 A

13 Q What year were you born?

14 A

15 Q ? So March of last year, how old were you?

16 A Fourteen.

17 Q Fourteen? Where were you living last March?

18 A Pine Forest.

19 Q Where is that?

20 A In Bluffton.

21 Q Okay. Who -- who were you living with?

22 A My mom and her boyfriend, Shawn.

23 Q Okay. Where do you go to school right now,

24 Minor

25 A Hilton Head High School.

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- 1 Q What grade are you in?
- 2 A Ninth.
- 3 Q Ninth grade?
- 4 A Uh-huh.
- 5 Q Do you like to go to school?
- 6 A Yeah.
- 7 Q Yeah? What's your favorite subject?
- 8 A Math.
- 9 Q Math? Do you get good grades in school?
- 10 A Sometimes.
- 11 Q Sometimes? You do best in math?
- 12 A No.
- 13 Q But it's still your favorite?
- 14 A (Moves head up and down.)
- 15 THE COURT: You're going to have to answer out
- 16 loud.
- 17 THE WITNESS: Okay.
- 18 Q (By Ms. Concannon) When you were living in
- 19 Bluffton, did you live somewhere before that not in
- 20 Beaufort County?
- 21 A In Aiken.
- 22 Q In Aiken? Who did you live with in Aiken?
- 23 A My grandma.
- 24 Q Your grandma? Do you know her name? What's
- 25 her name?

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1           A     Mary.  
2           Q     Mary? Okay. Is she your real grandma, or is  
3 she your stepgrandma?  
4           A     She's my mom's ex-husband's mom.  
5           Q     Okay. Minor do you know someone named Bubba?  
6           A     Yeah.  
7           Q     Yeah. How do you know Bubba?  
8           A     He was my mom's friend.  
9           Q     How long do you think you've known Bubba?  
10          A     A while.  
11          Q     A while? How old do you think you were when  
12 you first met Bubba?  
13          A     Little.  
14          Q     Little? Do you know an age, maybe?  
15          A     (Moves head from side to side.)  
16          Q     Were you in school?  
17          A     No.  
18          Q     Before that?  
19          A     Yeah.  
20          Q     Okay. Do you see Bubba today?  
21          A     Yep.  
22          Q     Where is Bubba today?  
23          A     Over there.  
24          Q     Can you point to Bubba, please.  
25          A     No.

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1 Q He's over there?

2 A (Moves head up and down.)

3 MS. CONCANNON: Okay. Let the record reflect  
4 the witness did point to the Defendant.

5 THE COURT: It will reflect she pointed towards  
6 the Defendant.

7 Q (By Ms. Concannon) Minor do you remember  
8 around Saint Patrick's Day of last year?

9 A Yep.

10 Q Do you remember going to a parade?

11 A Uh-huh.

12 Q Where was this parade?

13 A In Hilton Head.

14 Q On Hilton Head? Were you there all day?

15 A Huh-uh, no.

16 Q How long do you think you were at the parade?

17 A A few hours.

18 Q A few hours? What were y'all doing at the  
19 parade?

20 A Usual stuff that people do at the parade.

21 Q Just walking around?

22 A (Moves head up and down.)

23 Q Who were you at the parade with?

24 A My mom and Shawn and their friends.

25 Q After the parade ended, what did you do?

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- 1       A     I went home.
- 2       Q     You went home? And is this the home where you
- 3 lived at with Mom and Shawn?
- 4       A     Yeah.
- 5       Q     Was there anybody else at this home when you
- 6 got there?
- 7       A     When I got there, I was baby-sitting.
- 8       Q     You were baby-sitting there? Who were you
- 9 baby-sitting?
- 10      A
- 11      Q     And who is        ?
- 12      A     My dad's girlfriend's best friend's daughter.
- 13      Q     Okay. Did anybody else show up throughout the
- 14 night at that house?
- 15      A     My mom and Shawn and their friends.
- 16      Q     Their friends? Was there a bunch of people
- 17 over or. . .
- 18      A     There were a few.
- 19      Q     A few people over? Where were the grown-ups
- 20 throughout the night?
- 21      A     On the porch.
- 22      Q     On the porch? Did y'all have a big backyard --
- 23 or backyard at this house?
- 24      A     I don't really know. I didn't go in the
- 25 backyard, but it was -- I guess it was average.

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1 MS. CAMPBELL: Your Honor, I'm having a very  
2 hard time understanding her. And I do apologize, but I  
3 would like to hear her answers.

4 THE COURT: Minor , you're going to need to  
5 speak up. Ma'am, you're the farthest juror. Can you  
6 hear?

7 THE JUROR: Uh-huh.

8 THE COURT: Thank you. If you need to move,  
9 let me know.

10 MS. CAMPBELL: Thank you.

11 THE COURT: Thank you.

12 MS. CAMPBELL: Thank you.

13 Q (By Ms. Concannon) Just try to talk a little  
14 louder in the microphone.

15 So we're at Mom and Shawn's house; where you  
16 lived; where was your home. You said the grown-ups are  
17 out of -- they're on the porch?

18 A On the front porch.

19 Q Where are you?

20 A Inside.

21 Q What are you doing inside?

22 A Sitting on the couch watching TV.

23 Q Does anybody come in -- come in there while  
24 you're watching TV?

25 A Yep.

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- 1 Q Who comes in there while you're watching TV?  
2 A Him.  
3 Q When you say "him," who do you mean?  
4 A Bubba.  
5 Q Bubba? Where does he go when he comes in the  
6 den?  
7 A He sits down on the couch.  
8 Q Is that where you're seated?  
9 A Yep.  
10 Q What does he do on the couch?  
11 A He sat down really close to me. So I moved to  
12 the chair.  
13 THE COURT: You're going to have to speak  
14 louder. Thank you.  
15 Q (By Ms. Concannon) You moved to the chair?  
16 A (Moves head up and down.)  
17 Q What happened when you moved to the chair?  
18 A He came over there.  
19 Q Did he sit on the chair with you?  
20 A Yes, ma'am.  
21 Q Was he beside you on the chair?  
22 A Yep.  
23 Q How big is this chair? What kind of chair is  
24 it?  
25 A A chair. Like a usual furniture chair.

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1 Q Okay. When he -- is he touching you when he's  
2 sitting on the chair with you? Is his body touching  
3 you?

4 A Yeah.

5 Q Okay. What happens when you're sitting on the  
6 chair and he's sitting next to you on the chair?

7 (Respite.)

8 A Do you think I could take a break?

9 Q You need to take a break?

10 A Uh-huh.

11 THE COURT: Let me know when she's ready.

12 THE WITNESS: Do I need to just sit here?

13 (Respite.)

14 Q (By Ms. Concannon) You ready?

15 A Yeah.

16 Q Okay. What is Bubba doing when he's sitting on  
17 the chair next to you?

18 A He touched me.

19 Q Where did he touch you?

20 A My lower private area.

21 Q You have to say that a little louder, Minor

22 A My lower private area.

23 Q Was this above your clothes, or underneath your  
24 clothes?

25 A Underneath.

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- 1 Q Underneath? He was touching your skin on your  
2 private area?
- 3 A Yep.
- 4 Q Did any part of him ever go inside of your  
5 body, or did it stay on the outside of your private  
6 area?
- 7 A His fingers.
- 8 Q His fingers did what? They stayed --
- 9 A The inside.
- 10 Q They went on the inside?
- 11 A (Moves head up and down.)
- 12 Q When he's doing this, what are you doing?
- 13 A Texting.
- 14 Q Do you ever leave the chair?
- 15 A Yep. I went upstairs.
- 16 Q Okay. Where did you go when you were upstairs?
- 17 A To my sister.
- 18 Q And what sister is this?
- 19 A T.
- 20 Q And what is T. doing right now?
- 21 A She was sleeping. So I woke her up.
- 22 Q You woke her up?
- 23 A Yep.
- 24 Q What did y'all do?
- 25 A We were just talking.

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- 1 Q Do you remember what y'all were talking about?
- 2 A Not really. That was a while ago.
- 3 Q Did you tell T. what had happened
- 4 downstairs?
- 5 A No.
- 6 Q Why didn't you tell T. ?
- 7 A I didn't feel the need to. Because I was
- 8 scared.
- 9 Q After you're in T. 's bedroom, do you go
- 10 anywhere that night?
- 11 A Yeah.
- 12 Q Where do you go?
- 13 A I fell asleep in T. 's room, and then I woke
- 14 up, and then I went to my room.
- 15 Q Do you know what time you woke up?
- 16 A Not really.
- 17 Q It's dark outside?
- 18 A Yeah. Really dark.
- 19 Q Really dark? Is your room close to T. 's
- 20 room?
- 21 A It was right beside it.
- 22 Q What does your room look like?
- 23 A It had glass doors and -- and it's just a
- 24 regular room.
- 25 Q Just a regular room with a bed in it?

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- 1           A       (Moves head up and down.)
- 2           Q       When you go in your room, are you wearing your
- 3 pajamas right now or not yet?
- 4           A       I can't remember. I think I was.
- 5           Q       What do you sleep in?
- 6           A       A T-shirt.
- 7           Q       A T-shirt? Did you have anything on the
- 8 bottom, underwear or pants or anything?
- 9           A       Underwear.
- 10          Q       You go into your bed -- do you go to sleep?
- 11          A       Yeah. I dozed off.
- 12          Q       You dozed off? Did something wake you up?
- 13          A       Footsteps.
- 14          Q       After you heard footsteps, what did you do?
- 15          A       Pretended to sleep.
- 16          Q       Why did you pretend to sleep?
- 17          A       I don't know. It's just a reaction. And I was
- 18 scared.
- 19          Q       Why were you scared?
- 20          A       I'm afraid of the dark.
- 21          Q       Do you know whose footsteps those were?
- 22          A       After they come in my room, yeah.
- 23          Q       So those footsteps came into your bedroom?
- 24          A       Yep.
- 25          Q       Who came into your bedroom?

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- 1 A Him.
- 2 Q When you say "him," who is him?
- 3 A Bubba.
- 4 Q Bubba?
- 5 A Yeah.
- 6 Q What was Bubba doing in your bedroom?
- 7 A I don't know.
- 8 Q Did he ever come in your bedroom before?
- 9 A No.
- 10 Q No? What did Bubba do when he got in your  
11 bedroom?
- 12 A Laid down in my bed.
- 13 Q Could you say that again, Minor ?
- 14 A Laid down in my bed.
- 15 Q Does he think you're sleeping right now, or do  
16 you let him know you're awake?
- 17 A I was awake.
- 18 Q You were awake? When he lays down in your bed,  
19 is he beside you in your bed?
- 20 A Yep.
- 21 Q Okay. What happens when Bubba is in bed with  
22 you?
- 23 A He started touching me again.
- 24 Q When you say "touching" you, where did he touch  
25 you?

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1 A My lower private area.

2 Q What was he touching -- what part of his body  
3 was touching your lower private areas?

4 A His fingers.

5 Q Were you still wearing your T-shirt and  
6 underwear?

7 A Yep.

8 Q What did Bubba do after his fingers were  
9 touching your private area?

10 A He got up.

11 Q Did he go anywhere else?

12 A Nope.

13 Q Did Bubba's fingers go inside of your private  
14 area, or were they on the outside of your private area?

15 A Inside.

16 Q Where were your arms when this was happening?

17 A My hands were on my face.

18 Q Why didn't you get up?

19 A Because I was afraid.

20 Q Was Bubba holding you down?

21 A At that point, no.

22 Q At that point, no. At a different point, was  
23 he holding you down?

24 A Yeah. Yep.

25 Q How was he holding you down? Where were your

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- 1 arms?
- 2 A Beside me. Above me, beside me.
- 3 Q What part of his body was holding your arms
- 4 down?
- 5 A His hands.
- 6 Q Did you try to get away?
- 7 A I was afraid.
- 8 Q When Bubba's holding your hands down, what else
- 9 is he doing?
- 10 (Respite.)
- 11 Q Did any other part of Bubba touch your private
- 12 parts?
- 13 A Yep.
- 14 Q What part of Bubba touched your private parts?
- 15 A His private part.
- 16 Q Did it go inside your private parts, or did it
- 17 stay on the outside of your private parts?
- 18 A Inside.
- 19 Q He's on top of you during this?
- 20 A Yep. Yeah.
- 21 Q Why didn't you scream or call for help?
- 22 A Because I was afraid.
- 23 Q Why were you afraid?
- 24 A I didn't know how anyone was going to react.
- 25 Q After Bubba is on top of you and his private is

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- 1 inside of your private parts, what happens next?
- 2 A He heard a noise.
- 3 Q What did he do when he heard a noise?
- 4 A Jumped up and left.
- 5 Q And he left? What did you do when he left?
- 6 A I went to the bathroom.
- 7 Q What did you do in the bathroom?
- 8 A I urinated.
- 9 Q Did you notice anything funny when you went to  
10 the restroom?
- 11 A Blood.
- 12 Q There was blood. Was there anything else?
- 13 A (Moves head up and down.)  
14 Something weird.
- 15 Q Something weird? What did it look like?
- 16 A It was white.
- 17 Q It was white?
- 18 A Yeah.
- 19 Q After you went to the bathroom, did you do  
20 anything else?
- 21 A Took a shower.
- 22 Q After you took a shower, what did you do?
- 23 A Locked my door and went to sleep.
- 24 Q Why did you lock your door?
- 25 A I was scared.

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- 1 Q Did you have school the next morning, Minor  
2 A Yep.  
3 Q Did you go to school?  
4 A Yes, ma'am.  
5 Q Where were you at school during this time?  
6 A Huh?  
7 Q Where were you going to school?  
8 A Hilton Head Middle School.  
9 Q Do you remember seeing Bubba that next morning?  
10 A Yeah.  
11 Q Where did you see him?  
12 A Shawn took him to the hotel.  
13 Q What hotel did Shawn take him to?  
14 A Quality Inn.  
15 Q Did Shawn take you somewhere that morning?  
16 A He took me to school.  
17 Q Minor who was the first person that you told  
18 this -- that you told this happened to?  
19 A T.  
20 Q Who's T. ?  
21 A My little sister, the one that told.  
22 Q How old is T. ?  
23 A Twelve.  
24 Q Twelve. Did you tell anybody else?  
25 A Ta.

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1 Q Who is Ta. ?  
2 A My best friend. And C. and Ce.  
3 Q Who are C. and Ce.  
4 A C. is one of my best friends.  
5 Q And who is Ce. ?  
6 A He was my boyfriend.  
7 Q Do they live here in Beaufort?  
8 A No.  
9 Q Where do they live?  
10 A In Aiken. And C. lives in Anderson.  
11 Q Okay. Why did you tell them first instead of  
12 telling a grown-up?  
13 A Because.  
14 Q Because why?  
15 A I was afraid.  
16 Q Why were you afraid?  
17 A I didn't know what they were going to do.  
18 Q You didn't know what who was going to do?  
19 A Anyone.  
20 Q Did you tell anybody else about this?  
21 A Well, I had to tell my grandma.  
22 Q Why did -- why do you say you had to tell your  
23 grandma?  
24 A Because T. told, and my grandma made me  
25 tell her everything.

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1 Q This is Grandma Mary?  
2 A Yes, ma'am.  
3 Q Do you remember when Grandma Mary found out?  
4 A When we were on the way back to Aiken, when we  
5 were taking my friend, M. , home.  
6 Q Where does M. live?  
7 A In Windsor.  
8 Q Why didn't you tell your mom, Minor ?  
9 A I didn't know how she was going to react or  
10 what she was going to do.  
11 Q Why didn't you tell your dad?  
12 A Because he has a very bad -- he's not good with  
13 communicating sometimes, and he gets angry really,  
14 really easy.  
15 Q Why didn't you tell Grandma Mary?  
16 A I didn't want to talk about it, and I was  
17 scared too, because I knew that once she found out, she  
18 was going to tell.  
19 Q Who were you scared she was going to tell?  
20 A The police. Because I don't like talking about  
21 anything.  
22 MS. CONCANNON: Beg the Court's indulgence?  
23 THE COURT: Take your time.  
24 (Ms. Concannon speaks with Mr. Shelton off the  
25 record.)

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1 MS. CONCANNON: Minor I don't have any more  
2 questions for you, but Ms. Campbell will have some  
3 questions for you.

4 MS. CAMPBELL: Your Honor, may we approach  
5 briefly?

6 THE COURT: You may.

7 (Side-bar; Ms. Campbell and Ms. Concannon  
8 approach the bench.)

9 MS. CAMPBELL: Thank you, your Honor.

10 **CROSS-EXAMINATION**

11 **BY MS. CAMPBELL:**

12 Q Minor --

13 A Yes, ma'am.

14 Q -- you were living with your grandmother -- or  
15 stepgrandmother, Mary, up around Aiken in 2011 and early  
16 2012; is that right?

17 A Yes, ma'am.

18 Q Okay. When you were living with your  
19 stepgrandmother, isn't it true that you and your  
20 stepgrandmother were having a lot of disagreements and  
21 arguments at that time?

22 A I wouldn't say they were disagreements. It was  
23 more just about how my grades were.

24 Q Your grades weren't very good?

25 A I had a lot of Ds.

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1 Q Would your stepgrandmother have told your mom  
2 that you had started smoking?

3 A I didn't start smoking.

4 Q So she didn't tell her that?

5 A Not that I know of.

6 Q When you went to live with your mom here in  
7 Beaufort County in 2012, y'all moved in with a fellow by  
8 the name of Shawn Ward; right?

9 A Yep.

10 Q And Shawn would take care of the house and take  
11 care of your mom and take care of you and your sisters;  
12 right?

13 A Yes, ma'am.

14 Q And you remember that when you made the  
15 allegation that Gerald had assaulted you, that at some  
16 point you sat down and wrote down what you said  
17 happened; right?

18 A Yep.

19 Q And do you remember that when you first made  
20 the allegation, you said that this took place about a  
21 week or two before the end of school. Do you remember  
22 telling Grandma Mary that?

23 A Not really. It was a while ago.

24 Q Do you remember telling some other people that  
25 you remember it being two days after Saint Patrick's Day

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1 when this happened? Do you remember telling them that?

2 A Yes, ma'am. And I get Saint Patrick's Day and  
3 the Saint Patrick's Day Parade confused, because I never  
4 knew which one was which.

5 Q Okay. So when you told someone that this  
6 happened, and you said that it happened two days after  
7 Saint Patrick's Day, who -- who picked that day? Who  
8 picked March 19th, 2012? Was it you or the person you  
9 were talking to that picked that day?

10 MS. CONCANNON: Objection. She's leading the  
11 witness.

12 THE COURT: Overruled.

13 You may answer.

14 THE WITNESS: I don't know.

15 Q (By Ms. Campbell) You said, "I don't know"?

16 A I don't remember.

17 Q Okay. At some point, you talked to another  
18 person about this allegation, and that person's name  
19 was -- was Mr. Patrick Hall, a prosecutor for the state  
20 of South Carolina. Didn't you talk to Mr. Hall about  
21 this?

22 A Yes, ma'am.

23 Q And in that conversation with Mr. Hall, isn't  
24 it true that you again moved the date, and you moved it  
25 to March 11th, eight days away from March 19th?

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1           A     I moved it to the -- anywhere around that day,  
2 but, yes, I did, because I didn't know which one was  
3 Saint Patrick's Day. I remember it was the parade.

4           Q     Okay. And you wrote two days after Saint  
5 Patrick's Day -- and so when you're writing two days  
6 after Saint Patrick's Day, is that what you mean by the  
7 day of the parade?

8           A     I guess. Most likely, yes.

9           Q     So was it the day of the parade, or was it two  
10 days after the parade or two days after Saint Patrick's  
11 Day or a week before the end of school when this  
12 happened, Minor

13          A     It was the day of the parade. I thought that  
14 Saint Patrick's Day was around the time of the parade.  
15 I thought that that's why the parade was on Sunday.

16          Q     So when you made another written statement and  
17 you wrote, sometime around March or April, 2012, that  
18 was just a guess; right?

19          A     Yep.

20          Q     And you're positive today that it was the day  
21 of the Saint Patrick's Day Parade on Hilton Head; right?

22          A     Yes, ma'am.

23          Q     And you're positive that when you --

24          A     I'm positive.

25          Q     -- came home after the parade -- who was there?

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1                   Who was at the house? When you got home the  
2 day of the parade on Hilton Head, who was at the house  
3 in Bluffton when you got there?

4           A     Me and Ta.

5           Q     Okay. So when you make a statement earlier and  
6 you say, I got home, and my mom was there, and her  
7 boyfriend Shawn was there, and Bubba was there, that was  
8 just a lie?

9           A     No, ma'am.

10          Q     I'm sorry. What?

11          A     No, ma'am.

12          Q     Okay. But you did make that statement about  
13 this case, that everybody was there when you got home?

14          A     I mean, it is kind of hard to remember, seeing  
15 as how that was a whole year ago.

16          Q     Well, actually, your written statement was made  
17 at exactly the time that you started making these  
18 allegations, a whole lot closer to March 2012; right?

19          A     Seems that way.

20          Q     I have had a hard time understanding you and  
21 hearing you, but I believe that you said, Minor when  
22 you make the allegation that Gerald was assaulting you  
23 downstairs on the night of the parade, that while he was  
24 assaulting you, that you were texting. I believe that's  
25 what you said.

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1 A Yep.

2 Q That is what you said. Okay. So while you're  
3 being sexually assaulted, you were on your phone texting  
4 someone; is that right?

5 A Yep.

6 Q And then after you are sexually assaulted  
7 downstairs with -- in the midst of the party, you go  
8 upstairs to your bedroom; right?

9 A No.

10 Q You go upstairs to T. 's bedroom. I'm  
11 sorry. Right?

12 A Yep.

13 THE COURT: Is that a yes? Is that a yes,

14 Minor ?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you.

17 Q (By Ms. Campbell) And then you move from  
18 T. 's bedroom into the bedroom with the glass doors.  
19 That was your bedroom; right?

20 A Yes, ma'am.

21 Q Okay. And that bedroom has a door that locks;  
22 right?

23 A Yes, ma'am. But I was in the comfort of my own  
24 home, so, therefore, I did not feel the need to lock my  
25 door.

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1 Q And, again, so I'm clear, you had just been  
2 sexually assaulted downstairs, in your home, in the  
3 midst of the party going on, and when you get to your  
4 room, with a door you can lock, you don't lock the door;  
5 right?

6 A Nope.

7 Q And those doors are glass doors too, aren't  
8 they?

9 A Yep.

10 Q People can see in that room, can't they?

11 A Yeah.

12 Q Okay. Now, Minor you said that after this  
13 second sexual assault takes place upstairs in your  
14 bedroom, that you get up, and you go to the bathroom,  
15 and you are bleeding; right?

16 A Yep.

17 Q Okay. And you are bleeding. And not only are  
18 you bleeding, you have something that you characterize  
19 as weird white stuff on you; right?

20 A Uh-huh.

21 Q Okay. Minor was the blood also on the sheets  
22 of your bed or just on you?

23 A I don't really remember. I think it was just  
24 on me, though.

25 Q Was it on your clothing?

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- 1           A     Yep.
- 2           Q     I'm sorry.  What?
- 3           A     Yes, ma'am.
- 4           Q     Okay.  So there's blood on your clothing.  And  
5 where did you put that clothing?
- 6           A     In the dirty laundry.
- 7           Q     In the dirty laundry.  Did you ever see that  
8 clothing again?
- 9           A     After I washed it.
- 10          Q     Okay.  Do you remember telling some people that  
11 after you were sexually assaulted, that you had gotten  
12 yourself back into the bed, and that you started getting  
13 text messages from Bubba telling you to come on  
14 downstairs?
- 15          A     Yep.
- 16          Q     Do you remember saying that?
- 17          A     Yes, ma'am.
- 18          Q     Do you have those text messages for us?
- 19          A     No, ma'am, I don't.
- 20          Q     Did you give them to law enforcement?
- 21          A     Nope.
- 22          Q     Okay.  Minor  do you always call it urinating --
- 23          A     Yep.
- 24          Q     -- when you talk about going to the bathroom?
- 25          A     Not always, but most of the time.

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1 Q Isn't urinating a word that someone supplied to  
2 you?

3 A No, ma'am. We learned it in school in about  
4 fifth grade, because I'm in honors classes.

5 Q And you're absolutely positive that Saint  
6 Patrick's Day, the parade, you've been viciously  
7 sexually assaulted to the point that you're bleeding all  
8 over your clothing, that you -- about five o'clock in  
9 the morning, that you clean yourself up, you get your  
10 clothes on, and you get up, and you go to school the  
11 next day; right?

12 A Yep.

13 Q And that Shawn takes you to school?

14 A Yes, ma'am.

15 Q Was your momma in the car?

16 A No. She was sleeping. She wakes me up in the  
17 morning, and then she goes back to sleep.

18 Q Okay. So you never told Assistant Solicitor  
19 Patrick Hall that your mother and Shawn took you to  
20 school that morning; is that right?

21 A I don't remember.

22 Q Well, you just told this jury she didn't. Was  
23 your mom in the car or not?

24 A No. I don't remember if I told him that, but  
25 I'm pretty sure I didn't.

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1 MS. CAMPBELL: Just one second, your Honor.

2 THE COURT: Take your time.

3 (Respite.)

4 Q (By Ms. Campbell) Minor do you remember  
5 telling one of the investigators at Hope Haven that  
6 you had to see a mental health counselor for cutting  
7 yourself?

8 A What does that have to do with anything?

9 Q Well --

10 A That's kind of personal, and, yes, I do.

11 MS. CAMPBELL: Your Honor, I'm going to ask  
12 that she answer the question.

13 THE COURT: She just did.

14 MS. CAMPBELL: Okay.

15 Q (By Ms. Campbell) Minor were you, before you  
16 came to Bluffton, cutting yourself?

17 MS. CONCANNON: Objection; relevance.

18 THE COURT: Overruled.

19 Q (By Ms. Campbell) Were you cutting yourself,  
20 Minor You swore to tell the truth. Were you cutting  
21 yourself?

22 A Yes. But I don't see the point in you asking  
23 this.

24 Q And were you seeing a mental health counselor  
25 before you came to Bluffton in 2012?

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1           A     It was the guidance counselor, but, yes.  
2                   MS. CAMPBELL: That's all I have. Thank you.  
3                   THE COURT: Redirect?  
4                   MS. CONCANNON: Thank you, your Honor.

**REDIRECT EXAMINATION**

6   **BY MS. CONCANNON:**

7           Q     Minor    how much blood was on your clothes?  
8           A     I kind of thought it was my period.  
9           Q     It was about the same amount as a period blood?  
10          A     Yep.  
11          Q     So it wasn't everywhere, was it?  
12          A     No.  
13          Q     Did you wash those clothes?  
14          A     Yes, ma'am.  
15          Q     Did anybody else ever see those underwear?  
16          A     I hid them.  
17          Q     You hid them? You stated a little bit ago that  
18   Bubba texted you..  
19          A     Uh-huh.  
20          Q     You don't have those texts anymore. Why did  
21   you delete those?  
22          A     Because.  
23          Q     Because why?  
24          A     I knew that if my little sister or someone  
25   were to go through my phone and see that, they'd

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1 automatically start questioning me.

2 Q Why didn't you want them to question you?

3 A Because I was scared, and I didn't want to talk  
4 about it.

5 Q Do you remember this was around Saint Patrick's  
6 Day of last year?

7 A Yes, ma'am.

8 Q It happened at your home in Bluffton?

9 A Uh-huh.

10 MS. CONCANNON: I have no further questions.

11 MS. CAMPBELL: Just one or two, your Honor.

12 **RE-CROSS-EXAMINATION**

13 **BY MS. CAMPBELL:**

14 Q Minor you said that the underwear you were  
15 wearing that night, that you hid them?

16 A In the laundry basket.

17 Q Where did you hide them in the house?

18 A In the laundry basket, underneath my clothes.

19 Q You hid them in the laundry basket. Okay.

20 Thank you.

21 THE COURT: Ladies and gentlemen, this is an  
22 appropriate time for us to take our break. Do not begin  
23 your deliberations. Do not discuss this case amongst  
24 yourselves. You may leave your notepads in your chairs.  
25 We'll take about 10 or 15 minutes. If you'll just let

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1 the bailiffs know, after you have your comfort break,  
2 when you are ready to return.

3 Please rise for the jury.

4 Minor , stay seated. Thank you.

5 (The jury is escorted from the courtroom  
6 at 10:56 a.m.)

7 THE COURT: Thank you. Be seated.

8 Minor , you may step down. You're free to  
9 remain in the courtroom with us, but you're also free to  
10 go. Thank you.

11 Anything before we take our mid-morning break?

12 MS. CONCANNON: Not from the State, your Honor.

13 MS. CAMPBELL: No, your Honor.

14 THE COURT: All right. Thank you. We're at  
15 ease.

16 THE COURT: Ten minutes.

17 (A break is taken from 10:56 a.m. until  
18 11:08 a.m.; at which time, the proceedings continue as  
19 follows:)

20 THE COURT: Be seated. All right. Your next  
21 witness is Ms. Twitty; is that correct?

22 MS. CONCANNON: Yes, your Honor. I wasn't sure  
23 if outside of the presence of the jury, we wanted to  
24 address her.

25 THE COURT: Tell me, based upon the victim's

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1 testimony, what it is that you plan to elicit from  
2 Ms. Twitty at this time.

3 MS. CONCANNON: Initially, from Ms. Twitty,  
4 pursuant to Kromah, just the original time/date  
5 circumstance of the interview, just what Kromah will  
6 allow, from the demeanor of Minor , as well as her  
7 personal knowledge regarding that.

8 THE COURT: All right.

9 MS. CONCANNON: Then I was planning, so the  
10 jury doesn't get confused, regarding her qualifications  
11 as an expert, do that, then qualify her as an expert  
12 regarding the behavior of and trauma of child sexual  
13 abuse victims. Minor mentioned cutting, and she  
14 mentioned who she disclosed to. And both of those are  
15 two of the characteristics. We don't even have to call  
16 it Child Sexual Abuse Accommodation Syndrome, if that's  
17 throwing people off or too confusing.

18 THE COURT: I don't think anybody's confused by  
19 that term.

20 MS. CONCANNON: Okay. Just common  
21 characteristics that she has seen in her experience  
22 dealing with child sexual abuse victims.

23 THE COURT: Okay. Any last word, Ms. Campbell?

24 MS. CAMPBELL: Your Honor, the cutting is  
25 prior to this sexual assault. So that's not relevant

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1 whatsoever. That's not a behavior that would be the  
2 subject of any testimony from Ms. Twitty on the child  
3 sexual assault syndrome in relation to this matter.

4 If I understand the State correctly, they  
5 wanted to use Ms. Twitty to -- to flesh out the delay in  
6 reporting. I questioned her not about that. I did not  
7 go into anything to do with how long it took her to  
8 report the sexual assault, not a single question. In  
9 that scenario, cognizant of the fact that this syndrome  
10 has never been approved as a field of expertise in the  
11 state of South Carolina --

12 THE COURT: She's not going to use that  
13 terminology.

14 MS. CAMPBELL: -- that this type of testimony  
15 has never been allowed, no one's been qualified as an  
16 expert in South Carolina to that effect. And that even  
17 in the jurisdictions where they have allowed it, it has  
18 been to rehabilitate a victim --

19 THE COURT: Ms. Twitty, we're talking about  
20 you. So you might as well come on in and -- so that you  
21 understand clearly what you will be able to testify to  
22 and not to.

23 THE WITNESS: Where would you like me?

24 THE COURT: On the witness stand.

25 THE WITNESS: Okay.

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1 MS. CAMPBELL: Shall I continue?

2 THE COURT: You may continue. I did not mean  
3 to interrupt you. I just thought this would speed up  
4 the process.

5 THE WITNESS: And, actually, I would prefer not  
6 to testify to the Child Sexual Abuse Accommodation  
7 Syndrome.

8 THE COURT: You don't get to choose.

9 THE WITNESS: I don't get to choose? But  
10 that's something that I'm not. . .

11 MS. CAMPBELL: Okay. So if the Court deemed it  
12 appropriate to qualify her as the expert in that area,  
13 then I would have my continuing objection to the fact  
14 that I was only informed of that particular testimony --

15 THE COURT: Unless I'm confused, you weren't  
16 asking to qualify her as an expert in child -- in that  
17 syndrome; correct?

18 MS. CONCANNON: No, your Honor. Just in what  
19 she has experienced in her profession, in her counseling  
20 with victims of child sexual abuse, characteristics that  
21 they share.

22 THE COURT: So what are you going to -- what  
23 are you asking to qualify her as an expert in?

24 MS. CONCANNON: As a mental health  
25 professional, working with victims, and more

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1 specifically child -- children of child -- children of  
2 sexual abuse and trauma. And there are states --  
3 Shumpert has qualified a counselor to testify about  
4 trauma that has been suffered by rape victims.

5 THE COURT: Are you objecting to her  
6 qualifications as a practitioner of mental health  
7 specifically dealing with children of child sexual  
8 assault?

9 MS. CAMPBELL: I'm objecting to it, yes. And  
10 I'm looking for the specific section here -- and I  
11 apologize, as we've shifted gears a bit -- for cases  
12 recognizing the -- mental health in this area, social  
13 workers in particular.

14 Okay. So -- I guess my question is: What  
15 exactly are you, Ms. Twitty? What are your  
16 qualifications? What degrees do you hold?

17 THE COURT: All right. Direct it to me. She's  
18 not -- she's just merely --

19 MS. CAMPBELL: Oh, okay.

20 THE COURT: She's just merely there because  
21 that's where I have chosen for her to sit.

22 MS. CAMPBELL: Okay. I'm sorry. So there are  
23 several categories. One would be physicians, a nurse,  
24 the psychologist, and social workers -- and I do have  
25 all the code sections -- professional counselors. And

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1 so I guess I need more direction from the State as to  
2 her qualifications, and then I can go from there.

3 MS. CONCANNON: Counselor. She's a  
4 professional counselor of victims of child sexual abuse.

5 THE COURT: Is that what you're objecting to?

6 MS. CAMPBELL: Yes.

7 THE COURT: Do you wish to *voir dire* her on her  
8 qualifications?

9 MS. CAMPBELL: I will. Yes, I will, if I -- I  
10 need to grab her *Curriculum Vitae*.

11 I only have, in my packet, the *Curriculum Vitae*  
12 for Chris Dalton. I apologize, if I don't have the one  
13 for Ms. Twitty.

14 THE COURT: Do you happen to have your C.V.  
15 with you?

16 THE WITNESS: I do.

17 THE COURT: All right.

18 THE WITNESS: It has notes on it.

19 (Document is handed from Ms. Concannon to  
20 Ms. Campbell.)

21 THE COURT: All right. I will allow you,  
22 Ms. Campbell, to lay the foundation for her education,  
23 experience, before you qualify her, in the presence of  
24 the jury. I will allow you to *voir dire* -- object,  
25 *voir dire*, and then if I need any additional, I'll have

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1 you come to the bench. I'm going to allow limited  
2 testimony based -- and, again, it's going to depend upon  
3 how she's qualified and what she says.

4 I know you're sitting right here. I know,  
5 Ms. Twitty, I'm talking to you like you're not here --  
6 to discuss generally behavioral evidence as to delayed  
7 disclosure.

8 Note your exception to my ruling as to that.  
9 All right? Thank you.

10 Anything before we bring in the jury?

11 MS. CONCANNON: Not from the State, your Honor.

12 THE COURT: How many more witnesses do you  
13 anticipate calling, as for scheduling purposes?

14 MS. CONCANNON: One. One following Ms. Twitty.

15 THE COURT: All right. How long do you  
16 anticipate Ms. Twitty and that one witness will be?  
17 Trying to determine our lunch schedule.

18 MS. CONCANNON: I think we'll be done before  
19 noon --

20 THE COURT: All right. And do you have -- just  
21 for scheduling, do you have witnesses available if the  
22 afternoon --

23 MS. CAMPBELL: Well, if the State does not  
24 intend to call Investigator Adams to testify about his  
25 work in this case, then, obviously, I will have to call

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1 him.

2 THE COURT: All right. So at a minimum, you  
3 will have Investigator Adams --

4 That was not your next witness; is that  
5 correct?

6 MS. CONCANNON: No, your Honor.

7 THE COURT: All right. And do you have any  
8 other witnesses?

9 MS. CAMPBELL: Not today. I'll have to close  
10 my case, I suppose, and discuss with my client where we  
11 stand in terms of the *alibi* situation, and I may have to  
12 call Patrick Hall. So I may have two.

13 THE COURT: All right. You need to have  
14 Mr. Hall and whatever arrangements you need to make.  
15 Right now he needs to be on call after lunch and outside  
16 the courtroom door. And you need -- we've evidently  
17 moved faster than you anticipated. So your witnesses  
18 need to be here this afternoon.

19 MS. CAMPBELL: Yes, ma'am.

20 THE COURT: Your investigator is right here.  
21 So I have two for you right outside the door or in the  
22 courtroom.

23 MS. CAMPBELL: I'm ready to go.

24 THE COURT: All right. Thank you. Let's bring  
25 in --

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1 MS. CONCANNON: Your Honor, briefly, before  
2 the jury gets in, so we don't have any confusion.  
3 Ms. Twitty's testimony will initially regard the Kromah  
4 factors for Minor ' interview. Then I will qualify her  
5 to avoid any confusion. Then we will go into the  
6 testimony regarding her qualifications as an expert.

7 THE COURT: If that's how you choose to do it.  
8 I don't know why you need to do it that way. But if  
9 that's how you are choosing to do it, I'm not telling  
10 you how to control your case.

11 MS. CAMPBELL: And the second portion is only  
12 related to delayed disclosure?

13 THE COURT: That's the only thing that I have  
14 understood --

15 MS. CAMPBELL: Okay.

16 THE COURT: -- that there is an issue about.

17 MS. CAMPBELL: All right.

18 THE COURT: All right. But to protect  
19 your record, you need to object if there's anything  
20 objectionable. Thank you.

21 Let's bring in the jury.

22 (The jury is escorted into the courtroom  
23 at 11:19 a.m.)

24 THE COURT: Thank you. Be seated.

25 All right. Ms. Twitty is on the stand. Please

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1 swear her in.

2 THE DEPUTY CLERK OF COURT: Yes, ma'am. Would  
3 you please raise your right hand for me.

4 (The oath is administered by the Deputy Clerk  
5 of Court, and the witness answers as follows:)

6 THE WITNESS: I do.

7 THE DEPUTY CLERK OF COURT: Thank you. Would  
8 you state your name and spell it for the Court?

9 THE WITNESS: Certainly. Kendra Twitty,  
10 T-w-i-t-t-y.

11 THE COURT: Ms. Concannon.

12 MS. CONCANNON: Thank you, your Honor.

13 **KENDRA TWITTY,**

14 having been first duly sworn by the Deputy Clerk of  
15 Court to tell the truth, the whole truth, and nothing  
16 but the truth, was examined and testified upon her oath  
17 as follows:

18 **DIRECT EXAMINATION**

19 **BY MS. CONCANNON:**

20 Q Kendra, where are you currently employed?

21 A I'm currently employed at Hope Haven.

22 Q What is Hope Haven?

23 A Hope Haven is a children's advocacy center and  
24 rape crisis center, and we serve the 14th Circuit.

25 Q What are some of your duties as an employee at

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1 Hope Haven?

2 A I am a forensic interviewer at Hope Haven, and  
3 I'm also a counselor/therapist at Hope Haven. So I work  
4 with children that have been sexually abused.

5 MS. CAMPBELL: Objection, your Honor. I  
6 objected to her being -- terminology of forensic  
7 interviewer. And I believe that we had --

8 THE COURT: All right. No speaking objections.  
9 What are you objecting -- what is the basis of your  
10 objection?

11 MS. CAMPBELL: Under Kromah, I believe she's  
12 not qualified as a forensic interviewer. She's not a  
13 forensic interviewer.

14 THE COURT: All right.

15 THE WITNESS: That's what I do for my job.

16 THE COURT: Okay. When there's an objection,  
17 you need to stop talking until I rule on it.

18 THE WITNESS: All right.

19 THE COURT: Thank you.

20 MS. CONCANNON: We're not qualifying her as an  
21 expert forensic -- as a forensic interviewer. That's  
22 just part of her job duties.

23 THE COURT: All right. Overruled. Thank you.  
24 You may continue.

25 MS. CONCANNON: Thank you, your Honor.

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1 Q (By Ms. Concannon) Are you familiar with an  
2 interview involving Minor ?

3 A I am.

4 Q Do you know the time and date and the  
5 circumstances surrounding that interview?

6 A We received a referral from the Beaufort County  
7 Sheriff's Office to interview Minor on July 20th,  
8 2012, and the time of the interview was at two o'clock.

9 Q Who conducted this interview?

10 A I was the interviewer.

11 Q Was there anybody in the room with you during  
12 this interview?

13 A When I interview children, it's myself and the  
14 child, and law enforcement watches the interview from a  
15 closed-circuit television. So a victim advocate from  
16 Hope Haven and a law enforcement officer is in another  
17 room watching the interview.

18 Q What were your personal observations of Minor  
19 behavior and demeanor during this interview?

20 A Okay. Minor came in, very quiet and shy and  
21 closed and guarded. I could barely kind of hear her.  
22 She was soft-spoken. And once I was building some  
23 rapport with her, which is part of the process of -- of  
24 the interview technique that we use, she became a little  
25 bit more comfortable and started talking more, and I

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1 could hear her better. And then when we got to the  
2 abuse-related questions or scenario, when it was time  
3 for -- when I asking her open-ended questions, she kind  
4 of shut down, got really quiet. And, actually, at that  
5 point, I asked her if she would like to write down  
6 whatever it is that she wanted to say. And she said,  
7 yes, that she would like to write down the answers to  
8 some of my questions.

9 Q Was she ever able to verbalize to you what she  
10 wrote down?

11 A She was -- when I ask children if they would  
12 like to write it down, I tell them, after you write  
13 this, I'm going to read it, and then we're going to talk  
14 about it, and I'm going to ask that you talk about it  
15 with me. So she then talked about what she wrote down.

16 Q What was her body language like during this  
17 interview?

18 A Her posture was slouched, her affect was flat.  
19 She was -- she appeared to be shy and sad, confused.  
20 You know, she presented as someone that was not  
21 comfortable talking about an uncomfortable topic.

22 Q Did she ever cry during this interview?

23 A To be honest, I'm not sure if she cried during  
24 the interview or not. She may have become teary-eyed.  
25 But I interview so many kids, that I don't recall if she

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1 cried or not.

2 Q But she wasn't able to speak throughout the  
3 entire interview, was she?

4 A Correct. She shut down when I asked about the  
5 abuse.

6 Q She was eventually able to -- to write or  
7 verbalize what happened?

8 A That's correct.

9 Q Okay. I'm going to shift gears a little bit.

10 A Okay.

11 Q Can you tell us a little bit about your  
12 education?

13 A Sure. I went to Ithaca College in Ithaca, New  
14 York. Graduated in '98, and then I came down south and  
15 went to the Georgia School of Professional Psychology,  
16 which is now called Argosy, and graduated with a  
17 clinical psychology -- a master's in clinical psychology  
18 there in 2004. And that's my education experience, as  
19 far as degrees.

20 Q Do you have any professional licenses?

21 A I do. I'm a licensed professional counselor  
22 in South Carolina. And in order to become a licensed  
23 professional counselor, you do two years of direct  
24 clinical supervision under a psychologist or a licensed  
25 supervisor. And then you do 1500 hours of -- I'm sorry

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1 -- 1300 hours of direct client supervision with your  
2 counseling clients.

3 Q Do you only work with children, or do you work  
4 with adults as well?

5 A I focus mainly on children. I work with  
6 adults, in the sense that I work with the parents and  
7 the family, so -- but my specialty and training is in  
8 children, adolescents.

9 Q You said your specialty in training. Have you  
10 had some specialized training?

11 A I have. Starting in 2000, I have been  
12 attending trainings concerning child sexual abuse and  
13 the emerging issues and research and findings and skills  
14 and behaviors and symptoms for working with children  
15 that have been abused.

16 In 2006, I took a little break from that  
17 profession, went into private practice, and came back  
18 into the profession this past -- this last summer, and  
19 went back to a week-long training in Minnesota and then  
20 in Columbia to refresh my -- to keep up-to-date with the  
21 current trends in child sexual abuse. I found that  
22 pretty much still the same since 2000. And so,  
23 basically, those are the -- the trainings that I  
24 completed certificate for attending. I guess,  
25 continuing education kind of things.

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1 Q What is your professional experience in dealing  
2 with children?

3 A Okay. Starting in 2000 is when I started at  
4 the Hope -- Hope Haven, which is the Children's Advocacy  
5 Center. And I have been working with children that have  
6 been sexually abused since 2000. It may -- it may not  
7 have been at Hope Haven. When I was in private  
8 practice, I did a lot of work with adults that were  
9 disclosing child sexual abuse, and then a lot of  
10 children in the school system that were disclosing any  
11 type of trauma related to sexual abuse or physical  
12 abuse. So I would say since 2000.

13 Q Have you ever testified in court before?

14 A I have, but it was a long time ago.

15 Q Do you know roughly how many times you've  
16 testified?

17 A I've testified mostly in family court, and  
18 probably four, maybe -- I'm guessing four or five times  
19 in criminal court.

20 Q Okay. Have you ever been qualified as an  
21 expert in any of these proceedings?

22 A I have.

23 MS. CONCANNON: Okay. At this point, I would  
24 move to admit Ms. Twitty as an expert as a mental health  
25 professional working with victims of child sexual abuse

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1 and trauma.

2 THE COURT: Any objection?

3 MS. CAMPBELL: I do object, your Honor.

4 THE COURT: All right. You may *voir dire*.

5 MS. CAMPBELL: Thank you.

6 VOIR DIRE

7 BY MS. CAMPBELL:

8 Q Ms. Twitty, you said you had been qualified as  
9 an expert previously. Do you have any idea whether that  
10 was in family court or in criminal court?

11 A I believe it was in family court.

12 Q So you've never been qualified as an expert in  
13 this area in criminal court, with these types of  
14 proceedings, have you?

15 A I -- honestly, I can't answer that. I'm not  
16 sure if I've been qualified as an expert or not. I know  
17 that I've testified, but I'm not sure if that was a  
18 fact-finding person or an expert.

19 Q Okay. And, specifically, the focus of your  
20 training and your practice and your experience is in  
21 interviewing children and -- and working in child abuse  
22 situations; is that correct?

23 A That's correct. Not just interviewing, but  
24 also working with kids that have disclosed already about  
25 sexual abuse.

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1 Q And in terms of the techniques that you use and  
2 things of that nature, you've never been in a position  
3 to testify on behalf of a defendant as an expert;  
4 correct? It's always just the State that you're working  
5 with?

6 A I've been called about that, and I have never  
7 testified on the defense side, no.

8 MS. CAMPBELL: Okay. I have no further  
9 questions.

10 THE COURT: All right. Are you still  
11 objecting?

12 MS. CAMPBELL: I am.

13 THE COURT: Ms. Concannon, specifically, you  
14 want her to testify as an expert in what area?

15 MS. CONCANNON: As a mental health  
16 professional, working with children victims of sexual  
17 abuse, characteristics, and trauma.

18 THE COURT: As a mental health professional --

19 MS. CONCANNON: Working with victims of child  
20 sexual abuse and trauma.

21 More so in the characteristics and the behavior  
22 that she has seen in her counseling experiences through  
23 the years of being a child sexual abuse counselor.

24 THE COURT: Anything else?

25 MS. CONCANNON: No, your Honor.

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1           Just specifically about child sexual abuse  
2 victim characteristics and their behaviors.

3           THE COURT: Ladies and gentlemen, normally a  
4 person cannot give opinion testimony. Typically, when a  
5 person testifies, they must testify as to either what  
6 they heard or saw or sensed by smell or something of  
7 that nature. There is an exception in our laws if  
8 someone is qualified because of their education and  
9 experience. They are permitted to give their opinion  
10 in certain areas if the Court qualifies them in that  
11 way. This witness will be qualified in the area  
12 of -- as a mental health professional, specifically in  
13 the area of child sexual abuse characteristics and  
14 behavior, to give opinion testimony in that area. That  
15 does not mean that you must accept the opinion. It is  
16 simply evidence for you to use in any way that you see  
17 fit.

18           Note your exception to the qualification,  
19 Ms. Campbell. Thank you.

20           MS. CAMPBELL: Thank you.

21           MS. CONCANNON: Thank you, your Honor.

22           FURTHER DIRECT EXAMINATION

23           BY MS. CONCANNON:

24           Q     Briefly, back to Minor ' specific interview,  
25 did she indicate to you the time and place this all

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1 occurred?

2 A She indicated the place, and she was at her  
3 mother's house.

4 Q Okay. When was your interview with Minor ?

5 A It was on July 20th, 2012.

6 Q Among child abuse professionals, what  
7 is -- what is meant by the term delayed disclosure?

8 A Okay. In the 13 years that I've been doing  
9 this, first off, I find that kids usually never tell.  
10 And there's a lot of reasons why kids never tell:  
11 Because it's such an uncomfortable thing to tell,  
12 fear-driven. Kids -- even research shows that kids  
13 usually tell when they're adults. But as far as delayed  
14 disclosure, kids may not tell because of threat of the  
15 perpetrator; they may not tell because of shame, feeling  
16 like it's their fault, they blame themselves, they're  
17 embarrassed; they may fear that they're not going to be  
18 believed by telling; they may not feel like there's ever  
19 an opportunity that's a good time; they may fear that  
20 they tell, and it rips their family apart, or that this  
21 person that may have done -- or this person that has  
22 done something to them may be really close to their  
23 family. It may be someone that they're related to; it  
24 may be a caregiver; it may be a friend of the family.  
25 And so telling is a pretty big deal, as far as

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Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

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1 children disclosing. So a delayed disclosure is a very  
2 common thing in the child sexual abuse field. And a lot  
3 of times kids disclose accidentally or purposefully.  
4 Accidentally usually is the little ones. They, by  
5 accident, tell, because they don't know not to tell.  
6 And, purposefully, usually teenagers tell purposefully  
7 when they either feel safe or they have a time when  
8 they're hanging out with their peers, which is -- when  
9 you are a teenager, your peers are your world, and you  
10 start talking and you disclose on purpose. So that's --

11 Q You mentioned their peers. Why would they  
12 disclose to these peers?

13 A Well, when you are an adolescent, your peers  
14 are your world, and that's who you feel safe with. And  
15 so it's typical that I find, being at Hope Haven, that  
16 kids usually tell their peers. And then the grown-ups,  
17 the adults, the caregivers are usually the last people  
18 to find out, and it's really hard for caregivers to  
19 understand that.

20 Q What are -- can you maybe explain some family  
21 dynamics that could affect a child disclosing later?

22 A Sure. As far as family dynamics, kids were  
23 taught -- kids are taught to listen to adults. They are  
24 taught to respect their mom and their dad and their  
25 authority figures. And so telling something that might

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1 hurt someone in the family or a friend of the family is  
2 a lot of pressure on that -- that child.

3           So, again, that delayed disclosure of telling  
4 what happens, I find, in my work, is that the kids tell,  
5 and the family explodes, and then the kids recant, which  
6 means: Oh, wait, I didn't mean that. That's -- that  
7 really didn't happen. So recantation is very common  
8 when children disclose child sexual abuse.

9           Q       What are some -- based on your professional  
10 experience, some of the different time frames that may  
11 be included in delayed disclosure?

12           A       Disclosure is a process, number one. Kids  
13 usually don't just blurt out everything. So, first,  
14 it's a tentative phase, where they tell a little bit to  
15 test out the waters, to see how the grown-ups are going  
16 to respond, see if they're kept safe. And if there's  
17 someone that's going to listen them and believe them,  
18 then most typically they move into an active phase of  
19 disclosure, where they usually start telling all the  
20 information.

21                   Sometimes kids will stay in that tentative  
22 phase for years, for months, for weeks. It depends if  
23 they get therapy or not. So those -- you know, the  
24 disclosure process is different for each adolescent or  
25 child or person.

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1 Q Regarding the disclosure, is it -- do  
2 children necessarily recall in a particular order the  
3 chronological series of the events when they are  
4 disclosing?

5 A Disclosing, as I said, is a process. A lot of  
6 the times children are traumatized. It depends on if  
7 they're having chronic abuse, which means they've been  
8 abused from the age of 6 to 16, or they have acute  
9 abuse, which they've had either one incident of a sexual  
10 assault or two incidents or three incidents. You know,  
11 those are considered acute cases. So depending on what  
12 type of trauma or what type of abuse, if it was chronic  
13 or acute -- I'm sorry, I forgot what I WAS asked --  
14 the --

15 Q The chronological series --

16 A The chronological series is, it depends, again,  
17 if it's chronical, there's so much to tell. So it's  
18 hard for their memory, I find, in my profession, because  
19 of the trauma to recall the certain dates, times, events  
20 in chronological order because of the trauma and the  
21 paralyzing effect that trauma can have during -- during  
22 a scary time for a child.

23 Q In your experience, why -- why are children  
24 scared to disclose?

25 A Children are scared to disclose, I think, for

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1 the reasons I said before, as far as being fearful of  
2 all the consequences of what happens in disclosing.

3 MS. CONCANNON: I have no further questions for  
4 this witness at this time.

5 MS. CAMPBELL: May it please the Court?

6 THE COURT: Yes, ma'am.

7 **CROSS-EXAMINATION**

8 **BY MS. CAMPBELL:**

9 Q Ms. Twitty, isn't it true that when you talked  
10 with Minor that you received information that her  
11 allegations against Gerald Barrett were two to three  
12 days after Saint Patrick's Day? Isn't that what she  
13 told you?

14 A I believe she said it was sometime around  
15 Saint Patrick's Day, two to three days after. And  
16 usually when a child or adolescent or person is having  
17 an event -- a traumatic event, sometimes they'll hang  
18 onto a significant detail, like a holiday or birthday  
19 party or something like that.

20 Q Didn't you have her write it down for you?

21 A I wrote on -- I believe that you're holding the  
22 piece of paper that she wrote down the disclosure.

23 Q Right.

24 A Right. And then I wrote notes on that while we  
25 were talking.

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1 Q And on the paper --

2 A Okay.

3 Q -- it says after Saint Patty's Day. Two days  
4 after Saint Patty's day; right?

5 A If that's what -- I don't have it. So I'm  
6 sorry.

7 MS. CAMPBELL: May I approach, your Honor?

8 THE COURT: You may.

9 MS. CAMPBELL: Thank you.

10 (Document is handed to the witness.)

11 Q (By Ms. Campbell) This is the -- a statement  
12 that you -- you had her generate for you, to pin down a  
13 date and a time for her allegations; right?

14 A That's correct. This is what she told me at  
15 that time.

16 Q And what did she say? What does it say there?

17 A It says, two days after Saint Patty's Day,  
18 March or April, 2012.

19 Q Okay. Thank you.

20 MS. CONCANNON: Objection. Is Ms. Campbell  
21 moving the statement into evidence?

22 THE COURT: No.

23 Q (By Ms. Campbell) Now, Ms. Twitty, you've  
24 testified that in your experience, you -- you note  
25 things like shyness and sadness and confusion and not

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1 being comfortable in young people that you talk to about  
2 situations of abuse; right?

3 A Yes, ma'am.

4 Q Okay. And isn't it true that it would seem,  
5 well, a little bit odd or different that someone who is  
6 shy, and reticent to disclose, not being comfortable  
7 with the disclosure would also be someone, at 14, that  
8 was wearing a tattoo? Wouldn't that be a little bit  
9 off?

10 A I don't see the relevance.

11 Q Okay. Well, she had a tatoo. You made note of  
12 the tattoo. You made note that she was under the age of  
13 18, shouldn't have a tattoo, but yet she had one; right?

14 A I believe -- that's what we -- yeah, I believe  
15 talking about that in the interview. I was trying to  
16 build A rapport with her so she felt comfortable.

17 Q Now, having been qualified in as an expert in  
18 this area, are you familiar with the report from the  
19 National Children's Advocacy Center on recantation and  
20 false allegations of child abuse and child sexual  
21 assault? Are you familiar with this?

22 A I have done so much reading that I would have  
23 to look at it to say if I'm familiar with it or not.

24 MS. CAMPBELL: I'd be happy to approach and  
25 provide it to her.

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you.

3 (Document is handed to the witness.)

4 THE WITNESS: Page 9?

5 Q (By Ms. Campbell) Not necessarily page 9. The  
6 entire report, which deals with what you're an expert  
7 in; right?

8 A I have not read this entire report, but I have  
9 been to trainings that have talked about this report.

10 MS. CAMPBELL: Thank you. May I approach and  
11 retrieve it?

12 THE COURT: You may.

13 MS. CAMPBELL: Thank you.

14 (Document is handed back to Ms. Campbell.)

15 Q (By Ms. Campbell) Ms. Twitty, young people  
16 lie, don't that?

17 A Absolutely. Young and old people lie.

18 Q Well, you don't deal with old people; you deal  
19 with young people? Right?

20 A I deal with their parents. So. . .

21 Q Okay. Interesting. You're not a human lie  
22 detector, are you?

23 A I am certainly not a human lie detector.

24 Q All right. So you don't know when somebody is  
25 telling you the truth, do you?

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1 A I do not know.

2 Q Okay. All right. And so all you do is just  
3 take notes about what you are told; right?

4 A I would disagree with that.

5 Q Okay. And what you were told was that two to  
6 three days -- or two days after Saint Patty's Day this  
7 alleged sexual assault took place against Minor right?  
8 And she told you that; right?

9 A She told me that.

10 Q Okay. And other than that, you don't know  
11 anything about -- else about this case today to help us;  
12 right?

13 A Can you restate what you just asked me?

14 Q You don't know anything else about this  
15 case? You can talk on and on about shyness and being  
16 uncomfortable and all those things; but this case,  
17 you know when she says it happened, and that's it;  
18 right?

19 A Well, I know what she told me, and I know that  
20 based on --

21 MS. CAMPBELL: Your Honor, I'm going to object  
22 to that. That's not --

23 THE COURT: All right. Counsel, that's not the  
24 way we do it. So you need to rephrase your question.

25 MS. CAMPBELL: Okay.

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1 MS. CONCANNON: Can Ms. Twitty answer the  
2 question?

3 THE COURT: I'm sorry?

4 MS. CONCANNON: Can Ms. Twitty answer the  
5 question?

6 THE COURT: I'm going to let her rephrase the  
7 question.

8 Ms. Twitty, if you need to respond further --  
9 I'm going to let her rephrase her question. If you need  
10 to respond further, you may. Thank you.

11 MS. CAMPBELL: Thank you, your Honor.

12 Q (By Ms. Campbell) We've established,  
13 Ms. Twitty, that you are -- you're not a -- you're not a  
14 diagnosis [sic] for this; right?

15 A Correct.

16 Q You give no diagnosis?

17 A Correct.

18 Q You get a date; you get a time? Right?

19 A I get details of the event.

20 Q Right. And the date and the time that you  
21 were given in this case, specifically, was two days  
22 after Saint Patrick's Day, 2012; right?

23 A I believe it said two to three days, either  
24 April or March, 2012, is what I had written.

25 Q And so as you're getting the information about

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1 the date and time, because it's very important, you've  
2 got this broad range of time between March and April;  
3 right? And by the end of your interview, you have  
4 narrowed it down to two days after Saint Patrick's  
5 Day? It's what that piece of paper said; didn't  
6 it?

7 A I wouldn't necessarily say narrowed it down,  
8 but I asked the child to tell me when she thinks it  
9 happened. But at the time of the interview, that wasn't  
10 our main focus. My interview focus is to assess the  
11 overall safety of a child. Like, I want to rule out all  
12 hypotheses. I am not going in there looking for fact  
13 details to prove or not prove child sexual abuse. My  
14 hope is that kids aren't sexually abused, because that's  
15 what I would hope. So I was. . .

16 Q The paper says between March and April 2012;  
17 right?

18 A I asked her when she thought it would happen.

19 Q Right.

20 A -- or when she thought it happened.

21 Q Right. We've got a broad two-month time frame,  
22 but by the end of your talking to her is down to March  
23 19th, 2012; right?

24 A I don't know about March 19th. She said two to  
25 three days after Saint Patty's Day.

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1 MS. CAMPBELL: Thank you. I have nothing else.

2 THE WITNESS: Okay.

3 MS. CONCANNON: Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MS. CONCANNON:

6 Q Ms. Campbell just asked you a little bit about  
7 the interview that you conducted with Minor . She  
8 stated that -- she showed you a piece of paper. Okay.  
9 When -- when was that piece of paper drafted? When did  
10 you get ahold of that piece of paper?

11 A That piece of paper was -- I gave Minor a  
12 piece of paper when she shut down on me. And so as  
13 an interviewer, I try to offer other avenues for  
14 children to -- to disclose. And I say: Would you feel  
15 more comfortable writing this? And so I gave her the  
16 piece of paper, and that was the piece of paper that was  
17 just shown to me. She wrote down some of what happened  
18 to her.

19 MS. CONCANNON: Permission to approach the  
20 witness, your Honor?

21 THE COURT: You may.

22 Q (By Ms. Concannon) Ms. Twitty, I'm going to  
23 show you what's been previously marked as State's  
24 Exhibit 11.

25 (Document is shown to the Ms. Campbell.)

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1 (Document is handed to the witness.)

2 Q (By Ms. Concannon) Do you recognize that piece  
3 of paper?

4 A I do.

5 Q What is that?

6 A This is the paper that Minor wrote down for  
7 me, when I asked her what happened and she shut down and  
8 didn't talk and we sat there a little bit in silence,  
9 this is what she started writing.

10 Q Is all of that her handwriting?

11 A No. My notes are in purple.

12 Q When did you add your notes?

13 A I added my notes towards the end of the  
14 interview, when I was asking about when she thinks it  
15 happened.

16 MS. CONCANNON: Okay. Thank you.

17 Permission to publish to the jury and admit  
18 State's Exhibit 11 into evidence?

19 MS. CAMPBELL: I would object to that as being  
20 entered into evidence, your Honor. It's Minor  
21 statement, and she's trying to get it entered through  
22 Ms. Twitty --

23 THE COURT: All right. Counsel approach.

24 (Ms. Campbell, Ms. Concannon, and Mr. Shelton  
25 approach the bench for a side-bar.)

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1 THE COURT: State's 11 into evidence over your  
2 objection. Thank you.

3 MS. CAMPBELL: Thank you.

4 MS. CONCANNON: Thank you, your Honor.

5 (State's Exhibit No. 11 is admitted into  
6 evidence.)

7 MS. CONCANNON: Permission to publish  
8 State's 11 to the jury?

9 THE COURT: You may.

10 MS. CONCANNON: Thank you, your Honor.

11 (State's Exhibit 11 is published to the  
12 jury.)

13 Q (By Ms. Concannon) Ms. Twitty, Ms. Campbell  
14 asked you a question about you -- you knowing nothing  
15 but the date and time of the alleged incident. Did  
16 Minor tell you anything else?

17 A She disclosed to me what happened.

18 Q When you say she disclosed to you what  
19 happened, what did she say?

20 MS. CAMPBELL: Your Honor, I'm objecting.

21 THE COURT: What's your basis?

22 MS. CAMPBELL: That goes past the parameters of  
23 the Supreme Court ruling in Kromah.

24 THE COURT: All right. Maybe you didn't  
25 understand. Speaking objection, one word. Please

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1 approach.

2 (Mr. Shelton, Ms. Campbell, and Ms. Concannon  
3 all approach the bench for side-bar.)

4 THE COURT: Please rephrase your question.

5 MS. CONCANNON: Thank you, your Honor.

6 Q (By Ms. Concannon) What else did Minor tell  
7 you?

8 A We talked a little bit about her family. We  
9 talked a little bit about what she likes to do for fun.  
10 We talked about who she hangs out; what she likes to do  
11 at school. She loves school. Kind of neutral, finding  
12 out about her life, details.

13 Q What did she tell you about Saint Patrick's Day  
14 last year?

15 A What I have in my report is, when asked about  
16 the date of when this happened with Bubba, Minor  
17 reported that she thinks it was two or three days after  
18 Saint Patrick's Day. And that's all that I had asked  
19 her about, as far as Saint Patrick's Day.

20 Q What did she say what acts happened around  
21 Saint Patrick's Day?

22 A The acts that she stated that happened is that  
23 she was at her mom's house, hanging out with her mom,  
24 hanging out with her friends. She reported that Bubba  
25 came over to her mom's house, and they were all hanging

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1 out outside. She stated that she was inside watching  
2 TV, when Bubba came inside the house and sat next to her  
3 on the couch. She stated that she moved from the couch  
4 to the chair to get away from him, but he followed her  
5 to the chair and sat down with her.

6 MS. CAMPBELL: Your Honor, I object again.  
7 Same basis as before.

8 THE COURT: Overruled.

9 THE WITNESS: Can I continue?

10 THE COURT: Yes.

11 THE WITNESS: Okay. Minor appeared to become  
12 uncomfortable talking about what happened next. This is  
13 when she shut down. The interviewer asked Minor to  
14 write down what happened. This is when she wrote down  
15 that green stuff, the green marker. Minor wrote down  
16 what happened, and the interviewer read it out loud to  
17 Minor. Please see letter in file.

18 Minor reported that Bubba touched her -- her  
19 private area -- that's what she called her breasts --  
20 underneath her clothes, and that he touched her private  
21 area, is what she called her vagina. She stated that  
22 Bubba creped -- quote, creped her out and told him to  
23 get away, but he would not get away. Minor went  
24 upstairs with her little sister T. and then fell  
25 asleep. She stated that she got up and went into her

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1 room around 4:30 a.m., and that she could hear someone  
2 coming up the stairs. Minor stated that Bubba came  
3 into her room, laid down in her bed with her. Minor  
4 stated that she asked Bubba what he was doing, and that  
5 he told her not to worry about it.

6 She reported that Bubba told her not to tell  
7 anyone about what he was doing. Minor reported that  
8 Bubba put his private part inside her private part, and  
9 that it felt painful. She reported that she thought she  
10 was dying, and that she was crying. She stated that she  
11 felt helpless. Minor reported that Bubba held her arms  
12 out to her side when he was on top of her and when his  
13 private part, his penis, went inside her private part,  
14 vagina.

15 Minor stated that Bubba's shirt was on and  
16 that his pants were pulled halfway down. She stated  
17 that she was wearing a pajama shirt. Minor stated that  
18 Bubba got off of her when he heard a noise. She stated  
19 that he went downstairs and sent her a text to come  
20 downstairs. Minor reported that she went into the  
21 bathroom, locked the door, and took a shower. She  
22 stated that she was bleeding, and that when she went  
23 pee, white stuff was coming out of her on the tissue  
24 paper.

25 When asked about the date of when this happened

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1 with Bubba, Minor reported that she thinks it was two  
2 to three days after Saint Patrick's Day.

3 Q (By Ms. Concannon) What is the date of that  
4 report, when your interview was conducted?

5 A This was on July 20th, 2012.

6 Q 2012? What Saint Patrick's Day was she  
7 referring to? What year?

8 A I'm assuming she was referring to this Saint  
9 Patrick's Day. Because she said March or April 2012.

10 MS. CONCANNON: Okay. I have no further  
11 questions for this witness.

12 THE COURT: Ms. Campbell.

13 MS. CAMPBELL: Thank you, your Honor.

14 **RECROSS-EXAMINATION**

15 **BY MS. CAMPBELL:**

16 Q Ms. Twitty, you're familiar with something  
17 called the Child Sexual Abuse Accommodation Syndrome;  
18 right?

19 A I'm familiar with it, yes.

20 Q But you're no expert in that; right?

21 A I'm not an expert in it.

22 Q And you just testified to factors under the  
23 Child Sexual Abuse Accommodation Syndrome, haven't you,  
24 about delayed reporting; right?

25 A Correct.

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1 Q Okay. And you're no expert, but you're  
2 testifying about that; right?

3 A Well, the Child Sexual Abuse Accommodation  
4 Syndrome is categories, five categories of typical  
5 behaviors that professionals see in children that are  
6 sexually abused. So it's a theory.

7 Q Right. And you're not an expert, but you've  
8 talked about it; correct?

9 A Well, I feel that I'm an expert in the  
10 categories of the -- that they talk about in the Child  
11 Sexual Abuse Accommodation Syndrome, as far as what I do  
12 in my profession.

13 Q But you've not been qualified in that --

14 A Correct.

15 Q -- in that by this Court; correct?

16 A I'm sorry. Correct.

17 Q Okay. Now, you're familiar, also, then, with  
18 the fact that this particular type of testimony has  
19 been found to be very problematic and even referred to  
20 sometimes as pseudoscience; right?

21 A What type of testimony? The child sexual --

22 Q The type of testimony that you're giving.

23 A My professional opinion and my experience? I'm  
24 sorry. I don't understand the question.

25 Q All right. Well, are you familiar with the

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1 Children's Law Center?

2 A Yes. That's where I've been trained quite a  
3 bit, yeah.

4 Q And at the Children's Law Center, they put out  
5 a report about this delayed disclosure thing that you're  
6 talking about; right?

7 A Yes.

8 Q And in there, don't they characterize it as  
9 typically occurring in children and adolescents who have  
10 suffered years of repeated abuse? Would you like me to  
11 pass this up to you?

12 A Sure. Well, I think that's when we talked  
13 about the different types of abuse, as far as chronic  
14 abuse --

15 MS. CAMPBELL: May I approach?

16 THE COURT: You may.

17 THE WITNESS: -- and acute abuse, meaning the  
18 sexual assault happened.

19 Q (By Ms. Campbell) This is the paragraph here.

20 A Okay. Right.

21 Q Okay.

22 A That's for the accommodation syndrome that  
23 they're talking about.

24 Q Delayed disclosure, which you've testified  
25 about; right?

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1           A     Well, delayed disclosure in general just isn't  
2 part of that syndrome. There's something just called  
3 delayed disclosure.

4           Q     Okay. Well, in 1983, Dr. Summit -- Ronald  
5 Summit -- you're familiar with him; right?

6           A     Correct.

7           Q     Okay. And those factors that he puts out  
8 there, delayed disclosure is one of the factors; right?

9           A     It is one of the factors.

10          Q     And the Children's Law Center, that has trained  
11 you, has said that delayed disclosure is commonplace,  
12 typically reported in conjunction with years of repeated  
13 abuse; correct?

14          A     Correct.

15                MS. CAMPBELL: All right. Thank you. That's  
16 all I have.

17                THE COURT: All right. You may step down.  
18 Thank you.

19                Call your next witness.

20                THE WITNESS: I'm ready?

21                THE COURT: You're done. Thank you.

22                MS. CONCANNON: Thank you, your Honor.

23                THE WITNESS: Thank you.

24                MS. CONCANNON: State calls Kristin Dalton.

25                THE COURTROOM DEPUTY CLERK: Would you place

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1 your left hand on the Bible and raise your right hand  
2 for me, please, ma'am.

3 (The oath is administered by the Deputy Clerk  
4 of Court, and the witness answers as follows:)

5 THE WITNESS: I do.

6 THE DEPUTY CLERK OF COURT: Please be  
7 seated. State your name and spell it for the Court,  
8 please.

9 THE WITNESS: My name is Kristin Dalton,  
10 K-r-i-s-t-i-n, Dalton, D-a-l-t-o-n.

11 MS. CONCANNON: Thank you, your Honor.

12 **KRISTIN DALTON,**

13 having been first duly sworn by the Deputy Clerk of  
14 Court to tell the truth, the whole truth, and nothing  
15 but the truth, was examined and testified upon her oath  
16 as follows:

17 **DIRECT EXAMINATION**

18 **BY MS. CONCANNON:**

19 Q What is your profession right now, Kristin?

20 A I'm a pediatric nurse practitioner.

21 Q What is your education to become a pediatric  
22 nurse practitioner?

23 A I went to four years of undergraduate school to  
24 become a nurse, and then practiced for ten years, and  
25 went back to graduate school. In three years, got my

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1 master's degree and took a national certifying board  
2 exam, and became a nurse practitioner.

3 Q Where are you employed currently?

4 A Beaufort Pediatrics.

5 Q Do you hold any professional licenses?

6 A I do. I have a DEA license, an R.N. license,  
7 and an advanced practice nurse license.

8 Q Have you ever attended any specialized  
9 training?

10 A I have. Starting in 2004, I became a member of  
11 a group in the state of South Carolina. There are 16 of  
12 us medical providers who are specialized in child  
13 maltreatment. I started receiving training in that area  
14 in 2004, when I went out to Utah for a week-long medical  
15 training there. And then another week in Minnesota, a  
16 year later; four days in Atlanta a year after that; and  
17 then I've done annual child maltreatment medical  
18 conferences ever since.

19 Q You predominantly work with children?

20 A Only with children.

21 Q You never work with adults?

22 A No. Anyone under 21. Twenty-one would be the  
23 oldest.

24 Q What would bring a patient to you, a child  
25 patient to you?

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1           A     Well, in my role as a nurse practitioner at  
2     Beaufort Pediatrics, I function in the same manner as a  
3     pediatrician. I see children for their well checks and  
4     for their sick visits. If they're sick enough and need  
5     to be admitted to the hospital, admit them and follow  
6     them in the hospital.

7           Q     Are you ever called to examine any children  
8     regarding reports of sexual assault abuse?

9           A     Yes, I am.

10          Q     And how many people in the state of South  
11     Carolina have your same position as reporting when  
12     there's an allegation of child sexual abuse?

13          A     Well, currently, there's 16 people in our  
14     state who are qualified and designated as medical  
15     experts to examine children who are victims of abuse  
16     and sexual -- maltreatment. So neglect, physical abuse,  
17     and sexual abuse. This is a group that started -- in  
18     2004, it was created. We have a director, Dr. Olga  
19     Rosa, who is a pediatrician, who is also a child  
20     maltreatment Board-certified expert. And the 16 of us  
21     created the policies and procedures for doing these  
22     exams, for maintaining continuing education. We meet  
23     quarterly in Columbia for peer review and continuing  
24     education. This has been going on since -- for the last  
25     ten years.

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1 Q What are some of the procedures or policies  
2 regarding these examinations of a child sexual abuse  
3 victim?

4 A Well, there are two different kinds of exams.  
5 There are what's referred to as an acute exam. When a  
6 child has been sexually assaulted and you're looking for  
7 DNA evidence, you can usually get DNA if it's been less  
8 than 24 hours since the assault. So those acute exams  
9 are done infrequently, because it's not very common that  
10 we figure this out that quickly, that someone has been  
11 assaulted, a child.

12 Then there are what's called chronic exams.  
13 And the chronic exams are done any time a child has  
14 disclosed sexual abuse. One of the 16 of us in the  
15 state will do the exam, where we are examining them for  
16 multiple purposes. To see if there's any trauma, any  
17 evidence of physical trauma, to see if there are any  
18 sexually transmitted infections they may have acquired,  
19 and, in general, to reassure the child that their body  
20 is okay.

21 Q It would only be one of the 16 of y'all that  
22 would conduct these examinations?

23 A To my knowledge, there's nobody else that's  
24 certified to do that in our state.

25 Q Have you ever testified in court before?

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1           A     Yes, I have.

2           Q     Do you know how many times you've testified?

3           A     Probably about 18 or 20.

4           Q     Have you testified in criminal court?

5           A     Yes.

6           Q     Have you ever been qualified as an expert

7 before?

8           A     I have.

9                   MS. CONCANNON: At this point, I move to

10 qualify Ms. Dalton as an expert in the trauma and

11 physical symptoms following child sexual abuse.

12                   THE COURT: Ms. Campbell.

13                   MS. CAMPBELL: I have no objection.

14                   THE COURT: She will be so qualified. Thank

15 you.

16                   MS. CONCANNON: Thank you, your Honor.

17           Q     (By Ms. Concannon) You mentioned when you do

18 these examinations, there are two different types that

19 you do when you look for trauma. What is some trauma

20 that can be found in a victim that's suffered sexual

21 abuse?

22           A     For sexual abuse, the chance of physical

23 findings are incredibly, incredibly small. Right now

24 the national statistics state that about 3 percent or

25 less of children who are sexually abused will have

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1 physical findings. The reasons are myriad, but mainly  
2 because that area of the body is very rapid to heal.  
3 And also, it's difficult to injure that area of the  
4 body.

5           One of the ways to think about it is, the  
6 genitalia, the vaginal area of a female, is similar  
7 tissue to the inside of your mouth. So if you bite  
8 your cheek and it hurts a lot and it bleeds, and you  
9 might have difficulty eating for a day or two, when you  
10 go and look in the mirror and look at your cheek, you're  
11 not going to see where you bit yourself, and you're not  
12 going to see a scar. And there's nobody walking around  
13 today who can say, this is where I bit myself when I was  
14 five, and this is where I bit myself a month ago.

15           So the female genitalia heals very, very  
16 rapidly. It is also a tremendous misconception that  
17 goes around in the general public about the shape of the  
18 female body and the hymen and what that piece of tissue  
19 can do when somebody has had sex, whether it's  
20 consensual or nonconsensual. So everyone thinks that  
21 you can do a virginity test, that you can look at a  
22 woman or a teenager and see if they've had sex before.  
23 That is absolutely false, and there are multiple studies  
24 out there that show that that's false.

25           I have found, in my professional experience,

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1 that my statistics of findings are about what the  
2 national statistics are, which is certainly less than 5  
3 percent of the girls I examine will have physical  
4 findings. And I'm not talking just about the sexually  
5 abused children. I'm talking about -- I do gynecology,  
6 pediatric gynecology and pelvic exams and STD testing  
7 for teenagers, and I've been doing it for 20 years. And  
8 a huge number of them, far more than 50 percent, don't  
9 have any findings in their hymen to show that they've  
10 been consensually sexually active.

11           So the -- another reason for that is not only  
12 that trauma heals quickly, but the hymen, which is sort  
13 of a doughnut-shaped, very thin piece of tissue that's  
14 right at the entrance of the vagina -- so if you think  
15 of a tube having this thin membrane around it. This  
16 membrane is similar to a rubber band. It's very, very  
17 elastic. So if you were handed a bag of rubber bands,  
18 and you pulled one out and you stretched it, and then  
19 you put it back in the bag, and you asked someone to  
20 tell you which rubber band did you stretch, they're not  
21 going to be able to do that.

22           This is the same way the hymen is. It can  
23 stretch. And children -- young children can be victims  
24 of penile vaginal penetration and have no evidence, that  
25 can stretch and not have been injured at all, or injury

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1 can heal very rapidly.

2 Q Would there be signs of an injury to the hymen  
3 five months or so after the alleged assault?

4 A No.

5 Q Immediately after a sexual assault, is it  
6 common there be a lot of blood?

7 A It depends on the -- the degree of violence,  
8 the physicality of the assault. There are, you know, a  
9 lot of perpetrators who are well known to the victim and  
10 aren't as physically assaulting during the act of  
11 penetration, and then there are other instances when  
12 it's much more aggressive. So, you know, that's another  
13 myth. People think that every time a woman who is a  
14 virgin has sex, that there is going to be blood  
15 afterwards. It just depends on whether that hymen did  
16 tear. And, certainly, the hymen can tear. And for  
17 women who are highly -- are sexually experienced, many  
18 of them will have a visible, what we call transection,  
19 or a tear in the hymen, that will then heal. So when  
20 they go to the gynecologist, or they come to me, I can  
21 see that there is that -- that tear in the hymen that is  
22 healed. But, again, that is not something that is -- is  
23 seen in sexually active women as a definite, and that's  
24 why you can't tell.

25 MS. CONCANNON: Beg the Court's indulgence?

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1 THE COURT: Yes, ma'am.

2 (Ms. Concannon speaks with Mr. Shelton off the  
3 record.)

4 Q (By Ms. Concannon) Did you conduct a physical  
5 examination on Minor ?

6 A I did.

7 Q When was this physical examination conducted?

8 A In August of 2012, I believe it was.

9 Q What were your findings of that exam?

10 A There were no findings on her exam.

11 Q When you say there are no findings, what does  
12 that indicate?

13 A Well, first of all, the hymen had no  
14 disruptions in it. So there were no tears or notches or  
15 clefts in the hymen. I saw no visible signs of an STD.  
16 Unfortunately, her caretaker did not follow through on  
17 taking her to the lab to have the STD testing done. So  
18 I don't know for sure whether there was or was not any  
19 infection there. So that's the reason for no findings  
20 there.

21 Q And, again, you said this was in August of last  
22 year, the exam?

23 A Yes.

24 MS. CONCANNON: I have no further questions for  
25 this witness.

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1 MS. CAMPBELL: Thank you.

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q Kristin --

5 A Yes.

6 Q -- did you provide the state of South Carolina  
7 with an article from the Official Journal of the  
8 American Academy of Pediatrics that you rely on?

9 A Yes. It's one of the many that I rely on.

10 Q Okay. Well, this is what the State gave me  
11 that you were relying on in relation to your testimony  
12 today. Okay? And this Official Journal of the American  
13 Academy of Pediatrics, which is many, many pages long,  
14 you've read this; right?

15 A Yes, I have.

16 Q Okay. And you're very familiar with what this  
17 article says, aren't you?

18 A I'm -- yes, I am familiar with what that  
19 article says.

20 Q Okay. And you used the criteria in this  
21 article in your physical examination of Minor ;  
22 right?

23 A What do you mean by using the criteria?

24 Q I mean, you took your knowledge, your  
25 information, your expertise that founds itself, that

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1 rests itself on reports just like this, and you used  
2 that in your physical examination of Minor ; right?

3 A That was one of many, yes.

4 Q Okay. Well, the only one the State gave me  
5 is this one. And you admit to relying on this one;  
6 correct?

7 A It's part of the myriad of studies I use. Yes,  
8 that is correct.

9 MS. CAMPBELL: May I approach, your Honor?

10 THE COURT: You may.

11 (Document is handed to the witness.)

12 Q (By Ms. Campbell) If you would, please, would  
13 you read for the jury the title of this article.

14 A Genital Anatomy in Pregnant Adolescents.  
15 Normal Does Not Mean Nothing Happened.

16 Q Thank you. May I have it back, please?

17 A Sure.

18 Q Minor is not pregnant in August 2012, is  
19 she?

20 A No, she wasn't.

21 Q Okay. Now, in this physical examination you  
22 did of her, you say you looked at her hymen; right?

23 A Yes.

24 Q And when you did that, you're following  
25 a 13-page treatment protocol; right?

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1 A Following the protocol?

2 Q Yes. You have a 13-page child treatment  
3 protocol?

4 A That's the form that I fill out, yes, for after  
5 the exam.

6 Q Okay.

7 A That's the information that I need to provide  
8 to the State.

9 Q Right. Okay. And in that 13-page treatment  
10 protocol, you note that Minor is -- been the victim  
11 of or exposed to multiple occasions of domestic  
12 violence; correct?

13 A I did note that, yes.

14 Q Okay. Which are not at all related to  
15 Gerald Barrett, Jr.; right?

16 A I don't know if he was there for those -- I  
17 didn't specifically ask who was involved in those  
18 instances.

19 Q So there's some information you don't know?

20 A I'm sure there's a tremendous amount of  
21 information I don't know about Minor ' life, if that's  
22 what you're asking.

23 Q But, again, in the protocol, you're supposed to  
24 answer those questions. And that's what you answered  
25 right here on page 3. It says that she was exposed to a

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1 history of domestic violence between herself -- excuse  
2 me -- the mother and the father and the ex-husband,  
3 something to that effect. Would you like to see it?

4 A Yes, I would like to, please.

5 Q Okay.

6 (Document is handed to the witness.)

7 A Okay. So I put -- I interviewed both Minor  
8 mother, Ms. Brandace Smith, and then I interviewed  
9 Minor , to -- which is part of medical history. You  
10 always take a social history, a behavioral history, a  
11 past medical history, and a surgical history. So this  
12 is part of the social history. And I obtained it from  
13 both the victim and her mother. And the mother reports  
14 -- and I quote myself, she, referring to Ms. Smith, the  
15 mother, reports a history of domestic violence between  
16 herself and her ex-husband, which was often witnessed by  
17 Minor . She denies the family has ever been involved  
18 with any law enforcement or DSS, Department of Social  
19 Services, prior to this incident. There have been no  
20 problems with substance abuse, alcohol, or illicit drug  
21 use by any of Minor ' caretakers. This, of course, is  
22 important for the medical exam.

23 And then underneath that, I wrote, Minor has  
24 lived with her mother most of her life. Mother married  
25 when Minor was about one year. That marriage ended

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1 about three years ago, but stepfather is still involved.  
2 Then at the bottom I put, when Minor was interviewed  
3 alone, she reported law enforcement had been involved  
4 with the family on multiple occasions due to domestic  
5 violence.

6 Q (By Ms. Campbell) Thank you. And so you've  
7 got two different versions: One from the mother, one  
8 from Minori; right?

9 A Yes.

10 Q About any involvement with law enforcement, but  
11 both confirmed domestic violence; correct?

12 A Correct.

13 Q Now, on page 4, your report reflects that Minor  
14 reported that she was bleeding after she suffered this  
15 sexual assault; correct?

16 A Yes.

17 Q Okay. And on -- then again, on page 6, you say  
18 that, Minor had been treated long before this  
19 allegation for mental health issues and for cutting  
20 herself; correct?

21 A Yes.

22 Q All right. And then you go on in the -- in  
23 this protocol, and you say that -- on page 8, that  
24 the -- the hymen -- which, thank you for your  
25 explanation of that to all of us -- was estrogenized,

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1 which if I may, would mean that she's postpuberty;  
2 right?

3 A It could mean that she's just begun puberty or  
4 is towards the end. There's five stages of puberty. So  
5 it just means that she's involved in that process.

6 Q The estrogenized?

7 A Estrogenized means that a child's body has  
8 begun changing from that of a child to that of a woman  
9 or a man.

10 Q Right. And that you note on this page that the  
11 hymen is smooth, continuous; correct?

12 A Yes.

13 Q Okay. And very clearly, on your protocol that  
14 you have to follow, you make the notations, no tears?  
15 There are no tears; correct?

16 A Correct.

17 Q There are no lacerations?

18 A Correct.

19 Q There's no vaginal discharge?

20 A Correct.

21 Q There's no posterior hymenal transections;  
22 correct?

23 A Correct.

24 Q There are no deep notches?

25 A There are no findings at all, no. Correct.

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1 Q There are no perforations?

2 A Perforations, I don't believe that's one of  
3 the -- I don't believe that's even -- should be on the  
4 protocol. Perforation would imply a hole. The hymen  
5 already has a hole in it.

6 Q Okay. How about a deep cleft?

7 A I didn't see a deep cleft either.

8 Q Are you familiar in your studies with the term  
9 perforation?

10 A I'm not sure what you mean by that.

11 Q Okay. So the only person that has viewed Minor  
12 Minor r's hymen is you; right?

13 A I don't know. I'm -- I know that I viewed her.  
14 I don't know what her past gynecological history is.

15 Q Kristin, you took -- you took no photographs,  
16 correct, of the hymen? You preserved no evidence;  
17 correct?

18 A There was no evidence. So I didn't see the  
19 need to take a photograph.

20 Q Well, you study, in reports just like this,  
21 photographs of the hymen; right?

22 A What do you mean, I study photographs of the  
23 hymen? You mean when I go to medical conferences or  
24 read journal articles?

25 Q Kristin, you said you're familiar with this

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1 report; correct? You provided it to the State?

2 A Right.

3 Q Okay. And in this report that you rely on,  
4 there are photographs of the hymen -- of different  
5 hymens that you learn from and you look at and you say,  
6 okay, this is a certain type of hymen, and this is  
7 another type of hymen; correct?

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Okay. And so in this case, for us today, there  
12 is no preservation of any evidence. There's no  
13 photograph of the hymen that's at issue in this case;  
14 correct?

15 A I did not photograph her hymen. What I'm  
16 -- I'm sorry if I'm misunderstanding you. But what my  
17 point is, there wasn't what I considered to be evidence.  
18 There were no -- there was no unusual findings. So I  
19 did not photograph that.

20 Q Right. And you -- you made that decision;  
21 correct?

22 A Correct.

23 Q Okay. And so because you didn't find anything,  
24 you didn't preserve any evidence for us; correct?

25 A I didn't preserve evidence of a normal exam for

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1 you, that is correct.

2 Q You didn't order any kind of imaging studies at  
3 all on this -- this case; right?

4 A There are no imaging studies that you can order  
5 on a hymen.

6 Q You work for Hope Haven; correct?

7 A Yes. That's our child advocacy center.

8 Q Correct. And you testify for the State; right?

9 A Correct.

10 Q Okay. You don't testify in defense of any man  
11 that's charged with these crimes; correct?

12 A No. I have testified in defense.

13 Q And you didn't preserve any evidence; correct?

14 A There was no evidence to preserve, and I did  
15 not photograph the exam. I'm not understanding what  
16 you're asking me. I'm sorry.

17 Q I'll move on.

18 A I did not photograph a normal exam. I did not  
19 feel there was evidence -- may I say that? -- and so I  
20 did not feel the need to photograph.

21 Q You testified at the very beginning of your  
22 testimony about this thing that, you know, in a day or  
23 two, you don't have any DNA evidence you can get; right?

24 A Correct.

25 Q Okay. You're not a DNA expert?

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1 A No, I'm not.

2 Q But what you do know, is when you do a physical  
3 exam on someone that's made an allegation of sexual  
4 assault, that you can find DNA; correct?

5 A If -- if it's been 12 to 24 hours after the  
6 assault, that is the time that the scientists and the  
7 DNA experts tell us --

8 Q Right.

9 A -- no longer try after that period of time.

10 Q On her body; right?

11 A Pardon me?

12 Q On the body; correct?

13 A Correct.

14 Q Okay.

15 A And then you have a little bit longer on  
16 fomites, like sheets and towels and panties and that  
17 kind of thing.

18 Q Correct. And if you had the opportunity, you  
19 would take these items into evidence, wouldn't you?

20 A In the acute cases, I do, yes.

21 MS. CAMPBELL: Okay. Thank you. I may be  
22 finished, your Honor. Just one more second.

23 (Respite.)

24 Q (By Ms. Campbell) Kristin, you're not an  
25 Ob-Gyn doctor; Right?

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1 A No, ma'am.

2 Q And you're not a surgeon; right?

3 A No.

4 Q Okay. And just so we're clear, again, there  
5 were no findings -- under this nothing does not mean  
6 happened in adolescence genital anatomy report that you  
7 relied on relating to pregnant adolescents; right?

8 A Well, two of the 36 victims in that report had  
9 findings. The reason they used pregnant girls was they  
10 wanted to have a way to prove that girls had been  
11 sexually active, and that's about the only way you can  
12 prove. So in that study, 36 pregnant adolescents, who  
13 we can all accept had been sexually active, were  
14 examined by experts, and two of those 36 females had  
15 findings of vaginal penetration.

16 Q Okay. Again, this is the report that you  
17 relied on, the pregnant one?

18 A That is one of the reports that I rely on.  
19 Yes, it is.

20 MS. CAMPBELL: Thank you. I have nothing else.

21 MS. CONCANNON: Thank you, your Honor. Just  
22 very briefly.

23 **REDIRECT EXAMINATION**

24 **BY MS. CONCANNON:**

25 Q If there's -- if one of the -- if the child

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1 that you are examining indicates that blood was present,  
2 does that necessarily indicate that the hymen was torn?

3 A Not at all. It's very different in cases of  
4 sexual assault. The big difference between sexual  
5 assault and consensual sex is the arousal factor. In  
6 consensual sex, when a female is aroused, her body  
7 produces a lubricant that makes the whole process a lot  
8 easier. If there's no arousal, there's no lubricant.  
9 And there are spots that -- areas of the hymen -- or  
10 it's actually in front of the hymen, where in most cases  
11 of sexual assault where there is trauma, it's not really  
12 seen on the hymen. It's seen in the posterior  
13 fourchette, which is -- I describe it as thinking of a  
14 doormat in front of a door. That's what the posterior  
15 fourchette is.

16 So in cases of assault, if there is no  
17 lubricant, the friction tends to cause injury in that  
18 area. If you're looking at a clock, it's like at  
19 six o'clock. And that's often -- if I do an acute case  
20 where there's been, you know, an assault, and I've seen  
21 the child right afterwards, that is often an area where  
22 I will see bleeding.

23 Q All right. You wrote a report after your  
24 examination of Minor ; didn't you?

25 A Yes.

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1 Q Did this report include your findings of the  
2 exam?

3 A It did.

4 Q If you're examining a child and there's no  
5 evidence of trauma or you state there's no evidence at  
6 all, would you typically take pictures of that?

7 A No.

8 MS. CONCANNON: I have no further questions.

9 MS. CAMPBELL: Just briefly, your Honor.

10 **RE-CROSS-EXAMINATION**

11 **BY MS. CAMPBELL:**

12 Q Kristin, on page 5 of your report, you made a  
13 notation in your pertinent medical history that, in  
14 fact, Minor had an Ob-Gyn doctor on Hilton Head; correct?

15 A Yes.

16 Q And that that Ob-Gyn doctor probably around, I  
17 guess, March or April had started prescribing Minor birth  
18 control pills; correct?

19 A Correct.

20 MS. CAMPBELL: Okay. That's all I have.

21 THE COURT: Ladies and gentlemen, we've reached  
22 an appropriate time for us to take our lunch break. Do  
23 not begin your deliberations. Do not discuss this case  
24 amongst yourselves. Please take your notepads with you.  
25 We will lock them up during your lunch break. Please be

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1 back in your jury room at 1:45. We will begin promptly  
2 once all 14 of you are there.

3 Please stay seated.

4 Please rise for the jury.

5 (The jury is escorted from the courtroom  
6 at 12:35 p.m.)

7 THE COURT: Thank you. Please be seated.

8 You may step down. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: You are free to go.

11 Do you have any additional witnesses?

12 MS. CONCANNON: I will have Investigator Adams  
13 briefly, and that is my last witness.

14 THE COURT: All right. I'm going to advise  
15 your client of his right to testify. And we'll get to  
16 that today.

17 MS. CAMPBELL: Would you like us to stand?

18 THE COURT: Yes, please.

19 MS. CAMPBELL: Thank you.

20 THE COURT: Mr. Barrett, I'm going to place you  
21 under oath. Please swear Mr. Barrett.

22 (The oath is administered by the Deputy Clerk  
23 of Court, and the Defendant answered as follows:)

24 THE DEFENDANT: I do.

25 THE DEPUTY CLERK OF COURT: Thank you.

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1           THE COURT: All right. Mr. Barrett, at this  
2 time, I'm going to explain to you certain of your  
3 rights. If you do not understand anything that I say,  
4 please let me know. And if you need me to explain  
5 anything in further detail, please let me know. Do you  
6 understand?

7           THE DEFENDANT: Yes, ma'am.

8           THE COURT: We are very close to the stage of  
9 the trial where you may present your defense. You have  
10 the right to claim the protections given to you by the  
11 Fifth Amendment to the Constitution of the United  
12 States. This amendment states in part that no person  
13 shall be compelled in any criminal case to be a witness  
14 against himself. This means that you cannot be required  
15 to testify in this case. You have the right to testify  
16 on your own behalf; however, no one can make you  
17 testify. This is a personal right, and no one can waive  
18 this right except for you.

19           If you decide to testify, you will be subject  
20 to the same rules that govern other witnesses, and you  
21 may be examined and cross-examined on any relevant issue  
22 in this case. In addition, if you have any convictions  
23 involving dishonesty, or false statements, or for crimes  
24 punishable by imprisonment for more than one year, and I  
25 determine that the probative value of admitting the

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1 evidence outweighs its prejudicial affect to you, the  
2 Solicitor will be able to introduce your record to  
3 attack your credibility.

4 Any convictions?

5 MS. CONCANNON: Yes, your Honor. He has  
6 contributing to the delinquency of a minor, which was  
7 noted earlier. He also has a financial transaction card  
8 fraud, burglary second degree.

9 THE COURT: If you decide to testify, this  
10 decision on your part must be freely, voluntarily, and  
11 intelligently made, with the knowledge of the  
12 protections given to you by the Fifth Amendment and the  
13 consequences of your decision to testify. If you decide  
14 not to testify, I will instruct the jurors that they  
15 cannot give the fact that you did not testify any  
16 consideration whatsoever, and there is to be absolutely  
17 no prejudice to you because you did not testify.

18 It is left entirely up to you whether or not  
19 you testify. You may talk to your friends, your family,  
20 your attorney or anyone else, but the final decision  
21 will be left entirely up to you. Do you know understand  
22 what I've explained to you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have any questions about  
25 what I've explained to you?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you discussed with your  
3 attorney previously whether or not you will testify?

4 THE DEFENDANT: No, ma'am. Not at this time.

5 THE COURT: You have not previously discussed  
6 your attorney your -- whether or not you will testify?

7 THE DEFENDANT: Not if I would speak on my own  
8 behalf, no, ma'am, but to the case, yes.

9 THE COURT: All right. When the appropriate  
10 time comes, my question will be to you, do you wish to  
11 testify? But you will have over the lunch hour to make  
12 that decision.

13 All right. Anything before we take our lunch  
14 break?

15 MS. CONCANNON: Not from the State, your Honor.

16 MS. CAMPBELL: No, ma'am.

17 THE COURT: If you will let me know, if you  
18 will tell whomever I need to speak with about the rest  
19 of the week, so that we can plan accordingly. Thank  
20 you.

21 (A lunch recess is taken from 12:39 p.m.  
22 until 1:43 p.m.)

23 MS. CONCANNON: Mr. Shelton is in another  
24 courtroom handling other cases. I think he won't be  
25 present for the rest of the afternoon. My apologies.

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Official Court Reporter for the State of South Carolina

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1 THE COURT: Let's bring in the jury.

2 THE BAILIFF: The jury is ready.

3 THE COURT: Thank you.

4 (The jury is escorted into the courtroom  
5 at 1:48 p.m.)

6 THE COURT: Thank you. Be seated. Call your  
7 next witness.

8 MS. CONCANNON: Thank you, your Honor. State  
9 calls Investigator John Adams.

10 THE DEPUTY CLERK OF COURT: Place your left  
11 hand on the Bible, raise your right hand for me, please.

12 (The oath is administered by the Deputy Clerk  
13 of Court, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: Please be  
16 seated. State your name and spell it for the Court,  
17 please.

18 THE WITNESS: My name is John Adams. I'm an  
19 investigator with the Beaufort County Sheriff's Office.  
20 My last name is A-d-a-m-s.

21 JOHN ADAMS,  
22 having been first duly sworn by the Deputy Clerk of  
23 Court to tell the truth, the whole truth, and nothing  
24 but the truth, was examined and testified upon his oath  
25 as follows:

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DIRECT EXAMINATION

1

2 BY MS. CONCANNON:

3 Q You mentioned you're with the Beaufort County  
4 Sheriff's Office. In what capacity are you with the  
5 Sheriff's Office?

6 A I'm an investigator with the Sheriff's Office.

7 Q And as an investigator, what are some of your  
8 duties?

9 A I investigate cases, collecting evidence,  
10 interviewing witnesses, things of that nature.

11 Q Okay. Were you involved in the investigation  
12 of this current case we have been discussing the past  
13 two days?

14 A Yes, ma'am, I was.

15 Q Okay. Were you the lead investigator on this  
16 case?

17 A I was.

18 Q Do you know who Minor is?

19 A I do.

20 Q Who is Minor ?

21 A Minor is the victim in this case. It  
22 was reported on July the 3rd of 2012, by Minor  
23 grandmother, Mary, that she had been sexually assaulted  
24 at the residence of her mother's house, and where her  
25 mom lived with her boyfriend, at Forest Drive

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1 in Bluffton, Beaufort County, South Carolina.

2 Q How old was Minor ?

3 A At the time of the incident, she was 14.

4 Q Do you know how old she is now?

5 A I believe she's 15.

6 Q Who was Minor living with at that residence?

7 A At that residence, she was living with her  
8 mother's boyfriend, Shawn Ward, and her mother, Brandace  
9 Smith.

10 Q Do you know who she lives with today?

11 A I believe she lives with her father,  
12 Tyreed Lucas, on Hilton Head Island.

13 Q Was there anybody else living with Minor  
14 at that house with her mother and her mother's  
15 ex-boyfriend?

16 A I know that sometimes her half-sisters or  
17 stepsisters would live with them there off and on.

18 Q You said off and on. Where would they live  
19 when they weren't there?

20 A When they weren't there, they would live with  
21 their father, Michael Gray, at another residence in  
22 Bluffton.

23 Q Okay. So Minor 's stepsister -- or  
24 half-sisters, they share the same mother?

25 A Correct.

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1 Q Okay.

2 A These -- the sisters that you describe share  
3 the same mother.

4 Q Okay. Thank you.

5 In your investigation of this incident, what  
6 were some of your duties specifically?

7 A Well, on July the 5th, I made contact with  
8 Minor ' mother, Brandace Smith, and arranged for her  
9 to have a forensic interview at Hope Haven of the  
10 Lowcountry, the child's advocacy center in Bluffton.  
11 And on the 20th of July in 2012, I went to that forensic  
12 interview at Hope Haven of the Lowcountry, and I  
13 observed that Minor was brought to that interview  
14 with her -- by both her mother and her father, the  
15 mother, Brandace Smith, and the father, Tyreed Lucas.

16 I observed the forensic interview that took  
17 place between interviewer Kendra Twitty and Minor  
18 via closed-circuit television, which was live and in  
19 real time. And one of the things I observed about  
20 Minor during the interview is that she was intelligent,  
21 she was articulate, very soft-spoken. And as Kendra led  
22 her towards the actual assault part of the story, she  
23 became very withdrawn and silent and was unable to speak  
24 about the -- the assault itself and actually had to  
25 write down in a note what had occurred to her.

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1 Q Did Minor state the time and place the  
2 incident occurred?

3 A She said that it happened a few days after  
4 Saint Patrick's Day, a couple of days after Saint  
5 Patrick's Day.

6 Q And where the incident happened?

7 A At Forest Drive, Bluffton, Beaufort  
8 County, South Carolina, the residence of Minor's mother  
9 and her live-in boyfriend, Shawn Ward.

10 Q What else did you do in your investigation of  
11 the case?

12 A I also met with Mr. Ward on March the 16th of  
13 2013 at that residence, Forest Drive, at which  
14 time I photographed the residence. And I realized that  
15 the house was consistent with the house that Minor had  
16 described in her forensic interview. It was two  
17 stories. And Mr. Ward indicated that she did, in fact,  
18 stay in an upstairs bedroom.

19 Q Why did you wait almost a year after the  
20 incident occurred -- or I guess it was -- came to your  
21 attention in July and waited with until March to go  
22 speak with Mr. Ward?

23 A Well, twofold. The -- well, I guess more than  
24 twofold. I realized that neither Ms. Smith -- Brandace  
25 Smith or Minor were living at the residence. And

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1 the delayed disclosure of this particular case would  
2 have precluded me from collecting evidence from the  
3 scene that I could directly link to the actual assault  
4 itself. And I also went, I believe, at the request of  
5 the assistant solicitor that was assigned to the case at  
6 that time, Patrick Hall.

7 Q Did you speak with Mr. Ward?

8 A In reference to court preparation.

9 Q Had the disclosure been immediate at the time,  
10 would you have gone to collect evidence from the  
11 incident location?

12 A Yes, ma'am, we would have. Normally we do that  
13 via search warrant, and we collect lots of forensic  
14 evidence, if it's available at the scene.

15 Q Would forensic evidence have been available  
16 five months after the incident happened?

17 A Not to my knowledge, ma'am.

18 MS. CONCANNON: I have no further questions for  
19 this witness at this time.

20 MS. CAMPBELL: Thank you, your Honor.

21 **CROSS-EXAMINATION**

22 **BY MS. CAMPBELL:**

23 Q As the lead investigator in this case, Officer  
24 Adams, you received the report from Deputy Sheriff  
25 Glass; correct?

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1 A Yes, ma'am, I did.

2 Q Deputy Sheriff Glass is the officer who spoke  
3 with the stepgrandmother, Mary; correct?

4 A Yes, ma'am.

5 Q And -- and you know Deputy Sheriff Glass is  
6 trained, just as you are, to be accurate in his reports;  
7 correct?

8 A I would assume so, ma'am. I'm not -- I don't  
9 know exactly what the training is that Deputy Glass had,  
10 but I would assume that that is correct.

11 Q Now, Officer Adams, you relied on this report;  
12 right?

13 A I relied on it for the location, the people  
14 involved, and the contact information, to make contact  
15 with those people.

16 Q Okay. So, yes, you relied on Deputy Sheriff  
17 Glass' report?

18 A Yes, ma'am.

19 Q And in that report, it's very clear that the  
20 information you took from that report was that the  
21 allegation related to one to two weeks before the end of  
22 school; correct?

23 A I would have to go back and reread that. If  
24 you would like me to, I'd be happy to.

25 MS. CAMPBELL: May I approach?

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1 THE COURT: You may.

2 MS. CAMPBELL: Thank you.

3 (Document is handed to the witness.)

4 Q (By Ms. Campbell) Do you have a copy of the  
5 full report?

6 A Yes, ma'am, I do.

7 Q All right. Well, then, perhaps I could just  
8 direct you.

9 A I'd be happy to be directed.

10 Q On page 3 of 3 of Deputy Glass' report, dated  
11 July 3rd, 2012, in the second paragraph, three sentences  
12 down, Mary stated, Minor advised the incident occurred  
13 one to two weeks prior to the conclusion of school.

14 A It does say that in his report.

15 Q Okay. It also says in the report, that you  
16 relied on in conducting your investigation, that this  
17 allegation was leveled against Mr. Barrett, against  
18 Gerald, while Mary was traveling from Bluffton to Aiken  
19 with Minor , and that's when it took place; right?

20 A I'm not sure of the question, ma'am.

21 Q Okay. On page 3 of 3, Deputy Sheriff Glass  
22 reports that Mary advised that while she was traveling  
23 with Minor the allegation was made --

24 A Yes, ma'am.

25 Q -- correct?

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1           Okay. Not when they got back to Aiken, not in  
2 Bluffton, but while they were traveling, the allegation  
3 was made?

4           A     That is what it says in the report.

5           Q     And the allegation was made on July -- well,  
6 around the beginning of July; correct?

7           A     Yes, ma'am.

8           Q     Okay. Not spring break, but the beginning of  
9 July?

10          A     It was reported to Deputy Glass on July the 3rd  
11 of 2012.

12          Q     All right. It was also reported to Deputy  
13 Sheriff Glass, in information that you relied on, that  
14 the original time of the assault was 1:00 a.m., not  
15 5:00 a.m.; isn't that correct? Doesn't the report  
16 reflect that?

17                 Under the interview with Brandace Smith, Minor  
18 told her the suspect came into her room at 1:00 a.m. and  
19 laid in the bed with her; right?

20          A     It does say that in the report, ma'am.

21          Q     Okay. And that the incident occurred  
22 March 1st; correct? Three lines down?

23          A     It does say that in the report.

24          Q     Okay. Officer Adams, you were trained here in  
25 South Carolina at the Criminal Justice Academy?

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1 A Yes, ma'am.

2 Q Okay. And you were trained to interview  
3 witnesses?

4 A Yes, I have had training in interviewing  
5 witnesses.

6 Q And you were trained to interview victims of  
7 crimes?

8 A Yes, ma'am, I was.

9 Q And you were trained to interview suspects in  
10 crimes; correct?

11 A That's correct, ma'am.

12 Q You were trained to properly secure evidence;  
13 correct?

14 A Yes, ma'am.

15 Q That would include fingerprint evidence, that  
16 would include DNA evidence; correct?

17 A Yes, ma'am.

18 Q That would include evidence of semen at a crime  
19 scene; correct?

20 A Yes, ma'am.

21 Q Okay. And there's special procedures that you  
22 had to follow to collect that evidence; correct?

23 A Yes, ma'am.

24 Q Okay. And you know how to do that?

25 A I do.

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1 Q Okay. In fact, you regularly do that activity.

2 You process crime scenes?

3 A Yes, ma'am, I do.

4 Q Okay. So would it be fair to say that you  
5 might even be an expert in the processing of crime  
6 scenes; correct?

7 A I would not consider myself to be an expert,  
8 but I have done it before many times.

9 Q And you're accurate; right?

10 A I try to be, yes, ma'am.

11 Q And thorough?

12 A I try to be thorough.

13 Q Okay. And through your accurate and thorough  
14 investigation, you learned that Minor had made  
15 an allegation against Gerald Barrett that a sexual  
16 assault occurred, not one to two weeks before the end  
17 of school, but two days after Saint Patrick's Day, is  
18 what you -- you got; right?

19 A Yes, ma'am. I learned that at the forensic  
20 interview at Hope Haven.

21 Q And you took that information, and you went and  
22 got arrest warrants for Mr. Barrett; right?

23 A Yes, ma'am, I did.

24 Q And in your arrest warrant, you stated March  
25 19th was the day this happened; right?

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1           A     I did.

2           Q     Okay. And to the best of your knowledge, the  
3 solicitor's office took that information and got those  
4 indictments; right?

5           A     I believe that's correct, yes, ma'am.

6           Q     But those aren't the first indictments they got  
7 in this case, are they? They're the second set of  
8 indictments; right?

9           A     I believe the first set of indictments were for  
10 the date of March the 19th, but the second set were for  
11 the other date.

12          Q     Right. The second set of indictments they  
13 got extended the date all the way back to March 11th;  
14 correct?

15          A     I believe that's correct, yes, ma'am.

16          Q     And Assistant Solicitor Patrick Hall talked to  
17 you about the reason they needed to move the date back  
18 to March 11th; correct?

19          A     He did tell me that they were unsure of the  
20 dates, and that I needed to follow up on --

21          Q     And the solicitor also had informed you that  
22 Mr. Barrett had served notice of an *alibi* defense,  
23 correct, for March 19th; right?

24          A     That's correct.

25          Q     And so he sent you out, after he was made aware

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1 that Mr. Barrett had an *alibi* for the date of March  
2 19th, to talk to Shawn Ward; correct?

3 A That's correct.

4 Q Okay. And to get Shawn Ward to make a  
5 statement -- or to receive a statement, I suppose, from  
6 Shawn Ward, that would move the date of the alleged  
7 assault all the way back to the Saint Patrick's Day  
8 Parade on Hilton Head; right?

9 A He did not instruct me as to what date to get  
10 it for. The date problem, I guess, for lack of a better  
11 term, is primarily my fault. Because when I watched the  
12 Hope Haven interview of Minor she said that the  
13 assault had occurred a couple of days after Saint  
14 Patrick's Day, which I assumed to be March the 17th,  
15 when Saint Patrick's Day actually was in 2012. And  
16 after speaking with Mr. Ward, I realized that she was  
17 probably referring to the actual Hilton Head Island  
18 Saint Patrick's Day Parade, which during 2012 was not  
19 celebrated on the same day as traditional Saint  
20 Patrick's Day. That Saint Patrick's Day Parade was  
21 March the 11th.

22 Q And this light bulb didn't go off, you know,  
23 over your head until you had been informed that  
24 Mr. Barrett had an *alibi* for March 19th; correct? None  
25 of that took place until you knew about the *alibi* from

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1 the assistant solicitor; right?

2 A Ma'am, I did not realize that I had made a  
3 mistake in assuming that the child was referring to  
4 traditional Saint Patrick's Day until that time.

5 Q Now, you also received information through your  
6 investigation -- and this is not in March 2013. This is  
7 back in the summer of 2012. Just two -- maybe even a  
8 month after the alleged sexual assault, if you take the  
9 date being the end of school, that -- that a -- a  
10 violent sexual assault, where there was blood and semen,  
11 had taken place at Shawn Ward's house, in the bed there,  
12 and you never went to the scene. You never looked at  
13 the bed at all; correct?

14 A That's correct.

15 Q Okay. Now, isn't it true, Officer Adams, that  
16 the Beaufort County Sheriff's Department has what could  
17 be considered a state-of-the-art DNA processing lab  
18 right here in Beaufort County?

19 A Yes, ma'am, they do have a DNA lab here.

20 Q Tim French runs that program, and it is -- it  
21 is stellar. It's certified. It is good to go; right?

22 A Yes, ma'am.

23 Q All right. And that DNA lab could take samples  
24 from a crime scene, like a mattress, where there's  
25 semen, stains, and analyze it to determine where that

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1 came from, couldn't they?

2 A They could, yes, ma'am.

3 Q But the reason they can't do that in this case  
4 is because we don't have any such samples in this case;  
5 correct?

6 A That is correct. We do not have those samples.

7 Q And that's because you didn't go to the scene,  
8 and you didn't take those samples; correct?

9 A I did not take those samples because of the  
10 length of time of the disclosure.

11 Q I understand what you're saying, but you didn't  
12 go, and you didn't take them; correct?

13 A I did not take any samples.

14 Q And even in March 2013, when you did go to the  
15 scene, armed with your camera, to take the photographs,  
16 you didn't take any samples; correct?

17 A That is correct.

18 Q Okay. So the bed that you photographed,  
19 upstairs at Shawn Ward's house, did you think that was  
20 the bed that the assault had happened in?

21 A The reason why the bed is in the photograph  
22 is because I took general overview photos of the entire  
23 house. I did not believe that that was the actual  
24 bed.

25 Q Why not?

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1           A     Because Brandace Smith and her children had not  
2 lived there in quite some time.

3           Q     But you don't know that for sure; right?

4           A     That's correct.

5           Q     And you're an investigator; right?

6           A     I am.

7           Q     And you might should have asked that question,  
8 shouldn't you?

9           A     I should have.

10          Q     Okay. The answer to that question, and the  
11 stains on that bed, might actually contain the  
12 information that would say there is no stain on that  
13 bed; there is no semen on that bed; right?

14          A     I believe Mr. Ward testified earlier that it  
15 was not the same bed.

16          Q     That he had disposed of the bed where the  
17 alleged sexual assault took place; right? He had gotten  
18 rid of it?

19          A     It wasn't the same bed. That's what I recall.

20          Q     And did he tell you that on the day you were  
21 there taking the photographs?

22          A     I don't recall him telling me that.

23          Q     One of the critical pieces of information that  
24 you were able to get from Mr. Ward, when you went to  
25 talk to him in March of 2013, it seems pretty clear from

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1 your report, and his statement, is that on the night of  
2 the Saint Patrick's Day Parade from Hilton Head, he and  
3 Brandace got home after Minor got home, right?

4 A May I refresh my memory?

5 Q Sure.

6 (Respite.)

7 (The witness reviews documents.)

8 A What I recall from memory, ma'am, is that they  
9 rode separately.

10 Q Would it be -- would you like to see a copy of  
11 his statement?

12 A Yes, ma'am, I would.

13 Q Okay. Let me -- let me provide that to you.

14 MS. CAMPBELL: May I approach?

15 THE COURT: You may.

16 Q (By Ms. Campbell) Officer Adams, I have  
17 highlighted the sentence that I'm referring to. If you  
18 could read that for the jury, please.

19 A It's: Someone took the girls back to the  
20 house. We followed about an hour or two later.

21 Q Okay. Thank you.

22 (Document is handed back to Ms. Campbell.)

23 MS. CAMPBELL: That's all I have.

24 MS. CONCANNON: Just briefly, your

25 Honor.

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REDIRECT EXAMINATION

1

2 BY MS. CONCANNON:

3 Q Investigator Adams, would it be common or  
4 typical for five months after a sexual assault has  
5 occurred --

6 MS. CAMPBELL: Your Honor, I'm going to object.  
7 He's not an expert. He's already testified he's not an  
8 expert.

9 THE COURT: I don't know what her question is.

10 MS. CAMPBELL: Okay.

11 Q (By Ms. Concannon) -- for you personally to go  
12 and collect DNA samples?

13 A That's correct.

14 MS. CONCANNON: I have no further questions,  
15 your Honor.

16 MS. CAMPBELL: Nothing.

17 THE COURT: You may step down. Thank you.  
18 Call your next witness.

19 MS. CONCANNON: Your Honor, at this point the  
20 State rests.

21 THE COURT: All right.

22 THE COURT: Ladies and gentlemen, you have now  
23 heard all the testimony that you will hear on behalf of  
24 the State. That signifies to the Court there's a matter  
25 of law that I must take up outside of your presence. Do

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1 not begin your deliberations; do not discuss the case  
2 amongst yourselves. You may leave your notepads in your  
3 chair.

4 Please rise for the jury. We will receive you  
5 back in just a few moments.

6 (The jury is escorted from the courtroom at  
7 2:11 p.m.)

8 THE COURT: Thank you. Be seated. Any motions  
9 or matters?

10 MS. CAMPBELL: May it please the Court, your  
11 Honor. At this time, on behalf of my client, I would  
12 make a Motion for Directed Verdict. I would renew my  
13 motion made previously, and in particular, my motion in  
14 reference to Kendra Twitty and her testimony with regard  
15 to the Child Sexual Assault Accommodation Syndrome. And  
16 I would continue to object, in the sense that, I believe  
17 what the State accomplished and did was to call it  
18 something different than what it was. And I should have  
19 had an opportunity, with that type of testimony, to have  
20 an expert of my own for Mr. Barrett, to defend him  
21 against that, and we were not granted that opportunity.

22 I would also renew my motion, which your Honor  
23 obviously has already ruled on, but for the record, I'm  
24 renewing the Motion to Quash the Indictments, as the  
25 dates were changed in those Indictments. And any other

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1 objections that I had during the trial that were ruled  
2 against me at this point. Thank you, your Honor.

3 THE COURT: All right. I need for you to go  
4 through each Indictment, tell me the elements of each  
5 Indictment, and the testimony that has been presented.

6 MS. CONCANNON: Thank you, your Honor. The  
7 first Indictment that Mr. Gerald has been presented with  
8 is 2012-1631. It charges him with the offense of  
9 criminal sexual conduct with a minor in the second  
10 degree. Minor got on the stand, was able to  
11 testify to the incident personally. She was the victim.  
12 Her story remained consistent from when she initially  
13 disclosed, when she initially gave her interview to  
14 Kendra Twitty as it was today. The only element --  
15 which isn't even an element of the offense charged --  
16 the only thing that was not exactly concrete and  
17 identical in every testimony was the date of the  
18 incident, and date is not an element of criminal sexual  
19 conduct.

20 Minor stated that he -- that the Defendant,  
21 Gerald Barrett, vaginally penetrated her with his penis  
22 after already having assaulted her with her hands --  
23 with his hands downstairs, which he also digitally  
24 penetrated her. That would encompass a sexual battery  
25 that Minor stated happened.

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1           And Minor     is 14 years old -- was 14 years old  
2 at the time of the incident. She was born in -- on New  
3                           , making her 14, and she's 15 today.

4           Mr. Barrett was 21 years of age at the  
5 incident. That would go to the criminal sexual conduct  
6 with the minor second degree. Ms. Twitty was able to  
7 reiterate what Minor     told her during the forensic  
8 interview, and it matched Minor     ' disclosure then, as  
9 well as today.

10           Mr. Barrett is also charged in the Indictment  
11 2012-GS-07-1632 with kidnapping. He did unlawfully  
12 seize, confine, or abduct, carry away without authority  
13 of law. Minor     stated that he held her arms down. He  
14 confined her to her bed. She stated she didn't -- she  
15 couldn't go away, she couldn't escape, she had nowhere  
16 to go. She stated that on the stand, as well as Kendra  
17 Twitty, in her recitation of what was told to her during  
18 the forensic interview.

19           He has also been charged with lewd act in  
20 Indictment 2012-GS-07-1633. And the lewd act stems from  
21 the incident that initially occurred earlier on in the  
22 night downstairs on the chair.

23           Minor     was 14 years old, and the Defendant was  
24 over the age of 16 when this occurred. The Defendant  
25 touched her breasts and her vaginal area, with his

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1 hands, on her skin, beneath her clothing. And she was a  
2 child. She was a minor. She was 14 years old when it  
3 happened. And he was above the age of 16 when he  
4 participated in this. It states it's unlawful for a  
5 person over 14 to willfully and lewdly commit  
6 lewd or lascivious acts on the body of a child under the  
7 age with the intent of arousing, appealing to, or  
8 gratifying, and that's what he did when he began to  
9 assault her downstairs, and first by groping and  
10 fondling her breasts underneath her clothing, and then  
11 following it up by groping and fondling her vaginal  
12 area, as well inserting his finger inside of her vagina.

13 testified to that.

14 We've had different testimony, and from Shawn  
15 Ward, as well as , placing the Defendant at the  
16 residence. He's been there before. He was there when  
17 it occurred. Shawn Ward testified that he gave him  
18 permission to spend the night.

19 The -- ' testimony has been consistent  
20 from day one. And the State would believe that all of  
21 the elements have been met. And Investigator Adams was  
22 also able to testify to the location and date that it  
23 did occur in Beaufort County. has always been  
24 consistent that it happened at the house that she lived  
25 at with Mom and Shawn.

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1           As far as identification, Minor       was able to  
2 identify the Defendant. Shawn Ward was able to identify  
3 the Defendant. And regarding date, even though we have  
4 yet pinpointed, the testimony has always stated that  
5 it's been around Saint Patrick's Day. And to a child,  
6 she may not equate Saint Patrick's Day with March 17th.  
7 She equated it with the parade instead of the actual  
8 calendar date of the holiday. Thank you.

9           THE COURT: Any response?

10          MS. CAMPBELL: No, I don't have any response,  
11 your Honor.

12          THE COURT: All right. Pursuant to Rule 19 of  
13 the Rules of Criminal Procedure, and ruling on a motion  
14 for directed verdict, the Court must view the evidence  
15 and all reasonable inferences in the light most  
16 favorable to the nonmoving party. I'm concerned only  
17 with the existence or nonexistence of the evidence, not  
18 as to the weight.

19          Mr. Barrett is charged with criminal sexual  
20 conduct of a minor, age 11 to 14, second degree,  
21 kidnapping, lewd act upon a child under 16. In order to  
22 prove second degree criminal sexual conduct with a  
23 minor, the State must prove that the Defendant engaged  
24 in the sexual battery with the victim, must prove that  
25 the victim was at least 11, but not more than 14 years

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1 old at the time of the sexual battery.  
2 For kidnapping, the State must prove that the  
3 Defendant knowingly and unlawfully seized, confined,  
4 inveigle, decoyed, kidnapped, abducted, or carried away  
5 another person without authority of law. For committing  
6 a lewd act upon a minor, the State must prove that the  
7 Defendant was over the age of 14. The State must prove  
8 the Defendant willfully and lewdly committed a -- or  
9 attempted to commit a lewd or lascivious act on or with  
10 the body or the parts of a child under the age of 16,  
11 with the intent to arouse, appeal to, or gratify the  
12 lust, passions, or sexual desires of the Defendant or of  
13 the child.

14 Minor testified that she was born  
15 . She was 14 in March of last year,  
16 2012. She stated that she was in her bedroom, and  
17 Mr. Barrett came in, laid down beside her, and his  
18 fingers touched and went inside of her lower private  
19 area. She stated that at certain points, he was holding  
20 her hands down with his hands. She stated that he put  
21 his private into her private.

22 Minor also testified that prior to the  
23 above sexual assault, she was sitting on the couch -- or  
24 in a chair, watching TV downstairs, and the Defendant  
25 sat down close to her. She indicated that she moved to

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1 the chair, and Bubba sat down with her. Minor  
2 testified that Bubba's body was touching her in the  
3 chair, that he further touched her lower private area  
4 underneath her clothes, and his fingers went inside of  
5 her.

6 In viewing the testimony that has been  
7 presented in the light most favorable to the nonmoving  
8 party, Motion for Directed Verdict on all three  
9 Indictments is denied. Further, the Court stands by all  
10 rulings prior -- made prior to this point. And there  
11 has been no testimony that has been presented that would  
12 change my initial ruling.

13 Note your exception to all of my previous  
14 rulings and to my motion for directed verdict.

15 Mr. Barrett, we have now reached the stage of  
16 the trial that you will present your defense. Have you  
17 made a decision whether or not you will testify?

18 THE DEFENDANT: I don't wish to.

19 THE COURT: All right. Have you had enough  
20 time to speak with your attorney concerning that matter?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. And, Ms. Campbell,  
23 you've had an opportunity, at least over the lunch hour,  
24 to speak with your client and prepare him for trial?

25 MS. CAMPBELL: I have.

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1 THE COURT: All right. Do you have any  
2 additional witnesses?

3 MS. CAMPBELL: I have spoken with my client  
4 about that, and there will be no additional witness.

5 THE COURT: All right. So you rest at this  
6 time?

7 MS. CAMPBELL: I would rest at this time, and  
8 then I would have additional motions.

9 THE COURT: All right. All right. I will  
10 allow you to rest in front of the jury. Let me hear  
11 your motions.

12 MS. CAMPBELL: Your Honor, again, I would renew  
13 the motions I made prior on the directed verdict. And  
14 at this point, I would add that I believe the State has  
15 failed to establish the jurisdiction. I believe that  
16 there has been no testimony from the witness stand that  
17 this crime occurred in Beaufort County.

18 THE COURT: I -- I have researched that,  
19 because that's one of my biggest things that I always  
20 make sure. And the detective -- one of the last  
21 questions that she asked; was he gave the address of the  
22 home and indicated it was in Beaufort County.

23 MS. CAMPBELL: And I appreciate that. But I  
24 felt that my interpretation of what he had said  
25 warranted me bringing that to the Court's attention and

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1 obtaining your ruling on that.

2 THE COURT: You have my ruling, because I am  
3 very particular about jurisdictional issues. And so I  
4 know for a fact that it -- that there was testimony that  
5 it occurred in Beaufort County.

6 MS. CAMPBELL: Thank you so much, your Honor.  
7 And, again, as I said, renew my motions for directed  
8 verdict and the other motions. Thank you very much.

9 THE COURT: All right. I have heard nothing  
10 that would make me change my ruling as to the motion for  
11 a directed verdict. Are you requesting any lesser  
12 included?

13 MS. CAMPBELL: I am not.

14 THE COURT: State requesting any lesser  
15 included?

16 MS. CONCANNON: No, your Honor.

17 THE COURT: State prepared to go forward and  
18 argue and charge at this time?

19 MS. CONCANNON: Yes, your Honor.

20 MS. CAMPBELL: I can. Would I like to? No. I  
21 would prefer to argue and charge in the morning. But we  
22 can proceed at this time, if that's what your Honor  
23 would like to do. I would like to have over the  
24 night to prepare my closing argument and to have  
25 an opportunity to look at the evidence again and

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1 to -- although I had submitted proposed requests to  
2 charge to your Honor, I would like to have an  
3 opportunity to go back through those again and have sort  
4 of a conference, if you will, with the bench about the  
5 charges. I think I need to know what they are before I  
6 do my closing.

7 THE COURT: What's the State's preference?

8 MS. CONCANNON: Your Honor, the State is  
9 prepared to close and charge this afternoon. But it's  
10 in your discretion. We will go in the morning, if  
11 that's what --

12 THE COURT: I didn't hear your last --

13 MS. CONCANNON: We're prepared to go this  
14 afternoon, but we can also go in the morning, if that's  
15 what you so desire.

16 THE COURT: All right. I'm going to bring the  
17 jury in and release them. We'll argue and charge it in  
18 the morning. Is Mr. Hall released from his subpoena?

19 MS. CAMPBELL: He is.

20 THE COURT: All right. If you will please  
21 let --

22 MS. CAMPBELL: As is Deputy Sheriff Glass. He  
23 should be released as well.

24 THE COURT: All right.

25 Bring in the jury.

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1           You will need to rest in front of the jury.

2           MS. CAMPBELL: Yes, I will.

3           THE COURT: Thank you.

4           (The jury is escorted into the courtroom  
5 at 2:25 p.m.)

6           THE COURT: Thank you. Please be seated.

7           Ms. Campbell?

8           MS. CAMPBELL: May it please the Court, your  
9 Honor? On behalf of my client, at this time, the  
10 Defense rests.

11           THE COURT: Ladies and gentlemen, you have now  
12 heard all of the testimony that you will hear in this  
13 case and received into evidence all the exhibits that  
14 will be made part of the record in this case. What is  
15 left is closing arguments on behalf of counsel, and then  
16 I will instruct you on the law applicable to this case.

17           Ladies and gentlemen, we have determined that  
18 we are going to break for the evening, come back in the  
19 morning and argue and charge, so that you will have the  
20 full day, and if you need any additional time to  
21 deliberate -- hear closing arguments, the instructions,  
22 and deliberations. Ladies and gentlemen, do not begin  
23 your deliberations. I have not instructed you on the  
24 law applicable to this case. Ladies and gentlemen, do  
25 not do any independent research regarding this matter.

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1 Please go home, have a wonderful afternoon, and be back  
2 in your jury room at 9:15. We will begin again promptly  
3 once all 14 of you are here.

4 Please have a wonderful afternoon. I will see  
5 you in the morning. Please rise for the jury.

6 (The jury is escorted from the courtroom  
7 at 2:27 p.m.)

8 THE COURT: Thank you. Be seated.

9 Anything before we break for the afternoon?

10 MS. CONCANNON: Nothing from the State, your  
11 Honor.

12 MS. CAMPBELL: Not from the Defense.

13 THE COURT: All right. I want to do a charge  
14 conference now so I can prepare them over the evening  
15 hour. I have Defendant's --

16 Have you had an opportunity to go over the  
17 charges presented by the Defendant?

18 MS. CONCANNON: No, your Honor.

19 MS. CAMPBELL: I apologize, because I believe I  
20 have one copy in here. And I can quickly make a copy  
21 for the prosecution. Right in the back. Right there.

22 (Document is handed to the Deputy Clerk of  
23 Court for copying.)

24 THE COURT: Mr. Shelton.

25 (A discussion is held off the record.)

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1 THE COURT: All right. As to the Defendant's  
2 Request to Charge, I do not charge that specific  
3 language, but it's encompassed in my general witness  
4 charge. Defendant's Request to Charge, Number 2, the  
5 last sentence is an incorrect statement of law. It's an  
6 "or" not an "and." So I will be charging the applicable  
7 section.

8 Defendant's Request to Charge, Number 3, is an  
9 accurate statement of the kidnapping. So I will charge  
10 that.

11 Defendant's Request to Charge, Number 4, is a  
12 correct statement of lewd act on a minor, and it will be  
13 charged.

14 Since Mr. Barrett did not testify, I will  
15 include Defendant's Request to Charge, Number 5.

16 I will be including my standard reasonable  
17 doubt charge, not Defendant's Request, Number 6.

18 Defendant's Request to Charge, Number 7, will  
19 be included as to expert witnesses.

20 Defendant's Request to Charge, Number 8, will  
21 be include.

22 Defendant's Request to Charge, Number 9, will  
23 be included.

24 Defendant's Request to Charge, Number 10, as to  
25 credibility of witnesses, will be included.

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1           And that is all I have.

2           Any questions concerning those? Pretty  
3 straightforward.

4           MS. CAMPBELL: May I?

5           THE COURT: You may.

6           MS. CAMPBELL: The one request to charge that I  
7 believe that your Honor disallowed or disapproved was  
8 Request to Charge, Number 6, which is the two-sentence  
9 definition of reasonable doubt. And my simple question  
10 to the Court would be, do you have the kind -- a  
11 reasonable doubt is the kind of doubt that would cause a  
12 reasonable person to hesitate to act, is that phrase  
13 included in your reasonable doubt charge?

14           THE COURT: Been a while since I gave a  
15 criminal charge. Give me just a second. I charge  
16 firmly convinced, and you must give the Defendant the  
17 benefit of the doubt. That's the one I charge.

18           Any questions?

19           MS. CAMPBELL: Your Honor, so I believe what I  
20 understand is that -- that my request to have the charge  
21 as a kind of doubt that would cause a reasonable person  
22 to hesitate to act is being then denied, to be included  
23 in the charge to the jury? I'm not saying to substitute  
24 it for your charge, but would you allow it to be charged  
25 in addition?

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1 THE COURT: I charge firmly convinced. So I am  
2 not charging the hesitate to act.

3 MS. CAMPBELL: Hesitate to act?

4 THE COURT: Yes.

5 MS. CAMPBELL: Okay. So would I be allowed,  
6 then, to make this is a Court's exhibit?

7 THE COURT: I want you to always make, if you  
8 can, a packet, and it can be Court's Exhibit 1.

9 MS. CAMPBELL: Well, I will approach, then, if  
10 I may, and mark this as Defendant's Exhibit in this  
11 matter.

12 THE COURT: All right. Do you not want to  
13 charge -- give us the whole packet and make it  
14 Court's 1? I think it's always a really good procedure  
15 to use.

16 MS. CAMPBELL: I will be happy to do that, your  
17 Honor.

18 THE COURT: All right. Thank you.  
19 Does the State have any requests to charge?

20 MS. CONCANNON: No,, your Honor.

21 THE COURT: All right. With that, is there any  
22 further questions about the charge? There are no lesser  
23 included?

24 MS. CAMPBELL: I would like to ask, if I may  
25 approach.

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1 THE COURT: You may.

2 MS. CAMPBELL: And I believe this packet would  
3 be Defendant's --

4 THE COURT: It Court's 1.

5 MS. CAMPBELL: I'm sorry. Court's 1. If I  
6 may.

7 (Court's Exhibit No. 1 is marked for  
8 identification.)

9 MS. CAMPBELL: Will I have an opportunity to  
10 see a copy? Some judges will give us a copy of their  
11 charge --

12 THE COURT: No, ma'am.

13 MS. CAMPBELL: -- prior to my closing.

14 THE COURT: I don't. No.

15 MS. CAMPBELL: Okay. So then I would assume  
16 that I do not need to ask the Court for the typical  
17 criminal trial charges, which I did not, which would,  
18 obviously, unanimous verdict and those sorts of things.  
19 That's all going to be in your charge?

20 THE COURT: Correct.

21 MS. CAMPBELL: All right. Thank you very much.

22 THE COURT: Thank you.

23 MS. CONCANNON: No objections. Nothing further  
24 from the State regarding the charge.

25 THE COURT: All right. See you at 9:15, ready

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1 to go.

2 I do not have the verdict forms printed, but I  
3 typically print a verdict form for each charge, check  
4 guilty, check not guilty, just so you know. So there  
5 will be three separate verdict forms.

6 MS. CAMPBELL: Thank you, your Honor.

7 THE COURT: All right. We're at ease. Thank  
8 you.

9 COURT IN ADJOURNMENT, at 2:35 p.m.

10 (End of Volume II of IV. Day three of the  
11 trial to commence tomorrow, May 22, 2013. at 9:15 a.m.)

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Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

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REPORTER'S CERTIFICATE

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STATE OF SOUTH CAROLINA )  
 ) ss.  
COUNTY OF BERKELEY )

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR,  
and Registered Professional Reporter, RPR, do hereby  
certify that the transcript of the foregoing  
proceedings, **VOLUME II OF IV**, accurately reflects the  
events that occurred before me to the best of my ability  
at the time and place set out on the caption hereto, the  
witnesses having been duly cautioned and sworn, or  
affirmed, to tell the truth, the whole truth, and  
nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,  
related to, nor employed by any of the parties to the  
action in which these proceedings were taken or to any  
attorney or counsel employed by the parties hereto, nor  
financially interested, directly or indirectly, in the  
outcome of this action.

CERTIFIED AND SIGNED on this 17th day of February,  
2014.

ORIGINAL

*Rolayne M. Volpe*  
ROLAYNE M. VOLPE, CCR, RPR  
Certified Court Reporter and  
Registered Professional Reporter  
Commission Expires: 8/3/2021  
SOUTH CAROLINA PUBLIC

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina



**A P P E A R A N C E S**

For the State:

**MARY CONCANNON**  
**BENJAMIN SHELTON**  
Fourteenth Circuit Solicitor's Office  
P.O. Box 1880  
Bluffton, South Carolina 29901

For the Defendant:

**TRACI CAMPBELL**  
Attorney at Law  
P.O. Box 525  
Beaufort, South Carolina 29901

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1 the jury the law in this case.

2 THE COURT: Thank you. We'll be at ease until  
3 the jury comes in. I just wanted to make sure you had  
4 seen the verdict forms.

5 (A recess is taken from 9:09 a.m. until  
6 9:17 a.m; at which time, the proceedings continue  
7 as follows:)

8 THE COURT: All the jurors are here. Anything  
9 before we bring them in? From the State?

10 MS. CONCANNON: No, your Honor.

11 THE COURT: From the Defendant.

12 MS. CAMPBELL: No, your Honor.

13 THE COURT: All right. Let's bring in the  
14 jury. Thank you.

15 (The jury is escorted into the courtroom  
16 at 9:18 a.m.)

17 THE COURT: Thank you. Please be seated.

18 Good morning, ladies and gentlemen. Did  
19 every member of the panel comply with the Court's  
20 instructions? If you failed to follow my instructions  
21 over the evening hours, please stand.

22 Let the record reflect that all 14 jurors have  
23 indicated that they complied the Court's instructions.

24 Ladies and gentlemen, as you were told  
25 yesterday when we recessed for the evening, you had



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1 when he walked in those doors. And she's right. When  
2 he set foot in this courthouse, he's presumed innocent.  
3 But flame by flame and flicker by flicker, that torch  
4 was extinguished. Gerald Barrett, Jr., he is the one  
5 that put that flame out. He extinguished it, he dug a  
6 hole, he buried it, and he stomped on it. But someone  
7 else carries that torch today: Minor She has that  
8 torch today. And it may not be as perfect or as pretty  
9 as it was when it came in here yesterday, but she's the  
10 one that carries it today.

11 This trial really wasn't about Minor This  
12 trial was about Gerald Barrett, Jr. and what he did.  
13 And because of that, the Defense tried to get you to  
14 look elsewhere. They tried to take your distraction  
15 [sic] away from the testimony, away from the truth.  
16 Now, we're all lucky enough we live on the coast and  
17 live by the water. And if you go to the beach and you  
18 put your toes in the sand, the sand kind of stirs up a  
19 little bit and it gets cloudy and you can't really see  
20 your feet anymore. Well, if you wait a second and stop  
21 and stay still, the sand sinks back to the bottom and  
22 you see your toes again. That's the truth. All these  
23 distractions will settle, and you'll see the truth. It  
24 is screaming at you. And the truth is, is that he raped  
25 her. He committed two sexual assaults on her.

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1           Now, some of these distractions that  
2 Ms. Campbell wanted you to focus on were the date that  
3 this happened. Well, Minor has never swayed that it  
4 happened around Saint Patrick's Day of last year.  
5 Children like to equate traumatic situations with maybe  
6 holidays or birthdays or something that stands out to  
7 them. But, again, Minor is a child, and she did not know  
8 that Saint Patrick's Day was not necessarily the date of  
9 the parade. She equated Saint Patrick's Day with the  
10 parade. She didn't know that it was March 17th. She  
11 thought it was the day that she celebrated it. It's not  
12 Christmas Day, it's not New Year's Eve, New Year's Day,  
13 or her birthday. She didn't know the date that it  
14 happened. She just knew it happened, it happened at  
15 Mom and Shawn's house, and it happened around Saint  
16 Patrick's Day. That has never changed. She has  
17 maintained that story from when she disclosed to her  
18 friends and sister, when she told Kendra Twitty about  
19 it, when she told police about it, and when she told you  
20 about it yesterday. That has never changed.

21           Next, the Defense wanted to get into Minor s --  
22 was she maybe smoking? Irrelevant. Even her, as a  
23 15-year-old girl, knew that has nothing to do with this  
24 case; and, no, I'm not smoking cigarettes. It has  
25 nothing to do with this.

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1           She next wanted you to look at, well, Minor's  
2 cutting herself. Well, that's insulting. She is a  
3 14-year-old child. Even adults do not talk about their  
4 depression or their cutting or how they're coping with  
5 their depression. Minor, herself, knew, not relevant.  
6 Has nothing to do with this case that we are here about.  
7 Has nothing to do with the fact that she was raped by  
8 Gerald Barrett, Jr.

9           She next wanted you to think of the domestic  
10 violence that maybe Minor has been exposed to. Sad, yes.  
11 Maybe shed some light on her family dynamic? Yes. Has  
12 anything to do with this? No. Nothing to do with the  
13 fact that, again, she was raped by Gerald Barrett, Jr.

14           She next wanted you to think that, if this  
15 happened, there should have been pools and piles of  
16 blood everywhere, puddles. There should have been blood  
17 everywhere. This wasn't a gunshot. This wasn't a knife  
18 attack. This was a sexual assault. And Kristin Dalton  
19 explained to you that, you know what, the amount of  
20 blood that Minor reported is consistent with the sexual  
21 assault that occurred. She reported blood that maybe  
22 was the same amount as a period to her, and that is  
23 consistent with what happened. There doesn't have to be  
24 puddles and pools of blood to make this story true.

25           She wanted you to pay attention to all these

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1 distractions. But I think the more important thing to  
2 pay attention to is what questions were not asked to  
3 Minor, what they didn't want you to look at, what they  
4 didn't want you to focus on. And that is the truth.  
5 She was never asked about the rape. She was never asked  
6 about the lewd act that happen downstairs. She was  
7 never asked it if happened at Mom's house. She was  
8 never asked what he did to her. She was never asked  
9 if he held her down, if he pinned her down, if he  
10 restrained her to her bed. She was never asked, Did he  
11 put his penis inside of you? No. Because that's the  
12 truth, and they did not want you to focus on that.

13 So let's talk about what really did happen, the  
14 facts that were -- that were said on that witness stand.  
15 Minor was sexually assaulted not once, but twice by that  
16 man. First, he attacked her downstairs in her own home.  
17 He groped her bare breasts, her 14-year-old body, with  
18 his hands. Second, he placed his hands down her pants  
19 and penetrated her with his fingers. He sexually  
20 assaulted her with that lewd act downstairs.

21 He was not done. He went upstairs to her  
22 bedroom. He pinned her down. He held her arms down so  
23 she could not move. She could not go anywhere. She was  
24 stuck. She was forced. She was confined to her bed.  
25 So she shut her eyes. That was her escape. He put his

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1 entire weight on top of her, he held her down, and he  
2 forced his penis inside of her. He raped her.

3 After the assault, Minor went to the bathroom.  
4 She wanted to get it off of her. She wanted to wash it  
5 off of her. She was ashamed. She was embarrassed. She  
6 first went to the bathroom; she used the restroom. And  
7 she said to you, as she told y'all, yeah, when I wiped,  
8 there was a little bit of blood, and there was also this  
9 weird white stuff. Weird white stuff. That's what a  
10 14-year-old girl would call it. She doesn't know what  
11 it. She probably still today doesn't know what that is.  
12 But it is indicative of what happened. He forced her,  
13 he raped her, and he left that on her.

14 So now let's talk about who Minor disclosed to  
15 and when she told. We heard a little bit about Minor's  
16 family dynamic. She doesn't come from the best home.  
17 Her family's a little broken. So who was she going to  
18 tell? She was going to tell the people she felt closest  
19 to. Those are her friends and her sister, people around  
20 her age who she could confide in, who she felt  
21 comfortable telling this to. She didn't want to tell  
22 grown-ups. She did not want to tell grown-ups. She was  
23 embarrassed. She was ashamed. She couldn't believe  
24 this happened to her. And she told you up there, she  
25 was scared. She didn't want to talk to police about

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1 this. She didn't want to talk to anybody about this.

2 She was scared and ashamed.

3           When she had to tell Kendra Twitty about this  
4 in the interview, she shut down. She was soft-spoken  
5 at the beginning question, and she was able to get out a  
6 little bit about herself. But once the questions were  
7 asked regarding the specifics of the sexual assault,  
8 she shut down. She could not even say the words because  
9 she was so ashamed, so scared, and so embarrassed about  
10 what happened to her. She had to write it down. You  
11 read the words that she wrote down, words that nobody  
12 should ever have to think or say or write down: He  
13 raped me. He got on top of me, and I thought I was  
14 dying.

15           You saw her walk through those very doors and  
16 come up here and get on that witness stand. Her head  
17 was hung down. She walked with a slow pace. She was  
18 soft-spoken. She couldn't look up. She could barely  
19 even look in that direction. She was -- her shame and  
20 her horror was written all over her. And her demeanor  
21 just showed the truth more, that -- that, in fact, he  
22 raped her.

23           Another thing that needs to be acknowledged is  
24 that the story she told y'all yesterday that she was  
25 brave enough to say and relive again, because every time

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1 she says it, she's taken back to that very night, is the  
2 same story she disclosed. It's the same story she told  
3 police officers; it's the same story she said in her  
4 interview to Kendra Twitty in July of last year; and  
5 it's the same story she said to y'all yesterday. The  
6 facts have never changed. That's because the truth has  
7 never changed. The truth has remained the same since  
8 the night it happened. It remained the same the first  
9 time she told her friends. It remained the same the  
10 first time she had to talk to the police about it. It  
11 remained the same the first time she had to talk to  
12 Kendra Twitty about it. And it remained the same when  
13 she told y'all. And it's still the same right now. The  
14 facts of the assault have never changed: He touched her  
15 downstairs, he groped her downstairs, and then raped her  
16 upstairs.

17 Gerald Barrett is a guilty man. He is first  
18 guilty of the lewd act for groping her and fondling her  
19 bare skin and digitally penetrating her on the couch  
20 downstairs. Second, he is guilty of criminal sexual  
21 conduct in the second degree with a minor. Minor was 14  
22 years old when this happened to her. Her life may never  
23 be the same. Gerald Barrett was a grown man. He's an  
24 adult in every sense of the word. Even if you want to  
25 consider, well, maybe he thought she was consenting

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1 because she wasn't really trying to go anywhere. No.  
2 She was 14 years old. She cannot consent to something  
3 like this. She does not have the wherewithal to know  
4 what is happening. She knows that it -- she can't do  
5 it. But Minor never indicated that she wanted it, that  
6 she liked it, that she -- it was her idea. From the  
7 beginning she has said, He held me down, and he forced  
8 himself on me. Consent is not there. He forced a  
9 14-year-old child to have sex with him.

10 And, finally, he is also guilty of kidnapping.  
11 Minor was confined to her own bed. She had nowhere to  
12 go. She was stuck. She had no escape. He took his  
13 adult body, put it on top of her, pinned her arms down.  
14 She was lifeless underneath his weight and his strength  
15 and his might. She could not go anywhere. She was  
16 stuck. He held her down and forced his penis inside of  
17 her and raped her. The only escape she had was to close  
18 her eyes and try to survive, and that's what she did.  
19 And that is what she told you because that is the truth.  
20 The truth was there the very day this happened. The  
21 truth was there when we started this trial. The truth  
22 is still here today. And that truth is, that man is  
23 guilty. Thank you.

24 MS. CAMPBELL: May it please the Court?

25 THE COURT: Yes, ma'am.



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1 this case, you and you alone are the judges of the facts  
2 and the evidence or the lack of evidence in this case.  
3 And not a single person can argue with you and your  
4 decision on that issue.

5           So what has the State of South Carolina asked  
6 you to do? What did they ask you to do? They asked you  
7 with what they have brought into this courtroom to take  
8 it and roll it up and -- and put it into the form of a  
9 bullet and put it in a gun and point it at Gerald  
10 Barrett, Jr., and fire that verdict of guilty. You  
11 can't take it back. You can't put it back in the gun.  
12 You can't correct a wrong decision, and you can't put  
13 the bullet back in the gun.

14           So what do they give you? What do you have to  
15 work with? Well, we know three things. We know, number  
16 one, that Minor           is not reliable. We know, number  
17 two, that Investigator Adams did not fully and fairly  
18 investigate this case. And we know, number three, that  
19 Shawn Ward -- and you saw him here, you saw how he  
20 slouched down in his chair, leaned back, and how he told  
21 you that he threw away the most critical piece of  
22 evidence in the sexual assault case that we're here  
23 today about. Gone. And I would tell you that every  
24 single one of those facts, one, two, and three, is  
25 reasonable doubt. And we're going to talk about that in

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1 a few minutes and what that means.

2 Now, how do we know that Minor is not  
3 reliable? Well, you judge the believability, the  
4 credibility of the witnesses from that stand. And you  
5 can consider their demeanor, how they act, how they  
6 speak, how they walk, how they talk. You can look at  
7 bias or prejudice or motives and consistencies or  
8 inconsistencies. And I'll tell you, I don't know how  
9 many of you are parents, but if you have children and  
10 your child is telling you a lie, they will not look at  
11 you. They are fixated on the ground. They are fixated  
12 with their eyes away from the parents' eyes. When you  
13 catch them in the lie, when you push them on the lie,  
14 they do not look you in the face. And if you look at  
15 the demeanor of Minor when she came into this  
16 courtroom, she would not look any of us in the face.  
17 And the only time that she looked up is when she was  
18 confronted with difficulties about her story.

19 I don't know what her motives were. I don't  
20 know what was going on in Shawn Ward's house. I don't  
21 know what she was being subjected to there. None of us  
22 do. We don't have any information on that. I don't  
23 know if she wanted to go back to Aiken, South Carolina,  
24 if it had something to do with the boyfriend, C. ,  
25 back there. But I will tell you this: As much as the

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1 State wants you to believe that the story is consistent,  
2 it's not. It's, in fact, bounced all over the place.  
3 And I think that is clear. And what I would say to you  
4 is, yes, the truth does stay the same. It's a lie that  
5 conforms to fit its needs as it gets bigger and deeper.

6 Now, this -- the Grandma Mary, she came in  
7 here -- the stepmother grandmother, she came in here, if  
8 you remember her testimony -- some of you may have  
9 written it down -- she said the first she heard about  
10 sexual assault taking place was at spring break. Now,  
11 that's three full months ahead of July 2012. And it  
12 took three months for this to be reported? What was  
13 going on? I don't know; you don't know. What was  
14 happening at 106 Pinecrest [sic]? Where is the  
15 testimony that should be here from the other person that  
16 was living in that house, Brandace Smith, Minor  
17 mother? Absolutely no testimony.

18 Now, I'll tell you this also -- and you're  
19 going to have this back in the jury room with you, in  
20 the -- and the State put it in evidence. And I want you  
21 to look at it very carefully because, if you'll notice,  
22 what it doesn't say is it doesn't say that Bubba raped  
23 me. It doesn't say Gerald Barrett, Jr., raped me. It  
24 says: He raped me.

25 I don't know -- well, I'll, first off, say

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1 this: It is relevant. It is my job to bring out the  
2 fact that Minor had mental problems and mental  
3 disturbances long before Gerald Barrett was in the cross  
4 hairs of whatever was going on at 106 Pine Street [sic]  
5 and that whatever had been happening to her prior to  
6 that had caused her such a level of trauma that she  
7 would want to destroy her own body and cut it open. If  
8 I know that, if that's part of the evidence in this case  
9 and I don't bring that out, I'm not doing my job. I'm  
10 not sworn to -- to know something and not bring it to  
11 your attention. I can't do that.

12 Now, that mental disturbance I think might  
13 explain the absolutely bizarre nature of what she did  
14 testify to, that while she says she was being sexually  
15 assaulted downstairs in Shawn Ward's house, that she was  
16 texting on her phone. Ask yourselves this: The two  
17 people who testified about that night, who got home  
18 first that night, Saint Patrick's Day Parade on Hilton  
19 Head? Shawn Ward says, Oh, Minor got home first. Minor  
20 testifies: No, Shawn Ward got home first. Now, ask  
21 yourself this also: Who are the two people who  
22 destroyed evidence in this case, evidence that you might  
23 like to have? Minor destroyed her clothes, destroyed the  
24 sheets, all gone. She testified to that. Shawn Ward  
25 testified to you -- now, this is where a sexual assault

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1 is supposed to have taken place of a teenage girl in his  
2 house. And when asked about it, he says: I got rid of  
3 that bed, but I don't know where I put it. I don't know  
4 where it is now. I have no idea.

5 Now, the Beaufort County Sheriff's Office, it's  
6 their responsibility to both Minor and to  
7 Gerald Barrett, Jr., to fully and fairly investigate the  
8 allegations in this case. Now, I will tell you  
9 that Officer Adams testified that Beaufort County has a  
10 certified, fully functioning, ready to roll DNA lab. We  
11 use it all the time. It's there for just this type of  
12 situation. I mean, you know, we can look -- we don't  
13 need to be experts to know DNA's going to stay around  
14 millions of years. Dinosaur DNA, you can get it. And  
15 if there was sex taking place in that bed, in a bed at  
16 that house, there's going to be evidence of it. If you  
17 believe that a sexual assault took place there and that  
18 the man who assaulted her ejaculated, it's going to be  
19 there. You're going to find it. But even if you don't  
20 even believe that, don't you think you should look for  
21 it? Don't you think you should go to the location of  
22 the assault? I don't care if it's a month or two months  
23 or three months, you should go. You should look for the  
24 evidence because who can do that? Officer Adams told  
25 you who can do that. The officers, police. They can go

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1 get a search warrant. You can't get a search warrant.  
2 I can't get a search warrant. Gerald Barrett can't get  
3 a search warrant. He can't go in that home. The only  
4 person you can rely on to do that is law enforcement.

5 What did they do? Well, they got an arrest  
6 warrant from March 19th. They indicted him for March  
7 19th. Gerald Barrett received counsel. He prepared for  
8 trial. He notified, after he was aware of the  
9 allegations, the State of South Carolina, You know what,  
10 I wasn't there. I was somewhere else. Here's my notice  
11 of my *alibi*. That's a problem. That doesn't fit. We  
12 need to move it. And it was moved. And we move it all  
13 the way back to, oh, Saint Patrick's Day on Hilton Head.  
14 Changed the date, moved the date, denying him fairness.

15 Now, you go and you talk to the one person  
16 you've never talked to before, and that's Shawn Ward,  
17 and you do that nine months later. And he is none too  
18 pleased with it, but he does give you what you need to  
19 move the date. And any man, as I said before, the third  
20 factor, that knows that there's an allegation that a  
21 teenager in his house suffered sexual assault, picks up  
22 that bed, throws it away, moves it away. I don't know  
23 where it is. He says he doesn't know where it is.  
24 That's suspicious. That's reasonable doubt right there.  
25 Right there.

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1           Also we heard testimony about a party. There  
2 was a party. There were people in that house coming and  
3 going. Where are they? Where are the other people that  
4 ought to be here to say, Hey, I was at that party. I  
5 saw Gerald Barrett there. I'll tell you who tells you  
6 he was there. Shawn Ward tells you he was there that  
7 night. Nobody else.

8           And I'll speak just a little bit about  
9 Kendra Twitty and Kristin Dalton. I'll tell you they're  
10 cut from the same cloth. They read from a script. They  
11 testify the same every time. They work for the same  
12 company. They get paid to do what they do. They have  
13 no firsthand knowledge about anything in this case, no  
14 direct evidence. They're not a witness to anything.  
15 And I say to you, you should discard their testimony  
16 completely and in its entirety. It's biased; it's  
17 prejudiced for the state of South Carolina. It's not my  
18 job, as Ms. Concannon would tell you. And they like to  
19 say that. They like to say I'm here muddying the  
20 waters. That's not my job. I don't stand up here -- I  
21 don't talk to witnesses; I don't question witnesses; I  
22 don't investigate cases to try and confuse anyone. I am  
23 trying to help you see, to work for my client, to put  
24 the burden of proof where it squarely belongs, and  
25 that's this table right here, as I told you when we came

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1 into this courtroom. And I -- and Ms. Concannon wants  
2 to diminish -- diminish the presumption of innocence,  
3 and take the presumption that belongs only to a criminal  
4 defendant, and move it over to someone else? You can't  
5 do that. That's not the way this -- this works. That's  
6 not the way the integrity of this system operates.

7 I trust you. Gerald Barrett trusts you.  
8 I'm asking you to trust yourselves to lay down those  
9 emotions, prejudices, wishes, any passionate feelings  
10 you might have that may take over reason, and to view  
11 this case with these bedrock rules in mind.  
12 Gerald Barrett is presumed innocent, just as any of  
13 you would be. And the burden is on the State, the  
14 Government, for proof of guilt beyond a reasonable  
15 doubt. And reasonable doubt is when a reasonable man  
16 might hesitate to act. And if the State of South  
17 Carolina said to you, Here's the thing. I got these two  
18 bridges. I got these two mountains, and I'm building  
19 you a bridge to cross. And that bridge has been built  
20 by Minor . . . And you're going to walk from this  
21 mountain to that mountain. If you hesitate before you  
22 step on that first plank of that bridge, that's  
23 reasonable doubt, that is not guilty, and you must find  
24 him not guilty.

25 And as I said to you at the beginning of the

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1 trial, what can a man do but scream and shout, I'm  
2 innocent? Does no good for him to get up here and  
3 testify. If he testifies, I lose the right to argue to  
4 you last. He says he's innocent. He's always said, I  
5 wasn't there. I'm innocent.

6 Don't walk across that bridge. Don't allow  
7 yourself to put what evidence you've been given into  
8 that gun and to shoot it across this courtroom at  
9 Gerald Barrett. You can't take it back. It's too  
10 important. It's too important to this courtroom, it's  
11 too important to the Court, and it's too important to  
12 all of us to do that. Thank you for your time.

13 **CHARGE TO THE JURY**

14 THE COURT: Ladies and gentlemen, I remind you  
15 that during this trial you and I have certain duties to  
16 perform. As the trial judge, it is my responsibility to  
17 preside over the trial of this case and to rule upon the  
18 admissibility of the evidence as it has been offered  
19 throughout this trial. You are to consider only the  
20 competent evidence before you. If there was any  
21 evidence that was ordered stricken from the record, you  
22 must disregard that testimony. You are to consider only  
23 the testimony that has been presented from the witness  
24 stand as well as the exhibits that have been made part  
25 of the record in this case.

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1 I have the additional duty to charge you the  
2 law applicable to this case. I am the sole judge of the  
3 law in this case. It is your duty to accept the law and  
4 apply the law exactly as I state it to you now.

5 If you have any idea as to what the law is or what the  
6 law ought to be and it does not agree with what I'm  
7 about to tell you, you must abandon your own ideas  
8 because you are sworn to apply the law and accept the  
9 law exactly as I state it to you now.

10 In every case tried in this court before a  
11 jury, the jury becomes the sole and exclusive judges of  
12 the facts. Please remember a trial judge may not make  
13 any comment regarding the fact to a trial jury. You,  
14 the jury, are the sole judges of the facts in this case.  
15 Do not infer from anything that I have said during the  
16 progress of this trial that I have any opinion about the  
17 facts in this case. The law does not allow me to have  
18 an opinion about the facts of this case. This is a  
19 matter solely for you, the jury, to determine. It is  
20 your duty to determine the effect, value, and weight of  
21 the evidence that has been presented throughout this  
22 trial.

23 The Indictments in this case charge Mr. Barrett  
24 with the criminal sexual conduct with a minor 11 to 14  
25 years of age, second degree; kidnapping; and lewd act

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1 upon a child under 16. I remind you, the fact that  
2 Mr. Barrett was arrested, charged, and indicted in this  
3 case is not evidence in this case and cannot be  
4 considered by you as evidence of guilt in this case, nor  
5 does it create any presumption or inference of guilt.  
6 An Indictment is simply the formal document that  
7 contains the charges made against the Defendant. It is  
8 the formal document by which this case is brought into  
9 court.

10 Just as the Indictments in this case are not  
11 evidence, any terminology or labels used in this case to  
12 refer to individuals involved in this case cannot be  
13 considered as evidence. For example, the use of the  
14 words "defendant" and "victim" are merely formal labels  
15 and may not be considered by you as evidence.

16 The Indictments in this case allege three  
17 different offenses against the Defendant. The charges  
18 are, Indictment Number 1, criminal sexual conduct with a  
19 minor 11 to 14 years of age, second degree; Indictment  
20 Number 2, kidnapping; and Indictment Number 3, lewd act,  
21 committing a lewd act upon a child under 16. There is  
22 no significance in the way that I read the Indictments.  
23 It's simply, something has to go first when I read the  
24 Indictments to you.

25 Each Indictment charges a separate and distinct

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1 offense. You must decide each Indictment separately on  
2 the evidence and the law applicable to it uninfluenced  
3 by your decision as to the other Indictments.

4 Mr. Barrett may be convicted or acquitted on  
5 either all, or of the offenses charged. You will be  
6 asked to write a separate verdict for each of the three  
7 Indictments.

8 Mr. Barrett has pled not guilty to each  
9 Indictment. A person charged with committing a criminal  
10 offense in South Carolina is never required to prove  
11 himself innocent. I charge you it is an important rule  
12 of law that the defendant in a criminal trial, no matter  
13 what the seriousness of the charge may be, will always  
14 be presumed to be innocent of the crime for which the  
15 Indictment was issued unless guilt has been proven  
16 by evidence satisfying you of that guilt beyond a  
17 reasonable doubt.

18 The presumption of innocence does not end when  
19 you begin your deliberations. It accompanies the  
20 Defendant throughout the trial until you reach a verdict  
21 of guilt based upon evidence satisfying you of that  
22 guilt beyond a reasonable doubt. The presumption of  
23 innocence is not just a legal theory. It is not just a  
24 legal phrase. It is the substantial right to which  
25 every defendant is entitled unless you, the jury, are

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1 satisfied from the evidence of the Defendant's guilt  
2 beyond a reasonable doubt.

3           The State has the burden of proving Mr. Barrett  
4 guilty beyond a reasonable doubt. Some of you may have  
5 served as jurors before in civil cases where you were  
6 told that it was only necessary to prove that a fact is  
7 more likely true than not true such as by a greater  
8 weight or preponderance of the evidence. In criminal  
9 cases, the State's proof must be more powerful than  
10 that. It must be beyond a reasonable doubt. Proof  
11 beyond a reasonable doubt is proof that leaves you  
12 firmly convinced of the Defendant's guilt. There are  
13 very few things that we know with absolute certainty in  
14 this world, and in criminal cases, the law does not  
15 require proof that overcomes every possible doubt. If,  
16 based on your consideration of the evidence, you are  
17 firmly convinced that Mr. Barrett is guilty of the crime  
18 charged, you must find him guilty. If, on the other  
19 hand, you think there is a real possibility that  
20 Mr. Barrett is not guilty, you must give him the benefit  
21 of the doubt and find him not guilty.

22           There are two types the evidence that are  
23 generally presented throughout a trial: direct evidence  
24 and circumstantial evidence. Direct evidence is the  
25 testimony of a person who has actual knowledge of the

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1 facts, such as an eyewitness. It is evidence which  
2 immediately establishes the main fact to be proved.  
3 Circumstantial evidence is proof of a chain of facts  
4 and circumstances indicating the existence of a  
5 fact. It is evidence which immediately establishes  
6 collateral facts from which the main fact may be  
7 inferred. Circumstantial evidence is based on inference  
8 and not on personal knowledge or observation.

9           You should weigh all of the evidence in this  
10 case, and after weighing all of the evidence, if you are  
11 not convinced of the guilt of Mr. Barrett beyond a  
12 reasonable doubt, you must find him not guilty. The  
13 rules of evidence ordinarily do not permit witnesses to  
14 testify to opinions or to conclusions. An exception  
15 exists for witnesses we call expert witnesses. A  
16 witness who by education and experience has become  
17 expert in some art, science, or profession may state an  
18 opinion as to relevant and material matter in which the  
19 witness claims to be an expert and may also state the  
20 reasons for that opinion. You should consider any  
21 expert opinion given in this case, and like any other  
22 evidence, give it the weight that you think it deserves.  
23 If you decide that the opinion of an expert witness is  
24 not based upon sufficient education or experience or if  
25 you conclude that the reasons given in support of that

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1 opinion are not sound or that the opinion is outweighed  
2 by other evidence, you may disregard that opinion  
3 entirely. An expert witness' testimony is to be given  
4 no greater weight than that of other witnesses simply  
5 because the witness is an expert. Further, you are not  
6 required to accept an expert's opinion even though it is  
7 not contradicted.

8           Necessarily, you must determine the credibility  
9 of the witnesses who have testified in this case.  
10 Credibility simply means believability. It becomes your  
11 duty as jurors to evaluate the evidence and analyze the  
12 evidence and determine which evidence convinces you of  
13 its truth. In determining the believability of the  
14 witnesses who have testified in this case, you may  
15 believe one witness over several witnesses or several  
16 witnesses over one witness. You may believe a part of a  
17 testimony of a witness and reject the remaining part of  
18 the testimony of that same witness. You may believe the  
19 testimony of a witness in its entirety or you may reject  
20 the testimony of a witness in its entirety. You may  
21 consider whether the witness has exhibited to you any  
22 interest, bias, prejudice, or other motive in this case,  
23 and you may also consider the appearance and demeanor of  
24 the witness while on the witness stand.

25           I instruct you and emphasize, the fact that

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1 Mr. Barrett did not testify is not a factor to be  
2 considered by you in any way in your deliberation and in  
3 you consideration on the question of the guilt of  
4 Mr. Barrett. It must not be considered by you in any  
5 way or in any manner whatsoever. A defendant has the  
6 constitutional right to remain silent and the assertion  
7 of this right must not be considered by you in your  
8 deliberations. I repeat: Under your oath, you are to  
9 draw no conclusion whatsoever from the fact Mr. Barrett  
10 did not testify in this case.

11 Mr. Foreperson, I require and emphasize to you,  
12 the fact Mr. Barrett did not testify should not even be  
13 discussed in the jury room.

14 The Defendant is not required to prove his  
15 innocence. The burden of proof remains on the State to  
16 prove guilt beyond a reasonable doubt. In order to  
17 establish criminal liability, criminal intent is  
18 required. For example, the mental state required to be  
19 proven by the State for a particular crime might be  
20 purpose, intent, knowledge, recklessness, or criminal  
21 negligence. Criminal intent must be proven by the State  
22 beyond a reasonable doubt. Criminal intent is always a  
23 matter that must be determined by the jury from the  
24 circumstances surrounding the situation. There is no  
25 way to prove intent to a mathematical certainty.

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1 Because there is no way to tell with exact certainty  
2 what a person had in mind, the law says that criminal  
3 intent may be inferred from the circumstances shown to  
4 have existed at the time. This is how you make a  
5 determination of whether or not the element required and  
6 the intent was present. It is not necessary to  
7 establish intent by direct and positive evidence, but  
8 intent may be established by inference in the same way  
9 as any other fact by taking into consideration the acts  
10 of the parties and all of the facts and circumstances in  
11 this case. Criminal intent is a mental state. It is  
12 conscious wrongdoing. It is up to you to determine  
13 what the Defendant intended to do based upon the  
14 circumstances shown to have existed. Criminal intent  
15 can arise from action or a failure to act. It may  
16 also arise from negligence, recklessness, or to an  
17 indifference to duty or to consequences that is  
18 considered by the law to be the equivalent of criminal  
19 intent.

20 Mr. Barrett is charged with criminal sexual  
21 conduct with a minor 11 to 14 years of age, second  
22 degree. The State must prove beyond a reasonable doubt  
23 that the Defendant engaged in a sexual battery with  
24 the victim. A sexual battery is sexual intercourse,  
25 cunnilingus, fellatio, anal intercourse, or any

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1 intrusion, however slight, of any part of a person's  
2 body or of any object into the genital or anal openings  
3 of another person's body except when the intrusion is  
4 accomplished for a medically recognized treatment or  
5 diagnostic purposes.

6           The State must then prove beyond a reasonable  
7 doubt that the victim was at least 11 years old, but not  
8 more than 14 years old, at the time of the sexual  
9 battery.

10           Mr. Barrett is charged with kidnapping. The  
11 State must prove beyond a reasonable doubt that the  
12 Defendant knowingly and unlawfully seized, confined,  
13 inveigled, decoyed, kidnapped, abducted, or carried away  
14 another person without authority of law. To do a thing  
15 unlawfully is to do it willfully against the law.  
16 Knowingly means with knowledge; consciously, not  
17 accidentally. Seize means to take hold of suddenly or  
18 forcibly. Confine means to limit, restrict, or enclose  
19 within bounds, imprison, or shut or keep in. Inveigle  
20 means to lure, entice, or lead astray by false  
21 representations, promises, or other deceitful means.  
22 Decoy means to lure by as if by decoy. A decoy is  
23 something to entice a person into a trap. Kidnap is to  
24 remove a person against his will by unlawful force or by  
25 fraud. Abduct means to carry off secretly or by force

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1 for an illegal purpose. Carry away means to remove.

2           The State does not have to prove that the  
3 Defendant did all of these things. Instead, if you find  
4 beyond a reasonable doubt, if you find that the  
5 Defendant did any of these things, you may find the  
6 Defendant guilty of kidnapping. Something done without  
7 authority of law is something which the law does not  
8 sanction, permit, allow, condone, or provide  
9 justification for. The kidnapping does not have to be  
10 for any personal or monetary gain, for any illegal  
11 purpose, but may be for any reason whatsoever.

12           Mr. Barrett is charged with committing a lewd  
13 act upon a child under the age of 16. The State must  
14 first prove beyond a reasonable doubt that the Defendant  
15 was over the age of 14. Next, the State must prove  
16 that the Defendant willfully and lewdly committed or  
17 attempted a lewd or lascivious act on or with the body  
18 or its parts of a child under the age of 16 years with  
19 the intent to arouse, appeal to, or gratify the lust,  
20 passions, or sexual desires of the Defendant or of the  
21 child. Willfully means voluntarily and intentionally  
22 with a specific intent to do something the law forbids.  
23 Lewd means obscene, lustful, indecent, or lecherous.  
24 Lascivious means tending to insight lust, lewd,  
25 indecent, obscene, or tending to deprave the morals in

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1 respect to sexual relations.

2 Ladies and gentlemen, I am now going to go over  
3 the verdict forms with you.

4 Mr. Foreman, it is your responsibility to  
5 complete the verdict forms, but I'm going to go over the  
6 verdict forms with you.

7 Ladies and gentlemen, please understand there  
8 is no significance in the way that I'm going over the  
9 verdict form. It's simply something has to go on the  
10 paper first. There are three Indictments, and I must go  
11 over them in some sort of order.

12 State of South Carolina, County of Beaufort  
13 versus Gerald Barrett, Jr., Defendant in the Court of  
14 General Sessions for the 14th Judicial Circuit,  
15 Indictment 2012-GS-07-1631, verdict form: We, the jury,  
16 find Gerald Barrett, Jr., not guilty; or we, the jury,  
17 find Gerald Barrett, Jr., guilty of criminal sexual  
18 conduct with a minor victim age 11 to 14 years, second  
19 degree. It must be a unanimous decision. After you  
20 completed this verdict form and the unanimous decision,  
21 meaning all 12 of you must agree, you will sign and date  
22 the verdict form.

23 Indictment 2012-GS-07-1632: We, the jury, find  
24 Gerald Barrett not guilty; or we, the jury, find  
25 Gerald Barrett guilty of the kidnapping of Minor

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1 Once again, once you have completed this verdict form  
2 reaching a unanimous decision, all 12 of you must agree,  
3 you will sign and date the verdict form.

4 Indictment Number 2012-GS-07-1633: We, the  
5 jury, find Gerald Barrett not guilty; or we, the jury,  
6 find Gerald Barrett guilty of lewd act, committing a  
7 lewd act upon a child under 16.

8 Once again, Mr. Foreman, it must be a unanimous  
9 decision. Once you have reached a unanimous decision on  
10 this verdict form, you will sign the verdict form and  
11 date it.

12 Ladies and gentlemen, this will be last  
13 time that I say this to you. Do not begin your  
14 deliberations; do not discuss this case amongst  
15 yourselves. We will be gathering the verdict forms and  
16 the exhibits to come back to you. Please take all of  
17 your items with you. And once the bailiff has brought  
18 the verdict forms and the items to you, he will indicate  
19 to you that you may begin your deliberations. Do not  
20 begin any discussions regarding this case at all until  
21 you are told to do so.

22 To my two alternates, I'm going to hold you for  
23 just a few moments to make sure that my first twelve  
24 have begun their deliberations. Do not begin your  
25 deliberations; do not discuss this case with anyone. We

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1 will keep the two alternates separate from the 12, and  
2 then I will release you at the appropriate time.

3 Ladies and gentlemen, you will receive your  
4 further instructions from the bailiff in just a few  
5 moments.

6 Please rise for the jury.

7 (The jury is escorted from the courtroom  
8 at 10:06 a.m.)

9 THE COURT: Thank you. Be seated.

10 Any objection, correction to the charge as  
11 read? From the State?

12 MS. CONCANNON: Not from the State, your Honor.

13 MS. CAMPBELL: No, your Honor.

14 THE COURT: And State's 1 through 6 and 11 will  
15 be going back; is that correct?

16 MS. CONCANNON: That's correct.

17 MS. CAMPBELL: I believe that's correct. May  
18 we look at them before they're sent back, your Honor?

19 THE COURT: You may look at them, yes.

20 MS. CAMPBELL: Thank you.

21 MS. CONCANNON: Your Honor, I do have the  
22 pre-marked exhibits.

23 THE COURT: You'll need to give those to the  
24 court reporter since they have been marked. Thank you.

25 MS. CAMPBELL: May we go over with the court

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1 reporter the exhibits.

2 THE COURT: I have already gone over. It  
3 is 1 through 6 and 11. Now, you may look to make sure  
4 that that reflects your --

5 MS. CAMPBELL: That's what I --

6 THE COURT: But the court reporter and I have  
7 agreed upon 1 through 6 and 11. And that is the  
8 official court record.

9 MS. CAMPBELL: Yes, ma'am.

10 MS. CONCANNON: And these are the pre-marked  
11 ones that were not in evidence.

12 THE COURT REPORTER: Thank you.

13 MS. CAMPBELL: Thank you.

14 THE COURT: They may begin their deliberations  
15 once you give them those items. Thank you.

16 Anything before we're at ease awaiting a  
17 verdict?

18 MS. CONCANNON: No, your Honor.

19 MS. CAMPBELL: No, your Honor.

20 THE COURT: Thank you. We're at ease.

21 (A recess is taken from 9:43 a.m. until  
22 10:18 a.m.)

23 THE COURT: We have a note: We would like to  
24 have written definitions of all three charges that were  
25 presented on the stand.

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1 Any objection to sending a charge -- the charge  
2 back, or do you wish for me to bring them in and charge  
3 them on the -- on the three statutes?

4 MS. CONCANNON: The State doesn't have an  
5 objection as long as the entire charge is sent back.

6 THE COURT: Okay.

7 MS. CAMPBELL: Your Honor, I would object to  
8 any written charges going back into the jury room. It's  
9 not evidence. I believe if they would like that, you  
10 could bring them back here and recharge them on the  
11 charges. But I would also request that you recharge  
12 them on the burden of proof and reasonable doubt in  
13 addition to that anytime we recharge.

14 THE COURT: If I bring them back, I'm just --  
15 they've only asked for the definitions. If they ask for  
16 any -- I'll have them clarify if they need definitions  
17 as to that, I will.

18 MS. CAMPBELL: Okay.

19 THE COURT: I'm going to have the Foreperson  
20 indicate to the Court what definitions he wants.

21 MS. CAMPBELL: Okay.

22 THE COURT: All right. I'm now going to  
23 release the alternates since we have had a note. The  
24 alternates --

25 We have a note. Any objection?

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1 MS. CONCANNON: No objection.

2 MS. CAMPBELL: No objection.

3 THE COURT: All right. So this will be  
4 Court's 2, then, court reporter?

5 THE COURT REPORTER: Yes, your Honor.

6 THE COURT: First note will be Court's 2.

7 Let me go release the alternates.

8 (Jury Note Number 1 is marked for  
9 identification as Court's Exhibit Number 2.)

10 (A recess is taken. The Judge resumes the  
11 bench at 10:23 a.m.)

12 (The Defendant is present with his counsel.)

13 THE COURT: Let's bring back the jury.

14 (The jury is escorted into the courtroom  
15 at 10:24 a.m.)

16 THE COURT: Thank you. Be seated.

17 Mr. Foreman, I have received a note that  
18 indicates that you need the written definitions of all  
19 three charges that were presented; is that correct?

20 THE FOREPERSON: That is correct.

21 THE COURT: So what I understand in that note  
22 is that you need for me to go over the statute as to the  
23 three charges; is that what you're asking?

24 THE FOREPERSON: Well, ma'am, we just wanted  
25 to see it in writing. Obviously, you went through the

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1 law relatively quickly. And we just want to see in  
2 writing what the charges are if that's okay.

3 THE COURT: I will -- I can reread the charges  
4 to you. You need for me to reread to you the charges?  
5 I will not be providing a written copy.

6 THE FOREPERSON: Okay. Yes. Let's reread.

7 THE COURT: All right.

8 Second Degree, Criminal Sexual Conduct with a  
9 Minor: Mr. Barrett is charged with criminal sexual  
10 conduct with a minor 11 to 14 years of age, second  
11 degree. The State must prove beyond a reasonable doubt  
12 that the Defendant engaged in a sexual battery with the  
13 victim. A sexual battery is sexual intercourse,  
14 cunnilingus, fellatio, anal intercourse, or any  
15 intrusion, however slight, of any part of a person's  
16 body or of any object into the genital or anal openings  
17 of another person's body except when the intrusion is  
18 accomplished for medically recognized treatment or  
19 diagnostic purposes. The State must then prove beyond a  
20 reasonable doubt that the victim was at least 11 years  
21 old but not more than 14 years old at the time of the  
22 sexual battery.

23 Kidnapping: Mr. Barrett is charged with  
24 kidnapping. The State must prove beyond a reasonable  
25 doubt that the Defendant, knowingly and unlawfully,

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1 seized, confined, inveigled, decoyed, kidnapped,  
2 abducted, or carried away another person without  
3 authority of law.

4           To do a thing unlawfully is to do it willfully  
5 against the law. Knowingly means with knowledge  
6 consciously, not accidentally. Seized means to take  
7 hold of suddenly or forcibly. Confine means to limit,  
8 restrict, or enclose within bounds, imprison, or shut or  
9 keep in. Inveigle means to lure, entice, or lead astray  
10 by false representations, promises, or other deceitful  
11 means. Decoy means to lure by as if by decoy. A decoy  
12 is something to entice a person into a trap. Kidnap is  
13 to remove a person against his will by unlawful force or  
14 by fraud. Abduct means to carry off secretly or by  
15 force for an illegal purpose. Carry away means to  
16 remove.

17           The State does not have to prove that the  
18 Defendant did all of these things. Instead, if you find  
19 beyond a reasonable doubt that the Defendant did any of  
20 these things, you may find the Defendant guilty of  
21 kidnapping. Something done without authority of law is  
22 something which the law does not sanction, permit,  
23 allow, condone, or provide justification for. The  
24 kidnapping does not have to be for any personal or  
25 monetary gain for any illegal purpose, but may be for

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1 any reason whatsoever.

2 Lewd Act on a Minor: Mr. Barrett is charged  
3 with committing a lewd act upon a child under the age  
4 of 16. The State must first prove beyond a reasonable  
5 doubt that the Defendant was over the age of 14. Next,  
6 the State must prove that the Defendant willfully and  
7 lewdly committed or attempted a lewd or lascivious act  
8 on or with the body or the parts of a child under the  
9 age of 16 years with the intent to arouse, appeal to, or  
10 gratify the lust, passions, or sexual desires of the  
11 Defendant or of the child.

12 Willfully means voluntarily and intentionally  
13 with the specific intent to do something the law  
14 forbids. Lewd means obscene, lustful, indecent, or  
15 lecherous. Lascivious means tending to insight, lust,  
16 lewd, indecent, obscene, or tending to deprave the  
17 morals in respect to sexual relations.

18 Do you need anything further, Mr. Foreman?

19 (There's a discussion among the jurors off the  
20 record.)

21 THE FOREPERSON: There's a little confusion  
22 about the age brought up in the first charge, 11 to 14,  
23 and then in the third charge, over 14 but under 16. Can  
24 you clarify that?

25 THE COURT: Please remember, the Indictments in

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1 this case allege three different offenses against the  
2 Defendant. The charges are, Indictment Number 1,  
3 criminal sexual conduct with a minor 11 to 14 years of  
4 age, second degree; kidnapping; and lewd act, committing  
5 a lewd act upon a child under 16.

6 Remember, there was no significance in the  
7 order that I referenced the above Indictments. It's  
8 simply something must go first when I read them to you.  
9 Each Indictment charges a separate and distinct charge.  
10 You must decide each Indictment separately on the  
11 evidence and the law applicable to it uninfluenced by  
12 your decision as to any other Indictment. Mr. Barrett  
13 may be convicted or acquitted on either or all of the  
14 offenses charged. And, again, you are asked to write a  
15 separate verdict form for each offense.

16 Anything further, Mr. Foreman?

17 (There's a discussion among the jurors off the  
18 record.)

19 THE FOREPERSON: We're okay. Thanks.

20 THE COURT: All right. Please go and continue  
21 your deliberations.

22 Rise for the jury, please.

23 (The jury is escorted from the courtroom  
24 at 10:31 a.m.)

25 THE COURT: Thank you. Be seated. Any

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1 objection?

2 MS. CONCANNON: No, your Honor.

3 THE COURT: Any objection?

4 MS. CAMPBELL: Your Honor, again, for the  
5 record, I would like for your Honor to have charged  
6 reasonable doubt as you charged the Indictments again  
7 and the -- and the offenses again. And I understand  
8 that you decided not to do that, but, for the record, we  
9 did request it.

10 THE COURT: All right. Thank you.

11 All right. We're at ease.

12 Counsel, why don't you approach for just a  
13 moment?

14 (Court in recess from 10:32 a.m. until  
15 1:13 p.m.)

16 (Jury Note Number 2 is marked for  
17 identification as Court's Exhibit Number 3.)

18 THE COURT: All right. We need to bring in the  
19 jury.

20 Mr. Shelton, I understand you haven't had an  
21 opportunity to take a break. Are you okay?

22 MR. SHELTON: I'm fine. Thank you for asking.

23 THE COURT: Shouldn't take but a moment.

24 THE COURT: I'll be giving the Allen Charge,  
25 just so you understand.

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1 MS. CAMPBELL: For the record, would it be  
2 possible for us to know what the note says?

3 THE COURT: It says: After a great deal of  
4 deliberation and two rounds of voting on each count, we  
5 have a hung-jury situation.

6 MS. CAMPBELL: Thank you, your Honor.

7 THE COURT: I will be giving the Allen Charge  
8 pursuant to that.

9 MS. CAMPBELL: Thank you.

10 THE COURT: Please take your sunglasses off  
11 your head. Thank you.

12 (The jury is escorted into courtroom  
13 at 1:15 p.m.)

14 THE COURT: Thank you. Please be seated.

15 Mr. Foreman, I understand you have sent us a  
16 note and you have been unable -- and as you indicated,  
17 what you call a hung jury situation. I understand that  
18 you have stated you've been unable to agree on a  
19 verdict; is that correct?

20 THE FOREPERSON: That is correct.

21 **ALLEN CHARGE**

22 THE COURT: As I instructed you earlier, the  
23 verdict of -- of you, of the jury, must be unanimous,  
24 meaning all 12 of you must agree. When a matter is in  
25 dispute, it isn't always easy for even two people to

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1 agree. So when 12 people must agree, it becomes even  
2 more difficult. In most cases, absolute certainty  
3 cannot be reached or expected; however, you have a duty  
4 to make every reasonable effort to reach a unanimous  
5 verdict. In doing this, you should consult with one  
6 another, express your own views, and listen to the  
7 opinions of your fellow jurors. Tell each other how  
8 you feel and why you feel that way. Discuss your  
9 differences with open minds. Although the verdict of  
10 the jury must be unanimous, every one of you must agree  
11 and every one of you has the right to your own opinion.  
12 The verdict you agree to must be your own verdict, the  
13 result of your own convictions. And you should not give  
14 up your firmly held beliefs merely to be in agreement  
15 with your fellow jurors. The majority should consider  
16 the minority's opinion, and the minority should consider  
17 the majority's opinion. You should carefully consider  
18 and respect the opinions of each other and re-evaluate  
19 your own opinion for reasonableness, correctness, and  
20 impartiality. You must lay aside all outside matters  
21 and re-examine the questions before you based upon the  
22 law and the evidence in this case.

23 If you do not agree on a verdict, I must  
24 declare a mistrial. In that case, it does not mean  
25 anybody wins. It just means that at some future time, I

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1 will try this case with some other jury sitting where  
2 you now sit. The same participants will come in and the  
3 same lawyers will ask basically the same questions and  
4 get basically the same answers, and we will go through  
5 the whole process again. You were selected in the same  
6 manner and from the same source as any future jury will  
7 be. And there is no reason for me to suppose that the  
8 case will ever be submitted to 12 more intelligent,  
9 impartial, conscientious, and competent jurors who sit  
10 before me here today. I ask you, therefore, with my  
11 instructions in mind, to return to your deliberations  
12 with the hope you can arrive at a verdict within a  
13 reasonable time.

14 Please go and continue your deliberations with  
15 all of my instructions in mind.

16 Thank you, Mr. Foreperson.

17 (The jury is escorted from the courtroom at  
18 1:18 p.m.)

19 THE COURT: Thank you. Please be seated.

20 Any objections to the charges that I read?

21 From the State?

22 MS. CONCANNON: No, your Honor.

23 THE COURT: From the Defense?

24 MS. CAMPBELL: No, your Honor.

25 THE COURT: Thank you. We'll be at ease.

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1 MS. CAMPBELL: Your Honor, my client would like  
2 to use the restroom.

3 THE COURT: All right.

4 MS. CAMPBELL: And if I could coordinate with  
5 the detention center? Thank you.

6 THE COURT: Thank you. And he has not had  
7 lunch because I have not had lunch. So I know that he  
8 has not.

9 Can we have lunch arrangements for him?

10 THE COURT OFFICER: Yes, ma'am.

11 THE COURT: All right. Thank you. If you will  
12 accomplish that for me. Thank you.

13 MS. CAMPBELL: Thank you, your Honor.

14 (Court in recess from 1:20 p.m. until  
15 3:18 p.m.)

16 THE COURT: Thank you. Be seated.

17 We have another note. Is it possible to arrive  
18 at a verdict on two of the three charges but remain  
19 undecided on the third charge?

20 MS. CONCANNON: Yes. I mean. . .

21 THE COURT: All right. I know what the answer  
22 is. I need your response to what I need to tell the  
23 jury.

24 MS. CONCANNON: The State is fine with two --  
25 verdicts on two and not on one. a hung jury on one

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1 charge.

2 MS. CAMPBELL: Your Honor, I believe they're  
3 considering each Indictment separately. They can reach  
4 a decision on two of the two and not on the other.

5 THE COURT: I understand what the rule is.  
6 What do you want me to -- how do you want me to respond  
7 to the jury? Do you want me to bring them back in? Do  
8 you want me to send a yes? Do you want do have a more  
9 formal response?

10 MS. CAMPBELL: May I read their note and --

11 THE COURT: I just read it to you.

12 MS. CAMPBELL: Okay.

13 THE COURT: Is it possible to arrive at a  
14 verdict on two of the three charges but remain  
15 undecided; hung jury, on the third charge?

16 MS. CAMPBELL: The answer is yes. And we can  
17 write a note and send it back and say yes.

18 THE COURT: I'm just going to bring them in.  
19 Bring in the jury.

20 MS. CAMPBELL: Thank you, your Honor.

21 THE COURT: Thank you.

22 THE BAILIFF: Your Honor, the jury is entering.

23 THE COURT: Thank you.

24 (The jury is escorted into the courtroom  
25 at 3:20 p.m.)

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1 THE COURT: Thank you. Please be seated.

2 I understand that you indicated and asked: Is  
3 it possible to arrive at a verdict on two of the three  
4 charges but remain undecided on the third charge?

5 Remember when I instructed you the last time  
6 that Mr. Barrett is charged with three separate  
7 Indictments. Ladies and gentlemen, please remember that  
8 each Indictment charges a separate and distinct charge.  
9 You must decide each Indictment separately on the  
10 evidence and the law applicable to it.

11 Mr. Bartlett -- excuse me, Mr. Barrett may be  
12 convicted or acquitted on either or all of the offenses  
13 charged. You will be asked to write, again, the  
14 separate verdict for each separate offense.

15 Did that answer your question, Mr. Foreman?

16 THE FOREPERSON: It did.

17 THE COURT: Please go and continue your  
18 deliberations.

19 (The jury is escorted from the courtroom at  
20 3:22 p.m.)

21 THE COURT: Court's 4.

22 (Jury Note Number 3 is marked for  
23 identification as Court's Exhibit Number 4.)

24 THE COURT: Thank you. Be seated.

25 Any objection to the --

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1 THE BAILIFF: Jury is clear, your Honor.

2 THE COURT: Any objection to the charge?

3 MS. CONCANNON: Not from the State.

4 THE COURT: Any objection?

5 MS. CAMPBELL: No, ma'am.

6 THE COURT: Okay. We'll be at ease.

7 (Court in recess from 3:22 p.m. until

8 3:26 p.m.)

9 MS. CAMPBELL: May it please the Court, your  
10 Honor. On behalf of Mr. Barrett, I would object to the  
11 instruction given to the jury in response to their  
12 question. Upon further review, I do believe it's within  
13 the jury's province and right to reach a decision on two  
14 of the Indictments but not on the third. And the  
15 instruction that was given, in my interpretation, was  
16 that they had to reach a decision on all three  
17 Indictments.

18 THE COURT: They have to reach some decision  
19 whether it's acquitted, not acquitted, or -- guilty, not  
20 guilty, or a hung jury. They have to reach -- we can't  
21 just leave an Indictment hanging out there. There must  
22 be some decision on each Indictment.

23 MS. CAMPBELL: Correct. And I believe -- in my  
24 interpretation, it was unclear that one of the options  
25 was that they could not reach a verdict and have it be a

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1 hung jury and a mistrial. It seemed as if they were  
2 being instructed that they had to reach a decision --

3 THE COURT: Ms. Campbell, was there something  
4 about my question, Was there any objection to what I  
5 instructed the jurors, that was unclear at the time?

6 Please bring the jury back in.

7 I'm sorry. Was there something -- because you  
8 didn't object when I first released the jury to go back  
9 to continue deliberating.

10 MS. CAMPBELL: That's correct. And as I said  
11 for the record, upon further reflection, as I reflected  
12 upon what had been instructed, I felt it was important  
13 for me to bring that to the Court's attention.

14 (Respite.)

15 (The jury is escorted into the courtroom at  
16 3:28 p.m.)

17 THE BAILIFF: Your Honor, the jury is entering.

18 THE COURT: Thank you. Please rise.

19 Thank you, please be seated:

20 Ladies and gentlemen, there was some objection  
21 to the last instruction that I gave you, so I just  
22 wanted to make sure that everyone is abundantly clear.

23 There are three Indictments. You must issue  
24 something for each Indictment. Your question to the  
25 Court was could you find -- could perhaps one be a hung

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1 jury? That is -- whatever your verdict or decision on  
2 each Indictment, each Indictment must have some decision  
3 by the jury.

4 Any objection to that? From the State?

5 MS. CONCANNON: No, your Honor.

6 THE COURT: From Ms. Campbell?

7 MS. CAMPBELL: No, your Honor.

8 THE COURT: Thank you.

9 Yes, you have another question?

10 THE FOREPERSON: I just want to be clear  
11 because it wasn't clear when we walked back in there  
12 with some of the group members. If we are hung on  
13 one -- one of the charges, but we have come up with a  
14 unanimous decision on the two other charges, we can say  
15 we're -- we have no verdict on one, but we have a  
16 verdict on two and three; is that correct?

17 THE COURT: On which -- whatever your decisions  
18 are, if you will write it on the verdict form. If there  
19 is not an appropriate check place, then if you will  
20 indicate that to the Court, I will look at the verdict  
21 forms when you have completed those verdict forms. If  
22 they are not acceptable, then I'm going to send those  
23 back to you.

24 Did that answer your question?

25 THE FOREPERSON: Now I understand.

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1 THE COURT: If they are not completely -- if  
2 they are not filled out completely, then I will send  
3 those back to you.

4 Please remember that the law does not allow me  
5 to have an opinion about the facts in this case. So  
6 there is no right or wrong verdict. The verdict form, I  
7 was referring only to what is completed on the verdict  
8 form.

9 Any objection to that from the State?

10 MS. CONCANNON: No, your Honor.

11 MS. CAMPBELL: No, your Honor.

12 THE COURT: All right. Did that answer your  
13 question?

14 THE FOREPERSON: Yes.

15 THE COURT: Thank you.

16 THE BAILIFF: Thank you, your Honor.

17 And, again, the steps, please, folks.

18 THE COURT: If you have any further questions,  
19 Mr. Foreman, please let me know.

20 (The jury is escorted from the courtroom  
21 at 3:31 p.m.)

22 THE COURT: Thank you. Be seated.

23 Outside the presence of the jury, any objection  
24 or correction to the charge as read?

25 MS. CONCANNON: Not from the State, your Honor.

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1 MS. CAMPBELL: No, your Honor.

2 THE COURT: Thank you.

3 I suppose in the future, Ms. Campbell, that we  
4 should have a box for -- a line for hung jury?

5 MS. CAMPBELL: I couldn't say. I don't know,  
6 your Honor. It's been a long day. And I apologize if I  
7 was late in making my understanding known.

8 THE COURT: Thank you.

9 All right. We're at ease.

10 (Court is recess from 3:32 p.m. until  
11 3:39 p.m.)

12 THE COURT: Thank you. Be seated. Anything  
13 before we bring in the jury?

14 MS. CONCANNON: Not from the State, your Honor.

15 MS. CAMPBELL: No, ma'am.

16 THE COURT: Thank you.

17 THE BAILIFF: Your Honor, the jury is entering.

18 THE COURT: Thank you. Please rise.

19 (The jury is escorted into the courtroom  
20 at 3:40 p.m.)

21 THE COURT: Okay. I understand that you have  
22 reached a verdict. If you will hand the verdict forms  
23 to the Bailiff. Thank you.

24 (Documents are handed to the Judge.)

25 THE COURT: Thank you. All right. Madam

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1 Clerk?

2 **JURY'S VERDICT**

3 THE DEPUTY CLERK OF COURT: In the State of  
4 South Carolina versus Gerald Barrett, Jr., Indictment  
5 Number 2012-GS-07-1631, we, the jury, find Gerald  
6 Barrett, Jr. -- the jury could not reach a unanimous  
7 decision in this verdict.

8 THE COURT: All right. And you'll need to read  
9 what it is. The charges at --

10 THE DEPUTY CLERK OF COURT: Oh, I'm sorry. In  
11 Charge Number 2, we, the jury, find Gerald Barrett, Jr.,  
12 with a undecided decision in criminal sexual conduct  
13 with the a minor, victim age 11 to 14 years of age,  
14 second degree.

15 THE COURT: Thank you.

16 THE DEPUTY CLERK OF COURT: Sorry.

17 THE COURT: Okay.

18 THE DEPUTY CLERK OF COURT: Case Number  
19 2012-GS-07-1632, we, the jury, find Gerald Barrett, Jr.,  
20 not guilty of kidnapping Minor

21 And the Verdict Number 2012-GS-07-1633, we,  
22 the jury, find Gerald Barrett, Jr., guilty of lewd act,  
23 committing a lewd act upon a child under 16.

24 Ladies and gentlemen of the jury, if this is  
25 the -- if this is the decision of each and every one of

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1 you, please indicate by raising your right hand.

2 Thank you.

3 THE COURT: Let the record reflect that all 12  
4 jurors have raised their right hand.

5 Anything further required of the jury? From  
6 the State?

7 MS. CONCANNON: Not from the State, your Honor,  
8 no.

9 THE COURT: From the Defendant?

10 MS. CAMPBELL: Your Honor, I would ask that the  
11 jury be polled on the guilty verdict on the lewd act.

12 THE COURT: All right.

13 Will you -- is there some reason you don't want  
14 them polled on all three?

15 MS. CAMPBELL: I am just requesting that they  
16 be polled on the lewd act verdict which was guilty for  
17 my client.

18 THE COURT: All right. Madam Clerk, I want you  
19 to poll as to the guilty verdict, and then I want you to  
20 poll as to the two remaining verdicts. That make sense?

21 THE DEPUTY CLERK OF COURT: Yes, ma'am.

22 THE COURT: Thank you. And, please, juror  
23 numbers, not names.

24 THE DEPUTY CLERK OF COURT: Yes, ma'am.

25

JURY POLLED

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Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA ) GENERAL SESSIONS COURT  
                                  ) )  
COUNTY OF BEAUFORT ) FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina, )  
                                  ) )  
                          Plaintiff, ) Case Nos: 2012-GS-07-1631  
vs. ) 2012-GS-07-1632  
                                  ) 2012-GS-07-1633  
GERALD THOMAS BARRETT, JR., )  
                                  ) )  
                          Defendant. )

**ORIGINAL**

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TRANSCRIPT OF JURY TRIAL  
VOLUME IV OF IV  
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON  
ON MAY 23, 2013

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ROLAYNE M. VOLPE, CCR, RPR  
Court Reporter for the State of South Carolina at Large  
Post Office Box 342  
Summerville, South Carolina 29484

**A P P E A R A N C E S**

For the State:

**MARY CONCANNON**  
**BENJAMIN SHELTON**  
Fourteenth Circuit Solicitor's Office  
P.O. Box 1880  
Bluffton, South Carolina 29901

For the Defendant:

**TRACI CAMPBELL**  
Attorney at Law  
P.O. Box 525  
Beaufort, South Carolina 29901

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

State versus Gerald T. Barrett, Jr.  
Jury Trial, Volume IV of IV

I N D E X

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**DESCRIPTION**

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1 (Side-bar.)

2 THE COURT: We'll be at ease.

3 MS. CAMPBELL: Your Honor, where would you like  
4 me to speak to Mr. Barrett?

5 THE COURT: I am in a situation that I don't  
6 know where the -- where the best place is. I --  
7 considering that we just had a Supreme Court opinion  
8 that was released yesterday morning, I think in light of  
9 that and what Dykes means for your client as far as his  
10 future and the fact that the lewd act was added to the  
11 violent list in 2010.

12 MS. CAMPBELL: All right.

13 THE COURT: And then amended to the CSC third  
14 statute in June of 2012 and how that will -- both of  
15 those things will affect his future.

16 MS. CAMPBELL: In July of 2012.

17 THE COURT: I believe it was June 18th, 2012.

18 MS. CAMPBELL: Correct.

19 THE COURT: All right. Thank you.

20 MS. CAMPBELL: Thank you, your Honor.

21 THE COURT: Thank you.

22 (A recess is taken from 9:34 a.m. until  
23 9:50 a.m.)

24 THE COURT: And, Counsel, let me hear from you.  
25 You've indicated that you have had time to meet with

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1 your client to discuss the fact that this is, in fact,  
2 a violent offense, and that it will require lifetime  
3 monitoring -- GPS monitoring.

4 MS. CAMPBELL: I have discussed with my client  
5 that that is the viewpoint that the Court takes of the  
6 offense, that it is a violent offense, and that GPS  
7 monitoring is required. I have also discussed with my  
8 client and gone over the Dykes case with my client and  
9 would like at this time, on behalf of my client, to put  
10 two matters on the record.

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: In terms of the Dykes case, as I  
13 read the case, it requires your Honor to make a finding  
14 on the record as to whether or not Mr. Barrett is a --  
15 likely to re-offend, and -- and if that is the case,  
16 then the GPS monitoring would be appropriate. In light  
17 of my interpretation of the case, I would ask your  
18 Honor to order a Presentencing Report to be done by  
19 the Department of Probation, Parole, and Pardon Services  
20 to address the issue of re-offending in terms of  
21 Mr. Barrett and his propensity for any conduct that  
22 might require the GPS monitoring under Dykes.

23 Second matter in reference to 16-160 and  
24 16-170, under what I believe is the rule of law, that  
25 all sentencing benefits should be given to the

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1 Defendant. Today, as my client is being sentenced,  
2 lewd act is not included in 16-160. 16-170 says: Any  
3 crimes not included are nonviolent. And should the  
4 legislature had intended subsequent to changing lewd  
5 act to CSC third, that it be clear to the bench and  
6 to counsel that this be treated as either violent or  
7 nonviolent. They had an opportunity to do so; they did  
8 not. And --

9 THE COURT: You agree that criminal sexual  
10 conduct third degree is considered a violent offense?

11 MS. CAMPBELL: It is covered by the statute,  
12 yes, ma'am.

13 THE COURT: All right.

14 MS. CAMPBELL: That the particular statute that  
15 Ms. Barrett was convicted of -- as -- is not covered in  
16 16-160. And that 16-170 indicates if it's not covered  
17 in this, then it's a nonviolent.

18 And I have explained to him both of those  
19 matters, my position, the Court's position, and, again,  
20 would ask that the Presentencing Report take place in  
21 order to fully inform your Honor, and, really, all  
22 the parties involved as to what the true nature of  
23 Mr. Barrett, in terms of re-offending would be. Thank  
24 you, your Honor.

25 THE COURT: What's the State's position as to a

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1 pretrial -- Presentence Report?

2 MS. CONCANNON: The State has no objection to a  
3 Presentence Report.

4 THE COURT: Is that you -- who does the  
5 presentence?

6 MS. CONCANNON: Probation. I'm sorry. I'll go  
7 get probation.

8 THE COURT: Why is probation not here? They  
9 knew we were sentencing.

10 MS. CONCANNON: I cannot answer that, your  
11 Honor.

12 THE COURT: Then, Counsel, the issue becomes --  
13 I'm not to be in Beaufort for the remainder of the year.  
14 So how will we impose sentence?

15 MS. CAMPBELL: Obviously, we could come to your  
16 Honor and be happy to do that. I'm sure that we can  
17 make transportation arrangements for Mr. Barrett, and  
18 I'm certainly capable of getting myself there.

19 THE COURT: So that is -- that would not be an  
20 issue as far as imposing sentencing?

21 MS. CAMPBELL: It would not be from our  
22 perspective.

23 MS. CONCANNON: No.

24 THE COURT: All right. I agree; I do believe  
25 that a presentence investigation would be beneficial.

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1 in addressing all of the issues that the Court needs  
2 to have answers to prior to imposing a sentence.  
3 Specifically, under the Dykes case, now, with requiring  
4 GPS monitoring, there are some findings that I need to  
5 make. I also am requesting information on his progress  
6 with -- under the YOA. And I think that that report  
7 will give me all of the information that I need to craft  
8 a sentence that is appropriate to address what the  
9 victim -- the punishment on behalf of the victim, as  
10 well as rehabilitation, that I am hearing that that's  
11 what you're requesting; is that correct?

12 MS. CAMPBELL: Yes, your Honor.

13 THE COURT: All right. So if you will just  
14 let me know when the presentence investigation is  
15 completed and make sure that I have a copy, and we will  
16 schedule that accordingly. Anything further?

17 MS. CAMPBELL: Yes, your Honor. For the  
18 record, because your Honor is ordering the Presentencing  
19 Report, my client's time within which to file his  
20 appeal, I understand, would be stayed and would not  
21 begin to run -- the ten days would not begin to run  
22 until the date of sentencing, then?

23 THE COURT: That is correct. There's nothing  
24 to appeal at this point until I impose the sentence.

25 MS. CAMPBELL: Correct.

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1 THE COURT: So his appellate rights are stayed.  
2 Anything further?

3 MS. CAMPBELL: No, your Honor.

4 THE COURT: Madam Solicitor, do your victims  
5 understand what is happening?

6 MS. CONCANNON: I will explain to them if they  
7 have any questions.

8 THE COURT: Okay.

9 MS. CONCANNON: The State would like to add  
10 as part of he Presentence Report that he also be  
11 interviewed by a doctor who is specialized in sexual  
12 predators.

13 THE COURT: I agree.

14 I'm not sure if you heard that. You were  
15 speaking to your client. I'm also requesting that a  
16 sexual offender assessment be done by a doctor that is  
17 certified in that area.

18 MS. CAMPBELL: I believe that's appropriate.

19 THE COURT: I don't know who you use in  
20 Beaufort County. Do you have a preference?

21 MS. CAMPBELL: Not in Beaufort County.  
22 Dr. McKee -- Dr. McGehee (phonetics) out of Columbia, I  
23 am familiar with his work. He's worked as an expert for  
24 us before in that area, and he has done a number of very  
25 thorough and valuable reports for the Court.

State versus Gerald T. Barrett, Jr.  
Jury Trial, Volume IV of IV

1 THE COURT: Who does the State --  
2 MR. SHELTON: I can't remember his name. I'm  
3 so sorry. He's out of Summerville.  
4 THE COURT: Dr. Burke?  
5 MR. SHELTON: Dr. Burke. Exactly.  
6 THE COURT: All right. I'm going to request  
7 Dr. Burke. I am familiar with the -- I'm familiar with  
8 reading the -- the reports that he provides.  
9 MS. CAMPBELL: Okay.  
10 THE COURT: And since we're going to be doing  
11 the sentencing, most likely, either in Berkeley or  
12 Charleston, then he would be able to travel if you  
13 needed him to testify.  
14 MS. CAMPBELL: Okay.  
15 THE COURT: All right. So I think that  
16 resolves a couple of different issues as well. So I'm  
17 ordering an assessment by Dr. Burke, and you may need to  
18 indicate -- you may need some paperwork for me to fill  
19 out to get that assessment done. All right?  
20 Anything else?  
21 MS. CONCANNON: Not from the State, your Honor.  
22 MS. CAMPBELL: No, your Honor.  
23 THE COURT: Mr. Barrett, good luck to you. I  
24 will see you sometime in the future after your report  
25 has been done.

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

State versus Gerald T. Barrett, Jr.  
Jury Trial, Volume IV of IV

1 And, Ms. Smith, good luck to you as well.  
2 Thank you.  
3 All right. We're at ease in this matter.  
4 WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS  
5 CAUSE.

6 (The hearing of this cause concluded  
7 at 10:19 a.m., on May 23, 2013.)

8 (End of Volume IV of IV, May 23, 2013.)  
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Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
COUNTY OF BEAUFORT ) 14TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, ) TRANSCRIPT OF RECORD  
V. ) 2012-GS-07-1633  
GERALD T. BARRETT, JR., )  
DEFENDANT. )

OCTOBER 2, 2013

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

A P P E A R A N C E S:

MARY CONCANNON, ASSISTANT SOLICITOR

PATRICK HALL, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

TRASI CAMPBELL, ASSISTANT PUBLIC DEFENDER

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

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\*\*NO EXHIBITS WERE INTRODUCED\*\*

1                                    Wednesday, October 2, 2013

2                    THE COURT: Counsel, if you'll state your name for  
3 the record.

4                    MS. CONCANNON: Thank you, Your Honor. Mary  
5 Concannon, C-o-n-c-a-n-n-o-n.

6                    MR. HALL: Thank you, Your Honor. Patrick Hall,  
7 H-a-l-l.

8                    MS. CAMPBELL: Trasi Campbell, it's T-r-a-s-i,  
9 public defender in Beaufort.

10                   THE COURT: And you represent Mr. Barrett?

11                   MS. CAMPBELL: I do, Your Honor.

12                   THE COURT: And we are here for the sole purpose of  
13 sentencing; is that correct?

14                   MS. CAMPBELL: That is correct.

15                   THE COURT: Have you had an opportunity to review  
16 the presentence investigation prepared by Agent Cabiness  
17 (phonetic)?

18                   MS. CAMPBELL: I have.

19                   THE COURT: Have you had an opportunity as well to  
20 go over that with your client?

21                   MS. CAMPBELL: Yes.

22                   THE COURT: The State has had an opportunity to  
23 review that report as well?

24                   MS. CONCANNON: Yes, Your Honor.

25                   THE COURT: And, Ms. Campbell, you've also had an

1 opportunity to review the evaluation by Dr. Burke  
2 (phonetic); is that correct?

3 MS. CAMPBELL: Yes.

4 THE COURT: And have you had an opportunity to go  
5 over that report with your client as well?

6 MS. CAMPBELL: Yes.

7 THE COURT: Have you also received a copy of that  
8 report?

9 MS. CONCANNON: I have, Your Honor.

10 THE COURT: All right. We are here for the  
11 sentencing on indictment 2012-GS-07-1633; is that  
12 correct?

13 MS. CONCANNON: Yes, Your Honor.

14 THE COURT: All right. And, Ms. Campbell, I know  
15 that your client is not required to sign the indictment  
16 nor are you required to sign -- excuse me, the sentencing  
17 sheet because it was a guilty verdict. Have you had an  
18 opportunity -- the State is indicating that this is a  
19 violent offense. Do you agree with that?

20 MS. CAMPBELL: Your Honor, I did the research on  
21 this. I do believe that it's classified as a violent  
22 offense at the time before the law was repealed, and I  
23 have also looked into the particular statutory provision  
24 that deals with how violent offenses are handled in the  
25 department of corrections and I've talked with my client

1 about that, and the parole eligibility aspects of that as  
2 well. We've discussed that as well.

3 THE COURT: Do you also -- the State has also  
4 indicated on the sentencing sheet that this is a  
5 mandatory GPS, due to the nature of the offense; do you  
6 agree with that?

7 MS. CAMPBELL: That is correct.

8 THE COURT: What is your position as to whether or  
9 not this is a serious or most serious offense?

10 MS. CAMPBELL: My position is that it is neither.

11 THE COURT: And that is not checked on the  
12 sentencing sheet. I just wanted to make sure that that  
13 is correct.

14 MS. CONCANNON: That is correct. It is not a  
15 serious or most serious.

16 THE COURT: Ms. Campbell, do you need any more time  
17 to meet with your client before we go forward with this  
18 sentencing?

19 MS. CAMPBELL: I do not.

20 THE COURT: Mr. Michel, if you'll swear  
21 Mr. Barrett.

22 GERALD T. BARRETT, JR., after having been  
23 duly sworn, testified as follows:

24 THE CLERK: State your full name for the record,  
25 please, and spell --

1 THE DEFENDANT: Gerald Thomas Barrett, Jr.

2 THE CLERK: Spell your last name, please.

3 THE DEFENDANT: B-a-r-r-e-t-t.

4 THE CLERK: Thank you.

5 THE COURT: All right. Mr. Barrett, we are here to  
6 go forward with your sentencing here today. My first  
7 question to you is are you ready to go forward today?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Have you had time to meet with your  
10 attorney? And I understand we are in Charleston County  
11 because I will not be back in Beaufort County for the  
12 foreseeable future. Are you prepared to go forward here  
13 in Charleston County today?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have you had an opportunity to go  
16 over the report from Dr. Burke as well as the report from  
17 Agent Cabiness?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you need any additional time to meet  
20 with her before we go forward with sentencing?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. Thank you. I'm going to  
23 hear from the State, and then I'll give you all the  
24 time -- I'll be happy to hear -- I understand there's  
25 some family members --

1 MS. CAMPBELL: Yes.

2 THE COURT: That would wish to address the Court.  
3 So you all may have a seat.

4 Ms. Concannon, I'll be happy to hear from you.

5 MS. CONCANNON: Thank you, Your Honor. May it  
6 please the Court. In May of this year the defendant,  
7 Mr. Barrett, Jr., was convicted of a lewd act on a minor,  
8 the victim named <sup>Minor</sup> . The incident occurred  
9 back in March. You heard all the testimony at trial. We  
10 were there for, I believe three days at trial hearing  
11 testimony, first pretrial, then into the trial itself.

12 There are a few things I wanted to focus on in the  
13 sentencing hearing. First would be Mr. Barrett's prior  
14 record. He does have a prior record. He's been in and  
15 out of the judicial system since he was nine years old.  
16 We won't get into his juvenile record, but as adult in  
17 2007 he has a petty larceny, in 2009 he has a burglary in  
18 the second degree nonviolent, as well as a financial  
19 transaction card fraud for which he received a Y. O. A.  
20 on both of those convictions.

21 And I believe the most important conviction that he  
22 has on his prior record is from August 25, 2011,  
23 contributing to delinquency of a minor. He was given  
24 credit for 90 days credit for time served. If you recall  
25 the trial testimony of M. , who was the victim.

1 in that case --

2 THE COURT: Can you, just for the record, because  
3 we have different a court reporter, if you'll spell her  
4 name.

5 MS. CONCANNON: Yes, Your Honor. It is -- her  
6 first name is M.K. Her last name M.K.  
7 M.K.

8 She was 14 years old at the time of the incident.  
9 Mr. Barrett did waive presentment. He pled guilty to a  
10 count two from this charge. It was originally charged as  
11 a criminal sexual conduct with a minor in the second  
12 degree. She was 14 years old at the time of the incident  
13 from which he pled guilty to.

14 And if I may, for the record, read the count two  
15 for which he pled guilty. It says that in Beaufort  
16 County, South Carolina on or about between July 15th,  
17 2011 and July 26th, 2011 the defendant, Gerald Barrett,  
18 Jr., did contribute to the delinquency of a minor by  
19 causing or influencing M.K., age 14, to  
20 willfully endanger her morals by engaging in sexual  
21 intercourse with the defendant.

22 Your Honor, I do have a certified true copy of that  
23 conviction as well as the burglary second degree  
24 conviction.

25 THE COURT: And he pled guilty to the contributing?

1 MS. CONCANNON: He did plead guilty to the  
2 contributing.

3 THE COURT: Did he plead guilty to the burglary?

4 MS. CONCANNON: Yes, Your Honor, he did. The  
5 reason they wanted to point out --

6 THE COURT: Ms. Campbell, you are not objecting to  
7 either one of those convictions? You agree that he has a  
8 burglary conviction?

9 MS. CAMPBELL: I do.

10 THE COURT: All right.

11 MS. CAMPBELL: I believe that -- right. I was the  
12 attorney on the contributing charge and Mr. Bell, from my  
13 office, was the attorney on the burglary. Yes, they are  
14 both convictions.

15 THE COURT: All right. Thank you.

16 MS. CAMPBELL: Thank you.

17 MS. CONCANNON: Thank you. The reason that I  
18 wanted to elaborate on the contributing charge is I  
19 believe the facts are just too similar to the facts that  
20 he was found guilty of in this case. It shows that he  
21 will do this again. He has done this at least twice that  
22 the State is aware of and likely more times. He does  
23 have other pending sex related charges in the 14 Circuit  
24 Solicitor's Office, Your Honor.

25 THE COURT: Tell me what the time frame was, as far

1 as this event and the event for the contributing.

2 MS. CONCANNON: The contributing event occurred in  
3 July of 2011, and the lewd act, which he was convicted  
4 of, was the following March of 2012, so roughly seven  
5 months apart with these two incidents.

6 THE COURT: You may continue.

7 MS. CONCANNON: Thank you, Your Honor. It just  
8 shows that he has a -- he's repeated this behavior, this  
9 predatory violent behavior towards these girls on at  
10 least two separate occasions, and the State would concede  
11 more. We have more pending charges, as I stated, with  
12 Mr. Barrett in our office, which I know we're not here  
13 today on those. I just believe it shows that he has a  
14 pattern of this behavior.

15 He is a sexual predator. He has a type. They are  
16 young, they are attractive and they are vulnerable, and  
17 that is who he attacks and that's who is most susceptible  
18 to actions. The incidents are just too similar to be  
19 ignored at this sentencing hearing, the State contends.

20 Aside from his prior record I did want to elaborate  
21 just a little bit on the evaluation by Dr. Burke as well  
22 as the report submitted by probation and parole. I know  
23 Your Honor has a copy of the report as well as  
24 Ms. Campbell, and the State has gone through the report  
25 page by page and there are just a few different points

1 that I'd like point out that I think are important for  
2 this sentencing. I'm sure Ms. Campbell has some points  
3 as well that she would like to point out.

4 He did go through numerous tests in this  
5 evaluation. I would like to add to the Court that I'm  
6 not quite familiar with all of these tests but I did a  
7 little bit of research on some of these and it's quite  
8 new to me, a new area to me, but I would like to point to  
9 the Static 99 Test performed Dr. Burke. And it states  
10 that Barrett is in the 40 percent risk of re-offending  
11 over the next 40 years, and that places him in the  
12 moderate to high risk category.

13 And while 40 percent to the year may not seem  
14 extremely high, when it comes to this sort of behavior  
15 that Mr. Barrett is exhibiting 40 percent is just too  
16 much of a risk that the State is willing to take. We  
17 feel that 40 percent shows that there's likelihood he  
18 will re-offend and we feel that nothing lower than the 15  
19 years maximum sentence would be appropriate.

20 I also would like to go down further in the report  
21 where Dr. Burke combined the Static 99 and Stable 2007  
22 Test. When combined together it placed Mr. Burke -- my  
23 apologies, Mr. Barrett in 64 to 83rd percentile risk  
24 comparison of similar samples in that origin of  
25 offenders. Again, 84 percent -- 83 percentile is

1 exceedingly high and we feel that that is just too great  
2 of a risk to be placed back into society. He's too great  
3 of a threat on these victims.

4 I further wanted to go on, and the evaluation by  
5 Dr. Burke even went so far as to say that even if, even  
6 though Mr. Barrett has been tried and convicted of this  
7 crime, even if in fact he was not innocent -- was not  
8 guilty, which the State concedes he is guilty of this  
9 crime, that there is still a 40 percent chance that he'll  
10 be accused of a similar crime in the next 15 years. And  
11 again, a 40 percent chance -- although he may be in the  
12 department of corrections, with which that would be their  
13 recidivism rate across the board, forty percent of these  
14 sexual offenses is just too high for the State to bear.  
15 We feel that he is a threat to the community.

16 He is a threat to Beaufort County or whoever he  
17 will be released to. We cannot have him on our streets.  
18 Fifteen years is the most appropriate sentence for the  
19 crime that he has been convicted of.

20 And finally I wanted to go into some of the  
21 pretrial testimony that was testified to prior to the  
22 commencement of this trial. You heard from two victims,  
23 one M.K. , who I mentioned earlier who  
24 Mr. Barrett pled guilty to having sexual relations with  
25 her while she was 14 years old, just seven months prior

1 to attacking Minor in this case, and also A.W.  
2 (phonetic) A.W. who alleges that Mr. Barrett did on one  
3 occasion, likely two occasions, also have sexual  
4 intercourse with her. She was only 12 years old when  
5 those incidents occurred. That case is still pending in  
6 the solicitor's office.

7 The separate victims, these separate incidents show  
8 a trend, show a pattern, show that the defendant,  
9 Mr. Barrett, is a predator. He's a sexual deviant. He  
10 is a sexual predator. He preys on young, pretty,  
11 vulnerable victims. That is who he goes after and that  
12 is who he attacks. And the State feels that anything  
13 lower than the 15 years would just not be acceptable. We  
14 are asking you to sentence Mr. Barrett to the maximum 15  
15 years. We are scared when he's released any time prior  
16 to that he will attack again. He is a predator.

17 Your Honor may be wondering why Ms. Minor, our  
18 victim, is not here, her family is not here. I would  
19 like to just shed a little bit of light on that. I'm not  
20 sure if you all remember, Mike is her stepfather. The  
21 family dynamic is all over the place with Minor's family.  
22 Most of the family has moved to Florida and were unable  
23 to attend this morning's hearing and Minor is now in the  
24 care of her mother.

25 Repeated phone calls were left, unanswered. I did

1 speak with her father, told him the sentencing was today  
2 and we left a message when it was changed, the time from  
3 9:30 to 11:30. We didn't hear from them, but their  
4 statements at trial I think would still be true today,  
5 that they all feel that 15 years is appropriate.

6           Minor was brave enough to get on the stand and  
7 testify and tell the truth and tell what happened, and  
8 that helped the State convict Gerald Barrett, Jr. of this  
9 crime and we feel nothing below the 15 years would be  
10 appropriate. Thank you, Your Honor.

11           THE COURT: All right. Ms. Campbell?

12           MS. CAMPBELL: May it please the Court, Your Honor.  
13 You know, just because the solicitor calls Mr. Barrett a  
14 sexual deviant and calls him a sexual predator does not  
15 make him one. Dr. Burke, who is an expert in this field,  
16 did not label him as sexual deviant, nor label him a  
17 sexual predator.

18           I'd like to go back and address basically the two  
19 main points that the solicitor addressed, and then I have  
20 some of my own to make on behalf of Mr. Barrett, and then  
21 if his family wishes to address, Your Honor.

22           In reference to the facts regarding Mary Kollaros,  
23 Mary testified that albeit legally unable to consent that  
24 she considered herself at the time to be dating Gerald  
25 Barrett, that they were boyfriend and girlfriend.

1 THE COURT: That doesn't change the fact that he  
2 pled guilty, correct?

3 MS. CAMPBELL: Correct. He pled guilty to  
4 contributing to the delinquency --

5 THE COURT: What she believes is of no moment. It  
6 is what the law believed.

7 MS. CAMPBELL: Correct.

8 THE COURT: Okay. All right. Thank you.

9 MS. CAMPBELL: And I prefaced what I said with it's  
10 not the law, that at 14 she cannot legally consent to  
11 have a sexual relationship with Gerald Barrett. However,  
12 my point in saying that is that she did not make the  
13 assertion that he beat her, that he tied her up, that he  
14 held her down.

15 THE COURT: Ms. Campbell.

16 MS. CAMPBELL: Yes.

17 THE COURT: It is against the law for your client  
18 to have engaged in sexual intercourse with that child,  
19 correct?

20 MS. CAMPBELL: Correct.

21 THE COURT: All right. I don't need to hear about  
22 anything making it in your mind or your client's mind  
23 that it was better.

24 MS. CAMPBELL: And that --

25 THE COURT: I think you want to make it seem

1 different that he didn't force her, that there may have  
2 been some understanding that force was not used but she  
3 did not have the capability to consent, whatever she  
4 thought, correct?

5 MS. CAMPBELL: Correct.

6 THE COURT: All right. Thank you.

7 MS. CAMPBELL: And, Your Honor, I apologize the  
8 only reason I address that is because the State has at  
9 length tried to connect the circumstances of Minor case  
10 to M. s case and again --

11 THE COURT: Ms. Campbell, I was there.

12 MS. CAMPBELL: Correct.

13 THE COURT: I heard from that victim. I heard from  
14 the current victim. All right. I understand what the  
15 State's position is. I understand what your position is,  
16 and I understand what your client has pled guilty to.  
17 All right. I take great offense at the fact that we're  
18 trying to mitigate or that someone tries to mitigate when  
19 they have intercourse with a child by using the statement  
20 that that child consented. Thank you.

21 MS. CAMPBELL: Thank you, Your Honor. In reference  
22 to the Static 99, which the State relied heavily on in  
23 their argument to Your Honor, I think it's very important  
24 that we point out that Dr. Burke himself felt that the  
25 Static 99 Test was overrepresenting Mr. Barrett's risk at

1 this time. And, in fact, as Your Honor I know has a copy  
2 of it, he says, I believe that this Static 99 score  
3 overrepresents Mr. Barrett's risk at this time.

4 If that is the case, if Dr. Burke himself believed  
5 that the testing was overrepresenting his risk to  
6 re-offend, or his risk to engage in similar conduct or  
7 recidivism then it falls to the next few tests that those  
8 figures may also be off, and may be overrepresenting  
9 Mr. Barrett's risk to the community, risk for recidivism.

10 And I think it's important that the record reflect  
11 that Dr. Barrett (sic) himself made the note that the  
12 Static 99 was overrepresenting the risk at this time.  
13 And if that be the case, Your Honor, you know, even the  
14 moderate to mid range of, you know, recidivism that  
15 Dr. Burke talks about would probably more likely be lower  
16 than moderate or mid range, closer to that than the  
17 higher range.

18 Also on the few pages after that on the Limestone  
19 V. S. P. Assessment Section C. Mr. Barrett's pedophilic  
20 approximation quotient. His -- and this is key for us,  
21 his quotient numbers match non pedophilic child molesters  
22 and non exclusive pedophilic offenders.

23 And so I think it's important that we make sure  
24 that we understand that Dr. Burke is scoring him in this  
25 section not to meet criteria that would be of a concern

1 for pedophilia or anything of that nature.

2           The V. S. -- the voice stimulus set basically  
3 showed statistically no difference in any arousal levels  
4 in what was shown on that for Mr. Barrett, and that was  
5 important for us.

6           And the last page where Dr. Burke gives his  
7 conclusion I would like to make sure the record is clear  
8 that Mr. Barrett, according to Dr. Burke, the expert in  
9 this case, does not appear to have chronic sexual  
10 interest in any deviant stimuli as evidenced by that  
11 Visual Sexual Preference Test, and I think that he goes  
12 on further down here to explain some of the other,  
13 perhaps, discrepancies in the testing.

14           And then he recommends on the last page for Your  
15 Honor and for all of us that Mr. Barrett could benefit  
16 from intensive outpatient program that may specialize in  
17 a sexual disorder because as noted earlier Mr. Barrett  
18 himself is the victim of sexual abuse and that that  
19 sexual abuse needs to be addressed for his care and for  
20 everyone's care.

21           I think that the P. S. I. -- I'll move to that at  
22 this point. I think that the P. S. I. that Beaufort  
23 County did, frankly, it appears sort of a lot of cutting  
24 and pasting from the incident reports and from the Hope  
25 Haven report. It was their opinion that he should be

1 sentenced to the department of corrections with community  
2 supervision but they did not make a recommendation here  
3 on or for any length of time.

4 I'm asking Your Honor to sentence Mr. Barrett in,  
5 as Dr. Burke says, the moderate sort of mid range,  
6 something in the six to seven years mid range of the  
7 possible maximum sentence.

8 If Mr. Barrett returned from the meeting with  
9 Dr. Burke in the extremely high risk category then  
10 perhaps the lengthy prison sentence of 15 years would  
11 have been appropriate. That's our plea to Your Honor  
12 today, for a mid range sentence which according to  
13 Dr. Burke matches some of the findings that he had for  
14 Mr. Barrett.

15 And at this point I will turn it over to  
16 Mr. Barrett and/or his family if they wish to address  
17 Your Honor.

18 THE COURT: All right. Ms. Campbell, he is  
19 currently on Y. O. A. parole?

20 MS. CAMPBELL: He is.

21 THE COURT: Was on Y. O. A. when this was  
22 committed?

23 MS. CAMPBELL: That is correct.

24 THE COURT: And so tell me about that. Tell me  
25 what you know about that.

1 MS. CAMPBELL: Well, it's a Y. O. A. parole from  
2 the conviction that he had -- I want to say Jasper maybe.

3 THE COURT: The burglary?

4 MS. CAMPBELL: Yeah.

5 THE COURT: He was on Y. O. A. parole for the  
6 burglary?

7 MS. CAMPBELL: Oh, Beaufort, right, from Mr. Bell.  
8 Correct. And it's my understanding that the Y. O. A.  
9 parole, I mean, that's going to have to be taken up with  
10 them, and we've talked about that. That's a totally  
11 separate matter from the concerns that he has in the  
12 sentencing.

13 THE COURT: But you've gone over with him that this  
14 conviction --

15 MS. CAMPBELL: Yes, it will be revoked, is what I  
16 believe.

17 THE COURT: It could be.

18 MS. CAMPBELL: Yes, it could be.

19 THE COURT: It will somewhat impact his Y. O. A.  
20 parole.

21 MS. CAMPBELL: Yes, ma'am. I've advised him of  
22 that. Yes.

23 THE COURT: Because since he hasn't been sentenced  
24 they have been unable to do that.

25 MS. CAMPBELL: Correct.

1 THE COURT: How is he doing on probation -- on his  
2 Y. O. A. parole?

3 MS. CAMPBELL: Well, my understanding is other than  
4 these matters -- well, except for, you know, there were  
5 some issues with --

6 THE COURT: Drug use.

7 MS. CAMPBELL: The drug and alcohol counseling, the  
8 alcohol use, and there was one positive test for  
9 marijuana, I think, on the report.

10 THE COURT: So would we classify that as he was  
11 successful, not successful?

12 MS. CAMPBELL: Moderately successful.

13 THE COURT: All right. So tell me who you want me  
14 to hear from.

15 MS. CAMPBELL: May I have just one moment?

16 THE COURT: You may have all the time you need.

17 (WHEREUPON, Ms. Campbell speaks privately with her  
18 client and his family.)

19 MS. CAMPBELL: May it please the Court, Your Honor.  
20 My client does not wish to address the Court at this  
21 time.

22 THE COURT: All right.

23 MS. CAMPBELL: However, his mother and father and  
24 sisters are here and they would like to address the  
25 Court.

1           THE COURT: All right. Mr. Barrett, I understand  
2 that you do not wish to address the Court and in no way  
3 will I take that into consideration, just as I advised  
4 the jury that they were not to take into consideration  
5 the fact that you did not testify. You have those  
6 constitutional rights I do not consider.

7           I understand that that may be a decision that your  
8 attorney has indicated to you that you should not or may  
9 not want to address the Court, so I just want to relay  
10 any fears that you may have about that I consider or not  
11 consider the fact that you are not addressing the Court.  
12 All right.

13           THE DEFENDANT: Yes, ma'am.

14           THE COURT: All right. Just with that being said  
15 is there anything you wish to tell me?

16           THE DEFENDANT: No, ma'am.

17           THE COURT: All right. Thank you.

18           All right, Ms. Campbell. If you'll just have --

19           You can stand right there. I'll need you to state  
20 your name for the record, and again please tell us your  
21 last name.

22           FEMALE SPEAKER: My name is Valerie Barrett, and  
23 it's spelled B-a-r-r-e-t-t.

24           THE COURT: Thank you.

25           FEMALE SPEAKER: The only thing I would like to say

1 is Jerry has made several bad choices in his life but he  
2 has never -- he doesn't have the heart to hurt anybody,  
3 not purposely. That's all I've got to say.

4 THE COURT: Thank you, Ms. Barrett. And I'm just  
5 going to take the opportunity, there comes a time when  
6 the Court has to look at, and Ms. Campbell has to look  
7 at, and the State looks at that the difference between a  
8 bad person and bad choices, and I don't know necessarily  
9 that the State is saying that your son is a bad person  
10 but I think everybody in this room agrees that he has  
11 made severe -- a lot, a lot of bad choices in his short  
12 life. All right.

13 And, Mr. Barrett, the reason I make that  
14 distinction is because it is important for you to  
15 understand that your past decisions don't necessarily  
16 impact your future decisions; do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right.

19 MALE SPEAKER: I'm Gerald Barrett's father, Gerald  
20 Barrett, Sr., B-a-r-r-e-t-t. My son has grew up in a  
21 fairly bad family, Your Honor. We've had our problems.  
22 I was a fairly bad drug addict user, alcohol. He's seen  
23 a lot of that and maybe I have put a reference on him in  
24 a bad way, but he's a fairly good kid. He's my kid and I  
25 guess I would say that, but your leniency or whatever

1 will be appreciated.

2 THE COURT: Thank you, Mr. Barrett.

3 Ms. Campbell, I understand you said two of his  
4 sisters were here. Those are his sisters?

5 MS. CAMPBELL: These are Gerald's sisters, Your  
6 Honor, and I don't believe that they wish to address the  
7 Court, his older sister and his younger sister.

8 THE COURT: All right. Just note for the record  
9 that they are here.

10 And again, anything further, Ms. Campbell?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: And, Mr. Barrett, anything before I  
13 impose sentence?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: I understand there was a not guilty on  
16 the kidnapping, the criminal sexual conduct. Are you  
17 going to retry it? What is the State's position as to  
18 that, because it was a mistrial on that one.

19 MS. CONCANNON: That's correct, Your Honor. It was  
20 a mistrial. I may be in talks with Ms. Campbell to see  
21 if there's anything we can do to avoid another trial. I  
22 would hate to put my witness, victim on the stand again  
23 but I can't tell the Court at this time yes or no. I'm  
24 just not sure.

25 THE COURT: What is the State's position as to --

1 again, I'm going to impose sentence, as to a -- you don't  
2 have a trial date for the pending charges, correct?

3 MS. CONCANNON: No, Your Honor. There is no trial  
4 date for the pending charges.

5 THE COURT: And again, Ms. Campbell, just for the  
6 record, I am not considering that there are pending  
7 charges.

8 MS. CAMPBELL: Yes, Your Honor.

9 THE COURT: I'm just trying to make sure that we  
10 clean up as much paperwork-wise today that we can. All  
11 right.

12 MS. CAMPBELL: Yes, ma'am.

13 THE COURT: Anything further, Ms. Campbell?

14 MS. CAMPBELL: No, Your Honor.

15 THE COURT: All right. Anything further,  
16 Mr. Barrett?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: You understand and your attorney has  
19 advised you that you are facing 15 years in the  
20 department of corrections on this offense?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you understand that I can also fine  
23 you in an amount in the Court's discretion?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Or both. Do you understand that's a

1 possible punishment?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Pursuant to this you will be required  
4 after you have served your time in custody, assuming that  
5 that's what I impose upon you, to a mandatory lifetime  
6 GPS; do you understand that, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And this is also mandatory required  
9 reporting; is that correct?

10 MS. CAMPBELL: That's -- it's required for the  
11 sexual offender registry, yes.

12 THE COURT: Do you understand what that means,  
13 Mr. Barrett?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Can you explain that to me.

16 THE DEFENDANT: That I am required to report, just  
17 like probation.

18 THE COURT: All right. You are required --  
19 Ms. Campbell, have you explained to him that it's not  
20 like probation. There's a different place that he has to  
21 go sign up as a sexual offender?

22 MS. CAMPBELL: I don't know that I've explained to  
23 him -- I don't know that I've explained to him where he  
24 needs to report but he has to report to the sheriff's  
25 department. You know, I think it's now every six months.

1 THE COURT: Correct.

2 MS. CAMPBELL: He has to let them know where he's  
3 living and circumstances of his housing, and there's  
4 certain restrictions on where he can live.

5 THE COURT: Right. Ms. Campbell, did you also  
6 explain to him with the record that he has now  
7 accumulated the potential that he will be classified as a  
8 sexually violent predator?

9 MS. CAMPBELL: Mr. Barrett understands that. Yes.  
10 We've discussed that.

11 THE COURT: And, again, I just like to tie up as  
12 many loose ends and make the sentencing as informative as  
13 possible for any future issues that may arise.

14 Mr. Barrett, I have used a lot of terms; sexually  
15 violent predator, sex offender registry, those things; do  
16 you understand what all those mean?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Any questions for the Court?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Based upon my discussion does the State  
21 have anything further regarding -- related to those  
22 matters?

23 MS. CONCANNON: Nothing further from the State,  
24 Your Honor.

25 MS. CAMPBELL: Your Honor, if I could just have one

1 second?

2 THE COURT: Take all the time you need,  
3 Ms. Campbell.

4 (WHEREUPON, Ms. Campbell talks privately with her  
5 client.)

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: Anything further?

8 MS. CAMPBELL: No, Your Honor. Actually, Your  
9 Honor, for the record, my client has been in the  
10 detention center since June 12, 2012.

11 THE COURT: June 12, 2012.

12 MS. CAMPBELL: That's correct.

13 THE COURT: I'm assuming you're telling me that  
14 because you are requesting --

15 MS. CAMPBELL: Credit for time served.

16 THE COURT: -- credit for time served since June 12  
17 of 2012?

18 Any objection to that incarceration date?

19 MS. CONCANNON: No objection, Your Honor.

20 THE COURT: All right. It's the order of the Court  
21 on indictment 2012-GS-07-1633 that you be committed to  
22 the State Department of Corrections for a term of 12  
23 years provided upon the service of nine years. The  
24 balance is suspended, place you on probation for four  
25 years.

1           Terms and conditions, you are to enroll in a sexual  
2 offender treatment program and complete. There's to be  
3 no contact with the victim, the victim's family by you or  
4 anyone at your request. That includes face-to-face  
5 discussions, it also includes any texting, e-mailing,  
6 anything of that nature. Do you understand what that  
7 means?

8           THE DEFENDANT: Yes, ma'am.

9           THE COURT: I understand that there is capability  
10 for -- whether or not it's condoned by the department of  
11 corrections, that you may post on Facebook and do things  
12 of that nature. That includes anything that you post on  
13 Facebook or any electronic media. There is to be no  
14 contact with the victim; do you understand?

15          THE DEFENDANT: Yes, ma'am.

16          THE COURT: You are subject to mandatory GPS. You  
17 are to be placed upon the sex offender registry. Good  
18 luck to you.

19          MS. CAMPBELL: Thank you, Your Honor.

20          MS. CONCANNON: Thank you, Your Honor.

21          THE COURT: And, Ms. Campbell, since the sentence  
22 was imposed today, today starts your appeal.

23          MS. CAMPBELL: Correct. Thank you, Your Honor.

24 And if it pleases the Court, I'm going to try and speak  
25 to my client before they take him --

1 THE COURT: All right. If you'll --

2 THE DEPUTY: I'll put him in the booth.

3 THE COURT: All right. Thank you.

4 MS. CAMPBELL: Thank you very much.

5 (WHEREUPON, the hearing concluded.)

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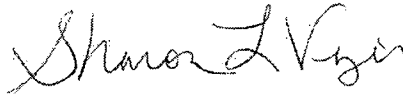
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 2nd day of October 2013.

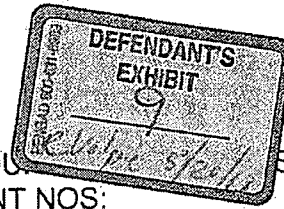
I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

December 10, 2013



SHARON L. VIZER

CIRCUIT COURT REPORTER



STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMONS SESSIONS
COUNTY OF BEAUFORT )	INDICTMENT NOS:
STATE OF SOUTH CAROLINA, )	2012-GS-07-1631,1632,1633
versus )	
GERALD BARRETT, JR., )	MOTION TO DISALLOW
Defendant. )	1. QUALIFICATION OF KENDRA TWITTY
_____ )	AS AN EXPERT
	2. USE OF THE TERMINOLOGY "FORENSIC
	INTERVIEWER"
	3. TESTIMONY FROM KENDRA TWITTY

The Defendant, Gerald Barrett, Jr., by and through his undersigned counsel, hereby respectfully requests that the State of South Carolina, pursuant to the opinion issued by the State of South Carolina Supreme Court in January 2013 in State v. Kromah, ( Appellate Case No. 2009-140328), be prevented from qualifying Kendra Twitty as an Expert, using the terminology referring to her as a "forensic expert", and presenting her testimony in this case.

The Defendant will move before this Honorable Court for a hearing on this matter on May 20, 2013 at 9:00 a.m., or as soon as the Defendant may be heard, for an Order in accordance with this motion. Grounds for this motion are detailed herein below.

The South Carolina Supreme Court noted in Kromah, attached hereto, that "the title of "forensic interviewer" is a misnomer. The use of the word forensic indicates that the interviewer deduces evidence suitable for use in court. It also implies that the evidence is deduced as the result of the application of some scientific methodology. The exact scientific methodology applied apparently defies identification. The RATAC style of interviewing is not scientific. It merely

represents the objectives and topics of discussion between the interviewer and the child. Somehow RATAC is supposed to convert the interviewer into a human truth-detector whose opinions of the truth are valuable and suitable for the jury's consumption".

The Court went on to explain that "forensic interviewers might be useful as a tool to aid law enforcement officers in their initial investigative process, but this does not make their work appropriate for use in the courtroom. The rules of evidence do not allow witnesses to vouch for or offer opinions on the credibility of others, and the work of a forensic interviewer, by its very nature, seeks to ascertain whether abuse occurred at all, i.e., whether the victim is telling the truth, and to identify the source of the abuse. Part of the RATAC method, which is not without its critics, involves evaluating whether the victim understands the importance of telling the truth and whether the victim has told the truth, as well as the forensic interviewer's judgment in determining what actually transpired. For example, an interviewer's statement that there is a "compelling finding" of physical abuse relies not just on objective evidence such as the presence of injuries, but on the statements of the victim and the interviewer's subjective belief as to the victim's believability. However, an interviewer's expectations or bias, the suggestiveness of the interviewer's questions, and the interviewer's examination of possible alternative explanations for any concerns, are all factors that can influence the interviewer's conclusions in this regard. Such subjects, while undoubtedly important in the investigative process, are not appropriate in a court of law when they run afoul of evidentiary rules and a defendant's constitutional rights".

Based upon these statements by the South Carolina Supreme Court, the Defendant asserts that Kendra Twitty should not be qualified as an "expert" by this Court. He further contends that her testimony should be excluded in its entirety. However, if this Honorable Court, after a hearing on this matter, deems it appropriate for Kendra Twitty to testify, then the Defendant asks that the State of South Carolina be disallowed from calling her a "forensic" interviewer. And, if she is to testify, then, in keeping with the parameters set forth in Kromah, she be limited to the following:

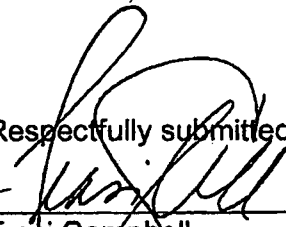
- the time, date, and circumstances of the interview;
- any personal observations regarding the child's behavior or demeanor;  
or
- a statement as to events that occurred within her personal knowledge

Specifically, again in keeping with the South Carolina Supreme Court ruling in Kromah, Kendra Twitty should not in any way during her testimony address the following:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or
- an opinion that the child's behavior indicated the child was telling the

truth.

Respectfully submitted,



Traşi Campbell  
Chief Public Defender  
Beaufort County  
Attorney for the Defendant

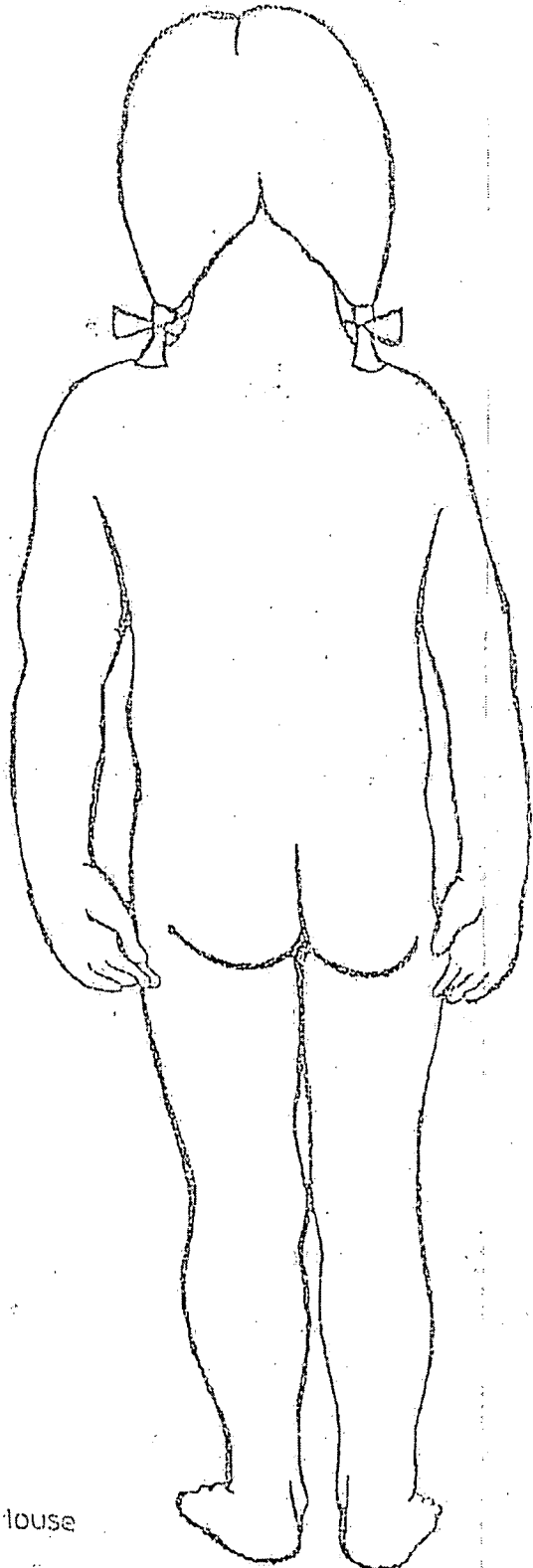
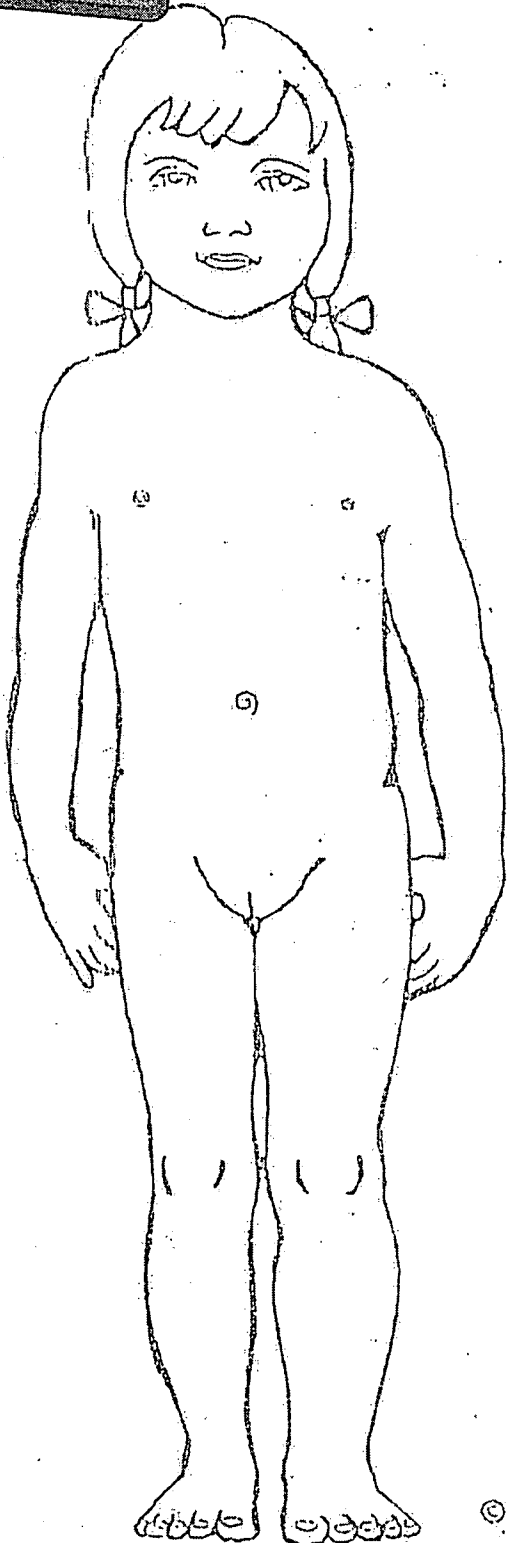
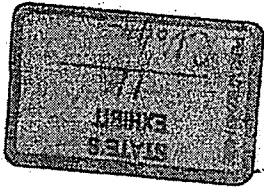
Beaufort, South Carolina

5/20, 2013

01/20/2009 10:02 FAX 6447233

CAC AIKEN County

008/013



©2000 CornerHouse

Minor

7-20-2012 After St. Patty's Day -  
2 days after St. Patty's day  
MARCH OR APRIL 2012  
He raped me. Step-mom - Katie

Katie  
JAM

he took his pants down  
and got on top of me  
and I thought I was dying.  
so I cried and he heard  
a noise so he ran down  
stairs and ~~texted~~ ten  
minutes later he texted  
and said come down stairs  
so I shut my door and  
locked it so he wouldn't  
come back and I ~~went~~ took  
a shower and then got  
some pants and a t-shirt  
on and went back to sleep.

Se. told

T. Sh.

(Sister)

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WITNESSES

J. Adams, BCSO

ARREST WARRANT NUMBER

2012A0710300043

ACTION OF GRAND JURY

True Bill

*Melinda Beene*

Foreperson of Grand Jury  
Date: AUG 23 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0701633

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Gerald Barrett Jr

Indictment for

Lewd Act, committing or attempting lewd act upon child under 16

SC Code: 16-15-0140

CDR Code:2468

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I  
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

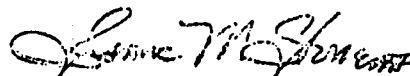
INDICTMENT  
2012GS0701633

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

**Lewd Act, committing or attempting lewd act upon child under 16**

That in Beaufort County, South Carolina, on or about, the Defendant, Gerald Barrett Jr, 1990-01-14, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Minor , date of birth , with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140, S.C. 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.

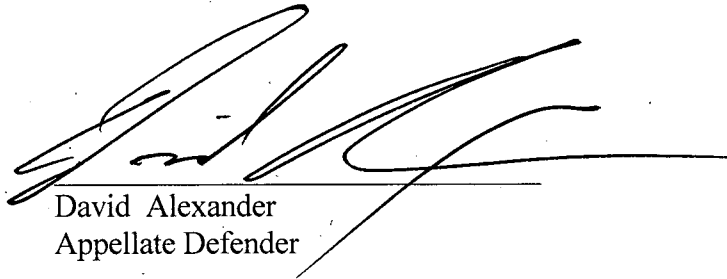


\_\_\_\_\_  
Solicitor

## 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."

November 9th, 2015



David Alexander  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**  
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