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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2012-213368
Opinion No. 2015-UP-455
(S.C. Ct. App. filed September 9, 2015)

THE STATE,

RESPONDENT,

V.

MICHAEL LEE CARDWELL,

PETITIONER.

APPENDIX

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TABLE OF CONTENTS

Record on Appeal.....	1
TRIAL TRANSCRIPT DATED OCTOBER 29 – 30, 2012.....	1
PRETRIAL MOTIONS.....	8
OPENING STATEMENT BY MS. LIVELY.....	37
OPENING STATEMENT BY MR. GOUDE.....	41
OPENING STATEMENT BY MR. FOX.....	42
TESTIMONY	
DAVID MARSH	
Direction Examination by Ms. Lively.....	44
Cross Examination by Mr. Goude.....	70
RON DOUGLAS	
Direct Examination by Ms. Lively.....	72
PHILLIP HANNA	
Direction Examination by Ms. Lively.....	79
MINOR CHILD1	
Direct Examination by Ms. Lively.....	88
Cross Examination by Mr. Goude.....	98
SARAH CARDWELL	
Direction Examination by Mr. Goude.....	108
MICHAEL CARDWELL	
Direction Examination by Mr. Fox.....	118
CLOSING ARGUMENT BY MY FOX.....	131
CLOSING ARGUMENT BY MR. GOUDE.....	150
CLOSING ARGUMENT BY MS. LIVELY.....	176
VERDICT.....	199
POST-TRIAL MOTIONS.....	204
SENTENCING.....	213
COURT’S EXHIBIT 3.....	218
TRUE-BILLED INDICTMENTS.....	231
CERTIFICATE OF COUNSEL.....	243
Final Brief of Appellant	245
Final Brief of Respondent	261
Decision of the South Carolina Court of Appeals	290
Appellant’s Petition for Rehearing	293
Order Denying Petition for Rehearing	300

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN)

State,) 2012-GS-22-560
) 2012-GS-22-561
Plaintiff,) 2012-GS-22-587
) 2012-GS-22-588
vs.)
)

Michael Lee Cardwell,
Defendant.)

State,) 2012-GS-22-558
) 2012-GS-22-559
Plaintiff,) 2012-GS-22-585
) 2012-GS-22-586
vs.)
)

Sarah Denise Cardwell,
Defendant.)

Transcript of Record

Hearing

October 29-31, 2012

B E F O R E :

Honorable Edward B. Cottingham
Georgetown County Courthouse
Georgetown, South Carolina

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Michael Lee Cardwell

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State v. Cardwell

III

1	I N D E X		
2	October 29, 2012		
3	Motions.	1	
4	Voir Dire.	29	
5	Jury Selection	39	
6	Opening Instructions by Court.	48	
7	Opening Statement by Ms. Lively.	55	
8	Opening Statement by Mr. Goude	59	
9	Opening Statement by Mr. Fox	60	
10	David Marsh		
11	Direct by Ms. Lively	62	
12	Cross by Mr. Goude	88	
13	Ron Douglas		
14	Direct by Ms. Lively	90	
15	Phillip Hanna		
16	Direct by Ms. Lively	97	
17	Dianne Nordeen		
18	Direct by Ms. Lively	105	
19	October 30, 2012		
20	Questioning of ^{Minor Child 2} - Re: Competence	118	
21	Questioning of Minor Child 1 - Re: Competence	121	
22	Minor Child 2		
23	Direct by Ms. Lively	126	
24	Cross by Mr. Goude	134	
25	Minor Child 1		

State v. Cardwell

IV

1	Direct by Ms. Lively	140
2	Cross by Mr. Goude	150
3	Melissa Muse	
4	Direct by Ms. Lively	162
5	Cross by Mr. Goude	183
6	Cross by Mr. Fox	211
7	Redirect by Ms. Lively	213
8	Recross by Mr. Goude	215
9	Motions.	216
10	Questioning of Defendants Re: Rights.	218
11	Sarah Cardwell	
12	Direct by Mr. Goude.	224
13	Cross by Mr. Fox	287
14	Cross by Ms. Lively.	293
15	Redirect by Mr. Goude.	305
16	Michael Cardwell	
17	Direct by Mr. Fox.	305
18	Cross by Mr. Goude	327
19	Cross by Ms. Lively.	341
20	Redirect by Mr. Fox.	348
21	Recross by Mr. Goude	349
22	Motions.	376
23	October 31, 2012	
24	Charge	383
25	Closing Argument by Mr. Fox	402

State v. Cardwell

V

1	Closing Argument by Mr. Goude.	422
2	Closing Argument by Ms. Lively	448
3	Question from Jury	474
4	Verdict.	477
5	Motions.	482
6	Sentencing	491
7	Certificate.	496
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

State v. Cardwell

VI

	E X H I B I T S		
			Id. Evd.
1			
2			
3	S-1	Computer	81
4	S-2	CD - Videotape	87
5	S-3	Photograph	82
6	S-4	Photograph	82
7	S-5	Photograph	82
8	S-6	Photograph	82
9	S-7	Photograph	82
10	S-8	Photograph	82
11	S-9	Photograph	147
12			
13	D-1	Calendar	88
14	D-2	Birth Certificate - Minor Child 2	134
15	D-3	School Records - Minor Child 2	138
16	D-4	Birth Certificate - Minor Child 1	150
17	D-5	School Records - Minor Child 1	153
18	D-6	Marriage Certificate	230
19	D-7	Divorce Decree	230
20	D-8	Sketch of Trailer	239
21			
22	C-1	Motion to Quash	
23	C-2	<u>State v. Brockman</u>	
24	C-3	Search Warrant	
25	C-4	Cedar Creek Information	

State v. Cardwell

VII

- 1 C-5 Statutes
- 2 C-6 Coppertone Girl Information
- 3 C-7 Brookgreen Gardens Statues
- 4 C-8 Photographs Art - Georgetown Library
- 5 C-9 Family Photographs
- 6 C-10 CD - UFC
- 7 C-11 Question from Jury Re: Definitions
- 8 C-12 Question from Jury Re: Watching Videotape
- 9 C-13 Charge
- 10 C-14 Defendant's Request to Charge
- 11 C-15 Statute - Indecent Exposure
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Motions

1

1 (On the record, October 29, 2012.)

2 THE COURT: Counsel, let me hear your motion to quash
3 even before we start the jury selection process, and let's go
4 ahead, I've thought about it, let's go ahead and hear these
5 other motions now, please, motion to quash first, please.

6 MR. GOUDE: Judge, if it please the Court, there are
7 four indictments in this case, two are ---

8 THE COURT: Let's see. I have five up here. Is it
9 four for each person?

10 MR. GOUDE: There's two for each person as I
11 understand it, Judge, two sex exploitation indictments for
12 each person and two unlawful conduct with a child indictments.

13 THE COURT: So, we got eight indictments up here.

14 MR. GOUDE: That's the way I understand it.

15 MS. LIVELY: Yes, sir.

16 THE COURT: All right, what is your motion?

17 MR. GOUDE: Judge, our motion is to quash both
18 indictments and ---

19 THE COURT: When you say both indictments you need to
20 identify ---

21 MR. GOUDE: All right, sir, I will.

22 THE COURT: --- the indictments, the name and as to
23 which Defendants for me.

24 MR. GOUDE: And this is a written motion, Judge, which
25 I am handing up to the Court.

Motions

2

1 THE COURT: What does it say? Have you served a copy
2 on Ms. Candice?

3 MR. GOUDE: I have given a copy to the Solicitor right
4 now, Your Honor.

5 MS. LIVELY: He just handed it to me.

6 THE COURT: I got you. You're saying they are unduly
7 vague under the, under the constitution.

8 MR. GOUDE: Yes, Judge. These two statutes, the
9 indictment says for the sex exploitation of a minor, and
10 basically the Defendants, this is Sarah Cardwell that I
11 represent. This is Michael Cardwell that Mr. Fox represents.
12 These parties were boyfriend and girlfriend. They have later
13 married. Sarah Cardwell had two children by her prior
14 husband, Minor Child 1 and Minor Child 2 one boy and one girl,
15 and both Defendants are charged, Sarah Cardwell is charged
16 with sex exploitation of the boy and the girl and Sarah
17 Cardwell is charged with unlawful conduct on the boy and the
18 girl, and Mr. Cardwell, Mr. Cardwell is charged with the same
19 thing, Judge.

20 THE COURT: Go ahead.

21 MR. GOUDE: Mr. Cardwell is charged with the same
22 thing which is two counts - each one is charged with four.

23 THE COURT: Let's get this straight. There's a sexual
24 exploitation of a minor is one of the charges. One minute,
25 let me get this straight here, up here.

Motions

3

1 MR. GOUDE: All right, sir.

2 THE COURT: Why are there two sexual exploitations,
3 two separate incidents?

4 MS. LIVELY: No, Your Honor, one for each child.

5 THE COURT: I got you. All right, go ahead. I got it
6 straight now. Yes, go ahead.

7 MR. GOUDE: Thank you, Your Honor. Basically the two
8 indictments ---

9 THE COURT: Go ahead.

10 MR. GOUDE: --- on the sex exploitation basically each
11 Defendant is charged as to each of the two minor children of
12 using, employing, inducing, coercing, encouraging,
13 facilitating, or permitting ---

14 THE COURT: Let me quickly get to the chase here. You
15 are asking me to override the specific statute of the General
16 Assembly; aren't you?

17 MR. GOUDE: Well, I think that's been done every time
18 any charge has ever been quashed or ever been ruled
19 unconstitutional and we've done that a lot ---

20 THE COURT: Well, let me cut to the - I see what your
21 position is. What's your reply, Ms. Candice?

22 MS. LIVELY: Your Honor, in regards to the statute and
23 the - for both unlawful conduct and sexual exploitation of a
24 minor first degree the elements are very clear. The
25 legislature was extremely specific in the elements of that

Motions

4

1 particular charge so that it includes not only a live
2 performance, material depicting sexual activity, as well as
3 the fact that they even have a special definition for what
4 they determine to be sexual activity. I believe that this
5 statute goes further than many in giving us specifics and
6 giving the Defendants notice as to what it is that they are
7 going to have to defend.

8 THE COURT: Mr. Goude, I note your position is clear
9 for the record, but I just respectfully disagree with you and
10 conclude that the statute is clear and free of any ambiguity.
11 Your motion is respectfully denied.

12 MR. FOX: Your Honor ---

13 THE COURT: Yes.

14 MR. FOX: --- I just want, for the record, although
15 Mr. Goude's written motion he's handed up is captioned State
16 of South Carolina versus Sarah Cardwell, these motions that
17 he's making are in fact on behalf of Michael Cardwell as well.

18 THE COURT: The record will reflect that the same
19 motion is made on behalf of both Defendants and as to both are
20 respectfully denied.

21 MR. FOX: Thank you, Your Honor.

22 MR. GOUDE: And Judge, we make the same motion to
23 quash on the other two indictments, the two unlawful conduct
24 indictments, on the same grounds that we have in our written
25 motion to quash.

Motions

5

1 THE COURT: The record will reflect that the motion is
2 made as to both Defendants as to that issue, on that
3 indictment, and again, is respectfully denied. My thinking is
4 that it's clear and free of any ambiguity.

5 MR. GOUDE: Thank you, sir.

6 THE COURT: All right, sir.

7 Let's go ahead and do the housekeeping. Is there any
8 other motions from the Defendant?

9 MR. GOUDE: Yes, sir. We have other motions, Your
10 Honor.

11 THE COURT: Let's go ahead and hear them before I pick
12 a jury.

13 MR. GOUDE: Thank you, sir.

14 THE COURT: Your written motion also says the charge
15 offers, what is that?

16 MR. GOUDE: It's the charged offenses and statutes
17 violate the freedom of expression under the First Amendment of
18 the U.S. Constitution.

19 THE COURT: I'm not clear what your position is there.

20 MR. GOUDE: As far as I can tell this charge that
21 we're in court for is because a six year old girl and an eight
22 year old boy jumped around and acted ignorant in their living
23 room while they were naked and that the Defendant Michael
24 Cardwell, the boyfriend of my client, the mother of the two
25 children, was also in the living room and he had no clothes

Motions

6

1 on. He was standing up and my client, the mother, she took a
2 digital camera picture in their living room of the two six
3 year old and eight year old naked kids jumping up and acting
4 ignorant.

5 THE COURT: I respectfully deny that motion, too.
6 It's made a part of - your written motion is made a part of
7 the record. Madam Court Reporter, take this. What's your
8 next motion?

9 MR. GOUDE: Your Honor, the next motion would be ---

10 THE COURT: Go ahead, please.

11 MR. GOUDE: --- and I'll pass these up. These are
12 written motions, too, Your Honor.

13 THE COURT: Tell me what they are.

14 MR. GOUDE: The next ---

15 THE COURT: Are these motions as to both Defendants?
16 What say, Eric?

17 MR. FOX: Yes, Your Honor, they are.

18 THE COURT: All right, I will consider them as being
19 made by both Defendants. Proceed Mr. - counsel.

20 MR. GOUDE: Your Honor, the next motion would be a
21 motion to produce any prior statements of the prosecution
22 witnesses. That would include all of the witnesses, that
23 would include the two minors, that would include the counselor
24 ---

25 THE COURT: How about let me cut to the chase, have

Motions

7

1 you complied with Brady and discovery issues?

2 MS. LIVELY: Yes, sir, Your Honor, and they filed a
3 motion regarding counselor notes and I did not fight them on
4 it. We've actually given them all the counselor therapy notes
5 as well.

6 THE COURT: She says she's got - you've got everything
7 they had, Mr. Goude.

8 MR. GOUDE: Thank you, Your Honor. Judge, the next
9 motion is a motion in limine and there are four parts to that.
10 I think one of the parts we may have talked about it back in
11 chambers, but anyway, it's four parts to it.

12 THE COURT: Not going to let Lyle in unless it becomes
13 a matter of cross examination.

14 MR. GOUDE: The first subparagraph of our motion in
15 limine, Judge, is requesting that the Prosecutor tell us the
16 criminal records of the two Defendants so we'll know whether
17 to testify or not.

18 THE COURT: Yes, have you done that, Candice?

19 MS. LIVELY: Your Honor, from what I can see they don't
20 have prior records.

21 THE COURT: That answers the question. Go ahead.

22 MR. GOUDE: Judge, the second part of our motion in
23 limine is, as we understand, my client's laptop computer was
24 taken by the police in Georgetown, the sheriff's office, sent
25 to the Charleston sheriff or police department for a computer

Motions

8

1 analyst to pour through the computer to see if there was any
2 videos of the children of my client or Mr. Cardwell or my
3 client on it. They found the one video on it that's going to
4 be shown here in court today.

5 THE COURT: Yes, sir.

6 MR. GOUDE: What we would ask the - is that we, the
7 Defense lawyers, be able to ask the police officer from
8 Charleston who testifies was there any other video of my
9 client, Mr. Cardwell, or these two minors naked on that
10 computer, and when we ask that computer, that question we
11 anticipate his answer is going to be no because that's all
12 they have ever given us, and what we want to make sure in this
13 motion in limine that by asking that one question ---

14 THE COURT: Well, you better find out. You know the
15 primary rule in examination is don't ask the question if you
16 don't know the answer. Can't you find out what the answer is
17 ahead of time?

18 MR. GOUDE: We know the answer. He's going to say no
19 because that's the only video they have given us. What my
20 motion is I don't want to open the door to the Prosecutor
21 being able to say, "Well, was there any other naked people on
22 the computer or is there any other sex on the computer?"
23 We've already talked about that in chambers but I do not want
24 ---

25 THE COURT: I know, but we didn't talk about you

Motions

9

1 asking the question if you ---

2 MR. GOUDE: No, we didn't. That's why I'm making that
3 motion.

4 THE COURT: No, I'm telling you no, if you ask the
5 question, is there any other, then you're opening the door.

6 MR. GOUDE: Well, my question was going to be is there
7 any other pictures of Sarah Cardwell or Michael Cardwell or
8 these two children naked on the computer.

9 THE COURT: What's the answer going to be?

10 MR. GOUDE: No.

11 THE COURT: What you say to that, Candice?

12 MS. LIVELY: Well, he's on a slippery slope, Your
13 Honor.

14 THE COURT: He sure is.

15 MS. LIVELY: Because - he is because what happens is
16 he's putting in front of the jury the position that I was
17 afraid of when I was talking back there that they've never
18 done this to the children before and the children have clearly
19 said in counseling and been disclosed to the Defendant ---

20 THE COURT: If you - no, sir, you're opening the door
21 now if you ask that question and he says no, then she's
22 entitled to say, "Well, what else did you find reference these
23 children?"

24 MR. GOUDE: Well, that's not what the Prosecutor is
25 arguing right now. I think what the Prosecutor is arguing is

Motions

10

1 she would then ask the children was there any other video?

2 THE COURT: No, she - no, you - she can ask him if he,
3 if he, if he looks at the video that you're talking about and
4 says no, she's entitled to ask him what other videos did he
5 see on this issue. You just can't cut him off and say there's
6 none. You don't have to ask the question, but if you do,
7 she's entitled to ask her question.

8 MR. GOUDE: All right, sir.

9 MS. LIVELY: And, Your Honor ---

10 THE COURT: Let it be clear, if you ask that question,
11 he says no as to your question, she can say how about some
12 others because you are opening the door wide open.

13 MS. LIVELY: Your Honor, and this might give some, this
14 might help simplify things. I'm not planning on calling the
15 forensic computer analyst unless it's in rebuttal.

16 THE COURT: I understand.

17 MS. LIVELY: And, and so, I don't intend at this point
18 in time in my case in chief that it's even going to be an
19 issue and I'm not going to go anywhere near Lyle for that
20 reason.

21 THE COURT: I said that in chambers.

22 MS. LIVELY: Yes, sir.

23 THE COURT: But if they're opening the door, I've told
24 you also in chambers that you're going to have a right to
25 explore it.

Motions

11

1 MS. LIVELY: Yes, sir.

2 THE COURT: I'm telling Mr. Goude if you ask that
3 question, that limited question, I'm going to permit her to go
4 into further testimony.

5 MR. GOUDE: Well, we won't ask the question, Judge.
6 Thank you.

7 THE COURT: All right, sir.

8 MS. LIVELY: Thank you, Your Honor.

9 THE COURT: Don't, don't do that now because I've told
10 you I'm going to keep out Lyle unless it becomes a subject of
11 cross examination by your bringing it up.

12 MR. GOUDE: All right, sir.

13 Judge, the third paragraph under our motion in limine is
14 sort of like we talked about in chambers which is that we
15 asked that the counselor, Ms. Muse, and no other witness be
16 allowed to testify that the children said that there had been
17 previous movie making or videotaping of them naked and that's
18 what the Court in chambers said the Court was ordering the
19 children not testify to that. We just wanted to make it clear
20 that no counselor like, particularly Ms. Muse who's been
21 counseling for two years, not be allowed to testify that the
22 children said there was any prior videotaping other than the
23 one we got.

24 THE COURT: We've agreed, is Mr. - is that witness
25 here?

Motions

12

1 MS. LIVELY: She's not, Your Honor, but I'm going to
2 inform everybody when they come in later this afternoon.

3 THE COURT: Tell her now. You know how they do. They
4 like to bring in everything and throw in the kitchen sink.
5 She should not refer to any conversation of the children
6 involving these prior acts unless they open that door.

7 MS. LIVELY: Yes, sir.

8 THE COURT: And let that be clear. If it comes in
9 now, I'm going to declare a mistrial.

10 MS. LIVELY: Yes, sir.

11 THE COURT: All right, now, in the same token, not
12 going to let you open the door and her not have an opportunity
13 to respond.

14 MR. GOUDE: Yes, sir, we understand.

15 THE COURT: All right, sir.

16 MR. GOUDE: The fourth and last paragraph of our
17 motion in limine, Judge, is, and this is what we had talked
18 about in chambers, too, to make it clear it's on the record
19 and made in a motion form, is we asked the Court to order the
20 Prosecutor to not ask any witness or any Defendant if there
21 was any child pornography on the computer or any sex videos on
22 the computer as those events are not being charged in these
23 four indictments or eight indictments.

24 THE COURT: That's Lyle, we're clear again, we're not
25 going into that unless it becomes necessary because you open

Motions

13

1 the door.

2 MR. GOUDE: Thank you, sir.

3 THE COURT: You can agree with that, Ms. Lively?

4 MS. LIVELY: Absolutely, Your Honor.

5 THE COURT: All right.

6 MR. GOUDE: Judge, the next motion is our motion to
7 sequester, we ask to sequester ---

8 THE COURT: I will grant sequester other than the
9 counselor. Who do you want to stay with you in the case, Ms.
10 Lively?

11 MS. LIVELY: Your Honor, the counselor, and well, the
12 way it works right now, I wasn't planning on my counselor
13 coming till tomorrow, so really my chief investigator, Phil
14 Hanna, could be in here.

15 THE COURT: He's entitled, he's entitled to be here.
16 That answers that question.

17 MS. LIVELY: Oh, and then, and Mr. Brown with the
18 Solicitors Office, he's our investigator. He's going to help
19 with the video equipment. He's really on the list just
20 because he ended up being ---

21 THE COURT: He can, he's a technician. He can stay.

22 MS. LIVELY: Thank you, Your Honor.

23 THE COURT: They have no witnesses other than the
24 investigator and the other witness who won't be here till
25 tomorrow, Mr. Goude.

Motions

14

1 MR. GOUDE: Thank you, Your Honor.

2 THE COURT: All right, sir.

3 MR. GOUDE: Judge, our next motion is a motion to

4 suppress the evidence, to suppress the video, to suppress the

5 laptop computer. I don't know if the Solicitor's witnesses

6 are here present for that motion to suppress it or not.

7 THE COURT: What's the basis for suppression?

8 MR. GOUDE: For unlawful search and seizure of the

9 computer.

10 THE COURT: What you say about that, Ms. Lively?

11 MS. LIVELY: Your Honor, the Defendant Sarah Cardwell

12 turned over her computer to a technician to have the hard

13 drive fixed. At that point in time it was no longer in her

14 possession. She turned it over voluntarily to this technician

15 who ran across the video.

16 THE COURT: No search and seizure issue. She

17 voluntarily turned it over to a technician who took it upon

18 himself to comment on it. I ---

19 MR. GOUDE: Judge, when Sarah Cardwell asked a

20 technician to repair her computer, Sarah Cardwell did not give

21 him any permission to disclose ---

22 THE COURT: I think under the law aren't they, aren't

23 they required to report any suspicious activity?

24 MS. LIVELY: Yes, sir.

25 THE COURT: I think the law requires them to do it.

Motions

15

1 MR. GOUDE: Judge, we would ask the Court to look at
2 the Court of Appeals case of State versus Brockman, which
3 basically it does not specifically deal with a computer, it
4 deals with a motorcycle where ---

5 THE COURT: No, but you talk about - with these
6 technicians under the law have to report special activities as
7 I understand it.

8 MR. GOUDE: They did not report special activities.

9 THE COURT: They reported this ---

10 MR. GOUDE: He didn't report anything. My client, if
11 you will let me make the motion, you will understand what I'm
12 trying to tell you, Judge. My client ---

13 THE COURT: No, tell me factually what you say
14 occurred so I can understand your motion better.

15 MR. GOUDE: Factually, based on the police reports,
16 Sarah Cardwell's computer wouldn't start up, her laptop. A
17 computer technician told her he would fix it. She let him fix
18 it. He was in his shop. The Chief of the Johnsonville Police
19 Department came to the shop. The Chief of the Johnsonville
20 Police Department saw a image that the computer technician did
21 not see flash across the screen on the computer. The chief of
22 police, a law enforcement officer of Johnsonville, Florence
23 County, South Carolina, instructed the technician to come back
24 in there and said, "Open that file. I want to see what's in
25 that file. I think I saw a nude kid." That was an illegal

Motions

16

1 search and seizure right there with no warrant, telling the
2 technician what to do.

3 THE COURT: I respectfully disagree. When she gave it
4 to the technician she had no concept to privacy.

5 MR. GOUDE: Well, according to that Court of Appeals
6 case that I just passed up to the Court, you don't lose your
7 expectation of privacy by asking somebody to fix something for
8 you or have it in their possession. It depends ---

9 THE COURT: Ms. Candice, what's your - I got your
10 position.

11 MR. GOUDE: All right, sir.

12 THE COURT: What you want to say, Ms. Candice?

13 MS. LIVELY: Yes, sir. It would be kind of one of
14 those situations like the police would go into, into a home
15 where they've been given consent to come in and there's
16 something in plain view. Here we have a Defendant who's
17 turned over her computer willingly for assistance for him to
18 go through the computer and figure out what's wrong with it
19 whenever a visual of a naked child pops up on the screen. He
20 ---

21 THE COURT: What causes, what caused the policeman to
22 be there looking for it?

23 MS. LIVELY: I will tell you probably divine
24 intervention, that he was not there - he was there to drop off
25 some other stuff for this technician to look through for the

Motions

17

1 Johnsonville Police Department. Just by chance he happened to
2 walk in and this flashed up ---

3 THE COURT: He wasn't investigating the case or
4 anything?

5 MS. LIVELY: No, sir. He was not investigating this
6 matter, had no idea what this matter was about.

7 THE COURT: No, sir, I respectfully deny that motion,
8 but you're protected for the record and I make your case a
9 part of the record.

10 MR. GOUDE: Judge, we would, we would just state, and
11 I'd like to make my pro-offer of my argument on the motion ---

12 THE COURT: Go ahead, make it short.

13 MR. GOUDE: -- that the - I will - that the basis for
14 the motion to suppress the search and the seizure is this, my
15 client had an expectation of privacy in her laptop computer.
16 She had a lot of personal pictures on it of her family,
17 birthdays or whatever. She asked the computer technician to
18 get her computer so it would start. He was in his office. He
19 has worked for years in his office in Johnsonville. He was
20 not in the room where the computer was. The chief of police
21 in Johnsonville comes in, sees as the computer is flashing
22 images across the screen, he sees an image which he says in
23 his statement that seemed to be the nude image of a minor.
24 So, he instructs, he does not ask or request, the computer
25 technician does not say, "Oh, please, let me bring you this

Motions

18

1 nude image because there is some law says I as a computer
2 technician in another room who never even seen it must come
3 and give you this nude image." The - he tells the computer
4 technician, this is in their statements, "Come in here. I
5 think I saw a nude image flash across the screen. Open the
6 computer, find me a file. Search for the file with naked
7 people in it that I think I saw flash across the screen."
8 That's a search and a seizure right there. The computer
9 technician ---

10 THE COURT: I disagree. Here's a policeman that goes
11 in, has no interest in the case. He sees a document which in
12 his opinion is evidence of a serious child pornography crime.
13 He has every right to pursue his interest in determining where
14 the truth lies. It's not a search and, search and he didn't
15 go in there to search, he didn't go in there to listen. The
16 computer was playing in plain view. The technician wasn't
17 even there.

18 MR. GOUDE: That's correct.

19 THE COURT: And he happens to go by and see something
20 that in his event may be a serious charge.

21 MR. GOUDE: Judge, the balance of my motion if I could
22 be best because there is another deputy from the Georgetown
23 County Sheriff's Office that's involved, too. I want to put
24 all this on the record, so on appeal if we lose, it doesn't
25 say that Ruben Goude didn't pursue it after ---

Motions

19

1 THE COURT: I understand, Reuben. You go ahead and
2 put what you got, but remember and I got - these things should
3 have been done last week when I asked you, "Do you have any
4 motions," but go ahead. We keeping the jury waiting.

5 MR. GOUDE: Anyway, the Chief of Police of
6 Johnsonville instructs the technician to come back into the
7 room and to open the computer and search for a file that's got
8 naked images on it. That's searches and seizure there in my
9 opinion. The computer technician does what the Police Chief
10 of Johnsonville instructs him to do, opens the computer, finds
11 this video that's got your two naked children and the naked
12 Mr. Cardwell on it. The Chief of Police of Johnsonville calls
13 the Georgetown County Sheriff because the computer technician
14 says, told the Chief of Police in Florence County,
15 Johnsonville that Sarah Cardwell lives in Georgetown County.
16 The police chief in Johnsonville calls the deputy in
17 Georgetown, has a deputy drive from Georgetown County into
18 Florence County, not the county that he's a deputy in,
19 Florence County in Johnsonville. The deputy in Georgetown
20 then instructs the chief of police and the computer
21 technician, "Bring me the computer here to the Chief of Police
22 Office in Johnsonville. Let me see the image that you say is
23 a illegal naked image." He knows right then he's got a
24 potential crime. His job is to get a search warrant, not to
25 just search.

Motions

20

1 THE COURT: Did the, did the, the computer was in the
2 custody of the technician. Did he at any time ever object to
3 this procedure?

4 MR. GOUDE: Well, he did not object when the chief of
5 police and the deputy said, "Open that computer." I doubt
6 that he wanted to be charged with naked images on a computer
7 in his possession.

8 THE COURT: I, I don't see it as search and seizure
9 incident because at that time the property was in the public
10 domain ---

11 MR. GOUDE: Judge ---

12 THE COURT: --- to wit, the technician.

13 MR. GOUDE: We respectfully say it was not in the
14 public domain, that Ms. - my client still had an expectation
15 of privacy in it and these policemen should have known, and
16 that's the test that Brockman says, does the policemen -
17 should the policemen know that the owner of the property has a
18 reasonable expectation of privacy in it. It's not like she's
19 taking it to Wal-Mart and broadcasting it on the sidewalk.
20 Anyway, our motion goes to the deputy from Georgetown County,
21 Mr. Hanna, who instructs the technician to open the video, to
22 show him the video, knowing that the police chief thinks it's
23 an illegal video. So, he is seizing the computer. He's got
24 no arrest warrant, no search warrant. He takes the computer
25 and then brings it to Georgetown. So, that is ---

Motions

21

1 THE COURT: You've elicited fully your position.

2 MR. GOUDE: Thank you, Your Honor.

3 THE COURT: And I understand it, but I respectfully
4 disagree.

5 MR. GOUDE: Thank you, sir.

6 THE COURT: Ms. Lightsey [sic], do you care to be
7 heard on that issue for the record?

8 MS. LIVELY: No, Your Honor, I believe that you've
9 covered it for me. Thank you.

10 MR. GOUDE: Judge, we have another motion to suppress
11 which is based on the search warrant in this case. The -
12 after the Georgetown County Deputy took the computer on or
13 about December the 10th, 2010, he held that computer until
14 about February the 9th, 2011, two months. The Georgetown
15 County Deputy, Mr. Hanna, he then gets a search warrant from
16 the magistrate, which is dated February the 9th, 2011, which
17 authorizes the Charleston Police forensic computer expert to
18 search the computer to see if he can find anything on it. On
19 the search warrant itself, dated February the 9th, 2011, signed
20 by the judge, it says, "This search warrant shall not be valid
21 for more than ten days from the date of issuance," and it was
22 dated February the 9th. Ten days from February the 9th would
23 be February the 19th. The report from the Charleston Police
24 coming back to the Georgetown County Sheriff's Office is dated
25 April the 4th, 2011, which would be about, about two months --

Motions

22

1 THE COURT: That's the return. When was the
2 inspection done?

3 MR. GOUDE: Well, the inspection was done ---

4 THE COURT: Was it done within the ten days?

5 MR. GOUDE: It says the inspection was done between
6 February the 10th, 2011, and April the 4th, 2011. It's got on
7 the case summary report date submitted ---

8 THE COURT: When was the subpoena issued, the search
9 warrant issued, what date?

10 MR. GOUDE: February, February the 9th.

11 THE COURT: And that report said it was done February
12 the 10th?

13 MR. GOUDE: It says it was, he received February the
14 10th and the date of this report is April the 4th.

15 THE COURT: I think that's substantial compliance with
16 the subpoena. The subpoena never envisioned that they'd do it
17 within ten days, just that they start the process and they
18 did. It was issued on the 9th and they started the process
19 when they received it on the 10th.

20 MR. GOUDE: Judge, we would like to offer this search
21 warrant as an appellate exhibit.

22 THE COURT: You may do so. I accept it for that
23 purpose. Ms. Lively, you need, probably need to respond to
24 this motion.

25 MS. LIVELY: Yes, sir, Your Honor, and what he is

Motions

23

1 referring to in regards to the search warrant issue is what
2 Jerry Roberts in Charleston was doing in trying to find other
3 videos and child pornography. I am not going to use that
4 report of Mr. Roberts. I don't intend to use the other
5 pornography that was found. I don't see this as even being an
6 issue at this point.

7 THE COURT: You're not going at this time, unless they
8 open the door, you are not going to introduce anything found
9 from that search warrant?

10 MS. LIVELY: Absolutely.

11 THE COURT: Does that take care of your concern, Mr.

12 ---

13 MR. GOUDE: I think that goes to that part of the
14 motion to suppress about the Charleston Police, Your Honor,
15 yes, sir.

16 THE COURT: They're not going to use it. So,
17 obviously it's suppressed.

18 MS. LIVELY: Yes, sir, Your Honor. The only thing that
19 I'm - I'm not even going forward on the sexual exploitation
20 third degree charge. That's still pending. That's out there
21 and he's still working on that, on the hard drive, so.

22 THE COURT: All right, thank you.

23 MS. LIVELY: Thank you, Your Honor.

24 MR. GOUDE: Judge, I think that, I think that
25 completes the motions I had to make.

Motions

24

1 THE COURT: All right, thank you. You are protected
2 on the record for your motions.

3 MR. GOUDE: Thank you, sir.

4 THE COURT: Ms. Lively, you had indicated that you had
5 some housekeeping motions to deal with.

6 MS. LIVELY: Yes, sir, Your Honor. In regards to the
7 indictments, there are some amendments that need to be made.
8 In having this case with so many indictments inevitably I have
9 made some errors and I wanted to have the Court - first of all
10 my position would be that these would not be prejudicial
11 changes to the Defendants. It would not change anything in
12 regards to the, the way that they would propose a defense in
13 this case. Everyone knows this is about a video. Everyone
14 knows it involves two children, Your Honor. So, my motions
15 are basically in regards to the following indictments that
16 need to be addressed.

17 In Sarah's case, the one 2012-GS-22-05, I believe it's 8-
18 5 and 8-6, both of those are for unlawful conduct towards a
19 child and I noticed that in the, oh, hold on, in 2012-GS-22-
20 0586, I put the timeline as 2001 through November 2010. That
21 should be January 2007 through November 2010. Every other
22 indictment has that timeframe.

23 THE COURT: I don't see how you're prejudiced there,
24 counsel. What do you say? It's all way - all - both of them
25 in the indictment in the amendment says through 2010. I'm

Motions

25

1 going to permit that. Are you - you want to change it on the
2 - before we proceed change it on the face of the indictment?

3 MS. LIVELY: Yes, sir.

4 THE COURT: All right, go ahead with your - the rest
5 of them first.

6 MS. LIVELY: Yes, sir. In regards to another just
7 housecleaning matter on an indictment, same thing on 20 - this
8 is Michael Cardwell, 2012-GS-22-0587. The indictment says the
9 date January 2007 and November 2012. Obviously that 2012 is
10 incorrect. We just ask the same timeframe, Your Honor, 2010.

11 THE COURT: I do not discern that that's prejudicial
12 to the Defendant and will permit it.

13 MS. LIVELY: Yes, sir, and then finally, Your Honor, in
14 regards to the four sexual exploitation against a minor
15 charges, whenever the indictments are done in our office it
16 normally pulls up just certain elements to the crime, and in
17 pulling up the elements to the crime, when I went back and
18 reviewed it, it states that, when it goes into the elements,
19 Minor Child 1 , date of birth - -9 , a minor under
20 the age of 10 years, to engage in sexual activity, all that's
21 fine, and it says for a live performance. It should also say
22 and/or in material depicting a live - depicting sexual
23 activity. That's a part of what the statute clearly says.

24 THE COURT: I will, I will permit that. There's no
25 prejudice to the Defendant. They fully know what they are

Motions

26

1 here to defend.

2 MS. LIVELY: Exactly, it's obviously a video. It's
3 always been the video and that's what the State is asking in
4 those other last four indictments, Your Honor, is that we add
5 that element in there.

6 THE COURT: All right.

7 MR. GOUDE: So, that language would be what? Could
8 you say that again?

9 THE COURT: Sir?

10 MS. LIVELY: It's the - yes, I'll be glad to.

11 MR. GOUDE: What language?

12 MS. LIVELY: Let me specify the exact language so that
13 everyone is clear.

14 THE COURT: Go ahead.

15 MS. LIVELY: From the statute it says, here it is,
16 engage in sexual activity for a live performance or for the
17 purpose of producing material that contains a visual
18 representation depicting a sexual activity. So it's basically
19 saying it can be either a live performance or material
20 containing visual representation.

21 THE COURT: Everybody knows for months we have been
22 concerned with the video.

23 MS. LIVELY: Yes, sir.

24 THE COURT: And I do not see any prejudice attached to
25 the Defendants for permitting this amendment.

Motions

27

1 MR. GOUDE: That would say, that would say for a live
2 performance or for the purpose of producing material?

3 MS. LIVELY: Correct.

4 THE COURT: The statute says that.

5 MS. LIVELY: It's, yeah, it's in statute section one.

6 THE COURT: It's just a scrivener's error. They just
7 forgot to do it, but you cannot be prejudiced. You know that
8 the - your defense - you know you're confronted with allegedly
9 a live video.

10 MR. GOUDE: Yes, that's fine, Judge.

11 THE COURT: All right.

12 MS. LIVELY: Yes, sir. I just wanted to make sure
13 that, because my arguments, I didn't want it to be confusing.

14 THE COURT: Okay, how do you want to amend these
15 various?

16 MS. LIVELY: Well, Your Honor, I'd like to, you know, I
17 know Your Honor is going to read them out to the jury. So I'd
18 like to amend them on the face so that way it won't be any
19 chance ---

20 THE COURT: I'm not going to read the specific
21 language.

22 MS. LIVELY: Okay, well, if you're not going to read
23 the specific language then I'm just going to use the way that
24 the amendments are made. I never bring up the indictment
25 anyway. I just talk about the elements of the crime. So if

Motions

28

1 Your Honor is not going to read the specifics out then I'm
2 fine, as long as the actual dates are changed, because I think
3 the dates are pretty important.

4 THE COURT: All right, before they go to the jury I'll
5 permit you to make those changes.

6 MS. LIVELY: Yes, sir, thank you.

7 THE COURT: All right, now, are we now ready for the
8 select the jury?

9 MS. LIVELY: Yes, sir. The only thing was what we had
10 talked about in the back in regards to clearing the courtroom
11 for purposes of the children's testimony which I anticipate
12 will be tomorrow.

13 THE COURT: All right, is there any spectators here?

14 OFF THE RECORD

15 (On the record. The following takes place outside the
16 presence of the jury venire.)

17 THE COURT: Yes, ma'am. All right, is there anything
18 further before we select the jury?

19 MS. LIVELY: No, Your Honor. Everything else has been
20 addressed and I've - and we're ready to go forward.

21 THE COURT: Bring the jury in.

22 (Whereupon, the following takes place in the presence of
23 the jury venire.)

24 THE COURT: Gentlemen and ladies, the first juror on
25 the list was excused by me for medical reasons. He had a

Voir Dire

29

1 stroke. If you observed him it was pretty obvious. So, he
2 will not be on the list.

3 Solicitor, call your case, please.

4 MS. LIVELY: Yes sir, Your Honor. May it please the
5 Court, State of South Carolina calls the case of Sarah and
6 Michael Cardwell. There are several indictments, Your Honor,
7 in the case: against Sarah Pope Cardwell, 2012-GS-22-0585,
8 unlawful conduct towards a child; 2012-GS-22-0586, unlawful
9 conduct towards a child; 2012-GS-22-0558, sexual exploitation
10 of a minor in the first degree; 2012-GS-22-0559, sexual
11 exploitation of a minor in the first degree. As to Michael
12 Cardwell we have four indictments, Your Honor: 2012-GS-22-
13 0587, unlawful conduct towards a child; 2012-GS-22-0588,
14 unlawful conduct towards a child; 2012-GS-22-0560, sexual
15 exploitation of a minor in the first degree; 2012-GS-22-0561,
16 sexual exploitation of a minor in the first degree.

17 THE COURT: Is the Defendants [sic] for both
18 Defendants ready to proceed to trial?

19 MR. GOUDE: Yes, we are, Your Honor.

20 THE COURT: All right, sir.

21 MR. FOX: Yes, Your Honor.

22 THE COURT: Ladies and gentlemen of the jury panel, I
23 regret having to keep you up until 12 o'clock today, but we
24 were involved in other issues and other matters not involving
25 your services. The State of South Carolina and the Defendants

Opening Statement by Ms. Lively

55

1 Remember now that these Defendants are presumed innocent.
2 Remember that you are the sole and only finders of the facts.
3 Remember that you are to consider each indictment separately.
4 Remember, too, that your verdict, either not guilty or guilty
5 as to each indictment, must be the unanimous verdict of all 12
6 of you. It cannot be a majority vote obviously, would not be
7 the minority.

8 We'll proceed in the following fashion. The State of
9 South Carolina represented by Ms. Candice Lively as a
10 solicitor will make an opening statement to you as to the
11 State's position. This is a guideline to help you follow the
12 introduction of testimony. Counsel for the two Defendants
13 will make a statement to you as to their position, again, to
14 help you follow the introduction of testimony. Remember what
15 the, what lawyers tell you now or in summation is not
16 evidence. It's their view of the evidence, but it's not
17 evidence. Evidence comes from this witness stand and from
18 such other matters as I may permit to be introduced into the
19 trial of this case. Ms. Lively, you may proceed.

20 MS. LIVELY: Thank you, Your Honor.

21 Ladies and gentlemen, exactly what Judge Cottingham has
22 told you is what is going to be expected of you as you review
23 the evidence that's going to be presented to you in this case.
24 This is a case of common sense and common decency. What
25 you're going to see in this case is one of those things that

Opening Statement by Ms. Lively

56

1 we don't normally get to present to a jury and that is a
 2 videotape of what the State is claiming is the actual crime
 3 that takes place. You're going to see a videotape, ladies and
 4 gentlemen, that is the entire case from the State of South
 5 Carolina and it's going to take each one of you reviewing this
 6 videotape to make the decision as to whether or not we've met
 7 our burden of proof. So let me give you a little bit of a
 8 background so you'll know what to expect to see.

9 In November of 2010 Sarah Pope, she's now Sarah Cardwell,
 10 went to a friend of hers, asked him to help her with a
 11 computer problem she was having. The evidence will show that
 12 David LeShaun Marsh received this computer and was going to
 13 work on it to assist Sarah. While he was working on this
 14 computer or actually having it downloaded so that he could see
 15 what is on there, what the problem was with the computer,
 16 something popped up that caused concerns. You're going to
 17 hear from David Marsh in regards to that. You're going to
 18 hear from Chief Ron Douglas of the Johnsonville Police
 19 Department about that as well. Sarah has four children,
 20 **Minor Child 1** **Minor Child 2** **Minor Child 3** and **Minor Child 4**

21 . The children at issue here are going to be the two
 22 oldest, **Minor Child 1** and **Minor Child 2** Ladies and gentlemen, in this
 23 video you will see these two children and it's going to be up
 24 to you to decide what you believe is going on. All I can do
 25 is present the video to you and tell you that in the State of

Opening Statement by Ms. Lively

57

1 South Carolina we have laws that establish what is considered
2 inappropriate sexual activity. What reaches the element of
3 sexual activity in our State?

4 Now, anyone who's a parent knows that being a parent is
5 one of the highest duties that we ever come into in our lives
6 in caring for a child. A parent has a high duty to make sure
7 that the best interest of their children are looked after and
8 I'm going to ask you all to consider that when looking at the
9 behavior and the information on this video. It may be
10 shocking to some of you, but you'll need to watch it, dissect
11 it. You will see the Defendant Michael Cardwell on this
12 video, and the evidence will show he was nude. The evidence
13 will show that the two children were nude. The evidence will
14 also show that Sarah Cardwell was the one videotaping the
15 events that took place. The State has to prove to you beyond
16 a reasonable doubt that part of what you're going to see was
17 some form of sexual activity as defined by our legislature,
18 which can include simulations of masturbation, and trust me
19 it's never easy to look at 12, 14 people I've never seen
20 before and talk to you about this, but I'm telling you what
21 the law is, ladies and gentlemen, and you have to follow the
22 law with the facts and the evidence that are provided to you.
23 I'm going to give you every bit of information you need to
24 find both Defendants guilty on all eight charges. They are
25 also charged with unlawful conduct towards a child, which is

Opening Statement by Ms. Lively

58

1 more of a broad statute. It's just basically saying as a
2 parent or guardian of children you have a duty to make sure
3 these children are not placed in unreasonable risk of harm.
4 It can be physical and it can be mental harm and the State
5 will show these children were mentally harmed and you will
6 hear that and the children will be here to testify as well.
7 So, ladies and gentlemen, I'm bringing everything to you as
8 the prosecutor that I'm required to bring. I'm going to give
9 you every single piece of information and piece to the puzzle
10 for you to feel firmly convinced that these two Defendants
11 acted beyond inappropriately, placed those children at an
12 unreasonable risk of mental harm, that they sexually exploited
13 these children who trusted and were a part of their family,
14 and as a result of that, for both of these two children, a
15 charge on each of these Defendants on all counts, ladies and
16 gentlemen. Once you see the video and hear from those
17 children you will be convinced that Sarah and Michael Cardwell
18 are guilty.

19 Please listen, watch even when it's difficult, listen
20 even when it gets hard because every bit of it is important to
21 the Defendants, to the State of South Carolina and most
22 importantly to Minor Child 1 and ^{Minor Child 2} Thank you.

23 THE COURT: Thank you.

24 Gentlemen, for the Defense, which shall go first?
25 Counsel for the Defense, opening statement, please.

Opening Statement by Mr. Goude

59

1 MR. GOUDE: Ladies and gentlemen, my name is Goude,
2 Rueben Goude. I'm a lawyer here in Georgetown, live out there
3 at Carvers Bay. I'm representing Sarah Cardwell. Sarah, if
4 you will, please stand up.

5 (Complies with request.)

6 MR. GOUDE: Thank you. If you would please, sit down.

7 (Complies with requests.)

8 MR. GOUDE: Sarah is married to Michael Cardwell, who
9 is seated over there and is represented by Mr. Fox, Eric Fox,
10 who's a lawyer and has been for years, in Conway, South
11 Carolina. We represent the two Defendants, Sarah and Michael
12 Cardwell. What I ask you to do, as the Judge told you just a
13 while ago, that when we come back either tomorrow or
14 Wednesday, whenever we get to the closing arguments and to the
15 end of the case, the Judge will tell you that you are to make
16 your decisions based on what people say on the witness stand
17 and how you interpret what they say and what you believe about
18 what they say and any exhibits we put into evidence, whether
19 it's the videotape or any other kind of exhibits that come
20 into evidence. Then I'll come back up here tomorrow or
21 Wednesday, whenever we make this closing argument, and ask you
22 and give you the reasons why I'm going to ask you, ask you to
23 vote not guilty on all of the charges. So, just listen if you
24 will and keep an open mind. Thank you.

25 THE COURT: Thank you. Mr. Fox.

Opening Statement by Mr. Fox

60

1 MR. FOX: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen. My name is Eric
3 Fox and I will be the attorney this week for Michael Cardwell.
4 Michael, would you stand up?

5 (Complies with request.)

6 MR. FOX: That's Michael. Thank you, you can sit
7 down.

8 (Complies with request.)

9 MR. FOX: I'll talk to you briefly before we start
10 about some things I'd like you to keep in mind. At the end of
11 the case, like Mr. Goude said, I will be back to tell you how
12 I believe the law that the Judge will give you at the end of
13 the case should be applied to these facts, and I also, of
14 course, will be asking you to return a verdict of not guilty
15 on all four indictments that relate to Michael Cardwell.

16 I would agree with Ms. Lively that this case is about
17 common sense and common decency. You're gonna' see a video
18 and it speaks for itself. I think the video shows a lack of
19 common sense. You may not care for what it says about decency
20 but it does not depict a crime. It does not depict a criminal
21 act. You have been chosen as jurors for the very reason that
22 you don't know anything about this case. You are coming at it
23 with open minds, with fresh opinions or open opinions about
24 it. You know nothing about this case other than the Judge has
25 told you what the charges are and now you know the Defendants.

Opening Statement by Mr. Fox

61

1 You're here for your very impartiality. You have no friends
2 to reward or enemies to punish. It's going to be an emotional
3 thing. I would say when you see this video you probably ain't
4 going to like what you see. It is an emotional thing, but
5 your oath requires you to set that aside and take the law that
6 you'll be given and say, "All right, I'm not here to judge
7 whether Michael and Sarah are the best parents in the world.
8 I'm here to judge whether or not what is on that video is a
9 violation of the law. I may not like what I see, but is it a
10 violation of the law," and it just simply isn't.

11 Ladies and gentlemen, forgive me for looking back at my
12 notes but I tend to be forgetful. The law will establish -
13 does establish what is inappropriate sexual behavior in this
14 content and the Judge will tell you exactly what that is.
15 There are certain things and the Judge will tell you what it
16 is and I'm just as sure as I can be you'll conclude that it
17 simply does not.

18 Every duty - every parent, rather, does have a duty. Ms.
19 Lively said probably the highest duty you have as a human
20 being, to raise your children in a healthy, appropriate
21 manner; however, every failure to match that ideal is not
22 criminal. People fail every day in ways big and small to be
23 less than ideal parents. That does not make them criminals.
24 Michael and Sarah certainly fell short of that ideal but they
25 are not criminals.

Opening Statement by Mr. Fox

62

1 Ladies and gentlemen, Winston Churchill said there are
2 three great duties that every citizen in a democracy must
3 fulfill, must take on: answering your country's call in a
4 time of war, voting, appropriately, and jury duty. It's not
5 fun, don't want to be here. You all have lives. You'd rather
6 be somewhere else. This is not, frankly, probably going to be
7 a real pleasant experience in terms of the things that you've
8 got to deal with but there's nothing more important; and so, I
9 thank you for being here. Again, I ask you to set aside any
10 emotion or prejudice you may have about what you're going to
11 see and decide it simply based on the facts, and I'm very
12 convinced when you see everything and apply the law that
13 you'll return verdicts of not guilty. Thank you.

14 THE COURT: Thank you, Mr. Fox. Ms. Lively, you can
15 call your first witness, please.

16 MS. LIVELY: Thank you, Your Honor. The State would
17 call David LeShaun Marsh.

18 Whereupon, David LeShaun Marsh was called to the stand,
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated and state
21 your full name for the record, spelling your first and last
22 name.

23 MR. MARSH: David LeShaun Marsh, D-A-V-I-D, M-A-R-S-H.

24 MS. LIVELY: If I may proceed, Your Honor?

25 THE COURT: You may.

David Marsh - Direct by Ms. Lively

63

1 MS. LIVELY: Thank you.

2 DIRECT EXAMINATION

3 Q Mr. Marsh, where are you currently employed?

4 A Carolina Communications.

5 Q And who do you work for?

6 A I work for Warren Baker and we maintain 911 centers.

7 Q All right, do you have any other type of employment?

8 A Yes, I own an internet company and I do computer work on
9 the side.

10 Q All right, and how long have you been in the business of
11 doing computer work?

12 A Since I was 15 working in Radio Shack.

13 Q Okay, and how old are you now?

14 A I'm almost 40.

15 Q All right, and do you continue to do this computer work
16 on a regular basis?

17 A Yes, yes, I do.

18 Q Tell this jury who some of your employees, or not
19 employees, but some of your customers are.

20 A Florence Sheriff Department, Johnsonville Police
21 Department, most rescue squads, fire departments and
22 businesses like Polyquest, places all over including the
23 County of Orangeburg.

24 Q Okay, do you ever have an opportunity to be hired
25 independently from someone like me or someone like ---

David Marsh - Direct by Ms. Lively

64

1 A Yes.

2 Q Okay, all right, and whenever you get approached by an
3 individual what, what do you typically do for them in regards
4 to computer work?

5 A We take viruses off, restore computers, upgrade, things
6 of that nature.

7 Q Okay, and do you know Sarah Pope Cardwell?

8 A Yes.

9 Q And how do you know Sarah?

10 A I've known her from the rescue squad many years ago and a
11 couple of years ago when we went out a couple of times.

12 Q Approximately when was that when you all went out a
13 couple of times?

14 A That was August of 2010 till the end of November.

15 Q Okay, and whenever you went out with Sarah back in late
16 2010 was there an opportunity - did an opportunity arise to
17 you regarding helping her with some computer work?

18 A Yes, she brought - we met at her grandmother's one day
19 and she brought her computer saying that she needed me to take
20 a look at it and get it fixed.

21 Q Okay, and let me back up just a minute. In the time
22 whenever you spent with Sarah did you have an opportunity to
23 meet her children?

24 A Yes, yes, on many occasions.

25 Q Okay, on many occasions, okay, and could you tell us

David Marsh - Direct by Ms. Lively

65

1 their names?

2 A Minor Child 1 Minor Child 2 Minor Child 3 and Minor Child 4

3 Q All right, and if you saw these children would you
4 recognize them?

5 A Yes, yes, I would.

6 Q Okay, and, now, Mr. Marsh, whenever you said that you
7 received the computer from Sarah in November of 2010 what was
8 your understanding of what you were supposed to do with this
9 computer?

10 A To reload it and put the data back on it.

11 Q Okay, and what did the computer look like?

12 A It was a small laptop computer that had an imprint of a
13 fist in the keyboard.

14 Q Okay, what color is it?

15 A Pink.

16 Q Pink, and whenever Sarah presented the computer to you
17 did she tell you whose computer it was?

18 A She said it was hers.

19 Q It was her computer?

20 A Yes.

21 Q Okay, and at the time, tell us one more time what exactly
22 it was that you were going to be doing with the computer?

23 A I was going to get the data off that was on it,
24 documents, anything like that, rebuild it if possible and then
25 put the information back on it.

David Marsh - Direct by Ms. Lively

66

1 Q Okay, all right, and when did you actually start that
2 process?

3 A Probably the first of December. I had a class in Florida
4 that I had to attend and I didn't do anything until I was
5 back.

6 Q Okay, all right, so, whenever you got back and began
7 working on the computer tell the jury what process you go
8 through in trying to back up data and retrieve items off of a
9 computer.

10 A If the computer will boot up I try and store everything
11 on a portable hard drive. If the computer will not boot up I
12 usually take the hard drive and attach it to my Mac because my
13 Mac can't get viruses and then I will back all the data up to
14 a file on my Mac and it'll sit there until I get the computer
15 finished and then I can just push it back straight across.

16 Q Okay, so, so, if it's not able to boot you then connect
17 it to your Mac because the Mac won't get a virus; is that
18 right?

19 A Uh-huh, Mac will not get a virus, no.

20 Q Okay, and in this particular case with Sarah's pink
21 computer what did you have to do?

22 A I had to take the hard drive out, connect it via USB
23 cable into my Mac and start the download process.

24 Q Okay, so, was there a problem with you trying to boot
25 this computer?

David Marsh - Direct by Ms. Lively

67

1 A The computer would not boot.

2 Q It would not boot, okay.

3 A It would not boot.

4 Q All right, so, whenever you did this - is your - where do
5 you actually handle that type of a process?

6 A It's in my office that's at my house. I have a special
7 room specifically for that that's right beside my garage.

8 Q Okay, and who has access to that information?

9 A I'm usually the only one that touches computers in that
10 house. The only other person who helps me in my business is
11 my mother and my father and they basically just come in and
12 take payments and update another computer, not anything I'm
13 working on.

14 Q Who - nothing you're working on?

15 A Nothing I'm working on.

16 Q So who actually goes into the computer and removes data
17 or sees the data that's on it?

18 A I do.

19 Q All right, and is that what happened with the computer,
20 the pink computer of Sarah Cardwell?

21 A Yes. I was downloading that information when my friend
22 Chief Ron came over delivering me packages that - we're not
23 open all the time. So, they deliver my packages to the police
24 department and he brought me some packages while we were
25 doing, while I was doing the download and when I went to take

David Marsh - Direct by Ms. Lively

68

1 the packages in the garage he called me back out wanting to
2 see something that had just flashed across the screen.

3 Q Okay, and let me just back up because the jury doesn't
4 know who Chief Ron is.

5 A Oh, okay.

6 Q Could you please tell them who Chief Ron is that you're
7 referring to?

8 A It's Chief Ron Douglas from Johnsonville Police
9 Department. He and I have known each other since I was a baby
10 and he was ten years old.

11 Q Okay, and do you do work for the Johnsonville Police
12 Department?

13 A Yes, I do work all the time for the Johnsonville Police
14 Department pulling videos and everything, mostly off of like
15 convenience store camera systems and stuff.

16 Q Okay, and how far is the Johnsonville Police Department
17 from where your house is?

18 A Half a block.

19 Q Half a block, okay. So, is it unusual for Chief Ron to
20 come to your house and just hand deliver these items?

21 A No, it's not unusual. He does that all the time.

22 Q Okay, and, and for the jury's benefit, was there any part
23 of what you were doing for Sarah Cardwell at the request of
24 law enforcement?

25 A No.

David Marsh - Direct by Ms. Lively

69

1 Q All right, you were doing a friend a favor?

2 A I was doing a friend a favor.

3 Q Okay, and on the day whenever Chief Ron you said came
4 over to give you some items ---

5 A Uh-huh.

6 Q --- you can continue now and tell the jury what exactly
7 happened.

8 A When he handed me my packages, I usually take them and
9 store them in the garage. That's where I keep all my ---

10 MR. GOUDE: Judge, excuse me. We would make a motion
11 to - that needs to be done out of the presence of the jury if
12 it pleases the Court.

13 THE COURT: Let you go to the jury room just a moment
14 and I'll be glad to call you right back.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right, the jury's out. What, what,
18 Mr. Goude?

19 MR. GOUDE: Thank you, Your Honor, for sending the
20 jury out. I would renew my motion that we made this morning
21 before we picked the jury, the motion to suppress the computer
22 evidence for all the reasons stated. The witness has
23 testified that he was solely the one that handles the
24 computers, that Sarah asked him to handle, asked him to handle
25 the computer, that nobody else bothers them, works on them,

David Marsh - Direct by Ms. Lively

70

1 touches them, accesses them, sees anything in them except him,
2 one person.

3 THE COURT: He was displaying it, running it in open
4 view while he went back to the back room for anybody to see
5 it.

6 MR. GOUDE: And so, we ask that the Court suppress
7 the video that was on the laptop computer, anything that was
8 on the computer and to suppress the use of the laptop computer
9 for the illegal searches and seizures by Chief Douglas and by
10 Deputy Hanna of the Georgetown Sherriff's Department.

11 THE COURT: I decline to do that for the reasons
12 stated pretrial but thank you for your motion.

13 MR. GOUDE: Thank you, sir.

14 MR. FOX: Thank you, Your Honor.

15 THE COURT: Bring the jury back.

16 MR. FOX: Your Honor, if the record may reflect we
17 join in Mr. Goude's motion.

18 THE COURT: I understand.

19 MR. FOX: Thank you.

20 THE COURT: Any motion made generally I'm accepting as
21 made by both of you anyway.

22 MR. GOUDE: Thank you, sir.

23 MR. FOX: Thank you, Your Honor.

24 THE COURT: Next time, to save the trouble, just
25 object to the testimony subject to the motion previously made

David Marsh - Direct by Ms. Lively

71

1 and that saves the jury going in and out.

2 MR. GOUDE: All right, sir.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

5 THE COURT: Madam Foreman, ladies and gentlemen, from
6 time to time both lawyers may raise an objection. Do not hold
7 that against the lawyers. Simply they are calling to my
8 attention a possible matter that I need to discuss outside
9 your presence but do not hold that against any lawyer moving
10 that the jury be dismissed for further consultation. Thank
11 you. All right, resume your examination.

12 MS. LIVELY: Thank you, Your Honor.

13 BY MS. LIVELY:

14 Q Now, Mr. Marsh, you were saying that Chief Ron had come
15 over to your home and this is where you had Sarah's computer
16 and you were actually doing the Mac ---

17 A The download.

18 Q --- the download, okay.

19 A Uh-huh.

20 Q All right, and right before the jury went out, the
21 question I asked you was what, at that point in time, happened
22 that caused you some concern?

23 A When I - when he handed me the packages I took them down
24 into my garage, which is where I store most all my stuff
25 trying to keep the clutter down, and he was just in there I

David Marsh - Direct by Ms. Lively

72

1 guess waiting on me to come back and he called me back in. He
2 said, "I just saw something go across the screen, can you back
3 it up?"

4 Q Okay, all right, and at that point in time did you know
5 anything about what he was talking about?

6 A No, I had no clue.

7 Q Okay, were you aware of it being information off of
8 Sarah's computer that he was talking about?

9 A No, he just said come back in, and then when I got in
10 there he said, "Please back that up just a little bit."

11 Q Okay, all right, and, and did you do so?

12 A Yes, I did.

13 Q All right, and at that point in time were you backing up
14 information that was being downloaded from Sarah's pink
15 computer?

16 A Yes, I was, uh-huh.

17 Q All right, so, when you backed it up, tell this jury what
18 it was that you saw.

19 A When we backed up a few files, what we saw was a still
20 image on the screen of ^{Minor Child 1} which is the oldest child, in a
21 pink bra.

22 Q Okay, and what else was ^{Minor Child 1} wearing?

23 A His hands, I think.

24 Q Okay, I mean, clothing-wise, can you tell me what else he
25 was wearing clothing-wise?

David Marsh - Direct by Ms. Lively

73

1 A No, just a pink bra.

2 Q A pink bra, okay, and when you saw this picture, what if
3 any concerns did you have about what it portrayed?

4 A Well, when I saw and backed up it was a still image but
5 it was actually a video. So, it had the play button on top of
6 the image as a video.

7 Q Okay.

8 A So, that - that's what Ron, Ron said he saw and he wanted
9 to see. So, we clicked play and we watched just a little bit
10 before we shut it down and that's when he asked me to put it
11 under lock and key and he would call me when he wanted it.

12 Q Okay, all right, and what jurisdiction were you in at
13 that point in time?

14 A I was in Johnsonville.

15 Q In Johnsonville, okay, so, at that point in time, what
16 did you actually view - how much of the video did you view,
17 what did you see before you actually shut it down?

18 A We viewed possibly a minute and we saw the children
19 dancing around naked along with Michael.

20 Q Okay, all right, did you recognize the people in that
21 video?

22 A Yes, I did.

23 Q Okay, who were the people in the video?

24 A The people in the video were Minor Child 1 and Minor Child 2 and
25 then Michael.

David Marsh - Direct by Ms. Lively

74

- 1 Q All right, what was Michael wearing?
- 2 A Nothing.
- 3 Q What was ^{Minor Child 2} wearing?
- 4 A Nothing.
- 5 Q Was there any other person or voices that you heard on
- 6 this video?
- 7 A ^{Minor Child 2}, Sarah's in the background directing.
- 8 Q Okay, what do you mean directing?
- 9 A Saying what to do.
- 10 Q Okay, and are you sure that was her voice?
- 11 A Yes.
- 12 Q Okay, and how are you so sure?
- 13 A Because we spent time together and I know her voice.
- 14 Q Okay, now, do you - you said that you watched about a
- 15 minute of the video?
- 16 A Yes.
- 17 Q Okay, if I showed you some still shots off of the video,
- 18 would you be able to recognize the individuals that were in
- 19 it?
- 20 A Yes, I would.
- 21 Q Okay.
- 22 THE COURT: Has these still shots been exchanged with
- 23 defense counsel?
- 24 MS. LIVELY: Yes, sir, Your Honor.
- 25 THE COURT: May I see the videos please?

David Marsh - Direct by Ms. Lively

75

1 MS. LIVELY: The still shots, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. LIVELY: Yes, sir.

4 THE COURT: Counsel for defense, you've seen these
5 still shots?

6 MR. GOUDE: Judge, we have another motion to make out
7 of the presence of the jury regarding the still shots if it
8 pleases the Court.

9 THE COURT: All right, I'll let you have to go to the
10 jury room just a moment. I'll be calling you back.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Let me see the still shots, please.

14 MS. LIVELY: Yes, sir, Your Honor.

15 THE COURT: Thank you, ma'am.

16 MS. LIVELY: Yes, sir.

17 THE COURT: All right, what's, what's your objection
18 with regard to these still shots?

19 MR. GOUDE: Your Honor, if it pleases the Court, the
20 clients are charged with sex exploitation of a minor by taking
21 a nude video of the children nude. The video lasts about two
22 minutes. The prosecutor has the video. The video is going
23 into evidence. These - the clients are not charged with
24 taking still photographs, which is what those are. The still
25 photographs are distilled and pulled out of the video, out of

David Marsh - Direct by Ms. Lively

76

1 context, would be misleading and prejudicial to the jury.
2 We've got the video that our clients are charged with taking,
3 which is supposedly a criminal act. We ask the Court to
4 disallow these distilled still images that's out of the video.
5 The video is going to come into evidence since the Court has
6 ruled that it's not a violation of search and seizure. So, we
7 say ---

8 THE COURT: No, sir, they are, in showing the video,
9 they're entitled to stop it at any time that they think
10 appropriate. These still shots you will agree were taken from
11 the video, and they are still shots, they are admissible.

12 MR. GOUDE: Well, we would renew our objection, Judge,
13 because that is not what our clients took. It does not show
14 what happened right before that still shot and it doesn't show
15 what happened right after.

16 THE COURT: These, these will be considered in the
17 totality of the video and I will explain that to the jury.

18 MS. LIVELY: And Your Honor, I know you've ruled in my
19 favor and I appreciate that and I sure don't want to argue
20 with you ---

21 THE COURT: I've ruled in favor of the law.

22 MS. LIVELY: That's what I was about to say and I also
23 wanted the Court to understand I'm not trying to lay it on.
24 The reason why I did that is because the jury cannot, when
25 they're going back in deliberations, have the video played

David Marsh - Direct by Ms. Lively

77

1 over and over if they need to break down the elements. I have
2 to show with the law. So, that's why I did it.

3 THE COURT: It's, it's admissible under my
4 instructions ---

5 MS. LIVELY: Yes, sir.

6 THE COURT: --- that they're to take it in
7 consideration of the entire video. Bring the jury in.

8 MS. LIVELY: Yes, sir, if I may retrieve them?

9 THE COURT: I note - yes. I note your objection for
10 the record.

11 MS. LIVELY: Thank you, Your Honor.

12 THE COURT: Let me see that one picture again. Let me
13 see that again.

14 MS. LIVELY: Yes, sir.

15 MR. GOUDE: Judge, for further ---

16 THE COURT: Wait a minute. Hold the jury up, please.

17 MR. GOUDE: --- we know the Court has ruled and not to
18 beat the horse to death, but anyway, the video has audio with
19 it and the video shows the actual things the people did and
20 the words they were saying. These photographs don't show any
21 words, they don't have any audio attached to them ---

22 THE COURT: I will explain to the jury they are
23 entitled to still shots if they want them and they are here,
24 but they will view these things consistent with the entire
25 video. Bring the jury in.

David Marsh - Direct by Ms. Lively

78

1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: The State of South Carolina proposes to
4 introduce for your consideration as finders of the facts
5 certain still shots allegedly taken from a video. If you
6 conclude that these still shots were, in fact, a part of that
7 video you may consider them in totality with the entire video
8 and give them such weight as you in your decision think
9 appropriate, but as you consider the still shots you must
10 conclude that they were a part of the video prior to further
11 consideration. You may proceed.

12 MS. LIVELY: Thank you, Your Honor.

13 BY MS. LIVELY:

14 Q Now, Mr. Marsh, you said that you did watch some portions
15 of the video; correct?

16 A Yes.

17 Q All right, and, and you've identified the persons that
18 you actually saw on the video; correct?

19 A Yes.

20 Q All right, and, and you also identified a voice that you
21 heard; correct?

22 A Correct.

23 Q Okay, before we get into that, as to the actual people
24 involved, let me ---

25 MS. LIVELY: If I may approach, Your Honor ---

David Marsh - Direct by Ms. Lively

79

1 THE COURT: Yes.

2 MS. LIVELY: --- I did fail to address this.

3 BY MS. LIVELY:

4 Q The actual computer, could you recognize it if you saw
5 it?

6 A Yes, I would.

7 Q Okay.

8 THE COURT: Have they had an opportunity to view these
9 stills prior to today, Ms. Lively?

10 MS. LIVELY: Yes, sir, Your Honor.

11 MR. GOUDE: We viewed them at 2:30 today, Your Honor.

12 MS. LIVELY: I'm sorry, not before today, no. We just
13 provided them to them before we started the case.

14 THE COURT: That's okay then.

15 MS. LIVELY: Yes, sir.

16 THE COURT: Give them plenty of time to look at them.
17 They were provided with the video some time ago; were they
18 not?

19 MS. LIVELY: Yes, sir, they've seen the video quiet
20 often.

21 THE COURT: Okay.

22 MR. GOUDE: Judge, if this computer's being entered
23 into evidence we object to it on the basis of the two motions
24 we've already made in the case.

25 THE COURT: I note that and my ruling thereby will

David Marsh - Direct by Ms. Lively

80

- 1 remain the same. Thank you.
- 2 MS. LIVELY: Thank you, Your Honor.
- 3 BY MS. LIVELY:
- 4 Q I'm going to show you what's been marked as State's
- 5 Exhibit Number One. If you'll take a look inside this box and
- 6 tell me if you can identify this item.
- 7 A Yes, I can.
- 8 Q Okay, and what is that?
- 9 A It has a fist print in the middle of the keyboard.
- 10 Q Okay, and what does that mean?
- 11 A That's why it was given to me because it wasn't working
- 12 after Sarah said that Michael had punched it.
- 13 Q Okay, and is that the computer that Sarah Cardwell, at
- 14 the time Sarah Pope, provided you to be worked on?
- 15 A Yes.
- 16 Q Okay, and other than downloading it at the request of Ms.
- 17 Cardwell have you - did you do anything else to that
- 18 particular computer?
- 19 A No, I never got a chance to.
- 20 Q Okay, all right, that computer was handed over to whom?
- 21 A To Mr. Phil Hanna.
- 22 Q Detective Hanna?
- 23 A Detective Hanna, uh-huh.
- 24 Q Okay, all right.
- 25 MS. LIVELY: Your Honor, the State would move to

David Marsh - Direct by Ms. Lively

81

1 introduce State's Exhibit Number One into evidence at this
2 time.

3 THE COURT: Subject to their objection it is admitted.

4 MS. LIVELY: Thank you, Your Honor.

5 (State's Exhibit Number One [Computer] introduced into
6 evidence and appropriately marked.)

7 THE COURT: And Madam Foreman, matters that I
8 introduce into evidence will be with you in the jury room, and
9 I apologize for not being able to see you. This block is in
10 front of me.

11 MS. LIVELY: Thank you, Your Honor.

12 BY MS. LIVELY:

13 Q Now, Mr. Marsh, you mentioned that you recognized the
14 individuals in the actual video, is that fair to say?

15 A Yes, yes.

16 Q Okay, I'm going to show you what's been previously marked
17 as State's Number Three, Four, Five, Six, Seven and Eight. I
18 need you if you don't mind, and I know you've seen these, to
19 review them again and ask - and let me know if you can
20 recognize the images in all of those particular still shots.

21 A Yes, I can.

22 Q Okay, and are those images a fair and accurate
23 representation of what you saw in the video that came off
24 Sarah Cardwell's computer?

25 A Yes, they are.

David Marsh - Direct by Ms. Lively

82

1 Q Are they - do they involve the people that you mentioned
2 before as being in the video?

3 A Yes, they do.

4 Q Okay, does it look like those pictures, those still shots
5 have been altered or manufactured or made to look a particular
6 way?

7 A No.

8 Q Are they a fair representation then?

9 A They are a fair representation.

10 Q Is that what you saw?

11 A Yes.

12 Q Okay.

13 MS. LIVELY: Your Honor, the State would move to
14 introduce State's Three through Eight into evidence at this
15 time.

16 THE COURT: Subject to Defense counsel objections I
17 permit them to go into evidence.

18 (State's Exhibit Numbers Three through Eight
19 [Photographs] introduced into evidence and appropriately
20 marked.)

21 THE COURT: You may publish at this time or they - of
22 course they'll have them with the jury room. If you care to
23 publish you may do so.

24 MS. LIVELY: Yes, sir.

25 MR. GOUDE: Judge, we would ask before the pictures

David Marsh - Direct by Ms. Lively

83

1 are published that if the Prosecution is going to publish
2 select shots taken out of the two-minute video that the
3 Prosecution be ---

4 THE COURT: No, sir, any ---

5 MR. GOUDE: --- that the Prosecution ---

6 THE COURT: No, sir, any - no, sir.

7 MR. GOUDE: --- be required to show the two-minute
8 video ---

9 THE COURT: Any, any ----

10 MR. GOUDE: --- before these still shots.

11 THE COURT: --- any shot, still shot permitted by me
12 will be a part of the video or it will not be introduced.

13 MR. GOUDE: Judge, we would ask that the jury be
14 allowed to see the entire video before they see the selected
15 portions of it.

16 THE COURT: No, sir, I'm not going to tell the State
17 how to try their case. I can tell the jury that they will see
18 the video and they will judge these pictures in the context of
19 the totality of the video. You may proceed.

20 MS. LIVELY: Thank you, Your Honor.

21 THE COURT: The question was did you desire to publish
22 at this time?

23 MS. LIVELY: I do desire to publish at this time.

24 THE COURT: Do so.

25 MS. LIVELY: Thank you, Your Honor.

David Marsh - Direct by Ms. Lively

84

1 THE COURT: Madam Foreman, take a look at them and
2 pass them around, please, and they will be with you during
3 your deliberations.

4 BY MS. LIVELY:

5 Q Now, Mr. Marsh, after you had Chief Douglas - I'm sorry,
6 Chief Ron Douglas get in contact with Detective Hanna, what,
7 if anything, did you have to do with the rest of this case and
8 the information that was found on Sarah's computer?

9 A Ron, Chief Ron called and told me that someone was coming
10 up to copy that video onto a DVD to bring it with it - with me
11 because the computer did not work.

12 Q Okay.

13 A And to bring both pieces up to the police department,
14 which I did, and since I turned them over to Investigator Phil
15 I have not had any part or act in the case other than just
16 waiting on trial I guess.

17 Q Okay, and, and once again when you're talking about using
18 the Mac and having the download done, was a part of the
19 problem that you had even with pulling up the computer to have
20 the disk run or have the movie run the same problem you were
21 having in having it boot?

22 A Correct.

23 Q Okay, all right, so in regards to that was that the
24 reason why you made a disk of the video?

25 A I made a disk of the video for Chief Ron as he asked.

David Marsh - Direct by Ms. Lively

85

1 Q Okay.

2 A And then everything that was on my Mac was deleted and
3 including I took the hard drive and it was destroyed.

4 Q Okay.

5 A And was started over.

6 Q All right, all right, and, and with the kind of
7 information and just based on your experience and what you
8 were doing, was this a matter where you felt that you had to
9 report this to law enforcement, even if Chief Douglas hadn't
10 been there?

11 A Yes, it's required of all PC techs.

12 MR. GOUDE: Objection to any of that stuff.

13 THE COURT: I, I overrule that. She's entitled to ask
14 the question. He's entitled to answer. Go ahead.

15 Q Okay, now ---

16 THE COURT: The jury is finders of the facts. They
17 can give it such weight as they think it's entitled to, but
18 proceed.

19 MS. LIVELY: Yes, sir.

20 BY MS. LIVELY:

21 Q I'm going to show you State's Exhibit Number Two, okay,
22 and ask you if you recognize this.

23 A May I open?

24 Q Oh, yes.

25 THE COURT: You may do so.

David Marsh - Direct by Ms. Lively

86

- 1 Q Yes, you may.
- 2 THE COURT: The record will reflect that you have the
- 3 Court's permission. Thank you.
- 4 A Okay, thank you. Yes.
- 5 Q And what is that, David?
- 6 A It's just a standard writeable CD-R in a little laminate
- 7 case that I order tons of that are around my office.
- 8 Q Is that your disk?
- 9 A Yes, that's my disk and the case that I would have put it
- 10 in.
- 11 Q Okay, and you provided that disk in the case to whom?
- 12 A To Investigator Phil.
- 13 Q Okay, Phil Hanna from the Georgetown County Sheriff's
- 14 Office?
- 15 A Yes, uh-huh.
- 16 Q Okay.
- 17 A It was handed directly to him.
- 18 Q All right, and whenever you put that information on the
- 19 disk was it because it would not play off of the computer?
- 20 A Correct.
- 21 Q All right, now, and is that disk - does it still look in
- 22 the same condition as at the time whenever you downloaded this
- 23 information?
- 24 A Yes, it does.
- 25 Q Okay.

David Marsh - Direct by Ms. Lively

87

1 MS. LIVELY: Your Honor, the State would move to
2 introduce State's Exhibit Number Two into evidence.

3 THE COURT: Subject to objection of counsel it is
4 admissible.

5 MS. LIVELY: I'm sorry.

6 (State's Exhibit Number Two [CD] introduced into evidence
7 and appropriately marked.)

8 THE COURT: Madam Foreman, ladies and gentlemen, this
9 video will be played for you in open court. During your
10 deliberations, we don't have the procedure to do it back
11 there. If you and your jury wants to see it or any part of it
12 let me know and I'll bring you out and we'll show it again out
13 here, but it will be available if you or your distinguished
14 jury wants to see all or any part of it. Thank you.

15 BY MS. LIVELY:

16 Q All right, and Mr. Marsh, you stated that was the last
17 thing that you did in regards to this case other than coming
18 here and testifying today?

19 A Yes.

20 Q Okay, after this occurred did you have any additional
21 contact with Sarah?

22 A No.

23 Q No? Okay, did you ever have any contact with Michael
24 Cardwell?

25 A No.

David Marsh - Cross by Mr. Goude

88

1 Q Okay. Thank you. Answer any questions that the Defense
2 attorneys may have for you.

3 A Thank you.

4 THE COURT: Counsel, you may proceed.

5 MR. GOUDE: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. GOUDE:

8 Q Sir, I'm going to show you what's marked as Defendant's
9 Exhibit One, which is two pages and ask you if you can tell
10 the jury what this two-page document is. Go ahead and take it.

11 THE COURT: Have you shown to counsel for the State
12 that two-page document?

13 MR. GOUDE: I just gave them a copy, Judge.

14 THE COURT: All right.

15 MS. LIVELY: I've got one.

16 A It's calendars.

17 Q Of what years?

18 A '06 through '11.

19 Q Yes, sir, thank you.

20 MR. GOUDE: Judge, we would offer this as our first
21 exhibit.

22 THE COURT: I will permit it. Take judicial notice
23 that that is a calendar.

24 MR. GOUDE: Thank you, sir.

25 (Defendant's Exhibit Number One [Calendars] admitted into

David Marsh - Cross by Mr. Goude

89

1 evidence and appropriately marked.)

2 BY MR. GOUDE:

3 Q And, sir, did you say that all of your activity was taken
4 place in Johnsonville, South Carolina?

5 A No, sir. I said I - in Florence and then recent.

6 Q No, where you was viewing this laptop computer ---

7 A Yes, Johnsonville.

8 Q --- and all this, that was in Johnsonville, South
9 Carolina?

10 A Yes.

11 Q And is that in Florence County, South Carolina?

12 A Yes, it is in Florence County.

13 MR. GOUDE: That's all I have, Judge. Thank you.

14 THE COURT: You may come down.

15 A Thank you.

16 THE COURT: Can this witness be excused or you need to
17 keep him?

18 MS. LIVELY: No, sir, Your Honor. He may be excused.

19 THE COURT: You are excused from your subpoena and we
20 thank you for your participation.

21 MR. MARSH: Thank you.

22 THE COURT: Call your next witness.

23 MS. LIVELY: Yes, sir, Your Honor. The State will call
24 Chief Ron Douglas to the stand.

25 Whereupon, Ron Douglas was called to the stand, duly

Ron Douglas - Direct by Ms. Lively.

90

1 sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated and state
3 your full name for the record, spelling your first and last
4 name.

5 MR. DOUGLAS: Ron Douglas, that's R-O-N, D-O-U-G-L-A-S.

6 DIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q Where are you currently employed?

9 A The City of Johnsonville as ---

10 Q And what are your duties?

11 A I serve as the Chief of Police.

12 Q How long have you been doing that?

13 A For a little over ten years.

14 Q And do you know David Marsh?

15 A I do.

16 Q Do you know Sarah Pope Cardwell?

17 A I had met her and then I do - I am acquainted with her.

18 Q Okay, how about Michael Cardwell?

19 A No, ma'am, I do not.

20 Q All right, now, Chief Douglas, did you have an
21 opportunity to go to the home of David Marsh in December of
22 2010?

23 A I did.

24 Q Okay, and tell the jury what you would typically go to
25 Mr. Marsh's house for.

Ron Douglas - Direct by Ms. Lively

91

1 A Of course, as I say, I serve as Chief of Police for the
2 City of Johnsonville and FedEx and UPS typically drop off
3 packages for several businesses in town. When they're closed
4 we accept their packages, kind of a little small town plus,
5 but I know him as Shaun actually because I've known him since
6 he was a baby, but anyway, Shaun's home office is just right
7 down the street from the police department and either he would
8 come to the police department almost on a daily basis and
9 retrieve packages or either I would take them over to him or
10 have one of my officers take the packages over to him.

11 Q Okay, and how long have you used David Shaun Marsh to
12 assist in computer issues at the Johnsonville Police
13 Department?

14 A Since day one there, over ten years now he's assisted us.

15 Q Okay, all right, and are you aware he actually handles
16 stuff for independent people as well?

17 A I am aware of his personal business, yes.

18 Q Okay, all right, and in the capacity of what he was doing
19 for you, was that for the Johnsonville Police Department and
20 investigations or is it just IT work?

21 A He just does IT work for us.

22 Q Okay, all right, now, tell the jury then what exactly you
23 were doing there in December of 2010.

24 A I basically had gone over to drop some packages off at
25 his office.

Ron Douglas - Direct by Ms. Lively

92

1 Q Okay, and where was David at that time?

2 A It's been about two years ago. I think we were in like
3 the little office. He has an office area in his house, a
4 little small room toward one end of the house, and typically
5 that's where we would do the transaction and just stand and
6 chat for just a minute or two and then that would be it.

7 Q Okay, and while you were there was there anything that
8 happened or that you saw that got your attention?

9 MR. GOUDE: And Judge, before the witness testifies,
10 we renew our objection on the grounds of the two motions we've
11 already made this morning and with the witness Marsh.

12 THE COURT: My ruling will stand as to those
13 objections. You're noted for the record. You may proceed.

14 Q You can answer the question, Chief.

15 A Thank you. I had seen an image that was - that concerned
16 me on a computer on a table there. He had like a large
17 computer table where he worked on things and I'd seen an image
18 that appeared to be a child, a nude child maybe holding a
19 ladies' bra up across his chest.

20 Q Okay, and when you saw that image what did you do?

21 A I immediately called that to Shaun's attention and asked
22 him what was that, and of course he explained that was a
23 computer he was working on. He told me that the computer -
24 actually he said the computer belonged to Ms. Pope and that he
25 was working on it because it sometimes would not start up.

Ron Douglas - Direct by Ms. Lively

93

1 The computer would not come on, and of course, obviously it
2 was on at this point and he said he was backing the computer
3 up trying to save the files apparently, and I'm not a computer
4 person, so forgive me for not being real specific, but he said
5 he was trying to get this computer backed up and fixed so that
6 it would work properly. At that time I had a concern about if
7 he shut that computer down that he would lose whatever's on
8 there, and being a trained investigator, I actually retired
9 from Florence Police Department about ten years ago as a
10 lieutenant of investigations and I knew as soon as I saw this,
11 having worked these type cases before, I knew there was
12 something that needed to be looked into here. So, at that
13 time I told him to - instructed him to go ahead and make a
14 copy of that if he could and then to immediately shut that
15 computer down and secure it because he had told me the
16 computer belonged to Ms. Pope who actually lived in another
17 jurisdiction, not in our jurisdiction. He told me she had
18 lived - she lived in Georgetown County. So, having no
19 jurisdiction over any type of activity that was captured on
20 that computer, I instructed him to try to make a copy before
21 the computer did shut down and malfunction and then secure the
22 computer until I could contact someone with Georgetown
23 Sheriff's Office to see if they would assist with the
24 investigation and take over that.

25 Q Okay, and Chief Douglas, if you saw that computer again

Ron Douglas - Direct by Ms. Lively

94

1 do you believe you would recognize it?

2 A I'll be glad to take a look. It's been two years.

3 Q I understand. I'm going to show you this computer and
4 just ask you if it looks familiar to you.

5 A I do recall it, it was a pink computer which was a little
6 unusual because we don't have any pink computers at my work,
7 and I do recall seeing that there was a pink computer that the
8 material was on.

9 Q Okay, and Chief Douglas, you said that it wasn't your -
10 it would have been something that happened not in your
11 jurisdiction; is that correct from what you understood?

12 A Well, yeah, I didn't really know what it was or where it
13 happened but, but hearing that the owner of the computer lived
14 in Georgetown County then I knew obviously I'd have no
15 jurisdiction should those images have been put on there in
16 Georgetown County.

17 Q Okay, and, and just to clarify for the jury, why did you
18 feel it necessary to have that video downloaded to a disk at
19 that time?

20 A As I recall Shaun had told me that he was having trouble
21 - the reason he was working on the computer was because it
22 sometimes would not start up and he had gotten it started
23 up and that's why he was backing it up, doing a backup file
24 for fear that maybe it would crash and would never start up
25 again and he was doing this work for Ms. Pope obviously or

Ron Douglas - Direct by Ms. Lively

95

1 whoever had directed him to do it, and so, that's why I told
2 him to go ahead and make a copy of it so that whatever was on
3 there would not be lost even if the computer did crash.

4 Q Okay, all right, so, as you stated in your experience as
5 an investigator as well is one of the things you're concerned
6 about the preservation of potential evidence in a case?

7 A Definitely, that's exactly why I told him what I did.

8 Q Okay, all right, now, you provided a statement to
9 Detective Phil Hanna with the Georgetown County Sheriff's
10 Office; correct?

11 A I did.

12 Q All right, and did you have any other opportunity to
13 possibly have met these children that were involved in the
14 video?

15 A I had seen the children a little prior to this I believe.
16 Shaun I believe had become friends with Ms. Pope and I didn't
17 realize I knew her until one day she came to the police
18 department I think selling some doughnuts or something for a
19 school trip they were doing and she reminded me who she was
20 and obviously I think we bought some candy from her or
21 something, but her children during that time, as they were -
22 had become acquainted, I think her children were with Shaun
23 spending some overnight visits with him, and we were doing - I
24 serve a lot of different functions. I'm on a little committee
25 where we decorate the town for Christmas and do different

Ron Douglas - Direct by Ms. Lively

96

1 things and we were, we were in the little local park
2 decorating, trimming a tree and putting up some lights and
3 Shaun had these children with him there and had told me that
4 that was Sarah Pope's children, and that's where I - when I
5 saw the image on the computer that's where I recognized the
6 child that I had seen before. So, I knew right away that, you
7 know, who the child was.

8 Q Okay, all right, so, you - and that was going to be my
9 question was were you able then to put the image together with
10 the child that you had actually met before?

11 A I was.

12 Q Okay, all right, thank you. Answer any questions that
13 the Defense may have for you.

14 THE COURT: Mr. Goude or Mr. Fox. Gentlemen, do you
15 have any examination?

16 MR. GOUDE: Just one second, Judge, please.

17 THE COURT: All right, sir.

18 MR. GOUDE: No questions, Your Honor.

19 THE COURT: Mr. Fox?

20 MR. FOX: None, Your Honor.

21 THE COURT: Come down, Chief. Thank you.

22 A Thank you, sir.

23 THE COURT: May this witness be excused from his
24 subpoena?

25 MS. LIVELY: Yes, may he please, Your Honor.

Phillip Hanna - Direct by Ms. Lively

97

1 THE COURT: You are excused and we thank you for your
2 participation.

3 A Thank you, sir.

4 THE COURT: Next witness.

5 MS. LIVELY: Yes, sir. The State would call Detective
6 Phil Hanna to the stand.

7 Whereupon, Phillip Hanna was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated and state
10 your full name for the record, spelling your first and last
11 name.

12 MR. HANNA: First name is Phillip, P-H-I-L-L-I-P, last
13 name is Hanna, H-A-N-N-A.

14 DIRECT EXAMINATION

15 BY MS. LIVELY:

16 Q Mr. Hanna, where are you currently employed?

17 A Georgetown County Sheriff's Office.

18 Q And how long have you been employed there?

19 A Almost four years.

20 Q What are your duties at the sheriff's office?

21 A I'm an investigator for the sheriff's office to follow up
22 on criminal activity such as burglaries, homicides, anything
23 that happens within the county to do follow-up investigations
24 to try to determine who, who committed a crime.

25 Q Okay, how long have you been in law enforcement?

Phillip Hanna - Direct by Ms. Lively

98

- 1 A 22 and a half years.
- 2 Q All right, and where were you working before you came to
- 3 the Georgetown Sheriff's Office?
- 4 A I worked, I was an investigator for Florence County
- 5 Sheriff's Office for 18 and a half years.
- 6 Q Okay, do you know Chief Ron Douglas?
- 7 A Yes.
- 8 Q Okay, and do you know David Shaun Marsh?
- 9 A Yes.
- 10 Q All right, do you know Sarah Pope Cardwell?
- 11 A Only through this investigation.
- 12 Q How about Michael Cardwell?
- 13 A Again, just through the investigation.
- 14 Q All right, will you please tell this jury when you became
- 15 involved in the investigation of these two Defendants?
- 16 A Yeah, actually I was notified - Chief Douglas had called
- 17 our agency asking for help about they had found this image on
- 18 a computer and didn't think that it was in his jurisdiction
- 19 and felt like it was in our county, and that being in our
- 20 jurisdiction and me being familiar with Ron and the area, I
- 21 went down there to see if I could assist and that would have
- 22 been right at December 10th, 2010.
- 23 Q Okay, and at that time did you have any information about
- 24 what it was that you were going to be involved in
- 25 investigating?

Phillip Hanna - Direct by Ms. Lively

99

1 A Through the phone call I was told that there was some
2 images of children nude that was seen on a computer and that
3 they - that was being worked on by David in Johnsonville and
4 that they wanted me to come and follow up on it to see if they
5 - if it was, in fact, any kind of illegal pictures or videos.

6 Q Okay, and what was your understanding as to how David
7 Shaun Marsh came into possession of this particular computer?

8 A After speaking with David I learned that the computer was
9 sent to him or he had picked the computer up from Ms. Sarah
10 Pope to do some work on it, and that during it - it was during
11 the time that he was working on the computer that they - he
12 and Chief Douglas actually accidentally stumbled across these
13 images.

14 Q Okay, was it a part of any type of law enforcement
15 investigation up until that point?

16 A No.

17 Q Okay, now, how are you able to or were you able to
18 determine that, that this video and these images were located
19 in your particular jurisdiction?

20 A We went by the, the date, later found out where it is and
21 I don't know the computer stuff either, but they have a way of
22 finding the dates that it was actually put on the computer and
23 we went back with the Sarah and Michael were arrested. It was
24 later determined after speaking with them that's where it
25 occurred at and also recognize, other officers at the

Phillip Hanna - Direct by Ms. Lively

100

1 | sheriff's office recognized the interior of the residence.

2 | Q Okay, and where was - the residence that you're referring
3 | to, is this the residence that is actually visible in the
4 | video?

5 | A Yes.

6 | Q All right, and what is the address of that particular
7 | residence?

8 | A That would have been on Road, and I'm sorry, it's -
9 | I don't have the address in - with me at this moment.

10 | Q Okay, if I provided you with your case report would that
11 | assist you in regards to the location of the actual video and
12 | where it was taken?

13 | THE COURT: You may approach the witness.

14 | MS. LIVELY: Thank you, Your Honor.

15 | BY MS. LIVELY:

16 | Q Here you go.

17 | A Yes, and that's - and in fact it was actually the
18 | Road.

19 | Q And where is Road located, Detective Hanna?

20 | A That's actually in Georgetown County, heading back from
21 | Georgetown toward Andrews.

22 | Q Okay, and the Road address that you have, how
23 | are you able to confirm that through your investigation?

24 | A That that's where the incident took place?

25 | Q Yes, sir.

Phillip Hanna - Direct by Ms. Lively

101

1 A Actually through speaking with Ms. Sarah Pope and, and
2 confirm with other investigators who are familiar with them
3 and had been - actually been in the residence before.

4 Q Okay, all right, now, after determining that this video
5 had been done in, in Georgetown County, what was your next
6 step in regards to your investigation?

7 A Well, had to take it to someone who was qualified and
8 certified to download these images and save them securely from
9 this broken computer. I took possession of this computer and
10 also the CD that they had made and sent the computer to the
11 Charleston computer lab so that they could download all the
12 stuff off this computer.

13 Q Okay, and Detective Hanna, when you received this
14 information and the disk, did you do anything in order to
15 allow yourself to or allow the forensic lab to go into the
16 computer and do a search?

17 A Yes, I obtained a search warrant for all the - for
18 everything on the computer.

19 Q Okay, and is that standard when you see images like
20 these?

21 A Yes.

22 Q Okay, and Detective Hanna, in regards to the actual
23 computer did you seize that computer from David Marsh and
24 Chief Douglas?

25 A Yes.

Phillip Hanna - Direct by Ms. Lively

102

1 Q Okay, sorry, it's in my way now, Judge, and is this -
2 does this look familiar?

3 A Yes.

4 Q Is this the computer that you seized from David Marsh?

5 A Yes, it is and I put it in that box.

6 Q And you put it in this box? Okay.

7 Now I'm going to show you what's in evidence as State's
8 Exhibit Number Two and ask you - well, actually I see your
9 name on this particular item. Do you recognize that?

10 A Yes.

11 Q And what is that?

12 A This is the actual CD that Mr. David had made when he -
13 when I took the possession of the computer. This is the
14 actual disk that he had made that showed the images.

15 Q Okay, all right. At that time when you got this
16 information, were you able to identify the individuals that
17 were involved in this particular video?

18 A Yes, Mr. David was adamant. He, he was familiar with
19 everyone, every party and he gave me the name of the male
20 person because I wasn't familiar with him, but he gave me his
21 name. I then went to DMV, Department of Motor Vehicles, and
22 pulled his driver's license picture and saw that it was, in
23 fact, the same person.

24 Q Okay, and at what point in time did you watch or did you
25 watch the video?

Phillip Hanna - Direct by Ms. Lively

103

1 A I watched it there that day at the police department.

2 Q Okay, okay, and in the video itself do you recall about
3 how long it is?

4 A Seem like it's a little over two minutes.

5 Q Okay, and whenever you watched the video and were able to
6 identify the people in the video did you have any trouble in
7 having to replay the video and look at it again?

8 A Yeah, there was some problems with the volume. It would
9 - the volume would come and go.

10 Q Okay.

11 A So, you'd have to stop it, start it, stop it, so the
12 volume, you could hear the actual person narrating the video.

13 Q Okay, so, in the video that you actually watched there
14 was sound included?

15 A Yes.

16 Q All right, okay, and how many people were in the video
17 that you actually saw?

18 A There was a male, which was Mr. Michael Cardwell, and the
19 two children.

20 Q Okay, all right, and was there any other voices that
21 could be heard on the video?

22 A There was a female voice that was actually running the
23 camcorder or the video.

24 Q Okay, all right, could you ever see this person?

25 A No.

Phillip Hanna - Direct by Ms. Lively

104

1 Q All right, now, Detective Hanna, after you've seized
2 these items and you have this stuff in your possession has
3 there been anything additional that you've had to do in
4 regards to this investigation?

5 A Yes, when I viewed the video obviously it concerned me
6 immediately. I contacted DSS and we made arrangements to - we
7 took the children from the home.

8 Q Okay, all right, and in regards to the, the actual
9 charges that were brought against Michael and Sarah Cardwell -
10 never mind, I'm not going to ask you that question. Just give
11 me one second, okay, Detective?

12 MS. LIVELY: May it please the Court, Your Honor, just
13 Court's indulgence one moment?

14 THE COURT: Yes, ma'am.

15 MS. LIVELY: Your Honor, the State is prepared to
16 publish the video at this time unless we want to go forward
17 with cross examination first. It does not matter to me how
18 the Court would like to handle that.

19 THE COURT: Well, I'll ask counsel for the Defense.
20 You want to have your cross examination and then play the
21 video or play the video prior to cross examination?

22 MR. GOUDE: I'd say play the video and play it first.

23 THE COURT: All right, sir, we'll do that.

24 MS. LIVELY: And Your Honor, if we could just - just
25 for the purposes of the jury understanding how this is going

Phillip Hanna - Direct by Ms. Lively

105

1 to happen, we'll start the video. Obviously the screen will
2 reflect what is on the video. It's right directly in front of
3 you.

4 BY MS. LIVELY:

5 Q And it lasts for about two minutes and 30 seconds; is
6 that correct, Mr. Hanna?

7 A Yes, sir - yes, ma'am.

8 Q Okay.

9 MS. LIVELY: All right, well we're ready.

10 (Whereupon, State's Exhibit Number Two played in open
11 court.)

12 MS. LIVELY: That's all.

13 THE COURT: You may examine, Mr. Goude.

14 MR. GOUDE: Judge, I have no questions.

15 THE COURT: Mr. Fox?

16 MR. FOX: No, Your Honor.

17 THE COURT: You may come down.

18 A Thank you, sir.

19 THE COURT: Please remain under your subpoena. All
20 right, sir, call your next witness.

21 MS. LIVELY: Dianne Nordeen.

22 Whereupon, Dianne Nordeen was called to the stand, duly
23 sworn by the clerk and testified as follows:

24 THE CLERK: Thank you. Please be seated and state
25 your full name for the record, spelling your first and last

Minor Child 1

- Direct by Ms. Lively

140

1 MS. LIVELY: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. LIVELY: Minor Child 1

4 Whereupon, Minor Child 1 is called to the stand,

5 duly sworn by the clerk and testifies as follows:

6 THE CLERK: Thank you. Please be seated and state

7 your full name for the record.

8 THE COURT: Good morning, young man.

9 Minor Child 1 : Morning.

10 THE COURT: Good to see you.

11 Minor Child 1 : Minor Child 1 Minor Child 1

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q Thank you. Minor Child 1 how old are you?

15 A Twelve.

16 Q And are you in school?

17 A Yes, ma'am.

18 Q Where are you in school?

19 A St. James Middle.

20 Q And what grade are you in?

21 A Seventh.

22 Q When's your birthday?

23 A th, 19.

24 Q Okay, so, you're getting ready to be 13?

25 A Yes, ma'am.

Minor Child 1

- Direct by Ms. Lively

141

- 1 Q A teenager. Are you excited?
- 2 A Yes, ma'am.
- 3 Q Okay, now, Minor Child 1 what's your favorite, what's your
- 4 favorite subject at school?
- 5 A Math.
- 6 Q Math, all right, and how are your grades?
- 7 A Good.
- 8 Q What are you making?
- 9 A A's.
- 10 Q A's, wonderful, and have you been on honor roll and stuff
- 11 like that?
- 12 A Yes, ma'am.
- 13 Q All right, now, Minor Child 1 was there a time whenever
- 14 you lived in Georgetown County on Road?
- 15 A Yes, ma'am.
- 16 Q Okay, and who lived there with you? Do you remember?
- 17 A My mom and my step-dad and sometimes my stepsisters and
- 18 my younger brother and younger sister and my other younger
- 19 sister.
- 20 Q Okay, and just so the jury knows everybody that you're
- 21 talking about, your younger sister ^{Minor Child 2} who we just talked
- 22 to right?
- 23 A Yes, ma'am; yes, ma'am.
- 24 Q Okay, and then there's ^{Minor Child 3}
- 25 A Yes, ma'am.

Minor Child 1

- Direct by Ms. Lively

142

- 1 Q And how old is he now?
- 2 A He's six.
- 3 Q He's six and then there's Minor Child 4 right?
- 4 A Yes, ma'am.
- 5 Q And how old is Minor Child 4
- 6 A She's three.
- 7 Q She's three, okay. So, are the four of you all still
- 8 living together?
- 9 A Yes, ma'am.
- 10 Q All right, and where are you all? In Murrells Inlet, is
- 11 that right?
- 12 A Yes, ma'am.
- 13 Q Okay, now, Minor Child 1 whenever you lived back off of
- 14 Road in Georgetown with your mom and your step-dad,
- 15 were they married yet?
- 16 A No, ma'am.
- 17 Q Okay, was Mr. Cardwell living there with you all though?
- 18 A Yes, ma'am.
- 19 Q Okay, and was there ever a time whenever you all were
- 20 living in that home where you did something with your mom and
- 21 your step-dad and your sister that made you feel
- 22 uncomfortable?
- 23 A Yes, ma'am.
- 24 Q And what was that?
- 25 A We made a video.

Minor Child 1

- Direct by Ms. Lively

143

1 Q You made a video, okay, and whose idea was it to make the
2 video, Minor Child 1

3 A My mom and my step-dad.

4 Q How did you feel about that?

5 A Upset and embarrassed.

6 Q Embarrassed, okay, and Minor Child 1 about how old were
7 you? Do you remember?

8 A About 11 or ten, ten or 11.

9 Q Ten or 11, okay, and so, your mom and your step-dad had
10 the idea to make the video. Whose idea was it for the way
11 that you all were supposed to be clothed or unclothed?

12 A My step-dad.

13 Q Your step-dad, okay, and what was the decision about
14 clothing?

15 A That no, none.

16 Q None, were you wearing anything at all?

17 A No, ma'am.

18 Q Do you remember if anybody was wearing a bra in the
19 video?

20 A Yes, ma'am.

21 Q Who was?

22 A Me.

23 Q Who put it on you?

24 A My step-dad.

25 Q How'd you feel about that?

Minor Child 1 - Direct by Ms. Lively

144

- 1 A I didn't like it.
- 2 Q You didn't like it?
- 3 A No, ma'am.
- 4 Q What was your sister wearing?
- 5 A Nothing.
- 6 Q Now, Minor Child 1 who was videotaping what was going on?
- 7 A My mom.
- 8 Q Your mom, what was she wearing?
- 9 A Nothing.
- 10 Q Nothing. Okay, now, Minor Child 1 there were some things
- 11 going on in the video and the jury has seen that video; okay?
- 12 A Yes, ma'am.
- 13 Q All right, but only the people who were there would you
- 14 agree knew what was going on? Right?
- 15 A Yes, ma'am..
- 16 Q Okay, all right, so, you knew or let me ask you this, who
- 17 told you how to act and what to do in that video?
- 18 A My step-dad.
- 19 Q Your step-dad, okay, so, I'm going to ask you some stuff
- 20 about that, okay, and I'm sorry, but you know I have to ask
- 21 you some of these questions.
- 22 A Yes, ma'am.
- 23 Q Okay, now, Minor Child 1 I'm going to show you State's
- 24 Exhibit Number Six, okay?
- 25 A Yes, ma'am.

Minor Child 1 - Direct by Ms. Lively

145

- 1 Q All right, and, and the jury's already seen these; okay?
- 2 A Yes, ma'am.
- 3 Q In this picture right here, who is in that picture,
- 4 Minor Child 1
- 5 A Me.
- 6 Q That's you, and what are you wearing?
- 7 A A bra.
- 8 Q A bra, okay, and what are you doing with your hands?
- 9 A I'm touching myself.
- 10 Q Okay, who told you how to touch yourself?
- 11 A My mom and my step-dad.
- 12 Q Okay, your mom and your step-dad, all right. Okay,
- 13 Minor Child 1 do you need any water?
- 14 A No, ma'am.
- 15 Q You're good? Okay, now I'm going to show you State's
- 16 Number Seven and tell me who is in this one?
- 17 A Me.
- 18 Q That's you, okay, all right, and I'm going to show you
- 19 State's Number Eight and ask you who's that?
- 20 A Me.
- 21 Q Okay, now, Minor Child 1 in these two pictures here, what
- 22 parts of your body are you touching?
- 23 THE COURT: Let the picture speak for itself.
- 24 Q Okay, and I know it's hard; okay? All right, are you
- 25 touching your front private part?

Minor Child 1

- Direct by Ms. Lively

146

- 1 A Yes, ma'am.
- 2 Q Who told you to do that?
- 3 A My mom and my step-dad.
- 4 Q Okay, did you know why they were having you do that?
- 5 A No, ma'am.
- 6 Q No, okay. When they did that do you know what you were
- 7 doing?
- 8 A No, ma'am.
- 9 Q Okay, whenever you were touching your front private part
- 10 in this video, what does that mean?
- 11 A Masturbation.
- 12 Q Okay, all right, and who taught you that?
- 13 A My mom and my step-dad.
- 14 Q Your mom and your step-dad taught you that that was
- 15 masturbation?
- 16 A Yes, ma'am.
- 17 Q Is that why you did it in this video?
- 18 A Yes, ma'am.
- 19 Q Okay, I'm going to show you State's Number Nine.
- 20 Minor Child 1 do you remember this part of the video?
- 21 A Yes, ma'am.
- 22 Q And who's that?
- 23 A My step-dad.
- 24 Q Okay, all right.
- 25 MS. LIVELY: And, Your Honor, we would move Number Nine

Minor Child 1 - Direct by Ms. Lively

147

1 into evidence.

2 THE COURT: What is Number Nine?

3 MS. LIVELY: Number Nine is the full picture of Mr.
4 Cardwell. It's not in. It's the last photo.

5 THE COURT: Yes, ma'am. I would permit it.

6 MS. LIVELY: Okay, all right.

7 (State's Exhibit Number Nine [Photograph] admitted into
8 evidence and appropriately marked.)

9 BY MS. LIVELY:

10 Q And was this a ---

11 THE COURT: I would say to the jury again that this is
12 a still photo, but you will consider it in the context of the
13 entire video, please. Thank you.

14 Q Okay, and is this a representation of how he was during
15 that whole video?

16 A Yes, ma'am.

17 Q Okay, all right, Minor Child 1 ---

18 A Yes, ma'am.

19 Q --- after - well, there was one part of it and then I'm
20 going to move on; okay? There was one part of it where you
21 hear a female voice and a male voice saying, "Do your grand
22 finale." Who was that female voice?

23 A My mom.

24 Q Your mom, and the male voice, who was that?

25 A My step-dad.

Minor Child 1

- Direct by Ms. Lively

148

- 1 Q What is the grand finale? Do you remember seeing it on
2 the video?
- 3 A Yes, ma'am.
- 4 Q Okay, was that you that did the grand finale?
- 5 A Yes, ma'am.
- 6 Q Who showed you or told you what the grand finale was?
- 7 A My step-dad.
- 8 Q Okay, did he tell you how to do that?
- 9 A Yes, ma'am.
- 10 Q Okay, I mean, did you ever see that or know that before
11 he told you?
- 12 A No, ma'am.
- 13 Q Okay, so, he taught you that?
- 14 A Yes, ma'am.
- 15 Q All right, now, after the video was over was there ever a
16 time whenever you saw the video again on the computer or it
17 popped up or anything like that?
- 18 A Yes, ma'am.
- 19 Q Okay, tell the jury about that.
- 20 A My stepsister and I we were, we were - it was after her
21 birthday and we had taken pictures on the camera of like her
22 presents and stuff and we were looking at the pictures and the
23 video came on the screen.
- 24 Q Okay, did you know that it was on the computer?
- 25 A No, ma'am.

Minor Child 1 - Direct by Ms. Lively

149

- 1 Q How did that make you feel?
- 2 A Upset.
- 3 Q Upset, okay, has all - has that video and knowing that it
- 4 was on the computer, has that kept you upset?
- 5 A Yes, ma'am.
- 6 Q How do you feel today about it?
- 7 A Upset.
- 8 Q And have you had any type of problems, you know, because
- 9 of that video and what's happened?
- 10 A No, ma'am.
- 11 Q No, you've done pretty good in school?
- 12 A Yes, ma'am.
- 13 Q How about sleeping? Do you ever have any problems
- 14 sleeping?
- 15 A No, ma'am.
- 16 Q No, have you ever had any problems with - I don't want to
- 17 embarrass you, but have you ever had any kind of problems with
- 18 wetting the bed?
- 19 A Once.
- 20 Q Okay, and was it after this had happened?
- 21 A Yes.
- 22 Q Okay, and do you know whose fault this is, this video
- 23 being made, is it your fault?
- 24 A No, ma'am.
- 25 Q Whose fault is it?

Minor Child 1

- Cross by Mr. Goude

150

1 A My mom and my step-dad.

2 Q Thank you. Answer any questions that the Defense might
3 have; okay?

4 A Yes, ma'am.

5 Q Thank you, Minor Child 1

6 THE COURT: Mr. Goude?

7 CROSS EXAMINATION

8 BY MR. GOUDE:

9 Q Minor Child 1 is your correct legal name Minor Child 1?

10

11 A Yes, sir.

12 Q And is your date of birth the th, 19 ?

13 A Yes, sir.

14 MR. GOUDE: Judge, we would offer Minor Child 1 s birth
15 certificate as our next exhibit.

16 THE COURT: I will admit it.

17 (Defendant's Exhibit Number Four [Birth Certificate of
18 Minor Child 1 admitted into evidence and appropriately
19 marked.])

20 BY MR. GOUDE:

21 Q Minor Child 1 what school did you say you were attending
22 right now?

23 A St. James Middle School.

24 Q And where is St. James Middle School located? What
25 section of the county here so is it located?

Minor Child 1

- Cross by Mr. Goude

151

- 1 A Like Horry, in Horry County.
- 2 Q Like Pawleys Island or Murrells Inlet or Myrtle Beach?
- 3 A Yes, sir.
- 4 Q Where, where at?
- 5 A Myrtle Beach I think.
- 6 Q Okay, and you said you were in what grade this year?
- 7 A Seventh.
- 8 Q And last year, the last school year what grade were you
- 9 in then?
- 10 A Sixth.
- 11 Q And what school did you attend last year when you were in
- 12 the sixth grade?
- 13 A Waccamaw Intermediate School.
- 14 Q And the year before that what grade would you have been
- 15 in?
- 16 A Fifth grade.
- 17 Q And what school did you attend when you were in the fifth
- 18 grade?
- 19 A Kensington Elementary.
- 20 Q That's here in Georgetown?
- 21 A Yes, sir.
- 22 Q And the year before the fifth grade you would have been
- 23 in what grade?
- 24 A Fourth.
- 25 Q And what school did you attend when you went to the

Minor Child 1

- Cross by Mr. Goude

152

- 1 fourth grade, when you were in the fourth grade?
- 2 A Sampit.
- 3 Q Sampit?
- 4 A Yes, sir.
- 5 Q And the year before the fourth grade you would have been
- 6 in what grade?
- 7 A Third.
- 8 Q And where did you go to school when you were in the third
- 9 grade?
- 10 A Sampit or Maryville, I can't remember.
- 11 Q Okay, and the year before the third grade what grade were
- 12 you in?
- 13 A Second.
- 14 Q And where did you go to school then?
- 15 A I was in Maryville.
- 16 Q And the year before the second grade you would have been
- 17 in what grade?
- 18 A First.
- 19 Q And where did you go to school when you were in the first
- 20 grade?
- 21 A In first grade I was in Chavis Elementary.
- 22 Q What town is that located in?
- 23 A Hemington - Hemingway.
- 24 Q Okay, now, before you went to the first grade, did you go
- 25 to kindergarten or preschool or any of that stuff?

Minor Child 1 - Cross by Mr. Goude

153

1 A I can't remember.

2 Q Okay.

3 MR. GOUDE: Judge, we would offer Minor Child 1's school
4 records for the same reason that we offered Minor Child 2's as our
5 next.

6 THE COURT: I will permit them to come into the record
7 and tell the jury that they can give such consideration to
8 those records as they think appropriate as finders of the
9 facts.

10 (Defendant's Exhibit Number Five [School Records of
11 Minor Child 1 admitted into evidence and appropriately
12 marked.]

13 BY MR. GOUDE:

14 Q Minor Child 1 the - this is, this is what month right now
15 that we're in?

16 A October.

17 Q And what year is this?

18 A 2012.

19 Q And as I understand it you and your brothers and sisters
20 were taken out of your momma's custody about December 2010.
21 Is that correct?

22 A Yes, sir.

23 Q And that would have been almost two years ago; is that
24 correct?

25 A Yes, sir.

Minor Child 1

- Cross by Mr. Goude

154

1 Q For the last two years have you been living in the same
2 house, not your momma's house, but some foster house, in one
3 foster house or two foster houses or three or how does, how
4 does that work?

5 MS. LIVELY: Objection as to relevance, Your Honor.
6 This is - I don't see how this is relevant.

7 THE COURT: This is cross examination. I'll permit
8 wide latitude. I'll permit it. Go ahead.

9 MS. LIVELY: Okay, thank you, Your Honor.

10 THE COURT: Thank you.

11 A I've been in three foster, foster homes - wait, two
12 foster homes and two respid - respiratory homes.

13 Q What's a respiratory home?

14 A It's like a temporary.

15 Q The foster home you're in now, how long have you been in
16 this one that you're in right now?

17 A For about two months.

18 Q And before that the other foster home that you were in,
19 about how long were you in that home?

20 A About a year and - about a year and a half.

21 Q Okay, and has the - in that almost two years, how many
22 times have you - is - who is your mother and what is her name?

23 A Sarah.

24 Q Is that Sarah, what's her last name now?

25 A Now her name is Cardwell.

Minor Child 1

- Cross by Mr. Goude

155

1 Q And is that Sarah seated there with the lavender top on
2 at that table?

3 A Yes, sir.

4 Q How many times have you seen your momma Sarah Cardwell
5 since December 2010 when you were taken out of the home?

6 A Counting this time, two.

7 Q The other time - the other one time that you saw Sarah in
8 the last two years did you get to go to Sarah's home to see
9 her or where were you when you saw her then?

10 A Family Bridges.

11 Q What is that?

12 A It's a - my therapy.

13 Q Your therapy, and who is the person gives you your
14 therapy?

15 A Melissa Muse.

16 Q And about how many times has you been - have you been
17 going to see that therapist Melissa Muse since you got taken
18 out of your home December 2010?

19 A Once every week.

20 Q And that's been going on for almost two years?

21 A Yes, sir.

22 Q And the one time in the last two years that you got to
23 see your momma at the therapy, Family Bridges place with the
24 therapist, was the therapist there, too, Ms. Muse?

25 A Yes, sir.

Minor Child 1

- Cross by Mr. Goude

156

1 Q About how long did you get to see your momma that one
2 time at the family therapy place?

3 A For about a half an hour to 45 minutes.

4 Q Now, has either of the foster parents told you that they
5 wanted to adopt you and your brothers and sisters?

6 MS. LIVELY: Objection, Your Honor, asks for hearsay
7 and it's irrelevant.

8 THE COURT: Let me hear that question again.

9 Q Have either one of the foster parents that you're living
10 with told you that they wanted to adopt you and your brothers
11 and sisters?

12 THE COURT: I'll permit it.

13 A Yes, sir.

14 THE COURT: Does that conclude your examination?

15 MR. GOUDE: Just if I can confer with my client,
16 Judge, please?

17 THE COURT: Yes, sir.

18 BY MR. GOUDE:

19 Q Minor Child 1 you say - did you say you have three brothers and
20 sisters?

21 A Yes, sir.

22 Q And did you say that you were the oldest?

23 A Yes, sir.

24 Q And you said you were how old?

25 A Twelve.

Minor Child 1

- Cross by Mr. Goude

157

1 Q And your - the next child under you, the age of that
2 child and that child's name is what?

3 A Her name is Minor Child 2 and she is in - she is 11.

4 Q So, she is how much younger than you?

5 A Almost two years.

6 Q All right, the next older - oldest child under Minor Child 2 is -
7 what is that child's name?

8 A His name is Minor Child 3

9 Q And how old is Minor Child 3

10 A He's six years old.

11 Q And so, he is how much younger than you?

12 A Almost seven years.

13 Q Almost seven years, so, when you were eight years old

14 Minor Child 3 would have been how old?

15 A A little over a year old.

16 Q Do you know what year Minor Child 3 was born?

17 A 2008.

18 Q Is it, 2008?

19 A Wait, no, 2006.

20 Q Okay, because you said he's how old?

21 A Six.

22 Q So, 2006, and six and his age was six would be 2012; is
23 that correct?

24 A Yes, sir.

25 Q And the youngest brother or sister you have is what -

Minor Child 1 - Cross by Mr. Goude

158

- 1 what is that child's name?
- 2 A Her name is Minor Child 4
- 3 Q And how old is Minor Child 4 now?
- 4 A She is almost four.
- 5 Q What year was she born in?
- 6 A 2008.
- 7 Q Do you know about what month she was born?
- 8 A November 17th.
- 9 Q And Minor Child 3 the third oldest child, he was born in 2006.
- 10 Do you know about what month he was born?
- 11 A August 28th.
- 12 Q In 2006?
- 13 A Yes, sir.
- 14 Q Now, when Minor Child 3 and the youngest child, Minor Child 4 were
- 15 born, did you ever see your daddy or momma changing those two
- 16 children's diapers?
- 17 A Yes, sir.
- 18 Q Did you say yes or no?
- 19 A Yes, sir.
- 20 Q Did you ever see Mr. Cardwell or Sarah, your mother, when
- 21 they were changing either Minor Child 3 or Minor Child 4's diapers say the
- 22 words Hello Dolly and tell them to hold their legs up in the
- 23 air so that they could take the diaper off and clean the doo-
- 24 doo off their butt and put the new diapers on them?
- 25 A No, sir.

Minor Child 1 - Cross by Mr. Goude

159

1 Q You never heard that?

2 THE COURT: Young man, we're going to be through in
3 just a moment. You all right?

4 Minor Child 1: Yes, sir.

5 THE COURT: Do you need anything?

6 Minor Child 1: No, sir.

7 THE COURT: Thank you. You're doing just fine.

8 MR. GOUDE: Thank you, Judge. We have no other
9 questions.

10 THE COURT: All right. Mr. Fox, the record will
11 reflect that you declined to cross examine the last witness.
12 I offer you the opportunity as to this witness.

13 MR. FOX: No, Your Honor. We've covered that
14 through Mr. Goude. Thank you.

15 THE COURT: The record will reflect that you have
16 declined cross examination as to both witnesses. Was there
17 anything in, anything in reply?

18 MS. LIVELY: No, sir, Your Honor.

19 THE COURT: Young man, come down and thank you so
20 much. You may call your next witness, Ms. Candice.

21 MS. LIVELY: Melissa Muse.

22 Your Honor, while she's walking in may we approach for
23 just a second?

24 THE COURT: You may.

25 MS. LIVELY: Thank you.

Sarah Cardwell - Direct by Mr. Goude

224

1 call Sarah Cardwell to the stand.

2 Whereupon, Sarah Cardwell is called to the stand and
3 testified as follows:

4 MR. GOUDE: Here's that water if you need it. If you
5 don't need it don't worry about it. Did you all swear her?

6 THE CLERK: She was sworn in earlier. She was sworn
7 in earlier.

8 THE COURT: Was this witness sworn before lunch?

9 BAILIFF: Yes, sir.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right, proceed.

12 DIRECT EXAMINATION

13 BY MR. GOUDE:

14 Q Now, what is your full legal name?

15 A Sarah Denise Cardwell.

16 Q What is your maiden name?

17 A Pope.

18 Q And how old are you today?

19 A Thirty.

20 Q And what's your date of birth?

21 A 6-30, 1982.

22 Q 1982, so, you're exactly 30 this year?

23 A Yes, sir.

24 Q All right, you was born in 1982. Where were you born and
25 raised?

Sarah Cardwell - Direct by Mr. Goude

232

- 1 Q And what did you all's relationship change to?
- 2 A Boyfriend and girlfriend.
- 3 Q And about when was that? What year was that?
- 4 A It was late of - late 2006.
- 5 Q And at some point after you became boyfriend and
- 6 girlfriend did you and Mr. Cardwell start living together?
- 7 A Yes, we did.
- 8 Q And when you all started living together, at that time
- 9 you had three children; is that correct?
- 10 A Yes, sir.
- 11 Q And what were those children's names and ages?
- 12 A Minor Child 1 was seven, approximately seven.
- 13 Q Because what year is it when you all start staying
- 14 together?
- 15 A 2006. So, Minor Child 1 was seven or had just turnt - was
- 16 turning seven.
- 17 Q Okay.
- 18 A Minor Child 2 would have been five and Minor Child 3 was six weeks old
- 19 when we - when I moved in with Michael.
- 20 Q And Minor Child 2 was born in what year?
- 21 A 2001.
- 22 Q Okay, so, we got seven, five and the third, the third
- 23 child Minor Child 3 was, was six weeks old you said?
- 24 A Yes, six or seven weeks old.
- 25 Q Is that at the end of 2006?

Sarah Cardwell - Direct by Mr. Goude

233

- 1 A Yes, sir.
- 2 Q All right, so, did you all stay together in 2007?
- 3 A Yes, sir.
- 4 Q And at some point did you get a laptop computer?
- 5 A Yes, sir.
- 6 Q And how did you get the laptop computer?
- 7 A I purchased it.
- 8 Q Do you remember where you purchased it from?
- 9 A I think it was Office Depot.
- 10 Q And is the pink computer that's been put into evidence,
- 11 the pink Gateway laptop, is that yours?
- 12 A Yes, sir.
- 13 Q Now, you have seen the video or have you - let me ask you
- 14 the question, have you seen the video that the Prosecutor
- 15 played here in Court either this morning or yesterday
- 16 afternoon, one or the other?
- 17 A Yes, sir. I saw it here and I also saw it with you.
- 18 Q And you saw it with me after these charges came about?
- 19 A Yes, sir.
- 20 Q And after I was to represent you?
- 21 A Yes, sir.
- 22 Q And that was down in the Solicitor's Office here in the
- 23 courthouse?
- 24 A Yes, sir.
- 25 Q Okay, now, this video where was that video taken, what

Sarah Cardwell - Direct by Mr. Goude

234

- 1 location, what premises or what building or whatever?
- 2 A At our home.
- 3 Q Whose home?
- 4 A Mine and Michael's home.
- 5 Q And where was that home located?
- 6 A Road.
- 7 Q All right, in case all of us don't live or know where
- 8 Road is, where is Road in relation to
- 9 this room we're in right now?
- 10 A If you head toward Andrews it's nine miles from
- 11 Georgetown or nine miles from Andrews right past the Nine Mile
- 12 Curve on the Andrews side.
- 13 Q If you going from here toward Andrews and we were going
- 14 to turn off of the main highway from here and Andrews, would
- 15 we turn off right or turn off left?
- 16 A To the right.
- 17 Q And if we turned off to the right off the main highway,
- 18 what is the name of the main highway from here to Andrews?
- 19 A 521.
- 20 Q We turned off this main highway between here and Andrews
- 21 and turned off to the right how far would we go down off that
- 22 ---
- 23 A One mile.
- 24 Q One mile, and what kind of dwelling was it you and Mr.
- 25 Cardwell were living in?

Sarah Cardwell - Direct by Mr. Goude

235

- 1 A A double-wide mobile home.
- 2 Q And how many bedrooms were in the double-wide mobile
3 home?
- 4 A Four.
- 5 Q How many bathrooms in the double-wide mobile home?
- 6 A Two.
- 7 Q Now, again, you or have you here in the courtroom
8 yesterday when the video was played, have you seen the video
9 that was played here? Did you see it yesterday when we were
10 here in court ---
- 11 A Yes, sir.
- 12 Q --- on that little screen at our desk over yonder?
- 13 A Yes, sir.
- 14 Q All right, so, when you saw the video what room in your
15 house was the video taken in?
- 16 A The living room.
- 17 Q And what kind of a video taking device was used to tape
18 the video?
- 19 A A digital camera.
- 20 Q And did the digital camera tape the video in still shots
21 like was put into evidence and still photographs or was it
22 just a little or was taken in a moving film?
- 23 A It was taken in a movie form.
- 24 Q And who was in the video that was taken in the moving
25 form by the digital camera? Who was in that?

Sarah Cardwell - Direct by Mr. Goude

236

- 1 A Minor Child 1 Minor Child 2 and Michael.
- 2 Q And what year was that video taken in?
- 3 A Approximately 2007.
- 4 Q And in 2007 how old is the child Minor Child 1 at that time when
- 5 the video was taken?
- 6 A Seven.
- 7 Q What part - roughly what part of 2007 you think it was
- 8 in?
- 9 A Early 2007.
- 10 Q And at that time of 2007 how old was Minor Child 2 your daughter
- 11 Minor Child 2 at that time of the video?
- 12 A Five or six.
- 13 Q If she was - Minor Child 2 was born in what year did you say?
- 14 A 2001.
- 15 Q All right, that's the two children that was in the video.
- 16 Who is the man that's in the video?
- 17 A Michael.
- 18 Q Michael who?
- 19 A Cardwell.
- 20 Q And you said this was taken on what kind of a instrument
- 21 took the pictures?
- 22 A It was a Kodak digital camera.
- 23 Q And at that time when you took the camera or the picture
- 24 how did the kids get into the living room?
- 25 A It was after bath time and they came through the living

Sarah Cardwell - Direct by Mr. Goude

237

1 room and they used to ---

2 Q Don't tell me what they used to. Just tell me what they
3 did on this occasion.

4 A They would ---

5 Q Just tell me what they did on this occasion.

6 A They jacked - they jerked Michael's pants down and
7 hollered, "Ha, ha, I got you," and I picked up the camera and
8 started videoing it.

9 Q And you said they jerked Michael's pants down. Who is
10 they?

11 A One of the two children.

12 Q Which what is the names of the two children?

13 A Minor Child 1 or Minor Child 2

14 Q One of Minor Child 1 or Minor Child 2

15 A Yes, sir.

16 Q And you said they did what to Michael?

17 A They jerked his pants down.

18 Q And what kind of pants was he wearing before they jerked
19 them down?

20 A A pair of gym shorts.

21 Q Now, is that long gym shorts like sweatpants that goes
22 from your waist to your ankles?

23 A No, sir, just a pair of shorts, a pair of cotton shorts.

24 Q Is that, is that underwear like you would wear under your
25 pants or is that shorts like you could wear out to jogging on

Sarah Cardwell - Direct by Mr. Goude

251

1 A To the computer.

2 Q You plug it into this laptop?

3 A Uh-huh.

4 Q And why would you put, plug your camera into this laptop?

5 A Other pictures, Christmas, birthdays, if the camera
6 starts getting - if the memory card started getting full I
7 would put the pictures on my computer.

8 Q All right, and the pictures were shot - the video was
9 shot in what year?

10 A 2007.

11 Q And when was it that you gave the Gateway laptop to the
12 computer man from Johnsonville to work on it for you?

13 A 2010.

14 Q About what part of 2010?

15 A October.

16 Q And how long is that after you took the film in your
17 living room?

18 A Three and a half years approximately.

19 Q How many?

20 A Three and a half years.

21 Q And now what was wrong with the laptop computer? Why did
22 you ask the computer man to work on it?

23 A It wouldn't come on.

24 Q How long ---

25 A It wouldn't boot up. It wouldn't do anything.

Sarah Cardwell - Direct by Mr. Goude

252

1 Q How long had it been since it would work properly before
2 you gave it to him and what month did you give it to him to
3 work on?

4 A October.

5 Q Of what year?

6 A 2010.

7 Q How long had the laptop not been working before you gave
8 it to him?

9 A About six or eight months.

10 Q And the problem with it was what?

11 A It wouldn't come on.

12 Q Now, at some point after you gave the laptop to the
13 computer man to work on did the - Mr. Hanna, the police
14 officer from the sheriff's office, did he contact you like he
15 testified?

16 A Yes, sir.

17 Q And at some point after Mr. Hanna - do you know about
18 when Mr. Hanna contacted you?

19 A It was December the 14th, 2010.

20 Q And at some point after that and where were you living at
21 that time?

22 A Road.

23 Q That's the same place you were living when, when you took
24 the video of your son and daughter and boyfriend - what
25 relation was Mr., was Mr. Cardwell to you in 2007?

Sarah Cardwell - Direct by Mr. Goude

253

- 1 A Boyfriend.
- 2 Q Have you ever been married to Mr. Cardwell?
- 3 A No, sir.
- 4 Q From the dawn of history till now have you ever been
- 5 married to Mr. Cardwell?
- 6 A Yes, sir.
- 7 Q Were you married to Mr. Cardwell in 2007?
- 8 A No, sir.
- 9 Q Was Mr. Cardwell the father of Minor Child 1 or Minor Child 2
- 10 A No, sir.
- 11 Q When you talked with Mr. Hanna from the sheriff's office
- 12 and did you say that was December the 14th, give or take?
- 13 A Yes, sir.
- 14 Q Of 2010?
- 15 A Yes, sir.
- 16 Q When were your children taken away from you?
- 17 A December the 14th, 2010.
- 18 Q And what children were taken away from you?
- 19 A Minor Child 1 Minor Child 2 and Minor Child 3 were taken from school and Minor Child 4
- 20 was taken from the sheriff's office.
- 21 Q Now, Minor Child 1 is the boy in the video?
- 22 A Yes, sir.
- 23 Q So, in 2010 he is now how old?
- 24 A He was ten.
- 25 Q He was born in what year?

Michael Cardwell - Direct by Mr. Fox

306

1 MR. CARDWELL: My name is Michael Cardwell, M-I-C-H-A-E-
2 L, C-A-R-D-W-E-L-L.

3 DIRECT EXAMINATION

4 BY MR. FOX:

5 Q Thank you. Michael, so, you've given your name. Could
6 you please tell us where you live now?

7 A Now?

8 Q Yeah.

9 A Road, Andrews, South Carolina, 29 - well,
10 that's it.

11 Q And is this where you're from? Is Georgetown County
12 where you're from?

13 A No, sir. I was originally born in Prince William County,
14 Virginia, Manassas.

15 Q Okay, and is that where you grew up?

16 A At five years old we moved to West Virginia and after
17 West Virginia we moved around a bit, ultimately settling down
18 here in 1983 at the age of 13.

19 Q Okay, did you go to high school down here?

20 A Yes, sir.

21 Q Finish high school?

22 A No, sir.

23 Q What'd you do after you left high school?

24 A Well, I was in the - in high school I joined the South
25 Carolina Army National Guard at the age of 17 and I worked at

Michael Cardwell - Direct by Mr. Fox

309

1 So once they released back to the state I took five months off
2 and reenlisted again.

3 Q Okay, were you based in Georgetown?

4 A When I reenlisted again?

5 Q Yes, sir.

6 A Yes, I started in Hemingway. I stayed there trying to
7 get out of the medical field, but first sergeant didn't want
8 that. He brought me back to Georgetown.

9 Q I heard Sarah say she met you when you were, when she was
10 a volunteer firefighter. How did you come to be involved with
11 firefighting?

12 A My very first time I was a volunteer firefighter end of
13 '88 and '89. I dropped out from being a firefighter until
14 1995. When I went to Station 9 which is located at the
15 airport, fire department on aviation in 17, I was a volunteer
16 then. I was working at that time as my full-time job at
17 Oneida Industries as a machine operator and what they do as a
18 volunteer fireman they allow you to have - to get schools.
19 They, they, they need you to be trained in order to fight the
20 fires, but at the same time you can use that into a, turn that
21 into a professional career and that's what I did.

22 Q Now, are you still in the military?

23 A No, sir, I've been retired.

24 Q You say you've been retired. Was that your decision?

25 A No, sir.

Michael Cardwell - Direct by Mr. Fox

310

1 Q How'd that decision come about?

2 A I was working active duty this time last year, well
3 disregard. Sorry, I made a mistake. Little over a year ago I
4 was working active duty for the National Guard at Fort
5 Jackson, South Carolina, providing my MOS to the ---

6 Q What's your MOS? We don't know what that is.

7 A Oh, I'm sorry.

8 Q Civilians.

9 A My, my, my, my job in the military is called a MOS and my
10 MOS is 68 whiskey, which is an identifier combat medic. The
11 army's got to have its own way of doing things, but these -
12 basically my commander found out that I was having this issue
13 in court and wasn't going to give the South Carolina Army
14 National, National Guard a bad eye, black eye, whether it be
15 proven innocent or guilty. So, I was asked to step down as a
16 - wasn't asked to step down. The general basically said your
17 service is no longer rendered.

18 Q At that point how long had you been in the guard?

19 A Twenty-four years.

20 Q Now, you still work as a firefighter?

21 A No, sir.

22 Q Why not?

23 A In July of '09 I was a lieutenant firefighter paramedic
24 for the Georgetown County Fire and EMS, various stations. I
25 mean, I didn't stay in one station, and in '07, July 30th I got

Michael Cardwell - Direct by Mr. Fox

311

1 the opportunity to go to active duty National Guard at Fort
2 Jackson and retain my civilian job as a firefighter paramedic
3 lieutenant, which is in accordance with the law. Then they -
4 as time progressed I assisted a few other people in starting
5 the EMS system that now at the National Guard training site at
6 McCrady training site, which is on the back side of Fort
7 Jackson is actually where I physically worked, and as this
8 thing grew, as I started with the EMS service up there, they
9 were trying to make it full time. Thank you, sir, and I was
10 looking at the - looking at the fact that I was holding up a
11 lieutenant spot in Georgetown County Fire and EMS. I'd much
12 rather stay in the military realm. It was better for me to be
13 a military medic than it was a civilian medic, so I retired
14 out in July of '09.

15 Q Okay, and then that was before your position with the
16 National Guard was ended; correct?

17 A That's correct.

18 Q Okay, what do you do now?

19 A Well, I work with, I work with a friend of mine with his
20 company running equipment, but I have recently accepted a job
21 starting Saturday with Peddinghaus Manufacturing in Andrews.

22 Q Now you met Sarah at that time, Young; is that right?

23 A Affirmative, yes, sir.

24 Q When, when did you meet her?

25 A Say again.

Michael Cardwell - Direct by Mr. Fox

312

- 1 Q When did you meet her?
- 2 A I guess somewhere in the springtime of '06.
- 3 Q Okay, do you remember when you all started dating?
- 4 A We started talking. There never really was an official
- 5 dating time but I would say around October of '06.
- 6 Q Did she have any children at that time?
- 7 A Yes, sir.
- 8 Q And who were those children?
- 9 A **Minor Child 1** Minor Child 2 and a newborn, Minor Child 3
- 10 .
- 11 Q Did you have any children?
- 12 A Yes, sir, I did.
- 13 Q Had you been married before?
- 14 A Yes, sir.
- 15 Q Okay, how many children did you have at that time?
- 16 A I have two.
- 17 Q And how old were they back when you started seeing Sarah?
- 18 A Sorry, I got to do the math. We had one that was five
- 19 and the other one was seven.
- 20 Q Did you have custody of those two? Were they living with
- 21 you?
- 22 A Well, they were - we - I was still married. So, me and
- 23 my, me and my wife had custody I guess.
- 24 Q Okay, did you and Sarah begin to live together at some
- 25 point?

Michael Cardwell - Direct by Mr. Fox

313

- 1 A Yes, sir.
- 2 Q Where did you first live together?
- 3 A At Road, Georgetown.
- 4 Q Where is that?
- 5 A Maryville.
- 6 Q In Georgetown?
- 7 A Yes, sir.
- 8 Q I'm sorry, Maryville?
- 9 A Yes, sir.
- 10 Q Okay, and did you at some point move from that house?
- 11 A Yes, sir.
- 12 Q And where'd you go from there?
- 13 A I went to Road.
- 14 Q Okay, and so, who lived in that house with you and Sarah?
- 15 A Myself, Sarah, my at the time present wife and my
- 16 children, all the children.
- 17 Q Okay, that'd be her children, Minor Child 1 and Minor Child 2 and
- 18 Minor Child 3 correct? And you had two children that would stay with
- 19 you; is that right?
- 20 A That's correct.
- 21 Q Okay, and at some point did you and Sarah have a child
- 22 together?
- 23 A Yes, sir.
- 24 Q And what's that child's name?
- 25 A Minor Child 4

Michael Cardwell - Direct by Mr. Fox

314

- 1 Q Michael, you have seen this video that was played in the
2 courtroom yesterday; have you not?
- 3 A Yes, sir.
- 4 Q And had you seen it before yesterday?
- 5 A No, sir.
- 6 Q Did you and I ever watch that video?
- 7 A Well, I stand, I stand corrected on that. I - sorry, I
8 saw it, I don't know, two or three months ago.
- 9 Q And where was that?
- 10 A That was in the Solicitor's Office.
- 11 Q Okay, and was I there with you?
- 12 A Yeah, you and Reuben.
- 13 Q And Mr. Goude?
- 14 A Yes, sir.
- 15 Q Speak up, I can't - I don't know if the jury can hear
16 you. I'm having a hard time hearing you.
- 17 A Oh, I'm sorry.
- 18 Q So Mr. Goude and myself and you were there watching that?
19 Okay.
- 20 A Yes, sir.
- 21 Q Was that the first time you had seen that video?
- 22 A Yes, sir.
- 23 Q Okay, now, had you seen it any time before the children
24 were taken in December 2010?
- 25 A No, sir.

Michael Cardwell - Direct by Mr. Fox

315

- 1 Q Okay, do you know whose camera it was that that video was
2 taken on?
- 3 A I'm assuming Sarah Cardwell.
- 4 Q Well, why do you assume Sarah? Did you have a video
5 camera at that time?
- 6 A I had a, I had a similar camera to that.
- 7 Q Do you remember, having seen the video now, do you
8 remember the occasion when that was taken?
- 9 A The occasion? I mean ---
- 10 Q Well, I'll try to - you've seen the video?
- 11 A Yes, sir.
- 12 Q And you can see what's going on in the video; right?
- 13 A Yes, sir.
- 14 Q Can you see who's in the video?
- 15 A Oh, absolutely.
- 16 Q Who's in the video?
- 17 A Myself, Minor Child 1 and Minor Child 2
- 18 Q Okay, can you hear anybody else around?
- 19 A Yeah, I hear the voice of Sarah.
- 20 Q Okay, do you recall whether anybody else was around?
- 21 A No, sir, I don't think there was.
- 22 Q Okay, can you tell from having seen the video now where
23 that video was taken?
- 24 A Oh, in the living room of the Road house.
- 25 Q Okay, and that's the living room Sarah has described with

Michael Cardwell - Direct by Mr. Fox

316

- 1 Mr. Goude, the layout of the trailer and everything?
- 2 A Yes, sir.
- 3 Q Okay, would you agree with that, her ---
- 4 A Oh, yeah.
- 5 Q --- her basic layout, okay. So, what do you remember
- 6 about how that video happened?
- 7 A To the best of my knowledge, we had the children there,
- 8 as I thought about that video a lot since we saw it, it was in
- 9 the evening time right around bath time. As far as I know the
- 10 kids were coming out of the bath. I was sitting - standing
- 11 there smoking a cigarette. They started jumping around. I've
- 12 heard the term dancing. That's not what, what I saw at all.
- 13 It's just youngins' jumping around acting a fool.
- 14 Q Did you pick up the video camera?
- 15 A Negative.
- 16 Q Did you tell anybody else to pick up the video camera?
- 17 A No, sir.
- 18 Q Okay, did you see when Sarah picked up the video camera?
- 19 A Actually, no, sir.
- 20 Q Were you aware that a video was being made?
- 21 A Yes, sir. One by the way that, you know, how kids get.
- 22 They get really, really excited when a video camera's out, and
- 23 at one point I actually I guess you could call it posed for
- 24 the camera.
- 25 Q Okay, well, let's talk about it. So, when the kids came

Michael Cardwell - Direct by Mr. Fox

317

1 out of the bathroom how were you dressed?

2 A Gym shorts, probably my grey cotton shorts.

3 Q Was that kind of typical uniform for you around the
4 house?

5 A Affirm, yes, sir.

6 Q All right.

7 A When I come home as soon, as soon as I got in good I took
8 my boots off, took my uniform off and put something
9 comfortable on.

10 Q Okay, would that usually be with or without a shirt?

11 A Sometimes with, sometimes without.

12 Q Okay, so, in the video and in these still photos that
13 have been selectively cropped from the video you're not
14 wearing any shorts are you?

15 A No, sir.

16 Q What happened to your shorts?

17 A One of the children come running up to me and they, they
18 just pulled them down.

19 Q Okay, did you pull them back up?

20 A No, sir, I did not.

21 Q Why did you not pull your pants back up?

22 A Sir, in a complete and utter act of stupidity I guess I
23 got caught up in the moment, you know. The kids were excited
24 and having a good time and act of stupidity.

25 Q Did you do anything to stop this good time?

Michael Cardwell - Direct by Mr. Fox

318

- 1 A No, sir.
- 2 Q Did you tell ---
- 3 A Regretfully enough I did not.
- 4 Q So you didn't tell the kids, "Knock it off"?
- 5 A No, sir, I should have.
- 6 Q Didn't tell them, "Go put some clothes on and quit being
7 silly"?
- 8 A Yes, sir.
- 9 Q Now, where did ^{Minor Child 1} get that bra from?
- 10 A To be quite honest, I, I really don't know, but I do know
11 that at the time we would fold the laundry on the couches.
12 That was kind of that, well, that is still kind of my domestic
13 duty if you will.
- 14 Q Is it like my house or is the couch situated in front of
15 the TV?
- 16 A Oh, yes, sir.
- 17 Q So, if you get stuck with that chore you can watch TV
18 while you're doing that chore?
- 19 A Well you know that, I mean, yes, sir.
- 20 Q Okay, but you, if I understand, you say you're not sure
21 when or where he picked that up, the bra?
- 22 A No, sir, I, you know, I can't say that.
- 23 Q Did you hand it to him, you yourself?
- 24 A No, sir.
- 25 Q Did you tell him to get it?

Michael Cardwell - Direct by Mr. Fox

319

- 1 A No, sir.
- 2 Q Did you put it on him?
- 3 A No, sir.
- 4 Q Okay, now, did you tell him to take it off?
- 5 A Once again, regretfully, no.
- 6 Q Okay, now, you've seen these still pictures where Mr.
- 7 Goude puts it quite well, you appear to be still as a statue.
- 8 In the video that you've seen, were you still as a statue?
- 9 A No, sir.
- 10 Q Okay, what were you - what is most of the video that you
- 11 have seen? What do you think most of that video shows?
- 12 A Minor Child jumping around acting silly.
- 13 Q Okay, but you're in it; aren't you?
- 14 A Yes, sir.
- 15 Q Two different times the camera swings over and there you
- 16 are; is that right?
- 17 A Yes, sir.
- 18 Q Naked as a jaybird?
- 19 A Yes, sir.
- 20 Q Okay, not a stitch of clothing?
- 21 A No, sir.
- 22 Q Okay, but you're not just standing there?
- 23 A No, sir.
- 24 Q Okay, now, what do you recall at some point, and there's
- 25 a still photo of you, frontal shot with your genitals hanging

Michael Cardwell - Direct by Mr. Fox

320

1 out, in the video, in the, rather in the photo still as a
2 statue, what do you see in the video at that point? Are you
3 moving, doing the - you say not dancing, you're not doing the
4 twist; are you?

5 A Well, though there was one portion in the video that I
6 was shaking my body back and forth.

7 Q Okay, so, it was kind of your whole body?

8 A Yes, sir.

9 Q When you shake your whole body what'd your penis do? Did
10 it stay perfectly still while the rest of your body moved?

11 A No, sir, it was, it flapped back and forth.

12 Q Okay, and then what are you doing in the other part when
13 they show you? When they - when the camera comes to you, what
14 are you doing? We've all seen it, but what are you doing?

15 A It appears that I was tweaking my nipples.

16 Q All right, now, one just has to ask, man, what the hell
17 were you thinking?

18 A At what point?

19 Q At either point, during the whole thing, but how about
20 specifically when you're tweaking your nipples?

21 A You know, I'd seen it before, thought it was funny, you
22 know.

23 Q To you at that point in time was there anything sexual
24 about it?

25 A Negative.

Closing Argument by Mr. Fox

402

1 word I should have used is sexual exploitation. All right,
2 does that address the concerns?

3 MS. LIVELY: Yes, thank you, Your Honor.

4 THE COURT: All right, Mr. Goude, you may have your
5 opening statement followed by Mr. Fox and then the State will
6 conclude. Thank you.

7 MR. FOX: Your Honor, since I won rock paper
8 scissors with Mr. Goude, if it's okay I will be going first.

9 THE COURT: As long as you all agree to it that's fine
10 with me.

11 MR. FOX: We do. By the laws of rock, paper,
12 scissors we agree. May it please the Court.

13 THE COURT: The record will reflect that you began
14 your remarks promptly at 11 o'clock.

15 MR. FOX: Thank you, Your Honor.

16 Ladies and gentlemen, let me reintroduce myself. It's
17 been a couple of days and probably at some point, Monday or
18 Tuesday, you wondered what happened to the lawyer that
19 introduced himself on Monday or who that silent fellow was
20 sitting over there between Mr. Goude and Michael. That was
21 me. That was not a potted plant. There was a good reason I
22 felt not to inject myself at certain times into this thing.
23 We've got two lawyers and two Defendants and it seems pretty
24 clear I think to everybody that their defense is pretty much
25 one in the same. They are husband and wife now, living

Closing Argument by Mr. Fox

403

1 together at the time this video was made, and it didn't seem
2 to make much sense to have Mr. Goude stand up and ask a bunch
3 of questions to a witness and then have me stand up right
4 after and ask basically the same questions. That just seemed
5 to be a little bit ridiculous. I don't need to make a point
6 about how smart I am or what a great lawyer I am or - but I
7 wouldn't want you to mistake my silence for any kind of lack
8 of commitment for my client in any way. Same thing with, you
9 know, a lot of the witnesses went by fast. Detective Hanna
10 and Chief Douglas from Johnsonville and Shaun Marsh who was
11 the computer guy, we got no bone to pick with those witnesses.
12 Those witnesses they did exactly what they should have done
13 under the circumstances. Mr. Marsh was just doing his job.
14 Chief Douglas happened to be there and see something that
15 immediately got his attention as it should have and he said,
16 "Whoa, whoa, whoa, let me see that thing," and then they
17 called Detective Hanna because they concluded it more than
18 likely happened in Georgetown County and he's got authority in
19 Georgetown County, simple enough. There's no reason to stand
20 up and go through 30 minutes or 45 minutes of cross
21 examination of those folks, and the same thing with ^{Minor Child 2} and
22 ^{Minor Child 1} yesterday. They've done nothing wrong. They're
23 simply children and who, I mean, it, it just, I think, broke
24 everybody's heart to watch them come in here and go through a
25 very difficult thing. You would have to be inhuman not to be

Closing Argument by Mr. Fox

404

1 touched by that. There's no reason for me to get up and ask a
2 bunch of questions just to show that I'm smart and can ask
3 questions and prolong the amount of time that they had to be
4 in the courtroom.

5 So I was thinking about how to do this. Guess what, I'm
6 going to ask you to vote not guilty. Surprise, surprise, and
7 yes, that is my job. It's also how I truly believe this case
8 should be resolved. I've been doing this a long time and you
9 got lots of theories of people of how you should present
10 yourself to a jury and what you should do, even what jurors
11 you should take. There's a whole industry of people who will
12 tell you, "Good Lord, don't take a person in a red sweater
13 because that's a person with a loud, aggressive personality
14 and you will not be able to persuade them, and so, don't take
15 a person wearing the red sweater and don't take this kind of
16 person or a person of that age or a person who has that kind
17 of occupation," and I always found that kind of silly.
18 There's a reason why we have jurors selected more or less at
19 random from the public at large and that's because we have a
20 very strong belief, and I share that, that your collective
21 wisdom, even though you are not lawyers and judges and have no
22 special training in the law or the issues that you're going -
23 that you heard this week, that you're all intelligent people
24 with common sense. You have your own life experiences, each
25 one unique and different, and that collectively that is far

Closing Argument by Mr. Fox

405

1 better than any other system. There are very advanced
2 democracies that have the right to jury trial in Europe that
3 don't have or I'm sorry, that don't have the right to jury
4 trial. They have the right to trial, but when you come into
5 court you have a panel of judges. Well, maybe not on purpose,
6 but almost everywhere judges tend to come from a particular
7 group of people. They tend to be educated in similar schools.
8 They tend to have similar experiences and that doesn't make
9 them bad judges, but it doesn't make them good jurors either,
10 and we concluded a long time ago laypeople with their
11 collective wisdom are much better than any panel of judges,
12 and I absolutely agree with that.

13 I told you on Monday that this, you would not like this
14 case. You would not like what you saw. I mean, there's no
15 question, there's no sense to dodge around that. There's no
16 sense of me standing up in front of you and acting like the
17 Wizard of Oz where they get - finally get to Oz and Toto runs
18 around and pulls the curtain and there's the wizard and the
19 wizard says, "Pay no attention to the man behind the curtain."
20 That would just be insulting to your intelligence. So, I
21 could do that dance and I could say, "Pay no attention to that
22 video and all of those things," but it's there. You can't
23 forget it. I would guess that Ms. Lively will play it for you
24 again in her closing argument and it's certainly available.
25 It's in evidence. It's available for you to watch again if

Closing Argument by Mr. Fox

406

1 you've got any questions or any need to see it again, although
2 I imagine it's probably pretty vivid in your mind. You won't
3 easily forget something like that. So, in thinking about how
4 to address this and trying to convince you all to think my
5 way, because that's what I'm here for, I said, "How can I
6 explain that? What's the best way to do it," and stay with me
7 because there is a point to this. Everybody has verbal ticks
8 and hiccups and some people say um or they gesture a certain
9 way with their hands. I have to sometimes tell a little story
10 to get my mind right. I was watching HBO last weekend and
11 there was a documentary about Ethel Kennedy, and for those of
12 who are too young to remember or just forgotten, Ethel Kennedy
13 was the wife of Robert Kennedy who was President Kennedy's
14 younger brother. Bobby Kennedy was murdered while he was
15 running for president, like 1968. Now, what in the world does
16 that have to do with anything? Well, not directly. What it
17 has to do with as I watched that I got very curious and then I
18 went, got the internet and you got YouTube, and I said, "I
19 don't remember Robert Kennedy. I was too young to remember
20 him. I am curious about him," and so, I pulled up some
21 YouTube videos about Robert Kennedy and what struck me was
22 that was a man, whatever you thought about him and about his
23 politics, who was very direct and blunt. He did not, was not
24 afraid to tell you exactly what he thought about a situation.
25 He was not afraid to go into the ghettos and say, "You people

Closing Argument by Mr. Fox

407

1 are crazy to be rioting and burning," like they were doing
2 back then. Those of you who are old enough to remember, there
3 were several summers of riots and burning in the streets and
4 he would not be afraid to go to that audience and say, "That
5 is ignorant and stupid. What are you doing," and he wasn't
6 afraid to go to a group of business people the next day and
7 say, "You have responsibility for some of the conditions in
8 this country. If we have people that are poor and children
9 that are starving and things that aren't right, you bear some
10 responsibility. We all bear responsibility." Now, agree or
11 disagree, it struck me particularly compared to the way things
12 are now that he would do that, and I thought that is the
13 attitude that I hope to bring to you all. So, that was a long
14 way around my point but my point being I want to be as direct
15 as I can with you and hopefully this will be a conversation
16 instead of a lecture with me lecturing at you.

17 I told you Monday and I truly believe nothing has
18 changed, that video is just awful. I mean, it is awful. I
19 mean I don't think that, it is awful. It's not right,
20 shouldn't have been done. I also don't think that it, that it
21 portrays any criminal act. The Judge has told you you have no
22 friends to reward or enemies to punish. You do not have to
23 think highly or well to any degree of Michael and Sarah. A
24 verdict of not guilty on your part is not an endorsement of
25 what they did. It is not acceptance of what they did. It is

Closing Argument by Mr. Fox

408

1 not approval of what they did in any way. It is simply a
2 determination that what they did, as bad as it was, does not
3 fit into any statute, any criminal law that the State
4 Legislature in South Carolina has passed that's before you,
5 that being unlawful conduct toward a child, sexual
6 exploitation of a minor, and the Judge has defined those for
7 you, and so again, you don't - I don't want you thinking that,
8 "Well, if we vote not guilty that's somehow condoning what
9 happened." It just isn't. There's no justification for what
10 happened. Michael said as much himself yesterday. I would be
11 insulting to you if I came forward today and tried to justify
12 in any way that video. I mean that's like the Groucho Marx
13 line, "Who are you going to believe, me or your own lying
14 eyes?" Well, I mean, good Lord, we can all see what's there.
15 So, but what it's not, unfortunately, it's not - well, not
16 unfortunately, it's just not a criminal act.

17 I am not going to go through and go point by point all
18 the different things of sexual exploitation. The Judge has
19 defined that to you. What it boils down to is whether or not
20 what is on that tape with regard to sexual exploitation,
21 whether it depicts sexual activity. Now, it's not what you
22 think sexual activity is in your everyday life; all right?
23 Sexual activity for your purposes in this courtroom has been
24 defined. The State Legislature has said this is what sexual
25 activity is and the Judge gave you that definition, and he

Closing Argument by Mr. Fox

409

1 didn't read the entire statute because frankly some things
2 don't have anything to do with this. Some of the other things
3 in that statute regard intercourse and things that absolutely
4 everyone agrees don't apply. What might apply and what the
5 allegation is is that the - so, it's what we call a term of
6 art, sexual activity is what we call a term of art. It has a
7 specific meaning for a specific purpose; all right? It's not
8 what we think might be sexual in nature, and in this case
9 that's masturbation, and the Judge has defined masturbation
10 and the question very simply is is what you saw on that video
11 does it depict masturbation or any simulation of masturbation?
12 I mean, that's really it.

13 Now, the Judge gave you a definition of masturbation.
14 Years ago the United States Supreme Court had to watch a movie
15 and decide whether it was an obscene pornographic movie, and
16 one of the justices said, "Well, we've been trying for years.
17 We cannot give you a definition of obscenity, but I know it
18 when I see it," and I think most of us kind of agree with
19 that. We kind of know when something's obscene or not.
20 Obscenity not an issue here, but I think it's the same thing
21 with masturbation, you know, we all know what it is and we all
22 know it when we see it, and in my humble opinion slapping
23 yourself at whatever age back and forth just isn't it. It's
24 weird, it's not appropriate, he shouldn't be doing it on
25 camera, he shouldn't be doing it with his mother and her live-

Closing Argument by Mr. Fox

410

1 in boyfriend. You know, none of that should be going on, but
2 that's a different question from whether that, in fact, is
3 masturbation. It's just not.

4 Now, you've got from Michael and I'm only interested in
5 Michael, I don't mean to speak for Reuben Goude. He certainly
6 doesn't need my help. I'm here for Michael Cardwell. You've
7 got four indictments for Michael, two for the sexual
8 exploitation and two for the unlawful conduct. So, with the
9 sexual exploitation there's one for each child. So, the only,
10 the only possible depiction of masturbation involves
11 Minor Child 1 the boy. He's the one that's naked and he's the
12 one that's mostly on the video. He's the one that's slapping
13 himself. So, that's one count and I believe that's just not
14 sexual activity as it's defined. Now, again, saying that it's
15 not sexual activity is not the same as saying we approve of
16 that, we think that was good parenting, we think that was a
17 smart thing to do, that's not what we're talking about, but
18 with regard to Minor Child 2 is very briefly, she is also nude,
19 she also should not be nude in that situation, but there is
20 nothing on that tape that shows her doing anything remotely
21 like masturbating, and the statute I think clearly talks
22 about, you know, that person doing it, not being present when
23 someone does it, not being around it, them doing it or them
24 depicting it, simulating it. Minor Child 2 she is naked. At one
25 point she jumps up on - kind of jumps on Michael, kind of

Closing Argument by Mr. Fox

411

1 pulls herself up on his shoulders, and you can hear her, but
2 she's clearly not touching herself. She's clearly not doing
3 anything that even remotely approaches masturbation. It just
4 doesn't fit the elements of that crime, sexual exploitation
5 with a minor. I think it's just very clear that that should
6 be a not guilty verdict.

7 I'm going to make a small distinction, again, I'm not
8 going to bore you with all the things of - difference between
9 first degree and second degree sexual exploitation. They both
10 though require a finding of some kind of sexual activity.
11 That's one thing that's in common with both, all right. So,
12 if you find that what's on that video does not depict sexual
13 activity, then that's a not guilty on either a first or a
14 second degree because they both have that element in them of
15 sexual activity. So, I would say absolutely not guilty on the
16 sexual exploitation charges.

17 Now, whatever your verdict on those, you've got to come
18 to a separate determination on the unlawful conduct, alleged
19 that that violates a whole different statute. So you may say,
20 it's perfectly within your right to say, "We don't think there
21 was sexual activity, but maybe we think there was unlawful
22 conduct." You know, my own opinion is and obviously I'm going
23 to say not guilty on everything. That determination is yours,
24 but the unlawful conduct comes down to showing that there was
25 an unreasonable risk of harm to the children in one of several

Closing Argument by Mr. Fox

412

1 ways, one of basically four ways and three of them, everyone
2 would agree, don't apply. Unreasonable risk of harm affecting
3 the children's life, as in life endangering, well that's again
4 whatever is there is not life endangering. Physical health,
5 physical health not in jeopardy. Safety, mental health,
6 mental health, the only thing you've heard any evidence about,
7 that's why Melissa Muse was here, the therapist. That's where
8 all the evidence was. The others, there's been no testimony
9 about that, no evidence about it, and again, clearly, their
10 physical wellbeing is not in jeopardy. Whatever you think
11 about that tape, their physical health and wellbeing is not in
12 jeopardy. Their life certainly was not in jeopardy. So, it
13 comes down to the mental health.

14 So, what about their mental health? Well Melissa Muse,
15 who's well-trained, obviously very experienced, obviously has
16 the best interest and welfare of those children at heart,
17 says, "Yes, that's harmful." Now, what other evidence do you
18 have? Michael and Sarah both said that during the time from
19 whenever this video was made until December of 2010, we know
20 it was over a year, maybe a couple of years, that they saw no
21 reactions or symptoms in their children. They saw no acting
22 out, no discipline problems at school, the grades were good
23 and grades by themselves I would agree that doesn't
24 necessarily mean anything. You okay?

25 JUROR: I'm sorry.

Closing Argument by Mr. Fox

413

1 MR. FOX: No problem, but none of those symptoms,
2 none of the sleepwalking, bedwetting, acting out, discipline
3 at school, grades stayed good, you know that's one thing I
4 think we all probably kind of know without being therapists.
5 Sometimes it's not everyone reacts the same way, but quite
6 often when something bad happens in a child's life one of the
7 ways you see that and when it sometimes first gets attention
8 is a drop in grades, drop in attention at school, acting out
9 at school, those sorts of things. So, we didn't see any of
10 that from the time whenever this video was made up until
11 December of 2010, and Melissa Muse, under cross examination,
12 admitted that, you know, the kids have been in foster care and
13 she admitted that there tended to be a spike around the time,
14 like this week, when court cases are going on. There's been
15 this. It's not your worry what's going on in family court,
16 but you've heard testimony that there's another separate focus
17 but another case going on, and so, understandably the
18 children, good Lord, obviously they did not want to come into
19 Court and be here. That's got to be anxious. I get nervous
20 and I'm not anywhere near the situation they are and that's
21 when they would see kind of a spike in some of the behaviors
22 that she described, and she I thought said a very interesting
23 thing right near the end when Mr. Goude was questioning her.
24 She said really if it weren't for the fact that these cases
25 have had to, you know, take a while to get resolved that she

Closing Argument by Mr. Fox

414

1 would have released them from treatment a long time ago. Now,
2 can't avoid, not trying to avoid some of the other things.
3 Melissa Muse has seen these children, oh, what was it 40 some
4 times. Once a week for a long time and twice, twice a month
5 for a lot longer, then more recently once a week again, but
6 it's 40 some times at least over the last couple of years.
7 Those children were taken out of the home suddenly without
8 warning. Had to be tough on them, whatever the reason, you
9 know, that can't be an easy thing to wake up, go to school one
10 day, kiss your mom goodbye fully expecting at three o'clock
11 she's going to be there to pick you up or meet you at the bus,
12 and instead it's a detective and someone from DSS saying, "You
13 need to come with us, we're taking you to a stranger's house."
14 I mean, whether that was the right thing to do or not, that's
15 got to be very, very difficult for the children and now the
16 mother who in any child's life is probably the single most
17 influential figure has been replaced in some degree by the
18 therapist. That's not to say that Melissa Muse is a bad,
19 mean, manipulative person, not at all, but reading between the
20 lines I think the fear with this video and the circumstances,
21 the fear is these children are too young to understand what's
22 going on. So even if there's not an intent from Michael and
23 Sarah to sexualize them and to turn themselves on with some
24 kind of weird, perverted child sexual play, that these
25 children are too young to judge for themselves, and so, the

Closing Argument by Mr. Fox

415

1 concern is because they're young and suggestible and malleable
2 and you just, you know, let's not expose them. That's the
3 fear, right, and a justifiable one. So if, in fact, children,
4 if we agree that children are young and suggestible and
5 malleable, is it at all possible that in 40 some counseling
6 sessions of an hour apiece where you're talking with someone
7 who clearly cares about you, who clearly cares about your
8 wellbeing or clearly cares about what happens to you, who
9 perhaps doesn't intentionally take the place of your mother,
10 but is this warm, caring, authoritative, female figure in your
11 life who as part of her focus, because her focus is to see
12 threats. To say, "Okay, my antenna are up because we've got
13 this video," and they should be up, "My antenna are up. I've
14 seen this video. This video is not right. So, my antenna are
15 up to be looking for signs of trauma, signs of problems, signs
16 of, you know, improper sexualization for their age, that sort
17 of thing." That's her job. Her job is to see threats. Is it
18 not at all possible that that gets communicated, even if it's
19 not directly. I don't have any question that Melissa Muse
20 stood in there and said, "Your parents are bad, your parents
21 are evil," I don't think she did that. "You must stay away
22 from your parents, don't think about your parents," you know,
23 adverse training, showing them a picture of parents and give
24 them a smack or something, I don't think that that's at all
25 what happened, but clearly they're being told, and because she

Closing Argument by Mr. Fox

416

1 testified about that, "We have to educate these kids. You
2 can't - this is not right, you didn't do anything wrong, you
3 should not blame yourselves, it's not your fault, it's not
4 your fault the family had to be separated, kids, but that was
5 bad," and have that repeated over and over again, that was
6 bad, that was bad, you know. I don't want to pick, I'm not
7 going to pick a fight with Minor Child 1 or Minor Child 2 at all. They
8 testified. Minor Child 2 number one because she was younger and
9 this happened several years ago, and number two because
10 unquestionably just so nervous and afraid to be in here, she
11 didn't remember. Her answer to most things was, "I don't
12 really remember, I'm not sure," and that - number one I think
13 she probably doesn't remember in particular. Number two, she
14 doesn't want to remember, and number three, she's just nervous
15 and scared. I mean that's fine. I don't use that as any kind
16 of benefit to my case. I mean, she just doesn't remember.
17 Minor Child 1 did say, "I remember, and you know, I didn't like
18 it," and now, I don't have any doubt looking back he doesn't
19 like it. I don't have any doubt that he's been brought to
20 that conclusion and I'm not saying that he should like it by
21 the way. He shouldn't, but - and again, it's not a
22 justification in any small way at all, but clearly at the time
23 that video was going on everybody was laughing and thinking it
24 was funny. That don't make it right. I'm not saying, "Well,
25 the kids were laughing, and so therefore, it's okay, they were

Closing Argument by Mr. Fox

417

1 -no, but clearly at the time that was kind of a hyper little
2 boy jumping around being silly and goofy, not in a way that it
3 should ever be done or filmed and not with, you know, Michael
4 naked there, but I think his conclusion that he didn't like it
5 is something that's come about later. I'm not saying there's
6 anything improper with that, but again, he has been told over
7 and over again about that. So my point is simply, if our fear
8 about children and being exposed to this thing is at base, at
9 the bottom that they are suggestible, they can't decide yet
10 for themselves what's appropriate or not appropriate, it just
11 to me is common sense that perhaps we should be careful about
12 how else they might be suggestible, and again, not with any
13 evil intent by anybody. It's absolutely clear, everybody in
14 this case, and I would include Michael and Sarah, that want
15 those kids to be healthy and happy and safe and wants what's
16 best, whatever the outcome is. I don't think there's any
17 disagreement in this courtroom about that.

18 Now, you all decide what to make of anybody that
19 testified. You know, Michael got on the stand and told you,
20 made no excuses and maybe you all think, "Well, that's just
21 his lawyer prepping him to be up there," and of course we've
22 talked, but you know, once you get in that witness chair there
23 is no one there to protect you or whisper in your ear and the
24 reason we have open testimony in courtrooms like this is all
25 witnesses, their kind of true nature tends to come out. No

Closing Argument by Mr. Fox

418

1 matter what you've thought about or what you've been told,
2 when you get up there and someone's asking you questions and
3 the microphone's in your face and it looks like it's this big,
4 I've gotten to sit in that chair for different reasons, and
5 when you're there, I'm telling you, the microphone looks like
6 it's like this. That's all you see, and so, I think Michael
7 was very straightforward with you about everything. He did not
8 try to justify this in any way. He did not try to pass the
9 buck. The Solicitor tried to bait him and it was very, very
10 well done, tried to bait him into blaming the kids for
11 everything. You know, her word was, "Well, it's, it's their
12 fault, right, that you were naked. So, this video was their
13 fault," and he said, "No, it's my responsibility, my
14 responsibility. This was not right, this was inappropriate."
15 Now inappropriate doesn't begin to approach it, that's the
16 word he could come up with, but he - I think it's clear what
17 he means by that is, "I'm not trying to justify anything about
18 this video. It's not right." He did not try to pass the blame
19 because, I mean, that would be so narcissistic and cruel to
20 try to pass the blame off on those children. It would just be
21 ridiculous. I don't think, aside from his own words, just his
22 whole body language and his whole demeanor and everything
23 about himself. So he made no justification for it because
24 there is none. He told you, you know, it speaks for itself.
25 He said, "Look, I didn't, you know, put the bra on," some of

Closing Argument by Mr. Fox

420

1 watch the tape he just says, you know, Sarah says, you know,
2 "Grand Finale," and Michael almost immediately says, "Hey,
3 hello dolly," kind of sing song thing. No one goes over and
4 shows ^{Minor Child 1} or tells ^{Minor Child 1} what to do or demonstrates, you
5 know, he knows, you know, he immediately kind of does that
6 thing and rolls and then he rolls over a little farther, but I
7 mean clearly he knows what that refers to. You know, it's
8 just clear he's seen that in the house. He's seen his little
9 sister and Michael's children be changed. I mean, it's, it's
10 right there. So, you might have wondered what in the world
11 were they going on about, hello dolly, but you know, there's a
12 reason for that.

13 Likewise, with, you know, what in the world, and I'll
14 talk about these still pictures in a minute and I'm almost
15 done, you know, what in the world are they doing touching
16 themselves, touching their nipples and Michael offered you an
17 explanation for that. I don't watch ultimate fighting, cage
18 fighting. I don't know about that, but Michael said, you
19 know, "We watch that, ^{Minor Child 1} watches that, big fans and
20 that's something we've seen," and he said, "You know, in
21 preparing for this case I went online and I was able to find
22 images of just that thing. I mean, I've seen it and I'm
23 telling you jurors I've seen it, but you know guess what, I
24 was able to find that." I'm not sure if he would say that if
25 he hadn't been able to, but you know, decide for yourself

Closing Argument by Mr. Fox

421

1 though whether that even - again, not really a pleasant thing
2 to watch, not sure why they were doing that, don't even know
3 why the ultimate fighters would do that, but it's not sexual
4 activity. It's not masturbation. So, again, you don't have
5 to approve or like it or understand it in any way to say that
6 just doesn't fit the statute. That's just not a crime, that's
7 just not a crime, and I guess that's my, my final point, my
8 ultimate point is not everything in life that is unpleasant
9 and bad, not everything in life that we disapprove of, not
10 everything in life that we would even condemn in our personal
11 life is a crime and I think that's what we have here. There
12 is absolutely no justification for what you saw. You can't
13 explain it away, you can't say, "Well, it's not so bad." I
14 don't want you think for a minute that I think this is not so
15 bad. I believe that you can tell that Michael doesn't just
16 wave it away and say, "Oh, that's no big deal." It was a
17 stupid, ignorant thing to do and it was a bad thing to do and
18 it has led to very, very serious consequences for everybody.
19 First and foremost and most, well, almost only importantly for
20 **Minor Child 1** and ^{Minor Child 2} they did nothing wrong and they have
21 now had to go all this time without their mother and that may
22 or may not be better in the long run for them. That's not my
23 job to decide or yours, but clearly not an easy thing for them
24 to endure. What happens in family court is not your worry. I
25 don't want you to think that if you vote not guilty that has

Closing Argument by Mr. Goude

422

1 any impact. Melissa Muse testified whatever happens here has
2 no bearing on what happens in family court with DSS. They
3 will do what they will do whatever that is. I'm not a part of
4 that, I don't know what they'll do.

5 There have been consequences already for Michael. He was
6 drummed out of the military and lost that career that he had
7 had since he was 17 and left high school, 24 years. He has
8 lost his own biological child and the two children that he had
9 made a family with, Minor Child 1 and Minor Child 2. Two years, has not
10 seen them until they walked in this courtroom. It has not
11 gone - well, there have been consequences. I was always told
12 actions have consequences and there have absolutely been
13 consequences already regardless of what happens here today.
14 So, I just urge you, I won't even ask you to set emotion aside
15 because that's just not realistic and I would be patronizing
16 to ask you to do that because it's an emotional thing, but to
17 not ignore the law and I think if you apply the law to the
18 facts that you have, as unpleasant as they are, the proper
19 verdict on all counts is not guilty. Thank you.

20 THE COURT: Mr. Goude.

21 MR. GOUDE: Thank you, Your Honor. When we got
22 started Monday, and again, I'm Reuben, Reuben Goude. When we
23 got started Monday and we talked at our little opening
24 statement we said we were going to listen to the evidence
25 Monday and then we were going to come back here Tuesday, which

Closing Argument by Mr. Goude

423

1 was yesterday, or today, Wednesday, go over the evidence with
2 you and then tell you what we was going to ask you to vote.
3 Mr. Fox, like he says while ago, during a lot of the witnesses
4 we had in the case, and some of them like he said, Chief
5 Douglas from Johnsonville, Mr. Marsh from Johnsonville,
6 Investigator Hanna from Georgetown, they were giving their
7 statements of what happened and there was no need for all of
8 us to get up here, said he didn't ask the question, Mr. Fox,
9 because I just asked them, and a lot of the statements for me
10 to make in my closing argument are similar to what Mr. Fox
11 just got through saying and just got through going over. As
12 the Judge is going to tell you or has already told you, we
13 have got four indictments in this case on Sarah Cardwell whom
14 I represent and the same four indictments on Michael Cardwell
15 charged with doing exactly the same thing. As I go through
16 this thick stack of notes here and pull out my four
17 indictments, three and all of the Judge's jury charges, two of
18 the charges as Mr. Fox said and as the Judge has told you is
19 that Sarah Cardwell engaged in sexual exploitation of the
20 minor ^{Minor Child 2} and of the minor **Minor Child 1** and as the Judge
21 told you and as Mr. Fox stated and as I'm stating, sexual
22 exploitation the Judge read you is an individual commits the
23 offense of first degree sexual exploitation of a minor, and
24 these two kids are minors, if knowing the character or content
25 of the material or performance he, the adult, Sarah Cardwell,

Closing Argument by Mr. Goude

424

1 uses the children, employs them, induces them, coerces them,
2 forces them, encourages them, facilitates them to engage or
3 assist others to engage in sexual activity. So they're saying
4 that Sarah and it also goes on to say or permits the minor to
5 engage in sexual activity. So they're saying that Sarah
6 permitted or encouraged the two children, Sarah's two
7 children, Minor Child 1 and Minor Child 2 to engage in sexual activity,
8 and it's been stated the only thing that you all are concerned
9 with is was what was on the video because the only thing that
10 was testified to here in court is what's on the two-minute
11 video. There's no - nothing said of anything that happened
12 before that that's a crime or nothing that happened after
13 that's a crime. What's on the video, my client is being
14 charged of that is sexual activity, sexual activity.

15 The Judge told you sexual activity means masturbation.
16 The Judge read you and we all know what masturbation is and
17 the Judge read you the statute definition or not the statute
18 definition, but the definition. Masturbate, to induce sexual
19 self-excitement, sexual self-excitement through manipulating
20 the genital organs or other erogenous zones which would be the
21 chest or boobs for a woman or the butt, maybe, can you
22 masturbate your butt? I didn't see anybody touching their
23 butt in the video. To perform masturbation on another,
24 stimulating the genitals or other erogenous zones usually to
25 orgasm, that's what the Court told you that Sarah is charged

Closing Argument by Mr. Goude

425

1 with doing, permitting Minor Child 1 or ^{Minor Child 2} to masturbate, to
2 sexually self induce pleasure in their privates or to do that
3 to another person. In any of the video did you see the boy
4 touch the girl and masturbate her? No. Did you see the girl
5 touch the boy and masturbate him? No. Did you see the girl
6 masturbate herself? Did you see her take and I'm going to
7 play the video in just one minute so you can see the
8 disgusting, gross video, and when I show you the disgusting,
9 gross video I want you to keep your eyes open. I don't want
10 you to think or imagine in your head what is on the video. I
11 don't want you to imagine in your head what you have heard
12 went on. What I want you to do is watch the video on your
13 little screens and see if in there you see the girl masturbate
14 herself, the boy masturbate the girl, the girl masturbate the
15 boy or the boy masturbate himself. If you don't see any
16 masturbation that's the only thing charged in sexual activity.
17 That's the only thing charged in sexual exploitation and the
18 only difference in sexual exploitation first degree and sexual
19 exploitation second degree, which the Judge is going to tell
20 you you vote on the sexual exploitation in the first degree
21 first because that's the worst and most serious. Like a
22 Tupperware bowl, you got a big Tupperware bowl, which is first
23 degree, and then the little Tupperware bowl goes inside the
24 first Tupperware bowl, so if you take it off and say not
25 guilty of the first Tupperware bowl, the bigger one, then you

Closing Argument by Mr. Goude

426

1 say is he guilty or not guilty or she guilty or not guilty of
2 the second, the little included Tupperware bowl, which is the
3 second included offense, second degree exploitation. The only
4 difference is first degree sex exploitation is that Sarah
5 permitted or encouraged the kids to do self-induced
6 masturbating. Second degree, if you say, "Well she didn't
7 permit it or she didn't encourage it or she didn't let them do
8 it," second degree is, "Well, she possessed the video that had
9 the little girl masturbating in it, self-inducing her pleasure
10 or the little boy masturbating, self-inducing his pleasure in
11 the video."

12 Now, this is, and the Solicitor said in her opening
13 statement this is a case about decency. That was what was
14 said Monday. Well, this is not a case about decency. People
15 can disagree on what decency means. I remember the churches
16 in our little Georgetown County if you would go to the
17 holiness church at Good Hope or at Outland they thought if a
18 woman wore lipstick to church or a young teenage girl she was
19 indecent, indecent, not decent. At our little church, Mount
20 Zion, the girls and the women thought that they were supposed
21 to make themselves pretty and put on lipstick and try to make
22 themselves attractive to God to come to church, to not come
23 plain but to dress up. So the holiness would call us, our
24 girls indecent. Our girls would call the girls that went to
25 Outland Church of God indecent. So this is not a case about

Closing Argument by Mr. Goude

427

1 indecency because it is a vague term that has no meaning.
2 What the case is about is did Sarah Cardwell violate this
3 statute, which says she committed sex exploitation by
4 permitting Minor Child 1 to manipulate his pee wee, to jack off
5 his pee wee, to come, to have an orgasm, to shoot semen out of
6 his pee wee. That's what masturbation is. It's disgusting
7 what I'm talking about, but it is also very disgusting to go
8 to the penitentiary for a long time for something you didn't
9 do. You talk about disgusting. I don't mind somebody saying
10 masturbation to my face in open court. I'd much rather hear
11 that than go sit in and eat the turkey necks with the roaches
12 on them.

13 MS. LIVELY: Objection, Your Honor. He's talking about
14 the penitentiary. That's not a decision for the jury to make.

15 MR. GOUDE: Okay, no, don't let's talk about that.

16 THE COURT: Sustained.

17 MR. GOUDE: Let's talk about what is disgusting. Yes,
18 to me if you take a picture or if you - forget about the
19 picture. If you're a parent and you got the five or six year
20 old girl, daughter Minor Child 2 and you got the eight or ten or
21 eleven, when it actually occurred the prosecutor's - the exact
22 date like July the 1st, 2008, September the 2nd, 2009, February
23 the 1st, 2007, well the prosecutors, the police, the DSS, the
24 counselors, the children, they don't know because the
25 indictment that the Judge is going to give you says between

Closing Argument by Mr. Goude

428

1 January 2007 and November 2010, four years later, 2007, 2008,
2 2009, 2010, four years, sometime in that four years that's
3 what the indictment charges. That's what we're charged with.
4 They don't know when it occurred and I think my client Ms.
5 Cardwell don't know exactly when it occurred. I think my
6 client said she thought it happened in 2007, which is in part
7 of the time period that the Solicitor's, Prosecutor said it
8 occurred and seem like the Prosecutor when Mr. Cardwell was on
9 the stand played a little audio, which I had never heard
10 because we don't have the tape. I think Mr. Cardwell and
11 Sarah said that the Solicitor's Office has the tape and they
12 let us come down and listen to it, but I had never heard or
13 picked out the word ^{Minor Child 4} on there, which is the fourth
14 little child. Now seem like the Solicitor played that when
15 Mr. Cardwell was on the stand and said something like, ^{Minor Child 4}
16 likes that shit," or, ^{Minor Child 4} does that when she shits," or
17 whatever she said. All I could hear I thought was the word
18 ^{Minor Child 4} Maybe we'll hear it when we play it again in a
19 minute, but the point is like it was brought out with Mr.
20 Cardwell, seemed like ^{Minor Child 4} was born in November '08. That's
21 the youngest, the fourth one that is Mr. Cardwell's daughter.
22 So if ^{Minor Child 4} was born in November '08, well then naturally he
23 had to be cleaning her diaper and making her do the hello
24 dolly that he got out of the army, lifting her legs so when he
25 puts her on the bed or the counter or wherever he puts her and

Closing Argument by Mr. Goude

429

1 tells her to hello dolly she lifts her little legs instead of
2 kicking him in the eyes or holding them down or holding her
3 legs together so he can clean her butt or wipe her privates if
4 she pees or doo-does, and Minor Child 1 is right there in the
5 room and sees it and Minor Child 2 or the trailer is right there in
6 the room or the trailer and sees it. So as Mr. Fox pointed
7 out, as soon as, and we'll see on the video, I can't remember
8 if Mr. Cardwell said hello dolly and then the boy got down on
9 the floor and spread his legs like he was having his diaper
10 cleaned or the boy was getting down on the floor and Mr.
11 Cardwell said hello dolly and then the boy went ahead and did
12 the tumersault [sic], but we'll see that in just a minute, but
13 I think Mr. Fox pointed out that if he, if Mr. Cardwell said
14 hello dolly before the boy got down on the floor, well the boy
15 knew to do exactly like his little brothers and sisters were
16 doing when they were having their diaper changed. What is the
17 point of all this because is that sexual activity? If the boy
18 gets down on the floor, spreads his legs, shows you his butt
19 or not, is that masturbating? No, it's not got anything to do
20 with the charge, but I think all of this statute remember is
21 sexual exploitation. It is not indecent exploitation, it is
22 not being ignorant exploitation, it is not crude exploitation,
23 it is not tasteless exploitation, it is sexual exploitation.
24 Now is it true that Sarah and Michael, and he was the
25 boyfriend, he was not the daddy. I think Sarah testified they

Closing Argument by Mr. Goude

430

1 got married after the DSS took the children in December 2010.
2 So all of this time he is the boyfriend. In '07 they just met
3 and just started staying together. Is it true that if the
4 kids, if it happened in '07 like the Solicitor's, Prosecutor's
5 indictment says the beginning time period January '07, the boy
6 testified and Sarah did that the boy was born in 1999. So he
7 would have been, well, in 2006, the boy would have been seven
8 to eight years old in 2007, and the Solicitor said their time
9 period ended when Sarah gave the computer to the man to repair
10 in November of 2010. Of course Mr. Cardwell said, well, this
11 video was taken a year or more before that. So that would
12 have been sometime in 2009. So, the boy was either - if it
13 started or could have began as early as 2007 or could have
14 been taken as early as 2007, the boy was born in '99. So he is
15 either seven to eight or nine, and if it happened in 2009, a
16 year before Mr. Marsh got the video, if it happened in 2009
17 the boy born in - he could have been ten, somewhere between
18 seven and ten years old. The girl said she was born in 2001.
19 If it happened in 2007 as the Prosecutors pointed out in their
20 indictment January of 2007 and she wasn't born till later in
21 the year, she was born in 2001. So from 2001 to 2006 she would
22 have been somewhere between five and then in 2009 she would
23 have turned eight. So she was between five and eight and the
24 boy was between seven and ten, somewhere in there. What is
25 the point, what - who cares? Well, what we want you to do,

Closing Argument by Mr. Goude

431

1 the Bible says you got to be wise like serpents and you got to
2 be wise in this case. The easy way for you all to do is to
3 say, "This is disgusting, these people are gross, I have never
4 photographed my five and seven year old children in my living
5 room of my house naked. If they had run out in my living room
6 of my house, my children I would have whipped their asses with
7 a belt in like two seconds. I would have said, 'Have you kids
8 got any sense? Get back in the bathroom and put your clothes
9 on and if I ever see you come back out here in that living
10 room again naked I'm going to tear your asses up,' and then
11 tore their asses up," and then if the DSS or Ms. Muse wanted
12 to take the kids when they went to school the next day and
13 said, "My ass is tore up because I was running naked in the
14 living room," then the DSS could of had them, Melissa Muse
15 could have raised them. That's what they had an episode on
16 Sex and the City, Coulda, woulda shoulda, which my assistants
17 that I have at my office, anytime we say the word should, we
18 always tell each other there is no such word as should because
19 it is a totally useless word because you don't - it means
20 nothing. Anyway, was it very gross and stupid and ignorant,
21 hillbilly, inbred, Appalachian, redneck, southern stupidity by
22 my client, Sarah Cardwell, and by Mr. Fox's client Michael, to
23 let the kids come into the living room like that naked,
24 they're a boy and a girl, they're not the same sex, do I
25 believe that seven years old to nine years old or five years

Closing Argument by Mr. Goude

432

1 old to eight years old brothers and sisters see each other
2 naked in their house? Yes, I do. Do I believe that mommas
3 walk into the bathroom when the kid is doo-dooing on the
4 toilet naked and the momma take her clothes off and get into
5 the bathroom, the shower, I believe some women do that. Do I
6 believe that some men go into the bathroom when their boy or
7 girl is naked, five years old to eight years old doo-dooing on
8 the toilet naked, the man takes his clothes off and get into
9 the shower and take a shower naked and that they see each
10 other? Yes, I believe that that happens. Do I believe that
11 some men in Georgetown County are using the bathroom and the
12 kid five to eight years old wants to take a bath and comes in
13 and takes off the clothes and gets into the bathtub or either
14 the kid is in the bathtub or the shower taking a bath or a
15 shower and the man comes in and uses the toilet in the
16 bathroom when the kid is in the bathroom taking a shower and
17 then the kid gets out of the shower naked and the man sees the
18 naked child? Yes, I believe that. Do I believe that children
19 run into their momma's bedroom when she's getting dressed and
20 she's naked or got a bra on or her panties and they taking
21 them off and putting them on and sees his mom taking his bra
22 off or her bra off and her panties on and her dress on or her
23 slip on or her nightgown on or whatever or bathing suit or
24 wherever we're changing to go to the beach or Pawley's Island
25 in the car, yes, I believe that they have seen them naked.

Closing Argument by Mr. Goude

433

1 Does that excuse or condone or make decent or make classy or
2 make good morals or make tasteful letting your kids jump
3 around and acting like fools like Mr. Cardwell said the boy
4 was doing and they were acting like fools. I have acted like
5 a fool myself. I have not acted that foolish. I have never
6 had my picture taken naked when I was five to eight years old
7 by my parents. So, yes, they are very tasteless. I know the
8 Prosecutor was trying to ask Sarah and Mr. Cardwell, "Well,
9 who is wrong? Who is at fault? Who is at fault in the kid
10 having the bra on, the boy having the bra on? Who, who is
11 wrong or at fault for your" - when you use those kind of words
12 fault, wrong, was it appropriate or inappropriate then? These
13 people are not lawyers. The Prosecutor is a lawyer. When you
14 use those kind of words does that mean if you say yes, it's,
15 yes, it's inappropriate, does that mean I am convicting myself
16 of a crime? If it's inappropriate does that mean it's a
17 crime? They don't know, my God. My client didn't even
18 graduate high school. She said she quit school in the tenth
19 grade. Is it appropriate to take the picture of them naked,
20 appropriate? Is it wrong, whose fault was it that the boy has
21 got a bra on? Fault. Is putting a bra on, is that
22 masturbation? That's what we're charged with, masturbation.
23 Why not just ask the question, "Did you put the bra on the
24 boy?" Then the witness can answer the question. "No, I did
25 not put the bra on the boy." You ain't got to say is it

Closing Argument by Mr. Goude

434

1 inappropriate to put it on him or appropriate or fault or
2 wrong.

3 Did the kids pull down Mr. Cardwell's shorts that he's
4 wearing with no underwear on them and no shirt and show him
5 naked there in the living room? Why ask was the kids at fault
6 for pulling his shorts down or was it appropriate for the kids
7 to pull his shorts down? Was it inappropriate for the kids to
8 pull the short down? Just ask, "Did the boy pull Mr.
9 Cardwell's shorts down? Did Mr. Cardwell pull his own shorts
10 down? Did the girl, ^{Minor Child 2} pull his shorts down? Is it - whose
11 fault is it that you videotaped the kids? Is it appropriate
12 or inappropriate that you videotaped the kids?" Why not just
13 say, "Did you videotape the kids?" "I did videotape the kids,
14 me, Sarah Cardwell.. I did videotape the kids."

15 Mr. Fox said that like the counselor said she's been
16 counseling the kids 50 times apiece for the last two years in
17 January of 2011 making \$70 an hour, \$7,000. It seemed like I
18 wrote down that she said that she - "they would have been
19 dismissed after 10 or 12 treatments back in January or
20 February of 2011, but we had all these court cases going on,
21 the family court terminating the parental rights case going
22 on, this criminal case going on. So instead of having 50
23 sessions, I should have just had 10 sessions." What
24 difference does that make if they had 10 or 10,000? Well, the
25 first set of charges, if you will use your brain and be honest

Closing Argument by Mr. Goude

435

1 and do your job as a juror, not because I say it because you
2 can see the video. The boy is not jacking off his pee wee. Is
3 it not common knowledge how you jack off a pee wee? There is
4 your pee wee. You take your hand and you put on the pee wee
5 and you jerk it up and down with friction so that the pee wee
6 gets big and the cum or the semen comes out of the pee wee and
7 you shoot off, jacking off. Probably every male in the
8 courtroom has jacked off when he was a minor, a teenager. Now
9 did you jack off when you're seven years old or eight or nine?
10 The boy said in his statement, Prosecutor showed him Exhibit
11 Seven said where he is touching his pee wee, and if you look
12 on the video his pee wee seems to be between a quarter of an
13 inch and a half inch long. That's the size of the seven to
14 nine year old boy's pee wee it appears to me in the video.
15 The boy says, the Solicitor says, the Prosecutor says, "Why
16 are you touching your pee wee in the video," and remember
17 these are the worst shots taken out of the - the Prosecutor's
18 got her job to do which is to convict our clients and put them
19 in the penitentiary. So naturally they took the worst possible
20 shots out of the video. They don't take the shot where the
21 boy is jumping up and down saying, "Nah, nah, nah, nah, nah,
22 nah, nah, nah." They don't take that shot. The Prosecutor
23 shows the boy this video that they distill with the millions
24 of dollars they got available to distill this stuff, I got my
25 little book and my yellow legal pad, that's what I got. They

Closing Argument by Mr. Goude

436

1 distill this photograph out of the video and ask the boy, "Why
2 are you touching your private part in this video?" What does
3 he say? "I don't know why I'm touching my private part."
4 Does he say, "I am, I am masturbating my private part?" Does
5 he say, "I am stimulating I'm masturbating my private part?"
6 Does he say, "I am jacking off my private part? I am beating
7 off my private part. I am self-inducing myself with
8 pleasure." No, what does he say? "I don't know why." Well,
9 if he don't know why, can you say why? Don't you think if
10 he's masturbating he knows he's masturbating. How can you
11 masturbate and not know you are masturbating? He didn't know
12 what masturbating was. As Mr. Fox pointed out he has learned
13 what masturbation is by the last two years, 50 one-hour
14 sessions with the counselor who said, "Now, why are you
15 touching your private parts?" "I don't know why I'm touching
16 my private parts. I'm just jumping up and down. Why am I
17 raising my arms?" "Well, you know when you touch your private
18 parts that's masturbating." "Is that what masturbating it?"
19 "Yes, sir, that's masturbating." "Well, is that good or bad?"
20 "That is very bad. Masturbating is very bad in public."
21 "Okay, you mighty right, that's very bad." "Remember now we
22 go into court next week, child. I am the DSS counselor, I am
23 the therapist, I am the Prosecutor. We go into court next
24 week. Is that masturbating what you're doing touching your
25 privates? And remember the foster momma is giving you these

Closing Argument by Mr. Goude

437

1 cookies when you come home from school, wants to adopt you.
2 You've been gone two years. You've seen your momma one time
3 in a counselor's office in the last two years. Your foster
4 momma, the new one with the little red bicycle out there, she
5 wants to adopt you, and if you're masturbating there, well,
6 she can adopt you."

7 Why does it - why did we want the video for you all to
8 see the video and that's what I want you all to watch. When
9 you all go back in the jury room, yes, these have been
10 admitted over our objection. Why do we object? We object
11 because that is not the picture that Sarah Cardwell took. She
12 took a video. She had her little camera and ran it for two
13 minutes. The kids were doing whatever they wanted to do. I
14 think the boy or somebody said on the stand, "Well, we was
15 being directed." Well, did you - listen to the video, see if
16 you hear any directions. I know, they had a, they had a
17 little rehearsal before the video and Mr. Cardwell and Sarah
18 they just told them what to do. They said, "Now, you all come
19 out there and jump up and down and say nah, nah, nah, nah and
20 then you - we're going to touch our chest and then at the end
21 when we say grand finale I won't have to say hello dolly.
22 You'll know that that means to do a backwards somersault,"
23 and if he did a backward somersaults or not, is that
24 masturbation? No. But the reason we objected to taking the
25 little pictures out of the video is because we want you to see

Closing Argument by Mr. Goude

438

1 the whole thing. What is - how - and if I'm the Prosecutor I
2 say, "Well, how can that be out of context? This came right
3 off the video. That's got to be a very honest and accurate
4 portrayal because it was on the video. How can that be an
5 honest - not be an honest and accurate portrayal because it's
6 on the video?" He said that, they said - they did that.

7 Okay, let's say Obama or Romney is running for president
8 next Tuesday and either Obama or Romney, either one, pick what
9 you want, he gets on - he tells the reporter, he says, "My
10 opponent, my opponent says I hate people. Well, that is
11 false, ladies and gentlemen. I love people. I love you.
12 That is false. I love you. I love all people. I love
13 everybody." Okay, now, let's take it out of context. That's
14 the video. That's the two minute video. Let's take one of
15 the little snippets out of the video and let's play it on -
16 for our ad commercial. Let's just take a little snippet out
17 of the video. We going to take - we going to delete the part
18 about my opponent says it and that is false because I love
19 people and we just going to play what Obama or Romney said
20 because they did say that, "I hate people." Now if I'm the
21 opponent, I'm going to play this little snippet. Now how can
22 you say I am misrepresenting what that person said? He
23 actually said that, said he hated people. It was totally out
24 of the context of what the truth was. So, what I ask you to
25 do - the Judge will tell you that you can take your exhibits

Closing Argument by Mr. Goude

439

1 back and you can look at them. If you want to look at the
2 video again, you can look at the video again, but when you all
3 take these things back in there in your room I ask you to turn
4 them over and I ask you if you all think about picking them up
5 and look at them, think first in your head, "I hate people. I
6 want, I want to look at this shot and before I look at it I
7 want to say to myself I hate people. I just want to remember
8 what Ruben Goude wrote on this board, I hate people, and I
9 want this to be just as accurate as what Romney or Obama said
10 when they said my opponent said I hate people, but really I
11 love all people. He said I love people, but now the other
12 side's playing the video or the audio where he says I hate
13 people." So that's what this is.

14 Now, the video, look at it, because we're going to play
15 it right now, that takes care of the sex exploitation. We
16 just ask you to vote not guilty because there's no
17 masturbation. If there's no masturbation it's not guilty of
18 all the sex exploitation charge. That's it, that's it. That
19 is it and the - that is it.

20 The other charge is unlawful conduct, unlawful conduct,
21 and the Judge is going to tell you on that one or he's already
22 told you that you had several little elements in that that can
23 be unreasonable, it says unreasonable risk of harm, that Sarah
24 places ^{Minor Child 1} or ^{Minor Child 2} at an unreasonable risk of harm
25 affecting the child's life. Mr. Fox pointed out, nothing

Closing Argument by Mr. Goude

440

1 harming their lives, that's gone, not guilty so far.

2 Physical health, physical health, there was not one speck
3 of evidence on any kind of physical health harm. So that's
4 not guilty. So far we can strike that one out.

5 Safety, there was not anything presented that shows the
6 kids were unsafe while this is going on. Strike that one out,
7 that's not guilty. Unlawfully or maliciously did any bodily
8 harm, that's beating them with an ax handle, cutting their
9 hands off, burning them with the cigarettes, bodily harm. Was
10 there any one speck of bodily harm? Not a speck. So, you'll
11 strike that one out and that's not guilty.

12 Did they place the child at an unreasonable risk of harm
13 affecting the child's mental health? This is the only one and
14 the last one, mental health, mental health. Mental, what is
15 that? That's your brain, that's not your toenail, that's not
16 your elbow. That's your mind, the brain. Now, the counselor,
17 the woman that counseled them, she says some kids that have
18 problems they still make good in school. Some kids that have
19 problems they don't make good in school. Well, you've got the
20 kids' school records in evidence. Please look at them, first
21 grade through now. This one is Minor Child 1

22 THE COURT: Mr. Goude, you've been speaking for 37
23 minutes. Your time is ending.

24 MR. GOUDE: Thank you, thank you, Judge, thank you,
25 Judge.

Closing Argument by Mr. Goude

441

1 Minor Child 1 in 2007 all his grades are good. "He's a
2 smart precious child. I've enjoyed teaching him this year."
3 This is '06 to '07, the beginning of the indictment. "Smart,
4 precious child. I've enjoyed teaching him. He's done a great
5 job in first grade. Be sure he continues to read as much as
6 possible," etcetera. 2008, ^{Minor Child 1} has worked hard in the
7 second grade. He has mastered the necessary objectives,
8 promotions to the third grade." 2009 grades: B, B, A, B.
9 These national standards when he was at Sampit, 1999, he met
10 all the performance levels and two of the categories - in two
11 of the categories he was exemplary, in the highest category,
12 exemplary, exemplary, exemplary. English language,
13 mathematics, social studies, he met the categories. The first
14 semester, ^{Minor Child 1}, honor roll, Sampit Elementary, honor
15 roll, media center award, social studies award, perfect
16 attendance award, student progress report 95, 94, 92, 95.
17 This is in May 2010, the spring right before he was taken away
18 that December from his ma and daddy, 95, 94, 92, 95, media
19 center, social studies, perfect attendance, honor roll,
20 student progress. 2010 to 2011 after he's taken away, the
21 first quarter, that August through December of 2010 when he
22 was living with his daddy and his momma, 96, 90 - well, his
23 momma and Mr. Cardwell, 96, 93, 95, 93, spelling award, great,
24 national standards. After he's taken away exemplary English,
25 exemplary mathematics, ^{Minor Child 2} is pretty much the same thing.

Closing Argument by Mr. Goude

442

1 You will have the school records, you'll have more time.

2 The Judge is telling me he's not - I'm not going to have
3 as much time as you're going to have. You can take all the
4 time you want. Now what we ask you to do and the counselor
5 said, "Well, this treatment would have been ended in ten or 12
6 sessions, February or March of last year, but we had all this
7 court we had to keep going to." She said, "Well, he's
8 anxious." Well, wonder if Obama and Romney's anxious on who's
9 going to win the election. "He's depressed." If somebody
10 took me out of my ma and daddy's home would I be depressed?
11 "He's angered." If somebody took me out of my ma's home would
12 I be angry, and I keep saying daddy. Mr. Cardwell is not the
13 daddy. They later got married, and so after December 2010 he
14 became the step-daddy. So he's the daddy then. When all this
15 is going on he is not the daddy. So we say there is no risk
16 of harm, there was no risk of harm, there is no injury. You
17 saw him on the stand. He acted like a perfect little
18 gentleman. Did he display any anxiety? Now, I know that Mr.
19 Fox said the kid said they didn't like it. Well, they was
20 jumping up and down and acting happy as jay - as blue jays to
21 me on the thing when it happened. So we tell you that there's
22 no risk of harm, no mental health problems. So, you vote not
23 guilty on the unlawful conduct charges.

24 THE COURT: Five minutes remaining, sir.

25 MR. GOUDE: Thank you.

Closing Argument by Mr. Goude

443

1 I brought my little digital camera. This is a digital
2 camera. It's in the living room over - I think the fireplace
3 is over here at the mounting boards. "Kids, there's a bathroom
4 over yonder and there's a bathroom here." Kids run in here,
5 Mr. Cardwell is wearing shorts. The kids yank his shorts
6 down. He's happy. He's down from Fort Jackson where he's
7 trying to save the - because he's a medic, the stricken
8 gamecock veterans after a ballgame I guess from Columbia. He
9 comes home here and the kids pull his pants down. He's happy,
10 got a little home, got a little woman he's living with, they
11 not married, but he's living with her happy. Got the two
12 little kids, they come out, they happy. They're jumping
13 around and they're acting ignorant. They've got the laundry,
14 the boy grabs his ma. He's seen her put the bra on and take
15 it off ten million times since he's lived with his mother. He
16 puts the bra on. The boy puts his own bra on. They do the
17 worldwide wrestling stuff that he testified to and he could
18 have - Mr. Cardwell could have said, "We did the nipple thing
19 because I like to do nipples before I have sex." That still
20 would have not have been masturbation. It's still not guilty
21 of the sexual exploitation charges. He did not tell you that.
22 He told you exactly the truth where he got that from and where
23 little ^{Minor Child} got it from doing it on his bra was watching the
24 worldwide or the mixed martial arts Ultimate Fighting
25 Championship stuff on television and he said that they had

Closing Argument by Mr. Goude

444

1 went back for this trial and we have made a video of the same
2 kind of stuff he'd been watching showing the rest of the
3 boxers, the Ultimate Fighting Championship boxers getting in
4 the ring wearing their boxing or kickboxing shorts and would
5 do their - lick their tongue with their fingers and put it on
6 their nipples in the ring that he said he had copied off the
7 internet stuff he'd been watching before the video ever
8 happened years ago, seven, eight, six, and brought it to
9 court.

10 MS. LIVELY: Objection, Your Honor. He's getting into
11 evidence that's not before the jury.

12 MR. GOUDE: I'm not saying he put it into evidence.
13 I'm saying he said that on the stand. That's what he said and
14 we offered it and it wasn't admitted in court. So, you ain't
15 seen it.

16 THE COURT: Please, please now, conclude your remarks.

17 MR. GOUDE: Thank you, sir. So I'm not going to have
18 time to show you the video. Maybe the Prosecutor will show
19 you the video of the children. When you watch it, just watch,
20 see if you see the boy jacking off his pee wee. He does
21 flap it and the reason he flaps it is Mr. Cardwell is standing
22 over there naked with a cigarette in his hand and he twists
23 his body like this and watch the little boy and Mr. Cardwell
24 is a little heavy. He's got excess meat and fat, so his whole
25 body swings. His pee wee swings because it's - there's no

Closing Argument by Mr. Goude

445

1 bone in a pee wee and it's meat. So it swings with the rest
2 of the body. It's not like he's standing there and moves his
3 pee wee back and forth. His pee wee is not erect, it's not
4 hard. It's hanging down. Every erect pee wee I ever seen
5 stood up. His is loose, hanging flat down. So he swings his
6 body and his little pee wee swings. The little boy is seven
7 or eight years old, skinny as a rail, he has no fat on his
8 little body. Watch him, he tries to swing and he says, "Daddy,
9 I can't do it," and he does call him daddy even though he's
10 not his daddy. "I can't do it." So he flaps his pee wee
11 trying to make it go from side to side like Mr. Cardwell's is
12 going side to side, and Mr. Cardwell says, "It will come in
13 time," meaning you going to get fat as a hog one of these days
14 and you're going to have meat, and when you flap back and
15 forth your whole belly and your pee wee is going to flap back
16 and forth, and when you get to be a grown man it'll flap back
17 and forth. Nothing sexual about it, nothing masturbating
18 about it. When you watch the video in a minute ask yourself
19 as reasonable jurors are you getting sexually turned on
20 watching the moron activities on the video? It's, it's a sex
21 charge is what we're charged with doing, sex, not, not
22 ignorance, not stupidity, not disgusting, not un-classy.
23 We're charged with sex acts. Ask you if you get sexually
24 turned on in any way by watching Michael Cardwell or the kid
25 Minor Child 2 or the kid Minor Child 1 Well, if you don't, they wouldn't.

Closing Argument by Mr. Goude

446

1 It wasn't sexual.

2 THE COURT: Counsel, are you trying to wrap up your
3 remarks now? I'm getting ready to sit you down and send this
4 jury out.

5 MR. GOUDE: So that's what I - yes, thank you, Judge.
6 I'm through.

7 THE COURT: I want you, I want you to wrap up your
8 remarks. I want to be courteous to you, but this jury has
9 been sitting there listening to you for an hour, both of you
10 together for an hour and a half and that's sufficient.

11 MR. GOUDE: Thank you all. I ask you to vote not
12 guilty of the charges and please don't bring back a compromise
13 verdict. Please don't go back there and say, "Well, we've
14 been in here 30 minutes or one hour or two hours, and so why
15 don't we just toss a coin or vote guilty on some and not
16 guilty," please don't do that. Take every charge, look at it
17 and use your brain, watch that video, don't watch those little
18 snippets, come back out here if you want to see the video
19 again. Watch it, see if you see any masturbating. You've
20 heard the kids, you see the school records. There's no mental
21 health harm to the kids. We ask you to vote not guilty of all
22 the charges. Thank you.

23 THE COURT: Madam Foreman, ladies and gentlemen,
24 you've been out very patiently for the last hour and a half.
25 I'm going to let you go to the jury room for a few minutes to

Closing Argument by Mr. Goude

447

1 relax. When you return we'll have only final remarks of the
2 Solicitor and I'll give you the case for your deliberations.
3 I've called Ms. Alma up and I'm going to make some type of
4 arrangements for lunch. Please go to the jury room. Let me
5 know when your jury is ready to come out. I know you're tired
6 and I certainly respect that.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, we are in recess for at least
10 15 minutes.

11 OFF THE RECORD

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Ms. Candice, are you ready for your 45?

16 MS. LIVELY: Yes, sir, I'm ready for my 45 minutes.
17 Thank you.

18 THE COURT: I'm going to hold you to it as I did
19 Defense counsel.

20 MS. LIVELY: I want you to, Judge.

21 THE COURT: All right.

22 MS. LIVELY: I think this jury's tired.

23 THE COURT: Is everybody here for the Defense?

24 MR. FOX: Yes, sir.

25 THE COURT: All right, we ready to proceed?

Closing Argument by Mr. Goude

448

1 MS. LIVELY: Yes, sir.

2 THE COURT: Defense?

3 MR. FOX: Yes, sir.

4 MR. GOUDE: Yes, sir.

5 THE COURT: Bring the jury in.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: Madam Foreman, ladies and gentlemen,
9 you've been very patient this morning and I appreciate it. We
10 have one final summation by distinguished counsel for the
11 State after which you will be given the case for your
12 deliberation and all matters that I have been - introduced
13 into evidence will be with you, and of course if you need the
14 video we'll bring you back out and see it.

15 Ms. Alma has ordered lunch for you and she tells me she
16 got it worked out where we're going to have some home cooking,
17 and we'll look forward to that. Now, when the lunch comes, I
18 leave it to you as foreman to deliberate while they're having
19 lunch or stop, deliberate later. You decide how you want to
20 handle that, Ms. Foreman. Okay? We are now ready - we've
21 had the - ready for the final summation of the State.
22 Proceed.

23 MS. LIVELY: Thank you, Your Honor. Ladies and
24 gentlemen, usually whenever I get started with a closing
25 statement one of the things that I try to make sure that I

Closing Argument by Ms. Lively

449

1 don't do is harp too much on what the Defense has tried to use
2 to show their side of the story, okay, but there's a couple of
3 things that I do think I need to address with you before I get
4 into what I normally would talk to you about and that is
5 obviously that the facts of this case clearly fit the statutes
6 and the criminal laws that these Defendants are charged with,
7 but there's some things that I, I want to just touch on real
8 quick because I want you to be thinking about it whenever I'm
9 going through the elements of each charge and the activities
10 that you saw on that videotape, okay. One of the things that
11 I told you when I first started this week was that this is a
12 case that involved common sense and decency. Now I'm not
13 putting decency on trial here. Trust me, if you want to take
14 pictures of your, you know, children or grandchildren running
15 around naked and, you know, doing cute things, you know, I
16 think we've all got those naked kid pictures that your parents
17 might throw up during your, I don't know, rehearsal dinner. I
18 know that you know the horrifying, "Oh, my gosh. I can't
19 believe my mom put that picture up there." You know that is
20 not what we're here about and you guys have got the common
21 sense to understand that, and so, I don't want to make a joke
22 out of it in any way, shape or form and that video was not a
23 joke, and it was not fun for those children, and clearly you
24 have the opportunity having seen those children testify and
25 having gone through what they've gone through because of the

Closing Argument by Ms. Lively

450

1 video that was made by their own biological mother, that's why
2 we're here. That's it, and one thing I will agree with the
3 Defense is that video is the case. Clearly it is. That video
4 along with the testimony of those children that lived through
5 that video is the entire case. So it's simple. So let's get
6 down to the couple things that I wanted to mention with the
7 Defense.

8 First of all, Mr. Fox had mentioned to you, you know,
9 obviously I agree this is not a case about decency, even
10 though that's how I started it because I wanted you to get
11 your minds kind of right about what you're going to be seeing.
12 There's no way you can prepare people for something like that.
13 So I tried to let you know, "We're going there, ladies and
14 gentlemen. Please bear with us and, and use your common
15 sense."

16 One of the things that Mr. Fox mentioned to you was the
17 fact that the video itself was tasteless and that it was done
18 in such a way that, you know, maybe they were bad parents or
19 parent, boyfriend, but it didn't rise to the level of sexual
20 activity, okay, and you know, that is the crux of the case, is
21 there sexual activity going on on this video? Okay, so, let's
22 see what the Defense does.

23 One of the things that, and Mr. Goude do, is he breaks
24 down, "Well, if you take it out of context, then like the
25 pictures that you've seen, if you take it out of context then,

Closing Argument by Ms. Lively

451

1 of course, you know it looks bad, you know, a snapshot of
2 what's going on with this video." (Ladies and gentlemen, that
3 video lasted for two minutes and 30 seconds. In two minutes
4 and 30 seconds I was able to pull off still shots showing
5 nipple stimulation, which is not a part of what the statute
6 calls for, and a child who is either seven or eight years old
7 touching himself in such a manner that all of you can look at
8 and determine whether or not you believe that he came up with
9 that himself at that age or you can believe what he told you
10 from that stand, and that is, "My daddy," because he
11 considered Mr. Cardwell at that time his daddy, "showed me how
12 to do this. He told me what to do." So, you either believe
13 Minor Child 1 or you believe Mr. Cardwell. That's it. If you
14 believe Minor Child 1 he was a seven or eight year old little
15 boy who had been shown what to do, told what to do and did it.
16 It is that simple. So remember that whenever you're going
17 through it. It's not just about bad taste. It's clearly
18 sexual activity.

19 Now, one of the things that's interesting is that
20 whenever the children are on there, they're playing, they're,
21 they're jumping around, they're laughing, they don't look
22 embarrassed in the video. They're in front of their parents
23 and - but this is the interesting thing, too, and then I'm
24 going to move on to what I want to talk to you guys about.
25 They talk about the harm to the children and about, you know,

Closing Argument by Ms. Lively

452

1 maybe they got the idea of this whole masturbation thing from
2 Melissa Muse because they've had all of these counseling
3 sessions and all of these things going on that's been put in
4 their face. Said, "You know what you were doing there that
5 was bad. You shouldn't have been doing that. That is
6 inappropriate. You know what that is? That's called
7 masturbation." Okay? Well, that's an interesting concept but
8 here's the problem with that concept, when these children were
9 first interviewed at the forensic center, the Children's
10 Recovery Center, by Dianne Nordeen, you remember her, the
11 dark-haired lady who sat up here. You know, she was talking
12 to you about her job is to ask questions like, "Name your body
13 parts, you know, so we can make sure when you say something
14 about my front private I know you're talking about a
15 particular part of your body." That's what they do, and
16 Melissa Muse hasn't got involved yet, never met the kids,
17 never talked to them. No one else had interviewed the
18 children at that time. These kids, in a child friendly
19 environment with a forensic interviewer who is trained to talk
20 to them and make them feel comfortable, let the children lead
21 the interview, when she said, "Well, can you tell me about
22 some video? I heard there was a video of you dancing around
23 naked." Here's the moment of truth. "Oh my gosh, I'm so
24 embarrassed. Did you see that? I was kidding, you know, we
25 watch the UFC fights, and oh, did you see that video? Yeah,

Closing Argument by Ms. Lively

453

1 because I saw it actually pop up on mom's computer about a
2 year later and I didn't even know it was still on there.
3 Gosh, I'm embarrassed. Did it still show me wearing her bra?
4 That's a child who's laughing, not embarrassed, doesn't think
5 anything's wrong, honest to somebody who's asking them a
6 question or it's a child who knows that they've been sexually
7 exploited, who has been told to rub their private part while
8 being videotaped, who has been told, "This is what you do,
9 grand finale." He looks in the camera, "What, you know what,
10 hello dolly, do the hello dolly." Okay? That's what's going
11 on, ladies and gentlemen, and Minor Child 1 knew it.
12 Minor Child 1 knew what to do. Minor Child 1 had been told what
13 to do. He told you and Minor Child 2 told you, as hesitant as Minor Child 2
14 was, she's younger, she's, as Ms. Muse told you, these kids
15 feel a lot of guilt. They feel a lot of shame, but they stood
16 - they came in here, told you what happened, had no reason to
17 tell you anything other than the truth, which is what the
18 Judge asked them to do in front of all of you, 12, 13
19 strangers they have never met before in their lives, knowing
20 at this point in time obviously that telling what they told
21 was going to have consequences. These children at any point
22 in time could have backed out and said, "You know what, I was
23 mimicking the UFC fights and didn't do it."
24 So, yeah, I'm not asking you to take things out of
25 context. I'm asking you to put it in context. I'm not

Closing Argument by Ms. Lively

454

1 telling you to look at these individual pictures and make your
2 decision. I'm saying look at the entire video and use your
3 common sense because the video as a whole is what makes it
4 sexual. The video as a whole is what's going to make you all
5 agree beyond a reasonable doubt that these parents, step-dad
6 and mom, made a conscious, intentional, maybe reckless
7 decision to videotape those children in a performance that
8 includes sexual activity, and that's what you have to do as
9 jurors. You've got to look at it for what it is, and here's
10 another thing, the Defense has the same opportunity to ask as
11 many questions as they want of every witness that gets on the
12 stand. So, let me talk to you about one thing, too. Who in
13 your mind, from watching this entire process, had the more
14 difficult, probing questions for these children? Who has the
15 burden of proof under our law beyond a reasonable doubt to
16 bring to you the evidence that I have to show to meet the
17 statute. The last thing I want to do is ask a little boy
18 about masturbation, but the law requires me to show to all of
19 you that that is what was going on. It gives me absolutely no
20 pleasure in doing that. I'm not going to simulate it for you,
21 I'm not going to get into it with you, I'm going to tell you
22 that's what Minor Child 1 told you he was doing. That's what
23 Minor Child 1 was told to do and that's what Minor Child 1 did,
24 and here's another interesting thing, the statute clearly says
25 sexual activity or any simulation of sexual activity,

Closing Argument by Ms. Lively

455

1 simulate. When you simulate something you act it out. It
2 doesn't mean you're actually doing it, and as Mr. Goude very
3 vividly tried to convince you that you would have to see some
4 form of, excuse me, erection and ejaculation, that is not an
5 element in the crime. Simulation of sexual activity, the
6 performance was videotaped, the material was saved to a
7 computer. So consider that. Clearly it meets the standards
8 of sexual exploitation, first degree.

9 Now, whenever you think about the fact that these kids
10 could have been the reason for Mr. Cardwell having his pants
11 down, okay, that might happen and I will tell you, once again,
12 use your common sense, if that were to happen to you or to
13 someone you know and maybe you were to see it out in public,
14 "Oh, gosh, somebody pulled their bathing suit bottom down or
15 something." What's the first thing, first reaction that you
16 would think of? "I hope nobody saw that, okay." This wasn't
17 even the child whose pants were being pulled down, if you
18 believe that's what happened, because if you believe ^{Minor Child 2} and
19 ^{Minor Child 1} everybody was naked. They were already naked
20 when the video started, and no one, they never said, "We
21 pulled down daddy's pants," never.

22 So, his pants, if you believe it, are down around his
23 ankles. Pull them up. Do you then step to the next thing, i
24 we're going to break it down like the Defense says and start
25 simulating some type of UFC fight? Are you then going to tak

Closing Argument by Ms. Lively

456

1 the next step and let your little five or six year old
2 stepdaughter jump on you naked? Are you then going to take
3 the next step and have your stepson with a bra, he - that bra
4 clearly, ladies and gentlemen, and I'm going to show you the
5 video because that's what this case is about, look at it when
6 he's twirling around. It's not hooked. It is tied to that
7 little scrawny, meatless child's body, tied, not hooked.
8 Either Sarah or Michael tied that bra around that child,
9 another part of the performance. Look for yourselves. It's
10 up to you.

11 So then you take the next step, he's in there jumping
12 around with a bra on and he's rubbing his nipples, still not a
13 part of the statute. So why have we spent so much time on
14 simulation and masturbation in this case? Why did I ask that
15 question? Because it is the law, it is the bottom line
16 standard that our legislature said, "You know what, we're not
17 even going to prosecute you for rubbing your nipples, we're
18 not even going to prosecute you for jumping around with your
19 naked stepdaughter and your naked stepson, we're not going to
20 prosecute you for flopping your penis back and forth, we're
21 not going to prosecute you for that, but if you go that next
22 step, if you go right here and you videotape your child doing
23 something that that child is having to simulate a sexual act,
24 you've gone too far." Isn't that too far, ladies and
25 gentlemen? Is that where - can we get to that point that that

Closing Argument by Ms. Lively

457

1 is too far? Okay? If they were jumping around naked, if he
2 had walked into the bathroom and took a picture of the little
3 girl on the toilet and then he went in there and jumped in the
4 shower and got back out the shower, then the little boy's
5 running around and he's coming in saying, "Oh, I got to pee
6 pee, too." I'm not prosecuting that. I don't have that kind
7 of time. Live your lives. You're entitled to it, but don't
8 endanger the health, mental, physical or whatever. It's an
9 or. It's not physical and mental and, it is or. Do not
10 endanger the precious children that you are required as
11 parents and/or guardians or caretakers of those children to
12 watch over, nurture and put in society and present to them the
13 kind of people that they need to be. Yes, it was
14 inappropriate, fine. Let DSS deal with it. Yes, it was
15 tacky, fine. Let DSS deal with it. Was it criminal?
16 Absolutely it was criminal. Those children told you it was
17 criminal. You know it was criminal. You can see it for
18 yourselves. You know those children were harmed. You mean to
19 say that these children just because they kept good grades
20 throughout it, thank goodness, that is an amazing testament to
21 the resilience of children, and they're going to get over
22 this, too. They're going to thrive and they're going to be
23 fine because children bounce back. They can get on the stand
24 in front of people they don't know and tell what happened to
25 them. They can bounce back. When they think about having to

Closing Argument by Ms. Lively

458

1 come to court, do they have bedwetting? Do they have
2 nightmares? Yeah. So I'm going to use the word fault again.
3 Whose fault is that? It's because these children were put in
4 a video and required to do or be exposed to sexual activity.
5 So just because ^{Minor Child 2} wasn't touching herself, masturbating
6 herself, touching her brother, masturbating her brother, it
7 doesn't matter. They're all a part of the performance. She
8 witnesses it. She's standing there. Nobody says ^{Minor Child 2} left
9 and never came back. You can still hear her in the
10 background; she is still in the video. She is still there
11 witnessing the sexual activity of her brother, and here's
12 another thing, I'm going to get a little bit graphic, but I
13 think even me being graphic's probably not going to get as far
14 as we've gotten in this case. This is what I'm going to tell
15 you to do because Mr. Goude was very clear in masturbation and
16 what it includes. When you look at the boy and he, he's - he
17 does this at first and he says, "Daddy, I can't do it," and he
18 says, "Don't worry about it, son, it'll come." Okay, that's
19 when he's talking about flapping, all right, and that's
20 because, you know, he's seeing the Defendant do this, all
21 right. So he's mimicking what he has seen and learned, okay?
22 Here's the thing, then he starts to, he starts to in seven and
23 eight touch himself. It's not slapping, it's not flapping
24 back and forth. This is what the State is showing you and
25 telling you is simulated masturbation. Now, yeah, it is a

Closing Argument by Ms. Lively

459

1 snapshot. I'm going tell you the snapshot doesn't do it
2 justice. When you watch the video and I'm going to have to
3 say it, when he's doing this at some point he stops and he
4 does this little face and falls over. Where do you think tha
5 he's seen that face before or who's told him? "You got to
6 have your moment, son. You got to have your moment because
7 that's the orgasm," because it's not just an innocent - it's
8 interesting, you know, because if you look at it it fits, and
9 that's where I'm asking you all to use your common sense. Yo
10 know, I didn't give you the, the snapshot of that because
11 that's something you've got to see in the context of
12 everything, and that's the whole point. They actually break
13 it down to the hello dolly. The Defense broke it down to it'
14 a UFC fight. That is what they do. They take it apart so it
15 becomes something they can make fit. Tacky, oh my gosh, the
16 UFC fight, they could have asked the simple question of
17 Minor Child 1 when he was on the stand. I asked the hard
18 questions. "What was that Minor Child 1 "I don't know."
19 "Tell me what it means." I did, I did not want to have to as
20 him, but I have to show that in order to prove my burden,
21 which we've done. The one question they could have asked
22 Minor Child 1 which would have been the easiest, nicest, "You
23 like UFC wrestling; don't you?" Didn't even have to say, "Yc
24 got the nipple tweaking and this and that from the UFC
25 wrestling," didn't even have to say that. Just have him

Closing Argument by Ms. Lively

460

1 acknowledge, "You watch UFC wrestling; don't you?" I'll tell
2 you why they didn't ask that question, it is the number one
3 rule in the book of liars. Don't ask a question you don't
4 know the answer to because if that child had said, "No, I
5 don't watch UFC wrestling," they'd have nothing. There'd be
6 no explanation.

7 Let's talk about the hello dolly. Ladies and gentlemen,
8 when you listen to the video after all these things have
9 happened, at the very what we know to be the end, momma says,
10 "Do your grand finale." That's before the hello dolly's
11 mentioned and let me tell you why the timing of that is so
12 important. It's because mom and dad didn't arrange for
13 exactly what was going to happen next. If so she would have
14 said, "Do your hello dolly, do the hello dolly." No, because
15 this is a performance. "We're ready for the grand finale.
16 Okay, okay, you know," and then he chimes in hello dolly, his
17 cue. "Oh, yeah, I'm supposed to roll backwards and spread my
18 legs open." Do you see how this is a performance? Do you see
19 how these children have been orchestrated to do this? This
20 wasn't random, "We're running out of the bathroom, woo, we're
21 all naked. This is funny. I'm pulling daddy's pants down,
22 ha, ha." If it was that random, if it was that not
23 orchestrated and it was not a performance, there's no way
24 these things could have come together like they did. These
25 kids didn't know. They were five, six or seven years old,

Closing Argument by Ms. Lively

461

1 | however old they were. We know they were minors. There's no
2 | way that it could have come together like that, or maybe so,
3 | believe them. Maybe it was piecemeal. "Well, we were
4 | thinking about the UFC fight, then we were thinking about
5 | diaper changing, then we were doing this, then he was just
6 | slapping his penis back and forth, you know." Yeah, you can
7 | break it down like that but what makes sense? What makes
8 | sense is when you take it as a whole, when you look at the
9 | complete picture, when you hear those children say what they
10 | were instructed to do, the lack of there being any indication
11 | that they were doing it because it was a UFC fight or some
12 | type of wrestling move, then there's only one conclusion. Is
13 | that unlawful conduct? Getting out of the sexual
14 | exploitation. Unlawful conduct's very broad. It's just as
15 | parents don't put your children in a situation where they can
16 | have harm, unreasonable risk of mental harm. That is common
17 | sense, ladies and gentlemen, and here's another thing, intent
18 | The Judge has told you about intent. Let me show you how you
19 | know where the intent is with Cardwell, Michael and Sarah.
20 | Do you remember whenever I was asking Sarah Cardwell
21 | about the fact that she was talking about the bathtubs and
22 | where the children go to take a bath? The boys go in one
23 | bathroom and the girls go in another, and you know that's
24 | pretty normal for parents. Once children get to a certain
25 | age, you know, they want them to kind of be separated because

Closing Argument by Ms. Lively

462

1 they start asking questions. You know, they start noticing
2 their private parts and stuff like that. It shows that she
3 knows. At that point in time she was already making a
4 conscious decision to separate her children, boys and girls,
5 whenever they're taking a bath. The most common, normal thing
6 that a parent does. So you mean to tell me that she thinks
7 that that's the appropriate thing to do, but then when this
8 situation on this video happens, "I don't see anything wrong
9 with that." You've got a grown, naked man in a video with
10 your naked children, a boy and a girl, and that's okay?
11 That's not sexual? Let's don't take a chance. Don't do it.
12 Be smart. Here's another thing, she downloaded it and kept
13 it. The children even said, "Yeah, it popped up later. I saw
14 it on the computer." What are you keeping that around for?
15 Why is that video still on that computer a year or two years
16 down the road with those children jumping around and
17 Minor Child 1 with the bra on and touching himself, why do you
18 keep that? That's an answer I can't give for you, and you
19 know, and it's something I don't have to give you, but it
20 still goes towards the intent of these parties. It was not
21 accidental, it was not fun. They kept it on their camera.
22 You can't tell me just by chance that camera was sitting there
23 and was like, "Oh, this is funny, we're going to record this
24 for posterity," and pick up a camera and all of a sudden just
25 magically all these things happen at that very moment? It was

Closing Argument by Ms. Lively

463

1 orchestrated, it was a performance, it was a plan and they
2 were all in on it, and the children had been told what to do,
3 just like they told you they had been told what to do, and
4 that's it. It's as simple as that.

5 Now I want to, and I've kind of gone through it, and wha
6 I've done is I've actually got a PowerPoint that I want to do
7 that will kind of bring it all together and I know sometimes
8 visual kind of helps you also because I've been talking and
9 walking all over the place, but, but this is what I want to
10 do. I want to make sure that you guys see where I've gone in
11 trying to deal with this case, and in starting off, I like to
12 always stick with what I start with and that is the common
13 sense and decency. I mean, that is at the bottom - that is
14 the bare minimum that we're starting off here with, okay, but
15 I've got to prove more to you, beyond a reasonable doubt.

16 So, one of the charges that we're looking at, the
17 unlawful conduct towards a child, as I said before, if you
18 look in section one it says place the child at unreasonable
19 risk of harm affecting the child's life, physical or mental
20 health. I don't have to show you all of those. I have to
21 prove one. Melissa Muse clearly provided you with more than
22 enough evidence of how this has affected the mental health of
23 these children. They don't have to be psychotic, they don't
24 have to be hallucinating, they don't have to be crazy.
25 They're harmed.

Closing Argument by Ms. Lively

464

1 Sexual exploitation of a minor first degree, bottom line
2 under number one, they use, induce or facilitate a minor,
3 which we obviously have minors, to engage in or assist others
4 to engage in sexual activity, the simulation of masturbation,
5 ladies and gentlemen, and they did produce material.
6 Obviously the material was produced, it's on the computer.
7 They've even admitted that. So that's clearly something we
8 can all agree on. The question is going to be exactly as Mr.
9 Goude and Mr. Fox said the sexual activity. Permitting a
10 minor under his custody or control to engage in sexual
11 activity, that's how it meets with Sarah as well because these
12 are her children. She's permitting these children to engage
13 in this activity. So both Cardwells meet under that number
14 two section and the material was produced. Clearly we have
15 that.

16 Sexual activity according to South Carolina law,
17 following acts or simulations thereof, I did not have to show
18 the end of that process. Masturbation, when done alone or
19 with another human or animal, they didn't have to masturbate
20 each other. It had to be simulation or the actual act by
21 Minor Child I which he told you it was, which he clearly told
22 you his dad told him to do it.

23 Material, I think that's the easiest one. It's a video
24 recording. It was downloaded; we all got to see it. If it
25 wasn't material it wouldn't be here. None of us would be

Closing Argument by Ms. Lively

465

1 here.

2 So, do we meet our burden? Minor Child 1 a minor, Minor Child 2
3 a minor, Michael Cardwell nude, performing while inducing,
4 encouraging minors, produced material, yes, what I've just
5 told you video, visual. Minors engaged in sexual activity,
6 Minor Child 1 simulating masturbation, which is what he told
7 you, and Minor Child 2 was a part of and participated in the
8 performance. She was there the whole time. No one ever said
9 she had left while Minor Child 1 was doing that part of the
10 video. You can hear her voice and you will hear it in a
11 minute through the entire video. She never left, she was a
12 part of the entire thing. She was a part of the sexual
13 activity that was recorded, and Sarah, exactly the same thing
14 the only thing with her is a little bit more. Not only did
15 she induce them, not only was the sexual activity taking
16 place, she also permitted it to take place. She permitted
17 this boyfriend to come in who lived with her children to act
18 in such a fashion.

19 Now, our witnesses, I agree with Goude and Fox, that's
20 true, our first, the investigators, Ron Douglas, Phil Hanna,
21 David Marsh, they were doing their jobs. They were collectir
22 evidence, okay? That's what they had to do. So then we get
23 to what was going on in the minds of these children.

24 Dianne Nordeen, "They shut down, wouldn't talk to me,
25 wouldn't say anything." It's because they knew what had

Closing Argument by Ms. Lively

466

1 happened was wrong. They knew it wasn't some funny little
2 video. Those children knew. They were protecting their
3 parents, this is before Melissa Muse got involved, and they
4 were embarrassed.

5 Then you've got Minor Child 1 who told you, "My daddy told
6 me what to do." "Who put the bra on you?" "My daddy." "Who
7 told you to touch yourself?" "My daddy." "Do you know what
8 that is?" Didn't want to say it. "What is it Minor Child 1
9 You know what he said. Minor Child 2 more shut down, she's still
10 shut down, but she told you. "Who told you to do this Minor Child 2
11 "My mom and my dad." "Who was naked?" "My mom," which she
12 denies, "my dad, me, and Minor Child 1 and Melissa Muse,
13 advanced sexual knowledge that these children have, we can
14 never take that back. They had that the first day she met
15 with them, and you saw Mr. Goude go through every single one
16 of their counseling sessions. If there had been one mention
17 of, you know, masturbation or, "Didn't you know what you were
18 doing was masturbation?" "That's wrong," it would have been
19 in those notes that he was reading to you. You had every
20 single one of them. It was flipping through them. Not in
21 there one time did it say, "I had to talk to these kids about
22 masturbation and tell them it was wrong." He could have asked
23 her that and he didn't because don't ask the question you're
24 not sure of the answer to.

25 So, we've got undisputed facts, minors, videotaped,

Closing Argument by Ms. Lively

467

1 performance. Everybody said it was a performance. They say
2 it's a tacky performance, I say it's a sexual performance. It
3 was on Sarah Cardwell's computer, obviously. Michael
4 Cardwell, you can see it, nude in the video, children were
5 nude and Sarah's voice is on the video. I think those are
6 things we can all agree on.

7 So, two, the two issues, was it sexual, and the reason
8 why I broke it down like with the word fault is because I
9 don't know any other way to put it than how the Defendants
10 presented it whenever they talked about why he was naked.
11 "They pulled my pants down. It was Minor Child 1's idea to put
12 on the bra. He'd seen his mom do it a hundred times. He's
13 the one that did it." "How'd he know to tie it on his back?"
14 "Well, he'd seen me hook it before." It wasn't hooked.
15 "Minor Child 1 got the idea from wrestling," Minor Child 1's idea.
16 "Minor Child 1 exposed his buttocks in the air because he
17 learned that from his younger siblings getting a diaper
18 change. Sarah just happened to have the camera sitting there
19 for her to videotape the kids being silly and she just
20 happened to download it on her computer." If you believe all
21 of those things are reasonable, if you believe all of those
22 things are what happened in this case then, of course, they're
23 not guilty. But is that reasonable? I don't have to prove to
24 you beyond every doubt. I just have to prove to you beyond a
25 reasonable doubt. Have I touched on everything to make you see

Closing Argument by Ms. Lively

468

1 what is reasonable here, what is common sense and what really
2 happened? If I have and you're firmly convinced, then they're
3 guilty, and this is just what I'm telling you again, and I'm
4 repeating myself some, but remember the age of these children.
5 They were between eight and nine. They didn't like being in
6 the video, they were embarrassed, they were sad. **Minor Child 1**
7 and **Minor Child 2** are pretty resilient and they're probably glad that
8 this is all over with. The idea that any part of this was fun
9 for them, well, I'll leave that up to you.

10 The harm issue, all of those things were shown to you by
11 Melissa Muse who said, also, yeah, I brought her in because
12 she's a counselor. Trust me, she hasn't made, I don't think
13 she's driving a Lexus. I don't know she might be or something
14 with that \$7000 she made over two years, but I can tell you
15 this, she did her job in being there for those kids. I don't
16 think anybody doubts that, and one of the things that she told
17 you was that sexual abuse includes non-contact. I mean, you
18 don't have to - I mean, Mr. Goude was saying, "Did you take
19 the kids later on and have sex with them, did you do this, did
20 you do that," well, thank goodness, not only that, they'd be
21 charged with something else. That's not what we're talking
22 about, but clearly what she told you as an expert she told
23 you, bottom line, that non-contact sexual abuse is sexual
24 abuse. It is. It affects children, it harms children and it
25 has harmed **Minor Child 1** and **Minor Child 2** and you can go ahead

Closing Argument by Ms. Lively

469

1 forward, I was just talking about that.

2 So, here's what the State's asking you to do is find the
3 guilty on the sexual exploitation and on the unlawful conduct
4 The State has a burden of beyond a reasonable doubt and that'
5 all I'm asking all of you to do is use your common sense and
6 be reasonable. That is it. Consider what the children have
7 told you, consider what makes sense. Look at the video, and
8 I'm going to show it to you again, look at the video and I'm
9 going to show it to you again because it is the case. You ca
10 come back out and see it again if you need to. If there's an
11 testimony of either the children or Mr. and Mrs. Cardwell tha
12 you want to hear, Dianne Nordeen or anybody, as jurors you
13 have a right to say, "Judge, we need to hear something again
14 because we want to be sure." I want you all to be sure
15 because it takes all of you to make this decision, and I want
16 you to have every bit of information you need to make that
17 decision.. So, I'm going to show you the video again because
18 you need to see it. We've broken it down so much from both
19 the Defense and the Prosecution that I think that it is the
20 right thing to do and that you need to see it. Take it back
21 with you. These pictures, the reason why it's broke down is
22 because I have elements I have to prove to you beyond a
23 reasonable doubt. If you need the Judge to tell you the law
24 again, if I haven't hammered it enough and the Defense
25 attorneys haven't hammered it enough you can come back out ar

Closing Argument by Ms. Lively

470

1 he can tell you if you have a question, but you'll have these
2 back there with you. Look at the context of the video. Look
3 at Minor Child 1's face whenever, after he tries to mimic Mr.
4 Cardwell with going back and forth what he starts to do. Look
5 at how uncomfortable his face is. Look at the moment
6 whenever, if you go with what Mr. Goude's saying in talking
7 about ejaculation and that moment of having orgasm, look at
8 the child's face and just wonder or don't wonder, know what
9 he's doing because it is what it is, ladies and gentlemen. It
10 is what it is. This will be back there with you. The video
11 will be here but will be ready for you to review at any time.

12 THE COURT: Ms. Candice, you have five minutes
13 remaining.

14 MS. LIVELY: Yes, sir, Your Honor, thank you. Actually
15 at this point in time, ladies and gentlemen, I think you've
16 heard everything you need to hear. Now it's time to see the
17 video again. I'm going to leave you and tell you once again I
18 know this has been a lot of uncomfortable information at
19 times, but it's important. It's stuff that I had to show you
20 to show you why this is criminal and why this behavior, this
21 activity with minors is illegal, period. Thank you very much.
22 If you would, please, Mr. Brown, the video.

23 (State's Exhibit Number Two played in open court.)

24 THE COURT: Madam Foreman, ladies and gentlemen, you
25 have now heard all of the testimony in the trial of this case.

Verdict

477

1 you.

2 OFF THE RECORD

3 (On the record. Question from jury at 3:00 p.m. The
4 following takes place outside the presence of the jury.)

5 THE COURT: One minute, I understand that two jurors
6 want a smoke break. That's fine, but tell the jurors to stop
7 deliberation until they return, be sure as to that.

8 OFF THE RECORD

9 (On the record. Verdict reached at 3:27 p.m. The following
10 takes place outside the presence of the jury.)

11 THE COURT: All right, I understand we have a verdict.
12 all the parties are present. Bring the jury in. I am
13 permitting the alternate to come back to sit with the jury.
14 They have - she, of course, has not participated in any
15 deliberations.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: Madam Foreman, I understand that your jury
19 has reached a unanimous verdict; is that true?

20 FOREPERSON: Yes, we have, Your Honor.

21 THE COURT: If these be unanimous verdicts, so signify
22 by raising your right hand, please. Raise your right hand if
23 this is a unanimous verdict.

24 (All jurors raise right hand.)

25 THE COURT: The jury has so signified. Madam Bailiff,

Verdict

478

1 accept the verdicts and hand them to me.

2 (Complies with request. Court reviews.)

3 THE COURT: Now, ladies and gentlemen, I'm going to
4 have the clerk publish the jury verdicts and I want it
5 abundantly clear that I will permit no remark, no outbursts of
6 any kind. If that should occur, you are going to spend
7 tonight in jail. I just do not permit that sort of conduct in
8 my court and the jury is not entitled to that sort of stuff.
9 Who reads the verdict here? Ma'am?

10 THE CLERK: I do.

11 THE COURT: Okay, come forward. First, I want you to
12 read the verdicts regarding the State versus Michael Lee
13 Cardwell, there being four in number.

14 THE CLERK: As to indictment number 2012-GS-22-560 for
15 sexual exploitation of a minor first degree, we the jury
16 unanimously find the Defendant Michael Lee Cardwell guilty of
17 sexual exploitation of a minor first degree as to **Minor Child 1**
18 Y. As to indictment 2012-GS-22-561, sexual exploitation of a
19 minor first degree we the jury unanimously find the Defendant
20 Michael Lee Cardwell guilty of sexual exploitation of a minor
21 first degree as to ^{Minor Child 2} Y. As to indictment number 2012-GS-
22 22-587 unlawful conduct towards a child we the jury
23 unanimously find the Defendant Michael Lee Cardwell guilty of
24 unlawful conduct towards a child as to ^{Minor Child 2} Y. As to
25 indictment 2012-GS-22-588 as to unlawful conduct towards a

Verdict

479

1 child we the jury unanimously find the Defendant Michael Lee
2 Cardwell guilty of unlawful conduct towards a child as to
3 Minor Child 1 Y.

4 THE COURT: And these are the four verdicts as to
5 Sarah Denise Cardwell. Please publish.

6 THE CLERK: As to indictment number 2012-GS-22-558
7 sexual exploitation of a minor first degree we the jury
8 unanimously find the Defendant Sarah Denise Cardwell guilty of
9 sexual exploitation of a minor first degree as to Minor Child 1
10 Y. As to indictment 2012-GS-22-559 sexual exploitation of a
11 minor first degree we the jury unanimously find the Defendant
12 Sarah Denise Cardwell guilty of sexual exploitation of a minor
13 first degree as to ^{Minor Child 2} Y. As to indictment number 2012-GS-
14 22-585 unlawful conduct towards a child we the jury
15 unanimously find the Defendant Sarah Denise Cardwell guilty of
16 unlawful conduct towards a child as to ^{Minor Child 2} Y. As to
17 indictment number 2012-GS-22-586 unlawful conduct towards a
18 child we the jury by unanimous consent find the Defendant
19 Sarah Denise Cardwell guilty of unlawful conduct towards a
20 child as to Minor Child 1 Y.

21 THE COURT: Let's see. All right, all right, Madam
22 foreman and ladies and gentlemen, none of you asked to come to
23 court this week and none of you surely asked to serve on this
24 jury, and I personally regret as trial judge that this
25 distinguished group of people of Georgetown County had to

Verdict

480

1 endure that photo document. It was something that we are
2 beginning to see more regularly in this state, but the State
3 of South Carolina in their job of proof beyond a reasonable
4 doubt had to present it to you, and I personally regret that
5 you had to endure it, but you did and you did it faithfully,
6 truthfully and honestly, and I was so impressed with the, with
7 the way that you handled this unsavory material at its best.
8 When I went on the bench 29 years ago, we didn't have this
9 sort of conduct because we didn't have all the internet and
10 the iPhones and this, that and the other, but unfortunately in
11 the last five years really there's been a proliferation of
12 this sort of unsavory conduct. Mr. Wilson, your Attorney
13 General, pursues these things very vigorously, got a special
14 task force to deal with it and we see people on the internet
15 using these vivid portrayals of children in all kinds of acts
16 from all over the world and it's sad.

17 I have no comments to make on this case except to say
18 that the evidence clearly, clearly supports your conviction of
19 guilty as to each charge. Having said that, you were the
20 finders of the facts, you were the decision maker, but I can
21 say as the trial judge that, and ruled on that, that there was
22 sufficient evidence as to all charges to give to you 12 good
23 folks of Georgetown County to make the decision of whether or
24 not the State of South Carolina has proved it beyond a
25 reasonable doubt. I want to thank Ms. Candice and the

Verdict

481

1 Solicitor's Office for bringing this case to the attention of
2 the voters of Georgetown County in the 15th Circuit. You do
3 our communities and the children great service in pursuing
4 this.

5 Additionally, I want to thank the attorneys for the
6 Defendants who were appointed to represent them and you gave
7 the very best.

8 MR. GOUDE: Thank you, Judge.

9 THE COURT: I will hear any arguments after I
10 discharge the jury.

11 MR. GOUDE: Yes, sir. I was just thanking you for the
12 compliments, Judge.

13 THE COURT: Well, thank you, but I've often said when
14 I see wonderful defenses at no cost to the Defendant
15 themselves, paid for by the taxpayers of South Carolina, I'm
16 proud of our judicial system that provides such services, and
17 I thank Mr. Goude and Mr. Fox for their services in the case.
18 This case was excellently tried by the Solicitor and by both
19 attorneys and by your efforts you helped this jury reach the
20 verdicts that they did.

21 I am now in a position to excuse you for the day and for
22 the rest of the week, and I will impose sentence in just a
23 moment. You may leave at this time if you care to or you may
24 remain in the courtroom for further proceedings, but if you
25 care to leave you do so - anybody care to leave do so at this

Motions

482

1 time.

2 Madam Foreman, come forward, please. Let's take a short
3 break. Counsel for the State and the Defense, join me in
4 chambers a moment.

5 MS. LIVELY: Yes, sir.

6 THE COURT: And I'll hear any motions regarding the
7 case as soon as we get back.

8 OFF THE RECORD

9 (On the record.)

10 THE COURT: Gentlemen for the Defendants in the
11 previous case, prior to sentencing I'll be glad to hear any
12 motions at this time, no need to wait ten days. I'll never be
13 more familiar with the facts than I am now. What says you for
14 the Defendant, Michael, please?

15 MR. GOUDE: Judge, if it's fine with the Court, I'll
16 go first.

17 THE COURT: Yes, sir.

18 MR. GOUDE: On Sarah Cardwell, Judge, we would make a
19 motion for a new trial and I've got about nine different
20 reasons, Judge. The first reason is the Court and I want to
21 make - ask Grace, the court reporter, if she has as a Court
22 Exhibit our - the Defendant's request to charge number three?
23 Judge, I would offer these.

24 THE COURT: What was that request to charge?

25 MR. GOUDE: That was the one about asking the Court to

Motions

483

1 charge that without more it's not a crime to be nude or naked
2 in your own home. We had requested that one and the Court ---

3 THE COURT: I declined to do that.

4 MR. GOUDE: We would ask the Court to mark that as an
5 appellate exhibit so it will be in the record.

6 Judge, and so, our first motion for a new trial is that
7 we had requested that the Court charge that as a jury charge
8 and the Court has declined or denied the charge, so we list
9 that as a grounds for a new trial.

10 THE COURT: I understand. Denied. Go ahead.

11 MR. GOUDE: Judge, the second ground for the new trial
12 would be that we had requested the Court charge South Carolina
13 code 16-15-130 the indecent exposure statute which basically
14 said that it was illegal to be naked in public. Therefore, we
15 were going to argue it was not illegal to be nude in ---

16 THE COURT: I denied that. Your motion there is
17 respectfully denied.

18 MR. GOUDE: Judge, we have attached that statute as a
19 Court Exhibit so that will be part of the record.

20 THE COURT: Well, several reasons I denied it. It
21 did not contain - this case never contained the elements of
22 indecent exposure, which is by definition exposure in a public
23 place. This was not a public place.

24 MR. GOUDE: Thank you, Judge, and Judge, our next
25 grounds for our motion for a new trial is that we had

Motions

484

1 requested that the Court read the entire statute 16-15-395,
2 which was the sex exploitation in the first degree, which we
3 were convicted of. We had requested the Court read all of
4 paragraph A, which had one, two, three, four different types
5 of ---

6 THE COURT: And the record will reflect that the
7 Solicitor clearly said that she was not relying on any of them
8 and relying as to that section on masturbation.

9 MR. GOUDE: Thank you, Judge. Judge ---

10 THE COURT: And I declined to do the other on the
11 grounds it would simply confuse the jury because they were
12 relying on the one element of masturbation and whatever,
13 whatever's involved in sexual activity that our Court may
14 determine.

15 MR. GOUDE: Thank you, Judge.

16 THE COURT: I frankly don't, I frankly think that as
17 to those definitions that does not exclude other possible
18 definitions of sexual activity; however, in this case, however
19 slight, there was some evidence of masturbation, but I would
20 conclude that our courts might clearly say that there's other
21 forms of sexual activity that could involve children not
22 involving those further definitions in the statute, but I, I
23 respectfully decline to do that because the Solicitor clearly
24 said we were concerned with masturbation only. Proceed, and I
25 charged them that.

Motions

485

1 MR. GOUDE: Thank you, thank you, Judge, and that is
2 our next grounds for the motion for the new trial which is
3 that the Defense had requested that the Court read the entire
4 statute 16-15-375-5 which defines sexual activity, and as the
5 Court just stated it had one, two, three, four, five, six, si-
6 types of sexual activity were illegal. We were asking that
7 the Court charge that as we explained before so the jury would
8 know the gist of the type of acts that the legislature had
9 prohibited and the Court had declined to charge all those
10 other elements other than, A, the masturbation, and that's our
11 ground for the motion for the new trial.

12 THE COURT: This is as to the exploitation case?

13 MR. GOUDE: Yes, sir.

14 THE COURT: Yes, sir. There's no sexual activity
15 language in the other charge.

16 MR. GOUDE: Thank you, Judge. Judge, our next motion
17 for the new trial was the Defense had made a motion to
18 suppress the video and the computer on the basis of the
19 illegal search and seizure and the Court had denied our motion
20 and we ask for a new trial on the grounds that we stated in
21 our motion for - in our motion to suppress at the beginning of
22 the case.

23 THE COURT: I denied that because the evidence showed
24 that that computer was being shown in full view and the
25 officer - police who happened to see it, just happened to

Motions

486

1 stumble across it and saw it in plain view. There's no search
2 and seizure necessary when an officer sees something in plain
3 view that he and everybody else passing by could see. It was
4 open to whoever entered that door.

5 MR. GOUDE: Thank you, Judge.

6 THE COURT: Yes, sir. I deny that motion.

7 MR. GOUDE: Judge, our next motion was the defense had
8 objected to the admission of the still photographs, the
9 Prosecution's exhibits which were taken from the video. We
10 objected that they were misleading and not in context, and the
11 Court had admitted those photographs into evidence over the
12 Defense objection and we list that as a grounds for a motion
13 for a new trial.

14 THE COURT: The record will reflect that in admitting
15 that still photograph, I charged the jury that they would
16 consider it in the context of the entire video. That being
17 what was said, I respectfully deny that.

18 MR. GOUDE: Your Honor, thank you, sir. We had - also
19 we had made a motion in limine during the case asking that the
20 Defendants be allowed to testify to a number of photographs
21 that we think are made Court Exhibits and I'll clarify that
22 with Grace, one set of photographs being the photographs of
23 Sarah's family from the birth of the children up to the time
24 the DSS took the children, another set of photographs being
25 photographs of children and families naked that were taken out

Motions

487

1 of Georgetown County library books that we were going to offer
2 to show that it's not illegal to be nude, it's not illegal for
3 children and families to be nude ---

4 THE COURT: Well, those pictures that you proposed to
5 introduce were taken in a situation not included in the facts
6 in this case, and therefore, in my view, were totally
7 irrelevant. Most of those pictures were probably - I don't
8 know where they were, but I, had no bearing in this case.

9 MR. GOUDE: Thank you, Your Honor. We've got two
10 left, Judge, two grounds. The next ground is that in the
11 video that was put into evidence of which the client was
12 convicted of the sexual exploitation and the unlawful conduct,
13 it showed the Defendant Michael Cardwell and the child ^{Minor Child 1}

14 grabbing their nipples. We had offered a video taken on
15 televised, television shows that were on the internet and had
16 put a video offered in that Mr. Cardwell had testified that
17 that's where he and the child ^{Minor Child 1} had seen ultimate fighting
18 championship boxers in the ring grabbing their nipples and
19 that's where the tweaking of the nipples came from, and the
20 Court had denied to let that into evidence. So, we ask that
21 that be a basis for the motion for the new trial.

22 THE COURT: No, sir. The contents on some
23 professional wrestling team showing their nipples clearly is
24 not consistent with the testimony in this case where that
25 occurred with two naked children, naked man and a naked woman,

Motions

488

1 totally different, no relation.

2 MR. GOUDE: Judge, I just - I would just add to that
3 something that - I wasn't able to add before because it didn't
4 have it until closing argument. I note that the Prosecutor in
5 closing argument referred to the nipple tweaking and Mr.
6 Cardwell essentially being a falsehood a dozen times or more,
7 which if we'd have put that video into evidence or been
8 allowed to that that ---

9 THE COURT: I would suggest to you that anybody heard
10 his testimony would - could conclude that it was ridiculous.
11 When he, was he - when he - it's for the jury to determine,
12 not me, but I don't believe many of them believed that he -
13 that a child pulled his pants off.

14 MR. GOUDE: Thank you, Your Honor. Judge, the last
15 motion ---

16 THE COURT: That was for the jury to determine, but I
17 ---

18 MR. GOUDE: The last motion, the last motion that we
19 have is the Prosecution had put in the still photographs that
20 were taken from the video which the Defense said was out of
21 context and the Defense requested that the Court not allow the
22 still photographs to go to the jury without also letting the
23 actual video that my client was charged with taking go to the
24 jury, and the Court declined that and did let the still
25 photographs go to the jury and the video was not allowed to go

Motions

489

1 into the jury room even though they did see it later.

2 THE COURT: No, sir, the video was allowed to go in
3 the jury room, except that not having the facility to show it
4 we told the jury that it was in evidence and if they wanted to
5 see it they could come out here and listen to it. That video
6 was before the jury for their consideration because they sent
7 word to me that they wanted to see it again and I showed it to
8 them in your presence.

9 MR. GOUDE: That's correct, Your Honor.

10 THE COURT: So, don't tell me it wasn't before them.
11 It was.

12 MR. GOUDE: I was just saying it did not go back to
13 the jury room with them, but anyway, Judge, those are our
14 motions for a new trial.

15 THE COURT: All right, sir. Denied, but I'll be glad
16 - for the record let me hear from you, ma'am. Ms. Candice?

17 MS. LIVELY: Your Honor, I just believe that this jury
18 by reviewing the video on their own as well as through the
19 trial of the case as well as all the evidence they obviously
20 considered everything, took everybody's testimony into
21 consideration, thought about it for a couple of hours in
22 coming back with their verdict. I completely stand behind
23 their verdict and believe that it's fair and I have, I agree
24 with Your Honor's rulings on these issues and will not argue
25 at all, and just ask at this time that we move forward with

Motions

490

1 sentencing. Thank you, Your Honor.

2 THE COURT: My view is, having seen it, and I had no
3 view till I saw it, and still that's the jury's consideration,
4 I don't believe there's a jury in South Carolina that could
5 look at that video and do differently from what this jury did.
6 It was simply and absolutely appalling, and the jury by their
7 verdict concluded so, but it was the jury's verdict, not mine.
8 All right.

9 MR. FOX: Your Honor.

10 THE COURT: Yes, sir?

11 MR. FOX: I need to put my motions on the record, also.

12 THE COURT: All right, sir.

13 MR. FOX: On behalf of Mr. Cardwell. Your Honor, I
14 would simply on behalf of Michael Cardwell renew - make a
15 request for a new trial. I would renew the objections that we
16 were, we made during the trial and those were precisely the
17 same ones that Mr. Goude just placed on the record. We would
18 adopt each of those objections and Mr. Goude's arguments as
19 part of our motion with the very small addition that with
20 regard to the video that we attempted to introduce where Mr.
21 Cardwell testified about touching his nipples and the fighting
22 on TV and all that, that I would like there - I think it was
23 part of my objection during the trial that we felt it was
24 error for Your Honor, understanding your ruling, but not to
25 even look at the video before - look at our proffer before

Sentencing

491

1 making your ruling. We believe that it was self-explanatory
2 and would have in fact been relevant and supported our
3 argument on that point, but for all of the reasons we've
4 articulated ---

5 THE COURT: My statement, my statement will stand as
6 my statement today in denying that, but you're protected on
7 the record.

8 MR. FOX: Yes, sir. Thank you, Your Honor.

9 THE COURT: All right, sir. I need some sentencing
10 sheets.

11 I have before me the indictment of unlawful conduct
12 towards a child wherein the jury found the Defendant Michael
13 Cardwell guilty involving the child Minor Child 1 and to this
14 indictment it is the judgment and sentence of the Court that
15 Michael Lee Cardwell be sentenced to a period of two years. I
16 have before me indictment ending in 588 - 587 involving
17 Michael Lee Cardwell upon the charge of unlawful conduct to a
18 child, the victim in this indictment being Minor Child 2 be the
19 sentence and judgment of the Court that this Defendant as to
20 this indictment be sentenced to a period of two years
21 concurrent with the previous indictment and you have that
22 number, concurrent to 588. Okay, I'm dealing with an
23 indictment ending in 560, which again is the State versus
24 Michael Lee Cardwell involving the jury's finding of guilt as
25 to sexual exploitation of a minor in the first degree. As is

Sentencing

492

1 made and provided by the statute, it is the sentence and
2 judgment of the Court that the Defendant Michael Cardwell be
3 sentenced to a period of incarceration of three years
4 consecutive to the indictment ending in 588, it be my purpose
5 in that Michael Cardwell shall serve a total of five years.
6 In addition to this sentence, which is mandatory, that section
7 also provides that you, Michael Cardwell, will sign as a
8 sexual offender and does it provide the other?

9 MS. LIVELY: It does, Your Honor, both unlawful conduct
10 and sexual exploitation require central registry. There's a
11 box on the sentence sheet for that.

12 THE COURT: Central registry.

13 MS. LIVELY: Yes, sir.

14 THE COURT: But the - this particular charge involves
15 sexual registry?

16 MS. LIVELY: Yes, sir, lifetime sex offender registry
17 on the exploitation.

18 THE COURT: Is, is that on the, on the - is there a
19 box on the form for that?

20 MS. LIVELY: Not for that, Your Honor. It's, it's
21 automatic in the statute. It's one of those sexually violent
22 offenses.

23 THE COURT: But I, I want my - my sentence is going to
24 also show it.

25 MS. LIVELY: Yes, sir. Thank you.

Sentencing

493

1 THE COURT: The next indictment still involves Michael
2 Lee Cardwell where the jury found him guilty of sexual
3 exploitation of a minor first degree ending in 561. It is the
4 judgment and sentence of the Court that he be confined as
5 provided by statute as to this charge for a period of three
6 years. That is concurrent to 560 wherein I gave him three
7 years. It's clear now that I've given him two years on the
8 earlier charge and three on the other for a total of five
9 years. The other charges are to run concurrent and he will
10 register as a sexual offender and will - what is the
11 definition of the other, other?

12 MS. LIVELY: It's the central registry for abuse
13 through DSS, Your Honor.

14 THE COURT: And that's on, on the sentence sheet?

15 MS. LIVELY: Yes, sir.

16 THE COURT: All right, let's go through the other. I
17 want to congratulate my law clerk in keeping me straight
18 dealing with eight separate indictments.

19 I now have before me the four indictments involving Sarah
20 Denise Cardwell and this indictment number is 586. The jury
21 having found him or her guilty it is the judgment and sentence
22 of this Court that she be confined upon this indictment for a
23 period of two years.

24 I now have before me an indictment ending in 585, the
25 State versus Sarah Cardwell, again involving the jury's

Sentencing

494

1 finding of unlawful conduct to a child. It is the judgment
2 and sentence of this Court that Ms. Cardwell be confined for a
3 period of two years which is concurrent to the previous
4 indictment 586. I'm now dealing with sexual exploitation 558,
5 the State versus Ms. Cardwell where the jury found her guilty
6 of sexual exploitation of a minor. It is the judgment of this
7 Court that in accordance with such section, statute made and
8 provided that she be confined for a period of three years
9 consecutive to the previous indictment of two years, and she
10 is required to register as a sexual offender. It's
11 consecutive to the two years given on 586, all right, also
12 attend the registry.

13 Now, I now have before me indictment 559 Sarah Cardwell
14 sexual exploitation of a minor first degree. In accordance
15 with such section made and provided I am going to sentence her
16 to three years and that is concurrent to 558, which is the
17 previous indictment for sexual exploitation. Again, it is my
18 purpose as to each Defendant to serve two years on one charge
19 and three years on the other for a total of five years. Any
20 questions about that? What say the State?

21 MS. LIVELY: None, Your Honor.

22 THE COURT: What say the Defense?

23 MR. GOUDE: No questions, Your Honor.

24 MR. FOX: None, Your Honor.

25 THE COURT: All right, now, I'm fully aware and I want

Sentencing

495

1 the record to reflect that the statutes provide that as to th
2 most serious charge it shall be consecutive to any other
3 charge, and I have made it consecutive as the statute
4 provides, permitting the other charge to run concurrent, but
5 there is a consecutive sentence imposed so that the appellate
6 court will understand what we're doing. All right, thank you,
7 gentlemen.

8 MR. GOUDE: Thank you, Your Honor.

9 MR. FOX: Thank you, Your Honor.

10 THE COURT: The case was well and professionally tried
11 by all concerned.

12 MR. GOUDE: Thank you, sir.

13 (Adjourned.)

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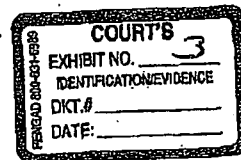
23

24

State of South Carolina

County of GEORGETOWN

SEARCH WARRANT



OFFICER: Inv. PHILLIP HANNA

DATE: 2-9-2011

STATE OF SOUTH CAROLINA } AFFIDAVIT

COUNTY OF GEORGETOWN

Personally appeared before me, one Investigator PHILLIP HANNA

Who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-40, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

IMAGES DEPICTING MINORS ENGAGED IN SEXUAL ACTIVITY AND/OR IMAGES OF MINORS DEPICTED IN LEWD AND LASCIVIOUS MANNER. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEO, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

A PINK GATEWAY LAPTOP COMPUTER MODEL SA6 SERIAL NUMBER LXW220X003835138C92500. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEOS, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY. THE COMPUTER IS CURRENTLY IN THE POSSESSION OF THE EVIDENCE CUSTODIAN WITH THE GEORGETOWN COUNTY SHERIFF'S OFFICE, LOCATED AT 430 N. FRASER STREET, GEORGETOWN SC 29440. THE COMPUTER WAS SEIZED BY INV. PHILLIP HANNA, AN EMPLOYEE OF THE GEORGETOWN COUNTY SHERIFF'S OFFICE.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

SEE ATTACHED AFFIDAVIT.

Sworn to and Subscribed before me

This 9 day of Feb, 2011

Signature of Judge

(L.S.)

Phillip Hanna
Affiant

Address 430 N Fraser St
Georgetown, SC
843-546-5102

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF GEORGETOWN

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF GEORGETOWN

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
To be searched

A PINK GATEWAY LAPTOP COMPUTER MODEL SA6 SERIAL NUMBER LXW220X003835138C92500. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEOS, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY. THE COMPUTER IS CURRENTLY IN THE POSSESSION OF THE EVIDENCE CUSTODIAN WITH THE GEORGETOWN COUNTY SHERIFF'S OFFICE, LOCATED AT 430 N. FRASER STREET, GEORGETOWN SC 29440. THE COMPUTER WAS SEIZED BY INV. PHILLIP HANNA, AN EMPLOYEE OF THE GEORGETOWN COUNTY SHERIFF'S OFFICE.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

IMAGES DEPICTING MINORS ENGAGED IN SEXUAL ACTIVITY AND/OR IMAGES OF MINORS DEPICTED IN LEWD AND LASCIVIOUS MANNER. AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, A SEARCH FOR ANY AND ALL SAVED, ARCHIVED OR DELETED DATA INCLUDING BUT NOT LIMITED TO VIDEO, E-MAILS, LEDGERS, LISTS, RECORDS, DOCUMENTS OR PHOTOGRAPHS TAKEN FROM, DERIVED FROM OR CONTAINED IN THE HARD DRIVE COMPONENTS AND STORAGE MEDIA DESCRIBED IN THE ABOVE LISTED SYSTEM PERTAINING TO THIS INVESTIGATION, CHILD PORNOGRAPHY.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

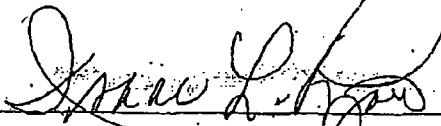
A written inventory of all property seized pursuant to this Search Warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Georgetown, S.C.

Feb 9 2011



(L.S.)

Signature of Judge

RETURN

I received the attached Search Warrant Feb 9, 2011 and have executed it as follows:

On Feb 10, 2011 at 11:05 o'clock A M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Laptop Computer

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Due to the intense nature and exhaustive amount of information that may be stored in the device and the necessary amount of time required to complete the analysis of this information, an amended Return copy of the Search Warrant will be forwarded to the issuing judge as soon as possible with regard to the results of the analysis.

This inventory was made in the presence of

AND

Jerry Roberts (Charleston PD)
Phillip Hanna

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

Day of _____, 20____

Phillip Hanna

(Signature of Officer Executing Warrant)

(L. S.)

Signature of Judge

AFFIDAVIT

On 12/10/2010 I met with Chief Ron Douglas at the Johnsonville PD in reference to an illegal video found on a laptop computer. Upon my arrival Chief Douglas informed me that he had seen a home made video on a laptop computer that was being worked on at David Marsh's shop Wed. 12/01/2010. Chief Douglas stated that the home made video showed illegal nude images of a young female child and a young male child. Chief Douglas informed me that he believes the incident occurred in Georgetown County and that's why he requested for our assistance. I advised Chief Douglas that I would need to speak with the person who had the computer and examine the images to confirm they were illegal. Chief Douglas advised he would have Mr. Marsh come to the PD to speak with me about this incident.

David Marsh met with Chief Douglas and I at the PD. Mr. Marsh also delivered to me the computer in which the illegal video was stored on. Mr. Marsh stated that back during the beginning on November 2010 he met with Sarah Pope at her mother's residence in Georgetown County to pick up her laptop computer so that he could fix it. According to Mr. Marsh he had been seeing Pope since around October 2010 and knew she had children and thought that she had stopped seeing her boyfriend Michael Cardwell. Mr. Marsh stated that Pope's computer had been at his shop since NOV. until Dec. 1, 2010 when he began working on it. Mr. Marsh stated that Chief Douglas just happen to be there because he (Marsh) does a lot of work for law enforcement as well. Mr. MARSH stated after he got Pope's laptop powered up he found in a stored file section several pictures of Popes children. Mr. Marsh also stated he found a video that showed Pope's son C. Y. and daughter A. Y. dancing around nude. According to Mr. Marsh the video was being recorded by Sarah Pope because he recognized her voice and Michael Cardwell was also in the video dancing around nude with the children. Mr. Marsh informed me that he had made a copy of the video for us because of the computer not working properly. This video was also turned over to me for evidence. While still at the Johnsonville PD I viewed the copy of the video. The video clearly showed a young male and female child dancing around nude along with a w/in adult dancing around nude with them. Mr. Marsh stated he recognized the male adult as definitely being Michael Cardwell and Marsh claims the female voice heard during the video coming from the person doing the recording is Sarah Pope. Mr. Marsh stated he couldn't tell me where the video was recorded at but believes it could have been at the residence where Sarah lived located on _____ Rd in Georgetown County. The recovered laptop was a pink Gateway model SA6 serial #LXW220X003835138C92500. The copy of the video was provided to me on a FUJIFILM CD-R. I feel that there could possibly be more nude images of these children stored on this computer.

Phillip Hanna 2/2/2011
Investigator Phillip Hanna

Georgetown county sheriff's office

AMENDED SEARCH WARRANT RETURN

DATE: 02/22/2011

TIME: 10:50AM

FROM: CHARLESTON POLICE DEPARTMENT DIGITAL
EVIDENCE UNIT

OFFICER: JERRY ROBERTS

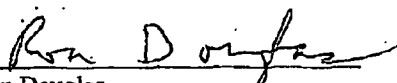
RECOVERED ITEM(S): A FORENSIC IMAGE OF ONE
GATEWAY LAPTOP COMPUTER SERIAL NUMBER
#LXW220X003835138C92500

#12101200

December 13, 2010

On 12-8-2010 at approximately 8:00pm I delivered some packages to Shaun Marsh at his office that were delivered to the police department by FedEx. While there, I noticed a photo on a computer screen that he was working on that appeared to be a male child with nothing on but an adult ladies' bra. I then asked Shaun about what I had seen and he stated he was backing up the hard drive on a laptop that he was working on. I then asked to see the file that had just been backed up and he searched until finding it and played it for me. I saw a male and female child dancing nude and recognized them as two children that I had seen with Shaun in the City Park recently as he was assisting with decorating a large Christmas Tree. Shaun had told me on that day that the children belonged to his girlfriend and they were staying with him for the day. Also dancing nude on the video was a white male in his forties that I did not know. When questioned, Shaun stated that the male was the father of another child with his friend, Sarah Pope, who owned the computer containing the images. Shaun further stated that Sarah, the children and the male in the video all live in Georgetown County.

Being very disturbed by what I had seen and knowing Shaun since he was a baby, I instructed him to secure the computer until I could contact someone with Georgetown Sheriff's Office to request assistance with this matter. The following day I contacted Georgetown Sheriff's Office and discussed the matter with Captain Owens who agreed to have an Investigator meet with Shaun and me on the following day (Friday, December 10th). I also instructed Shaun to make a copy of the video since the computer would sometimes not start up. At 3pm, Investigator Phil Hanna arrived and interviewed Shaun before viewing only a small portion of the video in question. At that point, he stated he had seen enough and gave Shaun a receipt for the computer which he took possession of. Investigator Hanna stated he would conduct an investigation and requested that I write a statement outlining my knowledge of this incident.


Ron Douglas
Chief of Police
City of Johnsonville
(843) 386-3500

12501

12/13/2010

On 12/08/2010 I, David LeShawn Marsh, was working on some computers in my office. Chief Ron came over to drop off some packages left at the Police Dept. for me. While I was storing packages in the garage, Ron called me back in to the office and said for me to look at one of the computers. It was a computer I was backing up because it had problems running and I was trying to save the files. Ron said he saw a file come across the screen that caught his attention. He asked me whose computer it was. It belongs to the girl I was trying to date, Sarah Pope. He asked if I would look at one of the last files backed-up, and we saw it was a video. Upon request of Ron, We watched the video. I saw Sarah's 2 oldest children, her current boyfriend Michael nude and I heard Sarah in the background directing actions in front of the camera. I know Michael from seeing him on Sarah's Facebook page holding their youngest daughter, R[REDACTED]. Ron asked me to secure and store it for him. I shut it down, and secured it in the cabinet as he asked. Then Ron called me on Friday(12/10/2010) to bring the computer and a copy of the video on DVD, to the Johnsonville Police Dept. I met Investigator Phillip Hanna from Georgetown Sheriff's Office at the Johnsonville PD. He then interviewed me, lastly he saw some of the video, and then requested to take the computer and video with him.

David LeShawn Marsh

David LeShawn Marsh Date 12/13/2010

Georgetown County Sheriff's Department

RECEIPT FOR PROPERTY

Date 12-10-2010Case No. 12101900Time 1545 HRS.Physical Evidence ☒Personal Property ☐Recovered Property ☐Found Property ☐Name: DAVID LESBANEY MARSH Address: 212 E. BROADWAY ST. JOHNSTOWN S.C.

QUANTITY	NAME OF ARTICLE AND DESCRIPTION	SERIAL NO.
1	GATWAY PINK COMPACT model SAG	#LXW220X00303
	~~DAVID LESBANEY MARSH~~	~~9092500~~

Circumstances of release Recovered For EvidenceRelease to Phil HannaAddress 420 N. FRASER ST. GEORGETOWN S.C.Released by [Signature]

Rank

Approved by

Rank

All recovered property and/or personal property turned over to this department not picked up within sixty days, becomes the property of this department. This does not include items taken as evidence of a crime.

RECEIVED THE ABOVE DESCRIBED PROPERTY

Signed [Signature]Phone 843-503-16528Date 12-10-2010

(TYPE OR PRINT ONLY)



CHARLESTON POLICE DEPARTMENT

Digital Evidence Unit

1023 Wappoo Road, A-15, Charleston, SC 29407 Phone (843) 769-8240 Fax (843) 769-8242



Case Summary Report

TO (Agency Name and Address):

Investigator Hanna

Georgetown County Sheriff Office

430 N. Fraser St

Georgetown, SC 29442.

DATE: 04-04-2011

DEU LAB NO. 2011-012

AGENCY CASE NO: GCS012101900

EXAMINED BY: J. Roberts

SUBMITTED BY: P. Hanna

TYPE OF CASE: Child Pornography

DATE SUBMITTED: 02-10-2011

SUBJECT(S):	Michael Lee Cardwell

TYPE OF SERVICE REQUESTED: Media examination

ITEMS PROCESSED:

[illegible]

ITEMS NOT PROCESSED:

Item Number	Item Identifier	Item Description (Include system ID if removed from computer or digital evidence item)	Reason

DIGITAL FINAL REPORT PROVIDED? Yes ☒ No ☐ (If No, explain in Summary Results)

SUBMITTED MEDIA ARCHIVED? Yes ☐ No ☒ (If No, explain in Summary Results)

Medium ☐ CD/DVD ☐ Hard Drive DEU/SN:

COPIES TO:

THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION.

This report represents a true and accurate result of my analysis on the item(s) described.

Analyst Name:

Analyst Signature



Case Summary Report Continued

DEU LAB NO.: 2011-012
AGENCY CASE NO.: GCSO12101900

RESULTS OF SERVICE REQUEST:

Acquisition Software Used:
Access Data Imager v3.0

Date:
02/18/2010

Results:
.Ex files

Analysis Software Used:
Access Data Forensic Toolkit v1.8.1.6

Date(s) of Analysis: 02-10-2011 to 4-1-2011

Summary Results:

On 02/10/2011 analysis began on DEU 2011-012.

Item number 1 was submitted to the DEU Lab for analysis. Item number 1 was acquired using a tableau forensic SATA Bridge IBEE write blocker DEU X110, preventing drive writes to the original drive.

The following results were noted:

Item 1:

2 files of interest

1949 images of interest

1 KFF file (file identified by FTK to be "know" child pornography)

71 mov files

31 other files of interest

1 video observed by PC tech

No archiving of item 1 as the customer did not provide media and was advised. Investigator Hanna was scheduled for case pickup.

Nothing follows

Bookmark

3/31/2011

Report file time zone: America/New_York

Name: KFF file from AccessData

Comment:

File Count: 1

File: 12 year old having hard sex reelkiddymov ddoggprn child kid porn fuck kiddie.mpeg

Extension: mpeg

File Type: MPEG 2

Category: Multimedia

Created: 3/18/2009 7:34:31 PM

Modified: 3/18/2009 7:36:20 PM

Accessed: 3/18/2009 7:34:31 PM

Logical Size: 5,902,150

Physical Size: 5,902,336

Recycled:

Carved:

Indexed: Name only (disregardable file type)

MD5: ECF33F48909CEC8788D07ACB01CBA3FF

Exported as: 259671.mpeg

AccessData Forensic Toolkit®

file://D:\KFF file from AccessData\11.htm

4/11/2011

Bookmark

3/31/2011

Report file time zone: America/New_York

Name: video observed by pc tech

Comment:

File Count: 1

Files: sara's camera 025.MOV

Extension: MOV

File Type: Apple Quicktime File

Category: Multimedia

Created: 1/18/2007 9:04:00 AM

Modified: 1/18/2007 9:04:00 AM

Accessed: 1/18/2007 9:04:00 AM

Logical Size: 89,455,862

Physical Size: 89,456,640

Recycled:

Carved:

Indexed: Full

MD5: 2EBBE0CBFCAB97EBE1E638150E8341E0

Exported as: 208125.MOV

AccessData Forensic Toolkit®

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2012GS2200587

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

ARREST WARRANT NUMBER

2012GS2200587

CDR: 2481 §63-05-0070

DOI: 1/18/2007

THE STATE

VS.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB:

SSN:

W / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

UNLAWFUL CONDUCT TOWARDS A
CHILD

VERDICT

Guilty

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

10/31/2012

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

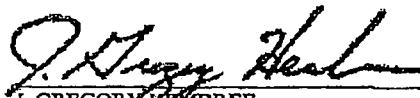
At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

CDR: 2481 63-5-0070

That Michael Lee Cardwell did in Georgetown County between January 2007 and November 2010²⁰¹⁰, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, ^{Minor Child} Y., date of birth [REDACTED], place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause or cause to be done bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child, in violation of Section 63-5-70, 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

233

COUNTY OF Georgetown
STATE VS.

Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42

DOB: SS#:

Address: PO Box 2042

City, State, Zip: Georgetown, SC 29442

DL#: 008702236 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

INDICTMENT/CASE#: 2012GS2200587

A/W#: 2012GS2200587

Date of Offense: 1/1/2007

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice

SCB12123

SC Bar#

Defendant

Attorney for Defendant

15123

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS2200588☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforcement Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 30-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(U) (Vehicle Assessment) \$40/en \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning 1 mo after release

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2012GS2200588

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

ARREST WARRANT NUMBER

2012GS2200588

CDR: 2481 §63-05-0070

DOI: 1/18/2007

THE STATE

VS.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB:

SSN:

W / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

UNLAWFUL CONDUCT TOWARDS A

CHILD

VERDICT.

Guilty

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

10/31/2012

Shirley Fowler Akeny

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

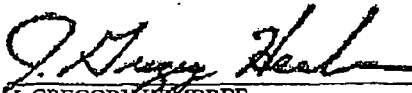
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CDR: 2481 63-5-0070

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.

Michael Lee Cardwell

AKA:

Race: WHITE Sex: M Age: 42

DOB: SS#:

Address: PO Box 2042

City, State, Zip: Georgetown, SC 29442

DL#: 008702236 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

INDICTMENT/CASE#: 2012GS2200588

A/W#: 2012GS2200588

Date of Offense: 1/1/2007

S.C. Code §: 63-05-0070

CDR Code #: 2481

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☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively Candice

SCB12123

SC Bar#

Defendant

Attorney for Defendant

15123

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 20.00 beginning 1 mo after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2012GS2200561

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

ARREST WARRANT NUMBER

2012GS2200561

CDR: 0379 §16-15-0395(D)

DOI: 1/18/2007

THE STATE

vs.

MICHAEL LEE CARDWELL

1096 INDIAN HUT RD.

GEORGETOWN, SC 29440

DOB: 1/19

SSN: - - -

W / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

SEXUAL EXPLOITATION OF A MINOR,
FIRST DEGREE

VERDICT

Guilty

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

10/31/2012

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

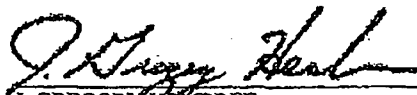
SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

CDR: 0379 16-15-0395(D)

That Michael Lee Cardwell did in Georgetown County during the period of January 2007, through November 2010, use, employ, induce, coerce, encourage, facilitate or permit ^{Minor Child} Y., date of birth [REDACTED], a minor under the age of ten (10) years, to engage in sexual activity for a live performance, in violation of Section 16-15-0395(D), S. C. Code of Laws, 1976, as amended.

↓
or for the purpose of producing material containing a visual representation of sexual activity

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

239

COUNTY OF Georgetown
STATE VS.
Michael Lee Cardwell

AKA:
Race: WHITE Sex: M Age: 42

DOB: -19 SS#:

Address: PO Box 2042

City, State, Zip: Georgetown, SC 29442

DL#: 008702236 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Sex / Sexual exploitation of a minor, First degree

INDICTMENT/CASE#: 2012GS2200561

A/W#: 2012GS2200561

Date of Offense: 1/1/2007

S.C. Code §: 16-15-0395(D)

CDR Code #: 0379

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

APPEAR:

Lively, Candice

SCB12123

SC Bar#

Defendant

Attorney for Defendant

15123

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS2200560

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Grace J. Hurley

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 20.00 beginning 1 mo after

\$ _____ paid to Public Defender Fund release

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge Eric S. Smith

Judge Code: 1001

Sentence Date: 10/31/12

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2012GS2200560

The State of South Carolina

County of Georgetown

Candice Lively

11G00377

COURT OF GENERAL SESSIONS

AUGUST, 2012 TERM

ARREST WARRANT NUMBER

2012GS2200560

CDR: 0379 §16-15-0395(D)

DOI: 1/18/2007

THE STATE

vs.

MICHAEL LEE CARDWELL

RD.

GEORGETOWN, SC 29440

DOB: 1/19

SSN:

W/M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Fox, J. Eric

Indictment for

SEXUAL EXPLOITATION OF A MINOR,
FIRST DEGREE

VERDICT

Guilty

J. Gregory Hembree, Solicitor

Foreperson of Grand Jury

Date:

10/31/2012

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on August 22, 2012, the Grand Jurors of Georgetown County present upon their oath:

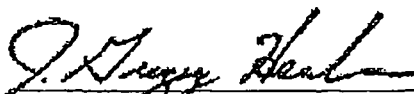
SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

CDR: 0379 16-15-0395(D)

That Michael Lee Cardwell did in Georgetown County during the period of January 2007 through November 2010, use, employ, induce, coerce, encourage, facilitate or permit Minor Child 1 Y., date of birth [REDACTED] a minor under the age of ten (10) years, to engage in sexual activity for a live performance, in violation of Section 16-15-0395(D), S. C. Code of Laws, 1976, as amended.

↓
or for the purpose of producing
material containing a visual
representation of sexual activity

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.

Michael Leo Cardwell

AKA:

Race: WHITE Sex: M Age: 42

DOB: SS#:

Address: PO Box 2042

City, State, Zip: Georgetown, SC 29442

DL#: 008702236 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Sexual exploitation of a minor, First degree

INDICTMENT/CASE#: 2012GS2200560

A/W#: 2012GS2200560

Date of Offense: 1/1/2007

S.C. Code §: 16-15-0395(D)

CDR Code #: 0379

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice

SCB12123

SC Bar#

Defendant

Attorney for Defendant

15123

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/B beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 20.00 beginning 1mo after release

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

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§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Grace L. Hurley

SCCA/217 (03/2011)

Presiding Judge

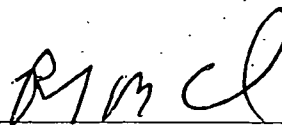
Judge Code: 2041

Sentence Date: 10/31/12

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 his Record on Appeal complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

march 26th, 2014



Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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Melissa A. Fried
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RECEIVED

MAR 26 2014

SC Court of Appeals

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-22-560, 561, 587, 588
Appellate Case No. 2012-213368

RECEIVED

MAR 26 2014

SC Court of Appeals

The State,

Respondent,

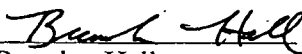
V.

Michael Lee Cardwell,

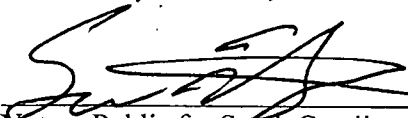
Appellant.

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above-referenced case has been served upon William Blitch, Jr., Esquire, Assistant Attorney General at S.C. Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of March, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of March, 2014:

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

RECEIVED

APR 15 2014

SC Court of Appeals

Case No. 2012-GS-22-560, 561, 587, 588
Appellate Case No. 2012-213368

The State,

Respondent,

v.

Michael Lee Cardwell,

Appellant.

FINAL BRIEF OF APPELLANT

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Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issue on Appeal	3
Statement of the Case	3
Facts	3
Argument.....	6
I. The trial court erred in denying the motion to suppress all video evidence because Mr. Cardwell had a reasonable expectation of privacy in the laptop computer.....	8
II. The trial court erred in denying the motion to suppress the video evidence because the plain view doctrine does not apply and a warrant was required prior to Chief Douglas and Detective Hanna viewing the video.....	11
Conclusion	13

TABLE OF AUTHORITIES

CASES

<u>In re Thomas B.D.</u> , 326 S.C. 614, 486 S.E.2d 498 (Ct. App. 1997).....	13
<u>Narciso v. State</u> , 397 S.C. 24, 723 S.E.2d 369 (2012).....	7
<u>State v. Ballard</u> , 276 P.3d 976 (N.M. Ct. App. 2012).....	8-9
<u>United States v. Barth</u> , 26 F. Supp. 2d 929 (W.D. Tex 1998).....	9, 10
<u>State v. Abdullah</u> , 357 S.C. 344, 492, S.E.2d 344 (Ct. App. 2004).....	13
<u>State v. Brockman</u> , 339 S.C. 57, 528 S.E.2d 661 (2000).....	6-7
<u>State v. Brown</u> , 401 S.C. 82, 736 S.E.2d 263 (2012).....	7
<u>State v. Brown</u> , 289 S.C. 581, 347 S.E.2d 882 (1986).....	13
<u>State v. Bruce</u> , 402 S.C. 621, 741 S.E.2d 590 (Ct. App. 2013).....	8
<u>State v. Gamble</u> , 405 S.C. 409, 747 S.E.2d 784 (2013).....	6-7
<u>State v. McKnight</u> , 291 S.C. 110, 352 S.E.2d 471 (1987).....	8
<u>State v. Robinson</u> , 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012).....	8
<u>State v. Spears</u> , 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011).....	7
<u>State v. Wright</u> , 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011).....	11
<u>United States v. Chan</u> , 830 F. Supp. 531, 534-35 (N. D. Cal. 1993).....	9
<u>United States v. Osunegbu</u> , 822 F.2d 472 (5th Cir.1987).....	10
<u>Walter v. United States</u> , 447 U.S. 649 (1980).....	11, 12

CONSTITUTIONAL PROVISIONS

U.S. Const. amend IV.....	6

STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN DENYING THE MOTION TO SUPPRESS EVIDENCE OF THE VIDEOTAPE ON APPELLANT'S WIFE'S LAPTOP WHEN THE LAPTOP WAS GIVEN TO A COMPUTER TECHNICIAN TO REPAIR, WHERE LAW ENFORCEMENT HAPPENED TO BE AT THE TECHNICIAN'S HOUSE AND SAW A QUESTIONABLE IMAGE FLASH ACROSS THE LAPTOP COMPUTER, WHERE LAW ENFORCEMENT THEN DIRECTED THE TECHNICIAN TO PLAY THE VIDEO IN ITS ENTIRETY WITHOUT OBTAINING A SEARCH WARRANT, AND WHERE LAW ENFORCEMENT INSTRUCTED THE TECHNICIAN TO COPY THE VIDEO AND DELIVER TO ANOTHER OFFICER WHO ALSO WATCHED THE VIDEO WITHOUT A SEARCH WARRANT?

STATEMENT OF THE CASE

On August 22, 2012, the Georgetown grand jury indicted Michael Cardwell on two counts of unlawful conduct towards a child and two counts of sexual exploitation of a minor, first degree. The case proceeded to trial in front of the Honorable Edward B. Cottingham on October 29, 2012. (R. p. 1). Eric Fox represented Mr. Cardwell and Candice Lively represented the State. (R. p. 2). On October 31, 2012, the jury returned a verdict finding Mr. Cardwell guilty on all counts. (R. p. 200, l. 3—R. p. 201, l. 3). The court sentenced Mr. Cardwell to concurrent two-year sentences for the unlawful conduct toward a minor charges, and concurrent three-year sentences for the sexual exploitation of a minor charges. (R. p. 213, l. 11 – R. p. 214, l. 4). The court stated its purpose was for Mr. Cardwell to serve a total of five years. (R. p. 214, ll. 4-5). Additionally, Mr. Cardwell was required to register as a sexual offender. (R. p. 214, ll. 7-12).

FACTS

Mr. Cardwell met Sarah Cardwell, who was then Sarah Young, at the end of 1988 or 1989 when he was a volunteer firefighter. (R. p. 119, ll. 9-14). They began dating in October 2006. (R. p. 122, ll. 4-5). At the time, she had three children from a prior relationship, Minor Child 1, Minor Child 2, and a newborn. (R. p. 122, ll. 6-10). Mr. Cardwell also had two children from a prior marriage (R. p. 122, ll. 11-16). Mr. Cardwell and Mrs. Cardwell moved in

together in 2006 and had a child together. (R. p. 123, ll. 21-25). They later married. (R. p. 117, l. 6).

On an evening in 2007, when Minor Child 1 was seven years old and his sister, Minor Child 2 was six years old, the two children took a bath and ran into the living room naked. (R. p. 113, l. 3, R. p. 126, ll. 7-13, R. p. 127, l. 2). Mr. Cardwell had just gotten home from work and had put on gym shorts. (R. p. 127, l. 2). As the children came out of the bathroom, they ran up to Mr. Cardwell and pulled his shorts down. (R. p. 127, ll. 16-18). Mrs. Cardwell pulled out a video camera and began filming the children and Mr. Cardwell. (R. p. 126, ll. 21-24).

Years later, in November of 2010, Mrs. Cardwell was having problems starting her laptop computer, so she dropped it off with computer technician, David Marsh to be repaired. (R. 47, ll. 6-10). The following month, Chief of Police for the City of Johnsonville, Ron Douglas, went over to David Marsh's business to drop off packages. (R. p. 73, ll. 22-25). When Mr. Marsh left the room to take the packages to the garage, Chief Douglas called Mr. Marsh back wanting to see an image that had just flashed across the screen of Mrs. Cardwell's laptop. (R. p. 49, l. 25—R. p. 50, l. 2). Chief Douglas asked Mr. Marsh about the image and Mr. Marsh explained that the computer was not his. (R. p. 74, ll. 21-25). Chief Douglas came into Mr. Marsh's house which also functioned as his office and asked him to "[p]lease back that up just a little bit." (R. p. 54, l. 10). At the time, Mr. Marsh was backing up information that was being downloaded from Mrs. Cardwell's computer. (R. p. 54, ll. 13-16). As he was backing up the files, he and Chief Douglas saw a still image on the screen of Minor Child 1, a male boy, in a pink bra with nothing else on. (R. p. 54, l. 19—R. p. 55, l. 1). At the top of the image was a play button, and Chief Douglas asked Mr. Marsh to play the video for him. (R. p. 55, ll. 4-9). Mr. Marsh and Chief Douglas viewed a minute of the video and saw Minor Child 1, Minor Child 2, and Mr. Cardwell

in the video. (R. p. 55, ll. 24-25). Chief Douglas later called Mr. Marsh and asked him to make a copy of the video onto a DVD. (R. p. 66, ll. 9-11). Chief Douglas did not have jurisdiction over Georgetown County, so he contacted the Georgetown Sheriff's Office to assist him. (R. p. 75, ll. 22-24, R. p. 80, ll. 16-22). Detective Phillip Hanna of the Georgetown Sheriff's Office was told that there were images of nude children on a computer that was being worked on by Mr. Marsh and they wanted him "to follow up on it to see if they – if it was, in fact, any kind of illegal pictures or videos." (R. p. 81, ll. 4-5). Chief Douglas told Mr. Marsh to copy the video onto a DVD and bring it with the laptop computer to the police department (R. p. 66, ll. 9-16). Upon Chief Douglas's request, Mr. Marsh brought the computer and the DVD over to Detective Hanna who took possession of the items on December 10, 2010. (R. p. 62, ll. 20-21, R. p. 68, ll. 11-15, R. p. 80, l. 22, R. p. 83, ll. 9-10). Detective Hanna viewed the video and contacted the Department of Social Services (DSS). (R. p. 85, l. 1, R. p. 86, ll. 6-7).¹

Prior to trial, counsel for Mrs. Cardwell and Mr. Cardwell moved to suppress the video evidence due to an illegal search and seizure of the laptop computer by Chief Douglas. (R. p. 21, l. 3 – R. p. 23, l. 2). Counsel also argued a motion to suppress due to Detective Hannah's viewing the video and seizing the laptop without a search warrant. (R. p. 27, ll. 20-23). Counsel argued that Mrs. Cardwell had an expectation of privacy in her laptop computer as she had numerous personal pictures on it of her family and did not relinquish her expectation of privacy by asking Mr. Marsh to repair her laptop. (R. p. 21, l. 3—R. p. 25, l. 9). The trial court denied the motion, stating that Mrs. Cardwell had no expectation of privacy when she voluntarily gave the laptop over to Mr. Marsh, the computer was in plain view when Chief Douglas viewed the

¹ The record indicates that Detective Hanna received a search warrant to search the contents of the laptop computer. (R. p. 83, ll. 17-18). The record does not indicate that the same search warrant applied to the DVD handed to Detective Hanna by Mr. Marsh.

image, and there was no search and seizure because at the time the property was in the public domain. (R. p. 21, l. 16 – R. p. 28, l. 4). Defense counsel renewed the motion during trial, asking the trial court once again to suppress the video and anything that was on the computer due to the illegal searches and seizures by Chief Douglas and Detective Hannah. (R. p. 51, l. 19 – R. p. 52, l. 10; R. p. 74, ll. 9-11).² The trial court denied the motion again (R. p. 52, ll. 11-12, R. p. 74, ll. 12-13).

At the end of trial, Michael Cardwell was found guilty of all charges against him (R. p. 200, l. 14 – R. p. 201, l. 3). Defense counsel unsuccessfully moved for a new trial. (R. p. 207, l. 16 – R. p. 208, l. 4). This appeal followed.

ARGUMENT

The trial court erred in denying Mr. Cardwell's motion to suppress the video evidence because Mr. Cardwell had a reasonable expectation of privacy in the laptop computer and its contents and the plain view doctrine is not applicable.

Pursuant to the Fourth Amendment of the United States Constitution, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend IV. Accordingly, the Fourth Amendment protects citizens from unreasonable searches and seizures and requires evidence which is seized in violation of this protection to be excluded or suppressed at trial. State v. Gamble, 405 S.C. 409, 416, 747 S.E.2d 784, 788 (2013). "The Fourth Amendment does not bar a search and

² Counsel for Mr. Cardwell joined in on the motion to suppress the video and the use of the laptop computer for illegal searches by Chief Douglas and Detective Hannah during Mr. Marsh's testimony at trial. The trial judge stated that he accepted any motion made generally as being made by both counsel (R. p. 52, ll. 16-21).

seizure, even an arbitrary one, effected by a private party on his own initiative. It does, however, bar evidence arising from such intrusions if the private party acted as an instrument or agent of the government.” State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (internal citation omitted).³ “[T]he United States Supreme Court adopted the federal exclusionary rule to prevent the admission of evidence at trial that was unlawfully seized in violation of the Fourth Amendment and subsequently expanded that rule to apply to the individual states via the Due Process clause.” State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011)

“A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property.” State v. Brown, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012). Generally, searches and seizures performed without a warrant are unreasonable unless one of the following exceptions exist: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, and (7) abandonment. Id. at 89, 736 S.E.2d at 266. In this case, the trial court’s decision was clear error as Mr. Cardwell had a reasonable interest of privacy in the laptop and the video evidence did not fall within the plain view doctrine. See Narciso v. State, 397 S.C. 24, 32, 723 S.E.2d 369, 373 (2012) (“This Court will only reverse the circuit court’s decision on a motion to suppress when there is clear error.”). Accordingly, the trial court erred by not granting the motion to suppress and, as a result, Mr. Cardwell’s conviction should be reversed.

³ Although the laptop was physically searched by Mr. Marsh, it was done so at the request of Chief Douglas, who, upon seeing a questionable image across the laptop while Mr. Marsh was out of the room, told Mr. Marsh, “I just saw something go across the screen, can you back it up.” (R. p. 54, ll. 1-3). Once Mr. Marsh found the file Chief Douglas requested, Chief Douglas asked Mr. Marsh to play the video for him. (R. p. 55, ll. 4-11). Therefore, this was not a private search as it was performed at the direction of law enforcement.

I. The trial court erred in denying the motion to suppress all video evidence because Mr. Cardwell had a reasonable expectation of privacy in the laptop computer.

First, Mr. Cardwell had a legitimate expectation of privacy in the laptop computer that was illegally searched and seized by Chief Douglas and Detective Hannah. “When a criminal defendant moves to suppress evidence on Fourth Amendment grounds, the trial court must first determine whether the defendant has a legitimate expectation of privacy in the searched premises.” State v. Bruce, 402 S.C. 621, 624, 741 S.E.2d 590, 592 (Ct. App. 2013). “A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable.” State v. Robinson, 396 S.C. 577, 583-84, 722 S.E.2d 820, 823 (Ct. App. 2012). “A reasonable expectation of privacy exists in property being searched when the defendant has a relationship with the property or property owner.” Id. at 584, 722 S.E.2d at 823. Additionally, it has been held that a person contesting the legality of a search due to lack of a search warrant only has to show that the state is attempting to introduce evidence against him. See State v. McKnight, 291 S.C. 110, 115, 352 S.E.2d 471, 474 (1987). Here, Mr. Cardwell has standing to contest the legality of the search of the laptop because, at the time the video was filmed, he had been dating Mrs. Cardwell and living with her since 2006, and they had a child together. (R. p. 109, l. 15—R. p. 110, l. 3, R. p. 122, l. 3—R. p. 123, l. 25). Additionally, the video was evidence that was being introduced against Mr. Cardwell at trial. See id. (“[O]ne contesting the legality of a search because of a defect under Section 17-13-140 need only show that the State is attempting to introduce the evidence against him.”).

Although this precise issue has not been addressed by South Carolina, other states have recognized an expectation of privacy in an electronic repository for personal data. See State v.

Ballard, 276 P.3d 976 (N.M. Ct. App. 2012) (stating “society will recognize an individual's expectation of privacy in a person's personal computer and external hard drives . . . [.]” but finding defendant relinquished privacy interest by specifically asking technician to destroy child pornography stored on his hard drives); United States v. Barth, 26 F. Supp. 2d 929 (W.D. Tex 1998) (finding “that the Fourth Amendment protection of closed computer files and hard drives is similar to the protection it affords a person's closed containers and closed personal effects.”); United States v. Chan, 830 F. Supp. 531, 534-35 (N. D. Cal. 1993) (finding the defendant's expectation of privacy in a seized pager was analogous to the privacy right a person has in a closed container but still denying the motion to suppress because it was a valid search incident to arrest).

The facts of United States v. Barth are strikingly similar to the facts at issue in the case at hand. In Barth, the defendant was having difficulty with his computer so he sent it to a self-employed computer technician. Barth, 26 F. Supp. 2d at 932. As the technician was opening individual files in search of viruses, he observed a JPEG image which appeared to be child pornography. Id. The technician was also a confidential informant, and he immediately notified the FBI. Id. The FBI agent told the technician to copy the files on the hard drive onto disks. Id. at 932-33. The technician then took the hard drives to the local police department and informed the police that he had made a copy of the hard drive pursuant to the FBI agent's instructions. Id. at 933. The officers obtained a search warrant to look at the hard drive based on the information obtained by the technician, rather than what they had observed. Id.

The district court in Barth found that while “the protection afforded to a person's computer files and hard drive is not well-defined . . . the Fourth Amendment protection of closed computer files and hard drives is similar to the protection it affords a person's closed containers

and closed personal effects.” Id. at 936. The court stated that a warrant is generally required to search the contents of a closed container, outside of automobile searches, due to the owner’s expectation of privacy in the contents of the container rather than the container itself. Id. Therefore, “by placing data in files in a storage device such as his hard drive, the Court [found] that Defendant manifested a reasonable expectation of privacy in the contents of those files. These files should therefore be afforded the full protection of the warrant requirement.” Id. at 936-37. The district court further explained that the defendant did not relinquish his reasonable expectation of privacy in his closed, individual files when he handed the hard drive over to a computer technician. Id. at 937. The district court compared this to a tenant who does not lose his expectation of privacy just because the landlord possesses the key and maintains a limited right to enter the premises for inspection and repair. Id. (citing United States v. Osunegbu, 822 F.2d 472, 478 (5th Cir.1987)).

Likewise, in this case, Mr. Cardwell did not lose his privacy interest in his wife’s laptop when she handed it over to Mr. Marsh for the limited purpose of being repaired. Instead, the computer and the pictures and images on the computer were comparable to a closed container as in Barth. The Cardwells used the laptop to store pictures from Christmas and birthday celebrations once the memory card in their digital camera was full. (R. p. 115, ll. 5-7). By placing these photos onto the laptop hard drive storage, like the plaintiff in Barth, Mr. Cardwell and his wife manifested a reasonable expectation of privacy in the contents of those files. Accordingly, the contents of the laptop computer should be afforded the full protection of the warrant requirement. See id. at 936-37.

II. The trial court erred in denying the motion to suppress the video evidence because the plain view doctrine does not apply and a warrant was required prior to Chief Douglas and Detective Hanna viewing the video.

Chief Douglas's insistence that Mr. Marsh play the video without first obtaining a warrant was in violation of the Fourth Amendment and does not fall under the plain view exception to warrantless searches. Detective Hanna's subsequent viewing of the illegally seized video was also in violation of the Fourth Amendment as no exception to the warrant requirement is applicable. Under the plain view doctrine, objects which are in the "plain view" of a law enforcement officer who is rightfully in a position to view the objects may be seized without a warrant. State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). "[T]he two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Id. The incriminating nature of the evidence was not immediately apparent to Chief Douglas or Detective Hannah. Both had the duty to obtain a search warrant before viewing the video. Their failure to do so violates the Fourth Amendment, and, therefore, Mr. Cardwell's conviction should be reversed.

In Walter v. United States, 447 U.S. 649 (1980), the Supreme Court stated that FBI agents were required to obtain a search warrant before they may screen obscene films that had been delivered to the wrong recipients. In Walter, twelve large, securely sealed packages of film depicting obscene activity were mistakenly delivered to the wrong recipient. Walter, 447 U.S. at 651. Employees of the mistaken recipient opened the box and unsuccessfully attempted to view the film by holding it up to the light. Id. at 652. The employees called the FBI who picked up the packages and, without obtaining a warrant, viewed the films with a projector. Id. The Supreme Court found the following:

Even though the cases before us involve no invasion of the privacy of the home, and notwithstanding that the nature of the contents of these films was indicated by descriptive material on their individual containers, we are nevertheless persuaded that the unauthorized exhibition of the films constituted an unreasonable invasion of their owner's constitutionally protected interest in privacy. It was a search; there was no warrant; the owner had not consented; and there were no exigent circumstances.

Id. at 654. The Court also found that the fact that a private party had already opened the boxes before they were acquired by the FBI did not excuse the failure to obtain a search warrant.

Id. at 655.

In this case, like in Walter, the incriminating nature of the computer file was not immediately apparent when Chief Douglas saw the image of Minor Child 1 flash across the laptop at Mr. Marsh's residence. Chief Douglas asked Mr. Marsh to manipulate the slideshow back to the image he saw go across the screen of the laptop when Mr. Marsh left the room. (R. p. 54, ll. 1-3). Upon seeing the image, Chief Douglas could have—and *should have*—obtained a search warrant before clicking the play button at the top of the image, but instead he directed Mr. Marsh to play the video (R. p. 55, ll. 8-11). Similar to the facts of Walter, the image Chief Douglas saw, while questionable, was not the video in its entirety. Instead, the image was a means of locating the video, or, like in Walter, similar to a label or description of the explicit video. Additionally, just as Chief Douglas had the duty to obtain a search warrant before asking Marsh to play the video; Detective Hanna, who only was told what was on the video and knew no search warrant had been issued, also had a duty to obtain a search warrant prior to watching the video. Their failure to do so was in violation of the Fourth Amendment, and as a result, the trial court should have applied the exclusionary rule to suppress the video evidence.

Moreover, the plain view doctrine does not excuse the warrantless search because that doctrine applies only to the *seizure* of evidence by law enforcement, not a *search* for evidence.

See State v. Abdullah, 357 S.C. 344, 352, 492, S.E.2d 344, 349 (Ct. App. 2004) (“Under the plain view doctrine, any object falling within the plain view of a law enforcement officer who is lawfully in a position to view the object is subject to lawful seizure.”); In re Thomas B.D., 326 S.C. 614, 620, 486 S.E.2d 498, 501 (Ct. App. 1997) (finding cigarette pack was in plain view when it was seized and therefore was lawful); State v. Brown, 289 S.C. 581, 588, 347 S.E.2d 882, 886 (1986) (stating “objects falling within the plain view of a law enforcement officer who is rightfully in position to view these objects are subject to seizure and may be introduced in evidence,” and finding “[t]he plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.”). Here, Chief Douglas did not seize the laptop, rather he performed a search of the video as soon as he saw the image flash across the laptop by directing Mr. Marsh to play the video for him. This type of search does not fall within the parameters of the plain view doctrine. Had Chief Douglas seized the laptop computer while waiting for a search warrant to be issued, then the plain view doctrine would be applicable. However, the facts of this case do not warrant the exception. Both Chief Douglas and Detective Hanna’s failure to obtain a search warrant before viewing the video violates the Fourth Amendment.

CONCLUSION

For the reasons stated, Mr. Cardwell respectfully asks this Court to reverse the trial court’s denial of the motion to suppress the video evidence, reverse Mr. Cardwell’s conviction, and remand the case for a new trial.

[Signature on Following Page]

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April 15, 2014

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-22-560, 561, 587, 588
Appellate Case No. 2012-213368

The State,

Respondent,

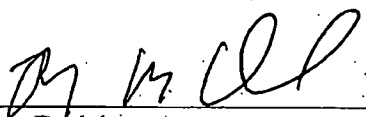
V.

Michael Lee Cardwell,

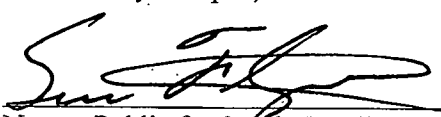
Appellant.

CERTIFICATE OF SERVICE

I certify that a true copy of the Final Brief of Appellant in the above-referenced case has been served upon William Blitch, Jr., Esquire, Assistant Attorney General at S.C. Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of April, 2014.


Robert Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 15th day of April, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

9

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case Tracking No. 2012-213368

The State,

Respondent,

vs.

Michael Lee Cardwell,

Appellant.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case Tracking No. 2012-212566

The State,

Respondent,

vs.

Michael Lee Cardwell,

Appellant.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT	5
I. The trial court did not err in denying the motion to suppress when Appellant had no reasonable expectation of privacy in his girlfriend's computer and its data voluntarily turned over to a third party, and the third party placed the data on his own equipment and allowed that equipment to be searched.	5
CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

<u>Alderman v. United States</u> , 394 U.S. 165, 174 (1969)	7, 14
<u>California v. Greenwood</u> , 486 U.S. 35, (1988).....	8
<u>Commonwealth v. Sodomsy</u> , 939 A.2d 363 (Pa. Super. 2007)	11
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).....	6
<u>Illinois v. Caballes</u> , 543 U.S. 405 (2005).....	19
<u>Katz v. United States</u> , 389 U.S. 347 (1967).....	6,7,8
<u>Lown v. State</u> , 172 S.W.3d 753 (Tex.App.2005)	12
<u>Melton v. State</u> , 69 So.3d 916 (2010).....	13,14
<u>Minnesota v. Carter</u> , 525 U.S. 83 (1998).....	7
<u>Nix v. Williams</u> , 467 U.S. 431 (1984).....	20
<u>Oliver v. United States</u> , 466 U.S. 170 (1984).....	6
<u>Rakas v. Illinois</u> , 439 U.S. 128 (1978).....	7, 15
<u>Rawlings v. Kentucky</u> , 448 U.S. 98 (1980).....	6
<u>Rogers v. State</u> , 113 S.W.3d 452 (Tex. App. 2003)	12,13
<u>Smith v. Maryland</u> , 442 U.S. 735 (1979).....	8
<u>State v. Abdullah</u> , 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004).....	5
<u>State v. Brown</u> , 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010).....	20
<u>State v. Crane</u> , 296 S.C. 336, 372 S.E.2d 587 (1988).....	10
<u>State v. Curley</u> , 253 S.C. 513, 171 S.E.2d 699 (1970)	16
<u>State v. Flowers</u> , 360 S.C. 1, 598 S.E.2d 725 (Ct. App. 2004).....	5
<u>State v. Gamble</u> , 405 S.C. 409, 747 S.E.2d 784 (2013)	16

<u>State v. Jenkins</u> , 398 S.C. 215, 727 S.E.2d 761 (Ct. App. 2012).....	19
<u>State v. McKnight</u> , 291 S.C. 110, 352 S.E.2d 471 (1987).....	6,9
<u>State v. Moore</u> , 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008).....	10
<u>State v. Rivera</u> , 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009).....	6
<u>State v. Wright</u> , 391 S.C. 436, 706 S.E.2d 324 (2011).....	17
<u>U.S. v. Matlock</u> , 415 U.S. 164 (1974)	16
<u>United States v. Barrows</u> , 481 F.3d 1246 (10 th Cir. 2007)	11,13
<u>United States v. Barth</u> , 26 F.Supp.2d 929 (W.D. Tex. 1998)	12,13
<u>United States v. Calandra</u> , 414 U.S. 338 (1974).....	7
<u>United States v. Jacobsen</u> , 466 U.S. 109 (1984).....	13, 15, 19
<u>United States v. King</u> , 2006 WL 3421253 (M.D.Ala.2006).....	12
<u>United States v. Miller</u> , 425 U.S. 435 (1976)	8
<u>United States v. Rusher</u> , 966 F.2d 868 (4th Cir. 1992).....	6
<u>United States v. Simons</u> , 206 F.3d 392 (4th Cir.2000).....	12

Statutes

S.C. Code Ann. § 16-15-365 (Supp. 2010).....	18
S.C. Code Ann. § 16-15-395 (Supp. 2010).....	18
S.C. Code Ann. § 63-5-70 (Supp. 2010).....	18
S.C. Code Ann. § 63-7-20 (Supp. 2010).....	18

Other Authorities

U.S. Const. amend. IV.....	<i>passim</i>

STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in denying the motion to suppress when Appellant had no reasonable expectation of privacy in his girlfriend's computer and its data voluntarily turned over to a third party, and the third party placed the data on his own equipment and allowed that equipment to be searched.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant's co-defendant, Sarah Cardwell, brought her laptop computer to David Marsh for repair.¹ The computer would not boot. (T.251-252; R.115-116). Sarah instructed Marsh to get the data off the computer, rebuild or repair it if possible, and then put the data back onto her computer. (T.65; R. 47). Marsh had to remove the computer's hard drive and attach it to his computer in order to make a back-up of the data until he could get the laptop working. (T.66; R. 48). At this point, the laptop did not work and all data was being handled through Marsh's computer. He testified: "If the computer will not boot up I usually take the hard drive and attach it to my Mac . . . and then I will back all the data up to a file on my Mac. . . ." (T.66; R. 48). With regard to Sarah's computer, he stated: "I had to take the hard drive out [of Sarah's laptop computer], connect it via USB cable into my Mac and start the download process." (T.66; R. 48).

While he was copying the data onto his computer, Chief Ron Douglas with the Johnsonville Police Department came into Marsh's work area to deliver some packages. Marsh took the packages into the other room and then heard Chief Douglas call him back into the work area. (T.67-68; R. 49-50). Chief Douglas indicated he saw something and wanted Marsh to back up a few files to determine what he had seen. (T.72; R. 54).

When Marsh went back through the files, he located a still image of Sarah's son. The image showed her son naked except for a pink bra. (T.72-73; 92; R. 54-55; 74). At this time they realized the image actually was a thumbnail for a video file. Chief Douglas indicated he wanted to see the file and so Marsh played a little bit of the file. The video showed two of Sarah's children dancing naked along with Appellant.² (T.73; R. 55).

¹ Sarah specifically indicated the pink laptop was hers when she brought it to Marsh. (T.65; R. 47).

² At the time of the video, Appellant was Sarah's boyfriend, but by trial, the two were married.

Appellant was also naked in the video. (T.74; R. 56). Marsh indicated Sarah's voice could be heard on the video directing the children what to do next. (T.74; R. 56). Marsh acknowledged even if Chief Douglas had not seen the video, had he become aware of it he would have been required to report it to law enforcement. (T.85; R.67).

Chief Douglas then told Marsh to put the computer and hard drive under lock and key. Chief Douglas got in touch with Investigator Phillip Hanna from the Georgetown Sheriff's Department. (T.93; 95; R. 75;77). He instructed Marsh to make a copy of the video because the computer was having so many issues he did not want to risk losing the data. (T.84; 93; 94-95; R. 66; 75; 76-77).

The computer and the disk containing the copy of the video were turned over to Investigator Hanna. He took possession of the computer, obtained a search warrant for the computer, and sent the computer to a forensic laboratory in Charleston. (T.101; R. 83). He indicated obtaining the search warrant was standard procedure if images such as the video were seen. (T.101; R. 83).

At trial, Appellant and his co-defendant moved to suppress the video, arguing the computer was searched and seized in violation of the Fourth Amendment. The trial court denied the motion, indicating no expectation of privacy existed once Sarah turned the computer over to the technician Marsh. (T.16; R. 23). Later the court elaborated and found Chief Douglas saw the item in plain view while in Marsh's shop, and had a right to seize it at that point. (T.18; R. 25). The court further indicated the computer was now in the custody of the technician and there is no indication Marsh objected to Chief Ron's requests to view the files. (T.20; R. 27).

ARGUMENT

- I. **The trial court did not err in denying the motion to suppress when Appellant had no reasonable expectation of privacy in his girlfriend's computer and its data voluntarily turned over to a third party, and the third party placed the data on his own equipment and allowed that equipment to be searched.**

Appellant contends the trial court erred in denying his motion to suppress evidence of a video which formed the basis of the charges against Appellant and his co-defendant. Appellant had no reasonable expectation of privacy in his co-defendant's computer when the record provides no evidence he used or had any control over the computer. Also, Appellant had no reasonable expectation of privacy in a computer and its data voluntarily turned over to a third party with instructions that the third party remove the data from the computer. Further, once the third party removed the data from the co-defendant's computer and placed it on his own computer, his consent to search the data on his own computer was valid and eliminated any need for a warrant. Finally, the contraband was seen in plain view and Appellant could not have a legitimate expectation of privacy in contraband.

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). The appellate court will not

reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991).

Expectation of Privacy

When moving to suppress evidence on the basis of an alleged unreasonable search, the defendant has the burden of showing a legitimate expectation of privacy in the area searched. See United States v. Risher, 966 F.2d 868 (4th Cir. 1992); see also Rawlings v. Kentucky, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his “own rights” have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). “Since Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), the touchstone of [Fourth] Amendment analysis has been the question whether a person has a ‘constitutionally protected reasonable expectation of privacy.’” Oliver v. United States, 466 U.S. 170, 177, 104 S.Ct. 1735, 1740–41, 80 L.Ed.2d 214 (1984) (quoting Katz, 389 U.S. at 360 (Harlan, J., concurring)).

As the United States Supreme Court stated in Alderman v. United States, 394 U.S. 165, 174 (1969): "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. Id. "And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 619, 38 L.Ed.2d 561 (1974), it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections." Rakas v. Illinois, 439 U.S. 128, 133-134 (1978).

Thus,

in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."

Minnesota v. Carter, 525 U.S. 83, 88, 119 S.Ct. 469, 472, 142 L.Ed.2d 373 (1998) (quoting Rakas v. Illinois, 439 U.S. 128, 143-44 n. 12, 99 S.Ct. 421, 430 n. 12, 58 L.Ed.2d 387 (1978)). A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable. Oliver, 466 U.S. at 177 (citing Katz, 389 U.S. at 361 (Harlan, J., concurring)).

In Katz v. United States, the United States Supreme Court explained: "For the Fourth Amendment protects people, not places. What a person knowingly exposes to the

public, even in his own home or office, is not a subject of Fourth Amendment protection.” Katz, 389 U.S. at 351. This was further announced in United States v. Miller, 425 U.S. 435 (1976), when the Supreme Court found no protection for information turned over by a depositor at a bank. The court explained:

This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

Id. at 443.

In Smith v. Maryland, 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979), the Supreme Court used the above analysis to hold that petitioner had no legitimate expectation of privacy when he used his phone to voluntarily convey the telephone number he was dialing to the telephone company and “‘exposed’ that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed.” Smith v. Maryland, 442 U.S. 735, 743 44, 99 S. Ct. 2577, 2582, 61 L. Ed. 2d 220 (1979).

In a case totally unrelated to technology, but analogous to the case at hand, the United States Supreme Court found a person did not have a reasonable expectation of privacy in trash left for the trash collector because it was given to a third party. California v. Greenwood, 486 U.S. 35, 40–41, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988) (finding no reasonable expectation of privacy in “plastic garbage bags left on or at the side of a public street,” which are accessible by “members of the public” and left on the curb “for the express purpose of conveying [them] to a third party, the trash collector”).

In the instant case, Appellant has no expectation of privacy in his co-defendant's laptop. The record does not indicate Appellant exercised any control over the laptop, had any possessory interest in the laptop, could exclude persons from using the laptop, or even used the laptop himself. His only claim regarding his expectation of privacy in his brief is the fact the State was using evidence against him and the fact his co-defendant put pictures and videos from her camera on the laptop. Neither basis is sufficient to establish a reasonable expectation of privacy in the computer and data belonging to Appellant's co-defendant.

He asserts he can challenge the search under State v. McKnight, 291 S.C. 110, 115, 352 S.E.2d 471, 474 (1987). However, the case specifically refutes Appellant's claims that he has an expectation of privacy and the ability to challenge the search and seizure of his co-defendant's computer. In McKnight, the South Carolina Supreme Court explained the difference between a challenge to the propriety of a search or seizure based on the Fourth Amendment, as was made in this case, and a challenge to a search or seizure based on an invalid or deficient search warrant as was at issue in McKnight.

The Court stated:

One who seeks to have evidence suppressed on this basis must establish that his *own* Fourth Amendment rights were violated. These are personal rights which may not be asserted vicariously. The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search.

McKnight, 291 S.C. at 114-115, 352 S.E.2d at 473 (internal citations omitted) (emphasis in original). The Court then states:

On the other hand, the rights afforded by Section 17-13-140 are not dependent upon a showing of an expectation of privacy in the searched premises. The primary purpose of the statute is to insure the timely recording of the testimony upon which the judicial officer relied in issuing the warrant. However, the primary benefit of the statute “is to the person arrested or searched.” Therefore, one contesting the legality of a search because of a defect under Section 17-13-140 need only show that the State is attempting to introduce the evidence against him.

Id. at 115, 352 S.E.2d at 474 (emphasis added).

The Court in McKnight, notwithstanding Appellant’s contention to the contrary, made it clear Appellant must have an expectation of privacy and must show “his own” rights were violated prior to being able to raise a Fourth Amendment issue. In this case, there is no search warrant involved in the search and so section 17-13-140 does not apply and cannot provide Appellant standing. The record provides no basis for an expectation of privacy in the computer by Appellant, and he does not even attempt to argue one. As a result, he cannot contest the search, seizure, or admission of the data under the Fourth Amendment. See State v. Crane, 296 S.C. 336, 341, 372 S.E.2d 587, 589 (1988) (“Because appellant cannot make the threshold demonstration of a legitimate expectation of privacy in connection with the searched premises, he is not entitled to launch the constitutional challenge to the search.”)

Further, even if Appellant could have an expectation of privacy in his co-defendant’s laptop, Appellant did not have a subjective expectation of privacy or an expectation society would recognize as reasonable. Sarah, as the primary owner of the laptop, clearly had the right to convey the property to Marsh and even if he had a right in the property as a co-user, her conveyance eliminated any reasonable expectation of privacy he may have enjoyed. See e.g., State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct.

App. 2008) (finding regular driver of a vehicle could not complain about a violation or infringement of his interest in the vehicle when the owner of the vehicle consented to search).

Sarah voluntarily turned over her computer and all data on her computer to a third party, Marsh. She provided Marsh with no restrictions on how he was to repair the computer or files he could or could not view. She made no attempt to exclude his access from the video by placing it in a private folder or utilizing any means of encryption or password protection. See e.g., United States v. Barrows, 481 F.3d 1246, 1248–49 (10th Cir. 2007) (finding appellant's "failure to password protect his computer, turn it off, or take any other steps to prevent third-party use" indicative of a lack of a subjective expectation of privacy). Accordingly, Sarah and Appellant failed to maintain even a subjective expectation of privacy in the video once it was turned over to a third party.

Additionally, as discussed above, the Fourth Amendment does not find society willing to protect information turned over to a third party. Whether it is telephone records, bank records, trash, or computer data, once it is given to a third party the original possessor assumes the risk of something happening with that data, including it being given to law enforcement.

Other courts have reached similar conclusions when a computer is turned over to a technician and contraband is located on the computer. In Commonwealth v. Sodomsky, 939 A.2d 363 (Pa. Super. 2007), the court analyzed a similar situation. The defendant turned a computer over to Circuit City for repair and upgrades. In doing the work, the repairman viewed the beginning of a video appearing to contain child pornography. He called the police, who came and viewed the video file. The computer and its data were

seized. Id. at 364-366. The Court concluded because the defendant: “abandoned his privacy interest in the videos contained in the computer, he cannot object to the subsequent viewing of the video list and file by police.” Id. at 369. The Court continued:

Our result in this case is consistent with the weight of authority in this area. If a person is aware of, or freely grants to a third party, potential access to his computer contents, he has knowingly exposed the contents of his computer to the public and has lost any reasonable expectation of privacy in those contents. E.g. United States v. Simons, 206 F.3d 392 (4th Cir.2000) (where employee was informed that his work-related internet activity would be scrutinized by employer, he had no legitimate expectation of privacy in fruits of his internet activity as he knowingly exposed such activity to public); United States v. King, 2006 WL 3421253 (M.D.Ala.2006) (defendant knowingly exposed personal files to public under Katz by linking to network after being informed that personal files could and would be searched using network even though defendant attempted to protect files from network search); Lown v. State, 172 S.W.3d 753 (Tex.App.2005) (defendant did not have reasonable expectation of privacy in files on work computer which were backed up at request of people in authority at defendant's company).

Id. at 369-370.

In Rogers v. State, 113 S.W.3d 452 (Tex. App. 2003), the Court considered whether a defendant lost his expectation of privacy not only when he voluntarily turned over his computer to the repair shop for analysis, but also requested that files be backed up. The Court concluded in turning the computer over to the repair shop, and seeking to have the files backed up, the defendant “no longer had a legitimate expectation of privacy in those files, and the trial court did not err in denying Rogers’s motions to suppress.” Id. at 458.

Significantly, the Rogers court also distinguished United States v. Barth, 26 F.Supp.2d 929 (W.D. Tex. 1998), which is a case relied on by Appellant. In Barth, the

Court found the defendant did not give up his expectation of privacy when he turned over a hard drive to a repairman. In Barth, the defendant gave the hard drive to the technician “for the limited purpose of repairing a problem unrelated to specific files and also expected that he would have the unit back the following morning to continue his business.” Id. at 937. The Rogers court found its circumstances clearly distinguishable because the defendant in Rogers asked the repairman to back up the files and not just fix a generic problem. Rogers, 113 S.W.3d at 457.

In United States v. Barrows, 481 F.3d 1246 (10th Cir. 2007), the Tenth Circuit Court of Appeals found mere ownership is not enough to establish and maintain a subjective expectation of privacy in a computer. The Court concluded when the defendant connected his personal computer to a public computer network to share files, he exposed his computer to the public and no longer had an expectation of privacy. Id. at 1248-1249.

The Court of Criminal Appeals of Alabama undertook an exhaustive analysis of a situation very similar to the one in the instant case in Melton v. State, 69 So.3d 916 (2010). In that case, the defendant took his computer to Best Buy to have viruses removed and the computer repaired. Id. at 922-923. The Court found persuasive the analysis of Sodomskey discussed above. Further, the Court found that even though the Best Buy employees only viewed highly graphic file names indicating their contents were child pornography, the fact the officers opened the files did not violate any Fourth Amendment rights. Id. at 928. The Court concluded, relying in part on United States v. Jacobsen, 466 U.S. 109 (1984), that nothing more was learned from viewing the files based on the name. Further, the Court held once the files were determined to be child

pornography from their filenames, there was no constitutional protection in the contraband. Id. at 928-929. Finally, the Court concluded there was no expectation of privacy society was prepared to recognize at the time the officers viewed the file names and the contents of any of the files. Id. at 931.

This Court should join the other courts who have addressed the issue and find Appellant maintained no expectation of privacy in any of the files Sarah turned over to Marsh. She placed no restrictions on the files or his usage of the files. He freely copied the files onto his own computer and it was from there the files were viewed by Chief Douglas and himself. Appellant had no subjective expectation of privacy when Sarah specifically told him to access the files and back them up, and he certainly had no reasonable expectation of privacy society is prepared to recognize in the contraband turned over to a third party.

Third Party Possession

Further, Appellant has no expectation of privacy in the files viewed by Chief Douglas, nor in the copy of the file made because they were seen and copied from Marsh's computer and no longer in the possession of Appellant or Sarah. Marsh testified Sarah told him to back up the data. In doing so, he made a copy of her data on his computer. He indicated he connected her hard drive to his computer and began making a copy of the data. As Marsh made the copy onto his machine, with nothing in the record to indicate he was prevented from making the copy, it is clear neither Sarah nor Appellant retained exclusive control over the data or the ability to exclude anyone from that data.

As the United States Supreme Court stated in Alderman v. United States, 394 U.S. 165, 174 (1969): "Fourth Amendment rights are personal rights which, like some

other constitutional rights, may not be vicariously asserted.” A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed. Id. “And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule’s protections.” Rakas v. Illinois, 439 U.S. 128, 133-134 (1978).

The search conducted in this case was conducted on Marsh’s computer and on data he placed there with Sarah’s permission. The copying of the data by Marsh was not governmental action, but was the actions of a private, third party. There is no allegation when he produced the backup at Sarah’s request he was acting as an agent for the government or law enforcement. As a result, his actions are purely private actions in searching or seizing the data. See U.S. v. Jacobsen, 466 U.S. 109, 113-114 (1984) (“This Court has also consistently construed this protection as proscribing only governmental action; it is wholly inapplicable ‘to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.’”).

Once the data was copied, any search of the copied data on Marsh’s computer was, at most, a violation of Marsh’s Fourth Amendment rights and not Appellant’s rights. Accordingly, he cannot assert a violation of the Fourth Amendment when Marsh’s action as a private citizen effectuated the seizure of the data, and any search or other violation allegedly occurring took place on Marsh’s property and not Appellant’s.

Third Party Consent

Additionally, even if Appellant somehow retained an expectation of privacy in the data and computer voluntarily turned over to Marsh, and copied by Marsh onto his computer, Marsh consented to any search and he had the apparent authority to do so. Consent is a clearly recognized exception to a warrant requirement. See State v. Gamble, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). A third party may consent if that party “possesses common authority over premises or effects” and their consent is “valid as against the absent, nonconsenting person with whom that authority is shared.” U.S. v. Matlock, 415 U.S. 164, 170 (1974).

The South Carolina Supreme Court reached a similar conclusion in State v. Curley, 253 S.C. 513, 171 S.E.2d 699 (1970). In Curley, the defendant loaned the vehicle to a third party along with no restrictions or prohibitory instructions. Id. at 516, 171 S.E.2d at 700. An officer stopped the driver and asked consent to search the vehicle including the trunk. The driver consented, and upon looking in the trunk, the officers spotted evidence linking the car and its owner to a safecracking. The Supreme Court found the evidence should not be suppressed because the driver validly consented. The Court explained:

[T]he defendant Curley, by allowing another to use his car and, without prohibitory instructions, entrusting her with the key to the trunk, must be taken to have assumed the risk that she would accede to the request of an officer to look inside. Having to this extent surrendered his right to privacy as to the contents of the trunk, he is in no position to maintain that the shoes were discovered in derogation of it.

Id. at 518.

In the instant case, Sarah voluntarily gave to Marsh her computer and all its data with instructions to back up the data to put it back on her computer when repaired. She gave no prohibitory instructions or restrictions on how he was to handle the data, the type or number of copies he could make, or the length of time he could keep the data. As a result, just like Curley, Sarah and Appellant assumed the risk Marsh would search the data and expose the video in question to law enforcement. As a result, Appellant cannot assert a violation of his Fourth Amendment expectation of privacy.

Plain View and Contraband

Also, even assuming Appellant has some expectation of privacy remaining in the data turned over to Marsh and copied by Marsh onto his computer, the file was seen in plain view by Chief Douglas and he had the right to seize the file. Once he saw the file, its nature as contraband was obvious and Appellant can have no legitimate interest in contraband.

“Under the ‘plain view’ exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence.” State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). The Court explained: “the two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities.” Id.

In the instant case, Chief Douglas was clearly where he was entitled to be and his “intrusion” into Marsh’s work area was lawful. Both Chief Douglas and Marsh testified Marsh had packages delivered to the police station because he was sometimes closed.

Chief Douglas was delivering the package to Marsh and was in Marsh's work area at Marsh's invitation. Chief Douglas stayed in the area he first met Marsh and there is no indication he was not properly in this area. As a result, when he witnessed the thumbnail go across the screen, he clearly was in a location he was lawfully allowed to be.

In addition, he testified the image he saw on the screen caused him concern because it was an image of a naked child holding a bra across his chest. The incriminating nature of this image was immediately apparent. See e.g., S.C. Code Ann. § 16-15-365 (Supp. 2010) ("Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets any such act, or who procures another to perform such act, . . . is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both."); S.C. Code Ann. § 16-15-395 (Supp. 2010) ("An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he: (1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; (2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity"); S.C. Code Ann. § 63-5-70 (Supp. 2010) ("It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to: (1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or

safety”). Accordingly, the contraband was seen in plain view and appropriately seized by Chief Douglas.

The United States Supreme Court has made it clear that one does not have a legitimate interest in contraband. The Court held:

Official conduct that does not “compromise any legitimate interest in privacy” is not a search subject to the Fourth Amendment. Jacobsen, 466 U.S., at 123, 104 S.Ct. 1652. We have held that any interest in possessing contraband cannot be deemed “legitimate,” and thus, governmental conduct that only reveals the possession of contraband “compromises no legitimate privacy interest.” Ibid. This is because the expectation “that certain facts will not come to the attention of the authorities” is not the same as an interest in “privacy that society is prepared to consider reasonable.” Id., at 122, 104 S.Ct. 1652 (punctuation omitted).

Illinois v. Caballes, 543 U.S. 405, 408-409 (2005). Once the contraband was in plain view, the fact Chief Douglas manipulated the video compromised no legitimate expectation of privacy. Appellant cannot demonstrate a violation of his Fourth Amendment right when the file was seen and seized in plain view and it was clearly contraband for which he cannot have an expectation of privacy.

Inevitable Discovery

Finally, even if there was no basis for the search and seizure by Chief Douglas or Investigator Hanna, once the file was viewed by Chief Douglas the officers would have, and in this case did, obtain a warrant for the computer and files so any discovery of the video and its contents was inevitable. The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence the same evidence seized unlawfully would have been discovered inevitably by lawful means. See State v. Jenkins, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App.

2012) (citing State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010); Nix v. Williams, 467 U.S. 431, 447, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) (holding evidence may be admitted despite a violation of the Fourth Amendment “if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police”)). When the doctrine applies, the evidence will not be suppressed despite the fact it was obtained pursuant to an illegal search. Brown, 389 S.C. at 483, 698 S.E.2d at 816.

In the case *sub judice*, Investigator Hanna testified he obtained a warrant to search the computer and the files on the computer as standard procedure when images of child pornography are seen. (T.101; R. 83). First, the computer was properly seized by Chief Douglas under the plain view doctrine as discussed above. Also, Marsh testified he is required to report images such as the one seen by Chief Douglas to law enforcement, so, even if not properly seized in plain view, the computer and image would have been brought to the attention of law enforcement because Marsh had a copy of the file on his computer. As a result, if any further action was in violation of the Fourth Amendment, it should not require exclusion because the evidence would have been found through the search warrant investigator Hanna obtained based on the image and the subject matter of the image.

The trial court properly ruled because Sarah turned her computer over to Marsh, Appellant could not maintain an expectation of privacy. Further, Marsh made a copy of the data in what was at most a private search and seizure and any governmental action took place on his computer and related to his copy of the data for which Appellant would have no reasonable expectation of privacy. Additionally, Marsh consented to the search

of his data and his computer, and would have had authority to consent to the search of Sarah's computer and data because she turned it over to him without any restrictions or prohibitions. Also, the trial court correctly ruled the evidence was seen in plain view by Chief Douglas, he readily knew its incriminating nature, and as a result he properly seized the contraband in which Appellant could not maintain a legitimate expectation of privacy. Finally, even if the actions by Investigator Hanna or Chief Douglas were overreaching, the evidence would have inevitably been discovered under the warrant obtained as a matter of standard procedure by Investigator Hanna. Accordingly, the trial court properly denied the motion to suppress the video.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 2, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case Tracking No. 2012-212566

The State,

Respondent,

vs.

Michael Lee Cardwell,

Appellant.

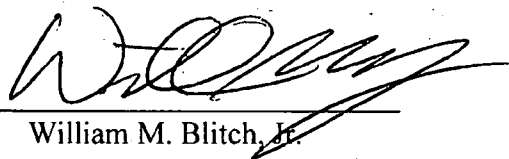
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
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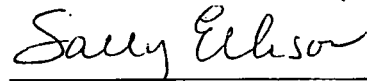
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent Appellant by depositing one copy of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 2nd day of April, 2014.



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APR 02 2014

SC Court of Appeals

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

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

The State, Respondent,

v.

Michael Lee Cardwell, Appellant.

Appellate Case No. 2012-213368

Appeal From Georgetown County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2015-UP-455
Heard September 9, 2014 – Filed September 9, 2015

AFFIRMED

Melissa Ashley Fried, of Nexsen Pruet, LLC, of
Charleston; and Chief Appellate Defender Robert
Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, and Assistant
Attorney General William M. Blich Jr., both of
Columbia, for Respondent.

PER CURIAM: Michael Cardwell (Cardwell) appeals his convictions for two counts of unlawful conduct toward a child and two counts of first-degree sexual exploitation of a minor. Cardwell argues the circuit court erred in refusing to

suppress his co-defendant's laptop computer and a video seized from the laptop without a search warrant. He contends that the search and seizure violated his Fourth Amendment rights because law enforcement instructed a computer technician to locate, play, and copy the video prior to obtaining a search warrant. Cardwell further asserts that his constitutional rights were violated when the Johnsonville Police Department provided the video to a Georgetown County Sheriff's Office investigator, who viewed it prior to obtaining a warrant. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether Cardwell had a reasonable expectation of privacy in the disputed video file stored on his co-defendant's laptop computer: *See* U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."); S.C. Const. art. I, §10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."); S.C. Code Ann. § 16-3-850 (2003) (requiring that film processors, photo finishers, and computer technicians discovering images depicting minors "engaging in sexual conduct, sexual performance, or a sexually explicit posture must report the name and address of the individual requesting the development of the film, or of the owner or person in possession of the computer to law enforcement officials in the state and county or municipality from which the film was originally forwarded"); *United States v. Gardner*, 554 Fed.Appx. 165, 167 (4th Cir. 2014) (citing *Arkansas v. Sanders*, 442 U.S. 753, 764–65 n.13 (1979) (plurality opinion), *overruled on other grounds by California v. Acevedo*, 500 U.S. 565 (1991)) ("[S]ome containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance."); *Commonwealth v. Sodomskey*, 939 A.2d 363, 369 (Pa.

¹ This court recently affirmed the circuit court's denial of Cardwell's co-defendant's motion to suppress the same video file. *See State v. Sarah Cardwell*, Op. No. 5351 (S.C. Ct. App. filed Sept. 2, 2015) (Shearouse Adv. Sh. No. 34 at 97–102).

Super. Ct. 2007) (finding that when defendant submitted his computer to technicians for repair, he abandoned his privacy interest in the child pornography stored on his hard drive); *State v. Wright*, 391 S.C. 436, 444, 706 S.E.2d 324, 327–28 (2011) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." (citing *Katz v. United States*, 389 U.S. 347, 351 (1967))); *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) ("To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched." (citation omitted)).

2. As to whether the circuit court properly denied Cardwell's motion to suppress when the questionable image was in plain view and the video file would inevitably have been discovered: *Nix v. Williams*, 467 U.S. 431, 444 (1984) ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means[,] . . . then the deterrence rationale has so little basis that the evidence should be received."); *Blair v. United States*, 665 F.2d 500, 507 (4th Cir. 1981) ("First, if the container is open and its contents exposed, its contents can be said to be in plain view. Second, if a container proclaims its contents by its distinctive configuration or otherwise and thus allows by its outward appearance an inference to be made of its contents, those contents are similarly considered to be in plain view." (citation omitted)); *Wright*, 391 S.C. at 443, 706 S.E.2d at 327 ("[O]bjects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." (citation omitted)).

AFFIRMED.

WILLIAMS, GEATHERS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2012-213368
Opinion No. 2015-UP-455
(Filed September 9, 2015)

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL LEE CARDWELL,

PETITIONER.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Michael Lee Cardwell respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-455 issued on September 9, 2015, based upon the following points overlooked or misapprehended by the Court.

I. Petitioner Had a Reasonable Expectation of Privacy in the Video File on the Laptop Computer as there was no Indication or Evidence that the Contents of the Video Could be Inferred by the Still Image.

The unpublished decision of this Court holds that Petitioner did not have a legitimate expectation of privacy in the laptop and the contents of the laptop because he knowingly exposed the laptop to the public and the contents of the video could be inferred from the still image which appeared across the laptop's screen. The Court cites United States v. Gardner for the proposition, "[S]ome containers (for example a kit of burglar tools or a gun case) by their very

nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.” United States v. Gardner, 554 F. App’x 165, 167 (4th Cir. 2014). However, the facts of Gardner are strikingly different from the facts in the present case. In Gardner, the court found the incriminating nature of a rifle case to be immediately apparent when it was found “in close proximity to drug paraphernalia.” Gardner, 554 Fed.Appx. at 167-68. Based on the two elements of a rifle case and drug paraphernalia, it is reasonable to conclude that the contents of the rifle case could be inferred from its outward appearance. However, the still image of a child in a bra is in no way comparable to a rifle case found in close proximity to drug paraphernalia. Moreover, the contents of the video could not be inferred from the still image. The incriminating nature of this video was not immediately apparent based on the still image and, therefore, the officer should have obtained a warrant prior to playing the video.

Moreover, Commonwealth v. Sodomosky, 939 A.2d 363 (Pa. Super Ct. 2007), relied upon by the Court, is also factually different from this case. In Sodomosky, the court found the incriminating nature of the video files was immediately apparent because the titles assigned to the videos on the computer listed a masculine name, an age of either thirteen-years-old or fourteen-years-old, and a different type of sexual act. Commonwealth, 939 A.2d at 370. Here, no evidence was presented of a descriptive title for the video. Rather, the only description in the record of the still image was that it showed a child wearing only a pink bra. (R. p. 54, line 19—R. p. 55, line 1). Furthermore, the solicitor’s closing statement supports the fact that the incriminating nature of the video was not immediately apparent based on the still image alone:

So, yeah, I’m not asking you to take things out of context. I’m asking you to put it in context. **I’m not telling you to look at those individual pictures and make your decision. I’m saying look at the entire video and use your common sense because the video as a whole is what makes it sexual. The video as a whole is what’s going to make you all agree beyond a reasonable doubt that these parents . . . made a conscious, intentional, maybe reckless decision**

to videotape those children in a performance that includes sexual activity

(R. p. 181, line 21—R. p. 182, line 8).

The case cited by the court, State v. Wright, 391 S.C. 436, 706 S.E.2d 234 (2011) for the proposition “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection,” is entirely irrelevant. Wright did not concern the search of a laptop computer but, rather, a police sweep of a dog fighting ring. See State v. Wright, 391 S.C. 436, 445-46, 706 S.E.2d 324, 328 (2011) (“While securing the scene, deputies saw in plain view dogfighting paraphernalia, including the dogfighting pit, dog muzzles, drugs, syringes, several injured dogs, and a dog suspension collar. The incriminating nature of this evidence was immediately apparent considering the deputies were there to investigate a tip concerning dogfighting.”). Also, State v. Missouri, 361 S.C. 107, 115, 603 S.E.2d 594, 597-98 (2004), which this court cites for the following statement “to claim protection under the Fourth Amendment of the U.S. Constitution, Defendants must show that they have a legitimate expectation of privacy in the place searched,” actually supports Petitioner’s position. In Missouri, the Court held that the Defendant did in fact have a reasonable expectation of privacy in the apartment that was searched, causing the SC Supreme Court to hold the Defendant who did not live or pay rent for an apartment but visited the home often “demonstrated a subjective expectation of privacy, and that expectation, [the court held], is one that society is prepared to recognize as reasonable.” State v. Missouri, 361 S.C. 107, 115, 603 S.E.2d 594, 597-98 (2004). The cases cited by the Court are factually dissimilar and irrelevant as to whether Petitioner had a reasonable expectation of privacy in the disputed video file.

Furthermore, the Court failed to consider United States v. Barth, 26 F. Supp. 2d 929 (W.D. Tex. 1998), which is most similar to the facts in this case before the Court. In Barth, the Defendant was having difficulty with his computer so he sent it to a self-employed computer

technician. Barth, 26 F. Supp. 2d at 932. As the technician was opening individual files in search of viruses, he observed a JPEG image which appeared to be child pornography. Id. The technician was also a confidential informant, and he immediately notified the FBI. Id. The FBI agent told the technician to copy the files on the hard drive onto disks. Id. at 932-33. The officers obtained a search warrant to look at the hard drive based on the information obtained by the technician, rather than what they had observed. Id. at 933. The district court in Barth found that while "the protection afforded to a person's computer files and hard drive is not well-defined . . . the Fourth Amendment protection of closed computer files and hard drives is similar to the protection it affords a person's closed containers and closed personal effects." Id. at 936. The court stated that a warrant is generally required to search the contents of a closed container, outside of automobile searches, due to the owner's expectation of privacy in the contents of the container rather than the container itself. Id. Therefore, "by placing data in files in a storage device such as his hard drive, the Court [found] that Defendant manifested a reasonable expectation of privacy in the contents of those file. These files should therefore be afforded the full protection of the warrant requirement." Id. at 936-37. The district court further explained that the Defendant did not relinquish his reasonable expectation of privacy in his closed, individual files when he handed the hard drive over to a computer technician. Id. at 937. The district court compared this to a tenant who does not lose his expectation of privacy just because the landlord possesses the key and maintains a limited right to enter the premises for inspection and repair. Id. (citing United States v. Osunegbu, 822 F.2d 472, 478 (5th Cir.1987)).

II. The Plain View Doctrine and Inevitable Discovery Rule are Inapplicable, and Chief Douglas Was Required to Obtain a Warrant Prior to Viewing the Video.

The unpublished decision cites Nix v. Williams, 467 U.S. 431, 444 (1984) for the proposition, "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means[,] . . . then the

deterrence rationale has so little basis that the evidence should be received." Ultimately, the U.S. Supreme Court held "when . . . the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible." Nix v. Williams, 467 U.S. at 448. In this case, the inevitable discovery doctrine does not apply because the State adduced no purported channel through which the police would have discovered the contents of the video file independent of the police officer and the computer technician opening the file without a search warrant.

Lastly, the Court cites Blair v. United States, 665 F.2d 500, 507 (4th Cir. 1981) and State v. Wright, for the applicability of the plain view doctrine to this case. The video and the contents of the video were not in plain view. Moreover, the still image did not proclaim its contents by its distinctive configuration and allow by its outward appearance an inference to be made of its contents. See Blair v. United States, 665 F.2d 500, 507 (4th Cir. 1981) ("First, if the container is open and its contents exposed, its contents can be said to be in plain view. Second, if a container proclaims its contents by its distinctive configuration or otherwise and thus allows by its outward appearance an inference to be made of its contents, those contents are similarly considered to be in plain view." (citation omitted)); Wright, 391 S.C. at 443, 706 S.E.2d at 327 ("[O]bjects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." As mentioned in Section I of this Petition, there was no indication by the still image of a child wearing a bra of the contents or nature of the video.

Furthermore, the Court failed to consider the decision of Walter v. United States, 447 U.S. 649 (1980), which is most similar to the facts of this case. In Walter, twelve large, securely sealed packages of film depicting obscene activity were mistakenly delivered to the wrong recipient. Walter, 447 U.S. at 651. Employees of the mistaken recipient opened the box and unsuccessfully attempted to view the film by holding it up to the light. Id. at 652.

The employees called the FBI who picked up the packages and, without obtaining a warrant, viewed the films with a projector. Id. The Supreme Court found the following:

... [N]otwithstanding that the nature of the contents of these films was indicated by descriptive material on their individual containers, we are nevertheless persuaded that the unauthorized exhibition of the films constituted an unreasonable invasion of their owner's constitutionally protected interest in privacy. It was a search; there was no warrant; the owner had not consented; and there were no exigent circumstances.

Id. at 654. Therefore, in following the ruling of Walter, Petitioner had a legitimate expectation of privacy in the laptop computer and its contents, the plain view doctrine is inapplicable, and the search by the officer was unconstitutional. The Petitioner respectfully requests a rehearing of his appeal based on the above points which were overlooked or misapprehended by the Court.

Respectfully submitted,

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Attorneys for Petitioner

This the 23rd day of September, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2012-213368

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SEP 23 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

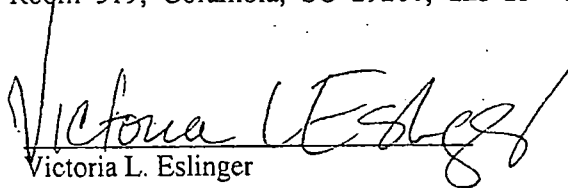
V.

MICHAEL LEE CARDWELL,

PETITIONER.

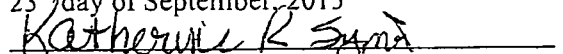
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of September, 2015



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SWORN TO BEFORE ME this
23rd day of September, 2015


Notary Public for South Carolina
My Commission Expires: 3/25/23

The South Carolina Court of Appeals

The State, Respondent,

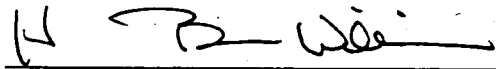
v.

Michael Lee Cardwell, Appellant.

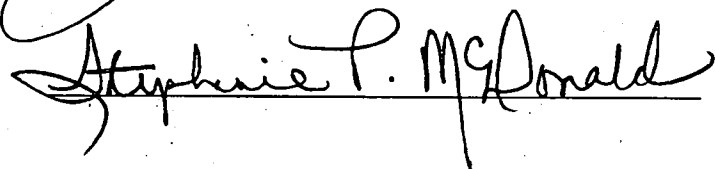
Appellate Case No. 2012-213368

ORDER

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


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Melissa Ashley Fried, Esquire
William M. Blitch, Jr., Esquire

FILED

October 23, 2015