

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES SIMMONS JR.,

APPELLANT

APPELLATE CASE NO. 2013-002389

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 7 (VIDEO INTERVIEW)**

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO'S. 2012-GS-07-01536 & 2012-GS-07-01537

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

JUNE 17 & 18, 2013

TRANSCRIPT OF PRETRIAL HEARING

BEAUFORT, SOUTH CAROLINA

JAMES SIMMONS

DEFENDANT

ORIGINAL

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

1 need to clarify this as far as the other proffers we're
2 going to do. Kristin Dalton, her time is limited, and
3 so, I have her -- I'm trying to keep her coming for the
4 smallest amount of time as possible. So, if we could --
5 if we need to proffer her testimony, if we could just do
6 that prior. Take a break from the jury, and do it prior
7 to her testifying.

8 THE COURT: That's what I plan on doing, is do the
9 proffers right before they testify.

10 MS. LEMPESIS: Okay. Great. Thank you, your
11 Honor.

12 THE COURT: Okay.

13 DEFENSE MOTION NUMBER 12:

14 MS. CAMPBELL: And I think, your Honor, Number 12
15 probably will be covered in 10 and 11.

16 THE COURT: Okay.

17 MS. CAMPBELL: And so, I'll just note that down
18 there.

19 DEFENSE MOTION NUMBER 7:

20 MS. CAMPBELL: And the last motion I believe, is,
21 indeed 7. I think it's customary with children of this
22 age that your Honor would need to have a competency
23 hearing, here in the courtroom.

24 THE COURT: Prior to testifying.

25 MS. CAMPBELL: Correct. However, in the discovery,

1 provided to the defendant, it is mentioned that the
2 children have been seeing a mental health counselor, and
3 have seen one in the past for mental health problems.
4 There were no records produced pursuant to Rule 5 for
5 the mental health records of the children and any, you
6 know, treatment or opinions that that mental health
7 provider may have given to the family.

8 For the record, these children, their biological
9 mother is a very seriously ill schizophrenic, and she
10 has suffered with that most of her life. And we do
11 believe that the mental health and capacity of the two
12 children from her is at issue. I've read the records
13 from their school work. I've read the records from
14 their doctor, Dr. -- and here's a little confusing
15 thing. Dr. Simmons is their physician, also. And Dr.
16 Simmons has indicated that the children have been on
17 enormous amounts of medication on and off over the years
18 to try and treat behavioral problems that they have had
19 from a very young age. We believe that their mental
20 capacity is a question, and we may need a mental health
21 evaluation by a professional to talk to the children.
22 And there is a procedure for that, should your Honor
23 deem that appropriate, perhaps, after you hear them.

24 MS. LEMPESIS: Judge, as far as the defendant's
25 motion to have a pretrial hearing to determine their

1 competency, Rule 601 of the Rules of Evidence says that
2 every person is a competent witness, unless the Court
3 determines otherwise, or that that person would have a
4 problem expressing himself concerning the matter as to
5 be understood by the judge and the jury.

6 There's a case *In Re: Robert M.* That's a South
7 Carolina Supreme Court case that even children are
8 proven to be competent unless shown otherwise. We would
9 just suggest that we bring Minor 2 and Minor 1 in
10 pretrial, and we can go through the typical language,
11 which is, you know, do you know what it means to tell
12 the truth, you know, as distinguishing between truth and
13 lies, and whether or not they promise to tell the truth
14 today. And we are happy to do that before they take the
15 stand.

16 THE COURT: And then, whether or not I feel
17 comfortable that they are, in fact, competent, or
18 whether I need someone to assess.

19 MS. LEMPESIS: And the issues that Ms. Campbell is
20 referring to is not -- she's making it sound like they
21 have all sorts of mental issues. They have ADHD.
22 They're twin boys. They have ADHD. They're on Ritalin
23 and Adderall. And Dr. Simmons, their doctor, will
24 testify, and he can testify about their ADHD, which they
25 were diagnosed with at age six years old, I believe.

1 That's in the records that Ms. Campbell has. I don't
2 have any mental health records concerning the boys.

3 THE COURT: There is no diagnosis of schizophrenia
4 for the boys. Is that correct?

5 MS. LEMPESIS: There is not, your Honor.

6 THE COURT: It's just for the mother. Is that
7 correct?

8 MS. CAMPBELL: I know that the mother's diagnosed
9 schizophrenia, but I don't know about a diagnosis for
10 the boys, because the mental health records from the
11 mental health counselor that they saw, I have never been
12 provided. And the State is saying they were never given
13 those records, but they have the name of the provider.
14 So, I'm not sure --

15 MS. LEMPESIS: The name of the provider was in the
16 doctor's records. I did not seek them out. I do not
17 have the records. As far as I know, from talking to the
18 boys' parents, their adopted parents, they've never been
19 diagnosed schizophrenic. In talking to their
20 pediatrician, Dr. Simmons, who, again, will testify, he
21 treated them up until the age of eleven, I believe, and
22 no diagnosis of schizophrenia.

23 MS. CAMPBELL: And for the record, the cases the
24 defendant relies on are *State v. Needs*, which is a 1998
25 case, and the *In Re: Michael H.* case, which is a 2004

1 2004 case that sets out the factors to assist the trial
2 judge in weighing whether or not the victims do require
3 some sort of out-of-court examination. And there are
4 six factors to be looked at in the *Michael H.* case.

5 DEFENSE MOTION NUMBER 9:

6 THE COURT: Do we need to talk about Number 9? Is
7 there any 404(b) *Lyle* evidence?

8 MS. DEYSACH: Your Honor, you know, I did want to
9 bring up, when we were talking about the videos, and
10 this might be the proper time to bring this up. There
11 are some mentions of previous -- his criminal history in
12 the videos, and we are seeking to redact those portions.

13 THE COURT: When you say *the videos*, are they
14 interviews of the defendant?

15 MS. DEYSACH: No, I'm sorry. The Hope Haven
16 interviews. Because when the defendant came back into
17 the boys' lives, he had just been released from jail or
18 prison or something. That is referred to, as well as
19 him being under investigation for something, or possibly
20 being involved in a robbery. Those things that are
21 mentioned, Ms. Lempesis has sought help from law
22 enforcement to redact all of that information. So, I
23 mention that because what you're going to see is going
24 to include those things, but we are aware of them.

25 THE COURT: So, you're going to redact them.

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO'S. 2012-GS-07-01536 & 2012-GS-07-01537

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

DAY ONE, TUESDAY, JUNE 18, 2013
DAY TWO, WEDNESDAY, JUNE 19, 2013
& DAY THREE, THURSDAY, JUNE 20, 2013

TRANSCRIPT OF TRIAL
BEAUFORT, SOUTH CAROLINA

JAMES SIMMONS

DEFENDANT

ORIGINAL

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE; AND A JURY.

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 time, I simply ask that you sit back and pay attention to
2 the attorneys during their opening statements.

3 And in order to preserve everyone's rights, is there
4 anything further the State would like me to instruct the
5 jury?

6 MS. LEMPESIS: No, your Honor.

7 THE COURT: Anything further from Defense?

8 MS. CAMPBELL: No, ma'am.

9 THE COURT: Sorry. I'm having a hard day today.
10 Ladies and gentlemen, we're going to go ahead and begin
11 the trial.

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

14 THE COURT: Yes, ma'am.

15 OPENING STATEMENT ON BEHALF

16 OF THE STATE BY MS. LEMPESIS:

17 MS. LEMPESIS: James Simmons, the defendant in this
18 case, raped his two twin sons. When [Minor 2] and [Minor 1]
19 Simmons were somewhere between the age of seven and nine
20 years old, their father, James Simmons, sexually molested
21 them. He did it at a home on Saint Helena Island. He
22 did it more than once, and he is charged today with
23 criminal sexual conduct of a minor involving a child
24 under the age of eleven years old.

25 [Minor 2] and [Minor 1] haven't had an easy life.

1 They were born to a woman named Cynthia Goethe, and to
2 the defendant, James Simmons. Custody was soon given to
3 a great aunt named Mamie when the boys were only eight
4 months old. Mamie Simmons, unfortunately, passed away,
5 and the boys were then left with a cousin named Rose
6 Simmons. And Rose, she did the best job that she could
7 in raising these two boys, but she was a single woman
8 with no children of her own. And so, she struggled.

9 It was some time when the boys were either seven --
10 some time between seven and eight years old when the
11 defendant, James Simmons, came to live on the same
12 property that they lived on, on Saint Helena Island.
13 There was a home there that they refer to as the family
14 home, and family members came and stayed there as needed,
15 and Mr. Simmons did that. He came to stay at this home,
16 which was very close to the home that the boys lived in
17 with Rose.

18 And the boys were, by all accounts, excited that
19 their father was there, and wanted to spend time with
20 him. And they spend many nights with him in that home.
21 And it was in that home that he sexually abused Minor 2
22 and Minor 1 on more than one occasion.

23 Now, some time in -- you'll hear testimony that
24 explains when James Simmons was living in that home. The
25 boys cannot recall exact dates, but you'll hear that he

1 was living in this home for about two years, and then, he
2 left. And the boys, after that, went to live with a
3 great uncle named Johnnie Simmons, and his wife, Cynthia.
4 And so, they were moved again.

5 They lived with Johnnie and Cynthia Simmons for a
6 year, and they ended up being adopted by Johnnie and
7 Cynthia. They were in a stable home environment and were
8 adopted in the family court, and live with them still.

9 And it was after the adoption that Minor 2 and Minor 1
10 finally told what had happened to them. They told
11 Cynthia Simmons, their adopted mother, first, and she
12 notified their pediatrician, called their doctor, took
13 them in for an appointment. They were seen by their
14 doctor, and he called the police. He notified the police
15 after he learned of the abuse.

16 The police got involved, investigated the
17 allegations. The boys were interviewed at a place called
18 Hope Haven. They disclosed abuse, sexual abuse, and they
19 were also -- a medical exam was done on them.

20 Now, you're going to hear, during this trial, from
21 many people. You're going to hear from Cynthia and
22 Johnnie Simmons, the boys' parents. You're going to hear
23 from Rose Simmons, the woman who raised them for a large
24 portion of their lives. You'll hear from Dr. Simmons,
25 the doctor who called the police. You will hear from

1 several other people. You'll hear from Investigator
2 Fraser, who investigated the charge.

3 You're also going to hear from Minor 2 and Minor 1
4 themselves. They're going to come in here, and they're
5 going to take the stand, and they're going to do the best
6 job they can in telling you what their father did to
7 them. And so, I ask you -- well, when you hear from
8 Minor 2 and Minor 1 you'll be able to see for yourself and
9 hear for yourself what happened.

10 The Judge, at the end of this case, as she
11 mentioned, is going to talk to you about the law, and
12 she'll probably tell you about the burden that the State
13 has, and that's the burden to prove to you all beyond a
14 reasonable doubt that the defendant, Mr. Simmons, is
15 guilty of these charges.

16 I ask that you please listen carefully, and after
17 you hear all of the testimony and see the evidence in
18 this case, you will find that the State has met its
19 burden, and that Mr. Simmons is guilty of two counts of
20 criminal sexual conduct with a minor under the age of
21 eleven years old. Thank you.

22 THE COURT: Thank you.

23 MS. CAMPBELL: May it please the Court?

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: I lost my bailiff to the noise, so

1 maybe if my investigator could help me get this over
2 here.

3 THE COURT: Please.

4 OPENING STATEMENT ON BEHALF OF

5 DEFENDANT BY MS. CAMPBELL:

6 MS. CAMPBELL: Good afternoon. My name is Trasi
7 Campbell. I am the attorney for James Simmons, who is
8 seated at my table with Mr. Harris, my investigator.

9 When I started working on this case, it took me
10 awhile to kind of wrap my mind around who everybody was.
11 And so, I thought it might be helpful to you if I took
12 the time to sort of make a family tree or a chart. And
13 so, I'm going to take you through that, so we can kind of
14 know who all the players are in this. And then, I'm
15 going to tell you a little bit about the family itself.

16 The first thing I might just say is that, obviously,
17 from the process that we went through the last two days,
18 Mr. Simmons is confident that all the measures that were
19 in place to make sure that a fair and impartial jury is
20 seated in this courtroom have been taken, and we're
21 certainly thankful that those procedures are here, and
22 that they've been met.

23 I will tell you, also, that, if there is any
24 residual feeling that you have that makes your stomach
25 sort of tighten up when you hear the Solicitor talk about

1 the charges, we're just going to ask that you go ahead
2 and leave that at the door right now, and we're confident
3 that all of you will do that." Thank you.

4 I'll tell you that many, many years ago, out on
5 Saint Helena Island, there was a Frank Simmons and
6 Evalina Simmons. And they were married, and they had
7 some property out there, about eight acres, five to eight
8 acres, that the family has lived on for generations after
9 this.

10 Frank and Evalina, I believe you'll hear testimony,
11 had a number of children. The first child I'm going to
12 talk about is Mamie. And then, there's a child they had
13 called Benjamin, but everybody in the family knew him as
14 Cornbread. And then, they had another child named
15 Johnnie Simmons, and we'll come back to Johnnie in just a
16 minute. And then, they had another child named James
17 Simmons, Sr. So, we'll start over here on this side.

18 Mamie Simmons, -- and I apologize, despite my
19 investigations, I don't have a name here, but she did
20 have two daughters, Rose Simmons and Darlene Simmons.
21 This is the Rose and this is the Mamie that took care of
22 the boys when they were little. Okay? And you'll hear
23 probably some testimony about an Uncle Cornbread, and
24 that's his relation in the family. And Cornbread had
25 four children that, at some point, as many of the people

1 on this chart did, lived on the property, heirs'
2 property, on Saint Helena.

3 James Simmons, Sr, had a number of children. He had
4 Paulette; he had David, Arnold, Craig, and Rosa. But
5 with Christine Salazar, he had James Simmons, Jr., my
6 client; and Katherine Simmons. These are all siblings
7 here, but only having the one parent in common.

8 James Simmons, Jr., became involved with a woman by
9 the name of Cynthia Goethe, and I think you'll hear
10 testimony that Cynthia was completely unable to care for
11 her children, because she suffers from debilitating
12 schizophrenia. And so, Cynthia had. Minor 1 and Minor 2 on
13 July 17, in the year 2000. And the parents, again,
14 Cynthia and James.

15 At some point, you'll hear testimony that James had
16 a girlfriend whose name was Mahogany, and Mahogany would
17 also live on the heirs' property on Saint Helena.

18 I will tell you that Paulette -- these are some of
19 the people you'll be hearing from in this case -- is
20 married to a fellow by the name of Leroy Crockett, and
21 he's a chef down at one of the restaurants downtown. And
22 they have three children, Maude, Travis, and Allyra.

23 Now, the people who called that heirs' property home
24 and basically lived in the same very small area of the
25 property during the time period that we're speaking of,

1 would, first of all, start with Rose Simmons and Darlene.
2 They lived there forever. Paulette lived there. Leroy
3 lived there. Their three children lived there. James
4 lived there. The two boys lived there. And depending
5 upon the relationship at the time, either Cynthia was
6 living there, or Mahogany was living there, one or the
7 other.

8 And so, if I've missed anybody that was living at
9 the property, I'm sure we'll get it from the witness
10 stand.

11 The way that the boys came to be with Johnnie
12 Simmons, who you can see is an uncle, great uncle here,
13 and his wife, Cynthia Simmons, who are from Walterboro;
14 they came into the picture because Rose, who had the
15 boys, was not really able to care for them anymore. And
16 so, they offered to take them to Walterboro and adopt
17 them -- or Early Branch, I guess it is. Sorry.

18 And so, in May of 2011, the boys went to live, you
19 know, away from Saint Helena, where they had spent most
20 of their lives. And so, I'm just going to move that to
21 the back right now, if you can help me with that. And
22 then, hopefully, we'll be able to refer to it again when
23 the case is over.

24 The boys, as I said, are fraternal twins. They are
25 not identical twins. They have different, obviously,

1 DNA. And so, that's the family.

2 Now, I'll tell you how the accusation came about. I
3 believe that you'll hear testimony that, once the adopted
4 father and the adopted mother got the boys up to Early
5 Branch, the adopted mother began to be concerned because
6 Minor 1 acted like a girl, because he was feminine, and
7 this caused her to wonder why would he be acting
8 feminine. And she reports that she then inspected his
9 anus, and she found that his anus seemed a little too
10 large to her, and she felt that this was concern for her.
11 And so, she wanted to take him to the pediatrician.

12 Now, in conjunction, at the same time, the boys were
13 getting in trouble at school for becoming involved in
14 incidents of trying to look at other boys, or being
15 touched by or trying to touch other boys, as well. And
16 so, the accusation comes forward after these events take
17 place up in Early Branch.

18 I will tell you that I believe Cynthia Simmons will
19 tell you she took the boys to a mental health counselor
20 and said nothing's wrong. I will tell you that she then
21 confronted them, you know, what's wrong with you; what's
22 happened to you; there must be something wrong with you;
23 you're acting like a girl; you're acting like a boy;
24 what's going on here?

25 And so, seeking some sort of answer for why one of

1 the boys might be feminine and the other not, the
2 accusation was leveled against their father. The tall
3 tales began there. The boys had been on medication for
4 many years for what they called attention problems, and a
5 number of medications were prescribed. The tall tales
6 got so big, I think you'll hear that, at one point, they
7 had their father sitting on a bed of cash, you know, with
8 guns and things, and that he was a bank robber. And what
9 you'll find is that all the people who were living out
10 there on that property will tell you that's absolutely
11 insane, it's crazy; there's something wrong with this
12 picture. James is certainly not a bank robber, and he
13 and his girlfriend were never holding guns, sitting on a
14 mound of cash.

15 I will tell you that what we do know about James'
16 relationship with the boys is that he was very strict;
17 that, when he did come back into their lives, you'll hear
18 the family members talk about something called standing
19 on the wall. And when the boys would misbehave, it
20 involved something about having to face a wall with your
21 nose right up against it. And I'll tell you, neither one
22 of them liked it at all. And but nobody ever, I think
23 will tell you, that he beat them or abused them or hurt
24 them.

25 I think you'll also hear testimony that the house,

1 in fact, that James, and I'm going to say maybe eight
2 other people lived in at the time on Saint Helena, is
3 probably about a thousand square feet, and has no
4 interior doors. None. There might have been a sheet
5 hanging up. And so, during this period of time, I
6 believe the family will tell you, that, in no way, shape,
7 or form did they suspect or see anything taking place
8 that was improper between the father and the boys.

9 I will tell you that, at this point, we're going to
10 ask you to do what we had hoped the State would do. You
11 know, we bear a burden of seeking the truth. And you
12 know, when an accusation is leveled like this, it has to
13 be investigated. I mean, you just can't ignore it,
14 right? So but, in investigating it, you should
15 investigate it to the point where all the information
16 comes forward and everyone has a fair hearing. And so,
17 here we are today. And we thank you so much for being
18 here, to figure out and seek the truth.

19 I'll tell you that it is my belief that the boys are
20 not telling the truth, but you have to come to your own
21 belief, your own individual belief, because you're 12
22 individual people, with 12 individual minds and thoughts
23 and processes. And with those 12 individual persons, if
24 you will, please listen to the case. We put it in your
25 hands, and we thank you for being with us today, despite

1 the fact that it's about a thousand degrees in here.

2 Thank you so much.

3 THE COURT: State will call their first witness.

4 MS. LEMPESIS: Your Honor, the State calls Dr. James
5 Simmons.

6 THE COURT: Okay. Come on forward, Dr. Simmons.
7 Come on around, right here.

8 MADAM CLERK: Would you place your left hand on the
9 Bible, and raise your right hand for me, please?

10 DR. JAMES SIMMONS: Left hand on the Bible?

11 MADAM CLERK: Yes, sir. Do you solemnly swear to
12 truthfully answer all questions asked of you by this
13 Court, so help you God?

14 DR. SIMMONS: Yes, ma'am.

15 MADAM CLERK: Please be seated. State your name,
16 and spell it for the court reporter, please.

17 DR. JAMES SIMMONS

18 DIRECT EXAMINATION BY MS. LEMPESIS:

19 Q Hello, Dr. Simmons. Can you just state your name
20 for the record.

21 A My name is Dr. James Simmons.

22 Q And Dr. Simmons, what do you do for a living?

23 A I'm a pediatrician.

24 Q Can you tell us about your licensing. How long have
25 you been licensed in South Carolina as a pediatrician?

1 A I've been licensed here for about 14 years.

2 Q And tell us some about your training, your medical
3 school, and your background.

4 A I was trained at the University of Pittsburgh School
5 of Medicine, and I did my residency at the University of
6 South Florida, and actually came back here afterward, and
7 worked for Beaufort/Jasper Comp Health. And then, about
8 eight years ago, went into private practice by myself.

9 Q And what is the name of your practice?

10 A All Children's Pediatrics.

11 Q Do you have a -- where is your office?

12 A It's actually in -- I have two offices, one in Port
13 Royal and one in Ridgeland.

14 Q And Doctor, are you board certified?

15 A Yes, ma'am, in pediatrics, general pediatrics.

16 Q Thank you. And how long have you been board
17 certified?

18 A Fourteen years. Actually, 15 years.

19 Q You said you have a practice here. What is the
20 nature of your practice?

21 A It is a general pediatric practice.

22 Q Okay. And again, you said you are -- you're
23 licensed in South Carolina. Are you licensed anywhere
24 else?

25 A No, ma'am.

1 MS. LEMPESIS: Your Honor, at this point, I would
2 offer Dr. Simmons as an expert in pediatric medicine.

3 MS. CAMPBELL: No objection.

4 THE COURT: Ladies and gentlemen, in this case, Dr.
5 Simmons is being qualified as an expert in the area of
6 pediatric medicine. Ladies and gentlemen, that allows
7 for him to give his opinion and the reasons for his
8 opinion. You are to use that as you see appropriate, and
9 as compared to other evidence in the case.

10 BY MS. LEMPESIS:

11 Q Dr. Simmons, are you familiar with Minor 2 and Minor 1
12 Goethe Simmons?

13 A Yes, ma'am.

14 Q Okay. And when did you first start treating Minor 2
15 and Minor 1

16 A When they were about eight month old. Eight month
17 old, yes.

18 Q Okay. And how long did you treat them?

19 A From eight months of age until I think about a year
20 and a half ago or so.

21 Q Okay. So, most of their lives?

22 A Yes, ma'am.

23 Q And what was the nature of your treatment of Minor 2
24 and Minor 1

25 A I was their general pediatrician. I treated them

1 for mostly general illnesses, but also for a diagnosis of
2 attention deficit disorder.

3 Q Thank you. And so, you mentioned attention deficit
4 disorder. Are Minor 2 and Minor 1 both diagnosed with
5 attention deficit disorder?

6 A I believe, yes, ma'am, they were.

7 Q Okay. And you diagnosed them?

8 A Yes, ma'am.

9 Q Do you recall at what age you diagnosed them with
10 A.D.D.?

11 A I believe it's around age seven, but I'm not
12 entirely sure. I'm sorry.

13 Q Okay. Do you recall exactly what you prescribed
14 them for the A.D.D.?

15 A They were on multiple medications over the years. I
16 write -- I believe they ended up on Vyvanse is the last
17 one. I'm sorry, I can't -- can't recall.

18 Q Okay.

19 A Oh.

20 Q Yeah, if you can just speak right into the microphone
21 so the court reporter can --

22 COURT REPORTER: And you believe they were on?

23 A Vyvanse.

24 Q Is Vyvanse to treat attention deficit?

25 A Yes, ma'am.

1 Q Okay. You said you were -- they were on multiple
2 medications. Were they all to treat attention deficit
3 disorder?

4 A Yes, ma'am, pretty much.

5 Q Do you recall who their primary caretaker was and
6 who would bring them in to their visits? --

7 A Initially, it was Rose Simmons. And then, I think
8 later on, for the last couple of years I took care of
9 them, it was Mr. Simmons. I can't remember. I think
10 it's George Simmons, I think. I can't remember his first
11 name offhand.

12 Q Okay. But it was a Mr. Simmons?

13 A Yes, ma'am.

14 Q Okay. Could it have been Johnnie Simmons?

15 A Johnnie Simmons. That's it. That's it.

16 Q Okay. Can you tell me sort of -- you said you saw
17 them their entire -- for most of their life. Can you
18 tell me the sort of complaints that they would come in
19 for.

20 A You mean as far as the attention deficit disorder,
21 or just in general?

22 Q Just in general.

23 A Anything. Cold, sore throats, you know, just the
24 typical, pediatric concerns that parents bring kids in
25 for.

1 Q Sure. Okay. And Dr. Simmons, do you recall
2 treating the boys for an issue with uncontrollable bowel
3 movements?

4 A Yes, when they were younger, I think we did have
5 some issues with them. And I think a lot of those issues
6 we thought were secondary to constipation.

7 Q Secondary to constipation.

8 A Yes.

9 Q Okay. Do you recall any reference to them having
10 accidents at school?

11 A I think they -- one of the boys did have some
12 accidents at school.

13 Q Doctor, do you recall treating one of the boys for
14 an irritated penis?

15 A I do recall. The problem that I have is that
16 they're twins. And so, it gets very confusing who I
17 treated for what. But I think I do recall having treated
18 one of the boys for that, yes.

19 Q Okay. And do you recall when you treated the boy?

20 A I don't recall the exact dates.

21 Q If I gave you your records, could you use them to
22 refresh your memory?

23 A Yes, ma'am. Yes, ma'am.

24 Q Okay.

25 MS. LEMPESIS: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 BY MS. LEMPESIS:

4 Q Dr. Simmons, I'm just going to hand you, for your
5 reference, the records, the complete records on Minor 2
6 and Minor 1 I believe if you refer to January of
7 2008, January 22, 2008.

8 A Yes. And this is for Minor 1 I have that one.

9 Q Okay. Do you see a reference to uncontrollable
10 bowel movements?

11 A Yes. Abdominal pain with stool, and having
12 accidents at school.

13 Q Thank you. And then, if you could, refer to January
14 15th of 2010.

15 A January 15th? It's not exactly in order.

16 Q If you can't find it, that's --

17 A Yes, I -- they're not all in order. Is this for
18 Minor 1 or Minor 2

19 Q For Minor 1 I believe. And that's fine. I don't
20 want to take up too much of the time.

21 A Okay.

22 Q But you said you did recall treating one of the boys
23 for an irritated penis?

24 A Yes, ma'am, I had.

25 Q Okay. Thank you. And Dr. Simmons, we've qualified

1 you as an expert. I'd like to ask you about those two
2 things in the record. In your opinion as a pediatrician,
3 is it possible that uncontrollable bowel movements or an
4 irritated penis could be the result of some sort of
5 sexual abuse?

6 A Yes, ma'am, it is.

7 Q Okay. And Dr. Simmons, have you treated patients in
8 the past who were sexually abused?

9 A Yes, ma'am.

10 Q In your opinion as an expert, what sort of symptoms
11 do you expect to see in child victims that have been
12 sexually abused?

13 A Classic textbook symptoms include behavioral --
14 behavioral problems such as acting out in school,
15 inappropriate sexual behavior with themselves and other
16 children. Just overall change in behavior. Sometimes
17 you will -- you will also get some urinary incontinence
18 and, or even stool incontinence periodically with
19 children who've been abused.

20 Q Thank you. Dr. Simmons, going back to, I think it
21 was September of 2011, do you recall Cynthia and Johnnie
22 Simmons bringing Minor 2 and Minor 1 into your office?

23 A Yes. Is that the date?

24 Q Well, --

25 A What happened on that date? I'm sorry.

1 Q Do you recall them being brought in and having a
2 disclosure of abuse, of sexual abuse?

3 A Yes. Yes, I do. Yes, I do. Yes, yes.

4 Q Okay. So, you saw them when they were brought in.

5 A Yes, ma'am.

6 Q Okay. Thank you. And so, can you tell me, first,
7 what you did when they were brought in and you were
8 notified that there was a suspicion of sexual abuse.

9 A First thing we did was we -- I had the young men
10 step out of the room, and I talked to their parents
11 alone.

12 Q Okay.

13 A And then, next, I actually -- I think it was Minor 1
14 I took Minor 1 into my office, actually, and talked to him
15 one-on-one, and just asked a few basic questions about
16 what happened; what do -- you know, just tell me what
17 happened. And once he told me his story, I just got -- I
18 -- I sent him back into the room with his parents, and I
19 pulled his parents out again and said, *I don't want you*
20 *to -- I'm going to make -- I'll make the referral to the*
21 *appropriate authorities.* But I told them I didn't want
22 them to discuss that with the kids anymore, but they
23 needed -- they needed forensic examinations.

24 Q Okay. And in fact, is that your typical practice if
25 you have such a disclosure?

1 A Yes, ma'am.

2 Q Okay. And going back, you said you took [Minor 1] into
3 your office.

4 A Um-hmm.

5 Q Okay. And so, was anyone else present when you were
6 speaking to [Minor 1]

7 A No, ma'am.

8 Q And Doctor, can you tell me what -- in talking to
9 [Minor 1] what he told you happened.

10 MS. CAMPBELL: Your Honor, I object. It's hearsay.
11 It's objectionable under 803. And certainly, he could
12 limit it to the child's disclosure of date and time, and
13 that's it.

14 MS. LEMPESIS: Judge, we'd say that this is under
15 the hearsay exception, 803. Excuse me, let me pull it
16 up. 803.

17 THE COURT: For medical diagnosis?

18 MS. LEMPESIS: For medical -- purpose of medical
19 diagnosis, exactly.

20 THE COURT: You can go ahead.

21 MS. LEMPESIS: Thank you.

22 MS. CAMPBELL: I did -- well --

23 BY MS. LEMPESIS:

24 Q Dr. Simmons, can you tell me what [Minor 1] told you
25 happened.

1 A I asked him, you know, tell me what happened. And
2 he said, basically, his -- sorry, I'm a little nervous.

3 Q That's okay. Just take your time.

4 A Yeah. He said, basically -- basically, he said his
5 -- his father, that he'd been watching porn, and that
6 they had told him not to tell anybody because of their
7 secret pact. And that I believe that his daddy had --
8 his father had touched his private area.

9 Q Touched his private area. Do you recall more
10 specifically what Minor 1 said?

11 A I believe -- I believe he said his penis.

12 Q Okay. And if you'd like to refer to your notes to
13 try to refresh your memory as to what was said.

14 A I'm sorry. I'm just a little nervous.

15 Q That's fine. I think if you look at the front of
16 your notes. Here we go.

17 A Okay. Here we go. Okay. That's right. That, he
18 -- we talked, and I asked him what happened, and he said
19 that -- I talked with them separately, and that Dad made
20 them, and I have in quotations, quote/unquote, *Dad made*
21 *them suck his penis*; and that the episode ended when he
22 was -- when the custody of Mr. Johnnie Simmons. And
23 that, also, they had been watching porno, and he said not
24 to tell them because of the secret pact with Dad.

25 Q Okay. Dr. Simmons, did you, in talking to Minor 1

1 and to the parents, did you determine where these
2 incidents that were disclosed had occurred?

3 A Actually, the way that I was trained is that, once
4 you ask those initial questions, that we don't ask
5 anymore, because we're worried about the kids being
6 giving -- imprinted with ideas. So, at that point, once
7 he said those words, we stopped the interview, and we
8 called the appropriate authorities. And I just let -- I
9 think Hope Haven, they took over and led the
10 investigation from there.

11 Q Thank you. Did you do any sort of physical exam --

12 A Yes.

13 Q -- after this?

14 A Yes.

15 Q Okay. You examined both of the boys?

16 A I believe I did.

17 Q Okay. Do you recall if you -- if there was anything
18 physically that you --

19 A No, I didn't find any signs of physical trauma or
20 any signs of physical abuse.

21 Q And Dr. Simmons, in your experience, and in your
22 opinion, is that common or uncommon to not find any
23 findings?

24 A It's actually very common not to have any signs
25 of --

1 Q Okay. Thank you.

2 A Any physical signs. Sorry.

3 Q Thank you. And so, I believe you said this, but
4 what did you do after these disclosures, exactly? Who
5 did you notify?

6 A We notified the -- the, I believe, the Sheriff's
7 Department. I think we had to call Beaufort, because it
8 occurred in Beaufort. So, we notified Beaufort Sheriff's
9 Department. And at that point in time, they took over
10 the investigation.

11 Q Okay. Thank you, Dr. Simmons. I beg the Court's
12 indulgence.

13 Dr. Simmons, just one more thing. Did Minor 1 or
14 Minor 2 tell you when these incidents had occurred with
15 their father?

16 A They said they occurred while they were in the
17 custody of Ms. Rose Simmons.

18 Q Okay. All right. Thank you, Dr. Simmons. Dr.
19 Simmons, just a few more things. You mentioned that you
20 didn't see any signs of physical trauma on the boys, and
21 that that is not uncommon -- or, it is common. Can you
22 explain that a little bit more for the jury why there are
23 no --

24 MS. CAMPBELL: Your Honor, I'm going to object to
25 this line of questioning, for him explaining the obvious.

1 I mean, he stated the answer to the Solicitor's question.
2 And going further, again, my objection, what he -- he can
3 state what he -- reasonably pertinent to a diagnosis and
4 treatment, and that is it. And this is way past that.

5 THE COURT: He can answer the question.

6 MS. LEMPESIS: Thank you.

7 THE COURT: He's been qualified as an expert
8 witness.

9 MS. LEMPESIS: Thank you, your Honor.

10 BY MS. LEMPESIS:

11 Q Dr. Simmons, if you could explain that a little bit
12 more, why there's usually no physical findings.

13 A Usually, in cases, it's actually the exception,
14 because, usually, in those cases, they are the extreme
15 cases. But more often than not, what happens is,
16 whatever the offender is, they're not using anything
17 large enough to leave any marks. Or sometimes the -- the
18 -- the area of the genitals are not seen until a lot of
19 things are actually healed up. The rectum and those
20 areas actually heal pretty fast. So, sometimes we don't
21 see -- actually, most of the time, we don't see any signs
22 of it. It's usually by a report from either a caregiver
23 or from the patient. Or we see other indirect signs,
24 like you said, as far as stool incontinence, urinary
25 incontinence, or behavioral issues that start showing up.

1 MS. LEMPESIS: Thank you, Doctor. Just one more
2 moment. Dr. Simmons, I don't have anymore questions for
3 you, but Ms. Campbell does.

4 THE COURT: Thank you.

5 MS. CAMPBELL: May it please the Court?

6 THE COURT: Yes, ma'am.

7 DR. JAMES SIMMONS.

8 CROSS-EXAMINATION BY MS. CAMPBELL:

9 Q Dr. Simmons, I'm going to be referring to your notes
10 that you provided pursuant to subpoena. And I'm not sure
11 what order you have them in, but I'm going to start with
12 the first one that I've got here, and that is some basic
13 family history on [Minor 1] and [Minor 2]. And isn't it true
14 that you make a notation that their mother is alive and
15 suffers from schizophrenia, correct?

16 A Yes, ma'am.

17 Q Okay. You also make several notations in the
18 following pages that, in 2011, that you were increasing
19 their medications, correct?

20 A I believe there were -- there were multiple
21 adjustments to the medication in that time period, yes,
22 ma'am.

23 Q Over the time period of what? Since they were six
24 or seven years old?

25 A Since -- yeah. Over the time period that we -- they

1 had the diagnosis attention deficit. So, there were
2 multiple revisions in their medications.

3 Q Okay. I see also in your notes that you have
4 something in April of 2012 that says ten-year-old male
5 with an ADHD and probable O.D.D.? What does that mean?

6 A O.D.D. is -- sorry. Oppositional defiant disorder.
7 It is a disorder that tends to go along with A.D.D. on
8 many occasions.

9 Q Okay. If you look with me on those records, as
10 well, in October of 2004, and again on the 11th and on
11 the 25th, do you not indicate that the child was
12 suffering then from constipation?

13 A You said October of?

14 Q On Minor 2 you've got a notation here.

15 A What year?

16 Q 2004.

17 A All right.

18 Q That he was brought in for suffering from
19 constipation in 2004.

20 A You say that's on Minor 1

21 Q No, it's on Minor 2

22 A Okay. We have everything.

23 Q Would you like me to approach and show you the
24 actual --

25 A That's fine. That might be easier for me.

1 Q Thank you. It's on this page.

2 A All right, here.

3 Q Yes, right here.

4 A Okay, yes. Those are problems -- these are from my
5 old, old medical records. Yes, those are the problems,
6 yes.

7 Q So, the answer is, yes, back in 2004, **Minor 2** was
8 brought in by the family because he was suffering from
9 constipation. Is that right?

10 A Yes.

11 Q Okay.

12 A Yes.

13 Q Do you have some notes in your records that you
14 received reports that **Minor 2** had been stealing medication
15 from the school nurse?

16 A Can you tell me what date that is?

17 Q Sure. I'll bring you the paper.

18 A Okay.

19 Q At the bottom of the page.

20 A Oh, yes. Yes, ma'am.

21 Q Okay. Thank you. You have a notation, then, on
22 **Minor 2** that he has, in 2011, been seeing a therapist.
23 Do you know who that therapist was?

24 A I believe it was Baker's Counseling. But what --
25 can you tell me what date?

1 Q Well, your records look like maybe June or May.

2 A Of 2011?

3 Q Yeah.

4 A Actually, I believe that was Dr. Payne.

5 Q Dr. Robert Payne?

6 A Yes, ma'am.

7 Q Okay.

8 A Yes.

9 Q And you also have a notation that Minor 2 had stopped
10 taking his medicine, or he was off his medicine at the
11 time.

12 A Yes, ma'am.

13 Q Okay. Would you have advised him to be off of his
14 medicine?

15 A I tend to leave that up to the parent -- to the
16 parents. Basically, we tend to make recommendations, but
17 sometimes parents are capable of dealing with children's
18 conditions without medications. So, we make a
19 recommendation, but at the end of the day, we can leave
20 it up to the parents.

21 Q And so, he's off his medication in 2011. So, he's
22 not getting any help for any attention deficit disorder,
23 correct?

24 A As far as -- as far as -- I mean, I cannot rule out
25 parental input, but from me, at that point, I don't think

1 we were giving him any medications, no, ma'am.

2 Q Well, you're not saying that Johnnie Simmons and
3 Cynthia Simmons were medicating with something other than
4 what you prescribed.

5 A No, ma'am. No, ma'am.

6 Q Okay. So, so, your report and your records here
7 show he's off his medication in 2011, but he's having
8 difficulty interacting with his peers, and the symptoms
9 began since kindergarten, correct?

10 A Yes, ma'am.

11 Q Okay. Not in 2008, but since kindergarten. Like,
12 2004, 2005, right? They were born in 2000.

13 A Yes, ma'am.

14 Q Well, the boys were born in the year 2000, correct?

15 A Okay, yes, ma'am.

16 Q Okay.

17 A Now, just because you were diagnosing --

18 MS. CAMPBELL: Your Honor, I didn't ask a question.

19 A Sorry.

20 THE COURT: He can explain. He is free to explain.
21 Go ahead, sir.

22 A If they were born in 2000, they had problems in
23 2004, the medication I recommended, until you get at
24 least six years older. And usually, I don't make a
25 diagnosis in kids under six years. We refer them out to

1 a psychiatrist for that. So, they probably weren't on
2 medication in 2004, because it's not recommendation for
3 that age group.

4 Q Right. And you did make a referral to a
5 psychiatrist for these children, correct?

6 A Um-hmm.

7 Q To Dr. Payne.

8 A But that was much later.

9 Q Okay. And when you made the referral, do you know
10 if they ever went?

11 A I believe they went to at least one visit.

12 Q Okay. Great. Following up with the rest of your
13 records here, you have a notation as we get further into
14 them, that it appears in, again, at the end of 2010 or
15 beginning of 2011, that Minor 2 is having no sleeping
16 difficulties, correct?

17 A What -- what date is this?

18 Q Looks like January 2011. He's sleeping just fine.

19 A I'm -- I'm not -- I'm kind of having difficulty
20 locating it. So, I'm going to say if my notes say that,
21 then, I would have to agree.

22 Q Okay. You have a reference on November of 2010,
23 that there are no behavior problems reported for Minor 2
24 correct?

25 A That's -- no, that'd be November the 9th? That's

1 September.

2 Q November the 4th.

3 A Could I see that? I'm sorry.

4 Q Sure.

5 A I'm having trouble with all these records.

6 Q It's highlighted at the top of the page.

7 A Okay. Yes, ma'am.

8 Q No behavior problems in the fall of 2010, correct?

9 A Yes, ma'am.

10 Q Okay. Back in September of 2010, again, with

11 Minor 2 no behavior problems reported, no concerns.

12 Correct?

13 A I'm still trying to -- you said September of 2010.

14 Q Yes, September 9th.

15 A Yes, ma'am.

16 Q Okay. Thank you. Now, you had Minor 2 started on
17 something called Loratadine tablets.

18 A Yes, ma'am.

19 Q And was that for allergy or something?

20 A Yes, ma'am. I believe that's Claritin.

21 Q Okay. So, Claritin, in addition to his other
22 medications.

23 A Um-hmm.

24 Q Okay.

25 THE COURT: Is that a yes, for the record, Doctor?

1 A Oh. Yes, ma'am.

2 THE COURT: Thank you.

3 Q And Cortisporin Suspension, was that for an eye
4 infection?

5 A I believe that's for ears.

6 Q For an ear infection. Okay. All of it with Minor 2
7 there.

8 Dr. Simmons, you stated that you had no physical
9 findings for Minor 2 or Minor 1 correct?

10 A Yes, ma'am.

11 Q Okay. And would you have done an examination of the
12 anus of both boys?

13 A We typically do a full exam. We check the whole
14 body, looking for bruises, healing scars, anything that
15 might show any signs of abuse.

16 Q So, yes, you had them pull their pants down, and you
17 looked at the anus of both boys.

18 A Yes. Yes, ma'am.

19 Q Okay. And you did not find that the anus on Minor 1
20 was unusually large. Is that correct?

21 A No, ma'am. No, ma'am.

22 Q Okay.

23 A Well, do you mean as far as the opening?

24 Q Just unusually large, anything large or unusual
25 about Minor 1 anus.

1 A I did not find any abnormalities on physical exam.

2 Q Okay. And of course, if you had, you would have
3 noted it, correct?

4 A Yes, ma'am.

5 Q Okay. Now, isn't it true that, when you spoke to
6 Minor 1 he said something to you like, *I've learned some*
7 *faggot stuff*. Did he use that phrase with you?

8 A I do recall that, yes.

9 Q Okay. Someone had used that, and then he reported
10 that to you, faggot stuff, right?

11 A Yes, ma'am.

12 Q Okay. And isn't it true that Cynthia told you that
13 she had to find out what was going on, and uncover the
14 reasons, and that they had a large stool produced by
15 Minor 2 and that Minor 1 anus was large. Isn't that
16 true?

17 A On what -- was this the same date?

18 Q Right, when they brought him in to you.

19 A I don't see that in my notes.

20 Q Do you remember telling the detective those things;
21 that Cynthia brought those concerns to you; that she had
22 done a physical examination of the boys; and in
23 particular, found Minor 1 anus to be unusually large?

24 A I don't -- I don't recall that.

25 Q Okay. But if the detective put it in his notes, you

1 probably did, right?

2 A I'm assuming. Yes, ma'am.

3 Q Okay. Now, you saw the boys in -- I'm trying to see
4 the date here -- I want to say maybe September of 2011,
5 correct?

6 A Yes, ma'am.

7 Q Okay. So, in September of 2011, we have -- that's
8 probably a year and a half, maybe, after the last time
9 you saw them? Or did you see them at all in 2011?

10 A I saw them -- the last day that I have is November
11 22, 2011.

12 Q Okay. So, nothing to you, in the years that you
13 treated them, indicated to you that these boys in any way
14 were the victims of any sexual abuse, correct?

15 A I was not -- no, ma'am.

16 Q No. Because if you suspected it, you were going to
17 have to report it, right?

18 A Yes, ma'am.

19 Q Okay. And you physically examined them; you spent
20 time with them, correct?

21 A Yes, ma'am.

22 Q Okay. And in all those visits and all those
23 treatments, never a single concern on your part that
24 there was anything taking place in terms of sexual abuse
25 with Minor 1 or Minor 2

1 A No, ma'am.

2 Q Okay. Now, you talked a little bit about the fear
3 that you are taught about that, when you're dealing with
4 children particularly, who make a report or an accusation
5 of sexual abuse, that you don't want to risk imprinting
6 them with ideas that maybe aren't true, right?

7 A Yes, ma'am.

8 Q Okay. And so, obviously, it would be possible, if
9 you were in a position of authority over a child, to
10 imprint them with ideas about what may or may not have
11 happened, correct?

12 A Yes, ma'am.

13 Q Okay. Just one second, your Honor.

14 Dr. Simmons, much of the reports that you turned
15 over appear to start in June of 2010, the typed reports;
16 but the handwritten reports go all the way back to your
17 beginning to care for them, correct?

18 A Yes, ma'am.

19 Q Okay. And in all the handwritten reports that
20 you've turned over, there's not a single indication from
21 the time you started until the time you got this report
22 from Johnnie and Cynthia, that indicated to you that you
23 should be concerned or fearful that these boys were being
24 abused, right?

25 A Yes, ma'am.

1 MS. CAMPBELL: Okay. That's all I have.

2 THE COURT: Ms. Lempesis?

3 MS. LEMPESIS: Thank you, your Honor.

4 DR. JAMES SIMMONS

5 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

6 Q Dr. Simmons, just a few things. We've talked about
7 the boys were diagnosed with A.D.D., and you mentioned
8 that they were on medication for A.D.D.?

9 A Yes, ma'am.

10 Q Do you know if they were ever -- did you ever
11 diagnose them with any other sort of mental illness?

12 A I think the only other ones that we have spoken of
13 were opposition defiance disorder.

14 Q And that was in relation to Minor2 or Minor1?

15 A I cannot recall. I believe it was mostly Minor1,
16 but -- Minor1, but I cannot recall. Like I said, they're
17 twins. I don't have their -- let me see their -- the
18 problem is in front of me. They're twins, and so, they
19 kind of get me a little confused.

20 Q Sure. But as far -- besides the A.D.D. and this
21 O.D.D., no other sort of mental illnesses?

22 A No, ma'am.

23 Q Okay. Ms. Campbell mentioned, and we've talked
24 about how you treated these boys throughout most of their
25 lives, and you stated that you didn't see any signs of

1 sexual abuse before this disclosure. Is that correct?

2 A Yes, ma'am.

3 Q But Dr. Simmons, in a typical visit to the
4 pediatrician, do you necessarily look for -- examine
5 every child, thinking that you're going to find sexual
6 abuse?

7 A No, we do not.

8 Q So, that's not something you're typically looking
9 for.

10 A No, ma'am. Typically, what happens is that, at all
11 well-child visits, we do full body exams. If there's
12 ever any report of sexual or physical abuse, then, we
13 take a step back and really do a thorough full-body exam,
14 to make sure we don't miss any -- any of the signs that
15 might be indicative of abuse.

16 Q Okay. So, it's not until it's reported that you
17 actually look for the injuries or any sort of signs.

18 A Yes, ma'am.

19 Q You stated before that there are signs that you see
20 in relation to sexual abuse. And in your expert opinion,
21 are those sort of symptoms more behavioral? Is that a
22 fair statement?

23 A Yes. The majority of time, you see more behavioral
24 symptoms, as opposed to physical symptoms.

25 Q And going back to your exam of [Minor 2] and [Minor 1]

1 after this disclosure, you testified that you did do a
2 thorough physical exam, and you examined their anus, and
3 you didn't see any sort of injury. Is that correct?

4 A Yes, ma'am.

5 Q Dr. Simmons, can you explain to the jury why that
6 would be, that you wouldn't see any injury?

7 A It actually depends on the level of trauma. It
8 depends on, if there's penetration, it depends on what
9 they're penetrating them with, how big, how small, if
10 they're using lubrication. There are just many, many
11 factors that are involved in finding if there's physical
12 signs of abuse.

13 Q Is it also typical that, if there's been some time
14 between the abuse and the disclosure?

15 A Yes. Chronic abuse, basically, the body adjusts
16 easier to chronic abuse. So, you -- if it is something
17 that's -- I'm sorry, chronic, long-standing, if that has
18 been going on for a long time, that actually decrease the
19 risk -- the chances you will find something.

20 MS. LEMPESIS: Okay. Thank you. I don't have
21 anything further for you, Dr. Simmons.

22 MS. CAMPBELL: May it please the Court, briefly?

23 THE COURT: Yes, ma'am.

24 DR. JAMES SIMMONS

25 CROSS-EXAMINATION BY MS. CAMPBELL:

1 Q Dr. Simmons, just so the record is clear, what you
2 testified to, to the State is that you, under your oath
3 as a physician, especially a pediatric physician, you
4 typically do not look for signs of sexual abuse; you wait
5 for it to be reported to you?

6 A No, what I said is, we do full physical exams at
7 least yearly, at their regular well-child exams.
8 However, when there is a report of sexual abuse, physical
9 abuse, we actually will do a thorough -- a more thorough
10 exam to make sure that, if there are signs, we can pick
11 up any signs that are -- any signs that are present.

12 Q So, are you on the lookout? Are you trying to
13 observe behavior in children that indicates sexual abuse?

14 A Yes, we --

15 Q Okay. Yes.

16 A Yes.

17 Q So, the behavior that you observed in these boys
18 since birth, until the day that Cynthia and Johnnie
19 brought them in there, nothing in their behavior
20 indicated to you that they were being sexually abused,
21 correct?

22 A Correct.

23 MS. CAMPBELL: Thank you.

24 THE COURT: Anything further?

25 MS. LEMPESIS: Nothing further, your Honor.

1 THE COURT: Thank you. Thank you. You all may be
2 seated. Welcome back, ladies and gentlemen. Thank you
3 for serving as our foreperson. Let's go ahead, and if
4 the State would call their next witness.

5 MS. LEMPESIS: Thank you, your Honor. State calls
6 Investigator Jeremiah Fraser.

7 THE COURT: Come on forward, Investigator Fraser.

8 INVESTIGATOR JEREMIAH FRASER: Yes, ma'am.

9 MADAM CLERK: Would you place your left hand on the
10 Bible, and raise your right hand for me, please? Do you
11 solemnly swear to truthfully answer all questions asked
12 of you by this Court, so help you God?

13 INVESTIGATOR FRASER: Yes, ma'am.

14 MADAM CLERK: Please be seated. State your name and
15 spell it for the court reporter.

16 INVESTIGATOR FRASER: Jeremiah Fraser, F/r/a/s/e/r.

17 INVESTIGATOR JEREMIAH FRASER

18 DIRECT EXAMINATION BY MS. LEMPESIS:

19 Q Thank you, Investigator Fraser. Who do you work
20 for?

21 A I work for the Beaufort County Sheriff's Office in
22 criminal investigations.

23 Q And what is your current position?

24 A I am currently the supervisor of the unit.

25 Q And your exact title?

1 A I'm a staff sergeant.

2 Q Okay. Investigator Fraser, can you tell us some
3 about your past training and experience.

4 A I've been with the Sheriff's Office for 12 years.
5 Prior to coming to the Sheriff's Office, I was in the
6 Marine Corp. Since coming to the Sheriff's Office, I've
7 been on patrol. I also supervise the K-9 team.

8 I've attended several continuing-education-type
9 classes in various types of crime, solving crime, crime
10 scene processing, things of that nature.

11 Q And your current position as a supervisor and staff
12 sergeant, what is that? What do your duties include in
13 that position?

14 A My duties include supervising the other
15 investigators who work for me or under me. I also have a
16 supervisor that I'm directly responsible to. And the
17 general operations of the investigations office falls on
18 -- on my plate.

19 Q Thank you. And were you working as an investigator
20 back in 2011?

21 A Yes, ma'am, I was.

22 Q And were you assigned to investigate a possible
23 criminal sexual conduct with a minor case?

24 A Yes, I was.

25 Q And did that involve James Simmons?

1 A It did, yes.

2 Q In your investigation, did you determine who the
3 victims were in that case?

4 A I did, as reported by the initial report.

5 Q And who were those victims?

6 A [Minor 1] and [Minor 2]

7 Q Did you determine their relation to the defendant?

8 A Yes. Through the course of the investigation, I
9 found that they were the sons of the defendant.

10 Q And tell us what was one of the first things you did
11 when you were assigned this case.

12 A When the case first came to me, when you're dealing
13 with younger children, it's not typically wise for me, a
14 stranger, if you will, to talk to those children. So,
15 what we do is, we refer them to Hope Haven. They have
16 interviewers at Hope Haven that regularly deal with
17 children in cases like this. And that's what I did, is,
18 I set up the appointment. I made contact with all of the
19 adults that were involved in the case, and started my
20 investigation by talking to the adults that were involved
21 in the case, prior to the interview that took place at
22 Hope Haven.

23 Q Thank you. Do you recall the different adults that
24 you just -- that you interviewed for this case?

25 A Yes. I noted them all in my report.

1 Q Okay. Can you sort of maybe list them for us.

2 A I can. I began by speaking with the doctor that was
3 just on the stand, Dr. Simmons. After I spoke to Mr.
4 Simmons, I arranged -- or Dr. Simmons, I'm sorry. He
5 earned his title. After I spoke to the doctor, I spoke
6 to Cynthia, who is the adopted mother, who the boys refer
7 to as their mother. I spoke to her husband, as well.
8 Both agreed to come to the Hope Haven interview.

9 I conducted a lengthy interview with Cynthia and her
10 husband. I spoke to the Hope Haven personnel who
11 conducted the interview. I was present during the
12 interview.

13 Q Can you tell me when that interview occurred at Hope
14 Haven?

15 A Excuse me?

16 Q Can you tell me when that interview occurred?

17 A I can. The interview occurred on October the 11th,
18 2011.

19 Q And you said you were present for that?

20 A I was, yes.

21 Q Present inside the room for the interview?

22 A No. When they conduct interviews, the only person
23 in the room with the child is the interviewer. They have
24 a closed-circuit T.V. system that's set up to record the
25 interview process itself. I sat in another room, along

1 with another Hope Haven employee, and we watched the
2 interview occur. Once the interview was over, we
3 conferred with the person who did the interview itself,
4 and that's my capacity there. I don't actually talk to
5 the children at Hope Haven.

6 Q Do you always have children interviewed at Hope
7 Haven?

8 A Younger children, I do. Younger children, I do.
9 Sometimes older -- teenagers, I'll talk to myself. It --
10 it depends on the child. It depends on where they are
11 developmentally, the impression that I get. If I feel
12 that they are withdrawn from me, I will definitely set up
13 with Hope Haven. Sometimes when they're talking to a man
14 who they don't know, they don't -- they don't want to
15 talk. So, that's the benefit of having Hope Haven. I
16 can set up a Hope Haven interview. The Hope Haven
17 interviewer will generally be able to glean more
18 information than I would in those cases.

19 Q Thank you. And I'm sorry. I interrupted you
20 before. But you were going through the various family
21 members that you had talked to in your investigation in
22 this case. Would you continue with that.

23 A Certainly. I believe I ended with the Hope Haven
24 interview with the boys. I went out to the Simmons
25 family property. I spoke with Darlene Simmons. I spoke

1 with Rose Simmons. I spoke with an aunt and uncle of the
2 boys, Leroy and Paulette Crockett. I actually had to
3 find them in Beaufort. They weren't out on the family
4 property any longer.

5 Q Investigator Fraser, based on your investigation and
6 the information that you have obtained, did you determine
7 a location as to where this abuse occurred?

8 A I did. I determined it was at [REDACTED]
9 which is in Beaufort County, within the jurisdiction of
10 the Beaufort County Sheriff's Office.

11 Q And is that -- where is that, exactly, in Beaufort?

12 A Seaside Road is a primary residential road on Saint
13 Helena Island. As you're going out towards Fripp Island,
14 there's a restaurant that used to be called Johnson --
15 Johnson Creek Tavern, I think, is what it was. That's
16 right there. Now it's Boondock's. Coffin Point Road's
17 right across the street. And it runs from Highway 21,
18 all the way back to the Lands End community, on Lands End
19 Road.

20 Q And you said you went out to the Simmons family
21 property. Can you sort of explain this property and the
22 houses there?

23 A Like Ms. Campbell said in her opening arguments, it
24 appeared to me to be heirs' property; heirs' property
25 being it's family property. There's one primary brick

1 structure on the residence. It appeared to me to be the
2 oldest structure on the property. It was white, closed-
3 in, had a pump house.

4 Sitting beside that, I believe it was Rose Simmons'
5 house. It was a double-wide trailer. Right behind Rose
6 Simmons' house, there was another single-wide mobile
7 home. Beside that, there was another single-wide mobile
8 home that I believe belonged to Darlene, who is an aunt,
9 also, I believe. And then, there was a fourth single-
10 wide mobile home on the property next to Darlene's house.

11 So, I think there is a total of the white -- the
12 white structure at [REDACTED] the white house, which is where
13 this occurred; the double-wide; and three single-wide's,
14 I believe, is what's on this property. There was another
15 structure as you first enter the property, but I don't
16 believe it was a dwelling. I believe it was a house.

17 Q All right. Thank you, Investigator Fraser.

18 MS. LEMPESIS: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 MS. LEMPESIS: Thank you.

22 BY MS. LEMPESIS:

23 Q Investigator Fraser, I am handing up what's been
24 previously marked as State's Exhibits 1 through 6. Do
25 you recognize these items?

1 A I do, yes, ma'am.

2 Q And how are you able to recognize them?

3 A These are photographs that I had taken.

4 Q Okay. And are they a true and accurate depiction of
5 the property on the Simmons family property?

6 A Yes, [REDACTED] yes, ma'am, they are.

7 Q Thank you. And do these pictures appear to have
8 been altered in any way?

9 A No.

10 Q Thank you.

11 MS. LEMPESIS: Your Honor, at this point, we'd offer
12 State's Exhibit 1 through 6 for admission into evidence.

13 MS. CAMPBELL: No objection.

14 THE COURT: They're in evidence without objection,
15 ladies and gentlemen.

16 MS. LEMPESIS: And permission to publish to the
17 jury, your Honor.

18 THE COURT: You may.

19 MS. LEMPESIS: Thank you.

20 DOCUMENT IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 1,

22 ADMITTED AS EVIDENCE.

23 DOCUMENT IDENTIFIED AS PHOTOGRAPH

24 MARKED STATE'S EXHIBIT NUMBER 2,

25 ADMITTED AS EVIDENCE.

1 DOCUMENT IDENTIFIED AS PHOTOGRAPH
2 MARKED STATE'S EXHIBIT NUMBER 3,
3 ADMITTED AS EVIDENCE.

4 DOCUMENT IDENTIFIED AS PHOTOGRAPH
5 MARKED STATE'S EXHIBIT NUMBER 4,
6 ADMITTED AS EVIDENCE.

7 DOCUMENT IDENTIFIED AS PHOTOGRAPH
8 MARKED STATE'S EXHIBIT NUMBER 5,
9 ADMITTED AS EVIDENCE.

10 DOCUMENT IDENTIFIED AS PHOTOGRAPH
11 MARKED STATE'S EXHIBIT NUMBER 6,
12 ADMITTED AS EVIDENCE.

13 BY MS. LEMPESIS: And Investigator, if you
14 would just --

15 THE COURT: You're welcome to step down, sir.

16 A Thank you, ma'am.

17 Q Investigator Fraser, can you just tell us what we're
18 looking at here?

19 A Yes, ma'am, I can. This is the entry road into the
20 greater property as a whole, if you will. This double-
21 wide trailer is the one I was talking about is Rose
22 Simmons' house. I'm actually standing right -- right in
23 the general area of the pump house, which is right beside
24 the white house, where this incident took place. Right
25 back here is the other single-wide. It is occupied. I

1 don't know who stays there. It is another family member,
2 I believe.

3 This is Darlene Simmons' residence right here. And
4 then, the fourth trailer on the property sits this way.
5 You can't see it in this picture, but it's right here.

6 Q Thank you. And again, if you can tell us what
7 this --

8 A I can. This is a picture that I took. I backed up
9 from the place where I just was at. Again, this is the
10 access road into the property. This is the pump house
11 for the residence at [REDACTED] the primary structure, the
12 brick structure on the house. Again, that is Rose
13 Simmons' single-wide mobile home. And then, right
14 straight through behind this tree is Darlene Simmons'
15 residence.

16 MS. CAMPBELL: Your Honor, could we please have the
17 officer step on the other side, perhaps?

18 A I was blocking jurors over there.

19 THE COURT: Yes.

20 MS. CAMPBELL: Well, I was just thinking, if we
21 pulled it this way, he could stand between that and the
22 Bar there, and then we could see, as well.

23 THE COURT: Okay.

24 MS. CAMPBELL: Right.

25 THE COURT: Maybe if you could just take a step

1 back, both of you, if that's all right. Thank you.

2 MS. LEMPESIS: Okay. Is that better?

3 MS. CAMPBELL: Yes, ma'am.

4 THE COURT: Wanda, are you okay if Investigator
5 Fraser steps over right there?

6 COURT REPORTER: I'm fine, yes, ma'am.

7 THE COURT: Okay. There you go. All right.

8 BY MS. LEMPESIS:

9 Q The next picture. Can you explain?

10 A I can. This is the structure I was telling you
11 about, the white house. It is a brick structure on [REDACTED]
12 Seaside Road.

13 Q Thank you.

14 A And this would be the side -- what appeared me to be
15 the side access along the primary driveway into the
16 property.

17 Q And again, with this picture?

18 A Yes, ma'am. This is standing in front of the white
19 house. In other words, I backed up again, and I took a
20 picture, trying to get in context Rose Simmons here, and
21 it's close proximity to [REDACTED] [REDACTED] the primary, brick,
22 white structure that's there.

23 Q And again, this picture.

24 A And again, that's another one backed up. That's a
25 full front shot from the driveway of the residence. This

1 would be what I would consider the front porch of the
2 residence. In other words, as you're driving into the
3 property, you see the front of that residence. It may
4 not be what's used as the front door, but that's what I
5 would assume would be the front of the residence, because
6 that's the first entry point you see when you come on the
7 property.

8 Q And again, this is what you determined in your
9 investigations to be the location of where the abuse
10 occurred?

11 A Yes, ma'am.

12 Q This picture.

13 A This is a more close-up shot of the front of the
14 residence. Again, that's what I would consider to be the
15 front porch of the residence. Various items around it.
16 You can't see any of the other residences, but from this
17 angle, Darlene Simmons' house is directly behind this
18 house.

19 Q And where was Rose Simmons?

20 A Rose would be directly to the left of this house.
21 Again, it's just taking steps back and trying to get a
22 front shot of the house.

23 Q Okay. And that's back to the beginning.
24 Investigator Fraser, you can go back to the stand.

25 A Yes, ma'am.

1 Q Thank you. So, Investigator Fraser, we just looked
2 at the pictures. About how far was Rose Simmons' house
3 to the family house, or the white house?

4 A It's very close proximity, a few yards.

5 Q And it looked like there was a bunch of stuff, lots
6 of stuff on the front porch of that house. How long
7 after -- when did you take these pictures?

8 A It was very recently. It was, I believe, a week or
9 two ago that I took those photos.

10 Q Okay. Investigator Fraser, based on your
11 investigation in this case, did you determine who the
12 suspects in this allegation of sexual abuse was?

13 A Yes, ma'am, I did.

14 Q And who did you determine that to be?

15 A Based upon the interviews that were conducted, the
16 defendant, Mr. Simmons.

17 Q Okay. And do you see him in the courtroom?

18 A I do.

19 Q Okay.

20 A Seated with the red tie.

21 Q Thank you. And what did you do after you determined
22 him to be the suspect?

23 A Once -- once he was identified as the suspect in
24 this case, I made the Prosecutor's Office aware of what
25 was going on, trying to keep them in the loop, and I

1 obtained arrest warrants for the defendant's arrest.

2 Q And do you know when he was arrested?

3 A I do.

4 Q That date?

5 A The defendant was arrested -- he was arrested on
6 June the 25th, 2012.

7 Q Thank you. Just a moment of the Court's indulgence.

8 Investigator Fraser, in referring back to the white
9 house on the property, were you able to determine in your
10 investigation who lived in the house during the time
11 frame at issue?

12 A During the interviews that were conducted
13 afterwards, I was able to determine that the defendant
14 and his two sons stayed there, as well as Leroy and
15 Paulette Crockett.

16 Q Okay.

17 A They were the only ones identified during my
18 investigation that stayed in that house.

19 Q Thank you. And do you know whether or not Leroy --
20 did you determine in your investigation whether or not
21 Leroy and Paulette Crockett were living there the entire
22 time that Mr. Simmons was living there, or do you know?

23 A No, to hear them describe it, people came and went.
24 But they -- they didn't give me a idea of how long people
25 would stay, but it sounded to me like it wasn't very

1 long.

2 MS. LEMPESIS: Thank you. Investigator Fraser, I
3 don't have anymore questions for you.

4 A Yes, ma'am.

5 MS. CAMPBELL: May it please the Court?

6 THE COURT: Yes.

7 INVESTIGATOR JEREMIAH FRASER

8 CROSS-EXAMINATION BY MS. CAMPBELL:

9 Q Investigator Fraser, I'm assuming that you reviewed
10 your report in anticipation of your testimony today,
11 correct?

12 A Yes, ma'am, I did.

13 Q Okay. So, I'm going to try and go over some of the
14 things that you did include in your report, and I'm
15 assuming that you would take the position that your
16 report is accurate, right?

17 A Yes, ma'am.

18 Q All right. You did interview Cynthia Simmons,
19 correct? Cynthia, who is married to Johnnie?

20 A Yes. Yes. Yes, I did.

21 Q Okay. And when you interviewed Cynthia, you gained
22 information that Cynthia felt that Rose was having a
23 difficult time dealing with the boys, right?

24 A That's what I believe, yes.

25 Q Okay. And Cynthia said, you know, she decided to

1 step in and adopt the boys, right?

2 MS. LEMPESIS: Objection, your Honor. That's
3 hearsay. Asking for hearsay.

4 MS. CAMPBELL: Well, I'm eliciting information that
5 this officer relied upon when he conducted his
6 investigation, in order to ascertain who the suspect was,
7 which he's already testified to.

8 THE COURT: I think he has testified to it, and
9 that's what he learned in this investigation. So, go
10 ahead.

11 BY MS. CAMPBELL:

12 Q You learned that Cynthia basically decided that she
13 was not going to tell anybody she had any suspicions of
14 abuse until she could get the adoption finalized, right?

15 A Yes. She was afraid that the father would step in
16 and stop the adoption if she brought forward her
17 concerns, is what I believe she told me.

18 Q Right. And the boys weren't even living with her at
19 that time. They were still on Saint Helena, right?

20 A I don't know that to be true.

21 Q Okay. So, we have adoptive parents, soon-to-be
22 adoptive parents, suspecting child abuse or child
23 molestation not reporting it, and using it after she gets
24 the adoption finalized, right?

25 A I believe the reason she gave me for not acting

1 further on what she -- what her suspicions were, she was
2 afraid that the father was going to stop the adoption,
3 and she wouldn't be able to remove them from the
4 situation, is what she told me.

5 Q Right. So, they were on Saint Helena.

6 A I -- I don't know where they were staying at the
7 time. I know they were between Saint Helena and
8 Walterboro, and I couldn't tell you where they were
9 staying at the time. At the time of the -- or that the
10 Hope Haven interview, they were in Walterboro.

11 Q Okay. And so, through your investigation, you were
12 unable to pinpoint where the boys were at the time that
13 Cynthia began to suspect that there had been some sexual
14 abuse. You didn't pin that down?

15 A No.

16 Q Okay. And you were able to pin down the fact that
17 Cynthia was extremely concerned that she thought Minor 1
18 was feminine, right?

19 A Yes, that's right.

20 Q Okay. And that she had conducted her own physical
21 examination of Minor 1 correct?

22 A I believe so, yes.

23 Q Okay. And that Minor 1 was involved in inappropriate
24 touching at school with other boys, correct?

25 A Yes, that's correct.

1 Q Okay. And that she had taken them to a counselor,
2 and that there was nothing wrong with the boys.

3 A Did I write that in the report?

4 Q You did.

5 A On what paragraph and number?

6 Q It's the third paragraph on Page 3 of 12, at the
7 bottom. It says:

8 *Nothing -- there was nothing wrong*
9 *with the boys.*

10 A Which line? Her interview's lengthy. I'm sorry.

11 Q Line 9 and 10.

12 A *Cynthia took the boys to a counselor who*
13 *spoke to them for a short time, and told*
14 *her there was nothing wrong with the boys.*
15 *She stated it was --*

16 Yeah.

17 Q Okay. So, yes, the answer to my question is, yes.

18 A Yes.

19 Q They went to see a counselor. It was reported to
20 Cynthia, and then to you, there was nothing wrong with
21 the boys. And after that, Cynthia begins this thing
22 where she's going to directly confront them, correct?
23 That's the next line.

24 A Yes, I believe that's right.

25 Q Okay.

1 A Based upon her suspicion, yes.

2 Q Now, through your investigation, you gained
3 information that the accusations were that James and his
4 friends sexually abused [Minor 1] and [Minor 2] correct?

5 A That's correct.

6 Q Okay. That they had these, I don't know, sex
7 parties, or parties where the boys were passed around as
8 sex favors, correct?

9 A No, it was more described as he would bring a friend
10 home. And I believe one of the boys was quoted as saying
11 that he told him that he had a son who like to suck pee
12 pee, or something along those lines.

13 Q Right. And so, their father would bring men home
14 and have the boys perform oral sex upon these friends,
15 correct?

16 A I believe it was only the one boy. From what it
17 sounded like, it wasn't several men he would bring. It
18 sounded like one on occasion, and that's what would
19 happen, yes.

20 Q Okay.

21 A Not in a party situation.

22 Q Did you also receive information during your
23 investigation that Cynthia felt [Minor 1] was like a girl or
24 acting like a girl?

25 A She described the boys as in a context of like an

1 adult relationship, if you will.

2 Q With each other.

3 A She said that the one acted more feminine, while the
4 other acted domineering, like a man and woman, is how she
5 described it, in a relationship. In other words, in her
6 opinion, it was like one was the girlfriend and one was
7 the boyfriend, on one hand. And that's how she described
8 it to me.

9 Q Right. And in fact, you also received information
10 through your investigation that there was an allegation
11 that the father made the two boys have sex with each
12 other, right?

13 A That's correct, yes.

14 Q Okay. And much of that information came from, I
15 guess, Cynthia, correct?

16 A I don't recall if that was gleaned in the interview
17 or from Cynthia.

18 Q And Cynthia also provided your investigation with
19 her belief that the father never disciplined the boys,
20 right?

21 A No, I believe she said that the father did
22 discipline the boys.

23 Q Well, --

24 A I believe it was Rose that didn't want to discipline
25 them.

1 Q If you'll look at Page 4 of 12, under *Interview with*
2 *Cynthia Simmons*, in the second paragraph, one, two,
3 three, four, five, six lines down:

4 *Their father never disciplined them,*
5 *either.*

6 A In the second paragraph on 4 of 12? I'm sorry?

7 Q Correct.

8 A Okay.

9 *The boys will not accept discipline,*
10 *as they were never disciplined at Rose*
11 *Simmons' house. Their father never disciplined*
12 *them, either.*

13 Q Correct. Thank you. All right. Now, you also
14 talked to, in your investigation, Uncle Leroy, right?

15 A Yes, ma'am.

16 Q And Leroy told you James might have had women at the
17 house, but he didn't have any men up in there, correct?

18 MS. LEMPESIS: Your Honor, I would object that it's
19 hearsay, but. She's asking for, I believe, what Uncle
20 Leroy said.

21 THE COURT: Okay. This is what he learned in his
22 investigation. Is that correct?

23 MS. CAMPBELL: That's correct.

24 THE COURT: Okay. Overruled.

25 BY MS. CAMPBELL:

1 A Uncle Leroy said that he did bring a few women into
2 the house, but what I noted is that never any men that
3 Leroy was aware of.

4 Q Correct.

5 A Leroy is employed full time and works. So, he
6 wouldn't have known about things that were happening when
7 he was there.

8 Q Thank you for the additional information. So, in
9 answer to my question, you were informed that Jimmy
10 brought a few women to the house, but never any men,
11 correct?

12 A That Leroy was aware of.

13 Q Correct. Thank you. Now, you were also informed by
14 Leroy that -- well, first, let me back up a little bit.
15 You had been given information that Uncle Leroy was
16 supposed to have walked in on one of these sexual
17 assaults, and told James to stop, and sent the boy out of
18 the house, right?

19 A That's correct.

20 Q Okay. And when you talked to Leroy, never happened,
21 right?

22 A That is correct. Leroy recalled walking in and
23 seeing a boy sitting on the bed, and James laying in the
24 bed, but that was -- that was all he made mention of.

25 Q Now, you also talked to Rose Simmons, correct?

1 A I did.

2 Q And Rose took over raising the boys when they were
3 around 18 months old from Mamie, her mom, right?

4 A That's correct, yes, ma'am.

5 Q Okay. And when you talked to Rose, you were seeking
6 information, I would assume, about the family dynamic,
7 and trying to get a full picture of who these people
8 were, right?

9 A Yes, ma'am, that's correct.

10 Q Okay. And in talking with Rose, you were able to
11 obtain information that the boys basically had been
12 diagnosed with attention deficit hyperactivity disorder
13 when they were in first grade, correct?

14 A Yes, ma'am.

15 Q Okay. And that Minor 1 also has a learning
16 disability, correct?

17 A I believe that's right.

18 Q Okay.

19 A I'm trying to find it in my report. I'm sorry.

20 Q It's all right. You also received information that
21 the boys never came to Rose at all and made any sort of
22 accusations against their father, correct?

23 A That's right.

24 Q And that, on her observations of the boys and their
25 father, she never observed anything other than a loving

1 relationship, correct?

2 A I'm sorry. I'm reviewing her statement, I
3 apologize.

4 Q That's fine.

5 A That's -- that's correct, yes, ma'am. She notes
6 that she worked late hours, and most of the time when she
7 got home, the boys were already in bed, but she didn't
8 say that the boys came to her with anything.

9 Q Right. You also obtained information that living in
10 the white house during that period of time was Leroy and
11 Paulette.

12 A Leroy and Paulette Crockett, that's correct.

13 Q Right. And that she noticed no difference at all in
14 the behavior of the boys, before or after their father
15 came to live there, correct.

16 A Who is *she*? Paulette?

17 Q Rose. We're talking about Rose.

18 A No, that's correct. That's what she said.

19 Q No difference. Okay. Now, you also talked with
20 Darlene, who is Rose's sister, right? She lives right
21 there on the property, as well, correct?

22 A That's right.

23 Q And Darlene told you,

24 *Officer Fraser, these boys have been*
25 *difficult their entire lives.*

1 Correct?

2 A Yes.

3 Q Okay.

4 *They did not change when their father*
5 *returned to Saint Helena.*

6 Right?

7 A That's correct.

8 Q Okay.

9 *They misbehaved in school, and got*
10 *into trouble before and after.*

11 A She just note -- yeah, she just noted that they
12 misbehaved and got into trouble at school. I didn't tell
13 her about what type of abuse was alleged.

14 Q Right. That is reflected in your notes. And so,
15 basically she says, no, I saw nothing, in terms of any
16 physical abuse of the boys, correct? Third paragraph.

17 A She said that there was one incident around the time
18 her Uncle Cornbread had passed, that Jimmy had beaten
19 Minor 2 is what she had told me.

20 Q Right.

21 A Right. He was bruised all over his back and
22 shoulders, and Jimmy kept him home from school.

23 Q Okay. And so, Darlene gave you the information
24 that, in fact, James had disciplined the boy.

25 A Right. She -- she didn't describe it as discipline.

1 She described it as a beating to which he couldn't go to
2 school the following day because of it.

3 Q Correct. And you also received information that, as
4 a result of that -- well, I shouldn't say a result -- but
5 you learned information that Cynthia Goethe has never
6 been able to take care of the boys, because she suffers
7 from schizophrenia, correct?

8 A That's what I've been told. I wasn't able to locate
9 the mother, so I couldn't -- I couldn't tell you if she
10 was ever actually diagnosed as schizophrenic. I don't
11 have that information to say one way or not if she is
12 schizophrenic.

13 Q Correct. And I'm not asking you if you know if
14 she's schizophrenic.

15 A Right.

16 A I'm just asking --

17 Q All I know is what I've been told through the
18 family, yes, ma'am.

19 Q Right. And the information that you were given and
20 relied on in your investigation indicated to you that the
21 two boys had a mother who suffered from schizophrenia,
22 correct?

23 A That's what I was told, yes.

24 Q Okay. You were also told that she has some other
25 form of mental defect, correct? Unknown exactly what it

1 is.

2 A I don't recall that. I recall them being specific
3 about schizophrenia and her never being involved in the
4 boys' lives at all.

5 Q And that would be in the third line of Page 7 of 12?

6 A Interview with Darlene?

7 Q Diagnosed -- yes, with Darlene.

8 Was diagnosed with schizophrenia and
9 some other form of mental defect.

10 A Okay. Yes, ma'am.

11 Q You were given information during your investigation
12 that Minor 1 -- excuse me -- that Minor 1 made allegations
13 that he watched Cynthia and James have sex, correct?

14 A That's correct.

15 Q Okay. And that, to him, the sex that he was
16 watching Cynthia and James have looked like something he
17 had seen on T.V., right? Or pornographic, right?

18 A I believe what he described -- where are we in the
19 report? Are we in the interview with the boys at this
20 point?

21 Q I believe so, yes.

22 A You'll have to forgive me. If you go back, I'll
23 have to find it. And we're in the interview with Minor 2

24 Q It's on Page 5 of 12.

25 A Okay.

1 Q One, two, three paragraphs down.

2 Because father and Cynthia watching
3 movies, trying to do things to each other
4 that they saw in a movie.

5 A That's correct.

6 Q Okay. You were also given information by Minor 1
7 that he remembers his father having a bunch of cash on
8 the bed, and he and his momma, Cynthia, were sitting on
9 top of that cash. And this is because he believed his
10 father was a bank robber, correct?

11 A Yeah, that sounds right. I think he said that he
12 thought they robbed something, because he said they had a
13 lot of cash. I believe he said *bank robber*. And that
14 may be what he associates with robbing. I don't know.

15 Q Correct.

16 A But that's what he said, yes; they were laying on
17 the bed, and they had cash on the bed.

18 Q Right. You also received information from Minor 2
19 that he thought his father wanted him to kill someone,
20 because he had given him a gun, correct?

21 A That's right.

22 Q Okay.

23 A And he threw the gun in a fire pit.

24 Q Right. He took a gun --

25 A Yeah.

1 Q -- that his father had given him, and he threw the
2 gun in the fire pit.

3 A That's what he said, yes.

4 Q Did he talk about anybody looking for the gun ever?

5 A I don't believe he did.

6 Q Just one second, your Honor. Officer Fraser, are
7 you testifying that, in your investigation, you were not
8 given information that Paulette and Leroy and their three
9 children lived in that white house?

10 A No, I was only given the information that Paulette
11 and Leroy were staying there with Mr. Simmons and his
12 sons; and that, occasionally, a female would be in the
13 house. I wasn't given information on anybody else was
14 staying in that house.

15 Q So, nobody told you that their three children lived
16 with them.

17 A No.

18 Q Okay. And nobody told you that Mahogany lived in
19 that house with her children, as well.

20 A No, not at all.

21 Q Okay.

22 A None of the family members or the boys.

23 MS. CAMPBELL: Thank you. That's all I have.

24 MS. LEMPESIS: Thank you, your Honor.

25 INVESTIGATOR JEREMIAH FRASER

RE-DIRECT EXAMINATION BY MS. LEMPESIS:

Q So, Investigator Fraser, going back to your -- to the information you learned during the investigation, can you tell us more about the interviews that were done on the boys, and the information that you gleaned from those interviews what sort of sexual abuse were they subjected to at the hand of their father?

A According to the interviews that were conducted at the Hope Haven, the boys described that their father had penetrated their anuses with his penis; that he had made them perform fellatio, or oral sex, both on them, and he on the boys; that he would bring men home and make one of the boys perform oral sex on the men that he brought home.

As far as sex goes, I think that about covers it. It was -- it was pretty graph -- the kids were pretty graphic in detail with what they were describing. It wasn't --

Q Thank you. Ms. Campbell mentioned the boys talking about seeing their father with money and being a robber. Was there mention in these interviews about him -- about that incident?

A There was. One of the brothers -- and again, the doctor's not the only one that has problems separating the two. They are -- they -- they look a lot alike. The

1 one brother did mention that he thought his father had
2 committed a robbery; that he come home, or something to
3 that effect, and seen the father and one of the
4 girlfriends laying on a bed, and they had cash around
5 them. They assumed that he had gotten the cash from a
6 robbery. I looked for recent robberies in the area, and
7 I didn't find any.

8 Q And as far as Minor 2 saying that his father had
9 given him a gun, is that what you recollect through your
10 investigation?

11 A I do. I do. His father had given him a gun. He
12 was afraid that his father wanted him to kill or hurt
13 somebody with it. So, he took it and he threw it in a
14 fire pit.

15 Q Thank you. Investigator Fraser, we were talking
16 about the interview of Cynthia Simmons, the boys' adopted
17 mother.

18 A Yes, ma'am.

19 Q When you were interviewing her, were you -- and she
20 was telling you her concerns about the boys' behavior,
21 what else did she tell you about, as far as why she was
22 concerned about the boys' behavior?

23 A Some of the concerns that she had with the way the
24 boys were starting to act out in school. They started
25 acting out in a sexual nature. I believe one of the

1 brothers had been caught looking over a bathroom stall at
2 another boy. I believe there were some other instances
3 of pulling pants down, if I remember correctly. They
4 were having problems in school that had persisted, but
5 they were becoming more sexual in nature, I think. And
6 that was one of her primary concerns, which, I believe,
7 prompted the whole thing.

8 Q Okay. And so, it prompted the whole thing in that
9 she did question the boys about why they were behaving.
10 Is that what she told you?

11 A Absolutely.

12 Q Okay. And regarding your conversation with Uncle
13 Leroy, did you determine what the relationship is between
14 Leroy and James Simmons, or do you know where they are
15 related in the family? How they are related?

16 A It's a large family. I know that they are -- I know
17 that they are a fairly close family.

18 Q Okay.

19 A I don't know to what level of closeness they are,
20 first cousins, second cousins, uncles.

21 Q Okay. Did you determine if -- in talking to Leroy,
22 did you determine if he was friends with James Simmons?

23 A I don't believe he was.

24 Q Okay. And again, going back to your question of, I
25 believe, on your investigation, you asked him about

1 whether or not he'd ever seen anything happen sexual
2 nature with the boys and James Simmons. Is that correct?

3 A I'm sorry. Can you say that again?

4 Q I'm sorry. Okay. So, in your interview of Leroy
5 Crockett, you asked him about one of the boys' statements
6 that he had walked in on something happening, correct?

7 A That's right.

8 Q And can you clarify for us what his statement was
9 about whether or not he had seen anything, and what he
10 saw, exactly?

11 A I can. He stated -- he described walking in the
12 house one time and finding [Minor 1] -- I believe it was
13 [Minor 1] Let me read it, just so I get the names right.

14 Q Sure. Go back to your notes. That's fine.

15 A It would have been [Minor 2] He described walking
16 into the residence and seeing one of the boys sitting on
17 the bed, and Leroy [sic] was laying on the bed. The room
18 was dark. He says he didn't see anything, but he did see
19 them situated in that manner.

20 Q Okay. And did he say that he saw this more than one
21 time, or just one time?

22 A No. He said he saw it more than one time. What he
23 said was, is this was, when he would ask about it, Jimmy
24 would tell Leroy that the boys' on punishment, which is
25 why they were sitting there.

1 Q On the bed.

2 A On the bed, with him laying there, yes. That's
3 correct.

4 Q And going back to your interview of Darlene Simmons,
5 who we've saw lived in one of the trailers on the
6 property, correct?

7 A Yes, ma'am.

8 Q Again, what did Darlene tell you about her
9 observations of one of the boys being beaten by Jimmy,
10 James Simmons?

11 A She said that she can recall a time around the time
12 that her Uncle Cornbread passed away that Jimmy had
13 beaten Minor 2 She said that he was bruised all over his
14 back and shoulders, and Jimmy kept him home from school.
15 That's -- that's pretty much all she described about it,
16 was that he had beaten him. It wasn't described as
17 discipline. It was described as a beating.

18 Q So, Investigator Fraser, in the course of your
19 investigation, you uncovered both sexual and physical
20 abuse of these boys, Minor 2 and Minor 1 at the
21 hands of their father, James Simmons?

22 A That's right. Leroy made mention about some
23 physical things, about extensive disciplining, as well;
24 but yes, that's correct.

25 MS. LEMPESIS: Thank you. No further questions,

1 your Honor.

2 MS. CAMPBELL: May it please the Court?

3 THE COURT: Yes, ma'am.

4 INVESTIGATOR JEREMIAH FRASER

5 RE-CROSS-EXAMINATION BY MS. CAMPBELL:

6 Q Just to clarify, Officer Fraser, what you uncovered
7 were allegations of physical abuse, correct?

8 A That's what the family told me they saw, yes, ma'am.

9 Q So, yes, you uncovered allegations of physical
10 abuse, correct?

11 A Yes, ma'am.

12 Q Okay. And you uncovered allegations of sexual
13 abuse, correct?

14 A Yes, ma'am.

15 Q Okay. And so, based on that information, you went
16 and got a warrant against -- well, actually, two warrants
17 against Mr. Simmons, on the information you had received,
18 correct?

19 A Yes, ma'am.

20 Q Okay. Now, I'm going to take you back to just a
21 couple of things that the Solicitor went over with you.
22 If you'll look at Page 4 of 12 on your report, there were
23 -- and I'll help you out here -- one, two, three, four,
24 five lines down, under the information for Minor 1 I
25 want to make it clear that the information you had was

1 that these instances of having to perform oral sex on
2 Dad's friends happened on several occasions, correct?

3 A That's correct.

4 Q Okay. And that Minor 1 was like, you know what?
5 This is just going too far, right?

6 A I believe --

7 Q This is too much.

8 A I believe when his father wanted him to have sex
9 with one of the men, he said that that had gone too far,
10 and that was too much.

11 Q Right. And then, if you look on the -- I guess,
12 basically, the next section down here, a couple of lines
13 later, again, it's a repeat that this was happening more
14 than once or twice. It happened several times.

15 A That's correct. It did.

16 Q Okay. And if you look over on the report that you
17 were given from Leroy about the beating, it mirrors what
18 Darlene's saying about the beating; that, in fact, James
19 did discipline the boys to a point where it was severe,
20 correct?

21 A From the sounds of it, it was two different kinds of
22 beatings. I don't think I understand what the question
23 was.

24 Q Well, the information you have is that the boys
25 suffered some pretty severe corporal punishment, correct?

1 A From -- from the one family member, it was beatings;
2 and from the other, it was severe discipline, yes. One
3 was a beating that caused bruises; the other was
4 discipline. Yes, ma'am.

5 Q Okay. To be specific, with the incident with Leroy,
6 just so we're clear, Leroy never told you, you don't have
7 any information that when he would observe Minor 2 or
8 Minor 1 being punished by their father that he ever spoke
9 to them and said anything about what was going on,
10 correct? He just, you know, left, basically, without
11 sending anybody out of the room.

12 A During the disciplining, he said that he would have
13 to step in and stop James from disciplining his sons,
14 because it was getting so severe. Is that --

15 Q I'm talking about the allegations that were made
16 that there was an actual physical sexual act taking place
17 between James and Minor 1 and that Leroy came in and saw
18 this taking place; he scolded James and sent the boy to
19 another room. Leroy says that never happened.

20 *I saw him punish them, but I never*
21 *saw him sexually abusing them.*

22 Correct?

23 A That's right.

24 MS. CAMPBELL: Okay. That's all I have.

25 THE COURT: Anything further?

1 MS. LEMPESIS: Nothing further, your Honor.

2 THE COURT: You may step down, sir. Do we have
3 another witness? Okay.

4 MS. LEMPESIS: Thank you. State calls Rose Simmons.

5 THE COURT: Thank you.

6 THE COURT: Come on forward, Ms. Simmons. Come
7 right around here. Ms. Young is going to swear you in.
8 If you'll come over here and place your left hand on the
9 Bible, and raise your right hand.

10 MADAM CLERK: Do you solemnly swear to truthfully
11 answer all questions asked of you by this Court, so help
12 you God?

13 ROSE SIMMONS: Yes, ma'am.

14 MADAM CLERK: Please be seated. State your name and
15 spell it for the court reporter, please.

16 MS. SIMMONS: My name Rose Simmons.

17 ROSE SIMMONS

18 DIRECT EXAMINATION BY MS. LEMPESIS:

19 Q Thank you. Thank you, Ms. Simmons. Ms. Simmons,
20 where do you work?

21 A Parris Island Commissary.

22 Q And what do you do there?

23 A I'm a commissary support clerk.

24 Q And where do you live?

25 A On Seaside Road, Saint Helena Island.

1 Q And what number is that on Seaside Road?

2 A [REDACTED]

3 Q [REDACTED] Thank you. Ms. Simmons, can you tell us how
4 you're related to [REDACTED] Minor 2 and [REDACTED] Minor 1

5 A [REDACTED] Minor 2 and [REDACTED] Minor 1 is my cousin, biologically.

6 Q Okay. And Ms. Simmons, who is your mother?

7 A Mamie Ruth Simmons.

8 Q And she's passed away?

9 A Yes.

10 Q And can you sort of explain to the jury how it was
11 that you came to take care of [REDACTED] Minor 2 and [REDACTED] Minor 1

12 A Yes. My mom got them, got legal custody of them at
13 eight months old. And she, therefore, died six months
14 later. So then, I started raising them by myself.

15 Q Okay. And where did you raise them? Where did you
16 live?

17 A At [REDACTED].

18 Q Okay. So, how long did you raise them? How long
19 did you have custody of the boys?

20 A I raised --

21 Q Until what age?

22 A I raised them 'til they were about nine, nine-and-a-
23 half.

24 Q Okay. And did you actually have custody of them?
25 Or you were the only one responsible for raising them.

1 A Right. I just was raising them, really.

2 Q Okay.

3 A No.

4 Q All right. And did anyone else ever live in the
5 house with you and Minor 2 and Minor 1

6 A My sister.

7 Q Your sister. And what is her name?

8 A Darlene Simmons.

9 Q Okay. And does she still live on the property
10 somewhere?

11 A Yes.

12 Q Okay. And now, Ms. Simmons, can you tell me how you
13 are related to James Simmons?

14 A James is my first cousin.

15 Q Okay. And do you see him in the courtroom today,
16 Ms. Simmons?

17 A Yes.

18 Q Okay. Can you point to where he's sitting?

19 A He's over there.

20 Q Okay. She's pointed to the defendant, James
21 Simmons.

22 Ms. Simmons, let's go back to when the boys were
23 babies, and you took over taking care of them. Did Mr.
24 Simmons, did James Simmons, ever see the boys much?

25 A Here and there.

1 Q Okay. And at what point did James Simmons come and
2 live on the property on Seaside Road?

3 A I want to say about 2008.

4 Q Okay. And where did he live when he came to stay?

5 A In the family's house.

6 Q Okay. And what does the family's house look like,
7 or where is it on the property?

8 A It's right next to me. It's a big, white, long,
9 white house.

10 Q Okay.

11 MS. LEMPESIS: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. LEMPESIS:

14 Q Ms. Simmons, I'm just going to hand you what's been
15 marked as State's Exhibit 4, and do you recognize that?

16 A Yes.

17 Q Okay. And what is that a picture of?

18 A One is a picture of my house, which is the mobile
19 home with the deck. And the other one is the front
20 corner of the big, white house.

21 Q Thank you. And is that the house that you're
22 referring to that James Simmons lived in?

23 A Yes. The big, white house.

24 Q Okay. Thank you, Ms. Simmons. Okay. And so, you
25 said James Simmons came to live in that house in about

1 2008.

2 A Yes.

3 Q When he came to stay in the house, did the boys get
4 to see him?

5 A Yes.

6 Q Okay. And how old were the boys then, if you can
7 recall, when James Simmons came to stay?

8 A They were right around I want to say eight.

9 Q Okay. And did they spend a lot of time in that
10 house?

11 A Yes.

12 Q Okay. And Ms. Simmons, [Minor 2] and [Minor 1] were they
13 a bit of a handful?

14 A Yes.

15 Q And you were responsible for their care and
16 upbringing, correct?

17 A Yes.

18 Q And so, you used to take them to the doctor.

19 A Yes.

20 Q Did they have any sort of diagnosis of any kind of
21 issues, or any like any sort of -- were they ever
22 diagnosed with any sort of like A.D.D., attention deficit
23 disorder?

24 A Yes.

25 Q Thank you. And were both of the boys diagnosed with

1 attention deficit disorder?

2 A Yes.

3 Q Do you recall what age they were when they were
4 diagnosed?

5 A Probably about first grade.

6 Q Okay. And so, as far as the boys and whether or not
7 they were a handful, what sort of things did they do that
8 made them a handful, being --

9 A They was just super active. They were hyper. They
10 were constantly on the go. They never sat down; they
11 were constantly doing stuff.

12 Q And do you have any children of your own?

13 A No, ma'am.

14 Q And you were alone in raising the boys.

15 A Yes.

16 Q And so, was it difficult at times?

17 A Sometimes.

18 Q And so, when James Simmons came to live on the
19 property and in the house, you said that the boys stayed
20 with him a good bit. Would they spend the night in the
21 house with James?

22 A Yes, they did.

23 Q And would you check on them over there, or how,
24 exactly, did it work? The houses are close by, so did
25 you --

1 A Right.

2 Q Explain to us, you know, how was it they would stay
3 over there and how often you would see them.

4 A Well, I saw them pretty much on a regular basis,
5 because I work the from scheduling, and I work in -- a
6 commissary's a grocery store, so I worked late.
7 Sometimes I got off early, and I would go over there and
8 check on them, you know, just pop on and check, see how
9 things doing, how everybody's doing, then I would go
10 home.

11 Q Okay. And would the boys bathe over there?

12 A Yes.

13 Q And would they -- they would sleep over there?

14 A Yes.

15 Q And get dressed over there?

16 A Yes.

17 Q And get dressed over there?

18 A Yes.

19 Q In addition to James Simmons living in the house,
20 did anyone else live in the house during that same time
21 frame that James Simmons was living there?

22 A His sister and her husband lived there with their
23 children.

24 Q And what was his sister's name?

25 A Paulette Crockett.

1 Q Okay. And her husband?

2 A Leroy.

3 Q Leroy. And their children, you say?

4 A Yes.

5 Q Okay. Do you know how many children?

6 A Three.

7 Q Okay. How many rooms did this house have?

8 A About five.

9 Q Okay. Do you know if James Simmons had his own home
10 -- excuse me -- his own room in the house?

11 A Yes, he did.

12 Q Okay. And did -- excuse me, Ms. Simmons. So, when
13 the boys would sleep over at the house, would they sleep
14 -- where would they sleep? In what room?

15 A They slept sometimes with him in his room. Or
16 sometimes they stay with their little cousins.

17 Q Okay. In their room?

18 A With the boy -- they got boys. With the boy
19 cousins.

20 Q Okay. And so, during the time that James Simmons
21 was living at the house, did the boys still spend the
22 night at your house, as well?

23 A In the beginning, they did.

24 Q Okay.

25 A But eventually, they started spending more and more

1 time over there.

2 Q Okay. At any point while James Simmons was living
3 at the white house, did the boys also spend time with
4 Cynthia and Johnnie Simmons?

5 A Not while he was there.

6 Q Okay. How did the boys behave when James Simmons
7 was around? How was their behavior?

8 A They were about the same, active.

9 Q Okay, active. And did you ever observe Mr. Simmons
10 or see on the boys any sort of -- did you ever see James
11 Simmons hit the boys?

12 A No, ma'am.

13 Q Okay. Did you ever observe any kind of bruising on
14 Minor 2 or Minor 1

15 A One time, Minor 1

16 Q Okay. And what did you observe?

17 A It looked like it was a belt mark.

18 Q Okay. Do you remember about the time that James
19 moved out of the house on Saint Helena? On the house at
20 Saint Helena?

21 A I knowed it was during the summer months, because
22 there wasn't any school.

23 Q Okay.

24 A So, it had to been like in 2009.

25 Q Okay. Do you recall, like, where the boys were in

1 school or what grade they were in?

2 A I believe it was third grade.

3 Q And it was in the summer months, so it was between
4 grades?

5 A Summer after third grade.

6 Q Okay. At what point did Minor 2 and Minor 1 start
7 spending time with Johnnie and Cynthia Simmons?

8 A It was near the end of 2009, because they were in
9 the fourth grade.

10 Q Okay. And why, exactly, did they go to spend time
11 with them? How did that come to be?

12 A Over -- cause they were a handful, and I was
13 working, and I needed help with them, especially on the
14 weekends; because there's no after-school camp or
15 anything during weekends. So, they decided to take them
16 home for the weekends.

17 Q Okay. And eventually, did they just take -- did the
18 boys just start living with Johnnie and Cynthia full
19 time?

20 A Yes.

21 Q And you said you needed help with -- you needed help
22 with the boys.

23 A Yes.

24 Q You needed Johnnie's help with the boys. Is that
25 correct?

1 A Yes, I needed help caring with care for them when I
2 worked weekends, mainly. That's when they started going
3 over there.

4 Q Okay. And at what point do you recall when they
5 were actually adopted by Cynthia and Johnnie Simmons?

6 A I believe it was 2010, when they officially adopted
7 them.

8 Q Okay. All right. Just a moment of the Court's
9 indulgence. Ms. Simmons, I don't have anymore questions
10 for you right now, but if you can answer any questions
11 Ms. Campbell has. Okay?

12 A Okay.

13 MS. LEMPESIS: Thank you.

14 MS. CAMPBELL: May it please the Court?

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL: Thank you.

17 ROSE SIMMONS

18 CROSS-EXAMINATION BY MS. CAMPBELL:

19 Q Hi, Rose.

20 A How are you doing?

21 Q I'm all right. I'm Ms. Campbell. I haven't had the
22 opportunity to speak to you. I think you may have talked
23 to my investigator. Is that right?

24 A Yes.

25 Q Okay. Obviously, you've already told us that you

1 know James. I want to go over a couple of things with
2 you, so we make sure we have a time line correct. James
3 came back to the family property, I think you're telling
4 us, maybe sometime in 2008. Maybe -- was it in the
5 Summer, or do you remember?

6 A I don't -- I don't remember exact time, but I
7 believe it was 2008.

8 Q And so, he stayed about a year maybe, a year and a
9 half?

10 A I think that's about right.

11 Q And he left, you're telling us, maybe the summer of
12 2009, right?

13 A Yes.

14 Q Okay. Good. Now, in the white house, -- and the
15 jury's been able to see the pictures of the white house
16 and in your property. In the white house we had, during
17 that period of time, we had Leroy and Paulette, correct?

18 A Yes.

19 Q Okay. And we had, I want to say, Amon, Travis and
20 Allyra?

21 A Yes, those -- those are the children.

22 Q Their children, right, were in the white house. And
23 I think also at some point in there, Mahogany was living
24 there, correct, with her kids?

25 A Yes, that one of his girlfriends. Yes.

1 Q Yes, one of his girlfriends, right. And at some
2 point, also, Cynthia Goethe, the boys' mother, moved back
3 in there for a little while, right?

4 A Yes.

5 Q Okay. But of course, Mahogany and Cynthia Goethe
6 weren't there at the same time, right?

7 A No.

8 Q Okay. Now, when you talk about the boy cousins that
9 were there, are we talking about Amon and Travis?

10 A Yes.

11 Q Okay. Were there any other boy cousins that were
12 regularly staying in that white house with [Minor 1] and

13 [Minor 2]

14 A No.

15 Q Okay. Now, you talked about sort of this transition
16 period where the boys went from being totally in your
17 care, right, to establishing a relationship with their
18 father, right?

19 A Um-hmm.

20 Q Okay.

21 COURT REPORTER: Is that yes?

22 A Yes.

23 Q Do you remember that there was a sort of a phrase or
24 terminology within the family of being on punishment or
25 put on the wall? Did you recall the boys ever being on

1 the wall or on punishment, having to stand up against the
2 wall?

3 A Yes. For punishment? Yes.

4 Q Yes. Okay. And so, it would be a pretty -- a
5 common thing to do with the young people; they're on
6 punishment; they're on the wall, correct? If they were
7 in trouble.

8 A Yes.

9 Q Okay. Rose, during 2008 and 2009, as the boys spent
10 more time in the white house with the rest of the family,
11 spending the night there --

12 A Yes.

13 Q -- you didn't ever have any sort of scenes or
14 incidents where they were begging you or asking you, can
15 we please just come back over and sleep with you tonight?

16 A No.

17 Q Okay. They were perfectly happy to stay with their
18 dad and the rest of the family in the white house pretty
19 much every night then, right?

20 A To my knowledge, yes.

21 Q Okay. And so, there was no drama of trying to get
22 back into your house, instead of in the white house,
23 right?

24 A No.

25 Q Okay. Now, some time around the end of 2009, after

1 James left Saint Helena, Cynthia Simmons and Johnnie
2 Simmons came into the boys' lives, right? To take them
3 off of Saint Helena, right?

4 A They started spending weekends.

5 Q Right. And that moved into a situation where they
6 were just going to take them full time and adopt them,
7 right?

8 A That's what happened, yes.

9 Q Okay. Now, I think you've testified, but I want to
10 make it clear, you never saw James beat the boys, but you
11 did see some whelps on [Minor 2] body at one time, right?

12 A No, it was -- I never saw him beating him, but it
13 was [Minor 1]

14 Q Oh, it was [Minor 1] okay, that had the whelps.

15 A Right.

16 Q Okay. And it'd be fair to say that you were shocked
17 to learn that there were allegations of sexual abuse.

18 A Yes, I was.

19 Q Yeah. And because you had never seen any suspicious
20 things, correct?

21 A No.

22 Q And that the behavior of the boys was consistently
23 difficult, before and after their father returned, right?

24 A Yes.

25 Q Okay. Did you ever happen to see piles of money or

1 a whole bunch of money out there at the white house?

2 A No.

3 Q Okay. And did you ever see James giving the boys a
4 gun?

5 A No.

6 Q Okay. It would be fair to say that you saw nothing
7 about their relationship that caused you any concern,
8 right?

9 A No. Did not.

10 Q That would be fair.

11 A Yes, I did not see anything.

12 MS. CAMPBELL: Okay, thank you. That's all I have.

13 THE COURT: Anything further?

14 MS. LEMPESIS: Just a few, your Honor.

15 ROSE SIMMONS

16 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

17 Q Ms. Simmons, when you testified that James Simmons
18 came to stay at the white house, --

19 A Yes?

20 Q -- did he come first; and then, later, Leroy and
21 Paulette came, moved in?

22 A Yes.

23 Q Okay. So, he lived there for some period of time
24 when Leroy and Paulette did not live there.

25 A Right.

1 Q Okay. And so, were there -- there were other people
2 that lived in the house, as well, when James Simmons was
3 living there?

4 A Yes.

5 Q Okay. Did those people just come and go?

6 A Yes.

7 Q Okay. Is that pretty common for this house?

8 A Yes, it's called the family house, and anybody in
9 the family needed a place to stay was welcome to come and
10 stay.

11 Q Okay. So, when James Simmons was staying there,
12 there were times that he was staying there that other --
13 Leroy and Paulette were not there.

14 A Right, for a little while.

15 MS. LEMPESIS: Okay. Thank you. Nothing further.

16 THE COURT: Anything further?

17 MS. CAMPBELL: Just clarify one thing.

18 ROSE SIMMONS

19 RE-CROSS-EXAMINATION BY MS. CAMPBELL:

20 Q When Leroy and Paulette were not there, James always
21 had either Cynthia or Mahogany there, correct? One of
22 the women was there with him.

23 A One of the women was there, but at that time, Leroy
24 and Paulette was there, also.

25 MS. CAMPBELL: Okay. Great. Thank you.

1 stated you didn't feel comfortable. I'm going to go
2 ahead and excuse you from the trial of this case. If you
3 have made friends with any of the other jurors, I do not
4 want you speaking to them, or if you know any of them,
5 speaking with them until this case has been resolved.
6 All right? Do you understand that?

7 JUROR NUMBER 114: Yes, ma'am.

8 THE COURT: All right. Thank you, ma'am. And I'm
9 going to go ahead and excuse you for the week.

10 JUROR NUMBER 114: Thank you.

11 BAILIFF: Thank you, your Honor.

12 THE COURT: Thank you. Okay. Was she the first or
13 the second alternate? Do you know?

14 MS. LEMPESIS: I'm sorry.

15 THE COURT: That's okay.

16 BAILIFF: I think she was the first.

17 THE COURT: I've got it right here. She was the
18 first. Okay. That's fine. All right. So, let's go
19 ahead and call your witness for this morning.

20 Minor 1

21 COMPETENCY HEARING:

22 MADAM CLERK: Stop right here for me, please. Put
23 your left hand here. Raise your right hand for me. Do
24 you solemnly swear to truthfully answer all questions
25 asked of you by this court, so help you God?

1 Minor 1 Yes, ma'am.
2 MADAM CLERK: Okay. Please be seated.
3 THE COURT: How are you?
4 JAASON GOETHE SIMMONS: I'm fine.
5 THE COURT: Good. What is your name?
6 Minor 1 Minor 1 G. Simmons.
7 THE COURT: It's nice to meet you, Minor 1

8 [REDACTED]
9 DIRECT EXAMINATION BY MS. LEMPESIS:

10 Q Hey, Minor 1 [REDACTED] I'm going to ask you an easy
11 question first. Tell us how to spell your first name.

12 A Minor 1 [REDACTED].

13 Q Perfect. You passed that test. Minor 1 [REDACTED] can you
14 tell me how old you are?

15 A What?

16 Q How old you are right now.

17 A Twelve.

18 Q Twelve. And when is your birthday?

19 A [REDACTED] [REDACTED]

20 Q So, you're about to have a birthday. Minor 1 [REDACTED] what
21 grade are you in? Are you in between grades right now?

22 A Fifth and sixth, yes, ma'am.

23 Q And do you stay at home for school?

24 A Yes, ma'am.

25 Q So, who's your teacher?

1 A Mr. and Mrs. Simmons.

2 Q Is that your mom and dad?

3 A Yes, ma'am.

4 Q Okay. What's your favorite subject in school,

5 Minor 1

6 A My favorite subject is reading.

7 Q Reading.

8 A And sometimes science.

9 Q Good. Minor 1 where do you live now? Where do you
10 live now?

11 A I live in Jasper County, at -- at
12 Road.

13 Q Okay. And Minor 1 you remember
14 how you just put you hand on the Bible and said you swore
15 to tell the truth?

16 A Yes, ma'am.

17 Q Do you know what it means to tell a lie?

18 A Yes, ma'am.

19 Q So, if I said that the Judge is a man, would that be
20 the truth or a lie?

21 A That's a lie.

22 Q That's right. And Minor 1 is it right or wrong to
23 tell a lie?

24 A It's wrong.

25 Q And do you promise that everything you tell us today

1 will be the truth?

2 A Yes, ma'am.

3 MS. LEMPESIS: Okay. Thank you, Minor 1 The Judge
4 might ask you some questions, and Ms. Campbell might ask
5 you some questions. Okay?

6 THE COURT: Ms. Campbell, do you want to ask him
7 anything?

8 MS. CAMPBELL: Thank you.

9 Minor 1

10 CROSS-EXAMINATION BY MS. CAMPBELL:

11 Q Can you tell us how to pronounce your name?

12 A Juh-ron.

13 Q Juh-ron. So, it's not Minor 1

14 A Some people do call me that.

15 Q Okay. Who calls you Minor 1

16 A Most of my old -- my old folks that I used to come
17 from, they used to call me that.

18 Q Okay. On Saint Helena? Okay.

19 COURT REPORTER: Is that yes?

20 A Yes, ma'am.

21 COURT REPORTER: Thank you.

22 Q Okay. What would you like for me to call you?

23 A You can call me Minor 1 or Mr. Simmons.

24 Q Minor 1 Well then, I will call you Mr. Simmons.

25 Mr. Simmons, have you ever lied?

1 A I have to my -- my mother now.

2 Q Yes.

3 A I've been telling some lies to them, most times
4 about what time that I'd get up in the morning.

5 Q Have you ever lied at school?

6 A At school? I have lied to some teachers, yes,
7 ma'am.

8 Q Okay. And those teachers were your teachers, right?

9 A Yes, ma'am.

10 Q Was it right to lie to your teachers?

11 A No, ma'am.

12 Q Okay. Why did you lie to your teachers?

13 A I figured that I could get away with some things
14 that I -- that, when I -- I don't think that I could get
15 in trouble for.

16 Q So, it's okay to lie if you're probably aren't going
17 to get in trouble for it, right?

18 A It's not good to lie at all.

19 Q It's not good to, but if you can get away with it,
20 lying might be okay.

21 A No, ma'am.

22 Q Okay. Is it ever okay to lie?

23 A No, ma'am.

24 Q Okay. So, when you lied to your teachers, that was
25 not the right thing to do, right?

1 A No, ma'am.

2 Q Okay. Do you ever -- when you -- when you were
3 younger, did you ever have any friends, imaginary
4 friends, that you played with?

5 A I did. I played with some animals around the yard.
6 And sometimes I'd make things on like a piece of paper,
7 and I'd play with them. And I -- if I don't have a kite,
8 I make my own kite to fly around.

9 Q Do you have any imaginary friends now that you might
10 play with or talk to?

11 MS. LEMPESIS: Judge, I would just object. I'm not
12 sure that goes to his competency.

13 A I play -- I have a -- I caught a frog last -- last
14 night, and I talked to it.

15 Q And any chance the frog talk back to you?

16 A He just croaked, ribbet.

17 Q Were you ever -- well, I guess, when you were
18 playing with your imaginary friends that, before and now,
19 do you ever hear them say anything to you?

20 A In my mind, I do, but not for real. They don't say
21 anything.

22 Q Right. But in my mind, you might hear them say
23 something. Okay. And when you hear them say something
24 in your mind, do you ever listen to what they tell you to
25 do?

1 A Most times I do. They tell me -- sometimes they
2 tell me not to do things that's wrong, and sometimes
3 they'll -- it's something within me that tells me to
4 fight, like, do something wrong, but I don't want to do
5 something wrong.

6 Q Do you ever feel like you can't control, maybe, your
7 actions sometimes, when you're listening to that voice?

8 MS. LEMPESIS: Judge, I would object. Again, I'm
9 not sure that's going to be relevant.

10 THE COURT: I'm going to let you go a little
11 further, but you're just about done, Ms. Campbell.

12 BY MS. CAMPBELL:

13 A Yes, ma'am.

14 Q You feel that way. Okay. How were you punished at
15 school when you lied?

16 MS. LEMPESIS: Again, your Honor, I object. I don't
17 think this goes to his competency. We're here for a very
18 simple --

19 THE COURT: It doesn't. It doesn't.

20 MS. CAMPBELL: Well, I believe it goes to whether or
21 not he understands, as the law requires, the need to tell
22 the truth, and what will happen if he doesn't tell the
23 truth.

24 THE COURT: And I'll ask him the question, Ms.
25 Campbell. You can go ahead and sit down.

1 MS. CAMPBELL: Okay. Thank you.

2 THE COURT: Thank you.

3 Minor 1

4 EXAMINATION BY THE COURT:

5 Q Minor 1 do you go to church with your grandma -- or
6 with your parents?

7 A Yes, I do.

8 Q What church do you go to?

9 A I go on Saint Helena's Gospel Baptist Church.

10 Q Okay. Do you go to Sunday School, or do you
11 actually go in to church?

12 A Well, sometimes I used to go to Sunday School when I
13 was over here.

14 Q Um-hmm.

15 A With Ms. Rose, I used to go to Sunday School and
16 attend church.

17 Q Okay.

18 A But now we -- they get up, they -- they don't make
19 it to Sunday School, so we go to real church, like,
20 attend real church, instead of doing Sunday School.

21 Q Okay.

22 A But we hear what they discuss in Sunday School,
23 because they discuss everything before we go into pre-
24 teen and all that.

25 Q Okay. You like going to church?

1 A Yes, ma'am.

2 Q Okay. Let me ask you, do you understand that what
3 you're doing here today is important, right?

4 A Yes, ma'am.

5 Q And you understand that you cannot tell a lie. Is
6 that correct?

7 A I understand.

8 Q And not in this circumstance, necessarily, but what
9 happens to you if you tell a lie?

10 A I get punished, and God, he will -- he will write
11 that in his Book of Life, and that'll be met at the
12 Judgment when I go.

13 Q Does it hurt you when you tell a lie, too, just in
14 your heart?

15 A It hurts me, but most times when I tell a lie, it
16 probably hurts someone else, but mostly it hurts me.

17 Q Okay. And I want to make sure. You're going to
18 tell me everything today that's only the truth. You
19 understand that?

20 A Yes, ma'am.

21 Q And if you don't remember something, and someone
22 asks you a question, I want you to say I don't remember.
23 Okay? You understand that, right?

24 A Yes, ma'am.

25 Q Because if you can't remember, you can't remember,

1 right?

2 A Yes, ma'am.

3 THE COURT: Okay. All right. Anything further?

4 MS. LEMPESIS: Nothing further, your Honor.

5 THE COURT: Okay. I'm going to go ahead and let him
6 step down, and then, give me a quick minute before we
7 bring up --

8 MS. LEMPESIS: Minor 2

9 THE COURT: Your brother. Yes, your brother. Which
10 one of you is older?

11 A Minor 2 born first.

12 THE COURT: He was born first? How many minutes?

13 A I don't know how many minutes, but they always said
14 that he was born first.

15 THE COURT: He was born first. There's always got
16 to be one that gets born first. Is he a good brother?

17 A He's a good brother, but he -- we always fight a
18 lot.

19 THE COURT: That happens.

20 A Yes.

21 THE COURT: That happens. I understand that.

22 A Not like -- not like fist fight, but we talk fight.

23 THE COURT: I understand that. Okay.

24 MS. CAMPBELL: And your Honor, for the record, I do
25 object to the witness's testimony. I would make a

1 statement on the record that --

2 THE COURT: Ms. Campbell, we're going to do this
3 outside of his presence. We're going to let him go back
4 and leave.

5 MS. CAMPBELL: Okay.

6 THE COURT: And then, you can put it on the record.
7 Okay?

8 MS. CAMPBELL: Thank you.

9 Minor 1 LEAVES COURTROOM.

10 DEFENSE OBJECTION TO Minor 1 GOETHE
11 SIMMONS' TESTIMONY.

12 THE COURT: Now you can go ahead.

13 MS. CAMPBELL: Thank you. Your Honor, I would
14 object to the testimony from this witness. Based on his
15 answers, he has testified that he hears voices in his
16 head; he sometimes listens to those voices; sometimes
17 those voices overcome his own will; and he listens to
18 them. He's indicated that, at his age, between fifth
19 grade and sixth grade, he, you know, has imaginary
20 friends; that the -- he carried on a conversation with a
21 frog that he felt like he was communicating with. And in
22 terms of the lying, it was very -- it was equivocal,
23 equivocating about lying and maybe getting away with it.
24 And based on his answers to my questions, and in
25 particular, the fact that, based upon a religious belief

1 alone is not sufficient to satisfy the requirements of
2 his understanding the difference between telling the
3 truth and a lie, the consequences. And regardless of
4 that, I would say that his mental capacity is at
5 question, and that he would require a mental health
6 evaluation to determine his ability to testify at this
7 point, based on his answers. Thank you.

8 RULING, BY THE COURT:

9 THE COURT: Thank you for making your record. I
10 think he was a very thoughtful, smart child. I think
11 your interpretation of what he said was completely the
12 opposite of what I said and what I saw. He talked about
13 having captured a frog last night, and having talked to
14 the frog. I think you put words in his mouth that were
15 simply not there.

16 I think he was more than competent. I think he
17 certainly understands right from wrong. He explained
18 that he gets punished when he speaks or tells a lie. The
19 fact that they've put the fear of God in him, if he does
20 tell a lie, that it's going to be written in the Judgment
21 Book, I think just adds that much more credence to the
22 boy understanding the difference between the truth and a
23 lie. I think he's more than competent, and very bright,
24 and very thoughtful. Let's go ahead and bring the next
25 one in.

1 MS. LEMPEŠIS: Thank you, your Honor. Minor 2

2 Simmons.

3 Minor 2 Minor 2

4 COMPETENCY HEARING:

5 THE COURT: Come on up here, Minor 2

6 MADAM CLERK: Stop right here for me. Place your
7 left hand on the Bible. Raise your right hand for me.
8 Raise that hand. Do you solemnly swear to truthfully
9 answer all questions asked of you by this Court, so help
10 you God?

11 Minor 2 Minor 2 I'm supposed to say
12 that?

13 MADAM CLERK: Say yes or no.

14 Minor 2 Minor 2 Yes, ma'am.

15 MADAM CLERK: Please be seated. Thank you.

16 THE COURT: Minor 2 my name is Carmen Mullen. It's
17 nice to meet you.

18 Minor 2 Minor 2 Nice to meet you.

19 THE COURT: Do you know who I am?

20 Minor 2 Minor 2 You're the judge.

21 THE COURT: I'm the judge, right. And you probably
22 know I'm the judge because I'm wearing a black robe,
23 right?

24 Minor 2 Minor 2 (Nodded head.)

25 THE COURT: Okay. Let me tell you this, just a

1 couple of quick things. When we're in here, you need to
2 say yes or no. You can't nod your head, because we don't
3 know what you're saying if you're just shaking your head
4 or nodding your head. Do you understand that?

5 Minor 2 Minor 2 Yes, ma'am.

6 THE COURT: Okay. And what Ms. Lasandra did right
7 here, she works with me. She's a very nice lady. And
8 what she was doing was placing your hand on the *Bible* and
9 swearing. And I know it's something that's said very
10 quickly, but basically, what you were doing was swearing
11 to tell the truth. Do you know what the truth is?

12 Minor 2 Minor 2 Yes, ma'am.

13 THE COURT: Okay. Now, I'm going to let -- Ms.
14 Lempesis is going to ask you a few questions, okay?

15 Minor 2 Minor 2 Yes, ma'am.

16 THE COURT: And if you know the answer, you can say
17 yes or no. And if you don't know the answer, there is
18 nothing wrong with saying I don't know. Okay?

19 Minor 2 Minor 2 Yes, ma'am.

20 THE COURT: But you understand what you're going to
21 do here is tell the truth. Is that correct?

22 Minor 2 Minor 2 Yes, ma'am.

23 THE COURT: All right, sweetheart. You go ahead.

24 Minor 2 Minor 2

25 DIRECT EXAMINATION BY MS. LEMPESIS:

1 Q Hey, [Minor 2]
2 A Good morning.
3 Q [Minor 2] I'm going to ask you a really easy question
4 first. Can you spell your first name?
5 A Yes, ma'am.
6 Q What is it?
7 A [Minor 2].
8 Q That's a good name. [Minor 2] how old are you?
9 A Twelve years old.
10 Q When's your birthday?
11 A [REDACTED]
12 Q All right. So, you're about to be 13.
13 A Yes, ma'am.
14 Q [Minor 2] what grade are you in, in school?
15 A Sixth grade.
16 Q Are you home schooled?
17 A Yes, ma'am.
18 Q So, who's your teacher?
19 A Ms. Simmons.
20 Q Ms. Simmons. Is that your mom?
21 A Cynthia Simmons, yes, ma'am.
22 Q What is your favorite subject in school?
23 A Math.
24 Q Math. [Minor 2] where do you live now?
25 A I live Early Branch, [REDACTED] South

1 Carolina.

2 Q And Minor 2 do you know what it means to tell a lie?

3 A Yes, ma'am.

4 Q So, if I said to you that the Judge is a man, would
5 that be true, or would that be a lie?

6 A That would be a lie.

7 Q And is it right or wrong, Minor 2 to tell a lie?

8 A It's wrong to tell a lie.

9 Q And so, do you promise that you will tell the truth
10 here today?

11 A Yes, ma'am.

12 MS. LEMPESIS: Okay. Thank you, Minor 2 Answer any
13 questions that the Judge might have for you or Ms.

14 Campbell. Okay?

15 A Yes, ma'am.

16 Minor 2 Minor 2

17 CROSS-EXAMINATION BY MS. CAMPBELL:

18 Q Good morning, Minor 2

19 A Morning, ma'am.

20 Q Are you okay?

21 A Yes, ma'am.

22 Q Okay. Great. Minor 2 you haven't always been home
23 schooled, right? At some point, you went to a regular
24 school, right?

25 A Yes, ma'am.

1 Q And when you were at that regular school, didn't you
2 get in trouble for lying to the teacher there?

3 A Yes, ma'am.

4 Q Okay.

5 MS. LEMPESIS: Objection, your Honor.

6 THE COURT: Okay. We're going to let him -- her go
7 for a little bit.

8 BY MS. CAMPBELL:

9 Q And when you got in trouble for lying to the
10 teachers, did anything happen?

11 A I got suspended.

12 Q And when you got suspended, were you punished at
13 home, too?

14 A Punished.

15 Q Okay. Other than lying at school, have you ever
16 told a lie any other time?

17 A Yes, I was.

18 Q And when you told a lie the other times, why do you
19 lie?

20 A Because I thought I was going to get away with it.

21 Q Is it okay to lie, if you can get away with it?

22 A No, ma'am.

23 Q Okay. Why not?

24 A Because the *Bible* says, *thou shalt not lie*.

25 Q Okay. So, based upon the *Bible*, you shouldn't lie.

1 A You should not lie.

2 MS. CAMPBELL: Thank you. I have no further
3 questions.

4 [Minor 2] [Minor 2]

5 EXAMINATION BY THE COURT:

6 THE COURT: Do you understand, [Minor 2] that when
7 you're in this courtroom here today, that you can only
8 tell the truth? Do you understand that?

9 A Yes, ma'am.

10 THE COURT: And you understand what the truth is.
11 Is that correct?

12 A Yes, ma'am.

13 THE COURT: And you say your favorite subject is
14 math? What are you doing in math right now?

15 A Fractions.

16 THE COURT: Fractions. And you're in the sixth
17 grade now?

18 A Yes, ma'am.

19 THE COURT: That's very advanced. That's very good.
20 Do you play any sports?

21 A No. I want to.

22 THE COURT: You want to. What do you like? What
23 sports to you like to watch?

24 A I like to watch football, basketball, golf, tennis.

25 THE COURT: You like everything. You like all

1 sports. Fabulous.

2 A I really want to be a athlete.

3 THE COURT: You want to be an athlete? What would
4 be -- what would be your ideal? What would you love to
5 be if you grew up, if you could choose to be any kind of
6 athlete, what kind would you like to be?

7 A A boxer.

8 THE COURT: A boxer. Okay. All right. You okay?

9 A Yes, ma'am.

10 THE COURT: All right. What I'm going to do is
11 this, Minor 2 I am going to let you walk back out, and
12 you're going to come back in here again in a little bit.
13 Okay? And I just want to remind you that you are going
14 to tell the truth when you come back in here. Can you
15 remember that?

16 A Yes, ma'am.

17 THE COURT: Okay. All right. We're going to go
18 ahead and let you go on out. Okay?

19 A Yes, ma'am.

20 THE COURT: I'll see you in a little bit.

21 Minor 2 Minor 2 LEAVES

22 COURTROOM.

23 DEFENSE OBJECTION TO Minor 2

24 Minor 2 TESTIMONY:

25 THE COURT: Go ahead, Ms. Campbell.

1 MS. CAMPBELL: May it please the Court, your Honor.
2 For the record, I observed this witness hesitate when he
3 was being administered the oath by the Clerk of Court,
4 and the Clerk of Court told him to answer yes. And I
5 believe your Honor attempted to clear that up with him
6 once he took the stand, but I think it needs to be clear
7 that, when he was administered the oath, he did not
8 answer yes until he was told to answer yes by the Clerk.
9 And based upon that, we would ask that he not be allowed
10 to testify. He clearly did not take the oath.

11 RULING BY THE COURT:

12 THE COURT: For the record, Ms. Lasandra Young has
13 been my Clerk of Court, and sworn in so many witnesses,
14 and I know a lot of times, we just do this as recitation,
15 and we say it fairly quickly. I think that when he first
16 got in here, I think there was a lot going on. You know,
17 he was being ushered in; he was looking around; someone
18 throws his hand on the *Bible*, and I don't think he fully
19 heard it, which is why I clearly went into a recitation
20 when Minor 2 got up here, to make sure he understood what
21 it meant to tell the truth.

22 He also stated that, in the *Bible* that he swore on,
23 it says *thou shalt not lie*. So, he clearly understands
24 the truth. He's certainly a bright boy, more than
25 competent to testify. Both of these boys are going to

1 be, you know, 13, within, you know, three weeks or so and
2 four weeks. And they've been -- again, were thoughtful,
3 smart, young boys who understand the difference between
4 the truth and a lie, and I think's appropriate for them
5 to testify. I was also very careful to tell them, as
6 well, that, if they didn't remember something or didn't
7 know something, they just need to say I don't know. So,
8 I think they're more than competent. Okay?

9 MS. LEMPESIS: Thank you, your Honor.

10 THE COURT: Okay. Do we need to -- obviously, we're
11 going to have to visit, once they do, in fact, testify,
12 we are going to have to re-visit whether or not you all
13 are going to introduce the actual taped interview. And
14 certainly, we need to go through that, as far as the Hope
15 Haven interviews are concerned. So, do you want to --
16 are you hoping to have the boys both testify, and then,
17 run the interviews back-to-back, or how did you want to
18 do it?

19 MS. LEMPESIS: We were going to have both the boys
20 testify. And then, your Honor, if we could, we thought
21 we'd take a brief recess to sort of re-group and decide
22 if we even need to play the --

23 THE COURT: Okay, the interview.

24 MS. LEMPESIS: Yes.

25 THE COURT: Okay. All right. That sounds good.

1 Okay. All right. Anything more for the record, before
2 we go ahead and bring the jury in and go ahead and start?

3 MS. LEMPESIS: Nothing from the State, your Honor.

4 THE COURT: Anything from the Defense?

5 MS. CAMPBELL: No, your Honor.

6 THE COURT: Thank you. Let's go ahead and bring the
7 jury in this morning. Thank you.

8 BAILIFF: Your Honor, the jury is entering.

9 JURORS ENTER COURTROOM 10:47 A.M.

10 BAILIFF: Your Honor, the jury is seated.

11 THE COURT: Good morning, ladies and gentlemen.

12 RESPONSES FROM JURORS.

13 THE COURT: Pleasure to see you all. At this time,
14 we're going to go ahead and continue with the trial of
15 the case. If the State would call their first witness
16 for this morning, please.

17 MS. LEMPESIS: Thank you, your Honor. The State
18 calls Minor 1

19 THE COURT: Come right up here.

20 Minor 1 Thank you.

21 MADAM CLERK: Do you solemnly swear to truthfully
22 answer all the questions asked of you by this Court, so
23 help you God?

24 Minor 1 Yes, I do.

25 MADAM CLERK: Thank you. Would you please be

1 seated? And would you state your name for the Court,
2 please.

3 Minor 1 [REDACTED] My name is Minor 1, Min
[REDACTED].

5 Minor 1 [REDACTED]

6 DIRECT EXAMINATION BY MS. LEMPESIS:

7 Q Hey, Minor 1 [REDACTED] How are you?

8 A I'm great.

9 Q I'm going to ask you a really easy question again
10 first. How do you spell your first name?

11 A Minor 1 [REDACTED].

12 Q And it's pronounced -- how do you pronounce it?

13 A Minor 1 [REDACTED].

14 Q Minor 1 [REDACTED]. What's your full name?

15 A Minor 1 [REDACTED] Minor 1 [REDACTED].

16 Q Minor 1 [REDACTED] Minor 1 [REDACTED]. What's the G stand for?

17 A Minor 1 [REDACTED].

18 Q Minor 1 [REDACTED]. Minor 1 [REDACTED] how old are you?

19 A I am 12 years old.

20 Q Twelve years old. And when is your birthday?

21 A [REDACTED] [REDACTED] [REDACTED]

22 Q So, you have a birthday coming up?

23 A Yes, ma'am.

24 Q How old will you be on your birthday? That's
25 another easy question.

1 A Thirteen.

2 Q Okay. Minor 1 what --

3 MS. CAMPBELL: Your Honor, may I approach, please?

4 THE COURT: You may.

5 OFF-THE-RECORD BENCH CONFERENCE,

6 OUT OF HEARING OF JURORS. PRESENT:

7 THE COURT, MS. LEMPESIS, MS. DEYSACH,

8 MS. CAMPBELL.

9 END BENCH CONFERENCE.

10 BY MS. LEMPESIS:

11 Q All right, Minor 1 All right. I think I asked you
12 what grade you are in school.

13 A Between fifth and sixth.

14 Q Between fifth and sixth. So, who do you -- who's
15 your teacher?

16 A Mr. and Mrs. Simmons.

17 Q Is that your mom and dad?

18 A Yes, ma'am.

19 Q So, you go to school at home?

20 A Yes, ma'am.

21 Q What is your favorite subject?

22 A Mostly reading and sometimes science.

23 Q Mostly reading, and sometimes science. What are you
24 learning in science right now?

25 A Well, right now, I'm in sixth grade science. It's

1 just biology. And I'm doing biology, which I think
2 I'm --

3 Q That's okay if you can't remember exactly. So,
4 you're taking biology.

5 A Yes, ma'am. I'm in that book.

6 Q And you like that class.

7 A I like that -- that science class a little.

8 Q Okay. Where do you live, **Minor 1**?

9 A I live in Jasper County, on **[REDACTED]**.

10 Q On **[REDACTED]**. All right. And who do you
11 live with?

12 A I live with Mr. and Mrs. Simmons, my two sisters,
13 and one -- two cousins, and my little -- my brother out
14 there.

15 Q Your brother out there. What's his name?

16 A **Minor 2**.

17 Q **Minor 2**. Is that your twin brother?

18 A Yes, ma'am.

19 Q And who did you live with before you came -- who did
20 you live with before you came to live in Jasper County?
21 Where did you live before that?

22 A I was with Ms. Rose.

23 Q Ms. Rose.

24 A And Aunt Darlene.

25 Q And Aunt Darlene. And how are you related to Ms.

1 Rose?

2 A They said that that's my cousin.

3 Q Okay. And where did you live with Ms. Rose? Do you
4 remember what the name of the town was?

5 A I lived on Seaside Road, in South Carolina.

6 Q In South Carolina. Okay. And [Minor 1] do you know
7 what it means to tell the truth, and what it means to
8 lie?

9 A Yes, ma'am.

10 Q Okay. And so, [Minor 1] if I said that the Judge is a
11 man, would that be true or a lie?

12 A That's a lie.

13 Q And is it right or wrong to tell a lie?

14 A It's wrong.

15 Q Do you promise today, Jarron, to tell the truth?

16 A Yes, ma'am.

17 Q Thank you. [Minor 1] do you remember how old you were
18 when you came to live with Ms. Cynthia and Mr. Johnnie?

19 A Nine.

20 Q Okay. And are they your -- are they who you call
21 your mom and dad now?

22 A Yes, ma'am.

23 Q And you said that, before you lived with Ms. Cynthia
24 and Mr. Johnnie, you lived with Ms. Rose.

25 A Yes, ma'am.

1 Q Okay. Who else lived with you when you lived with
2 Ms. Rose?

3 A There was some people at -- in behind her house,
4 which their name is Aunt Lorraine and Uncle John, and his
5 daughters.

6 Q Okay. Did anybody else live in the house with you
7 and Ms. Rose and your brother?

8 A No. It was just us, until Mike came.

9 Q Okay. Who's Mike?

10 A I think that's someone named Ashley.

11 Q Okay. That's fine.

12 A Brother.

13 Q Okay. Do you remember the white house on the --
14 where you used to live on Seaside Road? Was there a big
15 white house?

16 A Yes, ma'am. A white and blue one.

17 Q A white and blue one. Did you ever live in that
18 house?

19 A Yes, ma'am.

20 Q Who did you live with in that house?

21 A Him, and with the ones that just left.

22 Q Okay. When you said *him*, who do you mean?

23 A Jimmy.

24 Q Jimmy? Do you know -- can you tell us who Jimmy is?
25 How are you related to Jimmy?

1 A That's my dad.

2 Q That's your dad. Okay. And so, you lived in that
3 house with Jimmy?

4 A Um-hmm.

5 COURT REPORTER: Is that yes?

6 A Yes, ma'am.

7 COURT REPORTER: Thank you.

8 Q And that's right, Minor 1 You just have to say yes
9 or no. Okay? You have to say yes or no, instead of
10 nodding your head.

11 A Yes, ma'am.

12 Q Minor 1 do you see Jimmy in the courtroom?

13 A Yes, ma'am.

14 Q Okay. Can you just point to where he's sitting?

15 A Over there, ma'am.

16 Q Okay. And let the record reflect that he has
17 pointed to the defendant.

18 Minor 1 do you know why you're here today?

19 A Yes, ma'am.

20 Q I'm going to ask you some questions, Minor 1 about
21 why you're here today. Okay? You said Jimmy is your
22 dad. When you lived with Jimmy in the house on Seaside
23 Road, did Jimmy ever make you do anything that was
24 sexual?

25 A Yes, ma'am.

1 Q Can you tell me, [Minor 1] what he did?

2 A He touched me in my private parts.

3 Q Touched you on your private parts. Can you tell me
4 what private part he touched?

5 A My pee-pee.

6 Q Your pee-pee.

7 A And he touched me at my butt.

8 Q On your butt. Okay. What did he touch you with?

9 A His hands.

10 Q Did he touch you with anything else on your pee-pee
11 or your butt?

12 A Just his hands.

13 Q Just his hands. Okay. Did he ever make you touch
14 him? Is that a yes?

15 A Yes, ma'am.

16 Q Okay. Where did he make you touch him, [Minor 1]

17 A At his front -- at his front private part.

18 Q What did you -- how did he make you touch him on his
19 private?

20 A With my hands.

21 Q Okay. Did he ever make you put any other part of
22 your body on his private? Is that yes or no?

23 A No, ma'am.

24 Q Okay. [Minor 1] you said that he touched your butt,
25 too.

1 A Yes, ma'am.

2 Q Do you remember where you were when he touched you
3 on your private parts?

4 A I was in his room when he did it.

5 Q When he did it. Did he do it one time or more than
6 one time?

7 A More than once.

8 Q Did it usually happen in the daytime or in the
9 nighttime?

10 A At night.

11 Q [Minor 1] did anybody else see him touching you or see
12 him making you touch him?

13 A But my brother.

14 Q But your brother. [Minor 1] how did it feel when he
15 touched you?

16 A It didn't feel so good.

17 Q It didn't feel so good. How did it -- well, [Minor 1]
18 did you -- did he say anything to you after he touched
19 you in these ways?

20 A (Nodded head.)

21 Q What did he say?

22 A He said -- he said, *don't tell anyone, or else he'll*
23 *come and find me.*

24 Q Okay. [Minor 1] did you ever tell anyone about what
25 he did?

1 A My mom and my dad right now.

2 Q Your mom and your dad right now. Is that Ms.
3 Cynthia and Mr. Johnnie?

4 A Yes, ma'am. I told them in -- back in 2010 and '11.

5 Q Okay.

6 A When they asked me.

7 Q Okay. So, you told them about what Jimmy did.

8 A Yes, ma'am.

9 Q Did you ever tell anyone else about what Jimmy did?

10 A The Hope Haven people and all the counselors today,
11 except for the one in Ridgeland.

12 Q Um-hmm.

13 A I told her a little bit, but she kept asking me
14 other things about in their house.

15 Q Okay. And do you remember going to the doctor after
16 this? After this happened, did you see a doctor?

17 A They checked me.

18 Q Okay. All right, Minor 1 Just give me one second.
19 Okay? I'll be right back. Just a moment of the Court's
20 indulgence.

21 All right, Minor 1 just a few more questions. Okay?

22 Minor 1 did anyone else ever touch you in your private
23 like the way you've described your dad did?

24 A No one else but him.

25 Q Okay. Minor 1 did Jimmy ever touch you with his

1 mouth?

2 A At the front part, yes.

3 Q At the front part. What do you mean at the front
4 part?

5 A He had his mouth in -- on my -- my pee-pee.

6 Q On your pee-pee. Did he do that more than one time,

7 Minor 1

8 A Yes, ma'am.

9 Q Did he ever make you put your mouth on anyone else's
10 pee-pee?

11 A No, ma'am.

12 Q Okay. Minor 1 did Jimmy ever touch you with his
13 pee-pee?

14 A He put it at my butt.

15 Q He put it at your butt.

16 A Um-hmm.

17 Q Do you remember if he put it on your butt or inside
18 your butt?

19 A Inside.

20 Q Inside your butt. Minor 1 you said that your
21 brother, Minor 2 saw something that your dad did. Do you
22 remember what your brother saw?

23 A He saw everything.

24 Q He saw everything. Okay. And did you ever see your
25 dad do anything to Minor 2

1 A I didn't see him do anything to him, but Minor 2 saw
2 when he done it to me.

3 MS. LEMPESIS:

4 Q Okay. All right. Just one more second. Okay,
5 Minor 1 All right, Minor 1 I don't have anymore
6 questions for you. Okay? Ms. Campbell is going to ask
7 you some questions, and you can just answer her
8 questions. Okay? Thank you.

9 MS. CAMPBELL: May it please the Court?

10 THE COURT: Yes, ma'am.

11 MS. CAMPBELL: Your Honor, may I have the same
12 opportunity to be a little bit closer to the witness that
13 the State had?

14 THE COURT: You can come closer, --

15 MS. CAMPBELL: Thank you.

16 THE COURT: -- but let's just make sure you're just
17 back behind the Bar.

18 MS. CAMPBELL: Thank you so much.

19 THE COURT: Unless, of course, you need to show him
20 something and have to move.

21 Minor 1

22 CROSS-EXAMINATION BY MS. CAMPBELL:

23 Q Hi.

24 A Hi.

25 Q Minor 1 if I said that you practiced your answers

1 with this lady right here, would that be true?

2 A Yes, ma'am.

3 Q Okay. Did you practice also coming in here and
4 taking the oath to tell the truth?

5 A Yes, ma'am.

6 Q Were you actually brought into the courtroom and
7 taught how to do that, or did you do it somewhere else?

8 A I was brought in here by Ms. M.J.

9 Q By M.J., right. And would it also be true if I said
10 that you -- you've lied in the past about some things?
11 Would that be right?

12 A That would be true.

13 Q Okay. That maybe you got in trouble for lying at
14 school?

15 A Yes, ma'am.

16 Q And maybe you got in trouble for lying at home.

17 A Yes, ma'am.

18 Q Okay. Does Ms. Cynthia Simmons have something
19 called an ouch stick?

20 A Yes, she do.

21 Q She does. And has she ever used that ouch stick on
22 you?

23 A On me.

24 Q Yes. Okay.

25 COURT REPORTER: I'm sorry, I didn't hear your

1 answer.

2 A Yes, she did.

3 THE COURT: Do you want to lower that a little bit.
4 I know it's kind of right at your forehead. You're --
5 yeah.

6 MS. CAMPBELL: Thank you.

7 THE COURT: Thank you.

8 BY MS. CAMPBELL:

9 Q Do you remember Ms. Cynthia Simmons asking you to
10 take your pants off, so that she could look at your rear?

11 A Yes, she did.

12 Q Okay. How many times did she do that?

13 A I don't remember how many times, but she did ask me.

14 Q Okay. More than once?

15 A I know it was more than once.

16 Q Okay. Now, do you remember your Aunt Rose?

17 A Yes, ma'am.

18 Q Okay. Would it be fair if I said that Rose took
19 good care of you?

20 A She did.

21 Q Right. Would it be fair to say that she was -- you
22 felt safe with Rose?

23 A I felt safe with her, but not when he's around.

24 Q I understand. But Rose, you felt safe with, right?

25 THE COURT: Is that a yes, for the record? You need

1 to say yes or no.

2 A Yes, ma'am.

3 Q Okay.

4 A Yes, ma'am.

5 Q Thank you. And what about Aunt Darlene? Do you
6 remember Aunt Darlene?

7 A Yes, ma'am.

8 Q And did you feel safe with Aunt Darlene?

9 A Yes, ma'am.

10 Q Okay. How about Aunt Paulette? Do you remember
11 Aunt Paulette?

12 A I had many a funs with her.

13 Q Yes. Paulette, yes. And you felt safe with
14 Paulette, right?

15 A Sometimes I would, but that's when I had fun with
16 her and their -- her children.

17 Q And she's got three children, right?

18 A Yes, ma'am.

19 Q Great. How about do you remember a lady by the name
20 of Mahogany? Do you remember her being your daddy's
21 girlfriend?

22 A Yes, ma'am.

23 Q Okay. And Mahogany had some children, too?

24 A She had one.

25 Q Okay.

1 A Far as I know.

2 Q And in that white house that you were talking to
3 M.J. about, Paulette lived there, right?

4 A Yes, ma'am.

5 Q How about her husband, Leroy?

6 A Yes, ma'am.

7 Q And their kids lived there, right?

8 A Yes, ma'am.

9 Q Okay. Mahogany lived there.

10 A Yes, ma'am.

11 Q And her child lived there.

12 A Yes, ma'am.

13 Q Great. Do you remember after your dad came back to
14 Saint Helena if you ever asked Aunt Rose if you could
15 just stay with her and not go over to the white house?
16 Did you ever ask her that?

17 A I didn't ask her that, but there were sometimes when
18 I wanted to ask her. But I just went over there any -- I
19 just went over to his house anyway.

20 Q Okay. Do you remember, I guess, saying that, at
21 some point, when you're around seven years old, that
22 you'd just had enough of all this and you were going to
23 call the cops when you were seven. Do you remember
24 saying that, maybe at Hope Haven? Right.

25 A I did say that at Hope Haven.

1 Q And when you were seven, you'd had enough, you were
2 going to call the cops, and your Aunt Rose told you to
3 hang up that phone, you were not calling the cops. Is
4 that what you told Hope Haven?

5 A I dialed -- I dialed it anyway, but the cops called
6 back and asked what I did I wanted, but I didn't have a
7 chance to talk.

8 Q And was that on a house phone?

9 A Yes, ma'am.

10 Q Wasn't a cell phone.

11 A Not a cell phone.

12 Q Right. Now, do you remember that you, I guess, had
13 reported that you saw your father, your dad, giving money
14 to men for you to put your mouth on their pee-pee? Do
15 you remember telling people that?

16 A Yes, ma'am.

17 Q And that didn't happen. Is that right?

18 A It did.

19 Q Oh, it did happen.

20 A I just remembered it did.

21 Q Just right now you remembered it happened. Okay.

22 THE COURT: Is that a yes, for the record?

23 A Yes, ma'am.

24 THE COURT: Okay.

25 BY MS. CAMPBELL:

1 Q Now, again, just so I'm clear, you've gone over what
2 you were going to say today with M.J., right?

3 A Yes, ma'am.

4 Q Okay.

5 A Yes, ma'am.

6 Q And you never talked to her about the fact that you
7 had already reported that you were --

8 A I -- I already reported to her that I didn't have my
9 mouth on the other men's private parts, but an hour --
10 last night I remembered that I did.

11 Q Oh, okay.

12 A That's the truth.

13 Q Okay. So, you told M.J. that you never put your
14 mouth on other mens' private parts, but today you're
15 remembering that you did.

16 A Yes, ma'am.

17 Q Okay. Are you also remembering that your father was
18 paying them money to have you do that?

19 A He did.

20 Q Okay. Do you remember also reporting that your
21 father and, I think, Cynthia, right, were laying on a
22 pile of hundred-dollar bills at one point at the white
23 house? Do you remember telling some people that?

24 A They weren't there.

25 Q You don't remember that?

- 1 A No.
- 2 Q Okay. Do you remember telling people that the cops
3 came to your house looking for a bank robber?
- 4 A Yes, ma'am.
- 5 Q Okay. And that really happened.
- 6 A Did they come to the house?
- 7 Q Looking for a bank robber.
- 8 A Yes, ma'am.
- 9 Q Okay. Minor 1 just a couple more questions. Do you
10 remember your dad putting you on the wall?
- 11 A Yes, I remember that.
- 12 Q Did you like standing on the wall?
- 13 A I didn't like it.
- 14 Q No. You had to stand along the wall a long time;
15 didn't you?
- 16 A Yes, ma'am.
- 17 Q And you were being punished for misbehaving,
18 correct?
- 19 A I was.
- 20 Q Okay. Were you also required to do push-ups?
- 21 A In the push-up position?
- 22 Q Um-hmm.
- 23 A Yes, ma'am.
- 24 Q Right. And you didn't like that, either.
- 25 A No.

1 Q All right. And do you remember some time in 2009,
2 maybe, when you were around eight or nine years old, that
3 your dad left Saint Helena, right?

4 A He did.

5 Q Okay. And you went to live with Ms. Cynthia and Mr.
6 Johnnie, right?

7 A I didn't go -- I've been over there for the -- not
8 in 2009. I've been over there since I was nine years
9 old.

10 Q Okay. Good.

11 A When I was nine years old, I'd gone over there for
12 the weekends, after school, every Friday afternoon, until
13 Sunday, and they'd bring us back when they'd go to church
14 for Sunday service.

15 Q Um-hmm.

16 A And we'd go with Ms. Rose in the afternoon for
17 school the next day.

18 Q Oh, okay. Thank you for helping me understand that.
19 I appreciate that. Do you also remember that you
20 reported that some kids at school were touching you on
21 your private?

22 A One of them, yes, ma'am.

23 Q Okay. And that was on Saint Helena?

24 A Yes, ma'am.

25 Q Okay. And that was before your daddy came back. Is

1 that right?

2 A Yes, ma'am.

3 Q Okay. And you also remember that you were bullied a
4 lot, right?

5 A Yes, ma'am.

6 Q Do you remember talking about Minor 2 selling things
7 at school on Saint Helena? Do you remember that?

8 A He was.

9 Q What was he selling?

10 A They said that he was selling rubber bands.

11 Q Rubber bands. I think that's not allowed in school,
12 right?

13 A Yes, ma'am, except for the teachers.

14 Q Right, exactly. Because you can hurt people with
15 them, right? Okay.

16 A They be making some little piece of paper out of
17 them --

18 Q Um-hmm.

19 A -- and flicking it at people.

20 Q And it hurts.

21 A And putting food on it and flicking it at people.

22 Q Okay. That sounds terrible. And Minor 2 was selling
23 the rubber bands at school. Okay.

24 A Just one boy or many other boys had given it to him,
25 and he had to go sell them to other boys.

1 Q Hmm. Okay. Lastly, when you were a little child,
2 do you remember that you had some imaginary friends?

3 A Yes, ma'am.

4 Q Okay. Do you still have some imaginary friends?

5 A Like, one. When I'm over here with Mr. and Mrs.
6 Simmons, I have one, but I don't have any -- the rest of
7 them anymore.

8 Q Okay. And sometimes do you hear a voice in your
9 head that tells you things?

10 A Yes, ma'am.

11 Q Okay. Do you sometimes feel that you can't say no
12 to that voice?

13 MS. LEMPESIS: Your Honor, --

14 Q Have you tried?

15 THE COURT: Okay. Overruled. She can ask it.

16 BY MS. CAMPBELL:

17 Q Do you try to say no to that voice you hear?

18 A I say yes to the right voice, and no to the wrong
19 voice. Sometimes.

20 MS. CAMPBELL: Do you -- that may be all. Give me
21 one second.

22 Minor 1

23 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

24 Q All right, Minor 1 I'm going to ask you a few more
25 questions.

1 THE COURT: Hold on just a minute, Ms. Lempesis.
2 I'm not sure she's done yet.

3 MS. LEMPESIS: Oh, I'm sorry. I apologize.

4 THE COURT: Just a minute. Do you need a break, or
5 are you okay?

6 A I'm fine.

7 THE COURT: Okay.

8 Minor 1 GOETHE CAMPBELL

9 CONTINUE CROSS-EXAMINATION BY MS. CAMPBELL:

10 Q Minor 1

11 A Ma'am?

12 Q Thank you for being patient. Do you remember
13 telling Hope Haven that you had to suck the pee-pee of
14 many of your father's friends?

15 A Yes, ma'am.

16 Q So, how many was it?

17 A I don't remember how many, but it was a lot of them.

18 Q A lot of them. And are you telling us today that a
19 lot of times that your father, as M.J. said, put his
20 private part in your rear? Are you telling us that
21 happened a lot of times?

22 A It happened a lot of times, and I know it was more
23 than once and twice.

24 Q Okay. And do you remember your father giving, I
25 guess, your brother, Minor 2 a gun?

1 A He did. From -- from out of the old house with the
2 pool table in it, he gave him that. And that was behind
3 Aunt Darlene's house, the old house that's back there,
4 they stored -- they stored papers and everything back
5 there in that house. And there was a old pool table, and
6 there was a gun in it. He gave him -- he gave it to him.
7 And I was -- I wanted it, but **Minor 2** told me no, but he
8 put it on top of the house. He put it on top of the
9 house.

10 Q It didn't wind up in the fire pit, right?

11 A No.

12 Q Okay. That's all.

13 A It didn't -- it didn't fire or anything.

14 MS. CAMPBELL: Right. That's all I have. Thank
15 you.

16 **Minor 1**

17 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

18 Q Okay, **Minor 1** Now, I'm going to ask you a couple
19 more questions. Okay? **Minor 1** when Ms. Campbell was
20 just asking you about the kids at school who touched your
21 private, were they hitting you in the private parts?

22 A You know how them boys do. They hit people in their
23 front private part.

24 Q Um-hmm. Okay, yeah.

25 A And kick a lot.

1 Q That's not nice; is it?

2 A No.

3 Q Minor 1 when we were talking about the house that
4 Jimmy lived in, did -- we talked about those other people
5 that lived there, too, Uncle Leroy and Aunt Paulette, or
6 Polly, I think is what you call her.

7 A Auntie Polly.

8 Q Did those people live there all the time or just
9 sometimes?

10 A They've been moving back and forth. So, they
11 haven't been there for long. But when we moved, I guess
12 they moved, too.

13 Q Um-hmm. Okay.

14 A Stay over -- over with them for good. And I guess
15 they moved to someplace else. I don't know where they're
16 at now.

17 Q Okay. And when we talked about the things that your
18 dad did to you, when he touched your privates, your pee-
19 pee and your butt, and when you -- when he made you touch
20 his pee-pee with his mouth and his friends' pee-pees with
21 your mouth, did that all happen at night when no one else
22 was around?

23 A Everybody was asleep. It was just them and him, and
24 me and Minor 2

25 Q Okay. And it's hard to talk about these things;

1 isn't it?

2 A Yes, ma'am.

3 Q You don't really want to talk about what happened;
4 do you?

5 A No. I really don't want to, but --

6 MS. CAMPBELL: Your Honor, I'm going to object.
7 She's leading. I'm giving her leeway.

8 MS. LEMPESIS: Your Honor, I would respond where
9 there is case law that supports you can lead a child
10 witness.

11 THE COURT: Okay. All right.

12 MS. LEMPESIS: To the extent that --

13 THE COURT: Let's just be careful.

14 MS. LEMPESIS: Sure.

15 BY MS. LEMPESIS:

16 Q Just a couple more things, Minor 1 Okay? Actually,
17 just one last thing. Minor 1 did you lie here today?

18 A No, ma'am.

19 MS. LEMPESIS: Thank you. All right. That's
20 everything.

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

22 THE COURT: Yes, ma'am.

23 Minor 1

24 RE-CROSS-EXAMINATION BY MS. CAMPBELL:

25 Q Minor 1 did you practice that answer, too, where

1 you're told to say that you can't lie?

2 A Yes, ma'am.

3 MS. CAMPBELL: Thank you. That's all I have.

4 THE COURT: Anything further?

5 MS. LEMPESIS: Nothing further, your Honor.

6 THE COURT: All right. [Minor 1] you can step down.

7 MS. LEMPESIS: Your Honor, at this point, the State
8 would call [Minor 2]

9 THE COURT: Okay. Come on up.

10 MADAM CLERK: Do you solemnly swear to truthfully
11 answer all questions asked of you by this Court, so help
12 you God?

13 [Minor 2] [Minor 2] Yes, ma'am.

14 MADAM CLERK: Please be seated, and state your name
15 for the Court, please.

16 [Minor 2] [Minor 2]

17 DIRECT EXAMINATION BY MS. LEMPESIS:

18 Q Hey, [Minor 2]

19 A Hey.

20 Q How are you?

21 A Fine.

22 Q I think I'm going to ask you a really easy question
23 first. Can you spell your first name for us?

24 A [Minor 2].

25 Q Perfect. And what's your full name?

1 A Minor 2 Minor 2.

2 Q Say it one more time.

3 A Minor 2 Minor 2.

4 Q Okay. And you just want to talk right into that
5 microphone.

6 THE COURT: And if you want to, it moves, so you can
7 pull it down, like, lower to your mouth if you want to.
8 Okay? So, you can go ahead -- you can go ahead and do
9 it.

10 BY MS. LEMPESIS:

11 Q We just want to make sure we can hear you. Okay,

12 Minor 2

13 Q Minor 2 how old are you?

14 A Twelve.

15 Q And when is your birthday?

16 A [REDACTED]

17 Q Okay. And do you have a twin brother?

18 A Yes, ma'am.

19 Q What's his name?

20 A Minor 1

21 Q And Minor 2 what grade are you in, in school?

22 A Sixth.

23 Q Sixth grade. And who's your teacher?

24 A Cynthia Simmons.

25 Q Is that your mom?

1 A Yes, ma'am.

2 Q And so, are you -- do you stay home for school?

3 A Yes, ma'am.

4 Q What is your favorite subject, Minor 2

5 A Math.

6 Q Math. And what are you learning right now in math?

7 A Fractions.

8 Q Fractions. Okay. Minor 2 where do you live now?

9 A I live at South Carolina.

10 Q Okay. And who do you live with there?

11 A Johnnie Frank Simmons, Cynthia Simmons, my sisters.

12 Q And does your brother Minor 1 live there, too?

13 A Yes, ma'am.

14 Q And Minor 2 do you remember who you lived with
15 before you moved to Early Branch?

16 A Rose Simmons.

17 Q And where was Rose Simmons' house?

18 A I forgot.

19 Q You forgot. Is it -- is it -- do you remember what
20 road it's on?

21 A Seaside Road.

22 Q Okay. And Minor 2 do you know what it means to tell
23 the truth?

24 A Yeah.

25 Q And do you know what it means to tell a lie?

1 A Yes, ma'am.

2 Q And so, if I said that the sky is purple, would that
3 be the truth or a lie?

4 A A lie.

5 Q And is it right or wrong to tell a lie?

6 A Wrong.

7 Q And [Minor 2] do you promise that today you will tell
8 the truth?

9 A Yes, ma'am.

10 Q Thank you. [Minor 2] do you remember how old you were
11 when you came to live with Ms. Cynthia and Mr. Johnnie?

12 A Nine years old.

13 Q And before that, did you ever spend some weekends
14 with them?

15 A I don't remember.

16 Q You said before you lived with Ms. Cynthia and Ms.
17 Johnnie, you lived with Ms. Rose on Seaside Road.

18 A Yes, ma'am.

19 Q Who else lived with you when you lived with Ms.
20 Rose?

21 A In the house?

22 Q Um-hmm.

23 A Just me; Ms. Rose; and my brother, [Minor 1]

24 Q Okay. And do you remember another house that was on
25 that same property that was a white house?

1 A Yes, ma'am.

2 Q And who lived in that house?

3 A Auntie Angie and Auntie Polly, my dad, and Uncle
4 Leroy and their kids.

5 Q And you said your dad, do you know what your dad's
6 name is?

7 A Jimmy Simmons.

8 Q Minor 2 do you see him in the courtroom today?

9 A Yes, ma'am.

10 COURT REPORTER: Is that yes?

11 A Yes, ma'am.

12 Q And let the record reflect he pointed to the
13 defendant.

14 Minor 2 I'm going to ask you some things about what
15 happened with your dad. Do you know why you're here
16 today?

17 A Yes, ma'am.

18 Q And do you -- when your dad lived at the house, the
19 white house on Seaside Road, did you used to spend the
20 night there with him?

21 A Yes, ma'am.

22 Q Would you stay there a lot of nights?

23 A Probably on school nights, when Ms. Rose isn't home,
24 we'd either stay there, or she would ask us did we want
25 to go there for the night.

1 Q Okay. And when your dad, Jimmy, lived in that
2 house, did he live by himself there sometimes?

3 A No, ma'am.

4 COURT REPORTER: I'm sorry. Is that yes?

5 A No, ma'am.

6 COURT REPORTER: No, ma'am. Okay. Thank you.

7 Q When -- you said, I think, Auntie Polly and Uncle
8 Leroy lived there, too?

9 A Yes, ma'am.

10 Q Minor 2 when you were -- when you would stay with
11 your dad at that house on Seaside Road, the white house,
12 did your dad ever touch you in any way that was -- that
13 was inappropriate?

14 A Yes, ma'am.

15 Q How did he -- or can you tell me where he touched
16 you?

17 A He touched me in my private parts.

18 Q In your private parts?

19 A Yes, ma'am.

20 Q Can you tell me if that is your -- what private
21 parts exactly?

22 A My penis.

23 Q Your penis. Did he touch you anywhere else?

24 A No, ma'am.

25 Q What did he touch you with?

1 A His hands.

2 Q Did he ever make you touch him?

3 A No, ma'am.

4 Q Did he ever make you -- did he ever touch you with
5 anything besides his hand on your private parts?

6 A No, ma'am.

7 Q Minor 2 when he would touch you on your private
8 parts, was there anyone else around?

9 A He would either call my brother, or just tell him to
10 go.

11 Q Call your brother or just tell him to go.

12 A Told him to stand right in front of the corner.

13 Q Okay. And when he would touch you on your private
14 parts, was it usually nighttime or daytime?

15 A I can't remember.

16 Q Okay. And did he touch you on your private parts
17 once or more than once?

18 A More than once.

19 Q More than once. When he touched you on your private
20 parts, did that always happen in that house?

21 A Yes, ma'am.

22 Q Was it in the bedroom? Or where was it in the
23 house?

24 A He would going and do it in the bedroom.

25 Q He would go and do it in the bedroom?

1 A Yes, ma'am.

2 Q And you said your brother, [Minor 1] was in the room.
3 Is that correct?

4 A Yes, ma'am. Sometimes.

5 Q Did you ever see him touch your brother, [Minor 1]
6 Can you say yes or no?

7 A I don't remember. I just remember him calling
8 [Minor 1] in the room.

9 Q Okay. [Minor 2] did your dad ever touch you anywhere
10 with his mouth?

11 A No, ma'am.

12 Q How did it -- can you tell us, [Minor 2] how it felt
13 when he touched you on your private parts?

14 A It felt like I wanted to tell him to stop.

15 Q Okay. And did he say anything to you after he did
16 this?

17 A Yes, ma'am.

18 Q What did he say to you?

19 A He told me, *if I find out that you told someone, he*
20 *will come and get me.*

21 Q Okay. And [Minor 2] did you end up telling someone?

22 A When I started living with Ms. Rose. Or well, when
23 I started living with Ms. Simmons, um-hmm.

24 Q Is that Ms. Cynthia Simmons?

25 A Yes, ma'am. I told them.

1 Q You told them. Okay. Okay. All right, [Minor 2] and
2 just one second. Okay?

3 Okay, [Minor 2] I just have a couple more questions.
4 Okay? You said that Jimmy touched your private parts.
5 Did he ever touch you with his penis?

6 A No, ma'am.

7 Q Okay. And [Minor 2] I know it's hard to talk about
8 these things today, but can you tell me, did you tell the
9 truth today in what you just said?

10 A Yes, ma'am.

11 MS. LEMPESIS: Okay. Thank you, [Minor 2] Ms.
12 Campbell is going to ask you some questions now.. Okay?

13 MS. CAMPBELL: May it please the Court?

14 THE COURT: Yes, ma'am.

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

16 THE COURT: Yes, ma'am.

17 [Minor 2] [Minor 2]

18 CROSS-EXAMINATION BY MS. CAMPBELL:

19 Q Good morning.

20 A Good morning.

21 Q [Minor 2] I've never talked to you before; have I?

22 A Only when you were sitting right -- standing there.

23 COURT REPORTER: I'm sorry, honey. You're going to
24 have to speak a little bit. What was your answer?

25 A When she was standing right there with by my dad.

1 Q Okay. Before today, I've never talked to you. Is
2 that right?

3 A Yes, ma'am.

4 Q Okay. Good. But now, it's fair to say that you've
5 talked to this lady right here about what you were going
6 to say today, right?

7 A Yes, ma'am.

8 Q Okay. And you've also talked to Ms. Cynthia about
9 what you were going to say, right?

10 A Yes, ma'am.

11 Q And you've talked to some people at a place called
12 Hope Haven about what you were going to say.

13 A Yes, ma'am.

14 Q Okay. And every time, I'm sure they told you, every
15 time you were talking to them, it was very important for
16 you to tell the truth, right?

17 A Yes, ma'am.

18 Q And so, did you tell the truth all the other times?

19 A About my dad?

20 Q Yes.

21 A Yes, ma'am.

22 Q Okay. So, when you were talking with other people
23 before today, you were telling them the truth about your
24 dad and the things that happened with your dad, right?

25 A Yes, ma'am.

1 Q Okay. Do you remember telling before today that
2 your father had given you a gun, and you thought he
3 wanted you to shoot someone or maybe hurt someone with
4 the gun? Do you remember that?

5 A When did I say that?

6 Q When you talked to the interviewer at Hope Haven.

7 A I don't remember.

8 Q Okay. Do you remember telling the interviewer at
9 Hope Haven that you took the gun and you threw it in the
10 fire pit?

11 A Don't remember saying that.

12 Q Okay. Do you remember that you also told the
13 interviewer at Hope Haven that your dad, I think it was,
14 would make you and Minor 1 have sex with each other. Do
15 you remember talking about that?

16 A I did not say that.

17 Q Okay. Do you remember talking about the fact that
18 your -- do you remember telling the interviewer at Hope
19 Haven -- well, you know your Uncle Leroy, right? Yeah,
20 he's married to Paulette, right?

21 A Yes, ma'am.

22 Q Do you remember telling them that Uncle Leroy came
23 in when your father was doing these things to you? Do
24 you remember telling them that?

25 A I remember that.

1 Q Okay. And that, when your Uncle Leroy came in the
2 room and saw what was happening, he yelled at your dad.
3 Is that right?

4 A He didn't yell at him. He yelled at me.

5 Q Okay. So, the interviewer and the reports say that
6 you said Leroy yelled at James to get out of the house.
7 That's just not right.

8 A Not right.

9 Q Okay. But are you telling me today that Leroy did
10 come in the room, and he did see what was going on?

11 A He saw me pulling up my pants.

12 Q Okay. And are you telling me today that he yelled
13 at you, or he yelled at James?

14 A He yelled at me and asked what was going on.

15 Q Okay. And that's the truth.

16 A That's the truth.

17 Q Okay. Do you remember getting in trouble for
18 selling rubber bands at school?

19 Do you remember Ms. Cynthia and the ouch sticks that
20 she --

21 COURT REPORTER: I'm sorry. I didn't hear his
22 answer.

23 A Yes, ma'am.

24 COURT REPORTER: Okay.

25 Q Do you remember the ouch stick that Ms. Cynthia has

1 for you?

2 A Yes, ma'am.

3 Q Okay. And she's used that on you?

4 A If I tell a lie or steal.

5 Q And do you remember getting in trouble at school for
6 lying?

7 A Yes, ma'am.

8 Q Okay. But you don't go to the regular school
9 anymore, right? Ms. Cynthia's got you at home, right?

10 A Yes, ma'am.

11 Q Okay. So, the only teacher that you have all day
12 long is Ms. Cynthia, right?

13 A Yes, ma'am.

14 Q She's your mom now, too, right?

15 A Yes, ma'am.

16 Q And you're with her pretty much all the time, right?

17 A All the time, unless they leave us at home with our
18 sister.

19 Q Okay. Do you ever remember practicing coming into
20 this courtroom and taking the oath right there, right
21 here on the *Bible*? Do you remember practicing doing
22 that?

23 A Yes, ma'am.

24 Q Okay. And did you practice that with this lady
25 right here?

1 A Yes, ma'am.

2 Q Okay. And did she tell you that, when you take the
3 oath, that you need to promise to tell the truth?

4 A Yes, ma'am.

5 Q Okay. Now, when you were living out on Saint Helena
6 in that white house, and there were a lot of people in
7 the white house many times, right? Okay.

8 COURT REPORTER: Is that yes or no?

9 A Yes, ma'am.

10 COURT REPORTER: Maybe you better ask again.

11 Q Okay. There were a lot of people in the white house
12 on Saint Helena, right?

13 A Living there?

14 Q Yes.

15 A It wasn't that many. Just me, my auntie, my uncle,
16 my daddy, my momma, and my -- and my three cousins.

17 Q Okay. Well, that's exactly who I think was living
18 there. Thank you. And living in that house, do you
19 remember that that house had no doors, except the outside
20 doors?

21 A It had -- it had bathroom doors. It had two little
22 doors that go to two rooms, and the rest were curtain.

23 Q Okay. So, the bathroom had a door.

24 A Bathroom.

25 Q The bedrooms had no doors.

1 A No, it was two doors that -- that go to a bath -- or
2 that go to a bedroom.

3 Q Did your dad's bedroom have a door?

4 A Had curtains.

5 Q Okay. Do you remember when you were living out
6 there on Saint Helena, that you felt safe with your Aunt
7 Rose?

8 A I felt safer with my dad that I'm living with now.

9 MS. CAMPBELL: Do you want him to repeat it?

10 COURT REPORTER: Please.

11 Q Would you repeat your answer, please?

12 A I -- I feel safer with my dad that I'm living with
13 now.

14 Q Okay. Do you remember your Aunt Darlene? Did you
15 feel safe with her?

16 A When she'd take us places.

17 Q Okay. Good. And how about Paulette? Did you feel
18 safe with Paulette?

19 A No, ma'am.

20 Q Okay. Do you remember hearing someone talk about
21 the boy cousins or the use of the word *faggot*? Do you
22 remember that?

23 A Can you please explain more?

24 Q I'm saying, do you ever remember being called that
25 word or Minor 1 being called that word by someone?

1 A Not that I know of.

2 Q Okay. Do you remember the trailer, I guess, where
3 you lived with Aunt Rose? Do you remember that trailer?

4 A Yes, ma'am.

5 Q Do you remember the nights that you went over to
6 stay in the white house?

7 A I remember the nights.

8 COURT REPORTER: I'm sorry. I didn't hear him.

9 A I remember the nights.

10 COURT REPORTER: *I remember the nights.* Thank you.

11 Q And on the nights you went to stay at the white
12 house, where you've told us that your father was abusing
13 you, did you ever ask Aunt Rose if you could just stay at
14 her house?

15 A No, ma'am.

16 Q And not go to the white house?

17 A I never asked.

18 Q You never asked.

19 A (Shook head.)

20 Q Okay. You just went to the white house.

21 A Because sometimes we would do fun stuff, like play
22 games and whatnot.

23 Q Okay. You would do fun stuff at the white house.
24 And so, you decided to go to the white house, just in
25 case it was going to be fun.

1 COURT REPORTER: Is that yes or no?

2 A Yes, ma'am.

3 Q Minor 2 do you know your mother, Cynthia Goethe?

4 A I know her.

5 Q Okay. Has she ever been around Saint Helena with
6 you out there on that property?

7 A Yes, ma'am.

8 Q Okay. I think that might be all I have.

9 Minor 2 do you remember the police ever coming out
10 to your house out there and looking for a bank robber?

11 A Bank robber.

12 Q Um-hmm. A bank robber out on your all's property
13 out there? Okay. Do you remember --

14 THE COURT: Is that a no for the record or?

15 A No, ma'am.

16 THE COURT: Okay, he said, no, ma'am.

17 Q Do you remember your father sitting on a pile of
18 money or hundred-dollar bills on a bed?

19 A No, ma'am.

20 MS. CAMPBELL: No. Okay. That's all I have. Thank
21 you.

22 THE COURT: Ms. Lempesis?

23 Minor 2 Minor 2

24 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

25 Q Just a few more things. Minor 2 I'm just going to

1 ask you a couple more questions. Okay? When you went
2 over to the white house, you said it was fun sometimes.
3 Is that because your cousins were there?

4 A Yes, ma'am. They would, like, bring stuff from
5 stores and whatnot, and they would share with us, and --

6 Q What? Like toys?

7 A Toys, cookies, games. And they would bring it to
8 us, or we go over there, and they know they have it, and
9 we just go over there and play with it or eat with them
10 and talk and play games.

11 Q And [Minor 2] Ms. Campbell talked about how you and I
12 have talked before. Have you always told the truth to
13 me?

14 A Yes, ma'am.

15 Q Okay. And have you always told the truth in the
16 courtroom? Did you tell the truth today?

17 A Yes, ma'am.

18 MS. LEMPESIS: Thank you, [Minor 2]

19 [Minor 2]

20 RE-CROSS-EXAMINATION BY MS. CAMPBELL:

21 Q [Minor 2] there's an X Box at the white house. Is
22 that right?

23 A No.

24 Q Did you play X Box at the white house?

25 A Yes, ma'am.

1 Q Okay. And you played X Box with your dad.

2 A Right.

3 Q And you played X Box with Leroy, right?

4 A Right.

5 Q But that was the only men at the house.

6 COURT REPORTER: I'm sorry, you need to speak up
7 just a little, honey. You need to speak up.

8 A Right.

9 Q That was the only men at the house, correct?

10 A The only men?

11 Q Yeah.

12 A Yes, ma'am.

13 Q Right. And so, your dad and Leroy, and there were
14 no other men at the house that you remember, right?

15 A No, ma'am. But my uncle stays right behind Ms.
16 Rose.

17 Q What was his name?

18 A His name's Uncle John. That's Uncle John's son.

19 Q Right. Is that -- that's Cornbread.

20 A No, Cornbread's dead.

21 Q Got you. So, when you were at the house, the men
22 that were around were Leroy, your dad, and the uncle that
23 lived back there on the property, too, right?

24 A Yes, ma'am.

25 Q Okay. And that's the only men you saw there, right?

1 A That was there. I don't remember the other men that
2 was --

3 Q Okay. Did you ever see your father giving men money
4 for Minor 1 to put his mouth on their pee-pee or their
5 penis?

6 A No, ma'am.

7 MS. CAMPBELL: No. Okay. That's all I have.

8 THE COURT: Anything further?

9 MS. LEMPESIS: Nothing further, your Honor.

10 THE COURT: All right. You may step down.

11 Ladies and gentlemen of the jury, I think now is a
12 good time for a break. I need to remind you, ladies and
13 gentlemen, again, do not discuss this. It wouldn't be
14 appropriate to do so. Get a drink of water; come on
15 back; and we'll go ahead and continue from there until
16 lunch. All right? Thank you.

17 JURORS LEAVE COURTROOM 11:42 A.M.

18 BAILIFF: The jury is clear, your Honor.

19 THE COURT: Thank you. You guys want to go ahead
20 and take a break first, or -- let's go ahead. We've been
21 going for awhile. Why don't we all go ahead and take a
22 quick ten-minute break, and then, we'll put anything we
23 need to on the record. We also need to take up the
24 interviews if that's what you choose to introduce. Okay?

25 MS. CAMPBELL: Thank you.

1 MS. LEMPESIS: Thank you, your Honor.

2 THE COURT: Thank you.

3 OFF THE RECORD 11:43 A.M.

4 BACK ON THE RECORD 12:09 P.M.

5 ON-THE-RECORD BENCH CONFERENCE, OUT

6 OF HEARING OF JURORS, REGARDING

7 VIDEO INTERVIEWS OF Minor 1

8 AND Minor 2 Minor 2

9 PROFFERS; DEFENSE

10 MOTION FOR MISTRIAL. PRESENT:

11 THE COURT, MS. LEMPESIS, MS. DEYSACH,

12 MS. CAMPBELL.

13 BAILIFF: All rise, and come back to order, please.

14 THE COURT: Thank you. All right. Has the State
15 decided whether or not they wish to use the videos?

16 MS. DEYSACH: Your Honor, we would like to go
17 forward with Minor 2 interview. He was not quite as
18 specific on the stand as he was in his Hope Haven
19 interview, and that's the reason that we would like to
20 ask that the Court consider allowing us to play that
21 interview, pursuant to *Jessie's Law, South Carolina Code*
22 *Section 17-23-175.*

23 It is quite a lengthy interview, and the State would
24 be willing to limit it to just the disclosure, which is
25 about an eight-minute portion. There is a 30-second or

1 ten-to-fifteen-second reference to when Mr. Simmons got
2 out of jail that we would have to fast forward through.
3 We weren't able to redact, but we do have the time
4 stamped, and we know where it is, and would be able to
5 avoid that.

6 THE COURT: Okay. Well, as far as the use of the
7 video call, I think it clearly falls under the code
8 section, if there was a statement given in response to
9 questioning. Obviously, there is an audio and visual
10 recording of it. The child did, in fact, testify; was
11 subject to cross-examination. And I think the totality
12 of the circumstances for me having seen both videos in
13 their entirety make me feel comfortable as far as their
14 trustworthiness, and that the boy's not led and anything
15 along those lines.

16 Ms. Campbell, what is your position, as far as them
17 wanting to only play the eight-minute portion?

18 MS. CAMPBELL: Well, obviously, I just -- I would
19 say I continue to have my objections to introducing
20 either of the videos into the case. And I understand,
21 your Honor ruled that they are admissible now. I believe
22 that, if we're going to play the tape for Minor 2 that it
23 needs to be played in its entirety, in order to have a
24 full picture, and I think my client would be entitled to
25 that. So, if you're going to play it, then, I would ask

1 that the entire thing be played, obviously, without the
2 reference to the jail.

3 THE COURT: Okay. All right. Yes?

4 MS. DEYSACH: I would just point out that there are
5 several references to the jail. And so, that was another
6 reason that we were just trying to limit it to the
7 disclosure. But your Honor, I mean, we don't have an
8 issue with playing the whole thing. We do have those
9 portions noted. It will just take a little bit longer,
10 and we'll just have to be really careful to not play
11 those other portions.

12 MS. LEMPESIS: And your Honor, I wanted to make it
13 known that we have been working diligently to try to get
14 a copy that we could actually redact, and it was just not
15 possible. These are like read-only discs that were made
16 at Hope Haven, and one of the tech guys that's in
17 evidence tried for two days to get it to work and just
18 couldn't do it. But that means that, as Ms. Swanson
19 mentioned, we can stop it and start it. The only thing
20 is, it will take, in trying to fast forward to the part
21 to stop -- to start, --

22 THE COURT: Um-hmm.

23 MS. LEMPESIS: -- you would have to just advance one
24 second at a time, and it just takes -- just takes a
25 little while.

1 THE COURT: Okay.

2 MS. LEMPESIS: So, it's just going to -- it's going
3 to be a little bit longer to do.

4 THE COURT: How long was Minor 2 interview? If I'm
5 correct, that was the one that was a little bit longer
6 than the other one? Am I --

7 MS. LEMPESIS: It was about --

8 MS. DEYSACH: It was actually a little bit shorter.
9 It was 35 minutes long.

10 THE COURT: Okay. Okay. And do you want to do it
11 now? Is that when you would wish to do it?

12 MS. DEYSACH: Your Honor, I would suggest maybe
13 proffering Ms. Bratcher's testimony while taking a lunch
14 break --

15 THE COURT: Um-hmm.

16 MS. DEYSACH: -- for the jury, proffering Ms.
17 Bratcher's testimony.

18 THE COURT: Okay. And remind me who she is again.
19 I'm sorry.

20 MS. DEYSACH: She's the forensic interviewer, which
21 we would not be calling a forensic interviewer, but we
22 just need to simply lay a foundation to enter the video.

23 THE COURT: Okay. And that would also give you over
24 the lunch hour to make sure that you know where you're
25 starting and stopping on this video, so that there are no

1 mistakes. Is that something you're going to be doing,
2 Ms. Lempesis? You seem to be the one that's --

3 MS. LEMPESIS: Yes, I'm going to make sure. I have
4 that responsibility since I've -- if I mess up, it's
5 going to fall on me.

6 THE COURT: Okay, so --

7 MS. LEMPESIS: That'll be good.

8 THE COURT: Okay.

9 MS. CAMPBELL: May it please the Court?

10 THE COURT: Yes, ma'am.

11 MS. CAMPBELL: Your Honor, I have no other issues to
12 address on that matter, but we did have a side bar
13 conference during the first child's testimony, and I
14 would like the opportunity to put that on the record, if
15 I could.

16 THE COURT: Please.

17 MS. CAMPBELL: Thank you, your Honor. During the
18 time that the child walked in and began his testimony, of
19 course, I was observing what was taking place. It
20 appeared to me, in zealously representing my client,
21 paying attention that your Honor was smiling, and winked
22 toward the Prosecution table. I don't know if the jury
23 saw that, but it is imperative that I meet every duty
24 that I have in this courtroom. And if I see something
25 that appears to impartiality to a jury, then I have to

1 ASHLEY BRATCHER: Yes.

2 THE COURT: Thank you. Come on around. And if
3 you'd adjust the microphone to your face here. Thank
4 you.

5 PROFFER, ASHLEY DELUCINA BRATCHER

6 DIRECT EXAMINATION BY MS. DEYSACH:

7 Q Hey, Ashley. Can you please state your full name
8 for the record?

9 A Ashley Delucina Bratcher.

10 Q And where do you work, Ashley?

11 A Hope Haven of the Low Country.

12 Q How long have you worked there?

13 A A little over three years.

14 Q Okay. And what do you do?

15 A I do therapy.

16 Q Okay. Do you ever interview children?

17 A Yes, ma'am, I have.

18 Q And how do you get those referrals?

19 A Law enforcement or the Department of Social
20 Services.

21 Q Okay. And did you have the opportunity to interview

22 Minor 2

23 A Yes, ma'am.

24 Q When did that interview take place?

25 A October 11, 2011.

- 1 Q Okay. And who did you get the referral from?
- 2 A Law enforcement.
- 3 Q All right.
- 4 A Beaufort County Sheriff's Office.
- 5 Q Okay. When you interviewed Minor 2 did he
- 6 disclose sexual abuse?
- 7 A Yes, ma'am.
- 8 Q Did he tell you when that abuse occurred?
- 9 A Yes.
- 10 Q Did he tell you where that abuse occurred?
- 11 A Yes.
- 12 Q And where and when?
- 13 A He said he was nine years old, and it was at his
- 14 Uncle Leroy's house.
- 15 Q Do you remember where Uncle Leroy's house was
- 16 located? It's okay if you don't.
- 17 A Off the top of my head, I do not.
- 18 Q Okay. I'm going to show you what has been marked as
- 19 State's Exhibit Number 7. If you can please tell us what
- 20 this is. Do you recognize this? You can take it out of
- 21 the envelop if you wish.
- 22 A Yes.
- 23 Q Okay.
- 24 A It's a copy of Minor 2 interview with me.
- 25 Q Okay. And have you viewed that recently?

1 A Yes.

2 Q Has it been tampered or altered in any way?

3 A No, ma'am.

4 Q Is it a true and accurate depiction of the interview
5 that you conducted with Minor 2 back in October
6 of 2011?

7 A Yes, ma'am.

8 MS. DEYSACH: Okay. At this point, Judge, the State
9 would move to enter State's Exhibit Number 7 into
10 evidence.

11 THE COURT: Okay.

12 MS. DEYSACH: I would also ask to publish it to the
13 jury at this time.

14 MS. CAMPBELL: Subject to the prior objections and
15 ruling.

16 THE COURT: Thank you.

17 MS. CAMPBELL: Thank you.

18 ITEM IDENTIFIED AS OCTOBER 11, 2011

19 INTERVIEW OF Minor 2 Minor 2

20 MARKED STATE'S EXHIBIT NUMBER 7,

21 ADMITTED AS EVIDENCE.

22 MS. CAMPBELL: Your Honor, we're going to go ahead
23 and move over here, if that's okay.

24 THE COURT: Please do. Thank you.

25 MS. LEMPESIS: Judge, I apologize. We just need to

1 get the volume coming out on the --

2 STATE'S EXHIBIT NUMBER 7, OCTOBER 11,

3 2011, VIDEO INTERVIEW OF Minor 2 Minor 2

4 [REDACTED] PLAYING.

5 THE COURT: Ladies and gentlemen, there were some
6 portions of this that have been redacted. They're just
7 not relevant. It's nothing substantive.

8 END PLAYING STATE'S EXHIBIT

9 NUMBER 7, OCTOBER 11, 2011, VIDEO

10 INTERVIEW OF Minor 2 Minor 2

11 [REDACTED]

12 BY MS. DEYSACH:

13 Q All right, Ashley, just a few questions. It was
14 kind of hard to see in the video, but where was Minor 2
15 pointing when he was referring to his eww.

16 A His penis.

17 Q Okay. And when he was talking about his dad's
18 eww, --

19 A Um-hmm.

20 Q -- where was he pointing?

21 A The penis, as well.

22 Q Okay. What part did he point to when he said that
23 his dad's eww touched his butt?

24 A The penis.

25 Q And Ashley, let me ask you this. Are you a

1 mandatory reporter?

2 A Yes.

3 Q Can you explain to the jury what a mandatory
4 reporter is?

5 A It means that, if I suspect, for any reason, that a
6 child has been physically or --

7 MS. CAMPBELL: Objection, your Honor. May we have a
8 side bar, please?

9 THE COURT: You may.

10 OFF-THE-RECORD BENCH CONFERENCE,
11 OUT OF HEARING OF JURORS. PRESENT:
12 THE COURT, MS. LEMPESIS, MS. DEYSACH,
13 MS. CAMPBELL.
14 END BENCH CONFERENCE.

15 THE COURT: Ladies and gentlemen, we are going to
16 strike that last question. Again, you are not going to
17 consider it.

18 MS. DEYSACH: Please answer any questions that Ms.
19 Campbell might have for you, Ashley. Thank you.

20 MS. CAMPBELL: I don't have any questions for this
21 witness.

22 THE COURT: Any objections to this witness being
23 excused?

24 MS. DEYSACH: We would ask that she be excused.
25 Thank you, your Honor.

1 THE COURT: Any objection, Ms. Campbell?

2 MS. CAMPBELL: No objection.

3 THE COURT: You're excused. Thank you. Do we need
4 to take a break, or can we call our next witness?

5 MS. DEYSACH: We can call our next witness.

6 THE COURT: Okay.

7 MS. DEYSACH: State calls Cynthia Simmons.

8 Hey, Cynthia. Come on up.

9 THE COURT: Come on forward, Ms. Simmons. Right up
10 here, please. If you'll place your left hand on the
11 Bible, and raise your right hand. Ms. Young is going to
12 administer the oath to you.

13 MADAM CLERK: Do you solemnly swear -- do you
14 solemnly swear to answer all questions asked of you by
15 this court, so help you God?

16 CYNTHIA SIMMONS: I do.

17 MADAM CLERK: Please be seated. State your name,
18 and spell it for the Court, please.

19 CYNTHIA ELAINE SIMMONS

20 DIRECT EXAMINATION BY MS. DEYSACH:

21 Q Cynthia, can you please state your name for the
22 record?

23 A Cynthia Elaine Simmons.

24 Q And Cynthia, tell us how old you are, please.

25 A Forty-seven.

1 Q Okay. And how are you related to Johnnie Simmons?

2 A Marriage.

3 Q Okay. And tell us who Johnnie Simmons is.

4 A My husband.

5 Q And when did you guys get married?

6 A March 22, 2006.

7 Q Okay. And how do you know [Minor 2] and [Minor 1]

8 [REDACTED]

9 A They're his grandnephews.

10 Q Okay. And tell us how you came to know them.

11 A I met them after I was married to my husband. I met
12 them in church. We affiliate with the same church.

13 Q Okay. And what do you do for a living?

14 A I own my own folk art business. I'm currently a
15 sophomore at Park University, and housewife.

16 Q Do you have any children of your own?

17 A Yes.

18 Q How old are they?

19 A Thirty-two, 26, and 19.

20 Q Okay. So, you had an empty nest for awhile.

21 A Yes. Not actually. I have one grandson that we
22 assumed responsibility for, and he is five right now.

23 Q All right. And did you eventually assume
24 responsibility for [Minor 1] and [Minor 2]

25 A Yes.

1 Q And how did that come to be? Please tell the jury
2 how that came to be.

3 A Well, while we were attending church and the
4 children were in church, and the children were
5 constantly, I guess, running back and forth. And I -- I
6 knew them through Rose. And church members would
7 actually pull them to the side and just haul off and pop
8 them, and I didn't know why. But then, I felt sorry for
9 them, because I myself have children, and I myself dealt
10 with the school system, knowing children and special-
11 needs children, and it's children are all sorts. So, my
12 whole career, actually, at that time, was actually in
13 children. Dealing with Beaufort -- Beaufort County
14 Schools, being a safety supervisor, assistant manager for
15 the school bus company, I did deal with children. So, I
16 knew how to handle children. And I just took it upon
17 myself to try and help her while we were in church, where
18 she's in the choir singing, and I would actually have the
19 children sitting next to me. And then, we grew to
20 actually like one another.

21 Q So, you grew closer to the boys --

22 A Yes.

23 Q -- through the church.

24 A Yes.

25 Q Okay. And when did you start -- well, I'm sorry.

1 Let me back up. You referred to special needs. What
2 sort of special needs do the boys have?

3 A ADHD.

4 Q Okay. And at what point in time did you and Johnnie
5 start spending more time with them to help Rose out?

6 A In 2009, somewhere in between, from October.

7 Q And when would you take them?

8 A Take them as to?

9 Q When did you care for them or start spending -- what
10 did you do when you spent more time with them?

11 A We -- we started helping her a little bit more in
12 October, because she -- we had something like an open
13 forum at church, and everybody got up and spoke and asked
14 for help in particular areas that they need it. And at
15 the time, we were actually trying to help her with the
16 boys, because the boys were getting out of hand in
17 school. They were actually out of hand in school. She
18 couldn't handle the children. She was at work all the
19 time. She didn't have baby -- a babysitter to actually
20 keep -- keep the boys, and she said that she couldn't
21 handle them at school, because they were constantly
22 getting into trouble. So, we decided -- we talked about
23 it, and we decided, and my husband said that since those
24 were his brother grandchildren, and he didn't want to see
25 them go down the wrong road. So, he decided -- we both

1 talked about it, and he decided that he would go ahead
2 and just help them out. And I agreed, because that's my
3 husband, and that's what we agreed upon together.

4 Q Okay. And at the time, where were they living?

5 A They were living with Rose.

6 Q And where was that?

7 A Saint Helena Island.

8 Q Okay. Do you remember what road?

9 A [REDACTED]

10 Q Okay. Is that family property?

11 A Family.

12 Q When did they come to you permanently and live with
13 you? Before or after the adoption?

14 A Before.

15 Q Okay. About how long did they live with you, prior
16 to the adoption?

17 A They came in May of 2010, when school was over at
18 Saint Helena. And then, they -- they enrolled -- I
19 enrolled them at Ridgeland Elementary, because Rose gave
20 me a written permission to go ahead and enroll them. She
21 was trying to figure out how to, I guess --

22 MS. CAMPBELL: Objection. That calls for
23 speculation for what Rose was thinking.

24 THE COURT: Okay. Sustained.

25 MS. CAMPBELL: Thank you.

1 THE COURT: You cannot speculate as to what someone
2 else said.

3 A Okay.

4 THE COURT: Or thought. I apologize.

5 A Okay.

6 THE COURT: Why don't you ask it a different way.

7 MS. DEYSACH: I'm sorry.

8 THE COURT: Rephrase.

9 BY MS. DEYSACH:

10 Q About how long prior to the adoption did they live
11 with you and Johnnie?

12 A From May -- May 2010. And then, --

13 Q And when did the adoption take place?

14 A The adoption was finalized in, I think it was April
15 of 2011, but it didn't -- we didn't get the paperwork
16 until June, I think.

17 Q Okay. So, the boys lived with you for about a year,
18 and only you and Johnnie, prior to the adoption.

19 A Yes.

20 Q Okay. We know that they're twins. How similar are
21 they? Can you describe their personalities? Let's start
22 with Minor 1

23 A Minor 1 is -- he's a little bit on the easy side.
24 Feelings easy to get hurt. A follower, rather than a
25 leader. Tries really hard. He -- just soft -- soft-

1 spoken, I mean, just soft.

2 Q What about Minor 2

3 A is more macho type. He's -- he acts like
4 he's really hard, feelings are really hard. He just hide
5 a lot.

6 Q Who would you say is the more reserved of the two
7 boys?

8 A I don't know what you mean.

9 Q Would you say one of the boys is more open or
10 extroverted than the other boy?

11 A If we're talking about outspoken more than the rest.

12 Q Yes, ma'am.

13 A Minor 1 is more outspoken than Minor 2

14 Q Okay. Do you love these boys, Cynthia?

15 A Yes.

16 Q Do you want to protect these boys?

17 A Of course, yes.

18 Q When they lived with you for that year, did you
19 develop a stronger bond and relationship with them?

20 A Yes.

21 Q Can you tell us a little bit about the behavior
22 problems that you encountered with Minor 2 and Minor 1

23 A Is that home?

24 Q Any type of behavior problems.

25 A When we first took them over and, in May of 2010,

1 Minor 1 came -- Minor 1 -- he couldn't read. He couldn't
2 read. He couldn't do math. He was on maybe second grade
3 level, if you call it second grade level, if you call it
4 second grade level. But he couldn't read. Minor 2 was a
5 little bit weak in a lot of his academics. So, what we
6 did -- or what I actually did was, from May of 2010 until
7 July, I took about two months, two-and-a-half months, to
8 actually teach them, home school, to teach them how to
9 read, teach them how to write, math, and all the
10 academics.

11 So, we spent that whole summer actually trying to
12 get them up to par for the next school term, for going to
13 Ridgeland Elementary. Once they went to school in -- in
14 -- at Ridgeland, the first couple of months was fine.

15 Minor 2 made the honor roll for the first time in his
16 entire schooling, so he made the honor roll. Minor 1 was
17 still struggling.

18 Then, after Minor 2 made the honor roll, it seems
19 like, for him, it got, I guess, his behavior started back
20 to where it was when he came from Saint Helena. Minor 1
21 his behavior was okay, but then he stopped doing anything
22 in class. They had a shadow where the teacher would come
23 and get them and take them out of class, and go and take
24 them to another class in order to teach them, because
25 they had resource. And his behavior was fine; it's just

1 that he wasn't doing the work. He would go to class and
2 just sit there.

3 Q Were there any instances of behavior at home or at
4 school that you were concerned about with the boys,
5 either one of them?

6 A With **Minor 1**, I couldn't get him to wash. I --
7 **Minor 2** is the same way, too. I couldn't get them to
8 wash. If you sent them to the bathroom to go and wash,
9 and you think that they washed off, and in the next 30
10 minutes they're standing next to you, they smell bad.
11 So, if you washed, and 30 minutes later you still smell
12 the same, I make them go and wash again, but they don't
13 wash. They'll wait until I pass by the bathroom door and
14 splash the water in the tub, but I wanted to know why
15 were they not washing when they tell me that they were
16 washing. So, I went in the bathroom door, and that's
17 when I walked in and **Minor 1** was just standing in the tub.
18 **Minor 2** would just be standing in the tub. They refused
19 to wash. They would not wash.

20 Q Okay. And when you say wash, you mean bathe with
21 soap.

22 A Yes.

23 Q Like, clean off their bodies.

24 A Yes, everything, yes.

25 Q Okay. Did you notice anything unusual about either

1 of the boys' bodies?

2 A Only one. This was before we actually had the boys.
3 And we were spending time with the boys. We would get
4 them on the weekend, and then, we'd take them back on
5 Sunday. Minor 1 was bathing at one point in time, and he
6 wasn't washing off. This was in between, before me. And
7 he was washing off. He's supposedly supposed to be
8 washing off. And I was wondering what was taking him so
9 long in the bathroom. So, I went in the bathroom. And
10 when I went in the bathroom, he was just standing in the
11 tub. So, I told him to wash off, and I stood there to
12 make sure that he washed off. And when he bent over, his
13 -- let me see how to explain it. His buttocks, it -- the
14 only way I can say it is the booty hole, and around the
15 booty hole was completely red. Normally, -- it was more
16 than what it would normally -- what -- what it -- for me,
17 would actually look normal. And it was completely red
18 around. Now, and that kind of startled me, but I
19 couldn't point no fingers at anybody. And I couldn't --
20 I mean, we only got them on the weekend, and we were back
21 and forth with them, so I couldn't tell Rose; said
22 somebody did something to the child. I can't point the
23 finger, because I can't accuse anybody of something that
24 I don't know anything about.

25 Q And about what time frame was this? You said it was

1 prior to the adoption, but do you have --

2 A No, it was --

3 Q And prior to the --

4 A In 2009, in October of 2009.

5 Q Okay.

6 A Before May, when school ended in 2010. So, it was
7 before all of that, and before they actually attended
8 school at Ridgeland.

9 Q Do you recall any instances where the boys had any
10 sort of alarming behavior at school?

11 A [Minor 1] -- I speak on [Minor 1] first. [Minor 1] The
12 teacher would call, and the teacher -- we were actually
13 at the school more than the boys were actually in school.
14 The teacher would call --

15 MS. CAMPBELL: Your Honor, I'll object to the
16 hearsay, but she can certainly say what he got in trouble
17 for.

18 THE COURT: Okay.

19 A Okay.

20 THE COURT: You just can't say what someone else
21 said or told you.

22 A Okay.

23 THE COURT: Okay? That's hearsay. Thank you.
24 Sustained.

25 A Okay.

1 BY MS. DEYSACH:

2 Q If you can just tell us what the boys got in trouble
3 for when you had to go to the school.

4 A [Minor 1] got in trouble for just sitting there and
5 watching the teacher. The teacher -- and I was there, so
6 I can -- I can say what actually happened, because I was
7 actually there, because we had to go to the school. And
8 we stood outside the door to find out what she was
9 talking about. The teacher would go in and teach the
10 class. He refused to do his work. And he would watch
11 the teacher. If the teacher moved to the left, he moves
12 to the left. If the teacher moved to the right, he moved
13 to the right. So, he wasn't doing his work.

14 And then, he got in trouble for cursing the teacher
15 and cursing the students. Just outburst and cursing the
16 teacher and student. [Minor 2] got in trouble for feeling
17 another student, and it's a boy student, in his private
18 area. Playing with a boy's hair that had dreads in his
19 hair, and the boy -- I can't say what the boy said, so I
20 don't know. But playing in the boy's hair. Urinating
21 all over the bathroom wall. Standing up on the stalls
22 and watching over while the other boys are using the
23 bathroom. Beating up another child in the bathroom.
24 Cursing in the cafeteria. Just outbursts. Stealing from
25 the nurse's office when he went to go and take his

1 medication. Feeling on another student on the school bus
2 in her private area. That's -- that's just some of it.

3 Q Cynthia, did these behaviors cause you concern?

4 A Plenty.

5 Q And did you eventually confront the boys about all
6 of these behaviors?

7 A Every time one is done.

8 Q Okay. And did you eventually ask them what is going
9 on?

10 A I asked them after we -- Minor 2 got in trouble for
11 standing over the stalls and watching the kids urinate in
12 the bathroom. And I waited on him, me and my husband
13 both, until they got home, off of the bus, and we both
14 talked to them. And I wanted to know what was going on,
15 what was making him do those things, what was the
16 problem, and why he was doing all of those things.

17 Q Okay. And did you talk to both boys, or did you
18 talk to them separately? Or tell us how you talked to
19 them, not necessarily what they said, but how you talked
20 to them.

21 A At the time, I talked to both of them, me and my
22 husband both, we talked to both of them at the same time.
23 And after what was being said, we separated the boys so
24 we could talk to one, and not both of them together,
25 because we didn't want them to bounce off of one another

1 and feed off of one another, and say things that are not
2 true.

3 Q Okay. After you had this discussion with the boys,
4 what was the next thing that you did?

5 A It was late in the afternoon, so we couldn't -- what
6 I -- what I was mostly concerned about right then was
7 their feelings. I couldn't show mine from what I had
8 already heard. So, what I was mainly concerned about was
9 their feelings. They have to get over that one
10 afternoon, but the next morning I contacted the doctor
11 office.

12 Q Okay. What doctor did you contact?

13 A James Simmons.

14 Q Okay. And when you contacted Dr. Simmons, what did
15 you do? Did you make an appointment for the boys?

16 A I did. I did not discuss what was going on.

17 Q Okay. And were you with the boys when they went to
18 see Dr. Simmons?

19 A Yes.

20 Q Okay. And going back, I'm sorry, when you had this
21 discussion with the boys, when was it, in relation to the
22 adoption?

23 A It was after.

24 Q Was it prior to the adoption? After the adoption?

25 A It was after.

1 Q Okay.

2 A It was a couple of weeks after school started in
3 2011.

4 Q Okay. Beg the Court's indulgence. Going back to
5 when you saw the irritation on Minor 1 buttocks, you say
6 that that was in about 2009, around the fall of 2009?

7 A October.

8 Q October.

9 A I wouldn't say it was October, because it was a
10 couple of weeks after we had already started going back
11 to go and get them.

12 Q Okay. So, they were spending the weekends with you.

13 A Yeah, we only picked them up on Friday afternoon,
14 and take them back on Sunday afternoon.

15 Q Okay. Was Minor 1 spending time around his father at
16 that time?

17 A I can't say, cause I don't -- I --

18 Q Okay.

19 A Yeah.

20 Q And then, when you had the discussion with the boys,
21 did they tell you when and where they were abused?

22 A They couldn't tell me when, but they told me where.

23 Q And where did they say?

24 A Right next door to where they lived.

25 Q Okay. And they didn't give you a ballpark of age or

1 anything as to when?

2 A These boys --

3 Q It's okay if they didn't.

4 A Yeah.

5 Q Okay. Thank you, Cynthia. Please answer -- I would
6 just beg the Court's indulgence. Do the boys have any
7 recurring issues, as far as like, bed wetting,
8 nightmares, anything like that?

9 A Yes.

10 Q Okay. Can you just please explain those for the
11 jury.

12 A They still doing it. They still wetting the bed.

13 Q Okay. How often? And let's take **Minor 1** first.

14 A How often?

15 Q How often?

16 A Maybe twice a week.

17 Q Okay.

18 A They still doing it.

19 Q All right. And **Minor 2**?

20 A **Minor 2**, a little bit more than that. **Minor 2** maybe
21 three or four times a week.

22 Q And are nightmares an issue for either one of them?

23 A Nightmares was an issue. When they first told about
24 their incident, --

25 Q Um-hmm.

1 A -- nightmares was an issue. But then, we reassured
2 them that whatever their nightmares were, that it wasn't
3 going to be true.

4 Q So, you made them feel safe.

5 A Yes.

6 MS. DEYSACH: Okay. Thank you, Cynthia. Please
7 answer any questions that Ms. Campbell may have for you.

8 MS. CAMPBELL: May it please the Court?

9 THE COURT: Yes, ma'am.

10 CYNTHIA ELAINE SIMMONS

11 CROSS-EXAMINATION BY MS. CAMPBELL:

12 Q Cynthia, you've testified here today that you had
13 special, I guess you want to say, relationships and
14 training with children, long before you encountered
15 Minor 1 and Minor 2 right, with the school district and
16 things like that, correct?

17 A I've had training prior to, yes.

18 Q Okay. And you have said to us here today that, in
19 the year 2009, and you're very specific about this, in
20 October of 2009, that you testified today that you came
21 upon Minor 1 bathing, right?

22 A Um-hmm.

23 Q That's what you said.

24 A Yes.

25 Q And that, while he was bathing or not bathing, that

1 you were insisting that he wash, right?

2 A Yes.

3 Q And that he then bent over, correct?

4 A Yes.

5 Q And that, while he was bending over, you were able
6 to see what I'm going to call his anus, and that it was
7 red and enlarged, correct?

8 A Yes.

9 Q Okay. And that made you suspect, I would assume
10 with your training and your experience, that he was being
11 sexually assaulted. Is that correct?

12 A No.

13 Q You did not suspect that he was being sexually
14 assaulted when you saw his anus and it was red and
15 inflamed. You never --

16 A I can't -- I can't say. I said that I could not
17 accuse anybody of anything. I saw what I saw, but that's
18 not my first assumption.

19 Q Okay. So, you're not going to accuse anyone, but
20 did you fear that he was being sexually assaulted because
21 of the condition of his anus?

22 A I feared that something was wrong with him.

23 Q Okay. Something was wrong with him. What, in your
24 mind, might that have been?

25 A I don't know. I just looked at it.

1 Q Okay. And so, something was wrong with him, and
2 something was wrong with him, and you took him back to
3 Saint Helena, correct?

4 A Yes.

5 Q Okay. And you left him on Saint Helena, right? You
6 drove back to wherever you were living, correct?

7 A Yes, that's where he lived.

8 Q Okay. And do you remember that you were interviewed
9 by this Officer Fraser over here, about this case?

10 A Yes.

11 Q Okay. Now, were you truthful when you talked to
12 Officer Fraser?

13 A As truthful as -- as I can remember.

14 Q Okay. Well, obviously, two years ago, the incidents
15 would be very fresh in your mind, right? More fresh than
16 today, correct?

17 A If it were two years ago.

18 Q Okay. So, do you recall telling Officer Fraser that
19 you felt like Minor 1 was just too feminine.

20 A Yes.

21 Q Okay. And that his brother Minor 2 was just too much
22 like a man, dominant.

23 A Dominant. Not too much like a man, but I remember
24 dominant.

25 Q And that you felt like the two boys were like adults

1 in a relationship with each other.

2 A No.

3 Q Okay. So, if Officer Fraser's report reflects that
4 you said, *if they were adults, in an adult relationship,*
5 that's not true?

6 A I don't remember that.

7 Q Okay. Did I hear you correctly that you were having
8 Minor 1 and Minor 2 at eleven years old, the two boys
9 bathing together?

10 A No.

11 Q Okay. I thought they were splashing around in the
12 bath tub together, and then, when you walked by.

13 A No. No, I did not. I said Minor 1

14 Q No.

15 A What I said, if I can.

16 Q Please.

17 A What I said was both boys were supposed to be
18 washing off. They don't wash together. They never did.
19 But when I walked by the bathroom, they would normally
20 splash the water.

21 Q Do you remember calculating to wait to explore any
22 issues of sexual abuse until after you had gotten your
23 adoption completed?

24 A Can you repeat that, please?

25 Q Yes. Do you remember calculating to wait to explore

1 any issues of sexual abuse until after the adoption was
2 completed? Do you remember doing that?

3 A To -- say that again. Explain it a little bit for
4 me.

5 Q Okay. I'll try one more time. You suspected child
6 abuse, correct? Or sexual abuse, right?

7 A Yes.

8 Q Okay. The adoption was not completed, right?

9 A The adoption had not even taken place then.

10 Q Right. And you never reported it until after the
11 adoption, correct?

12 A If I never reported what?

13 Q Your suspected sexual abuse. That you suspected the
14 boys were being sexually abused, you never reported it
15 until after the adoption took place. But for two years,
16 you're telling us, you suspected it.

17 A Well, I speak on behalf of me where we knew that we
18 were going to get the boys during -- during the summer,
19 and we had already -- and I'm saying we, in general, as
20 to myself, my husband, and Rose -- had already agreed
21 that the boys were going to go to school on our side for
22 that year, that particular year. So, I had no problems
23 with that, because I knew that they were going to be with
24 us.

25 Q So, when Officer Fraser says:

1 Cynthia decided not to ask the boys
2 about the sexual abuse until the adoption
3 was finalized,
4 he just must be not telling the truth.

5 A I have no idea what you're talking about.

6 Q Okay. Now, with all these behavior problems and
7 difficulties that you were having, isn't it true that you
8 took the boys to a counselor who found nothing wrong with
9 them?

10 A It depends on what counselor you're talking about.

11 Q How many did you take them to?

12 A They went to Hope Haven, and then, they went to
13 Mental Health in Ridgeland.

14 Q Okay. I'm not talking about Hope Haven. I'm
15 talking about, I guess, the Mental Health in Ridgeland
16 that you told Officer Fraser said nothing was going on.

17 A You're asking me these questions as to Officer
18 Fraser asked me about the boys being in counselor --
19 counseling session in Ridgeland?

20 Q I suppose so, yes.

21 A I haven't talked to him about counseling session in
22 Ridgeland. I've talked to him on occasion when it --
23 when it had to do with Hope Haven. And I have taken them
24 to counseling sessions, and neither one of the counseling
25 sessions actually did them any good.

1 Q Do you remember that you reported that, when you
2 first confronted the boys about your suspicions that they
3 were involved in some sort of sexual activity, that
4 you've reported that you separated them, because you
5 didn't want them influencing each other. Do you remember
6 telling the officer that?

7 A I kind of think you kind of twisted it just now,
8 because I didn't confront them about their sexual
9 activities. I asked them about what was going on after
10 Minor 2 had gotten in trouble in school about urinating
11 over the bathroom. We didn't go to them and ask them
12 anything about their sexual orientation, until after the
13 fact that they actually told us what happened. We never
14 went to them, and I never went to them and asked them
15 anything about their sexual orientation. Minor 2 got in
16 trouble. We wanted to know exactly what was going on,
17 because that was not called for.

18 Q What do you mean by sexual orientation?

19 A Well, what do you mean by sexual orientation?

20 MS. CAMPBELL: Your Honor, I'm going to object to
21 the witness asking me questions.

22 THE COURT: Okay.

23 A I'm sorry.

24 THE COURT: Ma'am, you can't ask her any questions.
25 If you don't understand a question, you can ask her to

1 repeat it or rephrase it.

2 A Okay.

3 THE COURT: But --

4 BY MS. CAMPBELL:

5 Q What do you mean by a problem with their sexual
6 orientation?

7 A What are you talking about? Can you repeat the
8 question, please, in a way that I can understand it?

9 Q In response to a question I just asked you, you used
10 the phrase *problems with their sexual orientation*. I can
11 have the court reporter read it back if that would help.
12 And so, I'm asking you, what do you mean by *problems with*
13 *their sexual orientation*?

14 A I guess I said that after you said what you said,
15 when you asked the question, and you were making the
16 statement about us confronting the boys about their
17 sexual.

18 Q Correct. You said -- and the rest of that sentence
19 answer was about their sexual orientation, right?

20 A Right.

21 Q Okay. What do you mean by *sexual orientation*?

22 A What I'm saying is, I didn't ask them anything about
23 anything that has to do with whether or not they were
24 abused or sexually molested of any kind, until after they
25 came to me -- well, when we talked to them, and they

1 opened up as to what happened to them on Saint Helena.

2 Q So, Officer Fraser says:

3 *Cynthia stated it wasn't until she*
4 *directly confronted them that they began*
5 *to talk.*

6 That's not true?

7 MS. DEYSACH: Your Honor, I think we're talking
8 about an issue of semantics here. Confronted versus
9 asking them what was going on.

10 THE COURT: Okay.

11 MS. DEYSACH: I think it's been asked and answered.

12 THE COURT: Okay. If she can answer it, she can go
13 ahead and answer it. If she cannot, then --

14 A I don't understand what she trying to --

15 BY MS. CAMPBELL:

16 Q Did you tell Officer Fraser that you talked to the
17 boys together, or separately?

18 A I told him I talked to the boys together first.

19 Q Okay. Thank you. Cynthia, isn't it true that you
20 use something called an ouch stick on the boys?

21 A Yes.

22 Q Okay. And what's the purpose of the ouch stick?

23 A The ouch stick is just -- it's not an ouch stick. I
24 just put -- just drew an ouch on the stick, and pop them
25 on their hand.

1 Q Is it true that you have left whelps on Minor 2
2 hands on the interior of his hands?

3 A No.

4 Q Okay. So, if he says you left whelps on his hands,
5 he's lying?

6 A I can't answer that, because I didn't --

7 Q It never happened.

8 A I didn't say it didn't never happen.

9 MS. DEYSACH: Your Honor, I'm going to object to
10 pitting witnesses.

11 THE COURT: She's going to -- just let her go ahead
12 and finish. Let her answer. Go ahead.

13 BY MS. CAMPBELL:

14 A Yeah. I never did say that it never happen. I said
15 I popped it in his hand, yes.

16 Q And you did not leave a whelp.

17 A I didn't look.

18 Q Okay. Do you also beat him with a belt?

19 A I beat my child with a belt, so, yes.

20 Q But the boys, Minor 1 and Minor 2 you've beaten them
21 with a belt, correct?

22 A Before, yes.

23 Q Before what?

24 A I've beaten them with a belt.

25 Q Before today.

1 A No.

2 Q Okay.

3 A I've beaten them with a belt before.

4 Q Okay. I understand what you're saying. Now, would
5 it be a fair characterization to say that your religious
6 life is very strict, correct?

7 A No, not necessarily.

8 Q Would I be stating a true fact that, after the boys
9 testified, you put them down the hall on the concrete
10 floor, on their knees in front of you, and you were
11 reading from the *Bible* to them? Would that be true or
12 not?

13 A No. No. Absolutely not.

14 Q Okay. So, witnesses who were in the hallway and saw
15 that, that's not what they saw.

16 A That's a lie.

17 MS. CAMPBELL: Okay. Thank you. That's all I have.

18 THE COURT: Ms. Swanson? Just a minute, ma'am. Ms.
19 Swanson, anything?

20 MS. DEYSACH: I'm sorry, Judge. Just a couple of --
21 just a couple questions, just so that everyone's clear.

22 CYNTHIA ELAINE SIMMONS

23 RE-DIRECT EXAMINATION BY MS. DEYSACH:

24 Q What the boys told you about the sexual abuse
25 occurred after the adoption, right?

1 A Yes.

2 Q Okay. And so, you didn't have any concrete
3 knowledge of any sexual abuse that took place prior to?

4 A None.

5 Q Okay. And it's probably fair to say that you do --

6 MS. CAMPBELL: Your Honor, this is not cross-
7 examination. She can directly ask her a question, --

8 BY MS. DEYSACH:

9 Q Do you discipline the boys?

10 MS. CAMPBELL: -- or she can --

11 MS. DEYSACH: Your Honor, I've already withdrawn my
12 question and moved on.

13 BY MS. DEYSACH:

14 Q Do you discipline the boys?

15 A Yes.

16 MS. DEYSACH: Okay. Thank you.

17 THE COURT: Anything further? Any objection to this
18 witness being excused?

19 MS. DEYSACH: No, ma'am.

20 THE COURT: You're excused.

21 A Thank you.

22 MS. CAMPBELL: And I do need to put something on the
23 record.

24 THE COURT: Ladies and gentlemen, at this time,
25 we're going to take a very short recess. Again, do not

1 BAILIFF: You ready, Judge? Bring them in, your
2 Honor?

3 THE COURT: Please, Al. Thank you.

4 BAILIFF: The jury is entering, your Honor.

5 JURORS ENTER COURTROOM 3:14 P.M.

6 BAILIFF: Your Honor.

7 THE COURT: Thank you. All right. The State will
8 call their next witness.

9 MS. DEYSACH: Thank you, your Honor. The State
10 calls Johnnie Simmons.

11 THE COURT: Come on forward, Mr. Simmons, and be
12 sworn, sir. Right over here.

13 MADAM CLERK: Right here, sir. Would you place your
14 left hand on the Bible and raise your right hand for me,
15 please? Do you solemnly swear to truthfully answer all
16 questions asked of you by this Court, so help you God?

17 JOHNNIE FRANK SIMMONS: I affirm.

18 MADAM CLERK: Please be seated, and state your name
19 for the Court, please.

20 JOHNNIE FRANK SIMMONS: Johnnie Frank Simmons.

21 MS. DEYSACH: Thank you. Did you get that Ms. Rowe?

22 COURT REPORTER: I did.

23 MS. DEYSACH: Thank you.

24 JOHNNIE FRANK SIMMONS

25 DIRECT EXAMINATION BY MS. DEYSACH:

1 Q Mr. Simmons, can you please tell us a little bit
2 about yourself? How old you are, who you are, where
3 you're from.

4 A I'm Johnnie Frank Simmons. I'm a minister. I'm
5 from Seaside Road, Saint Helena. I'm 64 years old.

6 Q Okay. Did you grow up on Saint Helena?

7 A That's correct, I grew up on Saint Helena.

8 Q Okay. What do you do for a living, Mr. Simmons?

9 A Right now?

10 Q Yes, sir.

11 A I'm retired. I do a little art.

12 Q A little art. Can you tell us a little bit about
13 that?

14 A I do wood burning art, mixed with acrylic folk art.

15 Q Folk art. What sort of folk art?

16 A Art from the fifties and six -- early sixties, farm,
17 fishing, stuff like that.

18 Q Okay. And how are you related to Minor 2 and Minor 1
19 Simmons?

20 A They are my brother's grandchildren.

21 Q Brother's grandchildren. And so, their father is
22 who?

23 A My brother. No, no. My nephew.

24 Q Okay. And what is his name?

25 A Jimmy Simmons or Jim Simmons, I believe.

1 Q And do you see him in the courtroom today?

2 A Yes.

3 Q Okay.

4 A There.

5 Q And can you point him out? Okay. Over at the
6 Defense table. Can you tell us how the boys, Minor 2 and
7 Minor 1 Jimmy's children, came to live with you? And are
8 you married? I'm sorry, Mr. Simmons?

9 A Yes.

10 Q Who are you married to?

11 A Cynthia Simmons.

12 Q Okay. And can you please tell us how the boys came
13 to you, come to live with you and Cynthia?

14 A Okay. My niece Rose -- my sister, Mamie, had them.
15 She passed away, and they stayed in the house with Rose.
16 And Rose kept them up until I guess she got to the point
17 where she couldn't handle them, so to speak. So, she
18 begged for help. And since I was one of the uncles and,
19 I guess, able to help, I offered to help, although I
20 didn't want the job. But I offered to help her with
21 them, and that's what I did. And in the process, I took
22 them under my wing to try to make men out of them.

23 Q And you said you didn't necessarily want the job.
24 Why is that?

25 A I was 60-something years old, retired. After

1 working three or four jobs all my life, I was tired, but
2 somebody had to help her. So, that's what I did.

3 Q Okay. Do you love these boys?

4 A Yeah, they my brother's grandchildren. I mean, I
5 hated to see them go through foster home or whatever.
6 So, I decided to, and I could help, so I decided to help.

7 Q When they lived with Rose Simmons, where were they
8 living?

9 A With who?

10 Q When they lived with Rose, where were they living?

11 A Oh. They were living, you know, in the house we all
12 lived in.

13 Q Okay. Which is where?

14 A In the same compound, on Seaside Road.

15 Q Okay. And when did they come to permanently live
16 with you and Cynthia?

17 A Now, you're asking me date and time for sure?

18 Q You can estimate.

19 A I don't know for sure. Close, but almost three to
20 four years ago. Something in the neighborhood.

21 Q And where did they come to live with you
22 permanently?

23 A I'm -- I'm out at Early Branch. It's called Early
24 Branch area. [REDACTED]

25 Q Did you and Cynthia end up formally adopt the boys?

1 A Yes.

2 Q When did that take place?

3 A Exact date and time, close to about three years ago,
4 I guess.

5 Q Okay. Can you describe for the jury a little bit
6 about the behavior problems that you and Cynthia have
7 encountered with the boys?

8 A I -- excuse me. The boys themselves are boys, but
9 they did have some problems that, at first, I thought it
10 was disciplinary problems, and that's why I thought I was
11 going to help her out with disciplinary problems --
12 disciplinary problems, because being a man in the house,
13 you know, being in the house with a man, I pretty well
14 handle my own and pretty well run my house. And I
15 thought, well, I could help them become men, you know, by
16 try to correct them with their behavior problem.

17 Q And how did you try and correct them?

18 A Oh, I talked to them. I teach, I preach, I spank.
19 I done everything possible try to help them recognize
20 their wrong and help them straighten it up.

21 Q Okay. And so, you talked a little bit about the
22 discipline, but what sort of behavior problems were you
23 encountering when you had to discipline them?

24 A They would, how would you say it? Get even with one
25 another. They're -- they're -- they're twins, and I'm

1 not used to twins, so, they was hard to -- for me to
2 adjust to the type of things they would do, so to speak.
3 They would steal little things and put it on one another.
4 Stuff like that.

5 Q Okay. Was there anything that -- any types of
6 behaviors that you and Cynthia were concerned about, or
7 you were concerned about?

8 A There was a mannerism I didn't -- didn't -- didn't
9 like too much. Seemed like a girlish mannerism to me,
10 for being a man. I questioned that, kind of. Why -- why
11 this child acting like this, so to speak. I think you
12 understand what I'm saying.

13 Q Do you recall anything that happened at school that
14 caused you concern?

15 A Yeah. One of them, I think it was Minor 2 went to
16 school, and my understanding, he peeped across the stall,
17 like the next boy's, I guess, private, stuff like that,
18 which I thought was kind of out of the ordinary for boys.

19 Q Okay. And eventually, did you and Cynthia talk to
20 the boys about what was going on?

21 A Well, we wanted to know, after all the, I say, help
22 we tried to give them, advice, correcting them, or tried
23 to break a disciplinary problem, what's wrong? And that
24 was the big question. What's wrong? What's wrong, you
25 know? They got to be something wrong for when we tell

1 you to do something over and over, over and over,
2 something ain't clicking here. So, she sat them down and
3 spoke to them one on one, and that's how she find out
4 what went on with them. They break down and tell her.
5 That's how we got to this.

6 Q And did that conversation occur before or after the
7 adoption?

8 A After.

9 Q Beg the Court's indulgence. Johnnie, are there --
10 what are you doing with the boys now to try and make them
11 men? Are there any things that you guys do together just
12 as father and son? What kind of things do you do with
13 them now?

14 A Well, we do some of everything. What I do around
15 the yard. I do a little carpentry work. I do a little
16 farming or gardening. I play horseshoe; they play
17 horseshoe. We play a little baseball. Not much they can
18 play in the yard, cause there's no field there. Play a
19 little basketball.

20 Q And so, you mentioned gardening. What sort of
21 gardening?

22 A Well, I plant some of everything. In fact,
23 everybody got their own little garden. Minor 2 got one,
24 Minor 1 got one, the other kids got one, I got one, my
25 wife got one, and I supervise all of them, and make sure

1 it produce. And it does pretty well. We got corn,
2 squash, beans, tomatoes, sweet potato, okra, watermelon,
3 cantaloupe, cucumber, carrots. Couple -- some of
4 everything that will grow. Trees, we got a tree farm
5 where we -- I showed them how to transplant trees, root
6 them, you know, clip them and root them; how to
7 transplant trees. You know, make trees, so to speak.

8 Q So, you've spent a lot of time with them.

9 A Yeah, I -- I'm trying to. I like very much to see
10 them grow up to be a man. That -- that's my main goal.
11 Like, then see if they can function in society without
12 getting in trouble, so to speak.

13 MS. DEYSACH: Thank you, Mr. Johnnie. Please answer
14 any questions that Ms. Campbell might have for you.

15 JOHNNIE FRANK SIMMONS

16 CROSS-EXAMINATION BY MS. CAMPBELL:

17 Q Good afternoon, Mr. Simmons.

18 A Good afternoon.

19 Q I want to explore with you a little bit your
20 statements about making men out of them. What, exactly,
21 did you tell the boys was wrong with looking at other
22 boys in the bathroom?

23 A It ain't right. I tell them, you know, it ain't
24 right for a child -- one child of the same to look at
25 another. I mean, that just -- not in my book. It ain't

1 right.

2 Q And you said that you had serious concerns, because
3 you felt that one of the boys was very feminine or soft,
4 right?

5 A Um-hmm. Yes.

6 Q Is that yes?

7 A Yes.

8 Q Which child were you concerned that he was too
9 feminine?

10 A [Minor 1].

11 Q [Minor 1]. And because he was too feminine, something
12 must have been wrong, right?

13 A Well, I just looked at him from a mere point and
14 notice --

15 Q Um-hmm.

16 A -- that he was acting what I thought was a little
17 feminine. Now, I didn't say nothing to him about it, and
18 I didn't assume nothing was wrong, but I had that in my
19 mind, a question, so to speak.

20 Q And a man shouldn't be feminine, right?

21 A I would say from what I know, boys are boys, and --
22 and boys act like boys. I mean, I was a boy. Boys act
23 like boys. That's what I feel.

24 Q Mr. Simmons, were you around Saint Helena a good bit
25 when the boys were growing up?

1 A Not really. I lived there, but they lived in one
2 section. I work all the time, so. I mean, when you say
3 *growing up*, they --

4 Q I mean while Rose had them out there on Saint
5 Helena, were you around a lot or not very much?

6 A Around them?

7 Q Um-hmm.

8 A No.

9 Q No. Okay. And so, you really couldn't speak to
10 their behavior problems that happened when they were five
11 years old, right?

12 A I could in a sense, because Rose would call me when
13 something go wrong with them, or when they get into
14 trouble at school, she'll call me, and I'll go over there
15 and talk to them and try to see what the problem was or
16 tell them what was right and what was wrong.

17 Q And you were doing this sort of all along during
18 their early school years, right?

19 A Not -- not every day, not every month, but if she
20 call me and ask me to speak with them, I go down there
21 and talk to them.

22 Q And do you remember if that was after they had
23 started to school, like kindergarten, first grade, second
24 grade, or before they started school, or both?

25 A I remember -- say again?

1 Q Was it before they went to school, after they went
2 to school?

3 A After.

4 Q Okay. So, once they started school, they had
5 problems, behavior problems.

6 A Well, like I say, when she would call me --

7 Q Um-hmm.

8 A -- and say go by and check on them, or go by and
9 talk to them, then, I would do that. And I would meet
10 them at school sometime and talk to them.

11 Q Um-hmm.

12 A If I meet her in the street, and she having problems
13 with them, I talk to them and stuff like that.

14 Q Was that from the time they were little boys on up?

15 A No, not babies.

16 Q Not babies, but five, six years old?

17 A I would say in that neighborhood.

18 Q Okay. Now, you said that you had never encountered
19 the interesting behavior that twins have with each other.
20 Is that right?

21 A No, I said I haven't been around twins.

22 Q Okay. And did you -- and you said something about
23 that their behavior caused you concern. They seemed to
24 be lying and blaming each other for things.

25 A Well, yeah, they did --

1 Q What do you mean by that?

2 A What I mean, if one get on trouble. --

3 Q Um-hmm.

4 A -- and I'll question that one about that trouble,
5 and sometime they wouldn't answer me to a fact that, in
6 other words, they wait on the next one, or they wouldn't
7 own up to it at that time.

8 Q Had you tried to explain to them that it was
9 important to tell the truth, to answer you truthfully?

10 A Yes, we do that. We did that.

11 Q And even after you had explained to them that it was
12 important to answer you truthfully, sometimes they lied
13 to you, right?

14 A They're children.

15 Q Okay. So, yes.

16 COURT REPORTER: I'm sorry, what was your answer?

17 A Yes.

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

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

20 THE COURT: Thank you. Anything further?

21 MS. DEYSACH: Nothing further. Thank you, your
22 Honor. We would just ask if Mr. Simmons may be excused.

23 THE COURT: Any objection?

24 MS. CAMPBELL: I do still have Cynthia and both of
25 them under subpoena.

1 THE COURT: Okay. Let's bring her on in.

2 MS. LEMPESIS: The State calls Kristin Dalton.

3 THE COURT: Thank you. Come on forward, Ms. Dalton,
4 to be sworn.

5 MADAM CLERK: Ma'am, would you please place your
6 left hand on the Bible, and raise your right hand for me,
7 please? Do you solemnly swear to truthfully answer all
8 questions asked of you by this court, so help you God?

9 KRISTIN DALTON: I do.

10 MADAM CLERK: Please be seated. State your name and
11 spell it for the Court reporter, please.

12 KIRSTIN DALTON: Kristin, K/r/i/s/t/i/n, Dalton,
13 D/a/l/t/o/n.

14 KRISTIN DALTON

15 DIRECT EXAMINATION BY MS. LEMPESIS:

16 Q Thank you, Ms. Dalton. Can you tell us what you do
17 for a living?

18 A I'm a pediatric nurse practitioner.

19 Q Thank you. And are you -- is that a certification
20 that you have or?

21 A It is. I went to undergraduate school to become a
22 nurse. And then, after ten years of nursing experience,
23 I went back to graduate school for three years, studied
24 as a pediatric nurse practitioner, and I have to take
25 certifying board exams for that.

1 Q Okay. And did you receive any sort of -- you may
2 have just said this, but did you get a master's in
3 nursing?

4 A I did. I got a master's.

5 Q Thank you. And where do you work currently?

6 A At Beaufort Pediatrics. And I'm a contract worker
7 for Hope Haven, the Children's Advocacy Center, in
8 Beaufort.

9 Q Thank you. And as a contractor for them, what sort
10 of service do you perform?

11 A I perform the medical exams for victims -- child
12 victims of maltreatment.

13 Q Okay. Maltreatment meaning what?

14 A Sexual abuse, physical abuse, neglect, drug
15 exposure.

16 Q Okay. And in that role, how is it that you come
17 about examining these children? How do they get to you?

18 A The children, usually, when a disclosure has been
19 made, law enforcement is notified. Law enforcement will
20 then make the determination to have the child
21 interviewed, a forensic interview, at Hope Haven. And
22 then, based on what the child discloses has happened to
23 them, a determination is made on whether or not they need
24 to have a -- an exam with me.

25 Q Okay. And do you do that in Beaufort County, or

1 what counties?

2 A I do it in the entire 14th Judicial Circuit. Seven
3 counties.

4 Q Okay. Thank you. And how many forensic exams would
5 you say you have done through the course of your time in
6 that position?

7 A I've been doing these exams for over ten years, and
8 I have done well over 500.

9 Q Thank you. Ms. Dalton, have you been qualified
10 before as an expert in any sort of field?

11 A Yes.

12 Q And what was that field?

13 A As a child abuse medical expert witness.

14 Q Thank you. And can you tell us how many times
15 you've been qualified?

16 A In circuit court, I think it's been about ten.

17 Q Okay.

18 MS. LEMPESIS: And your Honor, at this time, the
19 State would move to offer Ms. Dalton as an expert in the
20 field of pediatric -- or excuse me -- child abuse medical
21 expert.

22 MS. CAMPBELL: Subject to my previous objections,
23 your Honor.

24 THE COURT: Ladies and gentlemen, in this case, Ms.
25 Dalton, as a nurse practitioner, has been qualified as a

1 expert as a nurse practitioner in the area of pediatric
2 forensic medicine, and that allows her, again, to give
3 her opinion and her reasons for the opinion. And again,
4 it's for you to see as appropriate, as compared to other
5 evidence in the case.

6 MS. LEMPESIS: Thank you.

7 BY MS. LEMPESIS:

8 Q Ms. Dalton, if we can sort of go through the process
9 of an exam. When a child comes to you after being
10 referred from Hope Haven or wherever, what is the -- can
11 you walk us through the process?

12 A Sure. The child will come to my office at Beaufort
13 Pediatrics. We do it there because I have all the proper
14 equipment. I have a high-powered microscope. It's
15 called a culpascope, with a digital camera attached to
16 it. I bring the family in. I usually interview the non-
17 offending caretaker first. As we do in all of medicine,
18 I get a social history, a behavioral history, a past
19 medical history, and allay any fears that the parent
20 might have, or the caretaker, about what the exam is
21 going to be like.

22 After that, I bring the child in, and I interview
23 the child alone, without the caretaker. There's a
24 victim's advocate who's always with me for that, from
25 Hope Haven. And then, after interviewing the child, I

1 give them the opportunity to choose whether to have their
2 caretaker in the room with them during the exam, or out
3 of the room.

4 Q Okay. And what is the purpose of the exam?

5 A Well, there are several purposes. First of all, we
6 want to look for forensic evidence that can support the
7 child's disclosure. Unfortunately, DNA evidence is only
8 around for a very brief period of time. So, if the last
9 incident of abuse had occurred more than 24 hours, or at
10 most, 72 hours prior to my seeing the child, I do not
11 collect forensic DNA evidence.

12 I give the child a full exam, head to toe, with
13 special focus on areas that the child disclosed were
14 abused. So, usually, it's the genitalia.

15 Q Okay. Do you do any sort of blood draw or take any
16 sort of samples?

17 A We do STD testing when it's indicated.

18 Q Okay. And so, I think you already covered this, but
19 if it's been -- did you say if it's been more than 24
20 hours after the incident, you do not look for DNA?

21 A Right. It depends on the age of the child, but
22 studies show that for adolescents and adults, you may be
23 able to collect DNA for up to 72 hours. For children who
24 are pre-pubital, that means they haven't started puberty
25 yet, it's very unusual to be able to collect evidence

1 after 13 hours on the body. But we will still try to
2 collect that for up to 24 hours. But I can when -- based
3 on what the child tells me, sometimes we can collect
4 evidence that may not be with them. But if they tell me
5 about some article of clothing or the like that might
6 have DNA, I can alert law enforcement to collect that.

7 Q Okay. Did you examine -- do you recall examining

8 Minor 1

9 A I do.

10 Q Do you recall the date that you examined him?

11 A It was October of 2011.

12 Q Okay. And you have just told us about the process.
13 Did you follow that same process in examining Minor 1

14 A I did.

15 Q Can you walk us through what you did?

16 A Sure. He was brought in by non-offending
17 caretakers. I believe that was his adoptive parents. I
18 spoke with him alone, and then did the -- with the
19 victim's advocate present, and got his vital statistics,
20 height, weight, and that kind of thing, and blood
21 pressure. And then, did a complete physical exam,
22 including an exam with a culpascope.

23 Q What is a culpascope?

24 A That's the microscope. It magnifies things up to 15
25 times.

1 Q Okay. And so, what on him were you examining
2 specifically?

3 A Well, based on his disclosure, I examined his mouth,
4 his penis and testicles, and his rectum.

5 Q Okay. And you said *based on his disclosure*. So,
6 you did question, you said, Minor 1 before examining him,
7 correct?

8 A I did. I -- I needed to know what parts of his body
9 had been inappropriately touched in order to know --
10 that's what guides my exam. It guides my decision to
11 test for STD's, and it helps me know where to look for
12 any possible injury or findings.

13 Q And so, in questioning Minor 1 for that purpose, what
14 did he tell you in response to your questioning?

15 A He disclosed multiple episodes of forced oral
16 copulation. He disclosed oral copulation performed on
17 him. He disclosed penile/anal penetration. And he
18 disclosed a lot of being witness to pornography.

19 Q Did he tell you anything regarding him having a
20 problem with soiling himself?

21 A He did. He -- he had mentioned -- I can't remember
22 his exact words. He had an itchy rash on his behind,
23 which had since resolved, but he said at one time he had
24 that. And he said that he had had soiling accidents in
25 the past.

1 Q Okay. Ms. Dalton, after your exam -- or can you
2 tell me your results from your exam?

3 A Okay. The physical exam of this little boy was
4 normal. You know, I was examining him, it was my
5 understanding, that it had been over six months since the
6 last incident of abuse. So, I did not expect to have any
7 findings, and I did not.

8 Q Did you determine from talking to Minor 1 when this
9 abuse was to have occurred?

10 A I would have to look -- look at my notes to say
11 specifically.

12 Q And I can -- I've got your notes, Ms. Dalton. Would
13 it help if I pass them up?

14 A It would. Thank you. We talked --

15 MS. LEMPESIS: Permission to approach the witness,
16 your Honor?

17 THE COURT: You may.

18 MS. LEMPESIS: Thank you.

19 THE COURT: Ms. Campbell, do you need to take a look
20 or? Okay.

21 BY MS. LEMPESIS:

22 A I believe it had been about six months. He was not
23 able to give a really good time line of events, which is
24 pretty typical of children. He talked about the time
25 span that he was abused as the bad time. He also

1 referred to living over there, which, when he lived over
2 there, that's when the abuse occurred. And then, when he
3 moved in with his adopted parents, that was living here.

4 Q Did you determine where over there was through your
5 either questioning of him or the gathering of background
6 information?

7 A Over there was with his -- and I'm not positive how
8 they're related, but he mentioned Rose, who was -- the
9 woman that had been raising him for the first two years
10 of life, had a daughter named Rose, and Rose was taking
11 care of the boys for many, many years. And while he
12 lived at Rose's house, his father would often come and
13 either visit or stay, sort of intermittently, he said.

14 Q Did he identify, in talking to you and disclosing
15 the abuse that occurred, did he identify who his abuser
16 was?

17 A He did.

18 Q And who was that?

19 A He said it was his father.

20 Q Okay. And so, going back to your results of the
21 exam, you said it was a normal physical exam.

22 A Yes.

23 Q So, there were no injuries found. Is that correct?

24 A No. There were no injuries, which does not mean
25 that there hadn't been injuries. It just means, at the

1 time I examined this child, that the exam was normal.

2 Q Okay. And can you tell us about that? In your
3 experience, is that common or uncommon?

4 A It's extremely common to have a normal exam. About
5 97 percent of children who are sexually abused will have
6 a normal exam. So, having findings is very, very rare.
7 Most studies show three percent of the time you'll have
8 findings. The main reason for that is because of the way
9 the body can heal itself, and different parts of the body
10 heal at different rates. A skin injury may take weeks or
11 even months to completely disappear. Parts of the body
12 that are -- have mucosa, which is what the lining of your
13 mouth, the vaginal area, the anus and rectal area, those
14 areas heal much more rapidly than some parts of the body.

15 So, usually, if there's any kind of traumatic
16 injury, it will heal in a matter of days. One way to
17 think about it is to think of times you might have bit
18 your lip or cut your throat on a Dorito or something, and
19 it might be very painful for a day or two. You might
20 bleed; you might have a little lump there; but most
21 likely, a week later, if you looked in the mirror at the
22 inside of your mouth, you're not going to see where that
23 was. And you can't look in the mirror and see all the
24 times you've bit your mouth over your life. It heals
25 completely without leaving any evidence. The rectum and

1 anus are the same way.

2 Q Thank you, Ms. Dalton. And so, in your expert
3 opinion, is it typical that you would not find physical
4 injuries on Minor 1

5 A Very typical.

6 Q Okay. Thank you. And going now to the exam of
7 Minor 2 did you examine him on that same day?

8 A I did.

9 Q Okay. And did you go through the same sort of
10 process with Minor 2

11 A Yes, exact same process.

12 Q Okay. And what did Minor 2 tell you in your -- in
13 response to your questioning for your exam as far as the
14 abuse that had occurred?

15 A As I recall, he was a lot more guarded and less
16 willing to discuss the abuse than his twin brother was.
17 I know he did disclose oral copulation.

18 Q Okay.

19 A If I could see my notes, that would help.

20 Q Absolutely.

21 MS. LEMPESIS: Your Honor, may I approach?

22 THE COURT: You may.

23 BY MS. LEMPESIS:

24 Q Here you go, Ms. Dalton.

25 A Actually, he disclosed oral/genital contact and

1 penile/anal contact.

2 Q Okay. I didn't ask this with [Minor 1], but can you,
3 just to make sure everybody knows what you're talking
4 about, can you explain it in a different term?

5 A Sure. For a lot of children, it's very difficult
6 for them to understand the concept of penetration. So,
7 when the child says that someone put their penis in his
8 butt, they may not understand the difference between just
9 the inappropriateness of a penis on your anus or -- or
10 the actual penetration. Same with the vagina.

11 So, I'll try to ask some specific questions about
12 was it on your bottom or your butt, or in your butt? And
13 [Minor 1] said that it was in his butt. And then, I usually
14 ask them how it feels. And I remember [Minor 1] saying that
15 it was nasty.

16 Q Do you recall what [Minor 2] said in response?

17 A He did not tell me anything about his feelings of
18 it.

19 Q Okay. And did he tell you anything else in your
20 questioning of your exam?

21 A Which one?

22 Q [Minor 2].

23 A [Minor 2]?

24 Q I apologize. Anything regarding him wetting the
25 bed.

1 A Yes. He told me that he wets his bed about one to
2 two times a week.

3 Q Okay. In your opinion as a pediatric nurse, is it
4 common for boys that age to wet the bed that often?

5 A Well, you know, it does happen. There are a lot of
6 children who wet their bed just because their -- their
7 brain is not sending the appropriate signal for them to
8 hold their urine. And for some people, it's just an
9 inherited thing, and they grow out of it. The older a
10 child gets, the less common it is for them to wet the
11 bed. So, you can't say that an eleven-year-old wetting
12 the bed is abnormal, but we also know that bed-wetting is
13 one of the behavioral symptoms that you can see from
14 children who are being abused. The reason is because
15 they -- they start regressing and going back to behaviors
16 that they've already are unable to continue mastery of
17 things they've already learned how to do.

18 Q Thank you. And as far as Minor 2 exam, did you
19 find any sort of physical injuries after your exam?

20 A No. He had a scar across his nose that he described
21 was a result of falling off a table while jumping into a
22 pool. That had happened a few years before. But other
23 than that, his exam was normal.

24 Q And I know you just went through this, but just to
25 be clear, that is common or uncommon?

1 A Common.

2 Q Okay. Okay, Ms. Dalton, just one moment, and just a
3 moment of the Court's indulgence. Ms. Dalton, I don't
4 have anymore questions for you.

5 A Okay.

6 MS. LEMPESIS: Thank you.

7 MS. CAMPBELL: May it please the Court?

8 THE COURT: Yes, ma'am.

9 KRISTIN DALTON

10 CROSS-EXAMINATION BY MS. CAMPBELL:

11 Q Ms. Dalton, I am going to start with Minor 1 You do
12 have your report; don't you?

13 A Yes, I do.

14 Q Okay. If you'll look on Page 6 of 13, under your
15 comments, it says that:

16 Minor 1 says that he no longer wets
17 the bed.

18 Right?

19 A Yes.

20 Q Okay. And he did soil himself when he was younger,
21 correct?

22 A No, it was last year.

23 Q So, younger, yes?

24 A Last year would have put him one year younger than
25 when I examined him, yes.

1 Q So, he soiled himself when he was younger than the
2 day you saw him, right?

3 A Correct.

4 Q And when you saw him, he had stopped wetting the
5 bed. According to your notes.

6 A Just a few months prior, yes.

7 Q Okay. Great. And you also -- well, first off,
8 disclose just means to just report something, right?
9 It's the same thing.

10 A Yes.

11 Q Thank you. His doctor had diagnosed him as having
12 pinworms, right?

13 A I had been told that.

14 Q Right. I mean, that is what your report is; it's
15 what you've been told, right?

16 A Correct.

17 Q Okay. So, you were told by Minor 1 that he had had
18 pinworms, and that the pinworms caused him to have bumps
19 and have an itchy rash on his, I guess, rear area,
20 correct?

21 A I do not recall this child telling me that he had
22 had pinworms.

23 Q Okay. Well, the report that I received from you, on
24 Page 6 of 13, at the bottom of the page:

25 *As seen by his doctor, diagnosed as*

1 *having pinworms. Has a peri-anal rash.*

2 *I have bumps, and I'm itchy.*

3 A Yes. The child did not tell me that. That was from
4 a report -- another report that I got. Are you asking me
5 what Minor 1 said to me or?

6 Q The information that you were given.

7 A Okay.

8 Q Is that the child had stopped wetting the bed; and
9 that he had pinworms; and that he had a itchy, bumpy
10 rear, right?

11 A Right.

12 Q Okay. You were also given information from Minor 1
13 that, if you'll look at Page 4 of 13, that:

14 *He was being forced to perform oral*
15 *sex on his father and his father's friends.*

16 Right?

17 A Correct.

18 Q And that his father would tell his friend:

19 *I have a son that loves to suck people,*
20 *and that his father pays his friends money*
21 *for the son to suck their pee-pee.*

22 Right?

23 A Correct.

24 Q Okay. And you took this information and you put it
25 in this report. And I assume, and I believe I'm correct,

1 you've not seen [Minor 1] again.

2 A Correct.

3 Q Okay. So, moving on to [Minor 2] on Page 4 of 13, and
4 let's just establish this, so we don't have an issue
5 again. The items that are listed in the first paragraph
6 there under *Clinical History*, you're indicating that the
7 boys disclosed that they were forced to perform oral sex
8 on him and each other.

9 A Correct.

10 Q Okay. In addition, you're being told in these
11 interviews that they were forced to watch pornographic
12 movies, correct?

13 A I'm just going to be clear here. This was not from
14 my interview with the child. As it says above, this is a
15 brief history of allegations, as provided by referral
16 sources. So, this is information I got from my referral
17 sources. Those are not the direct words I got from the
18 child.

19 Q Okay. And so, the information that you got, and
20 that you as an expert in this field that you've been
21 qualified as an expert in, and relied on -- I mean, and
22 it must be important, because you put it in your report
23 -- is that they were forced to perform oral sex on each
24 other, right?

25 A Correct.

1 is enough to send the case to the jury for CSC first.
2 So, I am going to respectfully deny your motion.

3 MS. CAMPBELL: Your Honor, are you also, then,
4 making the finding that the indictment as-is, can go to
5 the jury with the provision of having anal intercourse
6 with the victim, as well?

7 THE COURT: I've never sent an indictment to a
8 jury --

9 MS. CAMPBELL: I mean --

10 THE COURT: -- since I've been on the Bench, but I
11 know some judges in the past do it, but no.

12 MS. CAMPBELL: Okay.

13 THE COURT: I don't do it. That was back in the
14 olden days where they wanted you to write the verdict
15 right on the indictment. And I think we did that, you
16 know, 15, 16 years ago when I first came out of law
17 school, but we do the old-fashioned verdict forms now,
18 so. Now, let's talk, and go on to Minor 1

19 MS. CAMPBELL: May it please the Court? This is
20 indictment 2012-1537. In reference to this indictment, I
21 would return to an issue that I had earlier, which is
22 basically the competency of the witness, the child in
23 this case.

24 THE COURT: I'm sorry. We're back to Minor 1
25 correct? I mean, we're on Minor 1

1 MS. CAMPBELL: We're on Minor 1 Right.

2 THE COURT: Thank you. Thank you.

3 MS. CAMPBELL: The competency of the witness as
4 being an issue and a factor to consider by your Honor.
5 We question the mental capacity and the ability of this
6 particular child to recall the events accurately and
7 truly. I do believe that he testified about the anal
8 intercourse, and I do believe that he testified about the
9 victim -- the aspects of the fellatio.

10 THE COURT: Okay.

11 MS. CAMPBELL: But what we look to is the fact that
12 we feel like the competency of that witness has been in
13 question throughout the trial; and that the Court would
14 be in a position, if you agreed that the competency of
15 the witness was an issue, could strike the testimony.

16 And lastly, before, I guess, I turn it over to the
17 State, I would just say for the record that, we take the
18 position that there is no substantial evidence which
19 reasonably tends to prove the guilt of the defendant, or
20 from which his guilt could logically and fairly be
21 deduced. And the evidence as it stands now only raises a
22 suspicion of guilt for Mr. Simmons. Thank you.

23 THE COURT: Thank you.

24 MS. LEMPESIS: Your Honor, I think, as far as Minor 1
25 is concerned, and the competency issue, we've established

1 he was competent. Your Honor found him competent to
2 testify. And so, we certainly would think his testimony
3 in no way should be stricken. And he testified fully
4 that the defendant had forced him to perform oral sex or
5 fellatio on him, on others, and had performed fellatio on
6 Minor 1 And he also disclosed anal penetration by the
7 defendant on him. These disclosures were consistent with
8 what he told Kristin Dalton during her exam. And
9 partially, I think he told Dr. Simmons, his pediatrician,
10 about the sucking of the pee-pee. That was his
11 disclosure to Dr. Simmons.

12 And so, that is all fact in the record. And your
13 Honor, I think we've covered as far as, I guess, both of
14 the indictments are concerned, we've covered that they
15 were under the age of eleven. We had testimony that they
16 were living in the house with their father when they were
17 some time between the age of seven, eight, or nine years
18 old. And so that, since the boys were born in 2000,
19 which was also testified to, that would put them under
20 the age of eleven when these incidents occurred, because
21 we also heard testimony that they were -- they went to
22 live with Cynthia and Johnnie when they were -- in May of
23 2010, and then adopted in, I think Cynthia testified,
24 adopted in April of 2011. They didn't get the formal
25 paperwork until June of 2011. So, all of this puts the

1 incidents occurring before, while the children were under
2 the age of eleven. And we've established there were
3 sexual batteries on both of the children.

4 RULING BY THE COURT:

5 THE COURT: Well, taking the evidence in the light
6 most favorable to the non-moving party, as to the
7 indictment, where the alleged victim is Minor 1 I
8 do find that there is adequate evidence that this actual
9 battery -- excuse me -- sexual battery was committed
10 against Minor 1 both oral and penile/anal intercourse, as
11 testified to, as you stated, by the boy on the stand, as
12 well as reported to Dr. Simmons, and as reported by Kim
13 Dalton. Additionally, as to -- pardon? Kristin Dalton.
14 I apologize.

15 As to the competency issue in this case, again, I
16 find both of the boys were more than competent to
17 testify. They were clear; they did not hesitate, even to
18 the point where Minor 1 was funny when Ms. Campbell asked
19 if the frog that he had captured that he talked to spoke
20 back to him, and he said he croaked. That was a pretty
21 appropriate and lucid response. I have no doubt in my
22 mind. The boys were very well-mannered in the courtroom,
23 certainly mature, and conducted themselves appropriately
24 in this setting, and were more than competent.

25 Ms. Campbell, you have some witnesses you'd love to

1 PAULETTE CROCKETT: Crockett.

2 MS. CAMPBELL: I'm sorry.

3 MADAM CLERK: Right here, ma'am.

4 THE COURT: Right over here, ma'am. If you'll just
5 come around here and place your left hand on the *Bible*,
6 and raise your right hand, and Ms. Young is going to
7 administer the oath.

8 PAULETTE CROCKETT: Okay.

9 THE COURT: Thank you.

10 MADAM CLERK: Do you solemnly swear to truthfully
11 answer all questions asked of you by this court, so help
12 you God?

13 PAULETTE CROCKETT: I will.

14 MADAM CLERK: Please be seated. State your name and
15 spell it for the Court.

16 PAULETTE CROCKETT: My name is Paulette Crockett.

17 PAULETT CROCKETT

18 DIRECT EXAMINATION BY MS. CAMPBELL:

19 Q Good afternoon, Paulette.

20 A How are you?

21 Q Can I just call you Paulette?

22 A Yeah.

23 Q Thank you. Now, Paulette, have you been here since
24 yesterday, waiting to come in and testify, pretty much?

25 A Yes.

1 Q Okay. And how do you know my client? How do you
2 know Mr. Simmons?

3 A He's my younger brother.

4 Q Okay. And Paulette, are you married?

5 A I am.

6 Q And who are you married to?

7 A Leroy Crockett.

8 Q All right. And do you have children with Leroy?

9 A I do.

10 Q Okay. Paulette, do you work?

11 A No, I don't.

12 Q And the reason you don't work is?

13 A Because I had open-heart surgery in 2006.

14 Q What about Leroy? Does he have a job?

15 A He's -- -- had -- he gets disability, but he's
16 working through the disability board how much hrs he can
17 work at Blackstone's.

18 Q We're going to help you with that. He works at
19 Blackstone's?

20 A He works at Blackstone's Café.

21 Q What does he do there?

22 A He was a dishwasher, but he moved up to cooking part
23 time, too.

24 Q Great. Thank you.

25 A Um-hmm.

1 Q Do you remember some time in 2007, where you started
2 living?

3 A I lived on [REDACTED] [REDACTED] yeah.

4 Q Okay. Do you know -- did you live there
5 consistently in 2008 and '09, or were you in and out? Do
6 you remember that period of time?

7 A Yeah, I -- I stayed there. I didn't work. My
8 husband worked, and I stayed there at the house all the
9 time. Yeah.

10 Q Were your children there, also?

11 A Yes.

12 Q And who are your children?

13 A I have a son, Travis S. --

14 Q Um-hmm.

15 A -- Travis S.

16 Q Um-hmm.

17 A Now, he's 21.

18 Q Um-hmm.

19 A I have a son, Leroy A. [REDACTED] He's 16 now. And I
20 have a daughter, Allyra C. [REDACTED] She's 13 now.

21 Q Now, is that area out there on Seaside Road, is that
22 family land?

23 A Yes. The house that we stayed in is -- was built by
24 my great granddaddy, and it's just there like, when we
25 have hard times or whatever, and we need a place to stay,

1 we live there, yeah. Rose live on the land. Darlene
2 lived on the land. John's son, John-John, lived on the
3 land. My cousin M.C., he lived over there. My Aunt
4 Lizzie and Uncle Harry came down, you know, and Johnnie,
5 M.C.'s family. We all lived on the land.

6 Q You specifically lived in that little white house,
7 right?

8 A Yes.

9 Q Okay. May I approach, your Honor?

10 THE COURT: You may.

11 Q Paulette, did you keep that little white house nice?

12 A Oh, yes.

13 Q You kept it clean.

14 A I had Susan Cato from CAPA come in, and because the
15 wood stove that was in there always, it burned a hole in
16 the ground, in the floor. So, they came and fixed that,
17 and we laid carpet through the whole house.

18 Q And do you remember when you left from that house?

19 A Yes. I stayed there about a year and a half, yeah.

20 Q May I approach?

21 THE COURT: You may.

22 Q Paulette, I'm going to hand you what's been marked
23 as --

24 A Okay.

25 Q -- what's been marked as State's Exhibit, looks like

1 6, 5. I'm sorry. Grab that. 4, 3, 2, and 1. Do those
2 pictures accurately depict what that house looked like
3 when you lived there?

4 A No, ma'am. The yard was always cut. All this junk
5 on the front porch belongs to my cousin M.C. He uses the
6 house for storage.

7 Q Now, --

8 A After we left out of it. But when we lived in
9 there, there was nothing but my furniture. And we had
10 furniture on the front porch, where we used to sit at in
11 the summertime. Through the whole house, we had tables,
12 chairs. We had refrigerator, stove, you know, wash
13 machine, dryer, which was all my things.

14 Q Um-hmm.

15 A Yes, but all this junk, comes from my cousin, M.C.

16 Q Thank you, Paulette.

17 A This, you want this? Okay. This one --

18 THE COURT: When you refer to it, ma'am, do you
19 mind.

20 A Okay.

21 THE COURT: There's a number on the back of it, and
22 as you're referring to it, if you'd just tell --

23 A Okay.

24 THE COURT: There it is. It's right there.

25 A Okay. Exhibit 5.

1 THE COURT: I appreciate it.

2 A The land is not cut. This junk that's in the front,
3 it was never there. We had this whole land cut. We used
4 to -- the shack in the back is the pump house --

5 Q Um-hmm.

6 A -- where the water goes into the house. It was
7 never tore up like this, never. This satellite never
8 worked when I lived there, but it was there. There was
9 -- this front porch had a screen door on it, a screen
10 door. And we had, like I said, outdoor set on the porch,
11 which is a small porch, but we had it on there. We had a
12 deep freezer on the front porch, too.

13 Q Okay.

14 A Exhibit 4, this is Rose's house. It didn't have
15 this porch built on the front. This bush beside the
16 house was a small tree, because we used to keep it cut.
17 It was a small tree. The blue plants were there. We had
18 bricks lined up in the front of the porch, where we used
19 to plant -- try to plant plants, but you know, it never
20 grew. But all this used to be cut. Yeah.

21 Q It just wouldn't be right to live in these
22 circumstances; would it?

23 A No, ma'am.

24 Q No.

25 A The ceiling never leaked. The -- the commode

1 worked, the shower, the tub worked. My washing machine
2 and dryer worked. The stove worked, the refrigerator
3 worked. We had the deep freezer on the beginning on the
4 porch, that worked. We had Charter Cable in there. We
5 had -- we didn't have air condition, but we had fans
6 throughout the house. Everyone had a fan. We had one
7 air condition in the back that kind of blew through the
8 house, because the house is like, open, because there are
9 no doors on the rooms. It was cool, yeah. That's
10 Exhibit 4.

11 Okay. Exhibit 3. This is the blue door that leads
12 into the kitchen. This was fine. The porch and the
13 side, we used to sit out there on the swing. This right
14 here's the pump house. This was never tore up like this.
15 We had the cover and everything. This is where the pump
16 was for the house.

17 This room right here in the back was fine. We had
18 air condition in it. This door right here wasn't tore up
19 like this at all, and the porch was level where we sat.

20 Q Um-hmm.

21 A And you sat down and watched the breeze and talked
22 to Rose across the field.

23 Q Um-hmm. The next one?

24 A Exhibit 2. This yard in between is where we came in
25 from the beginning of the road. And this is the road

1 that we used so we can go in the house and park our cars
2 here. Rose could park over there. This house right here
3 is John-John's. And there's a house around this area
4 here, Darlene's. This tree was cut down.

5 Q Um-hmm.

6 A I mean, it was shaved off. We used to have a tire
7 swing hanging from here, where the kids used to play, and
8 we sat on the porch. Jimmy, he, Jimmy, okay, he would
9 cut the yard.

10 Q Um-hmm.

11 Q And all the way in the back, behind Rose's house, he
12 used to keep the yards cut over here by Darlene. John-
13 John did his own yard.

14 Q Um-hmm.

15 A But he used to keep around it, because we were
16 afraid of snakes. So, we would keep the grass all low
17 around and, yeah.

18 Q Okay. And I think that's the last one you have
19 there.

20 A Is Exhibit 1. Okay, this is in front of my cousin
21 Rose house. This porch wasn't on there. But we used to
22 go to Rose house and visit Rose before I got my washing
23 machine, because the washing machine I had at first
24 broke. And then, I got another one later. But when my
25 first one broke, we used to go to Rose's house and wash

1 clothes. This is my cousin Darlene's house, in the back.
2 And like I said, this one is John-John's. The kids used
3 to play up in here on the -- in the pool. Yeah, Um-hmm.

4 Q Thank you so much. Now, Paulette, --

5 A Yes?

6 Q -- thank you for taking the time with us to explain
7 to us how it was when you lived there.

8 A Um-hmm.

9 Q That's the same time that Minor 1 and Minor 2 lived
10 there, too, right?

11 A Yes, correct.

12 Q Okay. And at some point, their father lived there,
13 right?

14 A Yes, correct.

15 Q Okay. Did their father have any women that came to
16 live with him at that house?

17 A In the beginning, when we first moved in, he dated a
18 girl named Mahogany.

19 Q Um-hmm.

20 A She lived there with her younger son, and Rose
21 worked on Parris Island. So, Jimmy didn't have any job,
22 I didn't have a job, my husband worked, but we used to
23 stay there. And Mahogany didn't work either, at the
24 time. And we just stayed there and watched T.V. and play
25 video games and cards. And Rose used to bring the boys

1 to our house.

2 Q Um-hmm.

3 A All the time. She used to pack their night clothes,
4 or play clothes, because, when Rose came over, like, if
5 she was stopped and say, Minor 2 and Minor 1 you coming
6 home? No, we're going to stay here with our daddy.

7 Q Um-hmm. And so, did there ever come a time when the
8 boys' biological mother, Cynthia Goethe, lived in the
9 home, too?

10 A Yes. After Jimmy and Mahogany split up --

11 Q Um-hmm.

12 A -- she took her son, they left. And then, Cynthia
13 started coming over to Rose house to visit --

14 Q Um-hmm.

15 A -- Minor 2 and Minor 1 And plus, she has two other
16 twin boys, Sandman (phonetic spell) and Tum Tum, that
17 lives up the road from this spot. And she used to come
18 and visit her kids and bring things and stuff. Then, she
19 fell on a little hard times, so we said she could stay
20 with us. She stayed in the room with Jimmy. When we
21 went to town, and because we were the only one that had a
22 vehicle, we all went. We went shopping for the boys.
23 And my -- I shopped for my own kids. And the boys used
24 to be inside the house playing video games with my
25 husband, Jimmy, and my son, Amon.

1 Q Okay. And we talked just a second ago about Cynthia
2 Goethe.

3 A Um-hmm.

4 Q Do you know how many sets of twins she has?

5 A She has [Minor 2] and [Minor 1] by my brother. She has
6 Sandman and Tum Tum by another guy, and she has a twin
7 boy and a twin girl from another man, and she has a older
8 son, Jeffrey.

9 Q So, I count three sets of twins --

10 A Yes.

11 Q -- and then one son.

12 A One, yes.

13 Q Do you know if the boys, when they were living out
14 there on Saint Helena, before their daddy came back, if
15 they were having any difficulties in school or behavior
16 problems?

17 A Yes, they were. Rose is my cousin, and she told me
18 that, you know, --

19 MS. DEYSACH: Objection.

20 MS. LEMPESIS: Objection. Hearsay.

21 THE COURT: Okay.

22 A Okay.

23 Q It's okay, Paulette.

24 A I'm sorry.

25 Q Don't tell us what Rose said.

1 A Okay.

2 Q Do you know if the boys were having any behavior
3 problems at school?

4 A Okay, yes. The boys has ADHD.

5 Q Um-hmm.

6 A And they have problems in school where acting, not
7 as much as work, but, I mean, not as much as school work,
8 but the behavior problems. Okay, I can't say Rose.

9 Q Well, I appreciate you helping us out with that.

10 A Um-hmm.

11 Q What I want to ask you about now is how did the boys
12 act around Jimmy, their daddy?

13 A They behaved.

14 Q Okay.

15 A Can't say Rose.

16 Q How did they act in terms of were they affectionate
17 with him?

18 A Yes.

19 Q How did they act in that regard?

20 A Jimmy had a short job at Weezie's Crab Shack, and he
21 had to go to work, which is in walking distance up the
22 road, from Seaside Road. And the boys would be there
23 with me, and they would ask me, *Auntie Polly*, when my
24 daddy get off? And I'm saying, well, we don't know,
25 because his schedule kind of varied. But they used to

1 ask, when my daddy get off? You're just going to have to
2 wait 'til your daddy get off. I don't want my daddy to
3 go to work today, those kind of things they used to say.

4 Q Right. And so, how did the boys look? How were
5 they dressed, and things like that, when they were in the
6 care of their father? Were they kept clean?

7 A Clean.

8 Q Okay.

9 A Well, when they played outside, they got dirty,
10 because Jimmy had them on the tractor, cutting the yard.
11 The boys used to ride their bicycles that were laying
12 around the yard. We would play kick ball with my kids
13 outside, and they would get dusty then, but they would
14 come in and have their bath. He wouldn't let them take a
15 bath together. He would run the tub water, one would
16 take a bath and get dressed, and the other one would take
17 a bath and get dressed.

18 Q Now, Paulette, you lived in the home with them for a
19 long time. Did you ever see any signs of sexual abuse?

20 A No, I did not.

21 Q And were you shocked by these allegations?

22 A Yes, I was.

23 Q Okay. Did Jimmy ever have men up to the house?

24 A The only men Jimmy had up there was my Cousin Peter,
25 my Cousin David, which came into town when they came from

1 living off. My husband Leroy. M.C., Johnnie. See,
2 there's a lot of -- there's not a lot of people that can
3 come up on the family land, because it's really not there
4 to do. So, there wasn't a lot of visitors. It just was
5 us who lived on the land every day.

6 Q Um-hmm.

7 A Cousins would come up. My sister J.J. boys from up
8 the road, which is my cousin J.J.

9 Q But if you weren't family, you weren't coming on
10 that land, right?

11 A You weren't coming on there.

12 Q Right..

13 A We have a cousin named M.C. that kind of protected
14 the yard, like, at night, he would be walking around the
15 yard, walking around the yard, trying to just protect the
16 girls. He said he was protecting the girls.

17 Q Great.

18 A Because as one -- really girls as living over there.

19 Q I will check one thing, and then I think I might be
20 finished. Okay?

21 A Okay.

22 Q Paulette, on the inside of this little white house,
23 were there any interior doors?

24 A They were one black door coming off the porch into
25 the first room, that's a door. Then, you went through

1 the house, and there was a door attached to the kitchen.
2 Then, there was one door that could not lock, that was on
3 the -- it was like a swinging door on the bathroom. And
4 then, there was one small door hooked to the back room
5 that a wall was built up over it, that we couldn't go
6 out.

7 Q Okay. So, if you had, like, a bedroom door,
8 something like that, how did you -- did you have -- what
9 did you put on the door?

10 A We put heavy covers. Just covers that put up to the
11 entrance of the rooms.

12 Q And the time that Jimmy was living there, and the
13 boys were staying with him, you never walked in or saw
14 anything that gave you concern in terms of any sexual
15 assault taking place?

16 A Never. I did Jimmy's clothes and the boys' clothes
17 that Rose sent to the house, and I used to dry them, fold
18 them, and walk right in Jimmy room and lay them on the
19 bed, where the boys were sitting sometime when they act
20 up or would, you know, got in trouble, Jimmy would make
21 them sit down and watch T.V. and -- until their mother
22 came home.

23 Q Is there something called standing on the wall?

24 A Yes. That's the way Jimmy punished the boys when
25 they act up, and after he, you know, warned and warned

1 and warned them, you know, but they're boys, you know,
2 and they have ADHD, he would make them stand in the
3 corner.

4 MS. CAMPBELL: Paulette, at this point, I'm going to
5 ask you to answer the questions that the Prosecution has
6 for you. Thank you so much for being here.

7 A Okay. Um-hmm.

8 PAULETTE CROCKETT

9 CROSS-EXAMINATION BY MS. DEYSACH:

10 Q Hey, Paulette. How are you?

11 A I'm doing fine.

12 Q Good. When you guys were all hanging out over at
13 the white house, and the cousins would come over, --

14 A Um-hmm.

15 Q -- would you all play cards, dominoes?

16 A Yes.

17 Q And you sort of --

18 A We would play Spades.

19 Q All right. So, you all had little get-togethers
20 with family?

21 A No. The only one that came over was my brother-in-
22 law, Bo. That's the only one that we ever played Spades
23 with, and Jimmy, me, my husband, yeah, that's who came
24 over.

25 Q What about all those cousins that you were just

1 talking about?

2 A The cousins --

3 Q An M.C., who kind of acted as a lookout on the
4 property?

5 A Yes. Well, M.C., he didn't know how to play cards.
6 He don't know how to play Spades, but he would come over.
7 I would cook all the time, and M.C. always came to the
8 house so he can get in my pot.

9 Q You testified that the doors to the bedrooms had
10 some curtains on them.

11 A Yes.

12 Q Heavy covers.

13 A Yes.

14 Q So, you couldn't see through those covers, right?

15 A Well, the house didn't have any air conditioning,
16 like I explained, and the only air conditioning was at
17 the end of the house on one side. So, what we did in the
18 daytime, when it was blazing hot, was tie the covers
19 together in the middle, like a bow, so the air could come
20 through with the fans throughout the house to make a
21 breeze.

22 Q Okay. But if someone were getting undressed or
23 laying down to sleep, they would close those curtains to
24 have some privacy, correct?

25 A Right.

1 Q Okay. And you couldn't see through those curtains
2 when they were closed, right?

3 A No, but most of the time the curtains weren't
4 closed, because we did our showers at night. And it was,
5 like, too hot in the daytime to take a shower, change
6 clothes. We basically got dressed like, once a day, sat
7 around. Nightfall, we would dress again. So, the house
8 would stay open. Like, the kitchen door I would have
9 open, because I would cook a lot in there. And like I
10 said, we didn't have an air condition but one.

11 Q Okay. But you definitely couldn't see through those
12 curtains at night, especially when the lights were out,
13 if they were closed.

14 A Right.

15 Q Right?

16 A Right.

17 Q Okay. And Paulette, when you -- when you stayed at
18 this property, you did go to sleep, right?

19 A I did go to sleep, yes.

20 Q Okay. And you guys cut the lights out when you
21 sleep, right?

22 A Yes, but we had to leave the kitchen light on
23 because we had roaches.

24 Q Okay. But nobody slept with the lights on.

25 A Just only the kitchen light.

1 Q Okay. So, you were not with your brother Jimmy at
2 all times when you were at this house, and there were
3 sometimes that Jimmy was not supervised with his two
4 boys, correct?

5 A Like I said, he had the first girlfriend that slept
6 in his room named Mahogany, with her five-year-old son.
7 And when Jimmy and his girlfriend was together, the two
8 twin boys would sleep in my son, Simon's, room.

9 Q Okay.

10 A Because at the time, he was young, too.

11 Q But Mahogany did not live there the entire time that
12 Jimmy lived there, correct?

13 A No, no, she did not.

14 Q And neither did Cynthia, correct?

15 A Cynthia came after Mahogany left, and Cynthia and
16 Jimmy stayed in the same room. And I think about the
17 time that me and my husband decided to leave, Cynthia had
18 already left.

19 Q Okay. So, Jimmy was there during a period of time
20 without a girlfriend that lived there, correct?

21 A Yes. And that --

22 Q Okay. Thank you.

23 A Okay. I'm sorry.

24 Q Now, Jimmy is your brother.

25 A Yes, he is.

1 Q And you love your brother.

2 A I do.

3 Q And you do not want to believe that your brother
4 molested his own children. Is that right?

5 A Yes.

6 MS. DEYSACH: Thank you. I have no further
7 questions. Thank you, Judge.

8 A Okay.

9 MS. CAMPBELL: Just one final follow-up.

10 THE COURT: Yes, ma'am.

11 PAULETTE CROCKETT

12 RE-DIRECT EXAMINATION BY MS. CAMPBELL:

13 Q Paulette, would you have ever allowed pornographic
14 movies in your home?

15 A No, because, at the time -- see, the ones who's
16 paying the bills inside the house, the house becomes
17 theirs, at the time, because me and my husband paid the
18 bills. Jimmy didn't have a job. So, Jimmy wouldn't have
19 been able to bring anything in the house when I was under
20 the supervision of it at all. I had young children, too.
21 So, it would've never went down like that.

22 MS. CAMPBELL: Thank you so much, Paulette.

23 MS. DEYSACH: Nothing further. Thank you, your
24 Honor.

25 THE COURT: All right. May Ms. Crockett be excused?

1 around here, and you're going to place your left hand on
2 the *Bible*, and raise your right hand, and Ms. Young is
3 going to administer the oath, please.

4 LEROY CROCKETT: All right.

5 THE COURT: Thank you, sir.

6 LEROY CROCKETT: You're welcome.

7 MADAM CLERK: Do you solemnly swear to truthfully
8 answer all questions asked of you by this Court, so help
9 you God?

10 LEROY CROCKETT: Yes, ma'am.

11 MADAM CLERK: Please be seated. State your name and
12 spell it for the Court, please.

13 LEROY CROCKETT: Yes, state my name?

14 THE COURT: Yes, sir.

15 LEROY CROCKETT: How you all doing? I'm Leroy
16 Crockett.

17 LEROY CROCKETT

18 DIRECT EXAMINATION BY MS. CAMPBELL:

19 Q Good afternoon, Leroy.

20 A Hi.

21 Q Thank you for being here.

22 A You're welcome.

23 Q I'm going to ask you a couple of questions now about
24 living out on Saint Helena with your wife, Paulette.

25 A Um-hmm.

1 Q In that white house on the family property. Do you
2 remember that time?

3 A Yeah.

4 Q That you lived out there?

5 A Yeah.

6 Q Okay. Do you also remember talking to this
7 investigator, Mr. Fraser, when he was investigating this
8 case?

9 A Yes.

10 Q Okay. Great. Now, Leroy, do you remember who lived
11 in that house with you and Paulette when Jimmy was living
12 there?

13 A Yeah.

14 Q Who was living there?

15 A It was me; myself; my wife; my three kids; my
16 brother-in-law, Jimmy, James Simmons; --

17 Q Um-hmm.

18 A -- and one of his girlfriends. The -- the two twin
19 boys, I -- I want to say they lived there, because they
20 were there the majority of the time, most of the time.
21 Well, actually, it's safe to say, yeah, they pretty much
22 lived there. I mean, they home was across the yard --

23 Q Um-hmm.

24 A -- at Rose trailer.

25 Q Right.

1 A But they was pretty much in the home with us.

2 Q Leroy, do you remember that the woman that lived
3 with Jimmy for a period of time there was named Mahogany?

4 A Yeah.

5 Q Does that sound about right?

6 A Yeah.

7 Q Okay.

8 A Yeah, his girlfriend.

9 Q Right. Has Mahogany been here with you, or in the
10 courthouse today? Have you seen her at all?

11 A Yes.

12 Q Okay. And Paulette's here, and you're here, and
13 Mahogany's here. Did Cynthia Goethe live with Jimmy at
14 some point out there?

15 A At one point in time, yes. This -- that was after
16 him and Mahogany had broke up or whatever, and her and
17 her -- her son, Mahogany and her son, when they was
18 there. Cynthia was after the fact, was after Mahogany
19 and her son had done left.

20 Q There's been some question about whether or not
21 people were coming up to the property, other than family.
22 Did Jimmy ever have any friends or strange men up to the
23 property that you're aware of?

24 A No. That wasn't allowed.

25 Q Okay.

1 A What I mean by that wasn't allowed, just any and
2 everybody couldn't come up there on the family land.

3 Q So, just family.

4 A Just pretty much family, yeah.

5 Q Now, do you remember Officer Fraser questioning you
6 about an allegation that you walked in on Jimmy sexually
7 assaulting one of the boys? Do you remember that?

8 A Yeah, I remember that.

9 Q Tell us what happened, what you saw or didn't see.
10 Just help us understand.

11 A Okay. Like I told him a year ago, and like I told
12 him this year, --

13 Q Um-hmm.

14 A -- it never happened.

15 Q Okay.

16 A Just to give you a oversight picture of how a day-
17 to-day -- I'm looking for a word here -- a particular
18 day-to-day function of the house, we was all there. All
19 the people I named that was there.

20 Q Um-hmm.

21 A We didn't have any doors up to the bedrooms.

22 Q Right.

23 A We had a door up to the bathroom, --

24 Q Right

25 A -- which was just a door on hinges. It didn't even

1 have a doorknob.

2 Q Okay.

3 A We had the back door, which was -- we called the
4 back door, which was how you come in the house through
5 the kitchen.

6 Q Right.

7 A We just call it the back door. We had a door on the
8 front, --

9 Q Right.

10 A -- which you would come out -- come through the
11 front, little screen little thing there. We had a little
12 porch, a door. Behind that door was me and my wife's
13 room. And we had the door that separated that room and
14 the prayer room. But all the other door, as far as the
15 two entrances in the kitchen.

16 Q Um-hmm.

17 A Far as the entrances off to the side, little bedroom
18 was for my youngest son.

19 Q Um-hmm.

20 A The bedroom for my other -- my other son and where
21 my daughter was, there was no doors.

22 Q Um-hmm.

23 A We had heavy sheet curtains, blankets.

24 Q Um-hmm.

25 A Anything heavy.

1 Q Um-hmm.

2 A Because it was a old house that their granddad had
3 built from the ground up, back-in-the-day-type deal.

4 Q Um-hmm.

5 A Far as heat, we had a wood burner stove. Well, we
6 burned wood, you know, to project heat for the house.

7 Q Right.

8 A So, in the wintertime, we got cold. So, we had them
9 heavy things up there for privacy and to keep out drafts,
10 stuff like that in the wintertime. But it was -- it was
11 no door, locked doors, anything like that. We was all
12 free to walk in each other rooms. Yeah, you gave the
13 natural respect, door knocking on the little side, just
14 to let whoever in the room know, hey, this me coming in.
15 But it was -- it was never no -- no closed-in area where
16 you could lock doors or anything like that. And like I
17 told the guy, the officer that talked to me, it never
18 happened.

19 Q Okay.

20 A I mean, the kids stayed outside, played with the
21 kids. It -- it was just a bunch of us family --

22 Q Does the fact that --

23 A -- trying to make it from day to day.

24 Q Are you upset by the fact that Jimmy's been accused
25 of this?

1 A I'm -- I'm a little bit -- I'm a little bit, because
2 he's -- I mean, he is my brother-in-law, and I know him.
3 Me and him spent most of our time together. This man
4 taught me how to do things I would have never know how to
5 do, because I'm not from here. And it just kind of mind-
6 boggling that something like this would just, phew,
7 appear.

8 Q Right. Well, let me ask you this, Leroy. Jimmy did
9 discipline the boys, though, right?

10 A Yes. I mean, I disciplined mine while I was there.

11 Q And did he ever make them stand on the wall, or do
12 pushups, and things like that?

13 A Yeah, he would make them -- he would make them stand
14 on the wall. Like, just to give you a picture, say, we
15 all outside, all the kids running around playing, doing
16 they thing. We all just sitting around, just enjoying
17 the good weather, and -- and one of the boys done, say,
18 hit one of the other kids.

19 Q Um-hmm.

20 A And he was told to stop.

21 Q Right.

22 A But he kept doing it.

23 Q Right.

24 A So, instead of spanking them or anything like that,
25 put you on the wall for ten minutes.

1 Q Right.

2 A Yeah, you in time out; go in the wall. And, oh.
3 No, go on the wall. Turn around, face the wall. When
4 you done, we'll let you go about, you know, feel you can
5 behave with the other kids and stop hitting people, then
6 you go back out. That's just an example. That's just to
7 show you how we did it.

8 Q Correct. I appreciate that example. Thank you very
9 much. It helps understand how things were done out
10 there. So, if you had ever seen anything that was like
11 what's been described you walking in on, you would have
12 reported it or done something to help those boys, right?

13 A It would've happened, and just to be honest, then,
14 my brother would have problems with me.

15 Q Right.

16 A Because we don't -- I mean, it just ain't how we get
17 down. Because it would've -- it would've happened, he
18 would've had problems. He would've had a problem with
19 me, he would've had a problem with his sister, he
20 would've had a problem with Uncle John-John that's on the
21 land. He would've had a problem with -- he would have
22 had problems. And it -- it don't -- it -- no.

23 Q Thank you. Now, I think I might be right, but you
24 work here in town. Is that right?

25 A Yes, ma'am. I work at Blackstone's Café.

1 Q Okay. Are you a cook there?

2 A Cook/dishwasher. I do both.

3 Q Okay. Just one second, Leroy. Okay, Leroy, thank
4 you very much for being here.

5 A You're welcome.

6 MS. CAMPBELL: I turn the witness over.

7 THE COURT: Okay.

8 MS. LEMPESIS: Thank you, your Honor.

9 LEROY CROCKETT

10 CROSS-EXAMINATION BY MS. LEMPESIS:

11 Q Leroy, hello. How are you?

12 A Hey, how are you doing?

13 Q Good. You were just saying that, if you had known
14 that Jimmy was sexually abusing Minor 2 and Minor 1 that
15 you would have had a problem, that your sister would have
16 had a problem, that all the family would have had a
17 problem, and he would have known about it.

18 A Yeah.

19 Q And you all would have done something about it.

20 A Yeah.

21 Q But you didn't say anything about you would have
22 called the police.

23 A No, I didn't say anything, but I would call the
24 police, would eventually. I mean, that would've
25 happened.

1 Q So, do you recall when you talked to Investigator
2 Fraser?

3 A Yes.

4 Q And do you remember telling Investigator Fraser that
5 there was one instance when you had seen bruising all
6 over Minor 2 that Jimmy had beat him so badly that he
7 couldn't go to school?

8 A I don't recall. I don't think I told him that he
9 was bruised up from James beating on him.

10 Q You don't remember telling Investigator Fraser that
11 there was an instance when Jimmy beat Minor 2 so bad that
12 he was bruised all over?

13 A Hum-um.

14 COURT REPORTER: Is that no?

15 A That's a no. I'm sorry.

16 Q Okay. And you don't remember -- or do you remember
17 telling -- do you remember telling Investigator Fraser
18 that, typically, the boys would sleep in the bedroom with
19 Jimmy?

20 A Yeah, I told him that.

21 Q And did you remember and isn't it true that you told
22 Investigator Fraser that there was an instance when you
23 did walk in on -- walk into the bedroom and saw that
24 Jimmy was laying on the bed, and that one of the boys was
25 sitting on the edge of the bed.

1 A Yeah, I -- I recall saying that.

2 Q Okay. Do you recall was that nighttime? Was it
3 dark out?

4 A I don't think we covered whether what part of the
5 day it was.

6 Q Okay.

7 A And if we did, I don't remember that.

8 Q Okay. Do you remember telling Investigator Fraser
9 that you didn't think that -- that you knew how these
10 kids are, and that you didn't think -- believe that these
11 boys would make up something like this?

12 A Say that again.

13 Q Do you remember telling Investigator Fraser that you
14 knew how these kids are, --

15 A Um-hmm.

16 Q -- and that you didn't think they would make up
17 something like this?

18 A That I didn't think they would make up something
19 like?

20 Q Something like this allegation of sexual abuse of
21 their father molesting them.

22 A Hmm.

23 Q You don't remember telling Investigator Fraser that?

24 A I don't quite remember, no. I think I -- I think I
25 probably said something like that, you know how kids are;

1 they probably made up something like that. But I don't
2 -- I really don't recall that particular conversation
3 there.

4 Q Okay. That's fine. And Leroy, so, you said that --
5 sounds like from how you've described your relationship
6 with Jimmy that you all are pretty close, right?

7 A Yeah.

8 Q And you call him your brother.

9 A Yeah, I mean, he is my brother-in-law and -- but I
10 never -- well, all like, all my brother-in-laws, I drop
11 the in-law part.

12 Q Sure.

13 A I mean, you're family, you're family, you know.

14 Q So, you call him your brother. You all are pretty
15 tight.

16 A Yeah, I mean --

17 Q You lived together in the past. You all are
18 friends, right?

19 A Yeah. We had our ups and downs and our bumps and
20 bruises and arguments and different things, but yeah.
21 Overall, yeah, we're pretty tight.

22 Q All right.

23 A I mean, due to the fact when I married into this
24 family, that was the only brother-on-law that I really
25 knew.

1 Q Okay.

2 A I didn't really know the other ones like that.
3 Maybe that's because we lived in the same house. I don't
4 -- I don't know, but yeah.

5 Q Talking about living in the same house, isn't it
6 true that you all didn't live -- Jimmy was living in that
7 house before you and -- you and your -- Ms. Paulette
8 moved into the house, right?

9 A This last time? The last time we lived in the
10 family house?

11 Q The time we're talking about when --

12 A Yeah, he was there, from my understanding, he was
13 there before we moved there.

14 Q Well, and you remember, because -- so, when you guys
15 moved in, when you and Paulette and your three children
16 moved in, Jimmy was already living there.

17 A Yeah.

18 Q And so, the boys were already staying over there
19 with them, with him.

20 A Now, that, I -- I, you know, that I don't know.

21 Q Okay.

22 A I know that he was already there, but I don't know
23 if the boys was there or not, because we wasn't there.

24 Q So, the boys -- but the boys lived with Ms. Rose
25 Simmons still, at that point.

1 A Yeah.

2 Q Right?

3 A Yeah.

4 Q Which is just a couple of yards away.

5 A Well, no, it's right across the yard, actually.

6 Q Right.

7 A Yeah.

8 Q Okay. So, he was -- so, it's true that he was
9 living there for some of the time that you were not
10 living there with your wife.

11 A Yeah.

12 Q Okay. And we talked to him about these curtains
13 that were hanging as doors. So, you couldn't see through
14 those curtains if they were closed. Is that right?

15 A No, you can't see through them.

16 Q Okay. And you said, you know, people got their
17 privacy. So, people would close those curtains
18 sometimes, right?

19 A Yeah, I mean, well, they basically stay closed. I
20 mean, --

21 Q Okay.

22 A Yeah, they -- it -- -- it -- it's -- it wasn't like
23 a curtain curtain that you would put up to your front
24 room window or your kitchen window. It was like a heavy
25 cloth-like.

1 Q Like a blanket or something?

2 A Like a blanket or something.

3 Q Okay.

4 A You know, some solid --

5 Q Something that you couldn't see through.

6 A Right, you can't see through it.

7 Q Sure, so you could have some privacy.

8 A Right.

9 Q Okay. And you said you typically would knock a
10 couple of times before you would walk into the room.

11 A Well, you know, you walk up to the room, you don't
12 just want to walk in the room.

13 Q Sure.

14 A It's somebody's bedroom, you know. That's just out
15 of common respect, you know. He, yo, bubba, it's me.
16 Oh, come on.

17 Q So, in case they were doing something they didn't
18 want you to see, they could stop doing that before you
19 walked in, right?

20 A Well, I mean, I wouldn't -- I won't say that, but.

21 Q So, going back to your relationship with Jimmy, you
22 all are close, and you've known each other a long time.
23 Isn't it true that you don't want to believe that Jimmy
24 would sexually molest his children? Isn't that correct?

25 A Yeah, I mean, yeah. Who would want to believe that

1 --

2 Q Sure.

3 A -- one of they family members did something like
4 that to they nephew or to they niece.

5 Q That's right. Thank you.

6 A I mean, that's just --

7 Q Thank you, Mr. Crockett.

8 A You're welcome.

9 MS. LEMPESIS: I don't have anymore questions.

10 A Okay.

11 THE COURT: Anything further, Ms. Campbell?

12 MS. CAMPBELL: Not from this witness. No, thank
13 you.

14 THE COURT: Okay. Any objection to Mr. Crockett
15 being excused?

16 MS. CAMPBELL: No objection.

17 THE COURT: You are excused, sir. Thank you.

18 A All right. Thank you.

19 THE COURT: You all come forward for a minute.

20 OFF-THE-RECORD BENCH CONFERENCE,

21 OUT OF HEARING OF JURORS. PRESENT:

22 THE COURT, MS. LEMPESIS, MS. DEYSACH,

23 MS. CAMPBELL.

24 END BENCH CONFERENCE.

25 THE COURT: Ladies and gentlemen, we're just

1 attempting to figure out scheduling. It's my
2 understanding we'd like to go ahead and call one more
3 witness today. So, Ms. Campbell, if you will call your
4 next witness.

5 MS. CAMPBELL: Your Honor, at this time we're going
6 to call Mahogany Washington.

7 THE COURT: Okay. Come on forward, Ms. Washington.

8 MADAM CLERK: Would you place your left hand on the
9 Bible, and raise your right hand for me, please, ma'am?
10 Raise your hand. Do you solemnly swear to truthfully
11 answer all questions asked of you by this court, so help
12 you God?

13 MAHOGANY WASHINGTON: I do.

14 MADAM CLERK: Please be seated. State your name and
15 spell it for the court reporter, please.

16 THE COURT: Ms. Washington, if you'll spell your
17 first and last name for my court reporter, as well, I
18 appreciate it.

19 MAHOGANY WASHINGTON: Okay. It's okay if I sit
20 down?

21 THE COURT: Please. Thank you.

22 MAHOGANY WASHINGTON: Okay. Mahogany,
23 M/a/h/o/g/a/n/y, Washington.

24 MAHOGANY WASHINGTON

25 DIRECT EXAMINATION BY MS. CAMPBELL:

1 Q Thank you, Ms. Washington. Mahogany, how do you
2 know James Simmons, my client?

3 A I met him a couple years ago when I was working at
4 Carquest.

5 Q Okay. And did you wind up living with him at any
6 point?

7 A I did.

8 Q Okay, with your relationship with him. And when you
9 lived with him, do you remember where you guys lived
10 together?

11 A It was on Ladies Island, I think.

12 Q How about Saint Helena Island?

13 A Saint Helena Island. Excuse me.

14 Q A little bit further out.

15 A Yes.

16 Q And do you remember the house that you lived in?
17 Was it a white house? Do you have any recollection of
18 that, the color of the house?

19 A I think it was white.

20 Q Um-hmm.

21 A I think it was white and green, if I'm not mistaken.

22 Q Okay. When you lived with James, or Jimmy -- do you
23 call him Jimmy?

24 A I call him James.

25 Q Okay.

1 A Um-hmm.

2 Q When you lived with James, did you have children
3 living there, as well?

4 A I had my son there.

5 Q Your son. And how old was your son when he was
6 living there?

7 A At the time, he was six.

8 Q Okay. And do you know who Minor 1 and Minor 2
9 are?

10 A Um-hmm.

11 Q Okay And who are they?

12 A Those are James' sons.

13 Q Correct. All right. Well now, when you were living
14 with him out there with your son and his boys were there,
15 how did you see James interacting with his children and
16 with your son?

17 A Um-hmm. He was reacting as the same as my son,
18 playing with them, playing video games. That's really
19 about it. Going outside, playing, catching a football.
20 Just --

21 Q How did the boys act toward their father? Did they
22 act affectionate to him like they cared for him?

23 A They was -- yeah, they was happy to see him, and you
24 know, playing and everything. So, I mean, like a normal
25 child.

1 Q Did you ever see them ask any to go back over to
2 Aunt Rose's house, instead of staying with Dad?

3 A Say that one more time.

4 Q Did you ever see the boys ask could they go back
5 over to Aunt Rose's house, you know, the trailer across
6 the way, instead of staying with Dad?

7 A No, I mean, because it's like, well, since my son
8 was over there, they was always spending the night, and
9 it was basically back and forth.

10 Q Did sometimes your son and the boys all sleep
11 together in the house?

12 A Um-hmm.

13 COURT REPORTER: Is that yes, ma'am?

14 A I'm sorry. Yes, ma'am.

15 COURT REPORTER: Thank you.

16 Q At some point, were other people like Leroy and
17 Paulette and their kids there?

18 A Yes.

19 Q Okay. At some point, did you leave from Saint
20 Helena and move out of the home?

21 A I did, in October.

22 Q And is it possible that you're the woman that was
23 sitting on a pile of cash with Jimmy at that house?

24 A No, ma'am.

25 Q Do you have any recollection of anything like that

1 happening?

2 A No, ma'am.

3 Q Okay. Is it possible that you ever saw Jimmy with a
4 gun?

5 A No, ma'am.

6 Q Okay. Did you ever see Jimmy offering cigarettes or
7 something to smoke to the children?

8 A No, ma'am.

9 Q Okay. When you lived in that house, did you sleep
10 in the same bed with James?

11 A Yes, ma'am.

12 Q Okay. Now, you've been here waiting to testify for
13 a couple of days now. Would it be fair to say that you
14 were shocked when these accusations were made?

15 A Very shocked, yes.

16 Q And why were you shocked?

17 A Because he's not that type of person. I mean,
18 because he was around my son, and my son never report or
19 say anything to me about him touching or anything like
20 that.

21 Q And you're not going to, obviously, try to lie or
22 anything like that to help him.

23 A No, I have no reason to.

24 MS. CAMPBELL: Okay. Thank you so much.

25 MS. DEYSACH: Thank you.

1 MAHOGANY WASHINGTON

2 CROSS-EXAMINATION BY MS. DEYSACH:

3 Q Hey, Mahogany. How are you doing?

4 A How are you doing?

5 Q Your son was about the twins' age. Is that right?

6 A Well, somewhat, I mean, because he was, like, six.

7 Q Okay. All right. And do you remember about how old
8 the twins were?

9 A At that time?

10 Q Um-hmm.

11 A I can't remember.

12 Q But were they close in age?

13 A Yeah, they was close.

14 Q Okay. So, they enjoyed spending time together.

15 A Um-hmm.

16 Q Playing games together.

17 A Um-hmm.

18 Q They had fun. They enjoyed each other's company.

19 A Right.

20 Q And how long did you live at Seaside Road with
21 James?

22 A I want to say, like, maybe at the most like, six
23 months.

24 Q Okay. So, we're really talking about six months
25 that you were really at this property. Okay. And you're

1 a good mom, right?

2 A Oh, yes.

3 Q And you wouldn't purposely let your child around a
4 child molester, right?

5 A Right.

6 Q And you wouldn't want to believe that somebody that
7 you dated and you let your child around would molest his
8 own children.

9 MS. CAMPBELL: Objection, your Honor. I'm going to
10 object to the characterization and the use of the word
11 *child molester*. And I suppose, when the -- if you want
12 to have the State continue, I'll put my objections to
13 that on the record.

14 THE COURT: Okay.

15 MS. DEYSACH: I believe my question was finished.
16 Thank you. Thank you, Mahogany.

17 THE COURT: Anything further?

18 MS. CAMPBELL: No, your Honor. Thank you. I do
19 have another witness.

20 THE COURT: Okay. Any objection to Ms. Washington
21 being excused from anyone?

22 MS. DEYSACH: No, ma'am.

23 THE COURT: You're excused, ma'am. Thank you.

24 A Okay.

25 THE COURT: All right. And you would like to go

1 ahead and call another witness today?

2 MS. CAMPBELL: If I may.

3 THE COURT: Please.

4 MS. CAMPBELL: Okay. Thank you. We're going to
5 call Rosa Williams. I'm going to switch that around just
6 a little bit.

7 THE COURT: Okay.

8 MS. CAMPBELL: Katherine Simmons.

9 THE COURT: Yes, ma'am. Okay. Come on up here, Ms.
10 Simmons.

11 KATHERINE SIMMONS: Okay.

12 THE COURT: Just right around here. You're going to
13 place your left hand on the *Bible* and raise your right
14 hand. Ms. Young is going to administer the oath. Thank
15 you.

16 KATHERINE SIMMONS: Right here?

17 MADAM CLERK: Put your left hand on the *Bible* and
18 raise your right hand.

19 KATHERINE SIMMONS: Oh. Okay.

20 MADAM CLERK: Now, raise your right hand for me.

21 KATHERINE SIMMONS: Okay.

22 MADAM CLERK: Do you solemnly swear to truthfully
23 answer all questions asked of you by this court, so help
24 you God?

25 KATHERINE SIMMONS: Yes, ma'am.

1 MADAM CLERK: Please be seated. State your name and
2 spell it for the Court, please.

3 KATHERINE SIMMONS

4 DIRECT EXAMINATION BY MS. CAMPBELL:

5 Q Hi, Katherine.

6 A Hello.

7 Q How are you related to James Simmons?

8 A That's my brother.

9 Q Okay. Now, do you and James share the same parents,
10 Christine and James?

11 A Yes, ma'am.

12 Q Okay. Now, and Paulette's your sister, too, right?

13 A Yes, ma'am.

14 Q Okay. And David and Arnold and Craig and Rosa, as
15 well.

16 A Yes, ma'am.

17 Q All right. Now, have you had the opportunity to
18 observe James with his two boys and how he interacted
19 with them?

20 A Yes, ma'am.

21 Q Okay. And when you observed him interacting with
22 the boys, how would you describe those interactions that
23 you were a part of and witnessed?

24 A Fun, hanging out, doing fun things, like family
25 stuff, you know. Cookouts, and sometimes we'd get little

1 pools and let the kids play in the pool, and we'd just
2 sit around and just hang out and stuff like that.

3 Q Sounds great. Now, when the family would get
4 together out there on the property, were there other
5 people there besides family? Did you have any strangers
6 up on the property, or was it just family?

7 A Not really, mostly just family.

8 Q Okay. When you found out about the accusations
9 against your brother, were you shocked to learn about
10 those accusations?

11 A I was very shocked.

12 Q And do you have any recollection of seeing James
13 discipline his sons?

14 A Putting them on the wall.

15 Q Okay. That sounds like a family thing. What does
16 that mean?

17 A That's what we do, put them on the wall.

18 Q What does that mean, *put them on the wall*?

19 A Like, if, you know, they're acting out of way, you
20 know, it's like -- it's like a time out, you know. Most
21 people just set them in a chair or something like that,
22 but we just make them stand on the wall for, you know,
23 ten minutes. Depends on what they've done.

24 Q And do you know Johnnie Simmons and Cynthia Simmons?

25 A I do. That's my uncle and his wife.

1 Q Okay. And do you associate with them at all, or
2 have any gatherings with them, or hanging out with them?

3 A I say hi and bye, but I do that with all my family,
4 because I'm a busy woman.

5 Q And do Johnnie and Cynthia come up and hang out on
6 Saint Helena, as well, sometimes, or they didn't come out
7 to the property?

8 A I've never seen Cynthia on the property myself.

9 Q Okay.

10 A But Uncle John did used to come by the house.

11 Q Okay. And when you saw James with the boys, did it
12 appear that they were happy to be with him and wanted to
13 be with him?

14 A Always. Always, like, they were happy to like, it's
15 my dad, to hang out with my dad and stuff.

16 Q Did you ever see them ask to leave James and go back
17 over to Aunt Rose's?

18 A No, ma'am.

19 MS. CAMPBELL: Okay. That's all I have. Thank you.

20 KATHERINE SIMMONS

21 CROSS-EXAMINATION BY MS. LEMPESIS:

22 Q Just a couple of things, Katherine. So, where do
23 you live?

24 A I live in Burton.

25 Q In Burton.

1 A Yes, ma'am.

2 Q Okay. So, you don't live in the family property on
3 Seaside, right?

4 A No, ma'am. I did before.

5 Q You did before.

6 A Um-hmm.

7 Q But you didn't live there with Jimmy between 2008
8 and 2009?

9 A No, ma'am.

10 Q Okay. So, you just went over there and visited
11 sometimes?

12 A Yes, ma'am.

13 Q Okay. When all the family would go over.

14 A Yes, ma'am.

15 Q Okay. And you said before that you all would have a
16 lot of people over. You just testified that it was
17 mostly just family.

18 A Family -- well, --

19 Q So, would there be some people who weren't part of
20 the family?

21 A Well, not -- not like, they weren't married into the
22 family or nothing. Like, my boyfriend, you know. Well,
23 my fiancée. Or like, if my daughter would come, you
24 know, she might bring her friend or something like that,
25 one of her girlfriends.

1 Q Somewhat random people that weren't related, you
2 know.

3 A Well, no, I wouldn't call it random people. It was,
4 you know, friends of the family that's been friends of
5 the family for awhile. Stuff like that, yeah.

6 Q So, not just when you say family, we're not talking
7 about people who are actually related to people by blood
8 or marriage. There was some non-family members there.

9 A Friends.

10 Q Thank you. Okay. And said you saw Jimmy playing --
11 you would see Jimmy playing a lot with the boys and
12 playing outside and doing fun stuff.

13 A Taking care of them.

14 Q Okay. Is that because he didn't work, or would he
15 stay home a lot? Did he have a job? Do you know if --

16 A Well, he's -- I'm -- I'm -- that's a hard question
17 for me to answer, because he's like a entrepreneur, you
18 know, he fixes cars and stuff like that, so.

19 Q Okay. Well did he work for anyone? Did he have a
20 boss?

21 A I can't answer that.

22 Q Okay. And -- okay. So, he didn't -- he's was an
23 entrepreneur. He was always playing with the boys. So,
24 he had a lot of time to spend with the boys, I guess,
25 huh? He did.

1 A Yeah. I guess he is.

2 Q And he spent a lot of time with the boys.

3 A Yeah.

4 Q Okay. And again, just one more time, you didn't
5 live on [REDACTED]

6 A I did live at [REDACTED] but not in the
7 timely manner.

8 Q Okay. Thank you. Nothing further.

9 A You're welcome.

10 MS. CAMPBELL: And I don't object if she's excused,
11 your Honor.

12 A Oh, sorry.

13 THE COURT: You're excused. Thank you for coming.

14 A Oh. Thank you.

15 MS. CAMPBELL: And your Honor, for the record, and
16 for the Court's information, I do have just one more
17 short witness, which I think we could get through.

18 THE COURT: Certainly.

19 MS. CAMPBELL: Okay.

20 THE COURT: Are you all okay? Everyone ready?
21 Okay. Very well. Who is this, Ms. Campbell?

22 MS. CAMPBELL: I'm sorry, your Honor. This is Rosa
23 Williams.

24 THE COURT: Ms. Williams, come on forward to be
25 sworn, please.

1 MADAM CLERK: Would you place your left hand on the
2 *Bible* and raise your right hand for me, please? Do you
3 solemnly swear to truthfully answer all questions asked
4 of you by this Court, so help you God?

5 ROSA WILLIAMS: Yes, ma'am.

6 MADAM CLERK: Please be seated. State your name and
7 spell it for the Court.

8 ROSA WILLIAMS: My name is Rosa Williams.

9 THE COURT: Ms. Williams, will you adjust that
10 microphone? You just need to pull it down. Yes, ma'am.
11 Thank you.

12 ROSA WILLIAMS

13 DIRECT EXAMINATION BY MS. CAMPBELL:

14 MS. CAMPBELL: Rosa, thank you for being with us.
15 Are you okay?

16 A Um-hmm.

17 Q You've been here two long days, right?

18 A Yes, ma'am.

19 Q And are you James' sister?

20 A Yes, ma'am. I'm the baby sister.

21 Q You're the baby. Okay. Has this been stressful for
22 you?

23 A Yes, ma'am.

24 Q Have you been worried about your brother?

25 A Yes, ma'am.

1 Q Okay. Now, you have other siblings. You have
2 Paulette and David and Arnold and Craig, right?

3 A Yes, ma'am.

4 Q Okay. James Simmons, Sr., is your daddy, right?

5 A He's my stepdad.

6 Q Okay. You called him Dad, right?

7 A Yes, ma'am.

8 Q Okay. And you consider them family.

9 A Yes, ma'am.

10 Q The Simmons'.

11 A Yes, ma'am.

12 Q Did you ever live on the property, the family
13 property out there at Saint Helena?

14 A When we first got here, we lived in, like, a trailer
15 in the very back, but that was, like, 20 years ago.

16 Q Now, after you lived there, you must have moved off
17 the property at some point, right?

18 A Yes, ma'am.

19 Q Okay. And did you -- where did you move?

20 A Well, I've lived all over Beaufort. I lived with my
21 mom most of the time.

22 Q Okay. And did James ever live with you?

23 A My brother?

24 Q Yes.

25 A Yes.

1 Q Okay. And do you remember vaguely, kind of like,
2 was it early, like 2001, 2003, any --

3 A I remember when he first moved in with me. It was
4 when I was living in the trailer that burnt down. It was
5 like, maybe 2002, maybe around there.

6 Q Do you have -- I'm sorry, do you have a husband?
7 Are you married?

8 A Yes, ma'am.

9 Q Okay. And what's your husband's name?

10 A Terrell Williams. Well, his name is Henry Williams.

11 Q And do you have children with him?

12 A Yes, ma'am.

13 Q And did James live in the home with you and your
14 children?

15 A Yes, ma'am.

16 Q Did he babysit your children?

17 A Yes, ma'am.

18 Q Okay. Did you ever see James with Minor 1 and

19 Minor 2

20 A Well, --

21 Q With his children?

22 A Yes, ma'am.

23 Q Okay. How would you describe his relationship with
24 his children?

25 A Well, just like his relationship with just about any

1 child that encounters him. He's always playful, you
2 know, laughs and jokes and plays with them, so.

3 Q Did you see anything that caused you to think he was
4 sexually abusing the boys?

5 A No, ma'am.

6 Q And if you had suspected that, would you have
7 allowed him to be with your children?

8 A No, ma'am, never.

9 MS. CAMPBELL: Okay. I think that's all I have.

10 MS. DEYSACH: Thank you.

11 ROSA WILLIAMS

12 CROSS-EXAMINATION BY MS. DEYSACH:

13 Q Hey, Rosa. How are you?

14 A Good.

15 Q You just testified that Jimmy always has a close
16 relationship with children; is that not true?

17 A Um-hmm. Yes, ma'am.

18 Q And it's true that you never lived on the property
19 at [REDACTED] with Jimmy and his twin boys,
20 correct?

21 A No, ma'am.

22 MS. DEYSACH: Okay. I don't have anything further.

23 Thank you, Rosa.

24 THE COURT: You may be excused. Is there any
25 objection, anyone?

1 Thank you.

2 BAILIFF: Your Honor, the jury is entering.

3 JURORS ENTER COURTROOM 11:19 A.M.

4 BAILIFF: Your Honor, the jury is seated.

5 THE COURT: Welcome back, ladies and gentlemen.

6 Ladies and gentlemen, at this time you are going to hear
7 the closing arguments from the lawyers; and then, I'm
8 going to charge you on the law of this case; and we are
9 going to send the case to you for your deliberations.
10 All right? So.

11 MS. CAMPBELL: May it please the Court?

12 THE COURT: Yes, ma'am.

13 CLOSING ARGUMENT ON BEHALF OF

14 DEFENSE BY MS. CAMPBELL:

15 MS. CAMPBELL: Good morning.

16 RESPONSES BY JURORS.

17 THE COURT: As I begin to talk to you for a few
18 minutes, and it's the last opportunity that I'll have a
19 chance to speak to you. The State of South Carolina is
20 going to come up here and talk with you when I'm
21 finished. I'd like to start with what I feel like was a
22 pretty big issue for me, and I'm not sure if it was for
23 you or not. But the State of South Carolina, it would
24 appear, almost purposefully left you with the impression
25 that the Simmons family lived in a state of squalor on

1 Saint Helena Island. This family, this good family,
2 lived in a place that was falling apart, and frankly,
3 just, well, who would want to live there, let alone two
4 little boys? And they left you with that impression that
5 they were living like this from the age -- from babies,
6 until ten or eleven. And I say to you, is that fair to
7 you? No, absolutely not, to leave you with that
8 impression. Is it right? No.

9 His family had to come in here and explain to you
10 that they don't live like that; that they're a good
11 family, a tight family, a nice family; that they kept
12 that house -- well, you heard Paulette. I don't need to
13 go back through all of that with you. She had a pot of
14 food cooking on the stove. If it was wintertime, there
15 was a fire in the fireplace. The family was sitting on
16 the porch playing cards. Maybe Jimmy was mowing the
17 yard.

18 Leaving you with an impression like that calls into
19 question a number of things. I will tell you that you
20 should ask yourselves what else may you have been misled
21 about? What else have they been unfair to you about?

22 This courtroom is a place of purity and sanctity and
23 justice for every single American citizen. Or not. You
24 live in this country. You are entitled to come in this
25 courtroom and have fairness and equality and justice

1 given to you by the State of South Carolina, by the
2 Defense attorney, and by the Bench. These are the
3 guarantees, the foundations, with which we live and are
4 honored. And to diminish that is wrong.

5 We have to seek the truth. We have to seek to
6 protect the rights of all people, not just a few. Not
7 just a select few. And when accusations are leveled at a
8 man accusing him of having forcible anal intercourse with
9 his children, I mean, what can that man do but say, I
10 didn't do it; I'm not guilty; I'm innocent. What does a
11 man do when that comes at him?

12 Those accusations alone cannot lower the bar for any
13 of us. We can't say, because of the nature of these
14 charges, any responsibility that we have to this
15 courtroom, any duty we have to the system of justice that
16 we all value can be lowered. And if you lower that bar
17 and compromise the integrity of this courtroom because of
18 the type of charges that you're dealing with, no one can
19 say where, as a group or as a country, as a county, as
20 people individually, where are we headed if we do that to
21 this courtroom?

22 Now, you heard testimony from Minor 1 that he tried
23 to call. And I'm going to do my best to remember Minor 1
24 and Minor 2 and their specific testimony. It's been a
25 very long four days, and thank you for staying with us,

1 and you've paid wonderful attention.

2 You heard Minor 1 testify that he tried to call the
3 Sheriff's Department to report this abuse, and his Aunt
4 Rose told him to hang up the phone. And that they called
5 back or something to that effect. And I will guarantee
6 you, if that happened, the State of South Carolina would
7 march a dispatcher into this courtroom and put them on
8 that stand, and have them testify that, yes, that period
9 of time, we got this strange phone call; we got the call
10 back. Never happened, never happened, or you would have
11 it.

12 I will also guarantee you that, of all the talk
13 about the county deputies being out there on the Simmons
14 property looking for some bank robber, if that had ever
15 happened, you would also have an investigator sitting in
16 here on the witness stand, telling you, yes, in 2009, we
17 were on the hunt for somebody to set up a perimeter;
18 sure, the boys saw us on the property. Never happened,
19 or you would know about it. I will tell you that that
20 never happened, the phone call never happened, and the
21 sexual abuse never happened, certainly not by James
22 against his children.

23 One of the most important witnesses, I believe, that
24 you have to consider is Dr. Simmons. Not a family
25 member, but the boys' pediatrician. And he had cared for

1 them since they were little, up until about the age of
2 eleven, when they were adopted.

3 He told you that he is what they call a mandatory
4 reporter. This is someone that is bound by their oath,
5 you know, if you're in a profession, you take an oath,
6 and you have duties and responsibilities, and his oath is
7 to be in a position to and required to develop, to
8 maintain, and to practice a heightened level of scrutiny
9 when it comes to the care and keeping of the children
10 that come into his office.

11 And I saw him. He's a very likeable man. I'm sure
12 he developed a great relationship with the children. And
13 when he developed that relationship with them over the
14 course of those many, many years, he told you, yes, they
15 had problems at home; yes, they had problems at school,
16 long before James ever came back into their lives. Yes,
17 they were ADHD, but you know what? Never ever did I
18 suspect that anyone was mistreating them, was sexually
19 abusing them, was hurting them in any way, shape, or
20 form. Because, you know what? If I did, I would report
21 it.

22 He also gave you the information about the
23 children's mother, Cynthia Goethe, and the fact that
24 she's quite ill, and suffers from schizophrenia.
25 Obviously, her competency would be an issue, and there

1 are questions related that I got into with the children,
2 in terms of perhaps their competency. That's in your
3 hands to judge whether or not you feel like, at the
4 outset, that the children fully are in a position to
5 comprehend the differences between real events, perceived
6 events, things that may have happened, didn't happen, and
7 how they put all that together in their minds.

8 Now, I will also tell you that you've heard evidence
9 that this was a very loving, caring, playful family.
10 They spent time together, they would have a cookout, they
11 would hang out, they would have family, cousins and
12 uncles and aunts up there. They would come up to that
13 property, and they would spend time with one another in
14 what's been described to you and what I believe was a
15 wholesome family environment.

16 You have evidence that, when Cynthia Simmons started
17 spending time with the boys, she decided that Minor 1 was
18 just too feminine; and that she decided that that was
19 wrong that a boy should be that feminine, should be soft,
20 and act like a girl. And therefore, upon her testimony,
21 there was something wrong; has to be something wrong. A
22 boy's not supposed to be like a little girl. And if he's
23 like a little girl, well, something must have happened to
24 him to turn him that way, to make him that way.

25 You have evidence that the man in that home that

1 they went to live in was Johnnie Simmons. Johnnie
2 Simmons said that he felt like it was his job to turn
3 those boys into men, and being a man certainly didn't
4 mean acting like a girl. And that was no way -- I think
5 the phrase like, no way for a man to act and it was
6 wrong, simply wrong.

7 And if you take that mentality of something's wrong;
8 and then, you push it into a situation where [Minor 1] went
9 from living in a home where he was loved and accepted for
10 who he was, act like a girl or not, they loved him and
11 embraced him, and accepted him; going into a very strict
12 religious home where he was labeled unacceptable; he was
13 told it was wrong; and then, he was questioned and
14 confronted by Cynthia about what's wrong with you, what
15 happened to you.

16 I don't even go into questioning why she might have
17 suspected that there was something wrong with him, and
18 then didn't act on it, and waited and calculated a timing
19 on all of that. I leave that to you.

20 But what I do question is the absolutely bizarre
21 nature in which she testified about inspecting his anus.
22 Very problematic and troublesome. I will tell you that
23 nowhere, anywhere, any time, was there any accusation
24 made against James Simmons sexually assaulting [Minor 1] or
25 [Minor 2] until that occurred.

1 You saw her demeanor. You're allowed to judge the
2 demeanor of the witnesses. The Judge will tell you that.
3 She was hostile. She was defensive. In fact, she got so
4 angry with me that she was trying to question me, and
5 violate the rules of how things are done in this
6 courtroom. And I submit to you that all of that draws
7 into question her reliability and her credibility
8 completely.

9 Now, let's focus on how do you keep up with the
10 many, many inconsistencies and many differences in the
11 stories that Minor 1 and Minor 2 have told since they were
12 confronted and brought through all of this. You know,
13 I'll tell you, I think one thing is for sure. The truth
14 stays the same. A lie is going to change over time, and
15 in different settings, and different scenarios, because
16 it's hard to keep up with a lie. But you're never going
17 to have the truth alter itself. And so, I'll say to you,
18 I feel like the reason that you're getting different
19 versions and different scenarios is because they're
20 confused. And I'm not saying this is purposeful on their
21 part, not at all.

22 I'm saying that, if you put a child in a position,
23 just like our very reliable and credible Dr. Simmons
24 said, where you start imprinting them with ideas. That
25 is a very bad situation to start. And if you have a

1 child who already feels put down, criticized, ostracized,
2 criticized to the point of there's something wrong with
3 you, they're vulnerable.

4 I will tell that you I believe, and of course, just
5 my belief, you have 12 minds, you have 12 votes, you have
6 12 individual opinions, which I encourage you to guard
7 carefully as you deliberate. You should not allow
8 someone else to overtake you if you feel firmly and
9 strongly. Whatever your opinion is, it's your opinion,
10 and you are entitled to it.

11 I will tell you that one of the things that they
12 testified to kind of falls in line with the notion that
13 maybe everything that we as boys have done that's bad,
14 maybe we need to shift some blame. Little boys, young
15 boys, tend to experiment with smoking cigarettes. If
16 they find -- we're all too familiar, if they find a gun,
17 which they've testified they found a gun, they want to
18 play with it. And of the sudden now, it's Dad who made
19 me smoke the cigarette; it's Dad who gave me the gun;
20 it's Dad who did these things to me. Shifting and moving
21 around what really happened, into a scenario that didn't
22 happen, is entirely possible, because I don't think any
23 of us can go to the point where we believe that seven-,
24 eight-, and nine-year-old children are being encouraged
25 to smoke cigarettes. It just didn't happen. Certainly,

1 Leroy and Paulette will tell you that would not be
2 tolerated. And all the stuff about the pornographic
3 videos, I believe Paulette when she says that's not in
4 her house.

5 And how probable is it that men would come up to the
6 house, and that their father would pay these men money to
7 allow his sons to perform oral sex on them? Shouldn't it
8 be the opposite? None of it makes any sense. And I'll
9 tell you, I think that **Minor 2** got pulled into this. I
10 think **Minor 2** got pulled into it once the accusations were
11 made by **Minor 1**. And he was pulled, probably kicking and
12 screaming, into the craziness, because you saw when he
13 was here with you, he was more than reluctant to
14 participate and to go forward with the lie.

15 And then, the State had to bring in the video where
16 he was lead repeatedly by the Ashley Bratcher woman.
17 Well, don't you want to talk about this? Don't you want
18 to say this? Didn't this happen? Didn't that happen?
19 Come with me to where I need to get you to back up the
20 accusations that have been made. You can consider
21 whether you think he was lead, coached, practiced, all of
22 that comes into it.

23 And as I close, I will just say to you that the
24 Judge's charge to you is very important. She will tell
25 you that the burden of proof of guilt of James Simmons is

1 on the State of South Carolina. And we don't throw
2 around the phrase *beyond reasonable doubt* loosely in this
3 room. It is very serious. And beyond reasonable doubt.
4 Reasonable doubt, she will tell you, is the kind of doubt
5 that would cause you to hesitate to act. And in your
6 deliberations, if you hesitate, if you feel a hesitation
7 to act that is reasonable doubt, the State has failed to
8 meet their burden of proof, and you must find James
9 Simmons not guilty.

10 The presumption of innocence is also a foundation of
11 this room. Every single person, no matter who they are,
12 sits at that table with a robe of righteousness and
13 innocence cloaked upon their shoulders, and that will not
14 and cannot be removed by anyone, unless and until, as her
15 Honor tells you, the 12 of you together unanimously agree
16 that you should strip him of that.

17 And your verdict cannot be changed. It cannot be
18 undone; it cannot be removed. It would be as if you
19 fired a gun, shot a bullet, you cannot take that bullet
20 back. It is forever. I trust that all of the evidence
21 will be considered by you. We trust in you and your
22 individual verdicts, and we turn this over to you, and I
23 say to you, that as the State begins to speak with you,
24 ask yourselves, what would Ms. Campbell say about that?
25 And you yourself ask yourself when you listen to the

1 State, what do I say about what she is saying to me?

2 Thank you so much.

3 THE COURT: Thank you, Ms. Campbell.

4 MS. LEMPESIS: May it please the Court?

5 CLOSING ARGUMENT ON BEHALF OF

6 THE STATE, BY MS. LEMPESIS:

7 MS. LEMPESIS: Good morning. I want to start this
8 morning by thanking all of you for your patience and your
9 attentiveness and your service. I know this has been a
10 long week, and it has not been easy, and we appreciate
11 that you're here. We couldn't do our job without you.
12 So, we thank you for that.

13 I'm going to ask you one thing, and I'm going to say
14 it a couple of times while I talk to you today. I want
15 you to ask yourself, when you go back into that jury
16 deliberation room, I want you to ask yourselves, why
17 would they lie? Why would these boys lie about this?

18 The Defense, Ms. Campbell, wants you to believe that
19 Minor 2 and Minor 1 account of the sexual abuse that they
20 suffered at the hands of their father, James Simmons,
21 it's just one big product of their imagination, and they
22 just made it all up; that it couldn't possibly be true.
23 And I want you to ask yourselves again, why would they
24 lie about this?

25 Ms. Campbell just mentioned that -- she mentioned

1 about how the boys both have ADD, and she sort of -- she
2 referenced that maybe they have trouble comprehending or
3 understanding because of that ADD, and maybe that's why
4 they are making up this story. You saw them. They came
5 in here, and they sat right there, and you saw them both.
6 And I think you all saw them, and saw that those are not
7 two boys that have problems understanding or
8 comprehending. Those were two bright, young boys, who
9 came up there and told you what happened to them.

10 Ms. Campbell has also taken a lot of time during the
11 trial, and also this morning, making Ms. Cynthia Simmons
12 and Mr. Johnnie Simmons, but really Ms. Cynthia Simmons,
13 sound like an absolute terror and a bigot, and someone
14 who didn't want to believe that maybe this child was
15 acting feminine because they have some sort of problem
16 with that. And I'm going to talk about that more later,
17 we're going to talk about her testimony.

18 But what we heard, what Ms. Campbell was saying,
19 she's saying that Cynthia had a problem because she
20 thought something was wrong with [Minor 1] because of how he
21 was acting. Well, it turns out there was something wrong
22 with [Minor 1]. [Minor 1] was sexually abused by his father.
23 There was something wrong. Not wrong with the way he was
24 acting feminine. We're not talking about whether we care
25 if he acts feminine or not. We're talking about there

1 was something wrong. They were abused sexually by their
2 father, so Cynthia was right on.

3 She was a parent, taking time with these children.
4 Someone who didn't ask for these children to come into
5 her life, but took over and is raising them the best that
6 she can, and she's paying attention to them, and she knew
7 something was wrong.

8 Now, when Ms. Campbell first talked to you and the
9 Defense put up their case, they talked a lot about the
10 family members, and we saw a lot of the family members
11 come in and out of this courtroom, and they're all very
12 nice people. Ms. Campbell drew this chart for us, this
13 family tree of sorts, and we saw a lot of these people
14 yesterday. We saw, let's see. Ms. Paulette came in and
15 testified. She testified a good bit and explained what
16 the house looked like when they were living there. And
17 that is absolutely -- we have no reason to doubt what she
18 said. The house was very well-kept, I don't doubt that
19 for a minute. As Investigator Fraser testified, these
20 pictures were taken just recently. So, Paulette kept a
21 great house, cooks great meals, lots of family there.
22 They had a good time.

23 She also testified that she didn't live there the
24 entire time that James Simmons lived there, and she
25 wasn't always with him. And so, you can cross her off.

1 She wasn't with James Simmons the entire time he was
2 there in that house with his children.

3 We heard from Katherine Simmons, a sister to James.
4 Also, she didn't live in that house, so she wasn't there.
5 She doesn't know what may have happened to James Simmons
6 and his children in that bedroom.

7 We heard from Mahogany, the girlfriend. She lived
8 there for a little while. I think she said maybe six
9 months. So, she wasn't there the whole time James
10 Simmons was sexually abusing his children in that
11 bedroom. She wasn't there.

12 We heard from Mr. Leroy Crockett. Very nice man, a
13 hard-working man, calls James Simmons his brother,
14 friends with James Simmons, known him a long time,
15 doesn't want to believe that James Simmons could've done
16 this to his own children.

17 All these people also told us about -- they told us
18 about the fact that there were no doors in the house, but
19 there were curtains, heavy curtains that you couldn't see
20 through, so there was privacy. Paulette said that those
21 curtains were always open because there was no air
22 conditioning, and you had to have air flowing through the
23 house. Leroy contradicted that and said, *no, those*
24 *curtains were closed*. I mean, they had privacy. People
25 weren't just walking in and out of each other's rooms

1 with no announcing their presence.

2 So, the Defense is making it sound like there was no
3 way that these children could have ever been sexually
4 molested by their father because there were no doors, and
5 there were all these people around, and somebody would
6 have seen it. Well, I would submit to you that I think
7 if you're going to -- I would submit to you that, if Mr.
8 Simmons was going to sexually abuse his children, he
9 probably wouldn't do it out in the open.

10 And there was privacy. There were curtains hanging
11 to block off the bedrooms. And [Minor 1] had told you --
12 [Minor 1] and [Minor 2] told you that these incidents happened
13 in that bedroom.

14 Now, going back to all of the testimony you heard
15 during this case, and you heard from several people.
16 First, we brought up Dr. James Simmons. And Dr. Simmons
17 told you about how he had treated [Minor 2] and [Minor 1] their
18 entire lives, since they were just babies; that
19 initially, it was Mamie Simmons who brought them in; but
20 that he'd understood that she passed away; and then, Rose
21 Simmons, the cousin, took over raising them.

22 He told us about their diagnosis of ADD at the age
23 of six years old. I think he said you don't diagnose ADD
24 before age six. He diagnosed them at age six, prescribed
25 them with medicine for their ADD. That was the only sort

1 of mental illness that he treated them for, and he
2 treated them during their entire lives, until after the
3 disclosure of sexual abuse, September of 2011. So,
4 that's up until two years ago he treated them.

5 Dr. Simmons also testified about during his
6 treatment of Minor 2 and Minor 1 and during the time when
7 James Simmons was living in that home on Seaside Road, on
8 Saint Helena, that he had treated Minor 1 for
9 uncontrollable bowel movements and irritated penis. And
10 those are both things that occurred during the time
11 period we're talking about, when James Simmons was living
12 in that house and the boys were staying with their
13 father. And he said that uncontrollable bowel movements
14 and irritated penis could have been the result of sexual
15 trauma.

16 Now, he also said that, in his treatment of the
17 boys, he never suspected sexual abuse, and Ms. Campbell
18 has pointed that out, and that is what he testified to.
19 He wasn't looking for sexual abuse. There had been no
20 additional disclosures. There was nothing. His
21 testimony, I believe, was that, unless you have something
22 additional brought out, you're not going to think that
23 uncontrollable bowel movements means sexual assault. But
24 he said that, in his expert opinion, those things could
25 be the result of a sexual abuse.

1 He also talked about, in his opinion as an expert
2 pediatrician, the textbook symptoms of sexual abuse,
3 acting out, behavioral issues. Inappropriate sexual
4 behavior is one of the things he said to look for in
5 cases of sexual abuse. And we'll talk about the various
6 testimony where we've heard that Minor 2 and Minor 1 were
7 acting out inappropriately in sexual ways, by looking
8 over the bathroom stalls at other little boys at school.
9 All of this happening after James Simmons came into their
10 lives, and after he sexually abused them, Minor 2 and
11 Minor 1 acting out inappropriately in sexual ways.

12 Dr. Simmons said, in his opinion, those are the sort
13 of things you look for in victims of child sexual abuse
14 -- child victims of sexual abuse.

15 And the Defense has talked about the boys being
16 inconsistent. And that's something I want you to think
17 about. I want you to think about, and I'm going to point
18 out to you their consistent stories, their consistent
19 accounts of what their father did to them. And the first
20 one we heard on the stand was this account that Minor 1
21 gave to Dr. Simmons, when Cynthia and Johnnie brought
22 them into his office after their disclosure to her, the
23 first account we heard is that Minor 1 told Dr. Simmons
24 that his dad had touched his penis, and his dad had made
25 him suck his penis, and that they had a secret pact, and

1 that his dad was making them watch porn, pornography.
2 And I submit to you that that is consistent with the
3 other statements that [Minor 1] made to both the interviewer
4 at Hope Haven and to you here in this courtroom.

5 Dr. Simmons said that he examined both of the boys.
6 After he spoke to [Minor 1] he examined both [Minor 2] and
7 [Minor 1] and found no physical finding. And he explained
8 to you, as did Kristin Dalton, that that is very common;
9 that you're not going to see physical injuries so long
10 after a disclosure, and in children. Their bodies just
11 heal in different ways. You're not going to see physical
12 injuries.

13 And then, we heard from Investigator Fraser. And
14 Investigator Fraser came, and he's been with the
15 Sheriff's Office for a long time, he told you he
16 investigated this crime. He told you all about his
17 investigations, and his developing of this case, and that
18 he determined that James Simmons was the suspect, and he
19 arrested him and charged him with these two counts of
20 criminal sexual conduct with a minor.

21 We saw the pictures of Investigator Fraser of the
22 house, and I asked him when he had taken those pictures;
23 it was just weeks ago. You were able to see where this
24 home is, sort of just get a picture in your mind how
25 close Rose's house was to the big house, you know, what

1 the family house sort of looked like.

2 And we heard all about Investigator Fraser's
3 interview. He was present for the interview with Minor 2
4 and Minor 1 and again, these consistent disclosures about
5 what Minor 2 and Minor 1 said their dad did to them. So,
6 Investigator Fraser was there at Hope Haven when the
7 interview was done, and heard Minor 1 say in the interview
8 that Dad made him suck his pee-pee; that Dad sucked his,
9 Minor 1 pee-pee; that Dad touched him on his butt with
10 his pee-pee; and that Dad made him suck his friends' pee-
11 pee.

12 And we heard that Minor 2 said, during his interview,
13 and you saw Minor 2 interview, that Dad had touched his
14 eww. He called it his eww, referring to his penis,
15 touched his penis with his hand, and had touched his butt
16 with his eww. Again, these consistent disclosures by the
17 boys.

18 And Investigator Fraser told us all about his
19 interviews with the family members, and he talked to a
20 lot of those family members. And you heard from several
21 of them during this trial. None of them saw anything.
22 None of them want to believe that their brother or their
23 cousin or their relative did this, and that's what
24 Investigator Fraser told us. I will point out, though,
25 that when Investigator Fraser spoke to Leroy Crockett,

1 and what Investigator Fraser testified regarding his
2 conversation with Leroy was that, Leroy did say that,
3 when -- there was an incidence when he walked into the
4 room, to James Simmons' bedroom, and found James Simmons
5 laying on the bed, and Minor 2 sitting on the edge of the
6 bed, or sitting on the bed. So, James Simmons was laying
7 on the bed, and Minor 2 was sitting on the bed, and it was
8 dark, and that's what he saw.

9 Well, we know there were curtains hanging, and that
10 Leroy said he would (Solicitor knocking) knock before he
11 just barged into a room. So, just think about that.
12 Think about Leroy's statements to Investigator Fraser.

13 We also heard from Investigator Fraser about the
14 physical abuse that Minor 2 at least, suffered at the
15 hands of James Simmons. And his investigation turned up
16 not only the sexual abuse, but also physical abuse; that
17 Minor 2 was beaten so badly by James on at least one
18 occasion that he couldn't go to school; that they did not
19 send him to school because he was so bruised.

20 Then, we heard from Rose Simmons. Rose is a nice
21 woman, soft spoken. She came in here, she was obviously
22 nervous, and she explained to you all about the situation
23 of how the boys came to live with her. Her mother Mamie
24 died, and Rose took over raising them, and she did the
25 best that she could. She's a single woman, no children

1 of her own, and she just did the best that she could with
2 two twin boys with ADD, who were, she said, I think, they
3 were hyperactive. And she was relieved when James
4 Simmons came back into the picture to help her take care
5 of these boys. And so, she let them stay over at the
6 house just across the yard. She let them spend the
7 nights over there. They wanted to. Their cousins were
8 there sometimes, and they played on the X Box, and they
9 would have a fun time.

10 So, she explained to us that James Simmons came to
11 live at the house on Seaside Road on Saint Helena, in
12 about 2008, and he stayed for about one-and-a-half years.
13 She said approximately one-, one-and-a-half years. She
14 also testified that James had lived in that house first.
15 He came to live around 2008, and he was there for a
16 little bit, and then Leroy and Paulette moved in. So,
17 again, we have a time frame when James was living in the
18 house and nobody else was living there, and he was alone
19 with his children there in that house.

20 The next witnesses you saw were Minor 2 and Minor 1
21 and you saw Minor 1 first. Minor 1 who is almost 13 years
22 old, but you saw a smaller fellow, and you saw him swear
23 to tell the truth, and you heard me ask questions about
24 whether or not he understood what it meant to tell the
25 truth, and he said he did, and then he promised to tell

1 the truth.

2 You saw that Minor 1 has a lot of personality.
3 Certainly, more outgoing than his brother Minor 2 And
4 you heard Minor 1 tell us what his father did to him. And
5 again, I want to remind you, think about the
6 consistencies. Was he consistent when he got up there on
7 that stand and told you what happened? And the answer is
8 yes. He was consistent with all of the other accounts.
9 He said that his dad touched his pee-pee with his mouth
10 and his hands; that his dad made him put his pee-pee
11 inside his mouth; and that Dad had put his, Minor 1
12 pee-pee in his mouth. And not only that, but Dad had
13 made him suck other men's pee-pee's. And the Defense has
14 made a big to-do about there were no other people at this
15 house besides family members. But one of the witnesses
16 testified, one of the Defense witnesses testified, that
17 there were family members coming and going, cousins, but
18 not everybody was a family member. There were non-family
19 members coming to this house. Sounds like there were a
20 lot of people coming and going.

21 Minor 1 told you that Dad not only made him suck his
22 pee-pee, but also made him suck other men's pee-pee's.

23 Minor 1 also said that Dad put his pee-pee inside his
24 butt, and he did all of this more than one time. Again,
25 I'm going to ask you, why would he lie about that? Why

1 would he lie about that? He also said that Minor 2 was in
2 the room and saw it, and that Dad made Minor 2 stay in the
3 room. He said that Dad told them not to tell anyone;
4 that Dad threatened him not to tell anyone. And he
5 didn't. He didn't tell anyone, not until he got to
6 Cynthia and Johnnie's home where he felt safe, where he
7 felt protected, and he felt like he could tell. And that
8 was the first time he told someone.

9 Minor 1 also said that no one else had touched him
10 the way that his dad had touched him. There was a
11 reference to other boys at school touching him on his
12 private, and it was cleared up when he said that the boys
13 were hitting him in his private area. Like boys do, I
14 think he said.

15 And Ms. Campbell has just gone on a good bit about
16 how Minor 1 was -- Cynthia said Minor 1 was acting
17 feminine. Cynthia and Johnnie said Minor 1 is acting
18 feminine, and how they had a problem with this, and they
19 were concerned about this. And Ms. Campbell said that
20 Minor 1 was feeling put down by Cynthia and Johnnie.
21 That's not what you heard from Minor 1. Minor 1 came up
22 here and testified that he felt safe with Cynthia and
23 Johnnie. He feels safe with them.

24 You heard from Minor 2. And Minor 2 was quiet
25 and reserved, and you saw he had a hard time answering my

1 questions and Ms. Campbell's questions. He didn't want
2 to be up there. And you saw on the stand that same
3 [Minor 2] that you saw in the video, and the same [Minor 2]
4 that you heard Kristin Dalton explain to you, a reserved,
5 quiet boy who doesn't want to talk about how his dad
6 touched him with his penis on his butt. What 13-year-old
7 boy -- almost 13-year-old boy does? He's not outgoing
8 like [Minor 1] These are two different boys. But he got
9 up there, and he told you that his dad had touched him on
10 his pee-pee, on his butt -- or sorry -- he called it his
11 eww, with his hands.

12 And so, we played the video, because [Minor 2] --
13 [Minor 2] obviously, was having a hard time talking about
14 it. So, you saw the video with Ashley Bratcher from Hope
15 Haven, and you saw her interview of [Minor 2] And you saw
16 during her interview of [Minor 2] that he disclosed how his
17 dad had touched his eww, which he is referring to his
18 penis. He touched his eww with his hand, and that his
19 dad also touched him on the butt with his eww. He said,
20 in response to her question whether or not it was inside
21 or outside of his butt -- or excuse me -- inside or on
22 top of his butt; he said he couldn't remember if it was
23 inside or on top, but his dad touched his butt with his
24 eww. And he said he did it more than one time. In that
25 interview with Ashley Bratcher, he is consistent; he said

1 he did it more than one time, which is what he told you
2 on the stand. [Minor 2] said it happened more than one
3 time.

4 And you also heard another consistent account from
5 what Kristin Dalton told us what [Minor 2] told her.
6 Kristin Dalton again saying he was very reserved and
7 quiet, but he told her, and in her report she wrote:

8 Oral/genital contact --

9 excuse me --

10 Oral/genital contact and anal/penile

11 contact reported by [Minor 2]

12 You also heard in [Minor 2] interview -- well, let me
13 go back. Ms. Campbell had said that, in that interview
14 that Ashley Bratcher did at Hope Haven, that she was
15 leading [Minor 2] And you all saw the interview, and you
16 can judge for yourself whether she was leading him to say
17 the things that he said. She asked very simple
18 questions, and it was to those questions that he told her
19 what his father had done to him.

20 And then, you all heard from Cynthia Simmons.
21 Cynthia Simmons, who adopted these boys in June of 2011,
22 took them to live with her for a whole year prior to
23 that; took over the raising of these two twin boys with
24 ADD and behavior problems. Cynthia Simmons loves these
25 boys. She loves them. She's taking care of them. She

1 is raising them. When Rose did the best she could, but
2 they just didn't have somebody stable to help raise them.
3 So, Cynthia and Johnnie come in and they take him into
4 their home. And they raised children before, so they
5 take this on.

6 She home schools them, because they were having a
7 hard time in school. So, she takes the time to home
8 school them. She teaches them math and biology and
9 reading. She is someone who is dedicated to these boys,
10 and by all accounts, has been since the day she got them,
11 since they came to live with her.

12 The Defense has spent a lot of time making it sound
13 like Cynthia Simmons is the mastermind behind this big
14 lie that the boys are telling; that she has, for some
15 reason, somehow convinced them to make all of this up and
16 to levy these allegations against the defendant. She's
17 also, during her closing, said -- made it sound like
18 Cynthia Simmons had a problem with Minor 1 being more
19 feminine than a boy should be. But I would ask you what
20 in the world is Cynthia's motivation to lie about James
21 Simmons? Why would she lie about James Simmons? Not
22 just why would the boys lie, but why would Cynthia make
23 all this up, put these boys up to it? Is it because she
24 wants custody of the children? She already had it. The
25 adoption already went through. They're hers. They call

1 her Mom. The adoption was already final when [Minor 2] and
2 [Minor 1] told her what their father had done to them. The
3 adoption had already taken place.

4 Is it because she wants James Simmons out of the
5 boys' life? He was out of their lives. He left Seaside
6 Road. He was gone. It was after that Rose needed help.
7 And so, they went to live with Cynthia and Johnnie. So,
8 it's not that. She doesn't need James Simmons out of
9 their lives.

10 Is it because she wants to punish James Simmons in
11 some way? None of it makes sense. Why would Cynthia
12 Simmons cook all this up and make these boys lie about
13 this? Cynthia is trying to be a mom, a mother to these
14 children who desperately needed one. And in taking care
15 of them, and in that year before the adoption, all the
16 time that they're spending together, she noticed that
17 their behavior was odd; that it was different. She's
18 raised children of her own. These boys were not behaving
19 in ways that children behave. We've got [Minor 2] looking
20 over the bathroom stall at other little boys at school,
21 peeing on the walls in the bathroom, touching another
22 student in the private area. These sexual behaviors that
23 just didn't make any sense to Cynthia; and that we heard
24 from Dr. Simmons and from Kristin Dalton are traits that
25 children who have been sexually abused exhibit.

1 And so, Cynthia, in raising these boys, is paying
2 attention to them, and she's trying to figure out how to
3 solve these behavioral issues. And you heard that they
4 are a religious family. Johnnie is a reverend at the
5 church. They go to church. They read the *Bible*, but
6 they're not some sort of religious zealots. They're
7 churchgoing people. Cynthia is trying to homeschool,
8 raise these children, trying to figure out why their
9 behaving the way they're behaving. And so, after the
10 adoption goes through, because she's had these -- she
11 said she had these suspicions while they were living with
12 her, and she never said anything. She didn't want it to
13 affect the adoption, so she just kept it in the back of
14 her mind. She didn't want to go accusing somebody from
15 her husband's family, this family that she married into,
16 of being a -- of sexually abusing his children. So, she
17 kept doing the best she could, and eventually, when she
18 asked Minor 1 and Minor 2 why are you all behaving the way
19 that you are, they finally tell her.

20 This explains, it fills in the holes that she had
21 been unable to fill in. It explains why they're acting
22 out the way that they're acting out. And it's
23 consistent. Their disclosure to her is consistent. It's
24 consistent with what Dr. Simmons told us children of
25 sexual abuse exhibit, and what Kristin Dalton said.

1 She also told us about how Minor 2 and Minor 1 both
2 still wet the bed, and how they have nightmares. Now,
3 we're talking about children who are now almost 13 years
4 old, just shy of 13 years old, still wetting the bed and
5 having nightmares. The nightmares, maybe; the wetting of
6 the bed at that age? Dr. Simmons explained that that
7 would be a symptom of a child who has been sexually
8 assaulted. And so did Kristin Dalton.

9 The Defense has talked a lot about the ouch stick
10 that Cynthia and Johnnie have. It's a ruler that they
11 use to hit the boys' hands when they are being
12 disciplined. I think probably a lot of us have perhaps
13 been hit with a ruler on the hand to be disciplined.
14 They also talk about a belt. I think a lot of us may
15 have been hit with a belt to be disciplined. We're not
16 talking about a family where these children just get to
17 run wild. Johnnie and Cynthia are disciplining these
18 children. We make no bones about it. They are
19 disciplining them. They may use an ouch stick, they may
20 use a belt, if necessary, but the only testimony in this
21 case about physical abuse is about the time that James
22 Simmons beat Minor 2 so badly that he couldn't go to
23 school. So, keep that in mind.

24 After Cynthia, you all saw Johnnie Simmons, the
25 artist, the reverend, the retired man who, at 64 years

1 old said he didn't want the job, said he was done raising
2 kids, and he didn't want this job; but he took it, and
3 he's doing the best he can.

4 Ms. Campbell was right when she said he's raising
5 them to be men. He's teaching them to garden. He is
6 trying to teach them, I think, as he said it, to behave
7 right and be productive men. That's what he's trying to
8 do. He's trying to help these boys and raise them to be
9 productive men.

10 And he was concerned about the way Minor 1 behaved,
11 and he testified about that; that Minor 1 was soft; that
12 he was feminine acting; and he was concerned about it.
13 And he was concerned, as you heard him say. He testified
14 that he was worried because, after all of the help that
15 he and Cynthia were giving these boys, and after all of
16 the attention and the efforts to correct their behavior,
17 and all of the discipline, something just wasn't
18 clicking. That's what he said: *Something just wasn't*
19 *clicking*. And these boys were not getting better, and
20 they had been with them for a year, and something wasn't
21 clicking.

22 Finally, you heard from Kristin Dalton, who was
23 qualified as an expert in pediatric forensic medicine.
24 And she explained her exams of the boys, and she went
25 through and told you about how she examined them and the

1 process and the sort of tools that she uses to look for
2 injuries. And she explained that 97 percent of the time
3 in these sort of cases, you do not find any sort of
4 physical evidence, based on the way that the body heals.
5 Her example of biting a cheek, I think, is a good
6 example. We've all certainly done that, and it heals so
7 quickly that there will be nothing left behind to be able
8 to prove with scientific evidence to say that James
9 Simmons sexually abused his children.

10 From Kristin Dalton, we heard again the disclosures
11 from [Minor 2] and [Minor 1] the consistent disclosures.
12 [Minor 1] told Kristin Dalton that there was oral/genital
13 contact and anal/penile contact. She also said that
14 [Minor 1] said that he was forced to suck other men's pee-
15 pee's, consistent with what [Minor 1] told you himself, with
16 what Dr. Simmons said [Minor 1] stated, what Investigator
17 Fraser told you [Minor 1] said in his interview at Hope
18 Haven, all consistent, every time. The same allegation,
19 the same account by [Minor 1]

20 Why would he lie? If he was lying, wouldn't his
21 story change? Wouldn't he mess up and get it wrong, and
22 not be consistent every time? Why would he lie about
23 this?

24 And she examined -- she examined [Minor 2] and she
25 told you what [Minor 2] told her; and again, that [Minor 2] was

1 reserved and didn't want to talk about it as much, but
2 that he told her that there was -- and this is in her
3 notes, so this is doctor terminology, but -- oral/genital
4 contact and penile/anal contact. She also noted that,
5 for [Minor 2] he was soiling himself at school. And that
6 was in 2011, when she saw [Minor 2]. So, at age eleven, he
7 was soiling himself at school.

8 Think about these consistent disclosures, and
9 remember that, almost a year and a half more later, after
10 the last instance of sexual abuse, that you're not going
11 to see physical ramifications, but you're going to see,
12 as Kristin Dalton testified, the mental and the
13 behavioral ramifications. And you saw that with these
14 boys, and you heard about it repeatedly. They have
15 behavior problems. They are acting out. Cynthia and
16 Johnnie, for all of their hard work, couldn't figure it
17 out, and couldn't make a difference, and now we
18 understand why, and it's because James Simmons was
19 sexually abusing them. He did it more than one time, and
20 in more than one way, and he did it in that house on
21 Saint Helena Island.

22 The Judge is going to talk to you in just a little
23 bit about the law in this case, and she's going to charge
24 you on the law. And I just want to briefly mention to
25 you the elements of criminal sexual conduct with a minor

1 under the age of eleven, because we do have a burden.
2 The State has a burden to prove to you all beyond a
3 reasonable doubt that he's guilty of those charges.

4 The elements of criminal sexual conduct with a minor
5 include when an actor engages in a sexual battery with a
6 victim who is less than the -- who is less than eleven
7 years of age. That's sexual battery with the victim.
8 The sexual batteries that we're talking about in this
9 case are, with **Minor 1** the oral sex, the fellatio that he
10 was forced to perform on his father, and his father
11 performed on him. The anal penetration that he referred
12 to, that Dad touched his bottom with his penis, put his
13 penis inside his bottom, and it happened more than one
14 time. That is what we're talking about, the sexual
15 battery that we're talking about with **Minor 1** are those
16 things.

17 And with **Minor 2** we're talking about the sexual
18 battery that James Simmons committed on **Minor 2** is the
19 oral/genital contact and the anal/penile contact that
20 Kristin Dalton testified to. He told her during their
21 exam that he testified to during his Hope Haven
22 interview, that Dad touched him on his butt with his
23 penis; that Dad touched his penis with his hand. Also,
24 Kristin Dalton's account of what **Minor 2** told her, which
25 was that there was oral/genital contact.

1 One other thing that the Judge is going to tell you
2 about is that, that the losses -- the victims' statements
3 in this case need not be corroborated. So, we could've
4 just put up those two boys, and let you decide whether or
5 not you believed them. And that's one thing you have to
6 ask yourselves when you go back into your deliberation
7 room, is whether or not you believe those boys.

8 The victims' testimony need not be corroborated.
9 However, you didn't just hear from [Minor 2] and [Minor 1]
10 You heard from Kristin Dalton, the nurse practitioner;
11 from Dr. Simmons; from Investigator Fraser; from Cynthia
12 and Johnnie; from Rose. You heard from all of these
13 people. I would ask you, after you review all of the
14 evidence and consider all of the evidence and all of the
15 testimony that you have heard from all of these various
16 people, and from [Minor 2] and [Minor 1] themselves, I will ask
17 you to consider all of that testimony and the evidence
18 presented, and I hope that you will find, I know that you
19 will find, that the State has met its burden, and that
20 you will not hesitate to find the defendant guilty of two
21 counts of criminal sexual conduct with a minor under the
22 age of eleven.

23 Thank you.

24 THE COURT: Thank you. Does anyone need a break?
25 Are you all okay? Everyone okay? All right. Officer,

1 would you go ahead and secure the door, please?

2 BAILIFF: Yes, ma'am.

3 JURY CHARGE, BY THE COURT:

4 THE COURT: Thank you. Madam Foreperson, ladies and
5 gentlemen of the jury, you followed very patiently and
6 listened very attentively to the presentation of the
7 evidence in this case, and I want to thank you for that.
8 And I also want to thank the attorneys in this case for
9 their able arguments made by the Assistant Solicitors,
10 Mary Jordan Lempesis and Hunter Swanson on behalf of the
11 State; and Ms. Trasi Campbell on behalf of the defendant,
12 Mr. Simmons.

13 Ladies and gentlemen, it now becomes the duty of the
14 trial judge, under the constitution of this state, to
15 charge and instruct you on the law that's applicable to
16 this case. And it's your duty as jurors to accept and
17 apply the law, as the Court will now state it to you. As
18 jurors, it is your exclusive duty to decide all the
19 issues of fact in this case. You must determine the
20 effect, the value, the weight, and the truth of the
21 evidence.

22 Both the State of South Carolina and the defendant,
23 Mr. Simmons, have a right to expect that you will
24 carefully consider and evaluate the evidence, and apply
25 the law of the case to that evidence.

1 Ladies and gentlemen, by doing so, both the State of
2 South Carolina and the defendant, Mr. Simmons, will
3 receive and obtain a fair and impartial trial in this
4 case.

5 Now, the State of South Carolina, by the bills of
6 indictment in this case, charge the defendant, Mr.
7 Simmons, with two counts of criminal sexual conduct with
8 a minor. I remind you that the fact that the defendant
9 was arrested, charged, and indicted in this case is not
10 evidence in this case, and cannot be considered by you as
11 evidence of guilt in this case; nor does it create any
12 presumption or inference of guilt. An indictment is
13 simply the formal written instrument which contains the
14 charges made against the defendant. It's the formal
15 document by which the case is brought into this
16 courtroom.

17 Ladies and gentlemen, the defendant, Mr. Simmons,
18 has pled not guilty to these indictments, and that plea
19 puts the burden on the State to prove the defendant
20 guilty beyond a reasonable doubt.

21 A person charged with committing a criminal offense
22 in South Carolina is never required to prove himself
23 innocent. I charge you that it's an important rule of
24 law that a defendant in a criminal trial, no matter what
25 the seriousness of the charges may be, will always be

1 presumed innocent of the offense for which the indictment
2 was issued, unless guilt has been proven by evidence
3 satisfying you, the jury, of that guilt, beyond a
4 reasonable doubt.

5 Ladies and gentlemen, this presumption of innocence
6 does not end when you begin your deliberations, but it
7 accompanies the defendant throughout the trial, until
8 you, the jury, reach a verdict of guilt based on evidence
9 satisfying you of that guilt beyond a reasonable doubt.

10 Now, ladies and gentlemen, the presumption of
11 innocence is not a mere legal theory. It's not just a
12 legal phrase we use. It's a substantial right to which
13 every defendant is entitled, unless you, the jury, are
14 satisfied from the evidence of the defendant's guilt
15 beyond a reasonable doubt.

16 Now, what is a reasonable doubt in the law? A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. Now, the State has
19 the burden of proving the defendant guilty beyond a
20 reasonable doubt. And some of you may have served as
21 jurors in civil cases, where you were told that it was
22 only necessary to prove that a fact is more likely true
23 than not true, such as by the greater weight or we call
24 the preponderance of the evidence. In criminal cases,
25 the State's proof must be more powerful than that. It

1 must be beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly
3 convinced of the defendant's guilt.

4 Now, ladies and gentlemen, there are very few things
5 in this world we know with absolute certainty, and in
6 criminal cases, the law does not require proof that
7 overcomes every possible doubt. If, based on your
8 consideration of the evidence, you are firmly convinced
9 that the defendant is guilty of the crime or crimes
10 charged, you must find him guilty.

11 If, on the other hand, you think there is a real
12 possibility that the defendant is not guilty, you must
13 give the defendant the benefit of the doubt, and find him
14 not guilty.

15 Now, ladies and gentlemen, I remind you that, during
16 the trial of this case, you and I have certain duties to
17 perform. As the trial judge, it's my responsibility to
18 preside over the trial of the case, and I also have the
19 duty to rule on the admissibility of the evidence that's
20 offered during the trial. You are to consider only the
21 competent evidence that's before you. If there was any
22 testimony stricken from the record in this case during
23 the trial, you must disregard that testimony, and you are
24 to only consider the testimony which has been presented
25 from the witness stand, and any exhibits which have been

1 made a part of the record in this case.

2 Ladies and gentlemen, I have the additional duty to
3 charge you the law that's applicable to this case. As
4 the presiding judge, I am the sole judge of the law of
5 this case, and it's your duty as jurors to accept and
6 apply the law as I will now state it to you. If you
7 already have an idea as to what the law is or what it
8 ought to be, and it does not agree with what I now tell
9 you that the law, in fact, is, you must abandon this
10 idea, because you were sworn to accept and apply the law
11 exactly as I state it to you.

12 Ladies and gentlemen, in every case tried in this
13 court before a jury, the jury becomes the sole and
14 exclusive judge of the facts in this case. A trial judge
15 cannot intimate, state, comment on, or make any statement
16 to a trial jury about the facts in this case. And since
17 you, the jury, are the sole judge of the facts in this
18 case, you are not to infer from what I've said or done
19 during the progress of this trial and ruling upon the
20 admissibility of evidence or otherwise, or anything that
21 I say now during the course of this instruction to you
22 that I have an opinion about the facts in this case. The
23 law does not allow me to have an opinion about the facts
24 of this case. Ladies and gentlemen, this is a matter
25 solely for you, the jury, to determine, and I remind you

1 that it's your duty to determine the effect, the value,
2 the weight, and the truth of the evidence that's been
3 presented here during this trial.

4 Now, ladies and gentlemen, there are two types of
5 evidence which are generally produced or presented during
6 a trial. That is direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a person
8 who claims to have actual knowledge of a fact, such as an
9 eyewitness. It is evidence which immediately establishes
10 the main fact to be proved. Circumstantial evidence is
11 proof of a chain of facts and circumstances indicating
12 the existence of a fact. It is evidence from which
13 immediately -- it is evidence, excuse me, which
14 immediately establishes collateral facts from which the
15 main fact may or may not be inferred.

16 Ladies and gentlemen, circumstantial evidence is
17 based on inference, and not on personal knowledge or
18 information.

19 Ladies and gentlemen, the law makes absolutely no
20 distinction between the weight or value to be given to
21 either direct or circumstantial evidence; nor is a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence.

24 Ladies and gentlemen, you should weight all the
25 evidence in this case. And after weighing all the

1 evidence, if you are not convinced of the guilt of the
2 defendant beyond a reasonable doubt, you must find the
3 defendant not guilty. On the other hand, after hearing
4 all the evidence in the case, if you are convinced of the
5 guilt of the defendant beyond a reasonable doubt, you
6 must find him guilty.

7 Now, ladies and gentlemen, you must determine the
8 credibility of the witnesses who have testified in this
9 case, and credibility simply means believability. It
10 becomes your duty as jurors to analyze and evaluate the
11 evidence, and determine which evidence convinces you of
12 its truth.

13 In determining the believability of witnesses who
14 have testified in this case, you may believe one witness
15 over several witnesses, or several witnesses over one
16 witness. You may believe a part of the testimony of a
17 witness, and reject the remaining part of the testimony
18 of that same witness. You may believe the testimony of a
19 witness its entirety, or reject the testimony of a
20 witness in its entirety. And you may consider whether
21 any witness has exhibited to you any interest, bias,
22 prejudice, or other motive in this case. And you may
23 also consider the appearance and manner of the witness
24 while on the witness stand.

25 Now, ladies and gentlemen, the defendant in this

1 case presented evidence of his good reputation and
2 character to show that it would be inconsistent with the
3 defendant committing the crime. The weight you give to
4 that testimony, like all other testimony in this case, is
5 for you to decide in your good judgment. You may
6 consider testimony of the defendant's good character,
7 along with all the other evidence in deciding whether or
8 not the defendant committed the crime.

9 Now, ladies and gentlemen, there has been evidence
10 presented that witnesses have made prior statements which
11 are not consistent with the witness's present testimony.
12 You may use this evidence to decide whether to believe
13 the witness. You may also use evidence of the earlier
14 contradictory statements to determine the truth of those
15 statements, and it is up to you to decide whether to
16 believe the earlier statements, or the testimony given at
17 trial.

18 Ladies and gentlemen, if a witness is shown to have
19 knowingly testified untruthfully concerning any material
20 matter, you may consider this in determining whether to
21 trust the witness's testimony as to other matters. You
22 may reject all testimony of that witness, or give all or
23 part of the testimony the weight you think it deserves.

24 Now, ladies and gentlemen, during this trial, you
25 have heard testimony from children. Where a witness is a

1 child, you must determine, as with any witness, whether
2 that testimony is believable. In deciding believability,
3 you may consider not only matters that I've already
4 discussed with you, but also, you may consider the age of
5 the child, the child's ability to observe and remember
6 facts, and the child's ability to understand and answer
7 questions.

8 Because young children may not fully understand what
9 is happening here, it is up to you to decide whether the
10 child understood the seriousness of appearing as a
11 witness at this criminal trial, and whether the child
12 understood the questions, whether the child has a good
13 memory, and whether the child understands the difference
14 between lying and telling the truth.

15 Young children may be influenced by the way that
16 questions are asked. It is up to you to decide whether
17 the child understood the questions asked.

18 Now, ladies and gentlemen, the rules of evidence
19 ordinarily do not permit witnesses to testify to opinions
20 or conclusions. An exception to this rule exists for
21 witnesses that we call expert witnesses, a witness who,
22 by education or experience, has become an expert in some
23 art, science, or profession may give an opinion as to the
24 subject the witness claims to be an expert in, and may
25 also give the reasons for the opinion.

1 Ladies and gentlemen, you can consider any expert
2 opinion given by a witness, and like any other evidence,
3 give it the weight you think it deserves. If you decide
4 that an expert witness's opinion is not based on
5 sufficient education and experience, or if you decide
6 that the reasons given in support of the opinion are not
7 sound, or that the opinion is outweighed by other
8 evidence, you may disregard the opinion entirely. An
9 expert witness's testimony is to be given no greater
10 weight than that of other witnesses, simply because the
11 witness is an expert. And you do not have to accept an
12 expert's opinion, even though it is uncontradicted.

13 Now, ladies and gentlemen, I charge you that it is
14 the law of this state that the testimony of the victim
15 need not be corroborated in prosecutions under *South*
16 *Carolina Code Section 16-3-655*, that being offense of
17 criminal sexual conduct with a minor.

18 Now, ladies and gentlemen, I instruct you and
19 emphasize that the fact that the defendant did not
20 testify is not a factor to be considered by you in any
21 way in your deliberation and in your consideration on the
22 question or the guilt or innocence of the defendant. It
23 must not be considered by you in any manner whatsoever.
24 A defendant has the constitutional right to remain
25 silent, and the assertion of this right must not be

1 considered by you in your deliberations.

2 I repeat, ladies and gentlemen, under your oath, you
3 are to draw no conclusions whatsoever from the fact that
4 the defendant in this case did not testify. The fact
5 that the defendant did not testify should not even be
6 discussed in the jury room. The burden of proof, as I
7 have stated to you, is on the State. The defendant is
8 not required to prove his innocence, and the burden of
9 proof remains on the State to prove guilt beyond a
10 reasonable doubt.

11 Now, ladies and gentlemen, in order to establish
12 criminal liability, criminal intent is required. For
13 example, the mental state required to be proven by the
14 State for a particular crime might be purpose, intent,
15 knowledge, recklessness, or criminal negligence.
16 Criminal intent must be proven by the State beyond a
17 reasonable doubt. Criminal intent is always a matter
18 that must be determined by the jury from the
19 circumstances surrounding the situation, and there is no
20 way to prove intent to a mathematical certainty. There's
21 no way medical science can dissect a person's brain and
22 determine what the person had in mind. So, the law says
23 that criminal intent may be inferred from the
24 circumstances shown to have existed.

25 This is how you make a determination of whether or

1 not the element requiring intent was present. It is not
2 necessary to establish intent by direct and positive
3 evidence, but intent may be established by inference in
4 the same way as any other fact, by taking into
5 consideration the acts of the parties and all the facts
6 and circumstances of the case, based on evidence
7 introduced during the trial of the case.

8 Ladies and gentlemen, criminal intent is a mental
9 state. It is a conscious wrongdoing. It is up to you to
10 determine what the defendant intended to do, based on the
11 circumstances shown to have existed.

12 Now, ladies and gentlemen, in this case, the
13 indictments allege two separate offenses against the
14 defendant. The first is a charge of criminal sexual
15 conduct with a minor as to Minor 2 and the second
16 one is also criminal sexual conduct with a minor as to
17 Minor 1

18 Ladies and gentlemen, each indictment charge is a
19 separate and distinct offense. You must decide each
20 indictment separately on the evidence and the law that's
21 applicable to it, uninfluenced by your decision as to the
22 other indictment.

23 Now, ladies and gentlemen, the defendant may be
24 convicted or acquitted on any or all of the offenses
25 charged, and you will be asked to write a separate

1 verdict of guilty or not guilty for each indictment. And
2 I remind you, ladies and gentlemen, that the State must
3 prove each element of each of the offenses charged beyond
4 a reasonable doubt.

5 Now, ladies and gentlemen, the defendant is charged,
6 as I told you, with two counts of criminal sexual conduct
7 with a minor. Therefore, the State must prove, beyond a
8 reasonable doubt, first, that the defendant engaged in a
9 sexual battery with the victim.

10 Ladies and gentlemen, a sexual battery is sexual
11 intercourse, cunnilingus, fellatio, anal intercourse, or
12 any intrusion, however slight, of any part of a person's
13 body, or of any object, into the genital or anal openings
14 of another person's body, except when the intrusion is
15 accomplished for medically recognized treatment or
16 diagnostic purposes.

17 Ladies and gentlemen, the State then must next
18 prove, beyond a reasonable doubt, that the victim was
19 less than eleven years old at the time of the sexual
20 battery.

21 Ladies and gentlemen, consent, willingness,
22 indifference, or ignorance on the part of the minor, if
23 any, as to what was taking place, does not in any way
24 affect the charge of criminal sexual conduct with a
25 minor.

1 Now, Madam Foreperson, members of the jury, as you
2 retire to begin your deliberations, I wish to express the
3 hope that each of you are mindful of the importance of
4 your responsibility here today. You and I are not called
5 upon very often to serve as jurors, and the proper
6 performance of that duty requires that each of you reach
7 the height of freeing your mind of your mind of all
8 improper influences. You and I are acting for the
9 community, and that is why you must see to it that this
10 trial is fair and the verdict is just.

11 Now, ladies and gentlemen, you've observed during
12 the trial of the case the presiding officer of the Court
13 is referred to as your *Honor*. The reason is that the
14 Court is entrusted with the honor of this community, the
15 honor of this state, and the honor of this country in
16 seeking that every case tried here receives fair and
17 impartial justice.

18 Now, you, the jury, take into your care and keeping
19 the preservation of the honor of this community, the
20 honor of this state, and the honor of this country.

21 Now, ladies and gentlemen, please don't get the idea
22 that I'm trying to intimate to you how you should decide
23 this case, because I've already told you, under the laws
24 of South Carolina, you, the jury, are the sole judge of
25 all facts, and it would be highly improper for me to

1 influence you in your performance of that duty. Again,
2 ladies and gentlemen, I'm not trying to tell you what
3 your verdict should find, but as the presiding officer of
4 this court, I am vitally concerned that, whatever verdict
5 you reach will be the result of you going back into your
6 jury room and confining your consideration to the
7 evidence and the law that you've heard here in this
8 courtroom, weighing it fairly and impartially, as I have
9 every confidence you will.

10 Ladies and gentlemen, everyone is entitled to
11 justice in this case, both the State and the defendant,
12 Mr. Simmons. You owe no support or sympathy to anyone.
13 The Court is of the confirmed opinion that whatever
14 verdict you reach will represent truth and justice for
15 all concerned.

16 Madam Foreperson, I remind you that your verdict
17 must be unanimous. It must be the verdict of all 12
18 jurors. And to that end, my law clerk, Allison, has
19 prepared a verdict form. It simply has the case caption.
20 It says: *The State of South Carolina versus James*
21 *Simmons*, and lists the indictment numbers. And there are
22 two questions, both of which you must answer.

23 The first questions is:

24 *We, the jury, unanimously find the*
25 *following:*

1 Number 1: As to Indictment 2012-GS-07-
2 1536, the charge of criminal sexual conduct
3 with a minor, Minor 2 we, the jury,
4 unanimously find the defendant, James Simmons,
5 and it says either not guilty or guilty.

6 Question Number 2: As to Indictment Number
7 2012-GS-07-1537, the charge of criminal sexual
8 conduct with a minor, Minor 1 we, the,
9 jury, unanimously find the defendant, James
10 Simmons, --
11 and again, either not guilty or guilty.

12 Ladies and gentlemen, please don't infer by the
13 order that I put guilty or not guilty as having any
14 significance. Every trial I just reverse them. All
15 right?

16 And then, after that, Madam Foreperson, there is a
17 line for you to sign and verify that this is the
18 unanimous decision of all 12 jurors, and a place for you
19 to date.

20 Madam Foreperson and members of the jury, when
21 you've reached a verdict, please knock on your jury room
22 door, and we are going to accept you back in the
23 courtroom to announce your verdict.

24 Ladies and gentlemen, for the very last time, I am
25 going to send you back to your jury room, and I am going

1 to tell you not to discuss this case. If there's
2 something further these lawyers want me to charge you on
3 the law, I'm going to bring you back in, and I'm going to
4 charge you further. If not, ladies and gentlemen, I am
5 going to send in the verdict form, along with the
6 evidence that has been entered to this case, and that is
7 your signal to begin your deliberations.

8 Ladies and gentlemen, thank you for your patience.
9 We appreciate it, and you may retire to your jury room.

10 BAILIFF: Thank you, your Honor.

11 JURORS LEAVE COURTROOM 12:43 P.M.

12 BAILIFF: Jury is clear, your Honor.

13 THE COURT: Thank you. Any exceptions or additions
14 to the charge from the State?

15 MS. LEMPESIS: Not from the State, your Honor.

16 THE COURT: From the Defense?

17 MS. CAMPBELL: Your Honor, as far as the charge that
18 your Honor gave to the jury, now, no. I did put the
19 requested charge from the defendant under the presumption
20 of innocence into the record of the trial, and we would
21 just continue that objection. But as charged, no.

22 THE COURT: Thank you. All right. I want you both
23 to take a look at the verdict form, just to make sure
24 you're fine with it. And let's go through the exhibits
25 and make sure.

1 JURORS BEGIN DELIBERATION 1:15 P.M. .

2 BACK ON THE RECORD 3:50 P.M.

3 NOTE FROM JURORS:

4 THE COURT: So, we can go on the record in the case
5 that we're trying right now. The jury has stated or sent
6 me a letter that says the jury is currently at an
7 impasse. How should we proceed? I suggest we kind of
8 give them an Allen charge.

9 MS. CAMPBELL: I believe that's the proper
10 procedure, your Honor.

11 MS. LEMPESIS: I agree, your Honor.

12 THE COURT: Okay. All right.

13 OFF-THE-RECORD DISCUSSION, THE
14 COURT, DEPUTY JAILER GRAYSON.

15 THE COURT: Wanda, will you mark this as an exhibit,
16 please. A note from the jury. It's a court's exhibit,
17 yes. I'm sorry.

18 COURT REPORTER: Note from the jury is Court's
19 Exhibit 3.

20 NOTE FROM JURORS MARKED COURT'S

21 EXHIBIT NUMBER 3.

22 THE COURT: For those of you in the back of the
23 courtroom, I'm bringing the jury back in. So, I need
24 everyone to be quiet and not move. If you needed to
25 conduct some business, go outside. You're welcome to.

1 The doors are going to be locked. I'll tell you that, so
2 just to let everybody know.

3 BAILIFF: Your Honor, the jury is entering.

4 JURORS ENTER COURTROOM 3:54 P.M.

5 ALLEN CHARGE, BY THE COURT:

6 BAILIFF: Jury is seated, your Honor.

7 THE COURT: Thank you. Welcome back, Madam
8 Foreperson and members of the jury. I'm going to now
9 give you additional instruction regarding the problem of
10 trying to reach a verdict.

11 I have received a note from you, Madam Foreperson,
12 that the jury is at an impasse. I give you this charge
13 in the hopes that you can make another effort to reach a
14 verdict in this case.

15 As I have already told you, you the jury are the
16 sole judge of the facts and evidence in this case. And
17 as the judge, again, I'm not permitted to give you even
18 so much as a hint of about how I feel about what the
19 verdict you ought to bring or render in this case.

20 Again, it's my duty to state the law which applies
21 to the case, which I have done, and now, it's your duty
22 as a jury to bring in the verdict.

23 Ladies and gentlemen, I can tell you this, though.
24 When a matter is in dispute, it's not always easy for
25 even two persons to agree. And when 12 must agree, it

1 becomes that much more difficult. But you must
2 understand that it's important that litigation, and this
3 is a litigation, ladies and gentlemen, be ended, if it
4 can be ended without a single one of you doing violence
5 to your own conscience.

6 Ladies and gentlemen, no juror is expected to give
7 up an opinion based on reasoning satisfactory to himself
8 or herself merely for the purpose of being in agreement.
9 I want you all to understand that.

10 Ladies and gentlemen, you are not called upon very
11 often to try cases. On the other hand, I've taken part
12 in quite a number of cases and trials, first as a lawyer,
13 and now a judge. And I think you should know that it is
14 very, very unusual for a jury to go out and return
15 promptly with a verdict. Ladies and gentlemen, that's
16 what would happen if the jurors were in agreement at the
17 beginning of their deliberations, but that rarely
18 happens.

19 Ladies and gentlemen, at the same time, almost every
20 jury eventually is able to return a verdict. What this
21 means, ladies and gentlemen, that it's normal for jurors
22 to disagree at first, but the fact that we normally get a
23 verdict also means that, after reasonable persons lay
24 aside all extraneous matters and determine to decide a
25 case on the basis of the law and the evidence, they

1 nearly always come to a common understanding and return a
2 verdict.

3 Ladies and gentlemen, it has never been intended
4 that the verdict of a jury should be the verdict of any
5 one person. Ladies and gentlemen, the verdict of the
6 jury is the collective reasoning of all persons put
7 together. That's why we have a jury, ladies and
8 gentlemen, so that we have the benefit of collective
9 thought and collective reasoning.

10 Ladies and gentlemen, it is your duty to tell each
11 other how you feel about the case, and why you feel as
12 you do, and what you think, and I am sure you've been
13 back there doing just that, ladies and gentlemen. I want
14 you to listen to each other, and give to the others'
15 thoughts such meaning as you think it should have. So,
16 to some degree, it can be said that a jury's service is
17 definitely a matter of give and take, ladies and
18 gentlemen.

19 I want you to know that a mistrial of the case is an
20 unfortunate thing. If you don't agree on a verdict, it
21 doesn't mean that neither side wins. It just means that,
22 at some future term of court, before another judge or
23 possibly myself, and with 12 more citizens from Beaufort
24 County, they're going to sit exactly where you are, and
25 the same lawyers are going to be here, and they're going

1 to ask basically the same questions, and presumably, they
2 will get the same answers, ladies and gentlemen, and
3 we're going to go through the entire process once again.

4 I have no reason to believe that any other 12
5 citizens in Beaufort County will be more capable of
6 solving this controversy than you 12 are. So, I'm going
7 to ask you one more time, Madam Foreperson and members of
8 the jury, to go back to your jury room, and to deliberate
9 further, and see if you can reach a verdict, ladies and
10 gentlemen.

11 Now, I want to close this part of the instructions
12 by reminding you, while it is important that litigation
13 be ended, it should be ended in the form of a verdict
14 which does not do violence to any one of your
15 consciences. Ladies and gentlemen, no juror is expected
16 to give up an opinion based on reasoning satisfactory to
17 themselves, merely for the purpose of being in agreement
18 with the others.

19 And ladies and gentlemen, with that instruction, I'm
20 going to ask that you go back to your jury room and
21 continue your deliberations, and we will wait to hear
22 from you. Thank you.

23 BAILIFF: Thank you, your Honor.

24 JURORS LEAVE COURTROOM 3:59 P.M.

25 BAILIFF: Jury is clear and the door is closed, your

1 Honor.

2 THE COURT: Okay. You can unlock the door and you
3 can let them back in. We're fine to go, Ms. Campbell.
4 You're free.

5 MS. CAMPBELL: I just --

6 THE COURT: Yes, ma'am. Whatever you need.

7 MS. CAMPBELL: Just for the record, I believe that
8 your Honor gave an appropriate charge to the jury, and
9 the defendant is satisfied with your charge at this time.

10 THE COURT: Thank you.

11 MS. CAMPBELL: Thank you.

12 OFF THE RECORD 4:00 P.M.

13 Begin 6-20-13-v37-day 3

14 BACK ON THE RECORD 6:15 P.M.

15 VERDICT:

16 BAILIFF: All rise. Come to order. Court is back
17 in session.

18 THE COURT: Thank you all. Please be seated. All
19 right. It's my understanding that we have a verdict.
20 All right. Is the State ready?

21 MS. LEMPESIS: The State's ready, your Honor.

22 THE COURT: Is the Defense ready?

23 MS. CAMPBELL: Yes, your Honor.

24 THE COURT: All right. For those of you that are in
25 the courtroom, I want to make sure that you contain

1 yourself, regardless of what the verdict is. I just want
2 to make sure that you all understand that. I'm not too
3 concerned, looking around, but again, I would hate to
4 have to remove someone. So, with that said, let's go
5 ahead and bring the jury on in.

6 BAILIFF: Your Honor, the jury is entering.

7 JURORS ENTER COURTROOM 6:18 P.M.

8 THE COURT: Thank you.

9 BAILIFF: Jury is seated, your Honor.

10 THE COURT: Thank you. Madam Foreperson, I
11 understand the jury has reached a verdict.

12 MADAM FOREPERSON: Yes, we have, your Honor.

13 THE COURT: Would you please hand it to Bob? All
14 right. If Mr. Simmons will stand with his counsel,
15 please.

16 *In the case of the State of South*
17 *Carolina versus James Simmons, we, the*
18 *jury unanimously find the following:*

19 *As to Indictment 2012-GS-07-1536, the*
20 *charge of criminal sexual conduct with a*
21 *minor under the age of eleven, Minor 2*
22 *we, the jury, unanimously find the defendant,*
23 *James Simmons, guilty.*

24 *As to Indictment 2012-GS-07-1537, the*
25 *charge of criminal sexual conduct with a*

1 minor under the age of eleven, Minor 1
2 we, the jury, unanimously find the defendant,
3 James Simmons, guilty.

4 You may be seated. Ladies and gentlemen of the
5 jury, if this is your verdict, will you please indicate
6 by raising your right hand?

7 Thank you. And I noted all the jurors have raised
8 their right hand. Would you like for me to individually
9 poll the jury, Ms. Campbell?

10 MS. CAMPBELL: I would. Thank you, your Honor.

11 THE COURT: Ladies and gentlemen, I am going to ask
12 each one of you individually a question. I'm going to
13 ask you if this is your verdict, and I need a response.
14 And is this still your verdict, all right? And if you
15 would, ladies and gentlemen, I do know some of you, but I
16 want to make sure. Just let me know that it's you when I
17 call out your name.

18 Ms. Peskoe, is this your verdict?

19 JUROR NUMBER 239: Yes, it is.

20 THE COURT: Is it still your verdict?

21 JUROR NUMBER 239: Yes, it is.

22 THE COURT: Robert Drouin.

23 JUROR NUMBER 95: Yes, ma'am.

24 THE COURT: Is this your verdict?

25 JUROR NUMBER 95: Yes, ma'am.

1 THE COURT: All right.

2 MS. CAMPBELL: I just thought it was relevant that
3 your Honor be aware of that particular case. And
4 whatever bearing it rules on your sentencing at this
5 point, obviously, is in your determination.

6 THE COURT: Okay.

7 MS. CAMPBELL: Thank you.

8 THE COURT: Ms. Lempesis, do you want to --

9 MS. LEMPESIS: Just very briefly, your Honor. You
10 obviously sat throughout this trial and heard all of the
11 facts, and know exactly what Mr. Simmons has been found
12 guilty of. And so, because -- based on those facts, and
13 the sexual abuse to both of his sons, Minor 2 and Minor 1
14 we would ask for life.

15 THE COURT: Would anyone else like to speak on
16 behalf of either side?

17 MS. LEMPESIS: They do not, your Honor.

18 THE COURT: Mr. Simmons would not like to speak?

19 MS. CAMPBELL: He would not.

20 THE COURT: Okay. Thank you. All right. On
21 Indictment Number 2012-GS-07-1537, for criminal sexual
22 conduct with a minor victim under eleven years of age,
23 the sentence of this Court is you be committed to the
24 Department of Corrections for a period of life
25 imprisonment.

1 For Indictment Number 2012-GS-07-1536, for criminal
2 sexual conduct with a minor under the age of eleven,
3 again, the sentence of this Court that you be committed
4 to the Department of Corrections for a period of life
5 imprisonment. Those are to run concurrent to each other.
6 Good luck to you, sir.

7 Okay. Thank you all.

8 MS. LEMPESIS: Thank you, your Honor.

 END TRIAL 6:33 P.M.

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO'S. 2012-GS-07-01536 & 2012-GS-07-01537

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

OCTOBER 31, 2013

TRANSCRIPT OF POST-TRIAL HEARING

BEAUFORT, SOUTH CAROLINA

JAMES SIMMONS

DEFENDANT

ORIGINAL

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

1 mandatory lifetime GPS monitoring. Mr. Simmons had a
2 minimal criminal record. And based on those two
3 factors, we'd ask you to reconsider your sentence, and
4 sentence him to the 30 years versus the life sentence.

5 THE COURT: How old is Mr. Simmons?

6 MS. CAMPBELL: You know, I don't have that. It
7 should be on the PSI. Mr. Simmons was born, let's see,
8 in 2000. He was born [REDACTED] Mr. Simmons is 37 years
9 old in 2012. So, he's 38. Is that right? Yes. Am I
10 doing my math right, or is he 39?

11 MS. LEMPESIS: Thirty-eight. Wait.

12 THE COURT: You said '75. He was born in '75?

13 MS. CAMPBELL: Yes.

14 MS. LEMPESIS: He's 38.

15 THE COURT: He's 38. All right. Let's go ahead
16 and move on to his trial motions, and then, I'll let you
17 know on that.

18 MS. CAMPBELL: Okay. Your Honor, I really don't
19 have, you know, an oral argument to make on the post-
20 trial motions. I did file them in detail for your
21 Honor, and the bases for Mr. Simmons' motion for a new
22 trial.

23 That's just the defendant's position. I don't know
24 if the State has a position or argument on it. I know
25 you have a copy of them, as well.

1 THE COURT: I'm looking at it right now.

2 MS. CAMPBELL: Okay. Thank you.

3 THE COURT: I appreciate it. Sorry.

4 MS. CAMPBELL: No, that's fine. Thank you.

5 THE COURT: And I have reviewed it before. I just
6 want to look at it again.

7 Just going through and looking at your first basis
8 was the question of the petit jury panel. This was
9 tried during the June 17, 2013 term of court, wherein,
10 oftentimes, we transfer -- the Clerk of Court transfers
11 educators or anyone related to their job at school, or,
12 in fact, is a full-time student, to a term of court that
13 doesn't conflict with their responsibilities.

14 I know we went at length, and I can tell you the
15 Court was concerned about having a fair representation
16 of the petit jury panel. I'll also tell you that, since
17 then, I've had the ability to do an awful lot of
18 studying on petit jury panels, most recently in results
19 to, or as a result of, my death penalty case.

20 MS. CAMPBELL: Um-hmm.

21 THE COURT: The State's death penalty case that we
22 handled last week. And I heard a lot of motions in that
23 case about a proper representation of the community.
24 And again, I allowed you, correct me if I'm wrong, I
25 allowed you to make an argument, and we did look during

1 the time of it, and it was something that we considered
2 and heard --

3 MS. CAMPBELL: Um-hmm.

4 THE COURT: -- and took a great deal of time making
5 sure that we didn't have undue representation of any
6 particular, I won't say class of people, because I don't
7 think they are in any way a protected class of teachers.
8 My understanding is, in looking at your motion, you did
9 use peremptory strikes as to what appears to be for
10 people who were educators. And correct me if I'm wrong,
11 did you end up with any teachers or any educators on
12 your jury?

13 MS. CAMPBELL: I don't have an independent
14 recollection of that.

15 THE COURT: I don't think you did, is what I
16 recall.

17 MS. LEMPESIS: I don't think we did, Judge.

18 THE COURT: And I think I went ahead and made an
19 independent, if I'm correct, on the record, after the
20 panel, we had the panel qualified. And first, I looked
21 at the panel, obviously, because that what seems to be a
22 cross-section, and then, we looked again. And then, I
23 did another check independently after the jury was
24 drawn, and not that that's necessary, but I did, and
25 found that I thought it was a fair panel.

1 I will, for the record, state that we have
2 discussed, when we do transfer educators and people
3 related to school now, that we spread them over, and we
4 do do that, to some effect.

5 MS. CAMPBELL: Um-hmm.

6 THE COURT: I think, usually, we ask them what is
7 most convenient for them, because they're usually going
8 to say after school lets out. But I do know that the
9 practice in Beaufort County for the Clerk of Court's
10 Office is that they intersperse them among the summer,
11 and will continue to do that.

12 So, respectfully, as to that basis, I'm going to
13 deny it. I think I took every safeguard I could to make
14 sure we had a fair panel and a fair jury.

15 Secondly:

16 *The Court erred in denying Defense*
17 *motion to disallow the use of the terms*
18 *'victim' and 'defendant' during the course*
19 *of the trial.*

20 MS. LEMPESIS: Judge, I think we argued that at the
21 time, and there was just no case law to support that it
22 was -- that it should be disallowed. And so, your Honor
23 did allow it, and I think that was a proper decision.
24 We'd ask that the ruling be upheld.

25 THE COURT: And again, I think I just based it on

1 my same reasoning. Again, I don't know any prohibition
2 against calling someone a victim or a defendant.
3 Although, I will say that I am very careful. I will
4 tell you that, when I qualify a jury, a lot of people,
5 when asked if you know, I won't refer to, typically, the
6 alleged victims as victims at all. I just -- they're
7 potential witnesses in the case.

8 MS. CAMPBELL: Um-hmm.

9 THE COURT: As far as the Hope Haven interview, I
10 think it was appropriate, and I don't think there is any
11 question that there was a probable fact.

12 *As to your Number 4:*

13 *The Court erred in denying Defense*
14 *motion to deny the qualification of Kristin*
15 *Dalton as an expert, allowing her to testify*
16 *as an expert, and to testify to hearsay*
17 *statements of* Minor 1 *and* Minor 2
18 *and to the characteristics and*
19 *behaviors of victims of sexual assaults.*

20 Correct me if I'm right, Kristin Dalton is a nurse
21 practitioner? Tell me exactly who she is, again.

22 MS. LEMPESIS: Your Honor, she's the nurse
23 practitioner from Beaufort Pediatrics, and she does all
24 the forensic exams of victims in the Beaufort County,
25 and throughout the circuit, actually. We did not refer

1 to her as a forensic examiner. We just referred to her
2 as an examiner. We did not use the word *forensic*. She
3 did testify about what was said to her by Minor 2 and
4 Minor 1 during her examination of them, and it came in
5 under the 8034 exception to the hearsay rule.

6 She did not talk about -- and Ms. Campbell's motion
7 talks about her testimony about child sexual abuse and
8 assault accommodation syndrome. She did not testify
9 about anything along those lines.

10 We did have a discussion about that in reference to
11 Kendra Twitty, who was on my witness list, but I did not
12 end up calling.

13 THE COURT: Right.

14 MS. LEMPESIS: And so, that was not an issue. Ms.
15 Dalton did testify about behaviors of child victims of
16 sexual abuse to a limited extent, as I recall.

17 THE COURT: I think we were pretty tight on her, if
18 I recall. Did we do a proffer for her first, or not?

19 MS. LEMPESIS: We did.

20 THE COURT: I believe we did a proffer to make sure
21 that she was limited in her scope. And certainly, we
22 didn't call her a forensic examiner, because we all know
23 that's not appropriate. So, okay.

24 MS. LEMPESIS: She was qualified as an expert and
25 as a nurse practitioner.

1 THE COURT: As a nurse practitioner. Okay. All
2 right.

3 And then, your next basis was that Dr. James
4 Simmons was able to testify as to hearsay statements of
5 [Minor 1] and [Minor 2] Correct me if I'm wrong, he
6 was the pediatrician for the boys that the boys did
7 disclose some of the abuse to, and we let that in under
8 8034, correct?

9 MS. LEMPESIS: That's correct, your Honor.

10 THE COURT: As an exception.

11 MS. LEMPESIS: He was their physician that they
12 went to initially.

13 THE COURT: Okay. Just so I was clear.

14 *The Court erred in finding that*
15 *[Minor 1] was competent to testify,*
16 *and allowing the testimony of [Minor 1]*
17 *[redacted] in violation of '601' and relevant*
18 *authorities.*

19 I do think that both of these boys, -- and again,
20 I'm having a hard time placing which one was which, --
21 but the boys were both bright, intelligent. Certainly
22 understood right and wrong. They understood the
23 difference between telling a lie. And I think that,
24 again, they were certainly qualified to testify. And I
25 think, certainly, Ms. Campbell did as good a job as

1 possible in trying to show that they had had discussions
2 with the State; that it was possibly rehearsed or
3 coached. I didn't find their testimony to be linked to
4 that. So, respectfully, I pulled my earlier ruling,
5 certainly as to that, as well.

6 Number 7:

7 *The Court erred in finding* Minor 2
8 *Simmons was competent to testify.*

9 And I apologize again for going back and forth,
10 because I have a hard time remembering which boy was
11 which boy. But again, as I stated prior, you know,
12 previously, I think they both were fine to testify. I
13 think in this one, you stated that, because he had ADHD,
14 and that his mother suffered from schizophrenia. I can
15 tell you that I did an independent hearing on whether or
16 not he was qualified to testify, and I think he
17 certainly was qualified to testify, and understood the
18 difference between truth and a lie, and it was fine.

19 MS. LEMPESIS: And your Honor?

20 THE COURT: Yes.

21 MS. LEMPESIS: I apologize. As to Number 6,
22 though, in Minor 1 one of the things in the
23 motion is that he had imaginary friends that he would
24 listen to and talk to. And I just, for your Honor's
25 recollection, this was when Minor 1 said he had a pet

1 frog, and that he would talk to him. And when your
2 Honor asked what the pet frog would say, he said *ribbet*.
3 But it was -- certainly, his competency was more than
4 established at the time of trial.

5 THE COURT: Additionally, on your Subsection (a),
6 it says:

7 *The Court erred in denying a motion*
8 *for a mistrial, based upon displaying*
9 *improper approval and demeanor towards*

10 Minor 1

11 Well, to begin with, again, I remember there was
12 this whole idea about a wink or a nod toward the State
13 of South Carolina and the counsel table. To begin with,
14 I didn't do it. Secondly, on top of that, the jury
15 wasn't in the courtroom when it occurred, allegedly. It
16 was when he was given his qualifications as to whether
17 or not I was qualifying him.

18 Who tried this case with you?

19 MS. LEMPESIS: Hunter and I.

20 THE COURT: You and Ms. Swanson. So, I guess it
21 was the allegation that you were somewhere else, not at
22 the table, but it was Ms. Swanson and Investigator
23 Fraser that was sitting there.

24 MS. LEMPESIS: Correct.

25 THE COURT: And somehow, there was some kind of

1 suggestion that I was winking or nodding towards,
2 apparently, the two of them in some way. Again, it
3 didn't happen.

4 I will also go ahead and put on the record, I
5 understand that Ms. Campbell is vigorously defending her
6 client. She also assumes that she had seen something
7 out in the lobby, --

8 MS. CAMPBELL: Oh, great.

9 THE COURT: -- and that the grandmother was praying
10 with the boys, when, in fact, they were just playing a
11 game. And it was something that you cross-examined on
12 at length. And quite frankly, you were just incorrect
13 there, as well. So, again, I understand, possibly in
14 your vigorous defense, that you could have misconstrued
15 certain things.

16 But again, on that basis, again, I think it was
17 appropriate, and I think my ruling was as it should be.

18 Lastly, as to my denying the State's motion -- or
19 your Defense motion for a mistrial based on the
20 characterization of the defendant being a child
21 molester, when did Ms. Swanson use that term?

22 MS. LEMPESIS: It was during cross-examination,
23 your Honor, of one of the defendant's -- one of the
24 Defense witnesses. And I believe it was phrased as:
25 so, you wouldn't leave your children alone with a child

1 molester.

2 THE COURT: Okay.

3 MS. LEMPESIS: Or something along those lines. It
4 was one reference.

5 THE COURT: I believe it was maybe someone had said
6 they had left their child in the past with him.

7 MS. LEMPESIS: With Mr. Simmons?

8 THE COURT: Was it a sister or a relative in some
9 way? Or a neighbor, maybe?

10 MS. LEMPESIS: I believe it was Mr. Simmons'
11 sister, if I recall correctly.

12 THE COURT: And she said that her children had
13 always been around him, and that she never had any
14 concerns whatsoever. And I think her cross-examination
15 question is: so, you know, you would have no hesitation
16 leaving your children, you know, around someone who is a
17 child molester? And I believe her response was no; and
18 in fact, he was in my home, and I allowed him to live
19 there, you know, for a good amount of time.

20 So, respectfully, I don't think that raises to the
21 level of dictating a mistrial.

22 *The Court erred in denying defendant's*
23 *motion for a directed verdict.*

24 Again, I think there was adequate, both direct and
25 circumstantial evidence, that this would probably go to

1 a jury, and the jury would find that he was, in fact,
2 guilty of these offenses, which they did.

3 Lastly:

4 *That the evidence presented by the*
5 *State did not support the verdict.*

6 In that case, I did -- as they always do, they were
7 talking. They came back and said they were having a
8 difficult time. We all agreed that an Allen charge was
9 appropriate. And we charged them on an Allen Charge.
10 And they came back. And they were deliberating for
11 about five-and-a-half hours or so.

12 Again, this is a case that I think was coupled with
13 both direct and circumstantial evidence, and the jury
14 fairly weighed it. I think they certainly appreciated
15 the seriousness of the charges. And respectfully, I'm
16 going to deny your motion for a new trial.

17 MS. CAMPBELL: Thank you, your Honor.

18 MS. LEMPESIS: Thank you, your Honor.

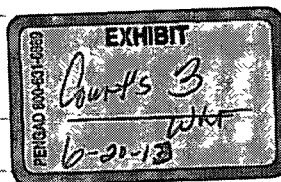
19 THE COURT: I will tell you, as to the motion for a
20 reduction of sentence, again, I'm not going to change my
21 sentence in this. I think it's appropriate. I think it
22 was obviously a very bad case. Very heart-wrenching
23 for, I think, everyone, including the entire family.
24 And I do think a life sentence is appropriate in this
25 case. I respectfully am going to deny your motion.

STATE VS SIMMONS
TIME DATE

340/
pm

6-20-2013

Jury is currently
 at impasse.
 How should we
 proceed?



Signature Lyndia E. Eskoe

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	INDICTMENT IS: PM 4:24
STATE OF SOUTH CAROLINA,	)	2012-GS-07-1536, 1537
versus	)	CLERK OF COURT
JAMES SIMMONS,	)	DEFENDANT'S NOTICE OF MOTION
Defendant.	)	AND MOTION FOR NEW TRIAL

TO: MARY JORDAN LEMPESIS, ASSISTANT SOLICITOR, 14TH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that Defendant by and through his undersigned counsel will move before this Honorable Court, as soon as counsel can be heard, for a NEW TRIAL pursuant to South Carolina Rule of Criminal Procedure 29, on the following grounds:

1. The Court erred in denying Defendant's Motion to Discard the Petit Jury Panel

This matter was called for trial by the State of South Carolina on June 17, 2013. The Defendant and his attorney were present for the Petit Jury Roll Call. During the roll call, it became apparent to Defense Counsel that the petit jury panel that was present for the June 17, 2013 term of General Sessions Court for Beaufort County consisted of approximately thirty percent (30%) educators and teachers. The Defendant brought this concern to the Court and asked for a hearing. The Court allowed Defendant a hearing on the issue of over-representation of one profession in the petit jury panel for the June 17, 2013 term of General Sessions Court and its impact on the fair, impartial, and random petit jury selection procedures mandated by law. At that hearing, the Defendant

presented the following matters for review of the Court: the applicable statutory laws (14-7-140, 160, and 1010) for the proper procedures for random selection of jurors for a term of General Sessions Court and the promulgated procedures from the Judicial Department of South Carolina (4.0.1) for the same. In addition, the Defendant asserted that those educators and teachers called randomly pursuant to the law for that term of General Sessions Court numbered four (4) jurors and that this reflected a 0.05% of the total number of jurors present in the jury panel on June 17, 2013. Upon questioning by the Court, it was determined that a total of twenty-three (23) jurors who were teachers and educators were "transferred in" to the June 17, 2013 term of General Session Court by action of the Beaufort County Clerk of Court. These twenty-three (23) were not randomly selected for the June 17, 2013 term of General Session Court for Beaufort County. Defendant argued that the jury panel as called on June 17, 2013 was in violation of the Defendant's constitutionally guaranteed fundamental rights to a fair and impartial and randomly selected petit jury panel. Defendant further argued that the petit jury panel as presented for his trial was in violation of the United States Constitution and the South Carolina Constitution guarantees of fairness and due process and other applicable laws that are in place to ensure that a criminal Defendant can have a fair, impartial, and randomly selected petit jury panel and trust that the integrity of the selection process has not been compromised. The Court heard Defendant's arguments and denied Defendant's motion to discard and excuse the June 17, 2013 petit jury panel for Beaufort County General Sessions Court. The Defendant had to proceed to select his jury from this panel. During jury selection, the Defendant had to use some of his

preemptory strikes on these educators. Specifically, he had to use a preemptory strike on Juror #62 (an educator/principal and a **transfer in**), Juror #274 (an educator and a **transfer in**), Juror #118 (an educator and a **transfer in**), Juror #276 (an educator/assistant principal and a **transfer in**) and Juror #310 (an educator).

2. The Court erred in Denying Defendant's Motion to Disallow Use of the terms "Victim" and "Defendant" During the Course of the Trial

The Defendant made a motion to disallow the use of the terms "victim" and "defendant" during the course of the trial. Defendant asserted that the use of these terms was prejudicial and unfair to the Defendant.

3. The Court erred in Denying Defendant's Motion to Disallow the Use of the Hope Haven Video of both ^{Minor 1} **and** ^{Minor 2}

The Defendant presented the Court with a written Motion on this matter and argued that the Hope Haven Videos were improper and in violation of the South Carolina Supreme Court ruling in *State v. Kromah* (Appellate Case No. 2009-140328). The Defendant asserted that 17-23-175 was now subject to an analysis based upon *Kromah* standards. The Court allowed the use of the ^{Minor 2} Hope Haven Video.

4. The Court erred in Denying Defendant's Motion to Deny the Qualification of Kristin Dalton as an Expert and allowing her to testify as an Expert and to testify to hearsay statements of ^{Minor 1} **and** ^{Minor 2} **and to characteristics and behaviors of victims of sexual assault**

The Defendant argued extensively that the State of South Carolina was seeking to introduce evidence of the *Child Sexual Abuse/Assault*

Accommodation Syndrome through the testimony of Kristin Dalton, a nurse practitioner, who performed the physical examination on [Minor 1] and [Minor 2] nearly two years after the alleged sexual battery. The Defendant argued that when the medical exam proved normal the State was going to try and seek to introduce testimony that those results were consistent with sexual abuse and further have Kristin Dalton testify as to the "typical" behaviors of children of sexual abuse. The Defendant objected to both types of testimony. The Defendant relied on Watson v. Ford Motor Company, Shearhouse advance sheet no. 37/S.Ct. Op. No. 26786) and Rule 702, SCRE. Additionally, the Defendant objected on the basis of 803(4), SCRE.

5. The Court erred in allowing Dr. James Simmons to testify as to hearsay statements by [Minor 1] and [Minor 2]

The Defendant objected to Dr. James Simmons, the pediatrician, being allowed by the Court to testify to hearsay statements made by [Minor 1] and [Minor 2] to him as being in violation of Rule 803(4), SCRE.

6. The Court erred in finding that [Minor 1] was competent to testify and allowing the testimony of [Minor 1] in violation of Rule 601(b) and relevant case and statutory law

The record reflected that [Minor 1] was on numerous medications for many years for ADHD and that his biological mother, Cynthia Goethe, suffered with severe schizophrenia. The Defendant thoroughly cross-examined [Minor 1] during the competency hearing. The record reflects that [Minor 1] responded that he had imaginary friends who he listened to and talked to and who sometimes told him what to do. He testified that he would tell a lie if he thought he could "get away with it". He testified that he was coached, and

rehearsed, and practiced his testimony with the State. The Defendant objected to his testimony as being in question due to concerns as to his competency.

7. The Court erred in finding [Minor 2] was competent to testify and allowing the testimony of [Minor 2] in violation of Rule 601(b) and relevant case and statutory law

The record reflected that [Minor 2] was on numerous medications for many years for ADHD and that his biological mother, Cynthia Goethe, suffered with severe schizophrenia. The Defendant thoroughly cross-examined [Minor 2] during the competency hearing. He testified that he had lied before and that he would lie if he thought he could "get away with it". He testified that he was coached, and rehearsed, and practiced his testimony with the State. The Defendant objected to [Minor 2] testimony as a result of the Clerk of Court telling [Minor 2] to answer "yes" when she had finished administering the oath to tell the truth and the fact that he admitted he would lie if no consequences.

8. The Court erred in denying Defendant's Motion for a Mistrial Based Upon the Court displaying improper approval and demeanor toward [Minor 1] during his testimony

The Defendant's Counsel objected during the opening series of questions by the State of South Carolina to the witness, [Minor 1]. Counsel observed what appeared to be a "wink and a nod" toward the State of South Carolina counsel table. Counsel asked to be heard fully upon the conclusion of [Minor 1] testimony and the Court agreed to a hearing. Counsel argued that the Court may have improperly, although perhaps inadvertently, displayed an approving manner and vouching demeanor for the witness [Minor 1].

when Counsel observed the Court “wink” toward the State of South Carolina counsel table. The Court attempted to review the courtroom video and reported that the video was unable to show the existence of a “wink” or the nonexistence of such. The Defendant argued that any appearance of support for or approval of or vouching for the witness, ^{Minor 1} [REDACTED] could be interpreted by the jury as being the Court’s opinion on the veracity of the witnesses testimony and would be improper and the Defendant would be entitled to a Mistrial. The Court denied any improper facial movements and denied Defendant’s Motion for a Mistrial.

9. The Court erred in Denying Defendant’s Motion for a Mistrial with Prejudice for the Solicitor’s tactical use of improper comments; in particular the use of the characterization “child molester” into the trial of the case

The State of South Carolina cross-examined Mahogany Washington, one of Defendant’s “*good character*” witnesses. The Assistant Solicitor, Ms. Hunter Swanson, during this line of her questioning of this witness injected the phrase “child molester” into the trial. Essentially, the State questioned the witness about whether she would leave her children with a “child molester”. Defendant promptly objected and moved for a Mistrial and a hearing on the improper conduct and comment. The Court agreed to the hearing and conducted a hearing on the matter the following day. The Defendant relied on numerous cases from South Carolina that dealt with this issue. The Defendant cited Vasquez v. State, 388 SC 447 (2010), State v. Bennett, 369 SC 219 (2006), State v. Day, 341 SC 410 (2000) and others. The Defendant contended that the egregious, calculated comment may have left the jury with the impression that

the Defendant was a "convicted child molester" and this was improper comment by the State which was calculated and tactical based upon the advance skill and knowledge of the seasoned and well-educated Assistant Solicitor who knew that the injection of such a phrase was improper. The Defendant made it clear to the Court that any "curative instruction" would be insufficient to "cure" the misconduct and improper characterization and introduction of the terminology "child molester" into the trial. The State of South Carolina argued that since the Defendant was "on trial" for "molesting children" that it was proper to use the terminology "child molester" since clearly he was in court and on trial for being just such a person. The Defendant was thus denied fairness and due process as required by the United States Constitution and the South Carolina Constitution and all applicable case law and statutory law. Thus, the Defendant was entitled to a Mistrial With Prejudice.

10. The Court erred in Denying Defendant's Motions for Directed Verdict

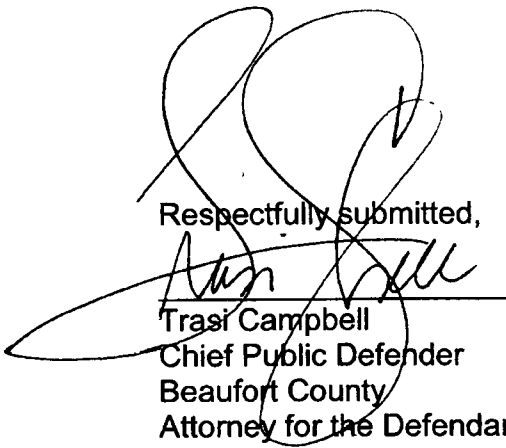
11. The evidence presented by the State of South Carolina did not Support the Verdict

The record is clear that the jury received this case for deliberations at 12:50 p.m. The jury returned with a note that they were at an impasse at 3:55 p.m. The Court gave the jury an Allen charge and sent them back to deliberate further. The jury returned with a guilty verdict at 6:15 p.m. The jury spend nearly 5 ½ hours in deliberations.

Beaufort, South Carolina

6/21, 2013

Respectfully submitted,


Traci Campbell
Chief Public Defender
Beaufort County
Attorney for the Defendant

379

WITNESSES

Fraser - BCSO

ARREST WARRANT NUMBER

M057114

ACTION OF GRAND JURY

True Bill

Melinda Berry
Foreperson of Grand Jury
Date: AUG 23 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701536

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

James Simmons

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 11 years old

SC Code 16-03-0655(1)
CDR Code.0385

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I _____
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

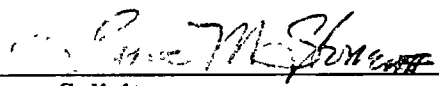
INDICTMENT
2012GS0701536

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years old

That in Beaufort County, South Carolina, during and between the years of 2009 and 2010, the Defendant, James Simmons, date of birth [REDACTED], did commit a sexual battery upon a minor who was less than eleven years of age, to wit: Defendant did penetrate the anus of the Victim, Minor 2 [REDACTED] (date of birth, on several occasions in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

25 yrs to life

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.
James Simmons

AKA:

Race: AFRICAN AME Sex: M Age: 37

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST.

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life imprisonment 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 ☐ OrderedTotal: \$ 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/Frob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.50
TOTAL		\$ 133.50

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2012GS0701536

A/W#: M057114

Date of Offense: 1-1-2008

S.C. Code § : 16-03-0655(1)

CDR Code #: 0385

SENTENCE SHEET

PTUP days/hours Public Service EmploymentObtain 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 \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2142

Sentence Date: 6-20-13

Certified - A True Copy

J. Ann Royce, Clerk of Court
Beaufort County, S.C. - Kristy Taylor

WITNESSES

Fraser - BCSO

ARREST WARRANT NUMBER

M057113

ACTION OF GRAND JURY

Melissa Beare
Foreperson of Grand Jury
Date. AUG 23 2012

VERDICT

Foreperson of Petit Jury
Date.
INDICT
3

DOCKET NO. 2012GS0701537

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

James Simmons

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 11 years old

SC Code: 16-03-0655(1)
CDR Code:0385

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I _____
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

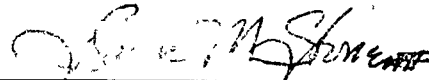
INDICTMENT
2012GS0701537

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years old

That in Beaufort County, South Carolina, during and between the years of 2009 and 2010, the Defendant, James Simmons, date of birth, [REDACTED] ^{15 Aug 88} did commit a sexual battery upon a minor who was less than eleven years of age, to wit: Defendant did penetrate the anus of the Victim, Minor 1 [REDACTED], date of birth [REDACTED] in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

25 yrs to Life THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

James Simmons

AKA.

Race: AFRICAN AMERICAN M Age: 37

DOB: [REDACTED] SS#: [REDACTED]

Address

City/State/Zip

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

INDICTMENT/CASE#: 2012GS0701537

A/W#: M057113

Date of Offense: 1-1-2008

S.C. Code §: 16-03-0655(1)

CDR Code #: 0385

SENTENCE SHEET

[X] CONVICTED OF or [] PLEADS

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

For plea is [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of life days/months/years or [] under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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.

[X] 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:

*Fine:

§ 14-1-205 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (DUI Breath Test Fee)

§ 56-5-2942(3) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$	\$
§ 14-1-205 (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	\$
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§ 56-5-2942(3) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL	\$133	\$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 \$ beginning\$ paid to Public Defender FundOther: [] 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: 2192

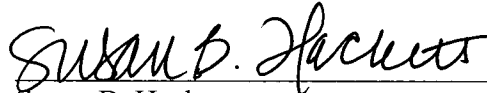
Sentence Date: 6-20-13

Certified - A True Copy
Jeri Ann Rosemead, Clerk of Court
Beaufort County, SC - Kiley Taylor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings "

February 4th, 2015


Susan B. Hackett
Appellate Defender

RECEIVED

FEB 04 2015

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

RECEIVED

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

RECEIVED

FEB 04 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V

JAMES SIMMONS JR ,

APPELLANT

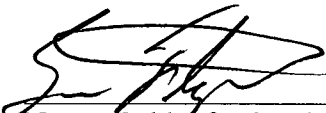
APPELLATE CASE NO 2013-002389

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of February, 2015.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2015.


_____(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.