

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

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OCT 27 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

JESSIE WAYNE DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-000282

RECORD ON APPEAL

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1 State of South Carolina Court of General Sessions
2 County of Oconee
3

4 State of South Carolina,)
5 Plaintiff,) 2013-GS-37-344 to 349
6 -vs-) January 27, 2014
7 Jessie Wayne Davis,) Volume 1: Pgs. 1 - 183
8 Defendant.) Transcript of Record
9 -----)

10
11 B E F O R E:

12 The Honorable Alexander S. Macaulay, Judge;
13 and a jury

14 A P P E A R A N C E S:

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16 Attorney for the State

17 R. Daniel Day, Jr., Esquire
18 Attorney for Defendant

19

20

21

22 Diane L. Thommes, RPR, CRR

23 Circuit Court Reporter

24

25

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2 For the State:

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4	1	Waiver of rights form	100	182
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5	3	Apology letter to ^{Minor}	100	182
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For the Court:

9	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
10	1	Capacity to conform evaluation	79	80
11		by Dr. Frierson		
12	2	Competency to stand trial	79	80
		evaluation by Dr. Frierson		

13

For the Defendant:

14

No exhibits introduced

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1 Walhalla, South Carolina; Monday, January 27, 2014

2

3 (WHEREUPON, court convened with all parties
4 present and the following proceedings were had
5 commencing at approximately 10:21 a.m.)

6

7 THE COURT: Ladies and gentlemen, my name is Alex
8 Macaulay. I am one of the resident circuit judges here
9 in the Tenth Circuit which includes not only Oconee
10 County where I reside, but also Anderson County. I have
11 been assigned to a term of general sessions, sometimes
12 called criminal court, here in Oconee County through this
13 week.

14 Our purpose today is to determine your
15 qualifications for eligibility to serve as jurors. In
16 South Carolina we have three sources of names from
17 which -- three sources from which names are selected for
18 jury service. Each of you is here because at least one
19 of these three sources applies to you. If you are a
20 registered voter or if you are a licensed South Carolina
21 motor vehicle driver, or if you have a South Carolina
22 identification card from the highway department, you are
23 eligible for jury service.

24 Now, we appreciate the sacrifice and
25 inconvenience jury service can cause to your personal

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Jury Roll Call

1 lives, and I thank you for being here. We will all do
2 our best to minimize your inconvenience and try to make
3 this a beneficial and educational experience for you.

4 Now, the first stage of the jury qualification
5 process is referred to as the roll call. The Clerk of
6 Court will call the roll of all who have been summoned to
7 jury duty. When your name is called, please stand and in
8 a very clear and audible voice provide the following --
9 or the information that is requested by the Clerk of the
10 Court.

11 As a part of the roll call and qualification
12 process, it is necessary that I administer an oath to
13 you.

14 Therefore, if you would please stand and raise
15 your right hand.

16 (WHEREUPON, the prospective jury panel was
17 sworn.)

18 THE COURT: Now, ladies and gentlemen, the Clerk
19 of Court will call the roll.

20 Madam Clerk.

21 THE CLERK: Ladies and gentlemen, as I call your
22 name, if you would please stand. We will need to know
23 the name of your employer and the job that you hold with
24 that employer. If you are married, we'll need the same
25 information for your spouse. If you or your spouse are

1 retired, we will need to know your last job held.

2 Number 3, Amy Armstrong.

3 PROSPECTIVE JUROR: I am a farm manager for our
4 family farm. My husband is Robert Armstrong. He works
5 for AT&T.

6 THE CLERK: And what does he do for AT&T?

7 PROSPECTIVE JUROR: He's a service tech.

8 THE CLERK: Thank you. Number 6, Benjamin
9 Ballard.

10 PROSPECTIVE JUROR: I'm an electrician with the
11 County.

12 THE CLERK: Number 7, Jason Barnes.

13 PROSPECTIVE JUROR: I work at Michelin. I'm a
14 maintenance manager. And my wife, Paige, works at
15 Palmetto Surgery. She's a surgical technician.

16 THE CLERK: Okay. Number 9, April Barry.

17 PROSPECTIVE JUROR: I work in the office at
18 Scenic Chevrolet. My husband is Greg, and he works on
19 the line at Itron.

20 THE CLERK: Number 10, Carl Bennett.

21 PROSPECTIVE JUROR: I work at The Corp Associates
22 as an electrician.

23 THE CLERK: Number 14, John Blount.

24 PROSPECTIVE JUROR: I work for J.M. Family
25 Transportation Engineering. My wife is Laurie Blount.

1 She's a housewife.

2 THE CLERK: Number 20, Ashley Burton.

3 PROSPECTIVE JUROR: Plant supervisor at Ulbrich
4 Specialty Wire and paramedic at Oconee County Medical
5 Center and Pickens County. My wife is a homemaker.

6 THE CLERK: Number 23, Wanda Campbell.

7 PROSPECTIVE JUROR: I am a teacher's assistant
8 with the School District of Oconee County, and my husband
9 works at Borg Warner Automotive as senior production
10 coordinator.

11 THE CLERK: Okay. Number 29, Kathy Cleveland.

12 PROSPECTIVE JUROR: I'm a retired parking
13 supervisor at Clemson University. My husband is Travis
14 Cleveland. He's a supervisor at the university dorm.

15 THE CLERK: Number 30, William Coburn.

16 PROSPECTIVE JUROR: I'm the chemical engineering
17 technician at Clemson. My wife works there also as a
18 captionist.

19 THE CLERK: Number 32, Conard Cooper.

20 PROSPECTIVE JUROR: I'm a maintenance machinist
21 at Oconee Machine and Tool.

22 THE CLERK: Okay. Number 33, Sarah Craft.

23 PROSPECTIVE JUROR: I am retired. I worked as a
24 secretary in the investigative services division of the
25 Griffin Police Department in Griffin, Georgia. My

1 husband is Ronald. He is retired from Delta Airlines as
2 an aircraft mechanic.

3 THE CLERK: Number 36, James Dalton.

4 PROSPECTIVE JUROR: I own a tree service,
5 self-employed. My wife owns a catering business.

6 THE CLERK: Okay. Number 38, T'ayuna Dendy.

7 PROSPECTIVE JUROR: I work on the assembly line
8 at Borg Warner.

9 THE CLERK: Number 39, Jeffrey Dillard.

10 PROSPECTIVE JUROR: I'm a lead carpenter with
11 Baumgarner Builders. I'm not married.

12 THE CLERK: Number 40, James Dobey.

13 PROSPECTIVE JUROR: I work for True Tech Animal
14 and Wildlife Removal Service.

15 THE CLERK: Number 44, Jason Eller.

16 PROSPECTIVE JUROR: I work at Tamassee DAR
17 School, chief development officer. My wife is a teacher
18 at Oconee Christian Academy.

19 THE CLERK: Number 47, Tina Esposito.

20 PROSPECTIVE JUROR: I'm a Ph.D. student and
21 teaching assistant at Clemson University.

22 THE CLERK: Number 50, Rhea Fletcher.

23 PROSPECTIVE JUROR: I'm a retired picture framer.
24 My husband is retired from insurance underwriting.

25 THE CLERK: Okay. Number 58, Rita Hafner.

1 PROSPECTIVE JUROR: I'm in the accounting office
2 at SNS South, and I also own a vacation rental business
3 called RH Properties.

4 THE CLERK: Number 59, Scott Harmon.

5 PROSPECTIVE JUROR: I'm a drywall contractor, and
6 my wife is a dental hygienist, but she's not employed
7 right now.

8 THE CLERK: Number 60, Debra Hassell.

9 PROSPECTIVE JUROR: I'm a nurse at Oconee Medical
10 Center. My husband Mike works at Duke Energy in OMP.

11 THE CLERK: Number 63, Brody Holcombe.

12 PROSPECTIVE JUROR: I'm an employee at Triple H
13 Recycle. That's it.

14 THE CLERK: Number 68, Sharon Howard.

15 PROSPECTIVE JUROR: I'm retired, small business
16 owner, single.

17 THE CLERK: Number 73, Idanell Johnson.

18 PROSPECTIVE JUROR: I'm a cashier at Wal-Mart. I
19 came out of retirement to go back to work part-time, and
20 my husband is James Johnson. He was an auto mechanic.
21 He's also retired.

22 THE CLERK: Okay. Number 82, Sheila Lee.

23 PROSPECTIVE JUROR: I'm a nurse. My husband
24 works for the Oconee County School District as an HVAC
25 mechanic.

1 THE CLERK: Number 85, Pamela Long.

2 PROSPECTIVE JUROR: I'm admissions director at
3 Seneca Health and Rehab.

4 THE CLERK: Number 88, Ginger Lowery.

5 PROSPECTIVE JUROR: I'm a paralegal with Land
6 Division Title Incorporated. My husband is Jared Lowery,
7 and he runs a poultry facility at L&M Farms.

8 THE CLERK: 89, Jessica Marcus.

9 PROSPECTIVE JUROR: I stay at home.

10 THE CLERK: Number 93, Robert McAlpine.

11 PROSPECTIVE JUROR: I'm a physician with Oconee
12 Urology. My wife is a physician at Upstate Medical
13 Associates.

14 THE CLERK: Number 94, Byron McCauley.

15 PROSPECTIVE JUROR: I'm a machinist at Greenfield
16 Industry.

17 THE CLERK: Number 101, Adam Moore.

18 PROSPECTIVE JUROR: I work for Walk on Wood
19 hardwood floors and separated.

20 THE CLERK: Okay. Number 102, Alexander Morales.

21 PROSPECTIVE JUROR: I'm studying at Tri-County
22 Tech for industrial engineering.

23 THE CLERK: Okay. Number 106, Kenneth Morris.

24 PROSPECTIVE JUROR: I'm a crane operator for Duke
25 Energy. I'm single.

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1 THE CLERK: Number 107, Nancy Morris.

2 PROSPECTIVE JUROR: I work for Seneca
3 Presbyterian Church where I'm pastor. My husband works
4 for Sears in sales.

5 THE CLERK: Number 109, Emily Nicholson.

6 PROSPECTIVE JUROR: I'm a park ranger at South
7 Coast County Park.

8 THE CLERK: Number 110, Jessica Nix.

9 PROSPECTIVE JUROR: I am a bookkeeper at Ingles.

10 THE CLERK: Okay. Number 111, Stephanie Otey.

11 PROSPECTIVE JUROR: I'm a cashier at Aldi's.

12 THE CLERK: Number 112, Margaret Patterson.

13 PROSPECTIVE JUROR: I am unemployed and attending
14 school.

15 THE CLERK: Number 114, Steven Peckham.

16 PROSPECTIVE JUROR: I'm a registered architect,
17 and I own and operate Signature Architects.

18 THE CLERK: Number 116, Bradley Pittman.

19 PROSPECTIVE JUROR: I am a radiation protection
20 technician with Duke Energy, and my wife is self-employed
21 as a massage therapist.

22 THE CLERK: Number 118, Joseph Price.

23 PROSPECTIVE JUROR: I work at ITT industries. My
24 wife is a stay-at-home mom. I work on CNC machines.

25 THE CLERK: Number 122, Amanda Roach.

1 PROSPECTIVE JUROR: Unemployed, taking GED
2 classes.

3 THE CLERK: Number 123, Nancy Rochester.

4 PROSPECTIVE JUROR: Retired high school English
5 teacher in Oconee County, and my husband is also retired.
6 He owned his own landscaping company.

7 THE CLERK: Okay. Number 124, Tanya Rosemond.

8 PROSPECTIVE JUROR: I am a behavior therapist
9 with the School District of Oconee County. My husband is
10 Attorney Delane Rosemond with the Rosemond Law Firm.

11 THE CLERK: Number 132, Faye Small.

12 PROSPECTIVE JUROR: I'm a cashier here at
13 Bountyland in Walhalla and a shift lead at Food Lion in
14 Seneca.

15 THE CLERK: Number 133, Adam Smith.

16 PROSPECTIVE JUROR: I'm a machine operator at
17 BASF.

18 THE CLERK: Number 134, Annie Smith.

19 PROSPECTIVE JUROR: I'm retired from baking, and
20 my husband is deceased.

21 THE CLERK: Number 135, Carol Smith.

22 PROSPECTIVE JUROR: My name is Carol Smith. I'm
23 a stay-at-home mom, and my husband works at Senior
24 Solutions part-time. He's retired.

25 THE CLERK: Number 137, Joey Smith.

1 PROSPECTIVE JUROR: Builder for Dave Zimmerman.
2 Wife is school teacher at Oconee school district.

3 THE CLERK: Number 138, Laura Smith!

4 PROSPECTIVE JUROR: I'm a housewife, and my
5 husband is disabled, retired from Winchester saw mill.

6 THE CLERK: Number 139, Mary Smith.

7 PROSPECTIVE JUROR: I am retired from the Oconee
8 County School District. My husband James is a retired
9 engineer with Duke Energy.

10 THE CLERK: Number 142, Mary Stanford.

11 PROSPECTIVE JUROR: Teacher West-Oak High School,
12 School District of Oconee County.

13 THE CLERK: Number 145, Katherine Strathman.

14 PROSPECTIVE JUROR: I'm a full-time student at
15 Clemson University.

16 THE CLERK: Number 148, Cody Swafford.

17 PROSPECTIVE JUROR: I work at Schneider Electric,
18 assembly line.

19 THE CLERK: Number 149, Edward Taylor.

20 PROSPECTIVE JUROR: I'm a logging contractor. My
21 wife runs a restaurant.

22 THE CLERK: Number 150, Stephen Terry.

23 PROSPECTIVE JUROR: I'm an electronics technician
24 at Cordell Dubilier. My wife is retired, a CNA.

25 THE CLERK: Number 153, Mike Todd.

1 PROSPECTIVE JUROR: I'm a custodian working at
2 Clemson, and my wife is a Clemson worker. She's a
3 computer programmer.

4 THE CLERK: Okay. Number 157, Jacqueline Webb.

5 PROSPECTIVE JUROR: I'm a housewife, and my
6 husband is disabled.

7 THE CLERK: Number 159, Tracy Whaley.

8 PROSPECTIVE JUROR: I'm a teacher with the School
9 District of Oconee County. My husband is the pastor of
10 Secona Baptist Church in Pickens.

11 THE CLERK: Number 160, Gail White.

12 PROSPECTIVE JUROR: I'm an accountant with Aimco,
13 and my husband is a retired deputy with Greenville County
14 Sheriff's Office.

15 THE CLERK: Number 165, Christopher Williams.

16 PROSPECTIVE JUROR: I'm with City of Westminster
17 street department.

18 THE CLERK: Number 168, Charles Wilson.

19 PROSPECTIVE JUROR: I'm a pastor, senior pastor,
20 at Madison Mountain View Church of God. I also do
21 security consulting also. My wife works for Etcon.
22 Sorry about that.

23 THE CLERK: That's fine. 169, Mark Wilson.

24 PROSPECTIVE JUROR: I am a heating and air
25 service tech. I'm unemployed at this time, and I'm

1 single.

2 THE CLERK: Number 170, Robert Winchester.

3 PROSPECTIVE JUROR: I'm the director with the
4 Oconee Joint Regional Sewer Authority, and my wife Betty
5 works for the Oconee County Sheriff's-Office.

6 THE CLERK: Number 172, Gladys Wright.

7 PROSPECTIVE JUROR: I'm a housewife, and my
8 husband works at the Milliken plant in Pendleton.

9 THE CLERK: Number 173, Jessica Yoder.

10 PROSPECTIVE JUROR: I'm a department manager for
11 Target.

12 THE CLERK: Number 175, Joshua Young.

13 PROSPECTIVE JUROR: I'm the principal of Walhalla
14 High School, School District of Oconee County, and my
15 wife is a guidance counselor in the School District of
16 Pickens County.

17 THE CLERK: If there is anyone whose name I did
18 not call, would you please stand at this time.

19 THE COURT: Very good. Thank you, ma'am.

20 Ladies and gentlemen, I now have certain
21 questions to ask you to determine your qualifications as
22 jurors in this court. These questions determine your
23 general eligibility to serve. State law requires that I
24 ask these questions. Quite frankly, some of the
25 questions are rather personal and you may not want to

1 stand and disclose the information openly in the presence
2 of your fellow jurors. After each question, if any juror
3 needs to respond, I'll ask you to stand. If you do not
4 want to stand at that time, that's fine. At the end of
5 the process we will give you a chance to come forward and
6 speak privately with me and the clerk. We do not want
7 any of you to suffer any embarrassment. So if you do not
8 want to stand, make a mental note and remember to come
9 forward at the end when I ask you to do so. It is
10 absolutely essential that we have accurate information
11 consistent with the oath that you have just taken.

12 Now, the first series of questions have to do
13 with disqualifications. As I mentioned earlier, there
14 are three sources of names for jury service in South
15 Carolina. You do not have to have all three, but you
16 have to have at least one of the three.

17 So is there any member of the jury panel who is
18 not a registered voter or qualified elector or a licensed
19 motor vehicle driver and nor do you have an
20 identification card from the highway department? In
21 other words, if you have none of those three things, if
22 you would please stand at this time.

23 Is there any member of the jury panel who is not
24 a citizen of the United States of America? If so, please
25 stand.

1 Is there any member of the jury panel who is not
2 18 years of age or older and a citizen of South Carolina
3 and a resident of Oconee County? If so, please stand.

4 Is there any member of the jury panel who is a
5 clerk or deputy clerk of this court, constable, sheriff,
6 probate judge, county commissioner, magistrate, or other
7 county officer or employed within the walls of any
8 courthouse? If so, please stand.

9 Yes, sir. Can you give us your name for the
10 record, Mr. Winchester.

11 MR. WINCHESTER: Robert Winchester. I'm an
12 elected soil and water commissioner.

13 THE COURT: All right. Then you will be excused
14 from jury service. Thank you for being here.

15 Anyone else?

16 Is there any member of the jury panel who's been
17 drawn for jury service within the last three years?
18 That's jury service in this courtroom not in -- or one of
19 the three courtrooms in this courthouse. Not in federal
20 court, municipal court, or magistrate's court. But if
21 you have been drawn for jury service within the last
22 three years in the court of -- circuit court of Oconee
23 County which is either general sessions, criminal court,
24 or common pleas, which is civil court, if you would
25 please stand at this time.

1 Is there any member of the jury panel who is a
2 commissioned constable with or without pay or other law
3 enforcement officer? If so, please stand.

4 Now, let's see. Do we have a Solicitor here?

5 Oh, there we are, Ms. Simmons, thank you. What's
6 the oldest indictment we will be dealing with this week?

7 MS. SIMMONS: Judge, I believe 2011 -- 2010,
8 Judge.

9 THE COURT: All right. Was any member of the
10 jury panel a member of the Grand Jury for Oconee County
11 for the last several years -- 2009, 2010, 2011, 2012,
12 2013, and this year, 2014? Any member of the jury panel
13 who was a member of the Grand Jury for Oconee County for
14 the last several years, if would you please stand at this
15 time.

16 All right. The next four questions will require
17 individual consideration; therefore, please wait until I
18 have finished asking all four questions before standing.
19 In fact, I'll go through the questions twice. I'll ask
20 four questions first, then I'll repeat them a second
21 time. And it's only after I repeat them the second time
22 and I ask you to respond if you think any of the
23 questions might apply to you or even if you have a
24 question about the questions themselves. So please do
25 not respond at all until I ask you to do so after I've

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Jury Qualification

1 gone through all four questions twice.

2 Is there any member of the jury panel who's
3 unable to read, write, speak or understand the English
4 language?

5 Is there any member of the jury panel who has
6 less than a sixth grade education or its equivalent?

7 Is there any member of the jury panel who has
8 been convicted or pled guilty in a state or federal court
9 of record to a crime punishable by imprisonment for more
10 than one year and whose civil rights have not been
11 restored by pardon or amnesty?

12 Is there any member of the jury panel who is
13 incapable by reason of physical or mental infirmities to
~~14 render efficient jury service?~~

15 Again, I'm going through those four questions the
16 second time. Do not respond if you have a question about
17 the questions themselves and you think you need to
18 respond to one of the questions until I ask you to do so
19 after I have finished going through all four questions.

20 Again, is there any member of the jury panel who
21 is unable to read, write, speak or understand the English
22 language?

23 Is there any member of the jury panel who has
24 less than a sixth grade education or its equivalent?

25 Is there any member of the jury panel who has

1 been convicted or pled guilty in a state or federal court
2 of record to a crime punishable by imprisonment for more
3 than one year and whose civil rights have not been
4 restored by pardon or amnesty?

5 Is there any member of the jury panel who's
6 incapable by reason of mental or physical infirmities to
7 render efficient jury service?

8 If you think any of those questions might apply
9 to you, or even if you have a question about the
10 questions themselves, if you would please stand at this
11 time and I'll ask you to come forward individually so I
12 might speak to you privately.

13 Very well. We now move to jury exemptions.
14 State law provides for several exemptions to jury
15 service. Exemption does not mean you are not qualified
16 to serve, it simply means in most instances you have the
17 right to choose to serve or not to serve.

18 Is there any member of the jury panel who is 65
19 years of age or older who does not wish to serve? As I
20 say, you may serve, but you do not have to serve if you
21 are 65 years of age or older and do not wish to serve.

22 Yes, ma'am. If you would give us your name,
23 please.

24 PROSPECTIVE JUROR: It's Smith.

25 THE COURT: And you are older than 65? Well, you

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Jury Qualification

1 will be excused, but I want to thank you for being here
2 today. Thank you, ma'am.

3 Anyone else?

4 Yes, ma'am, on the front.

5 PROSPECTIVE JUROR: I'm over 65 years old.

6 THE COURT: What is your name, please, ma'am?

7 PROSPECTIVE JUROR: Idanell Johnson.

8 THE COURT: All right. And you wish not to
9 serve?

10 PROSPECTIVE JUROR: I wish not to serve.

11 THE COURT: Thank you for being here. You will
12 be excused.

13 Anyone else?

14 All right. Is there any member of the jury panel
15 who is a guard, jailer, or other employee with the South
16 Carolina Department of Corrections? If so, please stand.

17 Now, the next applies to those who are involved
18 in education. Is there any member of the jury panel who
19 is a full-time student, teacher, or other certified
20 personnel -- school crossing guard, bus driver, or anyone
21 who is employed in any other school-related function who
22 is unable to serve on jury duty this week as a result of
23 that school involvement? If this exemption applies to
24 you and you wish to exercise this exemption, your jury
25 service will be transferred to another term of court at a

1 time which will not conflict with your school
2 responsibilities.

3 Is there any member of the jury panel who is a
4 full-time student, teacher, or other certified
5 personnel -- school crossing guard, bus driver or anyone
6 who is employed in any other school-related function who
7 wishes to have their jury service transferred to another
8 term of court, if you would please stand at this time.

9 All right. Yes, ma'am. We'll start on the right
10 there. My right. Yes, ma'am. Your name, please.

11 PROSPECTIVE JUROR: Katherine Strathman.

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR: I'm a full-time student at
14 Clemson University.

15 THE COURT: All right. Well, is there a time in
16 the summer or something like that that might -- you might
17 not be engaged in educational process?

18 PROSPECTIVE JUROR: Any time in May, I guess.

19 THE COURT: May.

20 All right. Madam Clerk.

21 THE CLERK: We have a term the week of May 27th.

22 THE COURT: Would that work?

23 PROSPECTIVE JUROR: I'm actually getting married
24 that week.

25 THE COURT: How about June?

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1 THE CLERK: We have a term the week of June 2nd.

2 PROSPECTIVE JUROR: That will be fine.

3 THE COURT: Are you sure?

4 THE CLERK: And June 23rd.

5 PROSPECTIVE JUROR: June 23rd would be better.

6 THE COURT: All right. Very good. Thank you
7 very much. You may be excused, but you will receive
8 another notice. Good luck to you in your studies and
9 everything else.

10 Yes, ma'am. Your name, please.

11 PROSPECTIVE JUROR: Mary Stanford. I teach at
12 West-Oak High School.

13 THE COURT: All right. Is there a time that you
14 would not be engaged in the educational --

15 PROSPECTIVE JUROR: Late July.

16 THE COURT: Late July. Do we have a term?

17 THE CLERK: We do not have our terms for July.

18 THE COURT: That's right. We only have six. We
19 do six months at a time, so we won't get those until
20 later. But make a note of sometime in July or after.
21 But you will be excused from this term.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Thank you, ma'am. Thank you for your
24 service.

25 Yes, ma'am. Your name, please.

1 PROSPECTIVE JUROR: Tina Esposito. Full-time
2 student and instructor at Clemson University.

3 THE COURT: All right. Is there a time that
4 would be less inconvenient?

5 PROSPECTIVE JUROR: Well, I don't know. They
6 don't give us our instructor assignments until the last
7 minute.

8 THE COURT: Well, is there some time that you're
9 not engaged?

10 PROSPECTIVE JUROR: Probably the earliest would
11 be August.

12 THE COURT: All right. Well, like I said
13 earlier, we will not have the second semester assignments
14 of court until late, so we'll put you down for sometime
15 August or later.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: Very good. Thank you very much for
18 being here. Thank you for your service.

19 Anyone else?

20 Is there any member of the jury panel who has
21 legal custody and duty of care for a child less than
22 seven years of age for whom adequate care cannot be
23 provided while you're performing jury duty this week?
24 Any member of the jury panel who has legal custody and
25 duty of care for a child less than seven years of age for

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1 whom adequate care cannot be provided while you're
2 performing jury duty this week, if you would please stand
3 at this time.

4 Is there any member of the jury panel who is a
5 primary caretaker of a person 65 years of age or older or ,
6 a severely disabled person who cannot care for him or
7 herself or cannot be left unattended while performing
8 jury duty? Any member of the jury panel who is the
9 primary caretaker of a person who is 65 years of age or
10 older or a severely disabled person who cannot care for
11 him or herself or cannot be left unattended while you
12 perform jury duty.

13 Yes, sir. Your name, please.

14 PROSPECTIVE JUROR: Adam Smith.

15 THE COURT: Yes, sir.

16 PROSPECTIVE JUROR: My daughter is disabled.
17 Well, when she gets home from school, there's nobody to
18 care for her.

19 THE COURT: All right. You will be excused then.
20 Thank you for being here, also for your service.

21 All right. The next has to do with those who are
22 involved in business or commercial or agricultural
23 enterprise.

24 Is there any member of the jury panel who is a
25 person who performs services for a business, commercial

1 or agricultural enterprise, and those services are so
2 essential to the operations of that business, commercial
3 or agricultural enterprise that the enterprise must close
4 or cease to function if you are required to perform jury
5 duty this week? Any member of the jury panel who
6 performs services for a business, commercial or
7 agricultural enterprise and those services are so
8 essential to the operation of that business, commercial
9 or agricultural enterprise that the enterprise must close
10 or cease to function if you're required to perform jury
11 duty this week, if you would please stand.

12 Yes, sir. Your name, please.

13 PROSPECTIVE JUROR: Jeff Dillard. My boss man
14 only has two men working for him, and if I'm out, it
15 pretty much shuts down everything.

16 THE COURT: You're the chief carpenter; is that
17 right?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: All right. You will be excused then.
20 Now, you could be subject to call later when your
21 business expands and you should have a little more
22 freedom, all right? But thank you for being here.

23 Yes, ma'am, lady here.

24 PROSPECTIVE JUROR: Amy Armstrong. I'm the farm
25 manager for our family farm. And my husband, who helps

1 on the farm, was also called for jury duty in Seneca this
2 week.

3 THE COURT: All right. Well, the thing is --
4 there are two things I need to mention. First of all,
5 it's not that you're going to have to be here every day.
6 In other words, it's only if you are selected on a trial
7 of a case that you have to be here during that trial. So
8 there's always a chance that you will not be called.

9 Now, the other thing is, as I say, if there is
10 some other time of the year that's less inconvenient,
11 then, of course, we would like for you to serve if you
12 could.

13 PROSPECTIVE JUROR: In the summer would be better
14 for me right now.

15 THE COURT: Let's try that then. If the
16 situation is the same, then, of course, you will be
17 excused. It's just that we want to be sure that
18 businesses and industries and things like that can -- and
19 farms can continue to operate.

20 So you will be excused this week. You might be
21 getting another summons later in the year.

22 PROSPECTIVE JUROR: Thank you very much.

23 THE COURT: Thank you, ma'am.

24 Yes, sir. Your name, please.

25 PROSPECTIVE JUROR: My name is Scott Harmon, and

1 I own a drywall business, and I'm the only finisher. If
2 I'm not there, then nothing is getting done.

3 THE COURT: All right. Is there any time of the
4 year, as I say, that might --

5 PROSPECTIVE JUROR: It just depends on how busy I
6 am at the time. Kind of coming in waves, but right
7 now --

8 THE COURT: You're busy now?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right. Well, I will excuse you
11 then.

12 THE CLERK: Could I get your name?

13 PROSPECTIVE JUROR: Scott Harmon.

14 THE COURT: Very good. Thank you, sir.
15 Anyone else?

16 Yes, ma'am.

17 PROSPECTIVE JUROR: I have a child that gets out
18 of school at 3:15, and I have no one to take care of him.

19 THE COURT: All right. We're going to excuse you
20 then. How old is the child?

21 PROSPECTIVE JUROR: He's 11.

22 THE COURT: Well, the thing is, as soon as he's
23 on his own, you might get another summons. All right?

24 PROSPECTIVE JUROR: Oh, yes, sir.

25 THE COURT: But for the purposes for this term of

1 court, I'm going to excuse you.

2 THE CLERK: Could I get your name?

3 PROSPECTIVE JUROR: Gladys Wright.

4 THE COURT: Yes, ma'am. Thank you. Good luck.

5 Yes, ma'am.

6 PROSPECTIVE JUROR: I have a foster child that's
7 in protective custody, and I have to get her off the bus
8 at 4 o'clock today.

9 THE COURT: All right. Very good. How old is
10 the child?

11 PROSPECTIVE JUROR: She's nine.

12 THE COURT: How long is she in your custody?

13 PROSPECTIVE JUROR: Probably until she's 18 years
14 old.

15 THE COURT: She's not going to need somebody
16 there every afternoon until she's 18, is she?

17 PROSPECTIVE JUROR: No. She's nine years old
18 now. But she's a foster child, and she's in protective
19 custody. We have to have -- I have to be there to get
20 her off the bus.

21 THE COURT: I'm going to excuse you. I just want
22 to be sure now because there are limits on what I can do.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: But, now, if you say that you can't
25 serve and won't be able to serve for another

1 nine years --

2 PROSPECTIVE JUROR: Oh, no, I'm not saying that.
3 I thought you said how long will I have her.

4 THE COURT: I was looking to see if there was a
5 time -- I tell you what. We'll work around this and
6 you'll be excused, and we'll say later in time, maybe the
7 young lady will be, you know, be free of your custody and
8 you will be able to come. But I will excuse you, though.
9 Thank you.

10 Did I get the name?

11 PROSPECTIVE JUROR: Sheila Lee.

12 THE COURT: Thank you, ma'am.

13 By the way, just so you know, the reason I have
14 to have each of your names when you respond each time you
15 respond is because the court reporter takes down
16 everything we say. And unless I get your name, then we
17 don't know who's talking. That's why I had to ask for
18 your name and also had to ask for it each time.

19 Good luck, and thank you for your service.

20 Yes, sir.

21 PROSPECTIVE JUROR: I work at Triple H Recycling,
22 and they have two employees, and one works the comp room
23 and the other one runs all the steel. And they have no
24 one to unload off the steel.

25 THE COURT: And you're busy all year?

1 PROSPECTIVE JUROR: They will probably hire
2 somebody else during the summer.

3 THE COURT: All right. Well, let's do that.
4 Let's look for after August. We'll put you down for a
5 time that time. But, of course, the same thing applies,
6 and you will be excused. All right? Your name, please?

7 PROSPECTIVE JUROR: Brody Holcombe.

8 THE COURT: Very good. Thank you very much,
9 Mr. Holcombe.

10 Anyone else?

11 Now, ladies and gentlemen, that concludes the
12 statutory list of qualifications and exemptions from jury
13 service. It may be that this week would constitute an
14 extreme hardship on you for a particular reason. I
15 cannot permanently excuse a qualified juror from jury
16 service, but under extreme and compelling circumstances I
17 may excuse a juror from this term of court and transfer
18 you to another term of court, particularly jurors that
19 have not been previously transferred.

20 Now, please recognize that general inconvenience
21 is not a sufficient basis to transfer you to another term
22 of court. To justify transfer to another term of court,
23 service this week must constitute an extreme hardship to
24 you.

25 Is there anybody that has any matter they want to

1 bring to the Court's attention, if would you please stand
2 at this time.

3 (WHEREUPON, the following was held at sidebar
4 outside the hearing of the prospective jury panel.)

5 THE COURT: Yes, sir. Your name?

6 PROSPECTIVE JUROR: James Dalton. I take a
7 vacation the first week of February every year. I'll be
8 glad to come back next week or a couple weeks.

9 THE COURT: Well, this will get you through the
10 first week of February.

11 PROSPECTIVE JUROR: I was -- well, I was going to
12 leave Friday, as a matter of fact.

13 THE COURT: I'll get you out of here by Friday.
14 That's my birthday.

15 PROSPECTIVE JUROR: I was leaving this past
16 Friday, and I stayed two more days here to show up today.
17 And I won't be back until next summer.

18 THE COURT: When are you leaving? I thought it
19 was February.

20 PROSPECTIVE JUROR: As soon as I get out of here,
21 I wanted to leave.

22 THE COURT: So you leave the last week in
23 January.

24 PROSPECTIVE JUROR: Well, right.

25 THE COURT: Okay. All right. We'll just -- when

1 will you get back?

2 PROSPECTIVE JUROR: I'll be back next Sunday.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: Anytime past next Sunday I'll
5 show up.

6 THE COURT: Very good. Mr. Dalton, you have a
7 good trip. By the way, the 31st is my birthday, so I was
8 going to get you out of here on time. Good luck to you.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Good morning, sir. Can I get your
11 name?

12 PROSPECTIVE JUROR: Good morning. Adam Moore.

13 My vehicle quit on me about four days ago, and I
14 don't have another way of going. I borrowed a vehicle.

15 THE COURT: We'll get you back and forth if you
16 don't mind riding with a deputy.

17 PROSPECTIVE JUROR: Well, I got parts ordered for
18 my truck. I was going to say if I could have a week or
19 two.

20 THE COURT: We'll do that. I mean, we'll get you
21 back and forth with the blue lights.

22 PROSPECTIVE JUROR: Well --

23 THE COURT: So you will be excused. Is there
24 some time that might be less inconvenient?

25 PROSPECTIVE JUROR: Just anytime in the next few

1 weeks. My parts are supposed to be here this week and
2 it's my only way of going.

3 THE COURT: We'll transfer you to March 31st.

4 PROSPECTIVE JUROR: That will be plenty fine.

5 THE COURT: Good luck with the truck.

6 Yes, ma'am. Your name?

7 PROSPECTIVE JUROR: Debbie Hassell.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR: My mom has had a stroke as of
10 Christmas, and she just had a carotid endarterectomy.
11 I'm not the primary, but between me and my brothers and
12 sisters --

13 (Off-the-record discussion was held.)

14 THE COURT: You will be excused.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: Laura Smith, and I can serve,
17 but my grandson is having a heart procedure tomorrow,
18 Tuesday morning, at Charleston.

19 THE COURT: Next week or --

20 PROSPECTIVE JUROR: This week.

21 THE COURT: I'll excuse you.

22 PROSPECTIVE JUROR: I could serve, but I want the
23 Court to know that.

24 THE COURT: Well, that's Tuesday of this week?

25 PROSPECTIVE JUROR: This week. I won't be going

1 down unless something turns up.

2 THE COURT: We'd rather have your mind. Can we
3 change it to another term?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Let's do that so you can concentrate.

6 PROSPECTIVE JUROR: Have my mind on --

7 THE COURT: That's right. If you are chosen on a
8 jury, we want you to be able to concentrate. Is there
9 any time in particular you would be --

10 THE CLERK: How about March?

11 PROSPECTIVE JUROR: If it's not a day that I have
12 to take my husband to Columbia because he's disabled.

13 THE COURT: We'll take care of that. Good luck
14 to you.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Thank you, ma'am.

17 All right. How are you?

18 PROSPECTIVE JUROR: My license is currently
19 suspended. My ride is out there waiting.

20 THE COURT: If you get drawn on the jury, we'll
21 provide you a ride.

22 PROSPECTIVE JUROR: Okay. Okay.

23 THE COURT: The only thing is, it will be a
24 deputy. You don't get to use the blue lights. That's
25 all right. If you want to, you can tell your ride to go

1 on now. How long are we -- all right. So we'll be
2 excusing you then. We're going through the jury. Stay
3 just a little bit longer. Unless you want to tell your
4 ride to go on, we can get you, whichever way. If you're
5 here.

6 PROSPECTIVE JUROR: As long as -- how long do you
7 think it will take? I think he's a little buggy-eyed.

8 THE CLERK: At 1:00 or 2:00. You'll be fine.

9 THE COURT: Very good. Thank you, sir.

10 Yes, sir. Good morning.

11 PROSPECTIVE JUROR: Hey, sir. I'm Mark Wilson.

12 My sister is the only caretaker for my mother, and she
13 has cancer. And she has to give her treatments like
14 three times a week. Now, she brought me up here today,
15 but I have no other transportation.

16 THE COURT: We can get you transportation, but if
17 you're necessary for your mother's care --

18 PROSPECTIVE JUROR: But my sister, she's the one
19 that takes care of her. I have no vehicle.

20 THE COURT: We can give you a ride.

21 PROSPECTIVE JUROR: Okay. If that's what you
22 want to do.

23 THE COURT: Would that be fine?

24 PROSPECTIVE JUROR: If I'm choosed (sic) for
25 jury, okay. That's fine.

1 THE COURT: Remember, only if you're chosen.

2 PROSPECTIVE JUROR: Okay. That's the only
3 problem.

4 THE COURT: Very good. Thank you.

5 Yes, ma'am.

6 PROSPECTIVE JUROR: I'm sorry. I was late this
7 morning. I was --

8 THE COURT: Let's not worry about it. We'll
9 excuse you this week. You just have to come back.

10 THE CLERK: What's your name?

11 PROSPECTIVE JUROR: Cheryl Stokes.

12 THE CLERK: What we'll do is transfer you to
13 another term.

14 PROSPECTIVE JUROR: Okay. Normally I would be
15 able to serve. I was planning to serve. My mother, Rose
16 Cashen, was in the hospital this weekend. They
17 transferred her to Cottingham House last night, hospice,
18 and my brother is out of the country on a mission with
19 the Gideons. I'm the medical power of attorney.

20 THE COURT: We'll have you later in the year.
21 All right?

22 PROSPECTIVE JUROR: All right. Thank you.

23 MS. SIMMONS: She's not on the list.

24 (Sidebar concluded.)

25 THE COURT: Is there anyone else? Very good.

1 Madam Clerk, I find the jury qualified.

2 All right. Ladies and gentlemen, y'all have been
3 there a while. I'm going to ask you to take a very short
4 break. I need to take up some matters with the attorneys
5 before we draw the jury on the first trial. I've got,
6 the clock on the back wall, at five minutes after 11:00.
7 Let's take about ten minutes, until a quarter after
8 11:00, if you could, and then be back in this part of the
9 courtroom. You don't have to sit in the same places but
10 just in the same part of the courtroom.

11 And if you come back here at 11:15, then we can
12 continue. Again I want to thank you for your patience
13 with the Court, and I look forward to working with you
14 this week.

15 All right. Everyone else remain seated while the
16 jury retires from the courtroom.

17 (WHEREUPON, the prospective jury panel exited
18 the courtroom at 11:05 a.m.)

19 (WHEREUPON, recess taken from 11:05 a.m.
20 to 11:25 a.m.)

21 (WHEREUPON, the prospective jury panel came into
22 open court at approximately 11:25 a.m.)

23 THE COURT: Is the State ready?

24 MS. SIMMONS: Yes, your Honor.

25 THE COURT: Defense ready?

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1 MR. DAY: Yes, your Honor.

2 THE COURT: All right. Ladies and gentlemen,
3 this is a term of general sessions court. As I mentioned
4 earlier, it is sometimes called criminal court. Its
5 purpose is to resolve questions of alleged criminal
6 conduct arising between the State of South Carolina and
7 the defendant in a fashion that will ensure that justice
8 under the law is accomplished.

9 The trial of a case begins with the selection of
10 a jury. Both the State and the defendant are entitled to
11 jurors who approach the case with an open mind. The
12 trial jury must be as free as humanly possible from any
13 bias, prejudice or sympathy to either side and free from
14 any preconceived ideas on the facts of the case or the
15 law of the case. Therefore, certain questions will be
16 asked of you, petit jury panel, and the questions which
17 will be asked are designed to ensure each side a fair and
18 impartial jury.

19 I might note that if any person should talk with
20 you or attempt to talk with you about any case scheduled
21 for this term of court, it will be your solemn duty to
22 immediately report that matter to the Court. You have
23 been sworn as jurors here in the Court of General
24 Sessions, Circuit Court of Oconee County, and no one is
25 to interfere with your service as such.

1 Now, again, if anybody cannot hear me or have
2 any -- understand me, let's say as well, please raise
3 your hands at this time.

4 Of course that's an interesting question because
5 if you couldn't hear me, you wouldn't know to raise your
6 hands. But as I said, though, in the beginning, if you
7 don't hear me and you can't understand me or if you see
8 my lips moving and you have some question about what I'm
9 doing, please raise your hand because the questions, as I
10 say, will be awfully important that we get correct
11 answers to any questions I ask of you.

12 All right. Madam Solicitor, you may call your
13 first case.

14 MS. SIMMONS: Thank you, your Honor. May it
15 please the Court, the State calls 2013-GS-37-344, the
16 State of South Carolina versus Jessie Wayne Davis,
17 indictment for criminal sexual conduct with a minor in
18 the first degree.

19 The State calls 2013-GS-37-345, State of South
20 Carolina versus Jessie Wayne Davis, indictment for
21 criminal sexual conduct with a minor in the third degree.

22 We also call 2013-GS-37-346, State versus Jessie
23 Davis, criminal sexual conduct with a minor in the first
24 degree; 2013-GS-37-347, State versus Jessie Davis,
25 criminal sexual conduct with a minor in the first degree;

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1 2013-GS-37-348, State versus Jessie Davis, criminal
2 sexual conduct with a minor in the first degree;
3 2013-GS-349, State of South Carolina versus Jessie Wayne
4 Davis, criminal sexual conduct with a minor in the third
5 degree.

6 THE COURT: All right. Ladies and gentlemen of
7 the jury panel, please give me your attention. We are
8 about to commence the trial of the case entitled State of
9 South Carolina versus Jessie Wayne Davis, who's indicted
10 in separate indictments: 2013-GS-37-00344 with criminal
11 sexual conduct with a minor; 345, criminal sexual conduct
12 with a minor, third degree; 346, criminal sexual conduct
13 with a minor, first degree; 347, criminal sexual conduct
14 with a minor, first degree; 348, criminal sexual conduct
15 with a minor, first degree -- excuse me -- with a minor
16 under 11, third degree. Excuse me. That is first
17 degree, I think. First degree. Then 349, criminal
18 sexual conduct with a minor, third degree.

19 Is there any member of the jury panel related by
20 blood or marriage, close personal friend or business
21 associate of the defendant, Jessie Wayne Davis? If so,
22 please stand.

23 Thank you.

24 Mr. Davis is represented by Mr. Day.

25 Mr. Day, if you would please introduce yourself

1 and your client.

2 MR. DAY: Thank you.

3 My name is Daniel Day. I practice here in Oconee
4 County with the public defender's office. I represent
5 Mr. Jessie Wayne Davis right here.

6 THE COURT: Thank you.

7 The Solicitor for Oconee County's office is
8 represented by Ms. Lindsey Simmons.

9 Ms. Simmons, if you would, please introduce
10 yourself and anyone who will be assisting you in the
11 trial of this case.

12 MS. SIMMONS: Thank you, your Honor.

13 Good morning. I'm Lindsey Simmons, Assistant
14 Solicitor here in Oconee County, employed by your elected
15 Solicitor, Crissy Adams. Assisting me in this case will
16 be Lieutenant Gentry Hawk, who is employed by the Oconee
17 County Sheriff's Office. Thank you.

18 THE COURT: All right. Was there any member of
19 the jury panel a member of the Grand Jury for Oconee
20 County that returned or found and returned the
21 indictments in this case? They're all indictments for
22 the year 2013. If so, please stand.

23 Now, there are certain potential witnesses in
24 this case. These are potential witnesses, and they are
25 witnesses that do not have to be called, but they may be

1 called in the trial of the case. And if any of the
2 potential witnesses are in the courtroom, when your name
3 is called, if you would please stand and look upon the
4 jury.

5 The reason we ask anyone who is participating in
6 a trial of a case to look upon the jury is because it
7 seems that in these days we might not know someone by
8 their name, but we would recognize them if we ever had
9 any association with them. Again, as I say, these are
10 potential witnesses who may be called but do not have to
11 be called in the trial of the case: Lieutenant Gentry
12 Hawk.

13 Thank you.

14 Deputy Jay Freeman. Corporal Matt Bryson.
15 Dr. Donna Schwartz-Watts. Mike Lark. Dr. Sally Carter.
16 Stacy Gianiodis. Brandi Wright. Minor 1 Minor 2
17 Sean King. Patti King. Glenn Farrow. Dottie
18 Ingram. Tammy Allen.

19 Is there any member of the jury panel related by
20 blood or marriage, close personal friend or business
21 associate of any of the potential witnesses in this case:
22 Lieutenant Gentry Hawk, Deputy Jay Freeman, Corporal Matt
23 Bryson, Dr. Sally Carter, Dr. Donna Schwartz-Watts, Mike
24 Lark, Stacy Gianiodis, Brandi Wright, Minor 1 ,
25 Minor 2 , Sean King, Patti King, Glenn Farrow, Dottie

1 Ingram, and Tammy Allen?

2 Any member of the jury panel related by blood or
3 marriage, close personal friend of any of those potential
4 witnesses in this case, if you would please stand at this
5 time.

6 All right. We'll start here on the front row.

7 Your name, sir.

8 PROSPECTIVE JUROR: Josh Young. Deputy Jay
9 Freeman was a coach on the coaching staff at Walhalla
10 High School at one time and serves as an SRO in Oconee
11 County where I work.

12 THE COURT: You are principal of Walhalla High
13 School?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Would that in any way interfere with
16 your ability to give the State and the defendant a fair
17 and impartial trial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Very good. Thank you.

20 Yes, ma'am.

21 PROSPECTIVE JUROR: My name is Jessica Nix, and
22 Matthew Bryson is related to me.

23 THE COURT: All right. How close of a
24 relationship?

25 PROSPECTIVE JUROR: One of my first or second

1 cousins.

2 THE COURT: All right. Would that in any way
3 interfere with your ability to give both the State and
4 the defendant a fair and impartial trial?

5 PROSPECTIVE JUROR: (Shaking head.) No, sir.
6 Sorry.

7 THE COURT: Very good. Thank you very much.
8 As I mentioned, the court reporter takes down
9 what is said. So we do need to speak up.

10 All right. Yes, ma'am.

11 PROSPECTIVE JUROR: Gail White, and I go to
12 church with Deputy Jay Freeman.

13 THE COURT: Would that in any way interfere with
14 your ability to give both the State and the defendant a
15 fair and impartial trial?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Very good. Thank you.

18 Yes, ma'am.

19 PROSPECTIVE JUROR: Pam Long. Matt Bryson, our
20 daughters are real close friends, and they spend a lot of
21 time together.

22 THE COURT: All right. Would that in any way
23 interfere with your ability to give both the State and
24 the defendant a fair and impartial trial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Very good. Thank you, ma'am.

2 Has any member of the jury panel or members of
3 their immediate family ever been represented by or
4 employed by the office of the Solicitor for the Tenth
5 Judicial Circuit here in Oconee County? If so, please
6 stand.

7 Has any member of the jury panel or members of
8 their immediate family ever been represented by or
9 employed by the Oconee County Public Defender's Office?
10 If so, please stand.

11 I'm going to ask three questions. Again, as I
12 did in the original qualification of the jury panel, I'm
13 going to ask these three questions in sequence at one
14 time. And before I ask any member of the jury panel to
15 respond to the questions that they feel that the question
16 might apply to them or even if they have a question about
17 the questions themselves. So listen carefully. I'm
18 going through them twice. Do not respond until after I
19 have finished all three questions the second time.

20 Has any member of the jury panel, family member
21 or close personal friend ever been prosecuted by the
22 Tenth Circuit Solicitor's Office? That's Anderson and
23 Oconee counties.

24 Has any member of the jury panel or members of
25 their immediate family or close personal friend been a

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1 victim of sexual abuse or been accused of and prosecuted
2 for criminal and/or prosecuted for sexual -- criminal
3 sexual conduct?

4 Has any member of the jury panel or members of
5 their immediate family ever been a member of or
6 contributed to any organization or group such as Mothers
7 Against Drunk Driving, Students Against Drunk Driving,
8 Sheriffs' Association, South Carolina Troopers
9 Association, South Carolina Law Enforcement Association,
10 or Fraternal Order of Police? If so, please stand.

11 I'm going through those three questions a second
12 time. It's only after I finish going through those three
13 questions I'll ask anyone who thinks the question might
14 apply to them or if they have a question about the
15 questions themselves to stand, and I'll ask you to come
16 forward individually so I might speak with you privately.

17 Is there any member of the jury panel or a family
18 member or close personal friend that's ever been
19 prosecuted by the Tenth Circuit Solicitor's office?
20 That's Anderson and Oconee counties.

21 Has any member of the jury panel or family member
22 or close personal friend ever been a victim of sexual
23 abuse or accused of and/or prosecuted for criminal
24 conduct?

25 Has any member of the jury panel ever been a

1 member of or contributed to any organization or group
2 such as MADD, SADD, Sheriffs' Association, South Carolina
3 Troopers Association, South Carolina Law Enforcement
4 Association, or Fraternal Order of Police?

5 Any member of the jury panel that might have a
6 question about those questions, will you please stand at
7 this time.

8 (WHEREUPON, the following was held at sidebar
9 outside the hearing of the prospective jury panel.)

10 THE COURT: Good morning, sir.

11 PROSPECTIVE JUROR: Good morning. Steve Peckham.

12 THE COURT: Yes, sir.

13 PROSPECTIVE JUROR: My brother was accused of
14 sexual misconduct years ago.

15 THE COURT: Has that matter been resolved?

16 PROSPECTIVE JUROR: According to the courts, yes.

17 THE COURT: All right. Would that in any way
18 interfere with your ability give both the State and the
19 defendant a fair and impartial trial?

20 PROSPECTIVE JUROR: It's difficult to say.

21 THE COURT: I'm going to excuse you. There is a
22 reason for that question. It's two-fold. One is, of
23 course, the parties are entitled to a fair and impartial
24 jury.

25 PROSPECTIVE JUROR: Sure.

1 THE COURT: But also so that you don't have to
2 serve on a jury -- I want to be sure that we do not
3 compromise you in any fashion.

4 PROSPECTIVE JUROR: I think I would be because I
5 don't think what happened to my brother was fair.

6 THE COURT: What I'm going to ask you to do is
7 stay with us but you will be excused.

8 PROSPECTIVE JUROR: Stay with us meaning?

9 THE COURT: Stay in the courtroom until after I
10 excuse everyone.

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Yes, sir.

13 PROSPECTIVE JUROR: Back again. My name is Mark
14 Wilson. And back in August of 2000 -- I mean it was
15 October of 2000, I stood before you and Crissy Adams and
16 they prosecuted me for DUI open container and failure to
17 stop for blue light.

18 THE COURT: No problem. Failure to stop?

19 MS. SIMMONS: Judge, we have DUI, obtaining goods
20 by false pretenses.

21 THE COURT: That's right. You will be excused.
22 I want you to stay with us until we excuse the jury.

23 PROSPECTIVE JUROR: So I'll stay?

24 THE COURT: Stay until we excuse everybody.

25 PROSPECTIVE JUROR: But then I'll be excused?

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: Thank you, sir.

3 THE COURT: Yes, ma'am.

4 PROSPECTIVE JUROR: Member of the Fraternal Order
5 of Police of Clemson University.

6 THE COURT: Name, please.

7 PROSPECTIVE JUROR: Kathy Cleveland.

8 THE COURT: Will that in any way interfere with
9 your ability to provide a fair and impartial trial in
10 this case?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Thank you. You are qualified.

13 Yes, ma'am.

14 PROSPECTIVE JUROR: I'm co-parenting with a
15 friend of a child who was legally placed with us
16 five years ago who was sexually molested by her mother's
17 boyfriend's father.

18 THE COURT: All right. Your name, please?

19 PROSPECTIVE JUROR: Stephanie Otey.

20 THE COURT: Ms. Otey, would that in any way
21 interfere with your ability to give both the State and
22 the defendant a fair and impartial trial?

23 PROSPECTIVE JUROR: Honestly, my blood is
24 boiling. I don't think I can participate.

25 THE COURT: I want to ask you. I want to be sure

1 the parties have fair and impartial jurors, but I want to
2 be sure that you're comfortable doing your job, whatever
3 that might be.

4 PROSPECTIVE JUROR: I can't do that.

5 THE COURT: That's why I'm going to excuse you.
6 Thank you for being so candid.

7 PROSPECTIVE JUROR: Thank you.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR: I -- Rhea Fletcher. And I
10 donated to Mothers Against Drunk Driving when I lived in
11 Syracuse.

12 THE COURT: Would that in any way interfere with
13 your ability to give both the State and the defendant a
14 fair and impartial trial?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Thank you. You are qualified to
17 serve.

18 PROSPECTIVE JUROR: Thank you.

19 THE COURT: Good morning, sir.

20 PROSPECTIVE JUROR: Good morning. How are you?
21 I got a cousin that was indicted, I guess, for child
22 pornography. But it wasn't any kind of sexual criminal
23 kind of deal.

24 THE COURT: Has the matter been resolved?

25 PROSPECTIVE JUROR: Yeah. He's actually served

1 time and he's out.

2 THE COURT: I was just going to ask you, would
3 that in any way interfere with your ability to give both
4 the State and the defendant a fair and impartial trial?

5 PROSPECTIVE JUROR: No. Absolutely not.

6 THE COURT: Very good. Your name, please?

7 PROSPECTIVE JUROR: Jason Barnes.

8 THE COURT: Mr. Barnes, you are qualified.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Yes, sir.

11 PROSPECTIVE JUROR: How you doing? Ashley Burton
12 is the name. My cousin was a victim of sexual harassment
13 when we were growing up. Her stepdad admitted to it.

14 THE COURT: All right. Would that in any way
15 interfere with your ability --

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: You can give a fair and impartial
18 trial?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Very good. You are qualified.

21 PROSPECTIVE JUROR: Thank you.

22 THE COURT: Good morning, Doctor.

23 PROSPECTIVE JUROR: Robert McAlpine.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: The second and third

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1 question. Third question was contributed several times
2 to the different. . .

3 THE COURT: Organizations.

4 PROSPECTIVE JUROR: Organizations. The second
5 one, my wife was sexually abused starting at age nine.

6 THE COURT: Let me ask you, would that in any way
7 interfere with your ability to give both the State and
8 the defendant a fair and impartial trial?

9 PROSPECTIVE JUROR: Not knowing what I would
10 hear, I know how it's affected her. I can't honestly say
11 that.

12 THE COURT: That's the exact reason I ask the
13 question. As I explained to others, that there are two
14 purposes in the question. One is whether the parties can
15 get a fair and impartial jury, but also you didn't ask to
16 be here, and if you are being asked to sit in judgment, I
17 want to be sure that you're not compromising your ability
18 to be fair and free and impartial, so I'm going to excuse
19 you on the trial of this case. But stay with us until we
20 finish the jury qualifications. J

21 PROSPECTIVE JUROR: Thank you, sir.

22 THE COURT: Very good. Thank you, sir.

23 He's excused.

24 Yes, sir.

25 PROSPECTIVE JUROR: I've contributed many times

1 to the Fraternal Order and to the Troopers Association.

2 THE COURT: Your name?

3 PROSPECTIVE JUROR: Kenneth Morris.

4 THE COURT: Mr. Morris, would that in any way
5 interfere with your ability to give both the State and
6 the defendant a fair and impartial trial?

7 PROSPECTIVE JUROR: No. No, sir.

8 THE COURT: Thank you very much. You are
9 qualified.

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Yes, sir.

12 PROSPECTIVE JUROR: Hi. I have a friend
13 that's -- I just can't get my head around it sometimes --
14 he's a registered sex offender.

15 THE COURT: All right. Let me just ask you,
16 would that in any way interfere with your ability to give
17 the State and the defendant a fair and impartial trial?

18 PROSPECTIVE JUROR: No, I don't think so, no.

19 THE COURT: As long as you feel comfortable in
20 sitting on a case like this. I tell you what. Let's
21 excuse you, but stay with us.

22 PROSPECTIVE JUROR: Okay.

23 THE COURT: But I will excuse you. Your name?

24 PROSPECTIVE JUROR: Stephen Terry.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR: Thank you.

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: My daughter was sexually
4 molested by her stepfather at the time. And my sister's
5 son, my nephew, is now serving a 25-year sentence in
6 Pennsylvania for sexual molestation.

7 THE COURT: Your name?

8 PROSPECTIVE JUROR: Faye Small.

9 THE COURT: Ms. Small, would that in any way
10 interfere with your ability to give both the State and
11 the defendant a fair and impartial trial?

12 PROSPECTIVE JUROR: I would hope not.

13 THE COURT: I'm going to excuse you, but I want
14 to be sure you're not feeling any sort of compromise or
15 anything.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: But that's not anything other than I
18 just want you to feel comfortable. So I'm going to
19 excuse you, but stay with us until I let all the jury go.

20 PROSPECTIVE JUROR: Okay. Thank you.

21 THE COURT: Yes, ma'am. Your name?

22 PROSPECTIVE JUROR: Gail White. And I support
23 MADD. And, of course, when my husband was a deputy, he
24 was a member of the state's PDA.

25 THE COURT: Would that in any way interfere with

1 your ability to give both the State and the defendant a
2 fair and impartial trial?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Very good. Thank you for being here.
5 Good morning, sir.

6 PROSPECTIVE JUROR: Good morning. Ben Ballard.
7 And my wife was sexually abused.

8 THE COURT: Would that in any way interfere with
9 your ability to give both the State and the defendant a
10 fair and impartial trial?

11 PROSPECTIVE JUROR: I don't think so.

12 THE COURT: I'm going to excuse you. Tell you
13 the reason for that. Not only -- part of it is the
14 defendant and State are entitled to a fair and impartial
15 trial, but also you didn't ask to be here. I want to be
16 sure if you're serving as a juror, you feel comfortable
17 and you do not have anything that would compromise. But
18 stay with us and I will excuse you with the rest of them.

19 Yes, ma'am.

20 PROSPECTIVE JUROR: A couple years ago I had a
21 case against somebody, and Gentry Hawk was the one that
22 helped me and was on my side through it all.

23 THE COURT: I would ask, do you feel comfortable
24 sitting as a juror to be fair to both the State and the
25 defendant?

1 Listen, I understand. That's why I'm asking you
2 because it's the hand of the truth of the matter that we
3 want to be sure that you are not compromised to anything
4 outside the facts that you hear and the judgment, so I'm
5 going to excuse you on the trial of this case. But stay
6 with us until I excuse all the jurors. All right?

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: Your name, please?

9 PROSPECTIVE JUROR: Jessica Nix.

10 THE COURT: Thank you.

11 Good morning again.

12 PROSPECTIVE JUROR: Good morning. Good morning.
13 I've given in the past to both the sheriff's office and
14 the highway patrol.

15 THE COURT: Name, for the record?

16 PROSPECTIVE JUROR: Josh Young.

17 THE COURT: Would that in any way affect your
18 ability to give both the State and the defendant a fair
19 and impartial trial?

20 PROSPECTIVE JUROR: No, sir. No, sir.

21 THE COURT: All right. You are qualified.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Yes, sir. Your name, please?

24 PROSPECTIVE JUROR: Jason Eller. My brother is
25 Shane Eller. He may have been in lockup here. I'm not

1 sure if he was with the public defender on not.

2 THE COURT: He was a client of the public
3 defender?

4 PROSPECTIVE JUROR: He may have been. I don't
5 know that for a fact.

6 THE COURT: Let's say if he was, would that
7 make --

8 PROSPECTIVE JUROR: It would not.

9 THE COURT: You could give both the State and the
10 defendant a fair and impartial trial?

11 PROSPECTIVE JUROR: It would not.

12 THE COURT: Both the State and the defendant --

13 PROSPECTIVE JUROR: It would not.

14 THE COURT: Very good. You're qualified. Thank
15 you, sir.

16 (Sidebar concluded.)

17 THE COURT: All right. Anyone else?

18 All right. Has any member of the jury panel
19 formed or expressed an opinion about this case? If so,
20 please stand.

21 Is any member of the jury panel aware of any
22 interest, bias or prejudice towards either the defendant
23 or the State of South Carolina? If so, please stand.

24 Does any member of the panel know of any reason
25 whatsoever why he or she could not give both the State of

1 South Carolina and the defendant a fair and impartial
2 trial? If so, please stand.

3 Any further questions from the State?

4 MS. SIMMONS: No, your Honor.

5 THE COURT: From the defense?

6 MR. DAY: No, your Honor.

7 THE COURT: Very well.

8 Madam Clerk, are you prepared to give us a jury?

9 THE CLERK: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen of
11 the jury panel, the way we draw a jury in general
12 sessions is a little bit different from common pleas. In
13 general sessions, the Clerk of Court has a computer that
14 randomly puts your names in a random order. And as your
15 names come up on the computer, your name will be called.
16 And when your name is called, if you would, come up to
17 the front of the courtroom where the bailiff is standing,
18 and looking back towards the back of the courtroom, then
19 the parties will consider your service or not.

20 The State will go first, will either say "present
21 the juror" or "swear the juror" or -- excuse me --
22 "present the juror" or "excuse the juror." The defense
23 will then go forward, and they will say either "excuse
24 the juror" or "swear the juror." And in that way we will
25 have the 12 members of the jury.

1 I am also going to suggest that we have two
2 alternates in this case because we're not going to start
3 the case until tomorrow. So in that case, we'll have two
4 alternates.

5 Now, the strikes will be five and ten; is that
6 correct?

7 MS. SIMMONS: Yes, your Honor.

8 THE COURT: And on the alternates two and one?

- 9 MR. DAY: Yes, sir.

10 THE COURT: Very good. All right. With that,
11 let's see. We're getting them all done. I might note
12 that this is a new process for me. I've been at it
13 20 years. And when I started out as an attorney a long
14 time ago, we did it a different way in general sessions.

15 There is a drum back here you might see that the
16 clerk used to put each juror's name in a little capsule
17 and put all the capsules in that drum, and the clerk
18 would then turn the drum and mix up the capsules. And
19 then we would have a child too young to read or write,
20 usually four or five years old, or a person who was
21 legally blind to come in. And they would reach into the
22 drum and pull out a capsule, and then they would open the
23 capsule, and then they would read the name.

24 Well, now we are provided with a list of names
25 that -- it's a random list. And, as I say, you're on

1 this list in accordance with the way your name was
2 selected, not your jury number. However, the State and
3 the defendant will strike the names according to this
4 list by the list -- the number on the list. So if you
5 hear your number, that doesn't mean that it was you.
6 It's just that your name happened to be at the same place
7 where your number was as jurors.

8 So with that, Madam Clerk, if you would please
9 give us a juror.

10 THE CLERK: Ladies and gentlemen, as I call your
11 name, if you would please come forward. If you will
12 stand at the bar and face the gallery.

13 Number 44, Jason Eller.

14 What says the State?

15 MS. SIMMONS: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. DAY: Excuse Mr. Eller in this case, please.

18 THE CLERK: Sir, you have been excused from this
19 case. You may be seated.

20 Number 118, Joseph Price.

21 What says the State?

22 MS. SIMMONS: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. DAY: Excuse Mr. Price in this case, please.

25 THE CLERK: Sir, you have been excused from this

1 case. You may be seated.

2 Number 10, Carl Bennett.

3 What says the State?

4 MS. SIMMONS: Please excuse the juror from the
5 trial of this case.

6 THE CLERK: Sir, you have been excused from this
7 case. You may be seated.

8 Number 23, Wanda Campbell.

9 What says the State?

10 MS. SIMMONS: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. DAY: Excuse Ms. Campbell in this case,
13 please.

14 THE CLERK: Ma'am, you have been excused from
15 this case. You may be seated.

16 Number 9, April Barry.

17 What says the State?

18 MS. SIMMONS: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. DAY: Please seat Ms. Barry.

21 THE CLERK: Ma'am, if you would please take a
22 seat in the jury box.

23 Number 32, Conard Cooper.

24 What says the State?

25 MS. SIMMONS: Please present the juror.

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1 THE CLERK: What says the defense?

2 MR. DAY: Please seat Mr. Cooper.

3 THE CLERK: Sir, if you would please take a seat
4 in the jury box.

5 Number 68, Sharon Howard.

6 What says the State?

7 MS. SIMMONS: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. DAY: Please seat Ms. Howard.

10 THE CLERK: Ma'am, if you would please take a
11 seat in the jury box.

12 Number 173, Jessica Yoder.

13 What says the State?

14 MS. SIMMONS: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. DAY: Excuse Ms. Yoder in this case, please.

17 THE CLERK: Ma'am, you have been excused from
18 this case. You may be seated.

19 Number 122, Amanda Roach.

20 What says the State?

21 MS. SIMMONS: Please excuse the juror from the
22 trial of this case.

23 THE CLERK: Ma'am, you have been excused from
24 this case. You may be seated.

25 Number 153, Michael Todd.

1 What says the State?

2 MS. SIMMONS: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. DAY: Please seat Mr. Todd.

5 THE CLERK: Sir, if you would please take a seat
6 in the jury box.

7 Number 139, Mary Smith.

8 What says the State?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. DAY: Excuse Ms. Smith from this case,
12 please.

13 THE CLERK: Ma'am, you have been excused from
14 this case. You may be seated.

15 Number 135, Carol Smith.

16 What says the State?

17 MS. SIMMONS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. DAY: Please seat Ms. Smith.

20 THE CLERK: Ma'am, if you would please take a
21 seat in the jury box.

22 Number 29, Kathy Cleveland.

23 What says the State?

24 MS. SIMMONS: Please present the juror.

25 THE CLERK: What says the defense?

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1 MR. DAY: Excuse Ms. Cleveland in this case,
2 please.

3 THE CLERK: Ma'am, you have been excused from
4 this case. You may be seated.

5 Number 14, John Blount.

6 What says the State?

7 MS. SIMMONS: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. DAY: Please seat Mr. Blount, please.

10 THE CLERK: Sir, if you would please take a seat
11 in the jury box.

12 Number 38, T'ayuna Dendy.

13 What says the State?

14 MS. SIMMONS: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. DAY: Please seat Ms. Dendy.

17 THE CLERK: Ma'am, if you would please take a
18 seat in the jury box.

19 Number 123, Nancy Rochester.

20 What says the State?

21 MS. SIMMONS: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. DAY: Please excuse Ms. Rochester in this
24 case.

25 THE CLERK: Ma'am, you have been excused from

1 this case. You may be seated.

2 Number 7, Jason Barnes.

3 What says the State?

4 MS. SIMMONS: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. DAY: Please seat Mr. Barnes.

7 THE CLERK: Sir, if you would please take a seat
8 in the jury box.

9 Number 157, Jacqueline Webb.

10 What says the State?

11 MS. SIMMONS: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. DAY: Please seat Ms. Webb.

14 THE CLERK: Ma'am, if you would please take a
15 seat in the jury box.

16 Number 30, William Coburn.

17 What says the State?

18 MS. SIMMONS: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. DAY: Please seat Mr. Coburn.

21 THE CLERK: Sir, if you would please take a seat
22 in the jury box.

23 Number 50, Rhea Fletcher.

24 What says the State?

25 MS. SIMMONS: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. DAY: Excuse Ms. Fletcher in this case.

3 THE CLERK: Ma'am, you have been excused from
4 this case. You may be seated.

5 Number 148, Cody Swafford.

6 What says the State?

7 MS. SIMMONS: Please excuse the juror from the
8 trial of this case.

9 THE CLERK: Sir, you have been excused from this
10 case. You may be seated.

11 Number 20, Ashley Burton.

12 What says the State?

13 MS. SIMMONS: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. DAY: Please excuse Mr. Burton in this case.

16 THE CLERK: Sir, you have been excused from this
17 case. You may be seated.

18 Number 102, Alexander Morales.

19 What says the State?

20 MS. SIMMONS: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. DAY: Please seat Mr. Morales.

23 THE CLERK: Sir, if you would please take a seat
24 in the jury box.

25 Number 85, Pamela Long.

1 What says the State?

2 MS. SIMMONS: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. DAY: Please seat Ms. Long.

5 THE CLERK: Ma'am, if you would please take a
6 seat in the jury box.

7 This will be for Alternate Number 1.

8 Number 112, Margaret Patterson.

9 What says the State?

10 MS. SIMMONS: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. DAY: Please seat Ms. Patterson.

13 THE CLERK: Ma'am, if you would please take a
14 seat in the jury box.

15 This will be for Alternate Number 2.

16 Number 116, Bradley Pittman.

17 What says the State?

18 MS. SIMMONS: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. DAY: Please seat Mr. Pittman.

21 THE CLERK: Sir, if you would please take a seat
22 in the jury box.

23 THE COURT: Is there any reason this jury cannot
24 be sworn for the trial of this case from the State?

25 MS. SIMMONS: No, your Honor.

1 THE COURT: From the defense?

2 MR. DAY: No, your Honor.

3 THE COURT: Very well.

4 Mr. Barnes, I'm going to ask you to serve as
5 foreperson of this jury. That means, when we come back,
6 if you would sit on the front row in the first seat.

7 And as far as the alternates, the two alternates
8 will always sit in the back row in those last two seats.
9 The reason for that is I need to be able to identify who
10 the foreperson is as well as the alternates. Everybody
11 else can sit wherever they want to in the jury box
12 without any seating arrangement at all.

13 I need to take up some matters with the
14 attorneys, so I'm going to ask you to go with the
15 bailiff, and he will show you the jury room we'll be
16 using during the trial of this case.

17 Now, my instructions throughout the trial are
18 going to be the same, and this will be through all trials
19 that we have, and that is you are not to undertake the
20 discussion of the case among yourselves in any way.

21 You really have not heard anything about this
22 case because even the indictments are not evidence.
23 They're just a process that brings us into court. And
24 the matter is, though, that you need to have an open mind
25 throughout the trial of the case because you never know

1 what's going to be the most important part of the case.
2 It could be the opening statements, the closing
3 arguments, the first witness, the last witness, or some
4 exhibit that's introduced during the trial of the case.
5 So you need to have an open mind throughout the trial
6 and, therefore, do not even discuss personalities or
7 anything else. Nothing about the case until it's finally
8 given to you for your final decision.

9 But with that, I'm going to excuse you and ask
10 you to go with the bailiff who will show you the jury
11 room we'll be using. I have some matters I need to take
12 up with the other jurors, and I'll be just a few minutes,
13 if you would, please. I look forward to working with you
14 this week on the trial of this case.

15 If you do have anything in the courtroom -- yes,
16 ma'am.

17 JUROR: My purse is back there.

18 THE COURT: If you would, please.

19 (WHEREUPON, two jurors retrieved their
20 belongings from the gallery.)

21 (WHEREUPON, the jury exited the courtroom
22 at 12:17 p.m.)

23 THE COURT: Now, have they got their numbers?

24 THE CLERK: It's on their letter that was handed
25 to them.

1 THE COURT: All right.

2 Ladies and gentlemen of the jury panel that were
3 not drawn on the trial of this jury, I'm going to excuse
4 you for the balance of the day. In fact, I'm going to --
5 I'm going to ask you to call -- I'm going to excuse you
6 for the balance of the day and also tomorrow, but I'm
7 going to ask you to call back on the -- I think you were
8 given a number on a sheet of paper when you checked in
9 this morning.

10 Does anybody not have the telephone number? It's
11 a telephone number that would have been on the sheet that
12 you got when you came to the courthouse. If you do not
13 have the number, hold up your hand and we'll give you
14 another copy of it.

15 Anybody that does not have the number, if you
16 would please raise your hand.

17 All right. That is a number to an answering
18 machine that will be in the clerk's office, and a message
19 will go on tomorrow night. Not tonight, but tomorrow
20 night after 6 o'clock. So if you would call that number
21 after 6 o'clock, there will be a message, and it will
22 tell you what to do, either to come in tomorrow or
23 Wednesday, excuse me, or to call back or something of
24 that nature.

25 So the thing is this is done by the Clerk of

1 Court for your convenience so you do not have to report
2 every day to find out what we are doing. So if you
3 would, please, call that number after 6 o'clock and do
4 whatever the message says.

5 Now, does everybody, one, have the number? If
6 you do not have the number, raise your hand. Two, does
7 everybody understand what to do? It's an answering
8 machine that will be on all night. So if you don't get
9 through the first time, keep calling it. I regret if you
10 do not get the message from the machine, you will have to
11 be here Wednesday morning to get the message from me, but
12 I think you would rather have the message from the
13 machine. So with that, I am going to excuse you.

14 Now, there were several members of the jury panel
15 that had a problem with transportation. If any of
16 those -- let's see. Mr. McGuffin, could you get their
17 names and addresses so if they do, when they come back,
18 if they do come back, that we can pick them up and give
19 them a ride in the mornings and the evenings?

20 THE BAILIFF: We can.

21 THE COURT: All right. Anyone that needs a ride,
22 if they would see Sergeant McGuffin here at the front of
23 the courtroom.

24 All right. With that, I'll excuse you, and I do
25 look forward to working with you, and I thank you for

1 your patience with the Court this morning. You are being
2 excused today and tomorrow, Tuesday. Call back on the
3 machine after 6 o'clock, though.

4 (WHEREUPON, the remainder of the jury panel
5 exited the courtroom at 12:22 p.m.)

6 THE COURT: All right. Let's see. Is the
7 courtroom clear of jurors?

8 THE BAILIFF: Yes, sir.

9 THE COURT: All right. I'm going to bring the
10 jury back out, and I'll excuse them to, what, 10 o'clock
11 in the morning?

12 MS. SIMMONS: Thank you, your Honor.

13 THE COURT: Is that all right from the defense?

14 MR. DAY: Yes, your Honor.

15 THE COURT: All right. And at that time we will
16 swear in the jury. But until then I'll just let them go
17 home and come back at 10 o'clock in the morning.

18 Is there any particular instructions or anything
19 from the State that you want me to give them?

20 MS. SIMMONS: No, your Honor.

21 THE COURT: From the defense?

22 MR. DAY: None, your Honor.

23 THE COURT: Very good.

24 Ask the jury to join us, please.

25 (WHEREUPON, the jury came into open court at

1 approximately 12:24 p.m.)

2 THE COURT: All right. Let the record reflect
3 the jury and alternates are in the jury box.

4 Mr. Foreman, ladies and gentlemen, as I said
5 earlier, we're not going to start the trial of this case
6 until tomorrow. There's some matters I need to take up
7 with the attorneys before the case is begun, and rather
8 than keep you here while I'm taking up those matters, we
9 hope that we will be able to resolve what matters we do
10 need to discuss and undertake and resolve before we do
11 undertake the case.

12 I'm going to excuse you until 10 o'clock in the
13 morning. The reason for that is that you know better
14 what you need to do in that regard. So Ocone is a big
15 county, and you know what you have to do before you get
16 here, so I'm going to wait and ask you to start at
17 10 o'clock in the morning. You will come back to this
18 jury room that you were in this afternoon. The bailiff
19 will show you how to get back and forth.

20 Now, as I said, my instructions throughout the
21 trial of the case will be that you do not undertake
22 discussion among yourselves or permit anyone to discuss
23 it with you. As I mentioned, the reason for that is very
24 simple, that you must make your decision in this case
25 based on the sworn testimony from this witness stand and

1 the exhibits and all documents introduced in this
2 courtroom. And you never know what's going to be the
3 most important part of the case or what part will impress
4 you the most. So, therefore, you need to keep an open
5 mind throughout.

6 Now, having said that, I will also advise you
7 this is the most difficult part of the case for you
8 because you're going home today. And sometime when you
9 get home, somebody is going to ask you what you're doing,
10 and you're going to say, "I've been drawn on a jury."
11 And they will say, "What's it about?" And, really, you
12 don't know what it's about. You only heard the
13 allegations. You haven't heard any of the evidence or
14 testimony or anything else.

15 And so I'm telling you not to discuss it. And
16 you're going to tell them, "Well, I can't discuss it."
17 And they're going to say, "Why not?" And you're going to
18 tell them, "Because the judge said so." Well, they'll
19 probably say something like, "Well, that's ridiculous."
20 Well, the thing is, I think you understand that this is
21 an important case. It's an important case to everybody
22 involved, the State and the defendant, and it needs to be
23 resolved in the proper fashion. And nobody who is not
24 sitting where you are now during the trial of this case
25 in that jury box will be able to help you because they

1 haven't heard the first of the testimony or seen the
2 first exhibit or other evidence. And the only thing they
3 can do is interfere with the proper resolution of the
4 case.

5 So, therefore, I am instructing you to tell
6 anybody that wants to discuss this case or any other case
7 with you that they cannot. If they insist on doing it,
8 you are to report them to me. But, more importantly, if
9 they don't understand your instructions, what I've just
10 told you, I will be here at 9 o'clock in the morning, and
11 I'll be glad to explain it to them. But I think you do
12 understand this is a case that needs to be resolved in
13 the proper fashion.

14 So with that, I'll excuse you, and I look forward
15 to working with you this week but at 10 o'clock in the
16 morning.

17 Everyone else remain seated while the jury
18 retires from the courtroom.

19 (WHEREUPON, the jury exited the courtroom
20 at 12:28 p.m.)

21 THE COURT: All right. We do have certain
22 housekeeping matters we need to take up.

23 First, the State has made a motion to consolidate
24 all of the cases into one trial. I understand they have
25 separate victims, but the allegations are such that they

1 would be bearing upon the same facts and circumstances
2 and the same matters that might be 404 anyway.

3 The Court was prepared to hear that motion, but I
4 was advised before we drew a jury that there would not be
5 any opposition to the motion and we will dispose of all
6 cases in one trial.

7 Is that what I understand from the State?

8 MS. SIMMONS: Yes, your Honor.

9 THE COURT: Is that correct from the defense?

10 MR. DAY: Yes, your Honor.

11 THE COURT: All right. So all -- I mean, I ran
12 out of the numbers. Are there six indictments?

13 MS. SIMMONS: Yes, your Honor.

14 THE COURT: Six indictments will all be tried at
15 the same time. And as I say, I'm not swearing the jury
16 or I didn't swear the jury in until tomorrow morning so
17 that double jeopardy does not attach.

18 All right. Now, we also have *Jackson v. Denno*
19 motions; is that correct?

20 MS. SIMMONS: Yes, your Honor. The State has
21 informed all of our witnesses to be present at 2 o'clock
22 today.

23 THE COURT: I notice we have DSS here, too.

24 MS. SIMMONS: Yes, your Honor. Mr. Day
25 subpoenaed them to be here this morning.

1 THE COURT: Do you want to do that now or wait
2 until 2:00?

3 MR. DAY: I think we can, your Honor.

4 THE COURT: You can take it up now?

5 MR. DAY: Yes, sir.

6 THE COURT: Why don't we take a very short break.
7 We've all been up here. And it's 12:30. Do you want to
8 say about 10 minutes, come back, take up the DSS issue?

9 All right. Very good.

10 Come back in ten minutes.

11 (WHEREUPON, recess taken from 12:10 p.m.

12 to 2:43 p.m.)

13 (WHEREUPON, State's Exhibit Number 1 was marked
14 for identification.)

15 THE COURT: All right. It's my understanding
16 that we do have a statement in this case.

17 MS. SIMMONS: Yes, your Honor.

18 THE COURT: And do you have the witnesses to that
19 statement?

20 MS. SIMMONS: Yes, your Honor.

21 THE COURT: All right. Are you ready to proceed,
22 Mr. Day?

23 MR. DAY: Yes, your Honor.

24 THE COURT: Very well.

25 MS. SIMMONS: Your Honor, as a housekeeping

1 matter, the defendant was evaluated for competency to
2 stand trial as well as criminal responsibility by the
3 department of mental health. Mr. Day and I have agreed
4 that those documents probably should be part of the
5 Court's record, so we have asked the court reporter to
6 mark those exhibits as 1 and 2.

7 THE COURT: Let me look at them, if I may,
8 please.

9 (Judge reviewing Court's Exhibits 1 and 2.)

10 THE COURT: All right. Is there anything else
11 from the State?

12 MS. SIMMONS: Judge, just for the record,
13 Dr. Schwartz-Watts also evaluated the defendant and will
14 be testifying for the defense in the *Jackson v. Denno*
15 hearing, but she concurs as to his competency.

16 THE COURT: All right. As to the competency as
17 well as how about criminal responsibility?

18 MS. SIMMONS: Yes, your Honor.

19 THE COURT: Dr. Schwartz-Watts indicated she
20 does.

21 All right. Mr. Day, anything further?

22 MR. DAY: No, your Honor.

23 THE COURT: All right. The Court has had the
24 opportunity to review the evaluation of Dr. Frierson
25 dated March 25, 2013, regarding criminal responsibility,

1 Courts' Exhibit Number 1, pursuant to which the examiner
2 found that the defendant was responsible in regard to
3 conforming and also capacity to conform, was responsible
4 and is capable of conforming his actions to expectations.

5 As far as the evaluation of Dr. Frierson on
6 March 25, 2013, marked as Court's Exhibit 2 regarding
7 competence to stand trial wherein he was also found
8 competent, and Dr. Schwartz-Watts said she concurred in
9 those findings, and based on -- let me just ask you,
10 Mr. Day. Have you had anything to offer as far as your
11 ability to consult with your client? Did your client
12 help you in the preparation of this case?

13 MR. DAY: Your Honor, the defendant has had some
14 periods in which he was extremely depressed. And going
15 through this, having been locked up, there were periods
16 of time when I was concerned about his mental status and
17 state, and that's why we had the evaluation done to be
18 sure of that. But he's been able to converse with me
19 about the case. I think he understands what's going on
20 here today and understands the charges against him and
21 how serious they are, and he has assisted me in my
22 defense.

23 THE COURT: Very well. I did note that in
24 Dr. Frierson's report that he did appreciate the severity
25 of the sentence as reflected by that statement that his

1 mother apparently made, quote, "My mom said I could get
2 40 years to life," closed quote.

3 All right. If there's nothing else, based on the
4 medical evidence and my own personal observation of the
5 defendant as well as the representations of counsel, I
6 find the defendant to be knowledgeable, perceptive, well
7 in control of his faculties and therefore competent to
8 stand trial and enter this plea.

9 Very well. Anything else from the -- and that is
10 also as to criminal responsibility and competency.

11 MS. SIMMONS: No, your Honor.

12 THE COURT: All right. As far as I understand --
13 that's, of course, according to *State vs. Blair* and the
14 other cases in that genre, 276 S.C. 644.

15 I might note that prior to the matter being
16 actually heard, the Court was advised that the parties
17 have agreed to the joinder of all charges, and there will
18 be no opposition by the defendant. So the Court has
19 entered a short order just reflecting that for the
20 record, too, because there was a motion to join all
21 charges in a single trial by the State. And that matter
22 has been disposed of.

23 Now, I do understand that there are certain
24 matters dealing with a statement allegedly or purportedly
25 made by the defendant.

1 MS. SIMMONS: Yes, your Honor. The State would
2 offer three witnesses for purposes of a *Jackson v. Denno*
3 hearing.

4 THE COURT: Very well.

5 MS. SIMMONS: The State calls Mike Lark.

6 **CHARLIE MICHAEL LARK,**

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8

9 THE COURT: All right. If you would, sir, please
10 raise your right hand.

11 You swore him?

12 THE CLERK: Yes.

13 THE COURT: Thank you. You have already been
14 sworn. I was looking at something else. Good.

15 If you would, then, give us your full name for
16 the record, spelling your last name.

17 THE WITNESS: My full name is Charlie Michael
18 Lark, L-a-r-k.

19 THE COURT: Very good. Thank you, sir.

20 You may proceed.

21 MS. SIMMONS: Thank you, Judge.

22 DIRECT EXAMINATION

23 BY MS. SIMMONS:

24 Q. Mr. Lark, do you have an occasion to work as a
25 consultant for the Oconee County Sheriff's Office on a

1 contract basis?

2 A. Yes, ma'am, I do.

3 Q. During the course of that, do you have occasion to
4 conduct interviews of criminal -- of people suspected in
5 criminal activity?

6 A. Yes, ma'am.

7 Q. Did you interview this defendant, Jessie Davis?

8 A. Yes, ma'am.

9 Q. Can you tell me when you did that?

10 A. I think it was January the 4th of 2013.

11 Q. Where did this take place?

12 A. Took place at the Oconee County Sheriff's Office in
13 the CID division.

14 Q. What room were you using?

15 A. I was using the interview room in the CID.

16 Q. How big is that room? Can you describe it briefly?

17 A. I never actually measured it. I would say it was 10
18 by 10, 12 by 12.

19 Q. What's in the room?

20 A. All that's in the room is a table and two -- there's
21 a table and at least two chairs, maybe three, and nothing
22 else.

23 Q. At any point in time did you deny the defendant any
24 comforts including a restroom or something to drink or a
25 break?

1 A. No, ma'am.

2 Q. Was he in handcuffs?

3 A. No, ma'am.

4 Q. Was he seated?

5 A. Was -- pardon?

6 Q. Was he seated for your interview?

7 A. Yes, ma'am, he was.

8 Q. Was anyone else present while you interviewed the
9 defendant?

10 A. Not while I interviewed him. It was just he and I.

11 Q. Did he consent to talk to you?

12 A. Yes, ma'am, he did.

13 Q. Did he seem to understand that speaking with you was
14 voluntary?

15 A. Yes, ma'am.

16 Q. Had he been previously read his Miranda rights by
17 Lieutenant Hawk?

18 A. Yes, ma'am. He was read his Miranda rights by
19 Sergeant Hawk, I think, at that time.

20 Q. Did he ever indicate to you that he wanted an
21 attorney?

22 A. No, ma'am, he did not.

23 Q. In your opinion, did he understand his rights and
24 seem to understand what was going on?

25 A. Yes, ma'am.

1 Q. Was he intoxicated or under the influence of illegal
2 drugs or alcohol at the time of your interview?

3 A. No, ma'am.

4 Q. Did he seem sleep deprived?

5 A. No, ma'am.

6 Q. What was his mental status that you observed?

7 A. He seemed to understand right from wrong, and, I
8 mean, you know, understood the consequences of what we
9 were talking about.

10 Q. Did he understand your questions?

11 A. Yes, ma'am.

12 Q. Did you ever intimidate him in any way?

13 A. No, ma'am.

14 Q. Did you ask him about his educational background?

15 A. Yes, ma'am, I did.

16 Q. And what did he tell you about that?

17 A. He told me that he had gotten his high school
18 diploma. I think it was an online situation. He -- and
19 he told me that the best thing that ever happened to him
20 was getting this high school diploma because he was the
21 first one in his family to get one.

22 Q. And was his conversation with you completely
23 voluntary?

24 A. Yes, ma'am.

25 Q. Was he free to terminate his conversation with you

1 at any time?

2 A. Was he -- ma'am?

3 Q. Was he free to terminate his conversation with you?

4 A. Oh, yes, ma'am, he was. I'm sorry.

5 Q. That's okay. I know you're a little under the
6 weather.

7 Did you ask the defendant about the allegations
8 that have been made against him?

9 A. Yes, ma'am.

10 Q. And what did you ask and how did he respond?

11 A. I asked him if he had sexually abused **Minor 2**, and he
12 told me at the end of the interview, he told me that he
13 had put his exposed penis on **Minor 2** and **Minor 1** and that
14 **Minor 1** had put her mouth on his penis.

15 Q. Did he make any statements regarding masturbation?

16 A. Yes, ma'am, he did. He told me that the girls, both
17 girls, had walked in the room while he was masturbating.
18 And he also told me to -- I don't have my notes in front
19 of me. I think he told me that both girls had
20 masturbated him.

21 Q. And did you prepare a report subsequent to --

22 A. Yes, ma'am.

23 Q. And that was provided to law enforcement?

24 A. Yes, ma'am.

25 Q. Did -- after he finished answering these questions

1 from you, did you give that information to anyone else
2 right after the interview --

3 A. I gave it to Sergeant Hawk -- or Lieutenant Hawk,
4 I'm sorry.

5 Q. And at the end of your interview, who did the
6 defendant go to talk to next?

7 A. Sergeant Hawk.

8 Q. So just to be clear, at no time did the defendant
9 ask for an attorney?

10 A. No, ma'am, he did not.

11 Q. Please answer any questions Mr. Day may have.

12 A. Thank you.

13 CROSS-EXAMINATION

14 BY MR. DAY:

15 Q. Mr. Lark, according to your testimony, then, just to
16 make sure I understand it, you come in the room, you ask
17 a few questions, and he admitted to everything; is that
18 correct?

19 A. Yes. It was -- it was approximately almost an
20 hour-and-a-half, hour-and-45-minute interview, yes, sir.
21 It was more than ten or 15 minutes.

22 Q. But you said he came in the room and then he
23 admitted it. He denied it, did he not?

24 A. Initially he did deny it.

25 Q. Okay. So he answered your questions, and then after

1 he answered your questions, all of a sudden he then tells
2 everything that you say -- that you just told about?

3 A. Yes, sir. After he denied it, and -- and then he
4 admitted it. He initially denied it and then later
5 admitted it.

6 Q. Later admitted it?

7 A. Yes, sir. During that same interview.

8 Q. How many times did you give him the test?

9 A. How many times did I give him the test?

10 Q. How many times did you run a polygraph on him?

11 A. Okay. Polygraph. I administered what we call an
12 acquaintance chart and probably three -- three charts.

13 Q. Okay. Does that mean you gave three separate tests?

14 A. No, ma'am -- no, sir. A polygraph examination has
15 got what we call an acquaintance test, and then you have
16 three -- you ask a series of questions on three separate
17 times. You ask the same questions three times. You ask
18 the first series -- you got a series of questions. You
19 ask those questions, then you stop and you ask that same
20 series of questions again, then you stop, then you run
21 that same series of questions again.

22 Q. Okay.

23 A. And that's -- that is a properly-administered
24 polygraph examination.

25 Q. And as part of that, you have -- you explain to him

1 he has certain rights?

2 A. Yes, sir.

3 Q. Civil rights?

4 A. I explained to him --

5 Q. I'm not talking about the right to vote or right to
6 carry a gun or any of that kind of stuff. I'm talking
7 about in a civil sense as against a criminal sense; is
8 that correct?

9 A. Sergeant -- I went through a consent form stating
10 that he was talking to me on a voluntary basis, he wasn't
11 under duress, that I wasn't making him any promises, that
12 he had a right to talk with an attorney if he wanted one,
13 gave me permission to talk to whoever that asked him the
14 questions that was necessary for it. Also to ask him to
15 authorize me to release results to the Oconee County
16 Sheriff's Office, stating that he was in good physical
17 and mental condition, and stating that he could terminate
18 the examination at any point in time that he wanted to
19 and that he understood the -- and...

20 Q. One of the things you told him, that he could talk
21 to anybody he wanted to before he signed or did any
22 examination, right?

23 A. That was in the consent form. He did ask to speak
24 to his mother.

25 Q. Okay. You said in what he filled out, "I realize

1 I'm not required to take this. I have the right to first
2 consult an attorney or anyone else," and he asked to
3 speak to someone else, did he not?

4 A. Yes, sir.

5 Q. And you didn't let him do that?

6 A. I told him he was 21 years old and he could make his
7 own decision. He was an adult.

8 Q. So when he did ask to speak to someone else, you
9 told him no?

10 A. I didn't tell him no. I told him he was an adult.

11 Q. Okay. But you told him he could speak to anyone
12 else, then you wouldn't let him because he was 21?

13 A. I didn't forbid him from talking to anybody. I told
14 him he was an adult and he could make his own decisions.
15 I did tell him that.

16 Q. Okay.

17 A. I didn't forbid him from talking. He could have got
18 up and walked out of that room at any point in time he
19 wanted to.

20 Q. He could?

21 A. Yes, sir.

22 Q. You believe that?

23 A. Yes, sir.

24 Q. In the sheriff's department?

25 A. He could have walked out of my room, yes, sir. He

1 wasn't under arrest when I talked to him.

2 Q. Okay. And you know that?

3 A. Yes, sir. I knew he wasn't under arrest when he
4 come in there. I told him he was free to leave at any
5 point in time, sir.

6 Q. Okay, sir. And you mention in this consent thing
7 you're talking about is the use of electronic hearing or
8 recording devices. Did you use any of those?

9 A. No, sir.

10 Q. Now, after he asked to speak to his mother, you
11 again -- make sure I understand -- you told him that he's
12 21, he has to do it himself?

13 A. I told him 21, he was an adult. He was old enough
14 to make his own decisions.

15 Q. Okay. All right. Up until this point he had denied
16 the allegations that had been made against him; is that
17 correct?

18 A. During the pretest, yes, sir, he denied it.

19 Q. Okay. And he had not made any allegations or
20 admitted any admissions or anything else to these two
21 crimes to Gentry Hawk or any other law enforcement
22 officer that you're aware of?

23 A. Prior to me -- he hadn't admitted to Gentry Hawk or
24 to anyone prior to me administering the polygraph, no,
25 sir.

1 Q. Okay. So make sure I understand this. He has
2 denied it, and, as you say, he denied it three times,
3 right?

4 A. He denied it during what we call a pretest
5 interview. A pretest interview is an interview where I
6 tell him the questions that's going to be asked on the
7 polygraph. During the actual polygraph, there is a
8 series of questions that I ask. And on each one of
9 those -- each one of those questions that I asked him
10 about ^{Minor 2}, he said no. So yes, sir, he did deny it on
11 three different tests, three different charts.

12 Q. Okay. Were you aware that his mother was in the
13 building?

14 A. No, sir.

15 Q. Okay. I'm looking at the report. Gentry Hawk says
16 he knew she was there because he went down and talked to
17 her?

18 A. I wasn't -- if I was aware of it, I don't remember
19 it, sir. I don't remember Sergeant Hawk telling me that,
20 sir.

21 Q. Okay. At any time did you tell Mr. Davis that you
22 were employed by the sheriff's department?

23 A. No, sir.

24 Q. But you were working --

25 A. I told him I wasn't a sheriff -- I wasn't a police

1 officer.

2 Q. But you were working for the sheriff's department?

3 A. I was their agent, yes, sir.

4 Q. Okay. Now, were you there when they -- you said he
5 had been given his Miranda rights. Did you actually hear
6 him receive Miranda rights?

7 A. I was told. I wasn't in the room, no, sir. I --

8 Q. I'm sorry, I didn't mean to interrupt.

9 A. I'm sorry. Sergeant Hawk told me that he had read
10 his Miranda rights to him, but I did not actually witness
11 it, sir.

12 Q. Okay. In the report that you did, you stated first
13 that -- you say that, "His responses were normally
14 indicative of deceptions to the relevant test questions.
15 During the posttest interview, Mr. Davis admitted"?

16 A. Yes, sir.

17 Q. So he had taken the test and you were now
18 questioning him?

19 A. Yes, sir.

20 Q. All right. Before you started questioning him, did
21 you explain to him he had certain rights; he didn't have
22 to answer those questions?

23 A. He was explained of those rights when the interview
24 was initially began. I went through that consent form
25 before the interview began. When he first walked in the

1 door is when I went through the consent form with him.

2 Q. Okay.

3 A. But no, sir, I did not explain those rights to him
4 again after the test. I did initially when he walked in
5 the door, but I didn't again.

6 Q. Okay. So after he has denied three times that he
7 committed these crimes that they're alleging, you then
8 began a series of questions of him after that in some
9 sort of, you say, posttest interview?

10 A. Yes, sir.

11 Q. And the posttest interview was after he had denied
12 it three times and you then began to question him about
13 the crime?

14 A. Yes, sir.

15 Q. But you were not giving him a test at that time?

16 A. No, sir.

17 Q. And he was in the room with you for about an hour
18 and 45 minutes, according to your notes?

19 A. I think it was from 12:05 until about 1:56 or
20 something like that. I'm not sure, sir.

21 Q. An hour and --

22 A. Pretty --

23 Q. It was within a minute or two, there?

24 A. Hour and 45 minutes approximately.

25 Q. Okay. During that time, did Gentry Hawk come into

1 the room?

2 A. I don't recall Gentry Hawk coming into the room,
3 sir.

4 Q. Okay. Did you leave and go talk to Gentry Hawk?

5 A. Yes, sir. After the test.

6 Q. Only after the test or --

7 A. To the best of my knowledge, the only time I went
8 out and talked with Gentry Hawk was after I -- after the
9 test, yes, sir.

10 Q. And that was -- in your report you say a verbal
11 report was given to Sergeant Gentry Hawk after you say he
12 made all of these admissions?

13 A. Yes, sir.

14 Q. But up to that point you had not left or nor had
15 anyone else come in?

16 A. Best of my knowledge I had not left that room, sir.

17 Q. Okay. And you just testified he said something
18 about the victim in this case being locked in his room.
19 That's nowhere in any of your reports?

20 A. Sir?

21 Q. You just said when you testified that he told you
22 the victims were locked in his room when this occurred.

23 A. I didn't testify to being locked in a room.

24 Q. Not talking about where he gave the polygraph, but
25 you're saying that he said that when these things

1 supposedly occurred, these allegations of touching or
2 whatever with the girls, that they were locked in his
3 room when that occurred. You can have her read it back.

4 A. I apologize, sir. I don't understand the question
5 you're asking. I was in a room, in an interview room
6 with him when I did it, but who was -- what -- what do
7 you mean? Who was locked in whose room?

8 Q. You testified that Mr. Davis told you that the
9 victims, alleged victims in this case, were locked in his
10 room when this allegation of criminal sexual conduct took
11 place.

12 A. I hadn't mentioned anything about being locked in
13 the room.

14 Q. Okay.

15 MR. DAY: Your Honor, if I might take a moment to
16 ask the court reporter if it would be possible to look at
17 that in his testimony a moment ago to determine that
18 question.

19 THE COURT: Can you do that?

20 THE REPORTER: Yes.

21 THE COURT: Let's go off the record.

22 MR. DAY: Yes, sir.

23 (WHEREUPON, the record was reviewed.)

24 MR. DAY: She says it does not show up in there.

25 I don't know where I heard it.

1 THE COURT: Well, I think the question or the
2 account of "locked room" came up when the witness was
3 asked whether or not he had the right to leave or
4 whatever. He could go at any time, and he said he was
5 not in a locked room. I think that had been mentioned,
6 but the record will reflect if that was even a part of
7 the record itself.

8 MR. DAY: All right, your Honor. Thank you. I
9 withdraw the question.

10 THE COURT: Very good.

11 BY MR. DAY:

12 Q. Just to confirm to make sure I got this part correct
13 anyway, as far as your statement of consent, you do say
14 that you explained to him what it says, "I have the right
15 to first consult an attorney or anyone else that I wish
16 before either signing this form or taking the
17 examination"? Did you explain that to him?

18 A. I told him that, and he said he wanted to speak to
19 his mom. And he told me -- I told him he was 21 years
20 old and he was old enough to make his own decisions.

21 MR. DAY: I think that's all I have. Thank you.

22 THE COURT: Re-exam?

23 MS. SIMMONS: Just one question.

24 REDIRECT EXAMINATION

25 BY MS. SIMMONS:

1 Q. After you told the defendant he was 21 years old and
2 he could make his own decisions, did he renew his request
3 for his mother?

4 A. No, ma'am, he did not.

5 MS. SIMMONS: Thank you.

6 MR. DAY: Nothing further, your Honor.

7 THE COURT: All right. You may step down.

8 MS. SIMMONS: Judge, we would ask that Mr. Lark
9 be released just for today. He's very under the weather.
10 I can assure the Court he will be back tomorrow.

11 MR. DAY: No objection.

12 THE COURT: Okay.

13 Hope you feel better.

14 All right. You may call your next witness.

15 MS. SIMMONS: The State calls Lieutenant Gentry
16 Hawk.

17 **GENTRY MORRIS HAWK, II,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19

20 THE COURT: All right. If you would, please,
21 sir, give us your full name for the record, spelling your
22 last name.

23 THE WITNESS: Gentry Morris Hawk, II, H-a-w-k.

24 DIRECT EXAMINATION

25 BY MS. SIMMONS:

1 Q. Lieutenant Hawk, where are you employed?

2 A. At the Oconee County Sheriff's Department.

3 Q. And in what capacity?

4 A. I am the lieutenant over criminal investigations
5 division.

6 Q. How long have you been in law enforcement?

7 A. Approximately 18 years.

8 Q. Did you talk to the defendant in this case, Jessie
9 Davis, regarding taking a statement from him?

10 A. Yes, ma'am, I did.

11 Q. Can you tell me when you did that.

12 A. It was on January 3rd, 2013.

13 Q. What background were you given by the defendant?

14 A. I was told that he had dropped out of high school in
15 ninth grade and that he had gotten his high school
16 diploma he said on Job Corps in Kentucky, and also that
17 he had gotten a culinary degree from Kentucky as well.

18 Q. When you were interviewing him, was he under arrest
19 at that time?

20 A. No, ma'am, he was not.

21 Q. Was he in custody or was he voluntarily at the
22 sheriff's office?

23 A. He voluntarily came to the sheriff's office.

24 Q. Did you advise him of what are commonly known as his
25 Miranda rights?

1 A. Yes, ma'am, I did.

2 Q. Did you do so using a rights form?

3 A. Yes, ma'am, I did.

4 MS. SIMMONS: Beg the Court's indulgence for one
5 moment.

6 BY MS. SIMMONS:

7 Q. I'm going to show you what's been premarked as
8 State's Exhibit 1 and 2. Do you recognize State's
9 Exhibit 1, which is the rights form in question?

10 A. Yes, ma'am, I do.

11 Q. Is that the standard rights form used by the Oconee
12 County Sheriff's Office?

13 A. Yes, ma'am, it is.

14 Q. Do you recognize the signature of the defendant?

15 A. Yes, ma'am.

16 Q. Do you recognize the initials on the form?

17 A. Yes, ma'am.

18 Q. What time did the rights waiver take place that
19 evening?

20 A. Approximately 11:15 p.m.

21 Q. And how long had you had contact with the defendant
22 that night?

23 A. Roughly 20 minutes, 30 minutes, somewhere in there.

24 Q. Did you initiate contact at his home?

25 A. Yes, ma'am, we did.

1 Q. Where did you advise him of his rights?

2 A. In the criminal investigations division of the
3 sheriff's office.

4 Q. And tell me about the room you were in.

5 A. It's an interview room that we have in the sheriff's
6 office for interviews.

7 Q. How big is the room?

8 A. It's approximately a 10-by-10, 12-by-12 room. I
9 don't know the exact dimensions of it.

10 Q. What's in the room?

11 A. A table and some chairs. You know, usually three,
12 four chairs at the most.

13 Q. At any point did you deny him the restroom or
14 something to drink or a break?

15 A. No, ma'am.

16 Q. Was he in handcuffs?

17 A. No, ma'am.

18 Q. Was he seated?

19 A. Yes, ma'am.

20 Q. Was anyone else present during your interview?

21 A. Deputy Freeman was.

22 Q. Was he there the entire interview?

23 A. Yes, ma'am.

24 Q. And this form lists the rights you informed the
25 defendant of?

1 A. Yes, ma'am.

2 Q. And can you read the form exactly as you read it
3 that evening to Mr. Davis and tell me where he indicated
4 his understanding of those items?

5 A. Well, yes, ma'am. When I do the Miranda rights
6 form, I fill out the top which includes OCSO, which is
7 Oconee County Sheriff's Office. I put the date, which is
8 1/3 -- and on this form I put 2012, but it was after the
9 first of the year. It was 2013. I wasn't used to
10 writing 13 yet. And time, 11:15 p.m. And what I do is I
11 show them -- I explain to them that these are the rights,
12 that I want to talk to him and get his side of the -- of
13 the situation here. I know there's two sides. And I
14 read him his Miranda rights. I tell him if he has any
15 questions or doesn't understand any of these to ask me
16 and I will explain it to him. And then I go through line
17 by line and I read to him each line of the Miranda
18 rights. And if he -- when I get done with it, if he
19 understands it, I have him initial next to the line.

20 Q. Can you read this form exactly as you read it to
21 him?

22 A. Yes, ma'am. It says, "Before we ask you any
23 questions, you must understand your rights." And then I
24 would have him initial it if he understood it, which he
25 did. And then, "You have the right to remain silent."

1 And I would have him initial it, asked him if he
2 understood it, and he initialed it. "Anything you say
3 can be used against you in court." Then the same thing,
4 I would ask him, make sure he understood it and initial
5 it, which he did. "You have the right to talk to a
6 lawyer for advice before we ask you any questions and
7 have him with you during questioning." And he understood
8 it and initialed it.

9 "If you cannot afford a lawyer, one will be
10 appointed for you before any questions if you wish,"
11 which he understood and initialed. "If you decide to
12 answer questions now without a lawyer present, you will
13 still have the right to stop answering at any time." And
14 he understood, initialed it.

15 The last one says, "I have read this statement of
16 my rights and I understand what my rights are. I am
17 willing to make a statement and answer questions. I
18 understand and know what I am doing. No promises or
19 threats have been made to me and no pressure or coercion
20 of any kind has been used against me." He initialed it
21 and then he signed it. And I signed it as a witness and
22 Deputy Freeman signed it as a witness.

23 Q. What time did he sign the form?

24 A. Right around 11:18 p.m. It was right before I put
25 the time down.

1 Q. Did he seem to understand these rights as you
2 explained them?

3 A. Yes, ma'am.

4 Q. Did he ever indicate he wanted an attorney?

5 A. No, ma'am.

6 Q. In your opinion, did the defendant understand his
7 rights?

8 A. Yes, ma'am.

9 Q. Was he intoxicated or under the influence of illegal
10 drugs?

11 A. No, ma'am.

12 Q. Did he appear to be tired, exhausted?

13 A. No, ma'am.

14 Q. Did he -- did you make any threats or promises in
15 order to get him to give you a statement and sign the
16 form?

17 A. No, ma'am.

18 Q. At any point did you intimidate the defendant?

19 A. No, ma'am.

20 Q. And was Deputy Freeman present during the entire
21 time you spoke with him?

22 A. Yes, ma'am.

23 Q. Did the defendant appear to -- what was his mental
24 state, based on your training and experience?

25 A. Well, he answered the questions, you know,

1 intelligently, you know, to his abilities. He spoke with
2 us. You know, he made sense. He didn't seem confused
3 about anything and understood what we were talking about
4 and the severity of it, and he talked -- I mean, we just
5 small-talked and he talked with us and he was fine.

6 Q. After he spoke with Mr. Lark, did he indicate that
7 he wanted to give you a statement?

8 A. Yes, ma'am.

9 Q. And what time did the statement begin?

10 A. It started at 1:48 a.m. on the 4th.

11 Q. And did you -- tell me about the voluntary
12 statement. Did you fill it out or did he write it?

13 A. He asked me to write it in his words because he said
14 he didn't spell very well.

15 Q. And did you write this verbatim as he told you?

16 A. Yes, ma'am.

17 Q. At this point in time were you interrogating him or
18 was this more of a narrative conversation?

19 A. Oh, it was a narrative conversation. He was telling
20 us what had happened.

21 Q. Did you write everything accurately that the
22 defendant told you?

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

24 Q. Can you read me the form and the statement in its
25 entirety?

17 "That I have the right to remain silent. I do
18 not have to answer any questions or make any statements
19 at all; that any statement I make can and will be used
20 against me in court or courts of law for the offense or
21 offenses concerning which the following statement is
22 hereafter made; that I have the right to counsel with a
23 lawyer of my choice before or at any time during the
24 questioning or statements I make; that if I cannot afford
25 to hire a lawyer, I may request and have a lawyer

1 appointed for me by the proper authority before or at any
2 time during any questioning or statements that I make
3 without cost or expense to me; that I can stop answering
4 any questions or making any statements at any time that I
5 choose and call for the presence of a lawyer to advise me
6 before continuing any more questioning or make any more
7 statements, whether or not I have already answered some
8 questions or made statements.

9 "I do not want to talk to a lawyer, and I hereby
10 knowingly and purposely waive my right to remain silent
11 and my right to have a lawyer present while I make the
12 following statement to the aforesaid person, knowing that
13 I have the right and privilege to terminate any interview
14 at any time hereinafter and have a lawyer present with me
15 during answering -- before answering any more questions
16 or making any more statements if I choose to do so.

17 "I declare that the following voluntary statement
18 is made by my own free will without promise or hope of
19 reward, without fear or threat of physical harm, without
20 coercion, favor or offer of favor, without leniency or
21 offer of leniency by any persons whomsoever."

22 Says, "I, Jessie Davis, have asked Investigator
23 Hawk to write this in my words: I was in my room
24 watching porn, jacking off as usual and drunk as hell.
25 Minor 2 came in, sat on my lap like she usually does.

1 I told her to get out. She didn't listen, just kept
2 grinding on my lap and asking what I was doing. I threw
3 her off and threw the cover off.

4 "She said, 'Are you happy?' And she started
5 looking at it. I had a hard on. She touched my penis.
6 She asked what I was doing. I said, 'Jacking off.' She
7 asked, 'What's that?' So I showed her.

8 "She then started to jack me off. She said she
9 was feeling funny in the front. I told her she was
10 probably getting wet or had to pee. She said that -- she
11 said, 'What do you mean?' I told her when man and woman
12 rub each other, it feels good. She wanted to see, so she
13 took her pants down, and my penis rubbed in the upper
14 crack of her butt.

15 "She said her 'wee-wee' and showed me it. And I
16 pointed at it and touched it with the tip of my finger.
17 Said it was a pussy or vagina. She said it felt weird.
18 I then stopped.

19 "Minor 1 walked in when Minor 2 was rubbing on my
20 penis with her pants down, and Minor 2 said, Come here,
21 Minor 1, see what -- Minor 1 said, 'What are you
22 doing?' Minor 2 said it was funny what this thing does.
23 Minor 1 came over and jacked me off and then took her
24 pants down and rubbed on my penis with her butt.

25 "She then put my penis in her mouth. I think she

1 was wondering what it tastes like. Her teeth rubbed my
2 penis. I told them not to tell and I was sorry.

3 "This happened between October and November at
4 the residence Drive, Westminster, in my room. I
5 don't think anyone else was at home. This only happened
6 this one time with both girls."

7 Do you want me to go through the rest?

8 It says, "I certify I have received a copy of the
9 statement, Jessie Davis. I have read each page of the
10 statement consisting of two pages, each page of which
11 bears my signature and corrections, if any, bearing my
12 initials, and I certify that the facts contained herein
13 are true and correct.

14 "I further certify that I made no requests for
15 advice or presence of a lawyer before or during any part
16 of this statement, nor at any time before it was finished
17 did I request that this statement be stopped. I also
18 declare that I was not told or prompted what to say in
19 this statement."

20 This says this statement was completed at 2:09
21 a.m. on the 4th day of January 2013, and it was witnessed
22 by myself, Jay Freeman and Mr. Lark.

23 BY MS. SIMMONS:

24 Q. And the statement is two pages?

25 A. Yes, ma'am.

1 Q. Was Mr. Lark there the entire time of the statement
2 or just Deputy Freeman?

3 A. Just Deputy Freeman.

4 Q. So Mr. Lark wasn't present for this signature?

5 A. He witnessed -- I believe he witnessed the signature
6 because he signed the form.

7 Q. Thank you.

8 Did you write this statement exactly as the
9 defendant told it to you?

10 A. Yes, ma'am.

11 Q. Did you read it back to him line by line?

12 A. Yes, ma'am, I did.

13 Q. Did he indicate this was indeed his statement?

14 A. Yes, ma'am.

15 Q. How many times did he sign this statement that you
16 can tell?

17 A. He signed it two times, and he initialed some of the
18 corrections on the second page that were made.

19 Q. So when you reread it to him, he initialed
20 corrections that were made?

21 A. Yes, ma'am.

22 Q. At any time the defendant -- did the defendant ask
23 you for an attorney during the course of giving this
24 statement?

25 A. No, ma'am.

1 Q. What did you do after the statement was given?

2 A. After he gave me the statement? I informed him that
3 he was under arrest for CSC.

4 Q. Did you allow him to see anybody after that?

5 A. Yes, ma'am, I allowed him to see his -- I asked him
6 if he wanted to see his mother and he said he did.

7 Q. And in response to questioning by his mother, what
8 did he say?

9 A. He said he wished he could tell her it wasn't true
10 but he couldn't.

11 Q. Please answer any questions Mr. Day may have.

12 CROSS-EXAMINATION

13 BY MR. DAY:

14 Q. You have got the statement there in front of you.

15 As I understand, let's see, time started was 1:48 a.m.;
16 is that correct?

17 A. Yes, sir.

18 Q. Okay. And finished at 2:08, I think, or 2:09?

19 A. 2:09.

20 Q. 2:09. Now, prior -- prior to beginning that
21 process -- get down to where it is here -- you note in
22 your report that you went to the sheriff's office, called
23 Polygraph Examiner Mike Lark, who came to the office.
24 You then went to the sheriff's department, met with
25 Jessie Davis and Deputy Freeman?

1 A. Uh-huh.

2 Q. Deputy Freeman is the one that drove him from the
3 house to the sheriff's department?

4 A. Yes, sir.

5 Q. Went to the room to speak with Jessie, and he told
6 you that his mom had told him not to talk with anyone
7 until she got there; is that correct?

8 A. He -- yes, sir.

9 Q. And then you said -- investigating officer, that's
10 you, advised him he was 21 years old, an adult, and you
11 would talk with him if he wanted to talk and not with his
12 mama; is that correct?

13 A. Yes, sir. Yes, sir.

14 Q. Make sure I understand that because I think I just
15 heard that again a few minutes ago, that that's the exact
16 same words that Mr. Lark used, that you're 21 years old,
17 an adult?

18 A. Yes, sir, he is.

19 Q. He stated that he would. You filled out a record of
20 the interview, then informed him of the allegations, read
21 him Miranda rights, which he signed and waived, denied
22 the allegations and then took a polygraph.

23 You next say the investigating officer, while he
24 was taking the polygraph, went down to the lobby and
25 spoke with his mother and her husband. They were there?

1 A. Yes, sir.

2 Q. Did you ever tell that to Mr. Lark, that his mother
3 was actually there?

4 A. I don't recall if I did or didn't.

5 Q. You've got in here you told his mother and
6 stepfather that it would be about two hours. They could
7 hang out. You then say, "The suspect failed the
8 polygraph and then admitted that he had touched the
9 victims." Now, were you in the room when that happened?

10 A. No, sir. Mr. Lark called me and I went into the
11 room after he admitted to Mr. Lark. So I was not in
12 there when he admitted to it, no, sir.

13 Q. Okay. You say he asked you to write the statement I
14 think that you just read because he couldn't spell?

15 A. Yes, sir.

16 Q. All right. Now, during this time was Mr. Davis free
17 to leave?

18 A. Oh, yes, sir, he was.

19 Q. Could have gotten up and left anytime?

20 A. Yes, sir, he could have.

21 Q. Did he ever stand up and say, "I want to leave"?

22 A. No, sir, he did not.

23 Q. And he was in the sheriff's department?

24 A. Yes, sir, he was.

25 Q. And like you say, a 10 or 12-by-12 room?

1 A. Uh-huh.

2 Q. And there was you and Deputy Freeman; is that
3 correct?

4 A. Yes, sir.

5 Q. And any other officers there?

6 A. No, sir.

7 Q. So y'all were the only ones there at the time?

8 A. At the time from the beginning of the first
9 interview, yes, sir. When we -- which time are you
10 talking about? We were the only officers up there with
11 Mr. Davis.

12 Q. Okay. Now, I want to make sure I got that right.
13 It began, let's see, at 1:48, and you finished up at
14 2:09. And when was it that you booked him into the jail,
15 do you remember?

16 A. I do not remember, no, sir.

17 Q. Okay. Then as I understand it, you had other
18 statements done that you wrote out as well; is that
19 correct?

20 A. I did not write out, no, sir. Which ones are you
21 talking about?

22 Q. A letter to Minor 2 .

23 A. We asked him if he wanted to write letters of
24 apology, but I did not write those. Deputy Freeman did.

25 Q. Deputy Freeman did?

1 A. Yes, sir.

2 Q. So who asked him about writing those?

3 A. I did.

4 Q. And as I understand it, according to your report,
5 you're saying you wrote out two of them, and then you're
6 saying Mr. Davis wrote out three others to three other
7 people that the family --

8 A. No, sir. No, sir. Deputy Freeman wrote out two of
9 them, and then Mr. Davis wanted to write out the other
10 three to the family.

11 Q. So while he didn't want to write out these others,
12 he did write out three of the letters?

13 A. Yes, sir.

14 Q. That he did that?

15 A. Yes, sir.

16 MR. DAY: Okay. One second, your Honor.

17 BY MR. DAY:

18 Q. Okay. During this, I think Mr. Lark, as well as
19 you, asked about medication or et cetera or taking any
20 medications or drugs or anything. Did y'all have any
21 kind of drug screen done?

22 A. No, sir. I didn't ask him about any medications
23 myself personally, no, sir.

24 Q. Okay. All right, sir. That's all the questions I
25 have.

1 REDIRECT EXAMINATION

2 BY MS. SIMMONS:

3 Q. Just one question. Lieutenant Hawk, did the
4 defendant appear to be under the influence of drugs or
5 alcohol based on your training and experience?

6 A. No, ma'am, he did not.

7 MS. SIMMONS: Thank you.

8 MR. DAY: Nothing further, your Honor.

9 THE COURT: All right. You may step down.

10 MS. SIMMONS: The State calls Deputy Jay Freeman.

11 **JAMES ALLEN FREEMAN,**

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13

14 THE COURT: If you would, please, sir, give us
15 your full name for the record, spelling your last name.

16 THE WITNESS: James Allen Freeman, F-r-e-e-m-a-n.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MS. SIMMONS:

20 Q. Deputy Freeman, where are you employed?

21 A. The Oconee County Sheriff's Office.

22 Q. And how long have you been there?

23 A. Six years.

24 Q. Tell me about your education.

25 A. Graduate from Presbyterian College. Majored in

1 psychology, minored in English.

2 Q. How did you become involved in the case relating to
3 this defendant?

4 A. I was -- at the time of the incident I was assigned
5 to road patrol night shift. We received a call shortly
6 after 7 o'clock when I would come on duty. It was
7 assigned to me. I spoke with a Miss Ellison by phone.
8 She stated that she had had a conversation with her
9 daughter, that she had been -- or that she had possibly
10 been assaulted. I met her at the hospital. She wanted
11 her daughter to be examined, at which time she told me
12 about the conversation that she had had and gave me a
13 written statement.

14 Q. Did you subsequently go to find Jessie Davis?

15 A. That's correct.

16 Q. Where did you find him?

17 A. At his residence.

18 Q. Who was with you at his residence?

19 A. Who went with me to the residence?

20 Q. Yes.

21 A. Lieutenant Hawk.

22 Q. Did he agree to speak with you guys further?

23 A. Yes, ma'am.

24 Q. Why did you not speak with him at the house?

25 A. Couple reasons. One, the privacy of the -- you

1 know, the nature of the allegations, the privacy matter
2 of not wanting to carry that on in a semi-public place
3 where there are other houses around. The other is for
4 the safety of the defendant as far as the fact that
5 his -- one of the alleged victims was living in the house
6 with him.

7 Q. Did he go with you willingly to the sheriff's
8 office?

9 A. Yes, ma'am.

10 Q. Was he in custody when you drove him to the
11 sheriff's office?

12 A. No, ma'am.

13 Q. Was he in handcuffs?

14 A. No, ma'am.

15 Q. Did he offer any information about other things on
16 his person when you were transporting him?

17 A. Before -- before we got ready to leave, he says
18 something to the effect of, "What do I need to do with my
19 gun?" indicating that he had a gun in his pocket. He
20 tried to take it out. I stopped him. I said, "Let me
21 take that," and he was very apologetic. I said, "No,
22 you're fine." I set it in the front seat of the car and
23 said, "We will give it back to you."

24 Q. What time did you arrive at the sheriff's department
25 with him approximately?

1 A. Right around 11 o'clock.

2 Q. And was this still -- was this January 3rd of 2013?

3 A. Yes, ma'am, at the time.

4 Q. Did you have to wait a few minutes on Lieutenant
5 Hawk?

6 A. I did. Lieutenant Hawk stayed behind at the
7 residence, I can only assume, to explain to the other
8 person living in the house what was going on. I arrived
9 at the sheriff's office. From where we were in
10 Westminster, took about 10 minutes. Went upstairs.
11 Because it's after hours, my key card does not allow me
12 to enter the criminal investigation division of the
13 sheriff's office, so the defendant and I stayed in the
14 lobby.

15 Q. Did you have any small talk then?

16 A. Just small talk. He asked what was going on, and I
17 told him we'll wait on Lieutenant Hawk.

18 Q. Did you and Lieutenant Hawk subsequently talk to the
19 defendant regarding taking a statement from him in this
20 case?

21 A. That's correct.

22 Q. Were you present when Lieutenant Hawk advised him of
23 his rights?

24 A. Yes, ma'am, I was.

25 Q. I'm going to show you what's been premarked as

1 State's Exhibit 1, and I'm also going to pass you State's
2 Exhibit 2.

3 MS. SIMMONS: Your Honor, may I approach the
4 witness?

5 THE COURT: Certainly.

6 BY MS. SIMMONS:

7 Q. Do you recognize the rights form?

8 A. Yes, ma'am.

9 Q. And who was that -- who -- is this the form that
10 Lieutenant Hawk used?

11 A. Yes, ma'am.

12 Q. Do you recognize it?

13 A. Yes, ma'am.

14 Q. Do you recognize your signature as a witness and the
15 defendant's signature?

16 A. Yes, ma'am, I do.

17 Q. And what time did the rights waiver take place?

18 A. The time was started, I believe, at 11:15 p.m. as
19 indicated by the time on the form and was ended shortly
20 thereafter at 11:18.

21 Q. At any point did you deny the defendant the
22 restroom, something to drink, taking a break?

23 A. No, ma'am.

24 Q. Was he in handcuffs?

25 A. No, ma'am.

1 Q. Was he seated or standing?

2 A. He was seated.

3 Q. Was anyone else present besides Lieutenant Hawk and
4 you?

5 A. No, ma'am.

6 Q. And are those the rights that Lieutenant Hawk
7 informed the defendant of?

8 A. Yes, ma'am.

9 Q. Did he go over the form with the defendant?

10 A. Yes, ma'am, he read it word for word. He actually
11 turned it upside down and pushed it in front of him and
12 read it, and he initialed beside every line that he
13 understood.

14 Q. In your opinion, did he seem to understand his
15 rights?

16 A. Yes, ma'am.

17 Q. Was he intoxicated or under the influence, as best
18 you could tell?

19 A. It did not appear to be, no.

20 Q. Did he seem sleep deprived?

21 A. No, ma'am.

22 Q. As a school resource officer, you observe people
23 with limited mental capacity or people that are mentally
24 retarded?

25 A. Yes, ma'am.

1 MR. DAY: Your Honor, I'm going to have to
2 object. I think we're getting well beyond the scope of
3 this witness' particular expertise on this issue here.

4 THE COURT: Other than experience as a resource
5 officer, what other background does he have?

6 MS. SIMMONS: Judge, he testified that he has a
7 degree from Presbyterian College in psychology.

8 THE COURT: And that covers -- we'll go ahead.
9 Proffer your question.

10 Don't answer the question until I say so.

11 BY MS. SIMMONS:

12 Q. Based on your dealings with people and children, did
13 you believe the defendant had any mental limitations,
14 based on your observations?

15 A. No, ma'am. No, ma'am.

16 Oh, I'm sorry.

17 THE COURT: Following instructions.

18 THE WITNESS: I'm sorry.

19 THE COURT: All right. I won't consider mental
20 limitations. We all have those problems.

21 I'm going to admit that one question, but I don't
22 know that you can go any further than that. I will
23 permit cross-exam as to the extent of his qualifications.

24 Very good.

25 Thank you, sir.

1 MS. SIMMONS: Thank you, Judge. I don't plan on
2 going any further than that.

3 BY MS. SIMMONS:

4 Q. Did the defendant indicate that he understood his
5 rights?

6 A. Yes, ma'am.

7 Q. And did he sign the form?

8 A. Yes, ma'am.

9 Q. At any point did you threaten him or make any
10 promises to get him to sign the form or make a statement?

11 A. No, ma'am.

12 Q. Did you intimidate him?

13 A. No, ma'am.

14 Q. Was his waiver of rights voluntary?

15 A. Yes, ma'am.

16 Q. At any point did he indicate that he wanted an
17 attorney?

18 A. No, ma'am.

19 Q. Later did the defendant actually give a statement to
20 you and Lieutenant Hawk?

21 A. Yes, ma'am.

22 Q. Was the statement in writing?

23 A. He -- Lieutenant Hawk wrote the statement for him.

24 Q. Do you recognize that as State's Exhibit, Number 2?

25 A. Yes, ma'am.

1 Q. Based on your recollection of that evening, did
2 Lieutenant Hawk write it accurately as the defendant told
3 him what happened?

4 A. Yes, ma'am.

5 Q. And was this an interrogation or a narrative-type
6 interview?

7 A. More of a storytelling. He, the defendant, at this
8 time was telling Lieutenant Hawk what happened.

9 Q. Did Lieutenant Hawk read it back to him and as he
10 wrote it?

11 A. Yes, ma'am.

12 Q. Did the defendant indicate it was his statement?

13 A. Yes, ma'am.

14 Q. How did he do that?

15 A. He signed it.

16 Q. And you've reviewed State's Exhibit Number 2?

17 A. Yes, ma'am.

18 Q. Is that a fair and accurate representation of the
19 conversation that evening?

20 A. Yes, ma'am.

21 Q. Did the defendant subsequently indicate that he
22 wished to offer letters of apology to the victims?

23 A. Lieutenant Hawk asked him if he would like to do
24 that. He indicated yes. I had some notebook paper. I
25 went into the room, and I asked him did he want to write

1 it or did he want me to write it for him, and he asked
2 that I write it for him. And I wrote one to Minor 2 ,
3 one of the victims, and the other one to Minor 1 .

4 Q. And subsequent to that, did he himself write any
5 more letters?

6 A. As I understand it, he did.

7 BY MS. SIMMONS:

8 Q. I'm going to show you what's been premarked as
9 State's Exhibit 3, 4, 5, 6 and 7. Whose handwriting is
10 on State's 3 and 4?

11 A. 3 and 4, that would be mine.

12 Q. Did you write it as the defendant -- in his own
13 words?

14 A. Yes, ma'am, I wrote it. I -- as he gave me the
15 narration, I wrote it. I then read it back to him, and
16 he wanted to add the line "love you and sorry." Then he
17 signed -- he signed "sincerely", -- he signed his name.

18 Q. Did the defendant sign all five letters?

19 A. Yes, ma'am.

20 Q. And do you recognize all five letters as the ones
21 that were either written by you or written by the
22 defendant that evening?

23 A. Yes, ma'am.

24 Q. Can you read each letter into the record, please.

25 A. In order or --

1 Q. In order, please.

2 A. Dated 1/4/13, "Dear ^{Minor}₁, I'm sorry that I did
3 everything to you. I'm sorry that I let you do it. I
4 should have stopped you before you started touching me.
5 Please forgive me for everything that I have done. I
6 hope you can forgive me someday. Love you and sorry.
7 Sincerely, Jessie Davis."

8 State's Exhibit 4 dated 1/4/13, "Dear ^{Minor}₂,
9 I'm sorry that I did everything to you. I'm sorry that I
10 let you do it. I should have stopped you before you
11 started touching me. Please forgive me for everything
12 that I have done. I hope you can forgive me someday.
13 Love you and sorry. Sincerely, Jessie Davis."

14 State's Exhibit Number 5, "Dear Sandy, I am so
15 sorry for every hurt ^{Minor}₂ and ^{Minor}₁. I know you want
16 to kill me but the girls need you, Chris, Hillbilly. I
17 know I mess up and should be killed. I know I will be
18 when I'm in, so please take care of everyone. Sincerely,
19 Jessie Davis."

20 State's Exhibit Number 6, "Dear Chris, I'm sorry
21 for what I did to ^{Minor}₂. I know you won't never forgive
22 me for it. Please take care of yourself and the boys,
23 girls and keep an eye on Hillbilly, please. Sincerely,
24 Jessie Davis."

25 State's Exhibit Number 7, "Dear James, I am so

1 sorry for everything I did to Minor 1 . I know you won't
2 never forgive me, but I know I mess up and I am sorry for
3 that. Please take care. I love you. I love y'all, both
4 of y'all. Sincerely, Jessie Davis."

5 Q. Are those letters in exactly the same condition as
6 they were written on January 4th of 2013?

7 A. Yes, ma'am.

8 Q. Did the defendant ever in the process of writing
9 these letters indicate he wished to talk to an attorney?

10 A. No, ma'am.

11 Q. After the statement was given, what did you do?

12 What happened with the defendant after that?

13 A. After that, his mother -- or Lieutenant Hawk asked
14 if he would like to speak to his mother and he indicated
15 yes. She came into the room.

16 Q. In response to questioning by her, what statements
17 did he make?

18 A. He indicated that he wished that he could tell her
19 that he had not done what he did, but he couldn't.

20 Q. After their conversation, did you let them have any
21 time together?

22 A. Yes, ma'am.

23 Q. Where was that?

24 A. It was in the courtyard of the sheriff's office.

25 And allowed him to be able to smoke.

1 Q. And after this evening, did you have any further
2 activity in this investigation?

3 A. No, ma'am.

4 Q. Please answer any questions Mr. Day may have.

5 A. Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MR. DAY:

8 Q. Deputy Freeman, you were in uniform like you are now
9 at this time?

10 A. Yes, ma'am -- or yes, sir, I was.

11 Q. Carrying your gun?

12 A. Yes, sir.

13 Q. Now, you were at the house, at Jessie Davis' house,
14 with Officer Hawk; is that correct?

15 A. That's correct.

16 Q. And you then took Jessie to the sheriff's
17 department?

18 A. Yes, sir.

19 Q. So it was just the two of y'all in the car?

20 A. Yes, sir.

21 Q. And this is after you said he told you about his
22 pistol and you took the pistol from you?

23 A. Yes, sir.

24 Q. Or from him, excuse me.

25 Now, on the way there, you also had his phone,

1 right?

2 A. That's correct.

3 Q. And on the way there, he was talking to his mother?

4 A. That's correct.

5 Q. And he asked for a lawyer?

6 A. He did not ask for a lawyer.

7 Q. You're saying while he spoke to his mother, he did
8 not ask for a lawyer?

9 A. He did not ask for a lawyer.

10 Q. He didn't say he wanted to be quiet?

11 A. No, sir.

12 Q. He didn't say he refused to talk, he wanted a
13 lawyer?

14 A. No, sir.

15 Q. Did he say he wanted to speak to his mother?

16 A. He did. No, let me stop you. He said that his
17 mother told him not to answer any questions until she got
18 there or until she was present.

19 Q. Did he also tell you that his mother said that he
20 needed to talk to a lawyer?

21 A. No.

22 Q. He never said, "Mother said I got to get a lawyer"?

23 A. No, sir.

24 Q. Did he ever use the term "lawyer"?

25 A. No, sir.

1 Q. And y'all drove back to Walhalla, and then y'all
2 went up into the CID area and to that room; is that
3 correct?

4 A. No, sir. We arrived at the sheriff's office, went
5 up to the lobby, the upstairs lobby of the sheriff's
6 office because I could not make entry with my key card
7 after hours to get into the CID area.

8 Q. Were you in the room with Mr. Lark?

9 A. No, sir.

10 Q. Did you hear Mr. Hawk say that, when Jessie asked
11 for his mother, that Hawk said that -- Jessie told Hawk
12 not to talk to anyone until she got there and that
13 Mr. Hawk advised him he was 21 years old and would not
14 talk if he wanted with his mama?

15 A. I don't remember the exact words used, but he did --
16 he did talk about wanting to talk to his mother, and
17 Lieutenant Hawk did say that, you know, that's really --
18 this is something that is between you and me that we need
19 to talk about and didn't pertain to his mother and that
20 he wasn't going to talk to him and his mother.

21 Q. Just to make sure I understand, you say you wrote
22 two of these five letters and Mr. Davis wrote three of
23 them?

24 A. Yes, sir. I wrote the two first, and then he asked
25 if he could write some more to the rest of the family.

1 Q. Okay.

2 MR. DAY: That's all the questions I have, your
3 Honor.

4 THE COURT: Re-exam?

5 MS. SIMMONS: Nothing further, your Honor, for
6 this witness.

7 THE COURT: All right. You may step down. Thank
8 you, sir.

9 All right. You may call your next witness.

10 MS. SIMMONS: Judge, that concludes the three
11 witnesses the State would offer in support of the
12 admission of the rights waiver, statements, and
13 subsequent letters of apology written by the defendant.

14 THE COURT: All right. Is there anything from
15 the defendant?

16 MR. DAY: Yes, your Honor. We would have a
17 couple witnesses, if we may.

18 THE COURT: Very well.

19 MR. DAY: First of all, I am confident, willing
20 to place the defendant on the stand concerning this
21 particular issue, not, of course, to ask him any
22 questions concerning the charges themselves but as to the
23 issue of the voluntariness of the statements. And I
24 would ask the Court, then, to make sure the defendant
25 understands his right to remain silent. He still does

1 not have to testify even at this if he does not want to,
2 but for the limited purpose of these particular
3 statements.

4 THE COURT: All right. Mr. Davis, if you would
5 please stand. Raise your right hand.

6 You are Jessie Wayne Davis?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Do you understand -- is
9 the testimony you're about to give, do you swear or
10 affirm it's the truth, the whole, truth and nothing but
11 the truth?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you are Jessie Wayne Davis?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You may lower your hand.

16 At this time I'm going to explain to you certain
17 of your rights. If you do not understand anything I say,
18 please let me know. If you want me to explain anything
19 in more detail, please let me know. Do you understand
20 this?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We have now reached a stage in this
23 proceeding where you may present some evidence on the
24 question particularly of whether or not your alleged
25 statements were freely and voluntarily in accordance with

1 your constitutional rights.

2 Now, you have that right to claim the protection
3 given to you by the Fifth Amendment of the Constitution.
4 And this amendment states, in part, "No person shall be
5 compelled in any criminal case to be a witness against
6 themselves." Do you understand this?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In other words, you do not have to
9 testify. You do not have to say anything at all. It's
10 entirely up to the State to prove every allegation in
11 every consideration of the charges against you to include
12 any statements made by you. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: This means you cannot be required to
15 testify in this case. You have the right to testify on
16 your own behalf, however. But once you do testify, this
17 is a personal right. No one can waive that right except
18 you. Do you understand? In other words, this is
19 entirely your decision. Nobody can talk to you or tell
20 you that you have to do it. Not your attorney or anybody
21 else.

22 You do have the right to consult with anyone,
23 your attorney or anyone else, as to whether or not you
24 should or would testify. If you do decide to testify,
25 you will be subject to the same rules that govern other

1 witnesses in like cases, and you may be examined and
2 cross-examined on any issue in this case dealing with
3 your alleged statements. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: In addition, if you have any
6 convictions involving dishonesty or false statements,
7 crimes punishable by prison of more than one year and the
8 Court determines the probative value of admitting that
9 outweighs the prejudicial effect to you, I will permit
10 the introduction of that statement for the purposes of
11 this hearing. Do you understand that? For the purpose
12 of any convictions or anything you might have where the
13 punishment is more than a year.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you decide to testify, as I said
18 earlier, this decision on your part must be freely,
19 voluntarily and intelligently made with the knowledge of
20 the protections given to you by the Fifth Amendment and
21 the consequences of your decision to testify. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you decide not to testify, that is
25 entirely your right to do so. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand everything I've
3 explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are there any questions you would
6 like to ask me about what I've explained to you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you discussed with your lawyer
9 whether you should or should not testify?

10 THE DEFENDANT: I told -- he told me I should.

11 THE COURT: He told you you should, but what do
12 you think?

13 THE DEFENDANT: I want to ask my mom, too.

14 THE COURT: Very good. You can do that. All
15 right. We'll go off the record for a moment so you can
16 consult with your mother; is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Very well.

19 MR. DAY: Your Honor, if I may, too, he is still
20 in shackles. We'd ask the shackles be removed so he can
21 at least get around the courtroom.

22 THE COURT: Where do you plan to do this?

23 MR. DAY: I think just right here.

24 THE COURT: He can turn around. I don't want to
25 start a precedence, not just for this individual. The

1 public is not here other than those who are involved in
2 this case, so I don't think he has any prejudice. So he
3 can just turn around then.

4 (WHEREUPON, an off-the-record discussion was
5 held between the defendant and his mother.)

6 MR. DAY: We're ready to proceed, your Honor. He
7 has conversed with his mother, and he'd like to go ahead
8 as to this issue and testify.

9 THE COURT: Very well. If you will come around,
10 please. I tell you what, if he's going to have to take
11 the stand, let's do take the shackles off.

12 (WHEREUPON, defendant's shackles were removed.)

13 **JESSIE WAYNE DAVIS,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15

16 THE COURT: All right. If you would, please,
17 sir, give us your full name for the record.

18 THE DEFENDANT: Jessie Davis.

19 THE COURT: Jessie Wayne Davis?

20 THE WITNESS: Yes, sir.

21 THE COURT: Very good.

22 You may proceed.

23 DIRECT EXAMINATION

24 BY MR. DAY:

25 Q. All right, Jessie. I'm going to go right to the

1 start and keep it in chronological order. Okay?

2 You were at home when officers arrived; is that
3 correct?

4 A. Yes, sir.

5 Q. Who came to the house?

6 A. Gentry Hawk and the other officer. I forgot his
7 name.

8 Q. Freeman?

9 A. Yes, sir.

10 Q. The gentleman who just testified?

11 A. Yes, sir.

12 Q. Now, how is it that you ended up going to the
13 sheriff's department? What did they tell you?

14 A. They asked me to come, and I asked them why, and
15 they told me they will explain when I get there. And I
16 told them I would come once I got done calling my mom.
17 They told me to come with them, so I called my mom as I
18 was going.

19 Q. When you got in the car, did you have your phone?

20 A. Yes, sir.

21 Q. And that's in the police car?

22 A. It was in my hand when I was getting in the car.
23 When I got in, I had my mom on the phone. She said don't
24 get in the car --

25 Q. Hold on. Hold on. Don't get carried away.

1 THE COURT: Slow down.

2 BY MR. DAY:

3 Q. You had it with you. Officer didn't put you in
4 handcuffs, did he?

5 A. No, sir.

6 Q. So you're in the back seat. You have your phone.
7 And who did you call?

8 A. My mom.

9 Q. All right. Did you get her on the phone?

10 A. Yes, sir.

11 Q. All right. Did you speak to her, put her on speaker
12 phone, how did you do it?

13 A. Talked to her regularly just straight because my
14 speaker phone messes up every now and then.

15 Q. So you're talking to her?

16 A. Yes, sir.

17 Q. Was that one continuous phone call all the way to
18 the sheriff's department?

19 A. It was pretty much, yes, until about right before we
20 got there. I lost connection because we were going down
21 the curvy road. Made me lose connection there.

22 Q. While you were driving through, did your mother ask
23 you to say or do anything while you were in the police
24 car?

25 A. She asked me to ask for a lawyer and asked me to be

1 quiet until she got there.

2 Q. Did you, in fact, do that?

3 A. I asked for a lawyer once in the car, once again
4 before anything actually would have started, and then
5 again once we was in the building when they were starting
6 to question me.

7 Q. So while you're in the car, you asked Deputy
8 Freeman, who was driving the car, or you told him you
9 wanted a lawyer?

10 A. Yes, sir.

11 Q. How did you phrase it to him?

12 A. I told him, "My mom said that I needed to get a
13 lawyer," and I don't know if he was paying attention to
14 me or not.

15 Q. Okay. Did you say it more than once?

16 A. Yes, sir. I said it probably twice in the car.

17 Q. And you got to the police department, sheriff's
18 department, and went inside; is that correct?

19 A. Yes, sir.

20 Q. When you got inside, who all was there?

21 A. Just me and Mr. Freeman.

22 Q. How long, approximately, were you there before
23 Mr. Hawk arrived?

24 A. Probably five, 10 minutes.

25 Q. When he got there, he says he read you Miranda

1 rights. Do you remember that?

2 A. I remember him reading me something, but at the time
3 I had been up for 48 hours, so it's pretty hard to
4 remember. It's pretty hard to remember him reading me
5 anything. It's pretty hard him telling me anything.

6 Q. All right. Did you ask for a lawyer?

7 A. I asked for a lawyer because my mom kept on telling
8 me to ask for one.

9 Q. Did you ask to speak to your mother?

10 A. Yes, sir.

11 Q. Did you know your mother eventually was in the
12 building while you were there?

13 A. No, sir. If I would have known, I would have
14 started screaming and yelling for her to come up there.

15 Q. The -- I'm going to show you what's marked as
16 State's Exhibit Number 1. Do you remember that?

17 A. I remember something of it, yes, sir.

18 Q. Okay. Do you remember seeing this and putting your
19 initials by each one of those lines?

20 A. I remember something like that, yes, sir, but I
21 was -- like I said, I had been up for 48 hours almost.

22 Q. Okay. And so we keep it in chronological order,
23 when Mr. Lark got there, did y'all go into a room?

24 A. Mr. Lark, that's the polygraph dude?

25 Q. Yes.

1 A. We went to a room, yes.

2 Q. Prior to that time, did you ask Mr. Hawk if you
3 could speak to your mother?

4 A. Yes, sir, and he told me I was 21 years old and I
5 could make my own decisions.

6 Q. Did you tell him you wanted a lawyer?

7 A. I told him I wanted -- I told him I want mom and a
8 lawyer, and he told me that same phrase.

9 Q. Okay. When you went in with Mr. Lark, did you tell
10 him you also wanted to speak to your mother?

11 A. I did not know I could ask for or speak to my mother
12 or a lawyer at the time with him. I just kind of sat
13 down and be quiet.

14 Q. Okay. He testified that you, in fact, did ask for
15 your mother.

16 A. Actually, I didn't remember that part. By then I
17 was too tired. I was just wanting to go to sleep. By
18 then I was ready to say anything they wanted me to say.

19 Q. He says you took this polygraph, and then after you
20 had taken it, you then admitted to everything?

21 A. After I took that polygraph, I sat there for about a
22 good five, 10 minutes while they went in and out of the
23 room.

24 Q. Okay. After you completed that, did you make
25 statements that he put in this thing saying that you had

1 committed the crimes that they were alleging you did?

2 A. In that statement? They told me I had to write a
3 statement. I told them I don't know how to spell
4 properly. So I sat there and be quiet. And then we
5 start talking about some other stuff. As it went on,
6 statement came out, and I started signing whatever that
7 is -- actually, I don't even know what it says, really,
8 because I ain't really read it. I just now heard it.

9 Q. Okay. Do you remember what you just now heard is
10 what you heard on that night?

11 A. Actually, I don't remember what I heard on that
12 night. Like I said, I had been up almost 48 hours.

13 Q. And --

14 A. What I just heard now is probably clearer than
15 anything.

16 Q. Okay. And the signature that's on there, was that
17 yours? Did you understand what you were signing?

18 A. Not really.

19 Q. Okay. The statements that were or letters that were
20 done here, Exhibits 4 and 5, Deputy Freeman says that he
21 wrote those out and you signed them.

22 A. Which two statements? The one --

23 Q. The one to ^{Minor 2} and one to ^{Minor 1}.

24 A. Actually, I didn't write nothing to them that I know
25 of. Yeah, I didn't write nothing to them.

1 Q. Okay. He wrote this and said you signed it and said
2 he used your words; is that correct? Are those your
3 words and you signed those?

4 A. I don't know about the words, but the signing is
5 mine.

6 Q. Okay. And then there are three others which are
7 Exhibits 5, 6, and 7 which you say that you actually
8 wrote. They say that's what you wrote?

9 A. Yeah. These got my handwriting.

10 Q. Did you know what you were writing there?

11 A. When I write stuff, my hand is faster than -- or,
12 excuse me -- slower than my mind is. When I write, I
13 have to actually go back over it.

14 Q. Okay.

15 A. And if you will look closely to them, there's
16 scribbled out a couple words that I messed up on that I
17 didn't go back and fix.

18 Q. Why did you write those?

19 A. Because at the time I thought it was something else
20 that I was getting in trouble for.

21 Q. Something else you what?

22 A. Was getting in trouble for.

23 Q. Okay. When you wrote those out, did you understand
24 that you were admitting to a crime?

25 A. I understood I was admitting to a crime, but not

1 this crime.

2 Q. During this time were you free to leave?

3 A. I tried to get up. They told me to sit down.

4 Q. Did you feel that you were free to leave?

5 A. No.

6 Q. Going back to Mr. Lark and the polygraph, when you
7 took the polygraph exam, after you had taken it, what did
8 Mr. Lark say to you before, according to his report, you
9 started telling him things that you had done that were
10 the allegations of this crime?

11 A. Before or after he ran out of the room twice -- no,
12 excuse me, three times?

13 Q. Well, I don't know. I wasn't there. You have to
14 tell me.

15 A. He ran out of the room once, and then he came back
16 in, ran back out for something else, came back in, and
17 then a guy knocked on the door, ran back out. Came back
18 in, sat down and called me a liar. I don't take kindly
19 to being called a liar.

20 Q. Okay. Did you make the statements to him that he
21 has in his report?

22 A. Actually, I didn't even know he made a report. I
23 didn't even know he made anything.

24 Q. Did you make any statements to him?

25 A. No. Sir.

1 Q. So any statements he claims you made admitting to
2 any particular crime or charge, you say you did not make?

3 A. No, sir.

4 Q. When you asked to speak to your mother, what did he
5 tell you?

6 A. If it's like he said it is, it's probably what he
7 said, I'm 21 years old and I should make my own
8 decisions.

9 Q. But he didn't let you speak to your mother?

10 A. No.

11 Q. All right, sir. Did you freely and voluntarily make
12 the statements that we're talking about here, the one
13 that Mr. Hawk wrote and the other ones that were written
14 out by Freeman and you, did you freely do that?

15 A. I didn't make no statements freely. I felt like I
16 was being pretty much intimidated. You got three guys
17 standing around with guns. I'm used to being calm,
18 relaxed and laid back. You got three guys looking at me
19 like they're going to shoot me if I make one wrong move.
20 That and they took my favorite little toy, the only thing
21 I actually feel safe with, yeah.

22 Q. All right. Please answer any questions that
23 Ms. Simmons may have for you.

24 CROSS-EXAMINATION

25 BY MS. SIMMONS:

1 Q. Mr. Davis, you're a high school graduate, aren't
2 you?

3 A. Yes, sir -- or ma'am.

4 Q. And you graduated from high school back in 2011; is
5 that correct?

6 A. Yes, ma'am.

7 Q. And let's look at your transcript. Human relations.
8 You made an 83 in that; is that correct?

9 A. Yes, ma'am.

10 Q. And your reading skills, you made 87 in that?

11 A. With help, yes, ma'am.

12 Q. Your practical English, you made an 89 in that
13 course?

14 A. With help.

15 Q. Civics including the origins of American government
16 and the United States Constitution --

17 A. History is my speciality.

18 Q. -- you made an 86 in that. Written communication,
19 you made an 85 in that; is that correct?

20 A. Written communications, what's that?

21 Q. Writing skills.

22 A. With help. The --

23 Q. And you made a 93 in literature, and that includes
24 poetry and novels and short stories?

25 A. Poetry, that's one of my favorites, but I usually

1 have help.

2 Q. But you graduated from high school and you got a
3 diploma?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. Like I said, with help. The teachers I had was a
7 special ed teacher.

8 Q. And teachers are there to help you, right?

9 A. She gave extra help.

10 Q. And you were actually in the Job Corps when you went
11 through this program, correct?

12 A. Yes, ma'am.

13 Q. Okay. You were not living with your mother at the
14 time you made these statements to law enforcement; is
15 that correct?

16 A. I was not, but I was threatened to be kicked out and
17 I was thinking about moving back with her.

18 Q. But, in fact, your mom moved out because she went
19 back to her husband and you didn't want to go and you
20 chose to stay there?

21 A. At the time I was having problems with my stepdad
22 which is now -- which now I don't. At the time I didn't,
23 when I was trying to go back.

24 Q. And, in fact, you hadn't grown up with your mom a
25 lot of the time because you were in foster care, right?

1 A. That was not her choice or mine.

2 Q. In fact, there was involvement -- let's see. Let me
3 see what you told -- you told Dr. Schwartz-Watts you were
4 placed in foster care when you were eight and that your
5 mom was giving you and your younger sister medications
6 which caused DSS to intervene; is that correct?

7 A. Not eight. Three. I was back when I got turned
8 eight. My mom got me back.

9 Q. Okay. And you were living in Kentucky before you
10 decided to live here, decided to move here?

11 A. I didn't have much choice to come here. If I had a
12 choice, I would have been back in Georgia.

13 Q. Okay. But you were not continuously living with
14 your mother prior to this. You were living on your own?

15 A. I had help, but I usually refer back to her when I
16 needed something fixed or when I had a problem.

17 Q. And you told your attorney that law enforcement took
18 your favorite toy. What would that be?

19 A. That would be my .22 Beretta.

20 Q. That's the only thing that makes you feel safe?

21 A. Pretty much. It's the only thing that I can
22 actually know that's got my back except for my mom.

23 Q. Okay. And in the course of your testimony with
24 Mr. Day, you said the first time, "I asked for a lawyer
25 once in the car." But then less than two minutes later,

1 you testified, "I asked for a lawyer two more times in
2 the car." Which is it?

3 A. Which way you want it to be? I asked --

4 Q. You tell me. You're the one that gave us two
5 separate stories.

6 A. I asked and then I asked again. Y'all didn't ask
7 specific.

8 Q. That was in response to a question by your lawyer.
9 And your testimony today is that you were up 48 hours
10 prior to giving this statement?

11 A. And I told Officer Gentry Hawk I've been up the same
12 time --

13 Q. But you told --

14 A. -- and I also told --

15 THE COURT: Just a moment. Let him finish his
16 answer.

17 THE WITNESS: And I also told him that I was not
18 feeling well. But like I said, he never paid attention
19 to nothing.

20 BY MS. SIMMONS:

21 Q. But you told Mr. Lark when he interviewed you that
22 you had slept three to four hours the night before. Were
23 you not telling the truth as to that?

24 A. Lark? That is?

25 Q. The older gentleman who just testified. You told

1 him you had slept three to four hours the night before?

2 A. I never told him nothing like that.

3 Q. So you would dispute that if it's in his written --

4 A. I would dispute that until the day I die.

5 Q. Okay. And Mr. Lark, you dispute that you told him
6 anything that was incriminating?

7 A. Yes, ma'am.

8 Q. And you dispute that in the presence of Deputy
9 Freeman and Lieutenant Hawk that you told them anything
10 that was incriminating?

11 A. Yes, ma'am.

12 Q. So, in essence, you're telling us that these three
13 folks conspired to deny you your right to counsel and
14 make you incriminate yourself?

15 A. They denied me my mom, which I go to her for advice,
16 for counsel, for pretty much everything that I use to
17 keep me from going insane. Depression. Which I'm back
18 on my meds thanks to y'all. Thank you. Ma'am. Yeah. I
19 like to smile, too. I go to her for just about
20 everything.

21 Q. But at the time you gave this statement, you were
22 21 years old and had lived independently from her?

23 A. It don't matter how old I am. I rely on her more
24 than I rely on myself half the time.

25 Q. But you have actually worked, haven't you? Didn't

1 you not work at an auto parts store?

2 A. I worked because she actually helped me get that
3 job.

4 Q. But you were able to hold that job down for a while?

5 A. The auto parts shop, I only held it down for a
6 month, and I barely held it down.

7 Q. And you also worked at Square D for about
8 six months; isn't that correct?

9 A. I held that down because my stepdad, he kept an eye
10 on me and watched out for me.

11 Q. But you were able to follow their rules and go to
12 work every day?

13 A. With my stepdad's help, yes.

14 Q. And you also denied that Lieutenant Hawk read you
15 your statement in the presence of Deputy Freeman?

16 A. (Witness belches.) Excuse me. If he did or if he
17 didn't, I can't remember. Like I told my defense lawyer,
18 I'd been up for 48 hours. I can't remember much. By the
19 time we got through, me in my little jail cell, I slept
20 for the last 4 days.

21 Q. And you denied writing any of these letters to the
22 victims to Dr. Schwartz-Watts when she interviewed you,
23 but today you admit that you did write some of them.
24 Which is it?

25 A. She asked only about a couple of them. She didn't

1 ask about all of them.

2 Q. Her report says that you denied writing these
3 letters. Did you write them or not?

4 A. She asked only certain ones. She did not ask about
5 the three of them. If you will pay attention and if you
6 was there, you would know.

7 Q. I'm not allowed to be there.

8 And one last question. On January 9th of 2013
9 Lieutenant Hawk attempted to interview you one more time?

10 A. Yeah. And at that time he had an attitude, so I
11 gave it back to him. I don't take kindly to people
12 getting attitude with me for no reason.

13 Q. But in that interview you invoked your right to
14 counsel; is that not correct?

15 A. At that time my mom, I got done talking to my mom,
16 and she told me not to talk to nobody. And she said if I
17 did, she was going to come back there and knock my head
18 off (laughing).

19 Q. And you didn't talk -- in fact, when you invoked
20 your right to counsel on January 9, 2013, Lieutenant Hawk
21 scrupulously honored that right and ceased questioning?

22 A. I wouldn't say honor it. He more like snapped my
23 head off and tried to cut it off with words.

24 Q. But he did not question you further. Can we settle
25 on that?

1 So, but your story today is when you were
2 interviewed on January 3rd and 4th of 2013, he deprived
3 you of your right to counsel and continued to interview
4 you despite your request for an attorney, but then on
5 January 9th of 2013, he then decided to honor your right
6 to counsel, he had a change of heart?

7 A. I guess he figured there was more people around so
8 he couldn't push the issue.

9 MS. SIMMONS: Nothing further, your Honor.

10 MR. DAY: Nothing further, your Honor, of this
11 witness.

12 THE COURT: All right. You may step down. Thank
13 you, sir.

14 THE WITNESS: I got a question. Is this for me
15 to drink?

16 THE COURT: Yeah, you can take that.

17 MR. DAY: Your Honor, I call Patti King.

18 **PATTI DENISE DAVIS KING,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20

21 THE COURT: All right. Give us your full name
22 for the record, please, ma'am, spelling your last name.

23 THE WITNESS: Patti Denise Davis King, K-i-n-g.

24 THE COURT: Very good. Thank you, ma'am.

25 DIRECT EXAMINATION

1 BY MR. DAY:

2 Q. Ms. King, what's your relation to Jessie Davis?

3 A. He's my son.

4 Q. Go quickly, if I may here, to this particular night
5 when this occurred back on January 3rd or 4th, night of
6 the 3rd, beginning the morning of the 4th, did you
7 receive a call from Jessie?

8 A. Yes, sir, but it was January the 2nd that I received
9 the call from Jessie.

10 Q. Okay. And did he tell you that he was with the
11 sheriff's department?

12 A. Yes, sir, and I told him not to get in the car. But
13 evidently he done got in.

14 Q. Did he call you while he was in the car?

15 A. Yes, sir, he did.

16 Q. Did you -- who was with you?

17 A. My husband, Sean King.

18 Q. And where were y'all?

19 A. We were in the vehicle -- well, we were at the house
20 when he called, and then we got into the vehicle like
21 seconds later. And I was driving and Sean was holding my
22 phone and his phone.

23 Q. And did you actually talk to Jessie?

24 A. Yes, sir, I did.

25 Q. When he told you he was in the back of a police car,

1 what did you tell him to do?

2 A. I put it on speaker phone. I told -- so my husband
3 could hear it, and I told him to ask for a lawyer and not
4 to say a word until I got there.

5 Q. Would you say that during Jessie's life that he has
6 depended upon you a great deal?

7 A. Oh, yes, sir, for everything.

8 Q. Did you hear him tell the officer he wanted a
9 lawyer?

10 A. Yes, sir, I did. More than once. The second time
11 was a little blurry because we were going into the curvy
12 road, but I still heard him say it.

13 Q. Where did y'all go?

14 A. We went to the Oconee County Jail.

15 Q. Did you let them know you were there?

16 A. Oh, yes, sir (laughing).

17 Q. Did they let you speak to Jessie?

18 A. No, sir. They said he was being interviewed. I
19 said, "Is he under arrest?" They said no. I said, "I
20 want my son down here." He said, "No, he's being
21 interviewed."

22 Q. Okay. Did you get an opportunity to speak to him?

23 A. After they kept him up there from about 11:00,
24 10:30, 11:00, until almost 3 o'clock, 3:30.

25 Q. Okay. But he finally came down. At that point he

1 was already under arrest?

2 A. Yes, sir.

3 Q. All right. Please answer any questions the
4 Solicitor may have.

5 A. Yes, sir.

6 CROSS-EXAMINATION

7 BY MS. SIMMONS:

8 Q. Ms. King, your son back at this time was 21 years
9 old; is that not correct?

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

11 Q. And he is a high school graduate?

12 A. With some help from his teachers, yes, and myself.

13 Q. And you were not present in the room when the
14 defendant was questioned by law enforcement, so you have
15 no idea what went on there?

16 A. Text. He was giving me texts up until they took the
17 phone from him.

18 Q. So you have no -- you were not present, though, you
19 did not actually hear the interviews he gave with law
20 enforcement?

21 A. No. Not until I went up there and he told me when
22 he hugged me that he didn't do it, that he was forced to
23 do it. Because he actually said, "Either you sign it or
24 you go to jail."

25 Q. So you deny that he hung his head in response to

1 your questioning and said, "Mom, I wish I could tell you
2 I didn't do it" --

3 A. No, he did not tell me that. Not one time. He
4 hugged me and said, "Mom, I didn't do it. They told me
5 either sign it or I go to jail."

6 Q. But you were not present when he gave any of those
7 statements?

8 A. No, I was not.

9 MS. SIMMONS: Nothing further.

10 MR. DAY: That's all I have of this witness, your
11 Honor.

12 THE COURT: All right. You may step down.
13 Call your next witness.

14 MR. DAY: Call Sean King.

15 **SEAN PATRICK KING,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17

18 THE COURT: All right. If would you, please, sir
19 give us your full name, spelling your last name for the
20 record.

21 THE WITNESS: Sean Patrick King, K-i-n-g.

22 DIRECT EXAMINATION

23 BY MR. DAY:

24 Q. Mr. King, what is your relationship to Jessie Davis?

25 A. I'm his stepfather.

1 Q. Now, going through this night in which he got
2 arrested there, your wife testified you received a call
3 from Jessie; is that correct?

4 A. Yes, sir.

5 Q. Were you aware of that call?

6 A. Yes, sir.

7 Q. How were you aware of the call?

8 A. I was in the car and the phone was on speaker.

9 Q. So you could hear Jessie's voice?

10 A. Yes, sir, I could.

11 Q. Could you hear it clearly?

12 A. Yes, sir.

13 Q. All right. Now, your wife, Ms. King, testified that
14 she told Jessie to ask for a lawyer; is that correct?

15 A. Yes, sir.

16 Q. Did you hear her say that?

17 A. Yes, sir. I also said it myself to him.

18 Q. And did you hear Jessie's response to that?

19 A. Yes, sir. He said -- we heard him holler, "I want
20 an attorney."

21 Q. Did you hear it more than once?

22 A. Yes, sir, I did.

23 Q. On that, were you able to hear any response or
24 anything from the deputy?

25 A. No, sir, I did not.

1 Q. And y'all went on to the sheriff's department that
2 night to the lobby?

3 A. Yes, sir, we did.

4 Q. Okay. And according to your wife, you were not able
5 to see Jessie until somewhere around 3:00 or later?

6 A. Yes, sir. We demanded to see him.

7 Q. And never did?

8 A. No, sir.

9 Q. All right. Thank you. Please answer any questions
10 the Solicitor may have.

11 CROSS-EXAMINATION

12 BY MS. SIMMONS:

13 Q. Mr. King, and were you present in the room when law
14 enforcement spoke with Jessie Davis?

15 A. No, ma'am.

16 Q. Do you have any idea what happened there?

17 A. No, ma'am.

18 MS. SIMMONS: Thank you.

19 THE COURT: Redirect?

20 MR. DAY: No, your Honor. That's all the
21 questions I have.

22 THE COURT: All right.

23 You may step down.

24 MR. DAY: Your Honor, call Dr. Donna
25 Schwartz-Watts.

1 **DONNA MARIE SCHWARTZ-WATTS,**

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3

4 THE COURT: If you would, please, ma'am, give us
5 your full name, spelling your last for the record.

6 THE WITNESS: Sure. Donna Marie Schwartz-Watts,
7 S-c-h-w-a-r-t-z, hyphen, W-a-t-t-s.

8 THE COURT: Very good. Thank you, ma'am.

9 MR. DAY: Your Honor, I believe that the State
10 was not sure they would stipulate as to the
11 qualifications of Dr. Schwartz-Watts since she's been
12 qualified as an expert witness in forensic psychology and
13 psychiatry on numerous occasions.

14 THE COURT: Madam Solicitor?

15 MS. SIMMONS: Yes, your Honor, we would
16 stipulate.

17 THE COURT: All right. The witness is recognized
18 as a well-qualified expert.

19 DIRECT EXAMINATION

20 BY MR. DAY:

21 Q. Dr. Schwartz-Watts, have you had occasion to
22 interview Jessie Davis?

23 A. I did.

24 Q. Tell us about that, exactly how that -- what it was
25 that you did in this interview and the purpose of it.

1 A. Sure. I evaluated him on November 17th at the
2 Oconee County Detention Center 2013. And during that
3 evaluation, I gathered history from him. I gathered a
4 medical history from him, a psychiatric history from him,
5 social history from him. And then I also performed a
6 mental status examination, which is an assessment of his
7 mental functioning. And I also performed a brief
8 neurological examination of him.

9 Q. And during this time was he cooperative?

10 A. Yes.

11 Q. Were his responses and your findings indicative that
12 he was cooperating with you?

13 A. Sure.

14 Q. And did your findings seem to be borne out by what
15 you had seen and what you believe based upon your
16 interview with him and other records?

17 A. Yes.

18 Q. What other records did you have access to that you
19 reviewed?

20 A. Well, at the time of the evaluation in November, I
21 had the discovery. And after interviewing him, I learned
22 that he had a history of being in special education, and
23 so I requested to have his school records. Also he had
24 given me a history that he had had a severe automobile
25 accident as a child, and I attempted to try to find those

1 medical records, and I contacted your office and I
2 learned that those records were not available.

3 Q. You were able to review his school records?

4 A. Some of them, yes. I received those, I believe,
5 last month from your office, and I have the Walton County
6 school records which are from, it looks like, about
7 eighth grade for him. He underwent psychological testing
8 there, and he had pretty thorough testing of his
9 cognitive abilities.

10 Q. Now, the purpose of our hearing today is to
11 determine whether or not he freely and voluntarily gave
12 statements on this particular notice which he was
13 arrested. You have been in the courtroom. You have
14 heard the testimony as to that night there and that he
15 gave certain statements. What is it in his background or
16 records by school and in your own interview and
17 examination of him would lead you or could you see how
18 his will could have overborne to write things that he
19 says he didn't write or are not true?

20 A. Well, based on my evaluation of him, there were a
21 number of things that were significant I think the Court
22 should consider. He reports that he had a history of a
23 closed head injury as a child. What he reported to me
24 was not exactly borne out by facts, but he reported that
25 when he was young, his grandmother was in an automobile

1 accident in which he was a passenger. He reported to me
2 that he had been in a coma for three or four months.
3 Upon speaking with his mother, I learned that he was
4 confused and that it was one of the other passengers in
5 the car who was actually in a coma for a period of time,
6 but that he did have a mild concussion.

7 He also reported later that he had another closed
8 head injury where he -- I believe his words were he got
9 popped in the head by a mirror. So based on that
10 history, that led me to perform a mental status
11 examination on him.

12 On that mental status examination, he did have
13 some abnormalities that are consistent -- that could be
14 consistent with a closed head injury. And if I may, I'll
15 go into detail about those.

16 The first thing that I had him do was copy a
17 design. And what that test involves, it's basically two
18 houses that are intersecting each other. And I had him
19 reproduce that drawing. He had some difficulty with
20 that. Very mild difficulty. Not much.

21 The next test I had him do is called Verbal
22 Fluency. And what that test is, I gave him one minute
23 and I asked him to name every word he could think of that
24 begins with the letter D. And in that test it was noted
25 that he gave up rather quickly. He came up with

1 five words, and then he kind of stopped and got
2 frustrated and wasn't able, even with encouragement, to
3 continue that task. So that was considered an
4 abnormality.

5 The other test I gave him, it's routine in
6 psychiatry. I ask him -- I gave him three words to
7 remember. And I asked him to say those words back to me,
8 and I told him that I would ask him to remember what
9 those words were later. And what was significant is his
10 recalling those words is that his brain, it's called
11 confabulation, what he exhibited. And that's where his
12 brain makes up a different word. And that can be seen in
13 people with closed head injuries.

14 And the example I can give you directly, the
15 words I used were "brown," "tulip," and "eyedropper."
16 And after five minutes, when I asked him to recall those
17 words, he got the words "brown" and "eyedropper" correct.
18 And he couldn't remember the word "tulip." So I gave him
19 a hint and told him it was a flower, and he said a daisy.
20 So he made up a flower that wasn't part of his task.

21 I asked him those same words ten minutes later,
22 and instead of the word "eyedropper," he returned the
23 word "teardrop." So that means -- you can see that kind
24 of answer on a test in someone that does have a history
25 of a closed head injury.

1 The other examination, I performed a brief, very
2 brief, neurological exam. I do that on all the clients
3 that I see now. And he did have some findings. The
4 first one is called nystagmus. What nystagmus is, I have
5 him follow my finger with his eyes, and his eyes beat.
6 That's not necessarily a very specific finding. You can
7 have that with medications, but you can also see that
8 finding in someone that's had a closed head injury. So
9 it's a nonspecific finding, but it was still significant
10 given his history.

11 I also had him -- there is a test where I have
12 him touch my nose with his finger and then touch his
13 finger, and he had some difficulty with that test on the
14 left side. So there was some indications there, and
15 certainly based on the history that he had given me, that
16 he may have had some cognitive findings.

17 Once I got his school records, his school records
18 indicated that he had been in special education, which he
19 had disclosed to me. And the tests indicate that he had
20 had problems in school with some of his verbal learning
21 and writing. Which also, by the way, is exactly
22 consistent with Dr. Frierson's diagnosis. I just did
23 read Dr. Frierson's report. I was not aware of that
24 until today in court. And that was also consistent with
25 Dr. Frierson noting that he had difficulty reading and

1 difficulty writing, and those records were also supported
2 by his school records.

3 Q. And those school records bear out what you found in
4 your own examination and interview?

5 A. Well, to a degree. The school records show that he
6 has a learning disability. And he had an average IQ,
7 actually. They tested his IQ in school, but he did have
8 some learning disabilities. So certainly that was borne
9 out in some of my testing. But my testing also indicates
10 that perhaps he also had some problems because of the
11 closed head injuries he's had in the past.

12 Q. Did your examination also determine his great degree
13 of dependence upon his mother?

14 A. Yes. I think that's very fair to say. It's obvious
15 he's relied upon her to some degree to make decisions
16 over the past. Not necessarily always, but certainly he
17 has got a very strong attachment to her.

18 Q. And based upon what you found in your testing and
19 examination and reviewing the records and from the
20 testimony you have heard today as to the situation he
21 found himself in on that particular night, could his will
22 have been overborne to such an extent that he would have
23 given statements that were not true?

24 A. It could be. It could be for lots of reasons. I
25 wasn't there. I don't know. But I certainly, I think

1 what I can tell the Court to a reasonable degree of
2 medical certainty is that he has some cognitive deficits.
3 He has a history of a learning disability, and he
4 certainly has been very dependent upon his mother. But
5 that would be the most I could say. I wasn't there. But
6 certainly people with learning disabilities or cognitive
7 impairments, they can be influenced.

8 Q. And being deprived of the ability or opportunity to
9 speak to his mother, would that adversely affect his
10 ability as you have stated, cognitive abilities in this
11 situation?

12 A. It could only because anyone with cognitive
13 impairment, if they are under stress, sometimes they
14 don't think as clearly. It can diminish some of their
15 judgment, so that's certainly possible.

16 Q. Would a person with all that you have described as
17 to his background, schooling, et cetera, and what your
18 own examination and his testimony that he says he did not
19 make those statements even though some are in his
20 handwriting, would that be consistent?

21 A. No, not necessarily, because there's obvious
22 evidence there that he gave some kind of statement. So I
23 would -- he's denying that he even gave a statement, so I
24 don't know.

25 Q. All right, Doctor. Thank you. Please answer any

1 questions Ms. Simmons may have.

2 CROSS-EXAMINATION

3 BY MS. SIMMONS:

4 Q. Dr. Schwartz-Watts, I'll be brief. You believe that
5 the defendant has the capacity to assist in his defense?

6 A. Yes, he does. And I observed his testimony today.
7 He's self-protective. He can assist. I noticed that
8 even on his cross-examination when there were questions
9 or he would correct you or his attorney or to clarify a
10 point, so, yes, it's been my opinion that he's absolutely
11 competent.

12 Q. He's competent to stand trial?

13 A. Yes, ma'am.

14 Q. And did you have access to his education records at
15 the time you assessed him at the detention facility?

16 A. I did not.

17 Q. And are you -- is it safe to say you're limited in
18 your assessment by what the defense attorney and the
19 defendant himself gives us or gives you access to?

20 A. Yes. Yes.

21 Q. You reported in your written findings that the
22 defendant was alert and oriented. Is that still the same
23 today?

24 A. As far as I can tell, yes. He's certainly -- I
25 didn't give him a formal test today. When we do that,

1 we're basically asking the date, the day of the week, the
2 year, the season, those sorts of things. But from
3 observing his testimony, it's clear that he understood
4 what was going on today.

5 Q. He reported to you and you subsequently verified he
6 does have a high school diploma and he completed culinary
7 training?

8 A. Yes. To note, though, he completed the culinary
9 training in Job Corps, and I believe that's usually a
10 one-year program. It did take him two and a half years,
11 according to his history. I haven't seen any evidence to
12 indicate otherwise, but it certainly would have taken him
13 longer than the average person.

14 Q. Did anyone actually provide you with any medical
15 records to substantiate the claim that he has a closed
16 head injury?

17 A. No.

18 Q. And he also reported to you that he had worked at
19 Auto Zone, worked at Schneider Electric and obtained his
20 driver's license on the first attempt?

21 A. Yes.

22 Q. And you, obviously, would not have any idea what his
23 mental status was at the time of the interview by law
24 enforcement?

25 A. No.

1 Q. And writing letters of apology, if indeed he did
2 write them, does that indicate some sort of understanding
3 of the nature of the charges against him and what is
4 going on if he wrote them in his own hand?

5 A. Yes and no. If you look at the actual letters,
6 they're not very specific so I can't really state there
7 would be a limit to what his intent was. But it
8 certainly -- if he wrote those last three letters, he's
9 certainly apologizing for something. So I think it's
10 clear that he understands he's apologizing. But for
11 what, from that context of those letters, I can't say.

12 Q. You report he does have an average IQ?

13 A. He does. Based on the testing that he had when he
14 was in ninth grade, his overall intellectual functioning
15 was a 92 which is low average. He definitely has
16 deficits in his verbal reasoning, his ability to write,
17 his ability to understand some things, and there's
18 definitely limits it to. But he was actually found to be
19 in the low average range.

20 Q. And one final question. Can you offer an opinion as
21 to the voluntariness of his confession or the veracity of
22 what it contained?

23 A. No. Again, I wasn't there. But I can certainly say
24 that he has some deficits there, and I think they're
25 borne out by the prior school records and certainly borne

1 out on the examination I performed. But to what extent
2 it affected his capacity, I can't say.

3 Q. Thank you, Dr. Schwartz-Watts.

4 THE COURT: Redirect?

5 MR. DAY: Nothing further. Thank you, your
6 Honor.

7 THE COURT: You may step down.

8 THE WITNESS: May I be excused?

9 MR. DAY: We'd ask the witness be excused.

10 THE COURT: Very well. You may be excused.
11 Thank you.

12 MR. DAY: That's all the witnesses for the
13 defense, your Honor.

14 THE COURT: All right.

15 Any reply?

16 MS. SIMMONS: No, your Honor.

17 THE COURT: All right. I'd like to hear a little
18 discussion of what has transpired this afternoon.

19 Madam Solicitor.

20 MS. SIMMONS: Thank you, Judge. In support of
21 the admission of the rights waiver, the confession and
22 the letters of apology, we would offer the *State vs. Von*
23 *Dohlen*, voluntariness of a confession test, 322 S.C.
24 234. As your Honor knows, it is a totality of the
25 circumstances test. It involves the youth of the -- the

1 characteristics of the accused, the youth. In this case
2 he is not a minor, Judge. He was 21 years old at the
3 time of questioning.

4 The Court also looks to the lack of education.
5 And, in fact, this defendant has a normal IQ and has
6 graduated from high school and has held three different
7 jobs. And the low intelligence, Judge, there's no
8 confirmed by medical records that he has had a closed
9 head injury, and, in fact, his IQ is in the low normal
10 range.

11 He was advised of his rights, Judge. The length
12 of detention is somewhere in the three-hour range. We
13 don't think that was too lengthy based on the nature of
14 the allegations. In fact, there is two victims. The
15 questioning was not prolonged. He was not physically
16 punished, and he was not deprived of food or sleep.

17 He did testify today that he had been up for
18 48 hours, but Mr. Lark's records indicate he said he did
19 sleep for three to four hours the night prior to giving
20 the statement.

21 Judge, I would bring the Court's attention to
22 *State vs. Floyd Doby*, 273 S.C. 704. And the Court in
23 that case ruled that the alleged lack of mental capacity
24 to understand and assert those rights did not in itself
25 establish voluntariness.

1 I would also bring the Court's attention to *State*
2 *vs. Johnnie Register*, 323 S.C. 471. That addresses when
3 a defendant asks for a parent during questioning, and
4 that is not equated to asking for an attorney, Judge. We
5 have offered law enforcement testimony from two officers
6 and one independent party, Mr. Lark, and no point in time
7 do any of those parties indicate the defendant requested
8 an attorney, and they all testified that he did seem to
9 have a factual and rational understanding of what was
10 going on and was able to speak with them in a clear
11 manner, and at no point was there even an ambiguous
12 invocation of counsel rights, according to law
13 enforcement in this case.

14 THE COURT: Mr. Day.

15 MR. DAY: Thank you, your Honor.

16 First off, as to the first question I think the
17 Court has to determine is whether or not the defendant
18 actually made the statements which are being attributed
19 to him. In this case, of course, there is testimony of
20 the fact that there are statements. Some were written by
21 the defendant.

22 It then must look at whether or not those were
23 voluntarily done. At one end of the scale would be the
24 one where they use physical force or something of that
25 nature, by fear, intimidation to scare him into making

1 him do it. That would be on one end.

2 On the other end, though, when that isn't there,
3 you have to look at what the officers are working with.
4 Here we have a young man, 21 years old, who does have
5 cognitive deficits. He is lacking in many skills. He is
6 now in the sheriff's department. He is in a situation
7 and an atmosphere where he is in a confined area. He is
8 being interviewed. He is being interrogated, and it's
9 the middle of the night where he can't leave. For them
10 to say he could get up and leave just begs the question,
11 your Honor. He's in the sheriff's department. For them
12 to say he could just get up and walk out at anytime, I'm
13 just not buying that.

14 And in this case the officers are there. They
15 are armed. They have him there. He is being given a
16 polygraph test, at which point the polygraph operator
17 then becomes not only a contractor, but as he stated, he
18 was an agent of the sheriff's department and he's doing
19 the interrogation. This is after he has said, "I want to
20 speak to my mother."

21 The officer who brought him to the jail had him
22 in the car, and the testimony has been received that, in
23 fact, in there he was told to ask for a lawyer, demand a
24 lawyer. And he was doing so at that point with an
25 officer who has him, in effect, in custody. To say he's

1 not in custody means he can't just leave. He's in the
2 car. He's in the back. He can't open the back door.
3 He's on his way to the sheriff's department.

4 Once he arrives there, he again asks, "I want my
5 mother." This is a young man very dependent upon his
6 mother. And he is told that's not going to work. You're
7 21. Too bad. And then those identically same words are
8 said by the polygraph operator who says that when he
9 says, "I want to speak to my mother," that, "No. You're
10 21. You can't do that. You have got to stay here."

11 Your Honor, we would submit that with that, in a
12 custodial interrogation in which he was in, the
13 voluntariness and his free born will was overdone to the
14 point to where he felt -- he testified he felt he had
15 nothing else he could do. He had to do it. He wanted to
16 get out of there. They told him he was going to jail.

17 And he -- because of that, your Honor, those
18 statements came about because of this situation. We
19 would submit to the Court, your Honor, that being the
20 case, that even though there is testimony on both sides
21 of whether he actually said, "I want a lawyer," he did
22 say he wanted his mother. His mother is telling him he
23 needs to have a lawyer. And they know they're talking to
24 him because Officer Freeman knows he was talking to his
25 mother. He heard him talking to his mother.

1 We would submit, your Honor, that because of
2 that, it takes away that voluntariness that would give
3 credibility or credence to these statements for their use
4 against him in this case. We'd ask the Court to exclude
5 them.

6 THE COURT: All right. Let me see. I'd like to
7 see the statements as well as State's Exhibit 1 and 2,
8 the *Miranda* and the -- well, 2, I think, is the statement
9 taken by the officer.

10 All right. Anything else?

11 MR. DAY: No, your Honor.

12 THE COURT: All right.

13 Reply?

14 MS. SIMMONS: Your Honor, I believe most telling
15 is the defendant's own testimony today. You were able to
16 observe his intelligence, his demeanor and his delivery.
17 Judge, you saw his cross-examination. His will is not
18 easily overborne, and he held his own pretty well and
19 completely was able to stick to his story and was not --
20 he is not someone who could be easily coerced or
21 intimidated. And it was unlikely, based on the
22 observations in court today, that this defendant would
23 have given in to pressure or coercion. He clearly can
24 function without his mother and understands the nature of
25 what is going on and is able to accurately protect

1 himself.

2 THE COURT: All right.

3 Although it was not at issue in the *Jackson v.*
4 *Denno* hearing as to the admissibility of any alleged
5 statements, the question of competence has arisen in the
6 examination, particularly of the expert witness,
7 Dr. Schwartz-Watts. And one thing that she said that
8 perhaps goes to the whole thrust of the argument about
9 the voluntariness of the statements is that, as to his
10 competence, he is absolutely competent to stand trial.
11 And she used this particular expression. I thought it
12 was, as I say, telling. He is very, quote -- or not he
13 is -- quote, "self-protective." I don't know if she had
14 a modifier on it or not, but self-protective.

15 And having briefly looked at the various
16 statements that are made in this course of either the
17 interrogation or inquiry, it's obvious that there was
18 something going on. And particularly if you look at --
19 and correct me if I'm wrong, I'm looking at State's
20 Exhibits 5, 6, and 7. If anything, they imply to the
21 point of implication wrongful acts, something that one
22 would want to be protecting themselves from.

23 Now, I say all of this because in *Jackson v.*
24 *Denno*, as we well know, it is the Court's responsibility
25 to act as a gatekeeper. In fact, from the totality of

1 the entire circumstances of the -- and it is a
2 confrontation any time that you have the authorities
3 inquiring of a citizen whether or not something occurred.
4 If that confrontation exceeded or overcame the
5 voluntariness and the freedom to express themselves, this
6 determination is for the Court initially, not based on
7 the rule that applies to all criminal actions, which is
8 that the defendant is presumed to be innocent. That
9 presumption follows the defendant throughout the process.
10 And it can only be stripped, not by a preponderance of
11 the evidence, even how great it might be a suspicion, but
12 by the fact that it is established beyond a reasonable
13 doubt.

14 Therefore, in taking the statements made, and I'm
15 going from the very first statement being and it's never
16 been suggested otherwise that State's Exhibit 1 was done
17 at the Oconee County Sheriff's Department between the
18 officers and the defendant then on January 3rd, 2012 --
19 well, what it says, 11:15 a.m. and 11:18 where each of
20 the rights that are required by our Constitution have
21 been initialed as acknowledging at least they were given
22 to him or he had seen them. And as he points out, he has
23 average IQ, which we all might like to be said at all
24 times, but also his ability to read as well is
25 exceptional as well as his understanding of other

1 information that he's able to assimilate and to use that
2 information to his advantage.

3 Also the voluntary statement, although it's done
4 not by the defendant but it's written out by the
5 investigating officer, it still indicates not only his
6 signature but also corrections and delineations in the
7 statement made by the defendant as acknowledged by his
8 initials.

9 And, again, the statements or the letters
10 purported to the alleged victims in the case do have his
11 signature. And also 5 and 6 which are the other letters
12 which are admittedly done by the defendant or -- and
13 conceded at one time it was done by the defendant.

14 I find, therefore, that I am convinced by a
15 preponderance of the evidence that before the statement
16 or confessions were obtained, the defendant was fully
17 advised of his rights under the Fifth and Sixth
18 Amendments and that the defendant was advised of the
19 constitutional safeguards required by *Miranda vs.*
20 *Arizona*, the right to remain silent, that any statement
21 can be used against him in a court of law, that before we
22 ask you any questions you must understand these rights,
23 that you have a right to talk to a lawyer for advice
24 before we ask you any questions and to have him with you
25 during questioning. If you cannot afford a lawyer, one

1 will be appointed to you before any questions. If you
2 decide to answer questions now without a lawyer present,
3 you will still have the right to stop answering at any
4 time, and that you have read this statement of your
5 rights and understand what your rights are and express a
6 willingness to make a statement and answer questions. I
7 understand, though, that I am doing what I am doing, no
8 promises or threats have been made against me. No
9 pressure or coercion of any kind has been used against
10 me.

11 I find that the defendant knowingly,
12 intelligently waived his rights under the Fifth. The
13 fact that he requested his mother I think, as I look at
14 the case cited by the State, I think that was an
15 18-year-old who was charged with homicide as well as
16 criminal conduct, sexual conduct. And the Court said in
17 that case that it is not the equivalent of asking for an
18 attorney.

19 It also is interesting in this case the fact that
20 he relies so heavily on his mother's advice and control
21 that he did not pay -- he ignored her advice and
22 otherwise participated in the questioning. I am very
23 much aware that with the preponderance of the evidence,
24 the burden is upon the State to prove whether or not that
25 his rights were voluntarily waived.

1 I do find that in this evidence, the evidence
2 that is presented is such that a preponderance would
3 suggest and convinces that Court that they were, rights
4 and the statements were made.

5 Now, I also find that the defendant knowingly and
6 intelligently waived his rights, as I said, under the
7 Fifth and Sixth Amendments as well as that the statement
8 or confessions obtained from the defendant were freely
9 and voluntarily given without any duress, coercion, undue
10 influence, without reward, without promise or hope of
11 reward, without promise of leniency, without threat of
12 injury or without compulsion or inducement of any kind
13 and that such alleged incriminating statement, confession
14 was a voluntary product of the defendant.

15 As I say, the standard here is by the
16 preponderance of the evidence. Of course, it will be and
17 I'll so instruct the jury that once the statement is
18 submitted to the jury, they must find voluntariness
19 beyond a reasonable doubt. They can either find that the
20 burden of proof beyond a reasonable doubt goes to whether
21 or not the statements were even made and each of the
22 statements were relied upon by the State in order to
23 establish their case. Or they were made but they were
24 not the free and unconstrained will of the defendant.
25 All of those, as I said earlier, is burden of proof for

1 the State to establish. I find, though, as a matter of
2 whether or not they will have that ability to consider
3 whether or not the confessions or statements or
4 allegations, whichever you want to do it, allegedly made
5 were reliable so that they can be considered in their
6 deliberations as to whether or not the State can prove
7 its entire case beyond a reasonable doubt is for them to
8 decide.

9 I will admit State's Exhibits 1, 2, 3, 4, 5, 6,
10 and 7 for the jury's deliberation or consideration
11 pursuant to the charge on the reasonable whatever.

12 (WHEREUPON, State's Exhibit Numbers 1 through 7
13 were admitted into evidence.)

14 MS. SIMMONS: Thank you, your Honor.

15 THE COURT: All right. Very good.

16 (WHEREUPON, proceedings adjourned at 5:13 p.m.)

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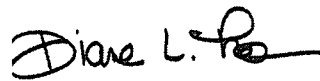
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate, and complete transcript of record of a portion
of the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal, in the
Circuit Court for Oconee County, South Carolina, on the
27th day of January 2014.

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I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 21, 2014



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Oconee
3
4 State of South Carolina,)
5 Plaintiff,) 2013-GS-37-344 to 349
6 -vs-) January 28, 2014
7 Jessie Wayne Davis,) Volume 2: Pgs. 183-267
8 Defendant.) Transcript of Record
9 _____)

10
11 B E F O R E:

12 The Honorable Alexander S. Macaulay, Judge;
13 and a jury

14 A P P E A R A N C E S:

15 Lindsey Satterfield Simmons, Assistant Solicitor
16 Attorney for the State

17 R. Daniel Day, Jr., Esquire
18 Attorney for Defendant

19

20

21

22 Diane L. Thommes, RPR, CRR

23 Circuit Court Reporter

24

25

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1 E x h i b i t s

2 For the State:

3	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
4	1	Waiver of rights form		241
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5	8	Empty shampoo bottle	210	211
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6
7 For the Defendant:

8	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
9		No exhibits introduced		

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1 Walhalla, South Carolina; Tuesday, January 28, 2014

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3 (WHEREUPON, court convened with all parties
4 present and the following proceedings were had
5 commencing at approximately 10:24 a.m.)

6

7 THE COURT: All right. Ladies and gentlemen,
8 before we begin this trial, obviously, it's a very
9 serious trial to everyone involved. And my
10 responsibility is to be sure that our proceedings are
11 done not only fairly and openly, but in an orderly
12 fashion.

13 Yesterday I noticed there were certain contact,
14 you might say, and some gestures or things that might be
15 done or said or how to do it. And that is not going to
16 be tolerated here. If you have anything to say to
17 anybody, then you will go outside the courtroom. If it's
18 somebody within this area where the trial is being
19 conducted, I will consider that contempt of court, and
20 you will be removed from the premises by order of this
21 Court. If anybody has any questions -- I don't want any
22 outbursts, I don't want any sort of comments whatsoever.
23 If you cannot control your emotions, you can leave right
24 now.

25 Does anybody have any questions of the Court?

1 Very well.

2 All right. Is the State ready to proceed?

3 MS. SIMMONS: Yes, your Honor.

4 THE COURT: Is the defendant ready to proceed?

5 MR. DAY: Yes, your Honor.

6 THE COURT: Very good. Ask the jury to join us.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:27 a.m.)

9 THE COURT: All right. Let the record reflect
10 the jury and alternates are in the jury box.

11 Madam Clerk, if you would, please, swear the
12 jury.

13 THE CLERK: Ladies and gentlemen if you would
14 please stand. Raise your right hand.

15 (WHEREUPON, the jury was sworn.)

16 THE CLERK: Please be seated.

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, I am sure each of you now fully appreciates
19 that this court, Court of General Sessions for Oconee
20 County, exists for the purpose of resolving questions of
21 alleged criminal conduct arising between the State of
22 South Carolina and the defendant.

23 It is a guaranteed right of every citizen that a
24 charge of criminal conduct be presented in open court
25 according to certain rules of procedure. The State has

1 not only an equal right but the duty to present a charge
2 of criminal conduct in open court, according to the same
3 rules of procedure as to each party.

4 Now, each of the parties therefore, both the
5 State and the defendant, then have an equal right to the
6 opportunity of this judicial proceeding and to have you
7 as the jury selected and now sworn for the trial of this
8 case. One of the most important aspects of your duty as
9 a jury lies essentially in the oath that you have now
10 taken to well and truly try and determine the facts of
11 the case. That oath in a very essential way says that
12 you are the sole judges of the facts in this case.

13 Obviously, any case tried in court will involve a
14 question about what happened or how something came to
15 happen or whom or if anyone did anything in a particular
16 occurrence of circumstance. On this point forward, then,
17 no one concerned with this trial has a right to decide
18 any question of fact in this trial or the truth of it
19 except you, the Jury.

20 The facts, then, are for your resolution and your
21 decisions and yours alone. Then after you hear all the
22 evidence in the case, then it will be your duty by your
23 mutual and joint discussions to determine the truth of
24 this case by deciding the weight and the believability of
25 each part of the evidence by applying the law of the case

1 to it.

2 Now, the trial judge -- as a trial judge, I am
3 the judge of the law in the case. It is also my
4 responsibility, among other duties, to preside over this
5 trial, to rule on the admissibility of evidence offered
6 during the progress of the trial and state to you, the
7 Jury, the law applicable to this case.

8 The Constitution of South Carolina mandates that
9 I as the trial judge cannot directly or indirectly
10 comment about the facts of this case. The process of a
11 verdict, then, is simply that you, the Jury, first
12 determine what the truth of the facts are and then apply
13 to that true state of facts the principles of law and by
14 that process determine and report to this Court your
15 final verdict in the case, speaking the truth of the case
16 as you determine.

17 Now, I will more fully and completely state to
18 you the principles of law applicable to each of the
19 issues in this case before it is submitted to you for
20 your decision. However, there are certain principles of
21 law applicable to the framework of every case. Now, in a
22 very basic way, I'll explain several of those basic
23 principles for you in your guidance as in general
24 sessions court.

25 The defendant has entered a plea of not guilty to

1 the charges contained in the indictment. Now, the
2 indictment in a case is not evidence. It is simply the
3 written instrument that contains the charge or charges
4 against the defendant and it serves as a formal document
5 on which the case is processed into this court. A plea
6 of not guilty places upon the State the burden of proof
7 in this case.

8 As to what is meant by the burden of proof, the
9 defendant is presumed in law innocent of all charges
10 contained in the indictments. The burden of proof
11 requires the State to prove guilt beyond a reasonable
12 doubt, and, therefore, consistent with that burden, the
13 defendant or the accused parties shall be presumed
14 innocent. And that presumption of innocence is
15 sufficient to compel a verdict of not guilty or a verdict
16 of acquittal unless you, the Jury, conclude that the
17 State has satisfied its obligation to prove the defendant
18 guilty beyond a reasonable doubt.

19 The term "reasonable doubt" means the kind of
20 doubt that would cause a reasonable person to hesitate to
21 act. Now, this case will be opened by the Solicitor
22 after which the same opportunity will be afforded to the
23 defendant to make an opening statement. When all of the
24 evidence has been received by the Court, counsel for the
25 State and counsel for the defendant will state to you

1 their respective positions after which the Court will
2 fully state to you the applicable law in this case.

3 Obviously, all parts of the case are important.
4 You do not know which witness in a case will most impress
5 you, whether the first witness or the last witness. In
6 reaching your final conclusions, you will need the
7 guidance and the judgment of the other jurors. You will
8 need the guidance of the principles of law that will be
9 stated to you by the Court. For all these reasons, then,
10 if we have any recess periods, when we retire or when you
11 retire to your jury room or during the overnight or meal
12 recess, I instruct you that you are not and must not
13 undertake to discuss this case among yourselves until the
14 case is finally given to you for your deliberation, nor
15 are you to discuss the case with anyone or permit anyone
16 else to discuss it with you. If anyone should try to do
17 so, as I mentioned yesterday, you are to report them
18 because they are not to interfere with your duty as
19 jurors here in the general sessions court here in Oconee
20 County.

21 Now, do remember the verdict in this case as to
22 all of the issues must be a unanimous verdict of all
23 twelve jurors. There are a few other comments I need to
24 make before we begin. As I mentioned earlier, although I
25 am the only one who can tell you what the law is, you and

1 you alone are the only ones who can determine the facts.
2 I do not have the right to indicate how I may feel about
3 the evidence presented. And throughout this trial, my
4 intention will be to act impartially towards each party.

5 Second, from time to time an attorney will object
6 to some bit of testimony or evidence which the other side
7 is seeking to present. As in sports or business or any
8 other structured activity, there are certain rules that
9 both sides must obey in presenting evidence. These rules
10 have a definite purpose. They ensure that the
11 information you receive is the most trustworthy and
12 reliable evidence available.

13 An objection is a procedure we use for an
14 attorney to call a possible violation of the rules to the
15 Court's attention. And for this reason you should not
16 hold an attorney's objection against his or her client,
17 nor should you conclude from my ruling on the objection
18 that I favor one side or the other.

19 Finally, I would ask that you pay the closest
20 attention possible to the evidence presented to you. I
21 will ask you not to take notes, please. If the
22 note-taker makes an error, those notes can be more
23 detrimental than helpful during your deliberations. The
24 test is for each of you to listen carefully, and I'm sure
25 each of you will do that.

1 I have suggested that you not take notes. The
2 reason for that is, as I mentioned earlier, you must seek
3 the facts in this case based on the testimony from this
4 witness stand and the evidence introduced in this
5 courtroom. And you should -- in order to do that you
6 need to judge not only the witness but also how the
7 evidence is presented. So therefore you need to
8 concentrate on what's happening in the courtroom.

9 It's been my experience if I take notes or
10 whatever, a lot of times what I'm doing is concentrating
11 on the note. In other words, just the spelling of the
12 words or being sure that I get what I think I hear. And
13 so therefore I'm distracted from what's actually
14 happening at the time. And, of course, what is it, as I
15 say, if you make an error in those notes, those notes can
16 be more detrimental than helpful because, just to use a
17 simple example, if we either drop a word that we don't
18 hear or add a word we think we hear, it changes the
19 meaning of the note altogether. I use the word "not."
20 In other words, if the "not" was in the testimony but
21 missed it, it changes everything about it. So,
22 therefore, if we have any questions or if you have any
23 questions about what the testimony was, I would suggest
24 that you rely on your fellow jurors, their recollection,
25 whichever recollections are most persuasive as to the

1 truth of them, and then, of course, that would be the one
2 that you would rely on.

3 Now, having said all that, I do take notes. It's
4 not do as I say, not as I do. Please understand that we
5 have different purposes in this courtroom. You and you
6 alone are the only ones that can find the facts of this
7 case. You are the only ones who can determine the weight
8 or believability of the evidence and the testimony.

9 I am not concerned with the facts of case. I am
10 only concerned whether certain things happen that are
11 required under our law. So what I am doing is jotting
12 down what happens, not the significance of it. That is
13 for you and your decision alone.

14 So with that, we will now begin the trial of the
15 case, and I will recognize the Solicitor for her opening
16 statement.

17 MS. SIMMONS: Thank you, your Honor. May it
18 please the Court, Mr. Day.

19 Good morning, ladies and gentlemen. As I told
20 you yesterday, my name is Lindsey Simmons, and I'm the
21 Assistant Solicitor here in Oconee County. I actually
22 was born and raised in Walhalla. And when your elected
23 Solicitor, Crissy Adams, was elected in 2005, that gave
24 me the opportunity to come practice law in my hometown.

25 I want to thank you for your service. I know

1 that there are probably a hundred things I would rather
2 be doing today other than this, particularly when it
3 might be snowing outside and the subject matter in this
4 case is not something that the average person is
5 comfortable with. I'm going to go ahead and warn you
6 about that. We're going to do our best, the defense and
7 I, over the next couple days to make it as comfortable as
8 we can for you, but there are certain details that we
9 have to bring out in court.

10 You have an important job as jurors, and I want
11 you to remember that you've already brought the most
12 important tool you need for jury duty with you and it's
13 your common sense. And at the end of this case I ask you
14 to look at your -- look at the case, look at the evidence
15 and apply your common sense to what you've heard.

16 The defendant in this case is charged with
17 multiple counts of criminal sexual conduct with a minor
18 in the first degree, and two counts of criminal sexual
19 conduct with a minor in the third degree. What does that
20 mean?

21 Criminal sexual conduct with a minor in the first
22 degree requires a few things. First of all, it requires
23 that the child in question be under the age of 11. It
24 also requires that the defendant, who was older than the
25 child, committed a sexual battery against the child.

1 You may be wondering what a sexual battery is.
2 It can be a number of things. Sexual battery can be what
3 you would normally think -- vaginal intercourse, the
4 penis inside the vagina. It can also be penetration of
5 the vagina by an object or a finger, anything that goes
6 inside. It also can be proved by oral sex performed on
7 the child or having the child perform oral sex on the
8 defendant. So there is a number of ways that you can
9 prove a sexual battery, and you're going to hear multiple
10 types of sexual batteries occurred in this case.

11 Criminal sexual conduct with a minor in the third
12 degree does not require an actual sexual battery. It is
13 more along the lines of a touching, an inappropriate
14 touching beneath the clothes of the private parts or the
15 chest area -- the private areas of a girl. And it also
16 can be masturbating the child or having the child
17 masturbate you. In this case you're going to hear, to
18 that element of the charge, there was some inappropriate
19 touching and the defendant had the children masturbate
20 him.

21 I have to prove all this to you beyond a
22 reasonable doubt. I want you to remember that that's not
23 beyond all doubt. It's beyond a reasonable doubt. And
24 as I just told you, your common sense is the most
25 important tool you'll have in applying the reasonable

1 doubt standard. One thing I always tell juries is this
2 is not CSI. It's not Law & Order, and my life is nothing
3 like the Special Victims Unit. So don't hold the trial
4 or the evidence or the players in this case to the
5 standards you see on TV. In reality cases don't make it
6 to trial in 90 days. We're not going to finish this case
7 in 60 minutes. This is Oconee County and this is real
8 life. There are two little girls that are here to tell
9 you their story. They're sitting right there, Minor 1
10 and Minor 2
11 Minor 2 , back in the summer to December of 2012,
12 was seven and Minor 1 was ten. Minor 1 lived at a home
13 here in Oconee County with her dad, the defendant's
14 mother and the defendant. At some point in time the
15 defendant's mother chose to move out. The defendant
16 stayed. So Minor 1 was approximately ten living in the
17 home with her dad and the defendant. She's going to tell
18 you that there was a lot of time that the defendant was
19 alone with her. Her dad had some pretty serious health
20 problems, he sleeps a lot, has these medical issues, so
21 the defendant was allegedly helping take care of her.
22 She's going to tell you that during the time
23 frame of the summer of 2012 to the very beginning of 2013
24 on multiple occasions the defendant put his penis inside
25 her vagina, touched her in inappropriate ways, had her

1 masturbate him, had her perform oral sex on him and he
2 perform oral sex on her. She's going to tell you there
3 were times that he threatened her, and she was very
4 scared to tell anyone about this.

5 Minor2 was seven back in 2012. Minor2 was their
6 neighbor. Minor2 would come over to play with Minor1 .
7 During the course of Minor2 coming over to play, some
8 things happened to Minor2 . Minor2 -- the defendant, Minor2
9 is going to tell you that he put his fingers inside her
10 vagina, and she's also going to tell you that he touched
11 her on a number of occasions.

12 What makes this case a little different than the
13 average sex case involving children is there are
14 eyewitnesses because at some point in time the children
15 saw abuse occurring to each other because they were in
16 the same room. This all kind of came to light back on --
17 the beginning of January 2013 when Minor2 , quite frankly,
18 had had enough and she told her stepmom. And that's what
19 got law enforcement involved and medical professionals
20 involved.

21 They're not perfect. They're still little girls.
22 They're going to do their absolute best to tell you what
23 happened, and I ask that you listen to them carefully and
24 hold them to the standard that we should hold them to as
25 little girls that are less than 11 years old.

1 You're also going to hear from Lieutenant Gentry
2 Hawk from the Oconee County Sheriff's Office. He
3 conducted this investigation. He also interviewed the
4 defendant. He is going to tell you what information he
5 was able to corroborate that the little girls gave him.
6 And Deputy Freeman was with Lieutenant Hawk when he
7 interviewed the defendant about these charges as well as
8 an independent interviewer, Mike Lark, was there.
9 They're going to tell you that the defendant did indeed
10 confess to these allegations. It's not a full and
11 complete confession as to every -- every aspect of
12 everything that happened. But you're going to see that
13 confession later today, and you will see that it is
14 compelling and it substantiates what those little girls
15 are going to tell you.

16 You're also going to hear from Brandy Wright.
17 She was employed at Oconee Medical Center when ^{Minor 2} did
18 tell and her stepmom took her to the hospital. Brandy is
19 going to tell you what ^{Minor 2} told her for the purposes of
20 her medical care.

21 Lieutenant Hawk also had both girls taken to a
22 doctor that specializes in examining children who have
23 been abused, Dr. Sally Carter. She's going to come here
24 tomorrow and tell you about what she -- the medical
25 evidence she found on both children that corroborates

1 what you're going to hear from them.

2 Ladies and gentlemen, the end -- probably at the
3 end of the day tomorrow we're going to finish this case,
4 and I'll have an opportunity to come in front of you
5 again and kind of summarize everything you've heard. I
6 think when you listen to the evidence, pay attention and
7 apply the law in this case, there is only one verdict
8 that can be reached in this case and it's guilty. Thank
9 you.

10 THE COURT: Mr. Day.

11 MR. DAY: Thank you.

12 Madam Solicitor, ladies and gentlemen, I
13 introduced myself to you back on Monday. I'm Daniel Day
14 of the public defender's office here in Oconee County.
15 And I echo what the Solicitor says. I know this is not
16 something that you planned on or wanted to do or woke up
17 on Monday morning and said, Oh, boy. I hope I get this
18 kind of case.

19 Just hearing the allegations is revolting. There
20 isn't a person in this courtroom that isn't taken aback
21 when an accusation is made that you have just heard. But
22 that's what it is. It's an accusation. It is a claim.
23 It says that the State of South Carolina believes that
24 Jessie Davis committed this horrific crime, and now the
25 matter is being placed in your hands for you to make a

1 determination.

2 And the burden of proof is on the State. "Burden
3 of proof" is a very, very serious phrase. Burden. They
4 must carry that burden. They can't shift it off. They
5 can't place it over anywhere else. The State has to do
6 it. The State of South Carolina versus Jessie Davis.
7 All of what the State has, all of its power, all of its
8 authority is placed against one person, Jessie Davis.

9 Now, you may think I'm standing up here as I'm
10 the one that's supposed to stand between the State and
11 Jessie Davis, but I'm not. You do. That is your job.
12 You must make sure that what you hear, as revolting as it
13 is, as terrible as it sounds, is supported by actual
14 evidence. If that was not the case, all the State would
15 have to do is make an accusation, and then we just do
16 away with courthouses and juries and judges and just move
17 it on. That's not the way it works. You've got to
18 decide. If this was a perfect world, we wouldn't need
19 all of us. But it's not.

20 What they have alleged -- and it is an allegation
21 and it is an accusation -- that these matters occurred --
22 let me get the right page -- between June of 2012 and
23 January the 3rd of 2013. They have got to prove to you
24 not only that they occurred in those time periods or when
25 in that time period, you've got to believe that that has

1 actually been proven, that it occurred during that. And
2 they have got to be somewhat specific. They just can't
3 say sometime in the last few years this occurred. Hold
4 them to that burden. Make them show that. Because
5 that's what they allege in the indictment.

6 As the judge explained to you, an indictment is
7 nothing more than a piece of paper that gets us into this
8 courtroom and that's all. That's what creates the paper
9 trail so we know why we're here. Jessie Davis says he
10 didn't do this. That's why we're here. He is exercising
11 his right as each of you could if you feel that you are
12 wrongfully accused, had been wrongfully accused, to stand
13 in front of a judge and jury, profess your innocence and
14 ask the judge and the jury to hear what's going on and
15 you, as the jury, to make a determination. That's why
16 you're here. And that's what's so important. That's
17 what makes this so important.

18 I ask you to please set aside the revulsion that
19 you feel from hearing the kind of charges that are
20 brought out and the allegations that are going to be made
21 and boil it down to the facts as they exist. Make the
22 State prove this case. That's what you took an oath to
23 do. I asked each of you individually. And after you
24 have heard everything, then you will make your
25 determination corporately, all of you together. But as

1 an individual, you must make a decision, and that's your
2 individual determination.

3 And, as they say, that Jessie Davis has admitted
4 to this. You will hear testimony this is in the middle
5 of the night at the sheriff's department in a 10 or
6 12-by-12 room being deprived of being able to talk to
7 anybody, including his mother upon whom he is very
8 dependent. Not being allowed to talk to anyone, placed
9 in that room by officers with guns and being told, Oh --
10 you will hear the officer say it, "Well, he could leave
11 anytime he wanted to." Hogwash.

12 Let's face it. From 10:30 until 3 o'clock in the
13 morning in the sheriff's department, what was he going to
14 do, get up and walk out? Nobody believes that. At the
15 end of it, they said that he confessed to all this. But
16 you will hear and you look at it and see whether or not
17 that confession actually is a true confession of what
18 they claim happened or is it what they wanted him to say.

19 When you look at it, you will also notice that on
20 the statements they claim -- they say that he admitted to
21 this. He didn't even write it. Somebody else wrote it
22 for him. There are no recordings. Could have been a
23 very simple matter, turn on a recorder, either audio,
24 visual or both, and have all this. We don't have any of
25 that. There's no law that says they have to. They could

1 have done it. That would have made life a whole lot
2 easier. Put that up on the stand and play it right up
3 here just like they want to do, put things in the
4 courtroom. And then we would know. But we don't have
5 that.

6 Please listen carefully. You're all intelligent
7 people. You have all been through a lot in life. But
8 today the only person on trial in this trial is Jessie
9 Davis, and that's the decision you have to make. It's
10 his life on the line. This is what counts. He
11 appreciates you here. He appreciates that you're here to
12 stand between him and the entire state of South Carolina
13 when he says, I have been wrongfully accused of this,
14 they made me write out those things, I had to write them,
15 and they wrote things out and wanted me to sign them.
16 And you will hear all that.

17 I ask you to please look at this. Make the State
18 prove their case no matter how hard it is to hear some of
19 this testimony. And it will be difficult. Make sure the
20 State has proven this because it's so important. Thank
21 you.

22 THE COURT: You may call your first witness.

23 MS. SIMMONS: Your Honor, the State calls

24 Minor 1 .

25 Minor 1 ,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2

3 THE COURT: If you would, please, Madam, give us
4 your full name for the record.

5 THE WITNESS: Minor 1 .

6 THE COURT: Very good. Thank you, ma'am.

7 DIRECT EXAMINATION

8 BY MS. SIMMONS:

9 Q. Minor 1 , I'm going to ask that you let me scoot you
10 a little bit closer. I know you're kind of soft-spoken.

11 Good morning, Minor 1 .

12 A. Good morning.

13 Q. How old are you?

14 A. Eleven years old.

15 Q. And what's your birth date?

16 A. .

17 Q. 2002?

18 A. (Witness nodding affirmatively.)

19 Q. Do you know the difference between right and wrong?

20 A. Yes, ma'am.

21 Q. If I told you -- if I went to Ingles and I stole a
22 candy bar, would that be right or wrong?

23 A. Wrong.

24 Q. If I was in the Ingles parking lot and somebody
25 dropped \$20 on the ground and I gave it back to them, is

1 that right or wrong?

2 A. Right.

3 Q. Do you know the difference between the truth and a
4 lie?

5 A. Yes, ma'am.

6 Q. If I told you that Lieutenant Hawk was wearing a
7 green jacket, would that be the truth or a lie?

8 A. A lie.

9 Q. If I told you he was wearing a gray jacket, would
10 that be the truth or a lie?

11 A. Yes, ma'am.

12 Q. The truth?

13 A. Yeah.

14 Q. And today in court do you promise to only talk about
15 true things that really happened?

16 A. Yes, ma'am.

17 Q. What grade are you in in school?

18 A. Sixth grade.

19 Q. How do you do in school?

20 A. Average.

21 Q. What kind of things do you like to do when you're
22 not in school?

23 A. Drawing and reading.

24 Q. What do you like to read?

25 A. Graphic novels and chapter books.

1 Q. And when you swore to tell the truth, do you know
2 what that means, Minor 1 ?

3 A. Yes, ma'am.

4 Q. Can you tell me that?

5 A. It means that I cannot tell a lie while I'm up on
6 the stand.

7 Q. And who do you live with now?

8 A. My father and his roommate, Natalie Brandt.

9 Q. Back in the summer of -- I'm going to take you back.
10 I know it's kind of been a long time, but in the summer
11 of 2012 to Christmas of 2012 -- so that's the Christmas
12 before last -- who was living with you then?

13 A. Jessie Davis, my daddy, and me.

14 Q. Do you remember how old you were back then or what
15 grade you were in?

16 A. I was in fourth or fifth grade. And I was ten years
17 old.

18 Q. Why was Jessie living with y'all?

19 A. It was because Sean King introduced Patti King to my
20 father, and eventually we met his son. And they became
21 very good friends, and they moved over into our house.

22 Q. At some point did Jessie's mom leave?

23 A. Yes, ma'am.

24 Q. Can you point out Jessie Davis in the courtroom for
25 me?

1 A. (Indicating.)

2 MS. SIMMONS: Your Honor, please let the record
3 reflect the witness is referencing the defendant.

4 THE COURT: The record will so reflect.

5 BY MS. SIMMONS:

6 Q. Did you spend a lot of time with Jessie back then?

7 A. Yes, ma'am.

8 Q. What sort of stuff did he do every day?

9 A. He would come into my room or he would make me come
10 into his room and he would rape me.

11 Q. What do you -- what do you call your girl private
12 parts?

13 A. Private parts.

14 Q. What do you call boy private parts?

15 A. Private parts.

16 Q. Did Jessie ever touch your private parts in a bad
17 way?

18 A. Yes, ma'am.

19 Q. Did he ever touch -- did he touch your private parts
20 with his hand?

21 A. Yes, ma'am.

22 Q. And when we talk about private parts, was that your
23 parts under your pants?

24 A. Yes, ma'am.

25 Q. Did he ever touch your private part with his boy

1 private parts?

2 A. Yes, ma'am.

3 Q. Did that -- did he touch it outside your girl
4 private or inside your girl private?

5 A. Both.

6 Q. Did he ever make you touch his boy private?

7 A. Yes, ma'am.

8 Q. What did he make you do to his boy private?

9 A. He made me touch it and use my mouth on it.

10 Q. When he made you touch it, did anything ever come
11 out of his boy private?

12 A. Yes, ma'am.

13 Q. Can you describe to us what it was?

14 A. A white, clear liquid. {

15 Q. Did he ever put his mouth on your girl privates?

16 A. Yes, ma'am.

17 Q. All these things, did they happen one time or more
18 than once?

19 A. More than once.

20 Q. Did it happen basically the whole time he was living
21 with you?

22 A. Pretty much, yes.

23 Q. Did he ever tell you anything when this was
24 happening or tell you --

25 A. Yes, ma'am.

1 Q. Can you tell me what that was?

2 A. He would say things like, "I know you want it. Say
3 yes." Those kind of things.

4 Q. Did he -- what word -- and I know this is very
5 uncomfortable for you so you can spell it if you want
6 to -- what word did Jessie call the girl private part to
7 you?

8 A. P-u-s-s-y.

9 Q. Thank you, Minor 1 .

10 Did he ever put anything on his private parts
11 while this was all going on?

12 A. Yes, ma'am.

13 Q. Can you tell me what that was?

14 A. Johnson's Baby Shampoo tear free.

15 Q. Bear with me for one moment. Okay?

16 A. Okay.

17 (WHEREUPON, State's Exhibit Number 8 was marked
18 for identification.)

19 BY MS. SIMMONS:

20 Q. Minor 1 , I'm going to show you what's been marked
21 as State's Exhibit 8. Do you recognize this?

22 A. Yes, ma'am.

23 Q. And what is it?

24 A. It is the baby shampoo.

25 Q. And is this the baby shampoo that he put on his

1 private parts?

2 A. Yes, ma'am.

3 MS. SIMMONS: Judge, at this time --

4 BY MS. SIMMONS:

5 Q. Was this recovered at your house?

6 A. Yes, ma'am.

7 MS. SIMMONS: Judge, the State would move in
8 State's Exhibit 8 at this time.

9 THE COURT: Any objection?

10 MR. DAY: No objection.

11 THE COURT: All right. Without objection.

12 That's State's Exhibit 8?

13 MS. SIMMONS: Yes, your Honor.

14 THE COURT: Thank you, ma'am.

15 (WHEREUPON, State's Exhibit Number 8 was admitted
16 into evidence.)

17 BY MS. SIMMONS:

18 Q. Did Jessie ever threaten you when all this was going
19 on?

20 A. Yes, ma'am.

21 Q. Can you tell me about that?

22 A. He threatened me with a gun, and one time he
23 threatened me with a knife.

24 (WHEREUPON, State's Exhibit Number 9 was marked
25 for identification.)

State of South Carolina vs Jessie Davis
Minor 1 - Direct Examination

1 BY MS. SIMMONS:

2 Q. Minor 1, I'm going to show you what's been marked
3 as State's Exhibit 9. Do you recognize this?

4 A. Yes, ma'am.

5 Q. Can you tell me what is?

6 A. It's a switchblade, double-bladed knife.

7 Q. And is this the knife that he threatened you with?

8 A. Yes, ma'am.

9 Q. And where was this knife recovered from?

10 A. It was recovered from my house.

11 Q. And does it look the same as it did at your house?

12 A. Yes, ma'am.

13 MS. SIMMONS: Judge, the State would move in
14 State's Exhibit 9 at this time.

15 MR. DAY: No objection.

16 THE COURT: Without objection, State's Exhibit 9
17 is admitted.

18 (WHEREUPON, State's Exhibit Number 9 was admitted
19 into evidence.)

20 BY MS. SIMMONS:

21 Q. Did he ever try to hurt you in any other ways?

22 A. Yes, ma'am.

23 Q. Can you tell me?

24 A. He tried to stop me from breathing one time, and he
25 tried to choke me once.

1 Q. Did anybody ever see some of the things he did to
2 you?

3 A. I don't remember if Minor 2 did, but I remember that
4 he done it to me.

5 Q. Did you ever see him do bad things to Minor 2 ?

6 A. Yes.

7 Q. Did you see him touch her private parts?

8 A. Yes, ma'am.

9 Q. Is that all you saw?

10 A. From what I remember, yes.

11 Q. Was this around the same time all this stuff was
12 happening to you, this stuff with Minor 2 ?

13 A. Yes, ma'am.

14 Q. When did you finally tell someone what happened?

15 A. I didn't. Minor 2 did.

16 Q. After Minor 2 did, were you able to tell?

17 A. Yes, ma'am.

18 Q. Why did you feel like you could tell then?

19 A. Because he couldn't threaten me or my family anymore
20 and keep us apart.

21 Q. Did you also talk to the police?

22 A. Yes, ma'am.

23 Q. Has what happened to you affected how you dress
24 every day?

25 A. Yes, ma'am.

1 Q. Can you tell me about that?

2 A. I wear two pairs of jeans now.

3 Q. Are you wearing two pair of jeans today?

4 A. Yes, ma'am.

5 MS. SIMMONS: Beg the Court's indulgence for one
6 moment.

7 BY MS. SIMMONS:

8 Q. Minor 1, when he did these things to you, did it
9 hurt?

10 A. Yes, ma'am.

11 Q. And did he ever touch your back -- your back
12 privates with his private?

13 A. Yes, ma'am.

14 Q. And how many times did that occur?

15 A. More than a few.

16 Q. Okay. Minor 1, please answer any questions Mr. Day
17 has for you. Okay?

18 A. Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MR. DAY:

21 Q. Minor 1, I'm Danny Day. I'm going to ask you some
22 questions. And I'm going to ask you to please do me a
23 favor. If you don't understand my question, don't be
24 afraid to say so. Okay?

25 A. Yes, sir.

1 Q. It's not embarrassing to me, and it certainly would
2 not be embarrassing to you. A lot of people don't
3 understand my questions, including me. Sometimes I ask
4 things that just don't make any sense. But if you don't
5 understand what I'm asking, please say so. Okay?

6 A. Yes, sir.

7 Q. Promise me you'll do that.

8 A. Yes, sir, I promise.

9 Q. Okay. Now, I know this is difficult for you, but
10 I've got to ask you some -- some questions just like the
11 Solicitor did. And I want you to try to answer them as
12 best you can. Okay?

13 A. Yes, sir.

14 Q. You have made some very serious accusations against
15 Jessie, so I need to better understand those. So let's
16 start with some simple questions like where did you say
17 this took place?

18 A. Sometimes it took place in my dad's bedroom, in his
19 bathroom, in the living room, my bedroom, his bedroom,
20 and his house.

21 Q. And his house?

22 A. In his bedroom.

23 Q. Okay. All right. And when these took place, let's
24 go back. When was the first time? Could you give me
25 some idea of when this took place?

1 A. Around July 2012.

2 Q. Okay. Why do you remember July of 2012?

3 A. Because that's around whenever we started to meet.

4 Q. Started to what?

5 A. Whenever we met.

6 Q. Okay. That's when he came to live with y'all?

7 A. Close. They started to come over and sometimes
8 would spend the night. Then they started to move in.

9 Q. And you say that was about July; is that correct?

10 A. They met.

11 Q. Okay. And who all was living in the house?

12 A. Just me and my dad, then Patti and Jessie moved in.

13 Q. And how long did they live there?

14 A. Patti stayed about until October, November almost.

15 And Jessie stayed until Minor2 told in January.

16 Q. Okay. Was Patti still living there in January?

17 A. No, sir.

18 Q. About when did she move out?

19 A. Around October and November, close to December.

20 Q. Now, Patti is who?

21 A. Patti is his mother.

22 Q. Mother of who?

23 A. Jessie Davis.

24 Q. Okay. Now, I know it's been hard for you. This has
25 been going on for a while now, but in preparation for

1 today, who all did you talk about what you were going to
2 say?

3 A. I didn't talk to anybody about what I was going to
4 say. I was just told by Lisa what to tell y'all like the
5 truth and nothing but the truth.

6 Q. Okay. So no one asked you what you were going to
7 say?

8 A. No, sir.

9 Q. Now, when the -- let me ask you. Did the police,
10 talking about Mr. Hawk, Gentry Hawk, did he come talk to
11 you?

12 A. At my house, yes.

13 Q. And when was that?

14 A. Around sometime last year whenever the evidence was
15 being collected.

16 Q. Okay. And was this right when Jessie was arrested?

17 A. I'm not sure. I can't really remember.

18 Q. Okay. And what -- when you say collecting evidence,
19 what evidence were they collecting?

20 A. They were collecting the shampoo bottle and the
21 knife.

22 Q. Okay. Did you talk to anyone else besides Mr. Hawk?

23 A. I talked to Mr. Hawk, Lisa, and my counselors that I
24 went to.

25 Q. Okay. And when you spoke to all of them, was anyone

1 with you?

2 A. Sometimes my daddy would be in there. But whenever
3 we talked about what happened, he was never in there. He
4 disappeared.

5 Q. Okay.

6 I'm just looking at my notes. I have a hard time
7 reading my own writing sometimes. You don't have that
8 problem, do you?

9 A. Sometimes I do.

10 Q. Okay. All right. You say that Minor 2 was the one
11 who first told someone; is that right?

12 A. Yes, sir.

13 Q. Who did Minor 2 tell?

14 A. She told her mom and dad.

15 Q. Were you there when she told them?

16 A. No, I was in bed about to go to sleep for the next
17 day at school.

18 Q. Okay. So Minor 2 told someone at school?

19 A. No, she told her mother and father while they were
20 out later, then -- they were out later from whenever I
21 went to bed.

22 Q. Okay. Now, in July and August of that year, 2012,
23 is when you said that this began or these things began, I
24 think that's the way you put it, that's when it started?

25 A. Yes, sir.

1 Q. Okay. All right. Did you and your family and
2 Jessie and his family go and do things together?

3 A. Sometimes we'd go look for bigger houses instead of
4 the trailer we lived in. And sometimes we'd go out like
5 around the county, go on maybe a trip here or maybe go
6 just out to eat.

7 Q. Okay. And did you go to places like out on the
8 lake?

9 A. No, sir.

10 Q. Okay. Go swimming in the lake?

11 A. No, sir, not from what I remember.

12 Q. Okay. So you say this began in July and August, I
13 believe is what you said, and it went on until when?

14 A. It went on until Minor 2 told.

15 Q. Until what?

16 A. Until Minor 2 told.

17 Q. Oh, I see. Okay. And that would have been when?
18 Can you remember when she told?

19 A. Around the first of January.

20 Q. Now you were going to school during most of that
21 time, started back in school in August, right? Is that
22 right?

23 A. We start back around August for the new school year.

24 Q. All right.

25 Just one second, please.

State of South Carolina vs Jessie Davis
Minor 2 - Direct Examination

1 Okay, Minor 1 . Thank you very much.

2 THE COURT: Re-exam?

3 MS. SIMMONS: No, your Honor.

4 Judge, may Minor 1 be excused? She would like
5 to go back to school.

6 MR. DAY: No objection, your Honor.

7 THE COURT: All right. Without objection, you
8 may be excused. Thank you very much, ma'am.

9 THE WITNESS: You're welcome.

10 THE COURT: Yes, ma'am. You may call your next
11 witness.

12 MS. SIMMONS: Thank you, Judge. The State calls
13 Minor 2 .

14 Minor 2 ,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16

17 MS. SIMMONS: Good morning, Minor 2 .

18 THE COURT: Just a moment. If you would, please,
19 would you give us your full name.

20 THE WITNESS: Minor 2 .

21 THE COURT: Very good. Thank you, ma'am.

22 DIRECT EXAMINATION

23 BY MS. SIMMONS:

24 Q. Good morning, Minor 2 .

25 A. ' Good morning.

1 Q. I know you're real soft-spoken, so can you speak up
2 for me?

3 A. (Witness nodding affirmatively.)

4 Q. How old are you, Minor 2 ?

5 A. Eight.

6 Q. When's your birthday?

7 A. .

8 Q. You just had a birthday then.

9 A. (Witness nodding affirmatively.)

10 Q. Do you know the difference between right and wrong,
11 Minor 2 ?

12 A. Yes, ma'am.

13 Q. If I went out in the parking lot and broke
14 somebody's car window, would that be right or wrong?

15 A. Wrong.

16 Q. If somebody lost their hat in the courtroom and I
17 picked it up and gave it back to them, is that right or
18 wrong?

19 A. Right.

20 Q. Do you know the difference between the truth and a
21 lie?

22 A. Yes, ma'am.

23 Q. If I told you this lady here was wearing a purple
24 shirt, would that be the truth or a lie?

25 A. A lie.

1 Q. If I told you it was a green multicolored shirt,
2 would that be the truth or a lie?

3 A. The truth.

4 Q. Do you promise today to only talk about true things
5 that happened today?

6 A. Yes, ma'am.

7 Q. What do you like to do in school? What's your
8 favorite subject?

9 A. Reading and writing.

10 Q. Do you make good grades?

11 A. Yes, ma'am.

12 Q. What kind of things do you like to do when you're
13 not in school?

14 A. Go out to eat and swim.

15 Q. Do you understand what it means when you put your
16 hand on the Bible and swore?

17 A. Yes, ma'am.

18 Q. Can you explain that to me?

19 A. It means you -- it means you must not lie at all.

20 Q. So we're only going to talk about the truth?

21 A. Yes, ma'am.

22 Q. Who do you live with now?

23 A. My daddy and my stepmom and my brothers.

24 Q. Do you remember back in the summer of 2012 until
25 Christmas who you were living with?

- 1 A. Yes, ma'am.
- 2 Q. Who were you living with?
- 3 A. Same people.
- 4 Q. Okay. Were y'all living at a different place?
- 5 A. Yes, ma'am.
- 6 Q. Who were you living with?
- 7 A. We were living right in front of Minor 1 's house.
- 8 Q. Do you know what city that's in?
- 9 A. Westminster.
- 10 Q. And do you know if that's in Oconee County?
- 11 A. Yes, ma'am.
- 12 Q. When you were living next to Minor 1 , did you go
- 13 visit her a lot?
- 14 A. Yes, ma'am.
- 15 Q. What kind of things did you like to do with
- 16 Minor 1 ?
- 17 A. Play with her Barbies and play puppets.
- 18 Q. Who was living with Minor 1 ?
- 19 A. Her dad and Jessie.
- 20 Q. When you say "Jessie," do you see Jessie in the
- 21 courtroom today?
- 22 A. Yes, ma'am.
- 23 Q. Can you point him out for me?
- 24 A. (Indicating).
- 25 MS. SIMMONS: Judge, please let the record

1 reflect the witness pointed to the defendant.

2 THE COURT: The record will so reflect.

3 BY MS. SIMMONS:

4 Q. Do you remember Jessie being around during the time
5 you lived next to Minor 1 ?

6 A. Yes, ma'am.

7 Q. Where did he usually stay in the house when you were
8 over there?

9 A. In his room.

10 Q. Did you ever go in his room with him?

11 A. Yes, ma'am.

12 Q. Minor 2 , what do you call your girl private parts
13 under your pants?

14 A. Private parts.

15 Q. What do you call the boys' private parts?

16 A. Private parts.

17 Q. That's what we're going to call them today. Did
18 Jessie ever touch your private parts in a bad way?

19 A. Yes, ma'am.

20 Q. Can you tell me what he did?

21 A. He would touch them with his hands and his boy
22 private parts.

23 Q. Did he ever -- when he touched your girl privates
24 with his hand, was it inside or outside or both?

25 A. Both.

- 1 Q. How did that feel?
- 2 A. It hurt.
- 3 Q. Did this happen once or more than once?
- 4 A. More than once.
- 5 Q. Did Jessie ever make you touch his privates in a bad
- 6 way?
- 7 A. Yes, ma'am.
- 8 Q. Can you tell me about that?
- 9 A. He would make us touch him or rub on them.
- 10 Q. What -- when you rubbed his boy private, what did it
- 11 look like?
- 12 A. We would do it with our girl private parts.
- 13 Q. Did you ever touch his boy private with your hand?
- 14 A. Yes, ma'am.
- 15 Q. Did anything ever come out of it --
- 16 A. Yes, ma'am.
- 17 Q. -- that you saw?
- 18 What did it look like?
- 19 A. Whitish and clearish.
- 20 Q. Was Minor 1 present when some of these things
- 21 happened to you?
- 22 A. Yes, ma'am.
- 23 Q. Did you see him -- did he ever say anything to you
- 24 while the things were going on?
- 25 A. Yes, ma'am.

1 Q. What did he say?

2 A. He would say, "You like it."

3 Q. Did he ever threaten you?

4 A. Yes, ma'am.

5 Q. What did he tell you?

6 A. He would threaten if we ever told, then he would
7 hurt us really bad.

8 Q. Did Minor 1 -- did you ever see him do things to
9 Minor 1 ?

10 A. Yes, ma'am.

11 Q. What did you see him do to Minor 1 ?

12 A. The same thing.

13 Q. Did you ever see him try to hurt Minor 1 ?

14 A. No, ma'am.

15 Q. Other than the bad things?

16 A. No, ma'am.

17 Q. When did you finally tell someone that was
18 happening, what was happening? Or who did you tell?

19 A. Sandy.

20 Q. Is she your stepmom?

21 A. (Witness nodding affirmatively.)

22 Q. Why did you finally tell?

23 A. Because I didn't like it.

24 Q. Did Minor 1 -- did Sandy call the police?

25 A. Yes, ma'am.

1 Q. Did she also take you to the hospital?

2 A. Yes, ma'am.

3 Q. Do you remember talking to a nice nurse at the
4 hospital?

5 A. Yes, ma'am.

6 Q. Did you tell me the same things that you told her
7 that day?

8 A. Yes, ma'am.

9 Q. So, Minor 2, I just want to make sure I understand
10 because I know this is hard, that during the time you
11 lived next to Minor 1, Jessie touched your private
12 parts, your girl privates, both in and on them; is that
13 correct?

14 A. Yes, ma'am.

15 Q. And you saw him touch Minor 1's private parts?

16 A. Yes, ma'am.

17 Q. And did -- and he made you touch his boy privates?

18 A. Yes, ma'am.

19 Q. Hold on one second for me. Okay?

20 When you say he touched the inside of your girl
21 privates, what did he touch it with?

22 A. His boy privates or his hands.

23 Q. Okay. What part -- did his hand ever go inside your
24 girl private?

25 A. Yes, ma'am.

1 Q. Minor 2 , thank you. Answer any questions Mr. Day has.
2 Okay?

3 CROSS-EXAMINATION

4 BY MR. DAY:

5 Q. Minor 2 , I'm Danny Day. I've got some questions I've
6 got to ask you. Okay?

7 A. (Witness nodding affirmatively.)

8 Q. And if you don't understand my questions, please
9 tell me. It's okay not to be able to understand some of
10 my questions. So if you don't understand, just say so.
11 Okay?

12 A. Yes, sir.

13 Q. I notice you have a friend with you. And who is
14 that?

15 A. Bull.

16 Q. Is that your good friend?

17 A. (Witness nodding affirmatively.)

18 Q. I don't blame you. I'm a big boy. I had one of
19 those, too.

20 All right. Try to understand my question. I'm
21 sorry to have to ask you these questions. Okay? When
22 Ms. Simmons was asking you some questions about Jessie,
23 where did these things supposedly take place?

24 A. In his room or in Minor 1 's room.

25 Q. And whose house was that?

- 1 A. Hillbilly's.
- 2 Q. Who?
- 3 A. Hillbilly's.
- 4 Q. Okay. And this is at Minor 1 's house?
- 5 A. (Witness nodding affirmatively.)
- 6 Q. Okay. Did you live there in that house?
- 7 A. No, sir.
- 8 Q. Where did you live?
- 9 A. In front of their house.
- 10 Q. Y'all lived on the same street?
- 11 A. Yes, sir.
- 12 Q. Okay. Do you remember when these things happened?
- 13 A. Last year during 2012.
- 14 Q. During 2012, okay. Do you remember when in 2012?
- 15 A. No, sir.
- 16 Q. Well, do you remember was it -- when it was cold
- 17 outside?
- 18 A. No, sir.
- 19 Q. Would it have been when it was hot outside?
- 20 A. I think it was hot.
- 21 Q. Okay. So sometime when the weather was hot is when
- 22 you remember this happening?
- 23 A. Yes, sir.
- 24 Q. Okay. Now, did you, your family and Minor 1 's
- 25 family and Jessie and his family, did y'all do things

1 together?

2 A. Yes, sir.

3 Q. Did you go places together?

4 A. Yes, sir.

5 Q. Where was some of the places that you would go?

6 A. Sometimes we would go out to eat. That's usually
7 what we did.

8 Q. Out to where? I'm sorry.

9 A. Out to eat.

10 Q. Oh, okay. Did y'all go to playgrounds?

11 A. Not that I can remember.

12 Q. Go to any parks?

13 A. No, sir.

14 Q. Did you go out on the lake?

15 A. No, sir.

16 Q. Go swimming together?

17 A. Not when Jessie was around. Not when --

18 Q. Okay. Now, the Solicitor asked you some very --
19 very hard questions about what happened. So I've got to
20 ask about some of those, too. Okay? So you said some
21 things happened to you. Do you remember how many times?

22 A. More than once.

23 Q. Would it have been three times?

24 A. It was more than three, I think.

25 Q. You think it was more than three. And did all of

- 1 these take place in the same place?
- 2 A. Yes, sir.
- 3 Q. Always in Jessie's room?
- 4 A. (Witness nodding affirmatively.)
- 5 Q. Is that right?
- 6 A. Yes, sir.
- 7 Q. Okay. All right. Now, Minor2, getting ready for
- 8 today, do you remember who were the people you talked to
- 9 about what you were going to say today?
- 10 A. Yes, sir.
- 11 Q. Huh?
- 12 A. Yes, sir.
- 13 Q. I'm sorry. I didn't understand.
- 14 A. Yes, sir.
- 15 Q. Okay. Who were they?
- 16 A. The Solicitor, the police officer and the nurse.
- 17 Q. And did you tell them what you were going to say
- 18 today?
- 19 A. Yes, sir.
- 20 Q. And did they go through and try to make sure they
- 21 understood what you were saying?
- 22 A. Yes, sir.
- 23 Q. About how many times did y'all do that, do you
- 24 think, that you remember?
- 25 A. Four or three.

1 Q. And where did y'all do this?

2 A. Mostly here or somewhere else.

3 Q. Okay. When you say "mostly here," here in the
4 courthouse?

5 A. With the Solicitor. The others were --

6 Q. Oh, downstairs -- I'm sorry.

7 A. Mostly here with the Solicitor, and then the others
8 were out -- were they -- where their office was.

9 Q. Okay. And you said four or three times that you
10 remember?

11 A. Yes, sir.

12 Q. Is that right?

13 A. Yes, sir.

14 Q. Okay. All right.

15 Okay. One second, please, ma'am.

16 Minor 2, thank you very much.

17 MR. DAY: That's all I have, your Honor.

18 MS. SIMMONS: Judge, I have no redirect. I would
19 ask that Minor 2 be released to go back to school also.

20 MR. DAY: No objection.

21 THE COURT: Without objection, you may be
22 excused. Thank you, ma'am.

23 I tell you what. Let's take a short break.

24 Mr. Foreman, ladies and gentlemen, I'm going to
25 ask you to retire to the jury room for, like I say, a

1 short break. Are there any refreshments back there?

2 Let's use this as a morning break. And then when you're

3 ready to come back, if you will just knock on the door.

4 I understand you have some smokers, so those that would

5 like to smoke, if they would go with the bailiff. All

6 right? Again, do not undertake discussion of the case

7 among yourselves in any way.

8 (WHEREUPON, the jury exited the courtroom

9 at 11:29 a.m.)

10 THE COURT: All right. We'll stand at ease until

11 the jury is ready to come back.

12 (WHEREUPON, recess taken from 11:30 a.m.

13 to 11:52 a.m.)

14 THE BAILIFF: Court come to order. Keep your

15 seats.

16 THE COURT: We were talking about scheduling.

17 Let's see how it goes, but I think we ought to break at

18 least at 1 o'clock. So, I mean, we'll finish your next

19 witness, but I don't know if we want to take another one.

20 MS. SIMMONS: Thank you, Judge.

21 THE COURT: All right. Ask the jury to join us.

22 Wait a minute.

23 Is there anything more from the State?

24 MS. SIMMONS: No, your Honor.

25 THE COURT: Anything from the defense?

1 MR. DAY: No, your Honor.

2 THE COURT: Very good. Ask the jury to join us,
3 please.

4 (Whereupon, the jury came into open court at
5 approximately 11:54 a.m.)

6 THE COURT: The last seat, I would suggest that
7 you move up one seat everybody. The reason for that, of
8 course, is the witness box in this courtroom is a little
9 bit further away so that I think it's good to be as close
10 as you could be.

11 All right. Let the record reflect that the jury
12 and alternates are in the jury box.

13 Mr. Foreman, ladies and gentlemen of the jury,
14 we'll now continue with the trial of the case.

15 Madam Solicitor, you may call your next witness.

16 MS. SIMMONS: Thank you, Judge. The State calls
17 Lieutenant Gentry Hawk.

18 **GENTRY MORRIS HAWK, II,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20

21 THE COURT: All right. If you would, please,
22 sir, give us your full name for the record.

23 THE WITNESS: Gentry Morris Hawk, II, H-a-w-k.

24 THE COURT: Thank you.

25 DIRECT EXAMINATION

1 BY MS. SIMMONS:

2 Q. Lieutenant Hawk, where are you employed?

3 A. At the Oconee County Sheriff's Department.

4 Q. And how long have you been there?

5 A. Right around 16 years.

6 Q. Your current rank is lieutenant?

7 A. Yes, ma'am.

8 Q. Is that a recent promotion?

9 A. Yes, ma'am.

10 Q. What was your rank back when you investigated this
11 case?

12 A. I was a sergeant.

13 Q. As a lieutenant at the sheriff's department, your
14 particular job, what do you do?

15 A. I investigate all crimes that involve children,
16 vulnerable adults, elderly, homicides, crimes against
17 persons. You know, any violent crimes that happen
18 against a person.

19 Q. As lieutenant of the investigative division, are you
20 also over all the other investigators?

21 A. Yes, ma'am.

22 Q. Tell me a little bit about your background.

23 A. Well, as far as school, I graduated from Seneca High
24 School back in 1988. I went to college for a year and
25 then I went into the military. I joined the Navy, and I

1 became a Navy diver, stationed all over the world. Then
2 I, subsequently from getting out of the military, I went
3 to Seneca Police Department and started working at Seneca
4 Police Department as a road officer at which time I
5 started dating my wife, and she's a teacher, so I started
6 working with kids. And I went into being a school
7 resource officer at Seneca Middle School. And then the
8 sheriff's office had gotten a position for school
9 resource officer at West-Oak High School, and I applied
10 and got that job and worked at West-Oak for approximately
11 five years. And then I went into investigations as a
12 domestic violence investigator where I investigated --
13 started our domestic violence unit. And then we got a
14 position for child and elder abuse investigator, and I
15 was moved into that a year later.

16 Q. So you've been doing that a while?

17 A. Approximately ten to 11 years.

18 Q. How did you become involved in this case related to
19 this defendant?

20 A. I was called by the road officer. He was working
21 night shift, and he called me because of the seriousness
22 of the crime. He called me because I was -- obviously
23 I'm an investigator and I worked those kinds of crimes,
24 and he called me to come out and assist him.

25 Q. Who are the victims that you identified in the case?

1 A. Minor 1 and Minor 2

2 Q. And, to your knowledge, is Minor 2 related to the
3 defendant or his mother in any way?

4 A. Not to my knowledge, no, ma'am.

5 Q. Just shares the same last name?

6 A. Yes, ma'am.

7 Q. Did you have interviews of the victims conducted in
8 this case?

9 A. Yes, ma'am. Involving small children like this,
10 when we have allegations made, I refer them to the Child
11 Advocacy Center. It's a place that's set up for kids to
12 do interviews where it's, you know, it's not in the law
13 enforcement center, it's not in a hospital. It's done in
14 a child-friendly setting where we can interview the kids,
15 and it's done one-on-one with a forensic interviewer.

16 Q. During the course of your investigation, did you
17 find that a location of the events alleged by the
18 children was in Oconee County?

19 A. Yes, ma'am.

20 Q. And what city was it in?

21 A. In Westminster.

22 Q. How did you create a time frame for the events?

23 A. Based on the defendant's statement when he moved
24 into the residence as well as with the children and the
25 family members.

1 Q. So you established that time frame is between June
2 of 2012 to the beginning of January 2013?

3 A. Yes, ma'am.

4 Q. With children, is it often -- are you often able to
5 isolate a specific day?

6 A. No, ma'am, not with young children like that.

7 Q. Did you order physical examinations of the victims
8 in this case?

9 A. Yes, ma'am. As commonplace with crimes like this,
10 whenever there's any kind of penetration allegations, we
11 will send them to the same place, which is the Child
12 Advocacy Center, where they have a doctor there that does
13 the medical exams. She does them for the Child Advocacy
14 Center and she specializes in these type of cases.

15 Q. Did those examinations result in physical evidence?

16 A. Yes, ma'am.

17 Q. Or medical evidence, I'm sorry?

18 A. Yes, ma'am.

19 Q. I want to show you -- you've seen what's been marked
20 as State's Exhibit 8 and 9. Do you recognize these as
21 the items you recovered from the home?

22 A. Yes, ma'am.

23 Q. When you went to the -- you went to the defendant,
24 where he was living, to speak with him, right, initially?

25 A. Yes, ma'am.

1 Q. What did you tell him when you got there?

2 A. Well, when we went there, due to the allegations
3 being made that one of the victims possibly lived in the
4 residence with him, as a police officer, for the
5 defendant's safety as well as my safety and the people
6 inside the home, I asked him to come outside when we got
7 to the residence. Well, first I knocked on the door. As
8 we were driving up, myself and the deputy, I saw a head
9 pop out the door and look and shut the door.

10 So I went to the front door and knocked on the
11 door, asked him to identify himself, asked if he was
12 Jessie, asked him to step outside to get away from the
13 residence, and I wanted to, you know, talk to him. When
14 we got out there, I told him there was some allegations,
15 made against him, and I asked him if he would voluntarily
16 come with us to the sheriff's office where we could
17 conduct an interview away from the residence, away from
18 where the possible -- another victim was and her father.
19 It's just not a good situation at the residence to talk
20 to him there.

21 Q. Was there anything unusual on the defendant's person
22 before you left for the sheriff's office?

23 A. Well, he -- he -- it was my fault. He had his hands
24 in his pocket the whole time talking to us. And as a
25 police officer, that's something that I'm not comfortable

1 with. When he agreed to come with us, he had said,
2 "Well, what do I do with my gun?" and started to pull his
3 hands out of his pocket, at which time Deputy Freeman
4 grabbed his arms -- or grabbed hand and stopped him and
5 said, "Don't take it out." Which he had all the right to
6 have his gun. He was on his property. We took it from
7 him for our safety as well as his and put it in the
8 patrol car, and he then voluntarily went to the sheriff's
9 office with us to talk about the allegations.

10 Q. Do you recall the date you began talking to him at
11 the sheriff's office?

12 A. It was January 3rd.

13 Q. Of what year?

14 A. 2013.

15 Q. Did you advise the defendant of his constitutional
16 rights when you started talking to him?

17 A. Yes, ma'am.

18 Q. Did you do so using a rights form?

19 A. Yes, ma'am.

20 Q. I'm going to show you what's been premarked as
21 State's Exhibit 1. Do you recognize this?

22 A. That's our Miranda rights form that we use in
23 investigations when we read somebody their Miranda rights
24 form when we're going to question them about a crime they
25 have been accused of.

1 Q. Is this the one you used on that day?

2 A. Yes, ma'am.

3 MS. SIMMONS: Judge, the State would move in
4 State's Exhibit 1 officially for the jury.

5 MR. DAY: There won't be any objection.

6 THE COURT: State's Exhibit Number 1 is admitted.

7 (WHEREUPON, State's Exhibit Number 1 was admitted
8 into evidence.)

9 BY MS. SIMMONS:

10 Q. Do you recognize this form as the one you used with
11 Jessie Davis?

12 A. Yes, ma'am.

13 Q. Where did this take place?

14 A. In the criminal investigations division in one of
15 our interview rooms.

16 Q. What time did you start advising him of his rights?

17 A. At 11:15 p.m.

18 Q. And what time did you finish?

19 A. 11:18 p.m.

20 Q. Did he sign to indicate that he understood his
21 rights?

22 A. Yes, ma'am.

23 Q. And who witnessed that signature?

24 A. Myself and Deputy Freeman.

25 Q. When you go over rights with a defendant, do you

1 have them read it or do you read it to them?

2 A. I read it to them.

3 Q. Can you explain the process of reading it and read
4 it exactly as you read it to Mr. Davis that night.

5 A. Yes, 'ma'am. When I do Miranda rights, first of all,
6 I do what's called a record of interview. I get the
7 personal information. And then I tell them the
8 allegations made against them so they understand what
9 we're talking about. Then I go through and I fill out
10 place, which is Oconee County Sheriff's Office, which is
11 OCSO is what I put down for initials. The date is 1/3
12 and I apologize. It was right after the first of the
13 year. It's 2013. I have -- for about the first week I
14 write down the old year. And I did that in this instance
15 as well. And time was 11:15 p.m. And I will then go
16 into and I tell them that if you don't understand -- I
17 read them line for line. "If you have any questions or
18 don't understand it, ask me and I will explain it to
19 you."

20 So I began and I read them, "Before we ask you
21 any questions, you must understand your rights." And
22 after each line I read to them, I have them initial it,
23 which he did, that he understood it, didn't have any
24 questions. And then next line, "You have the right to
25 remain silent," and I asked him if he understands it,

1 puts his initials on it, which you can see right there he
2 did. "Anything you say can be used against you in
3 court." Did the same thing, asked him if he understands
4 it, puts his initials next to it. "You have the right to
5 talk to a lawyer for advice before we ask you any
6 questions and have him with you during questioning." He
7 understood it, put his initials next to it. "If you
8 cannot afford a lawyer, one will be appointed for you
9 before any questions if you wish," which he initialed
10 that he understood it. "If you decide to answer
11 questions now without a lawyer present, you will still
12 have the right to stop answering at any time," which he
13 initialed it that he understood it. "I have read this
14 statement of my rights, and I understand what my rights
15 are. I am willing to make a statement and answer
16 questions. I understand and know what I am doing. No
17 promises or threats have been made to me, and no pressure
18 or coercion of any kind has been used against me," which
19 he initialed that paragraph as well that he understood
20 it, and then he signed it, waiving his rights. He wanted
21 to talk to me about the allegations.

22 Q. Did you deny him any comforts during the course of
23 the -- of this interview like the restroom, a break,
24 food, anything like that?

25 A. No, ma'am.

1 Q. Was he in handcuffs at this time?

2 A. No, ma'am.

3 Q. Was he officially under arrest or in custody?

4 A. No, ma'am.

5 Q. Where was he in the room?

6 A. He was seated down at the table.

7 Q. And who else was present with you?

8 A. Deputy Freeman.

9 Q. Was he present during the entire interview?

10 A. Yes, ma'am.

11 Q. At any point did the defendant indicate that he

12 wished to exercise his right to counsel?

13 A. No, ma'am.

14 Q. In your opinion, did the defendant seem to

15 understand his rights?

16 A. Oh, yes, ma'am.

17 Q. Was he intoxicated or under the influence of illegal

18 drugs based on your training and experience?

19 A. No, ma'am.

20 Q. Did you ever threaten him or promise him anything to

21 get him to sign the form?

22 A. No, ma'am.

23 Q. Did you ever intimidate him?

24 A. No, ma'am.

25 Q. Did you actually -- did this actually involve an

1 interrogation or was it more of a discussion? I know
2 there's different kinds of interviews.

3 A. It was more of a discussion. We were just talking.

4 Q. Did you ever raise your voice?

5 A. No, ma'am.

6 Q. Was the defendant subsequently interviewed by Mike
7 Lark?

8 A. Yes, ma'am.

9 Q. What does he do for the sheriff's office?

10 A. He's a consultant. He's a contract interviewer.

11 Q. Can you describe him for me?

12 A. He's an older man, nice, been doing it for quite a
13 while, interviewing.

14 Q. The defendant went to talk to him for a while?

15 A. Yes, ma'am.

16 Q. Were you present in the room with him?

17 A. No, ma'am.

18 Q. Based on your knowledge, did he ever ask Mr. Lark
19 for an attorney?

20 A. No, ma'am.

21 Q. After the defendant spoke with Mr. Lark, did he
22 indicate that he wanted to speak to you further?

23 A. Well, Mr. Lark called me. And because he was in the
24 room interviewing him, he called me on my cell phone
25 because I was outside the room and told me to come in

1 there, that he was basically confessing to him about the
2 allegation -- what he had done to the victims.

3 Q. Did Mr. Davis tell you anything different than he
4 told Mr. Lark, more?

5 A. No.

6 Q. Did he tell you more than he told Mr. Lark?

7 A. Yes, ma'am.

8 Q. Did you subsequently obtain a written statement from
9 Mr. Davis?

10 A. Yes, ma'am.

11 MS. SIMMONS: Judge, the State would move in
12 State's Exhibit 2 at this time.

13 MR. DAY: No objection your Honor.

14 THE COURT: State's Exhibit Number 2 is admitted.
15 Now that is the statement?

16 MS. SIMMONS: Yes, your Honor.

17 (WHEREUPON, State's Exhibit Number 2 was admitted
18 into evidence.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, a statement purportedly made by
21 the defendant has been admitted as evidence. However,
22 that was done by the Court based on the testimony that I
23 had yesterday, and it was done only based on a
24 preponderance of the evidence. In other words, it was
25 not the same degree. You have a much more difficult

1 degree in determining whether or not what, if any,
2 consideration will be given to this statement because you
3 have to be satisfied that it's beyond a reasonable doubt
4 that is freely and voluntarily given without any threat,
5 compulsion or fear or anything, and that it was a free
6 and voluntary statement of the defendant.

7 First of all you have to start out with whether
8 or not it was even the statement made by the defendant.
9 So once you are satisfied of all that, then you may give
10 it whatever weight you would give it. But it's like any
11 other evidence. It's your determination what weight or
12 what importance it is to be given. But more importantly
13 than anything else, you have to be decided -- you have to
14 be satisfied beyond a reasonable doubt that it is the
15 statement of the defendant and it is was freely,
16 voluntarily, knowingly and intelligently made, and that
17 he voluntarily waived his rights under the Miranda
18 warnings and that he made that statement. There again,
19 as I say, that will all be up to you to determine.

20 You may proceed.

21 MS. SIMMONS: Thank you, Judge.

22 BY MS. SIMMONS:

23 Q. Did you write this statement for the defendant or
24 did he write it?

25 A. I wrote it for him.

1 Q. Why did you write it for him?

2 A. He asked me to because he said he couldn't spell
3 very well.

4 Q. When you say he couldn't spell very well, did he
5 appear to be mentally challenged in any way?

6 A. No, ma'am, not that I could tell.

7 Q. Based your training and experience, did he seem
8 pretty average?

9 A. Yes, ma'am.

10 Q. So when did you begin writing the statement the
11 defendant gave you?

12 A. Approximately 1:48 a.m. on the 13th.

13 Q. Did he appear to be sleep deprived when he started
14 talking to you?

15 A. No, ma'am.

16 Q. Did he seem to be alert?

17 A. Yes, ma'am.

18 Q. Can you read to me the top of the form that you
19 filled out there.

20 A. It says date was 1/4/13. Place, Oconee County
21 Sheriff's Office. Time started, 1:48 a.m. "I, the
22 undersigned, Jessie Wayne Davis, am 21 years of age, my
23 date and place of birth being the

24 ." I didn't get where he was born at. That's
25 what that next line is for. "I now live at

1 Drive, Westminster, South Carolina 29693." I can't read
2 that. "Before answering any questions or making any
3 statements, Gentry Hawk and Jay Freeman, persons who
4 identified themselves as investigator of Oconee County
5 Sheriff's Office."

6 Q. And does the next section cover the Miranda rights
7 that you had already gone over?

8 A. Yes, ma'am.

9 Q. Did you allow the defendant the opportunity to look
10 at that?

11 A. Uh-huh.

12 Q. And do you recognize this as page one of his
13 statement?

14 A. Yes, ma'am.

15 Q. Did you write it in exactly the defendant's own
16 words?

17 A. Yes, ma'am. He said it, and as he said it, I wrote
18 it out.

19 Q. Can you read the first page to the jury.

20 A. Yes, ma'am. "I, Jessie Davis, had asked
21 Investigator Hawk to write this in my words." It says
22 "Minor 2," but it's scratched through. "I was in my room
23 watching porn jacking off as usual and drunk as hell.
24 Minor 2 came in, sat on my lap like she usually does.
25 I told her to get out. She didn't listen, just kept

1 grinding on my lap and asking what I was doing. I threw
2 her off and threw the covers off, said, 'Are you happy?'
3 And she started looking at it. I had a hard on. She
4 touched my penis. She asked what I was doing. I said,
5 'Jacking off.' She asked, 'What's that?' So I showed
6 her. She then started to jack me off. She says she was
7 feeling funny in the front. I told her she was probably
8 getting wet or had to pee. She said, 'What do you mean?'
9 I told her when man and woman rub each other, it feels
10 good. She wanted to see, so she took her pants down, and
11 my penis rubbed in the upper crack of her butt."

12 Q. Did the defendant subsequently sign the first page
13 of the statement?

14 A. Yes, ma'am, but he signed it at the end of the
15 statement together, but he did sign it, yes, ma'am.

16 Q. What time did he sign the first -- the entire
17 statement?

18 A. 2:09 a.m. on the 4th of January 2013.

19 Q. And did you notarize that? Is that your signature?

20 A. Yes, ma'am.

21 Q. And who were the witnesses to that?

22 A. Mike Lark and Jay Freeman.

23 Q. And, again, at this point had he indicated that he
24 wanted to speak to an attorney at any point?

25 A. No, ma'am.

1 Q. Do you recognize -- I'm going to show you what is
2 page two of the statement. Do you recognize this?

3 A. Yes, ma'am.

4 Q. Can you keep reading.

5 A. "She said her wee-wee and showed me it. And I
6 pointed at it and touched it with the tip of my finger.
7 Said it was a pussy or vagina. She said it felt weird.
8 I then stopped. Minor1 walked in when Minor2 was
9 rubbing on my penis with her pants down. And Minor2 said,
10 'Come here.' Minor1 said, 'What are you doing?' Minor2
11 said, 'It is funny what this thing does.' Minor1 came
12 over and jacked me off and then took her pants down and
13 rubbed my penis with her butt. She then put my penis in
14 her mouth. I think she was wondering what it tastes
15 like. Her teeth rubbed my penis. I told them not to
16 tell and I was sorry. This happened between October and
17 November at the residence, Drive, Westminster,
18 in my room. I don't think anyone else was at home. This
19 only happened this one time with both girls."

20 Q. At any point in time did you suggest what the
21 defendant should say?

22 A. Oh, no, ma'am.

23 Q. And are these words written in your words or his
24 words?

25 A. They're in his words.

1 Q. Did you -- did he sign page two?

2 A. Yes, ma'am.

3 Q. When you were finished writing this, did you read it
4 back to him?

5 A. Yes, ma'am.

6 Q. How do you do that?

7 A. I read the statement back to him and tell him to
8 listen to it. If there's any changes that need to be
9 made, to let me know and make sure it's all the truth of
10 what is his statement.

11 Q. Were there a couple of changes that you made at his
12 request?

13 A. I don't know if they were at his request or I just
14 scratched out because as I was writing it, he was telling
15 me things. But he initialed them when I scratched them
16 out. You can see by the word "Minor I ," the "JD" and
17 then "her" and towards the bottom it's got his initials
18 on it. And when I finished the statement, I crossed it
19 out and I have them put their initials big so nothing
20 else can be added to the statement.

21 Q. Is this a full and complete depiction of what the
22 defendant told you that day?

23 A. Yes, ma'am.

24 Q. What did you do after the statement was given?

25 A. After that, I asked him if he -- if he was -- I told

1 him he was sorry, and I know they were sorry and asked
2 him if he wanted to write letters of apology to the
3 girls.

4 Q. Did he subsequently write those letters?

5 A. Yes, ma'am.

6 Q. Who took care of that portion of the investigation?

7 A. Deputy Freeman.

8 Q. What did you place the defendant under arrest for
9 eventually?

10 A. For CSC third.

11 Q. What else did you charge him with?

12 A. At the beginning I charged him with CSC third and
13 CSC with a minor first degree, which is the penetration.
14 That was based on what she told at the hospital, what her
15 stepmother told me, and what he had disclosed to me. So
16 I charged him with just the case on Minor2 because we
17 had not interviewed or spoken with the other victim,
18 Minor1, at that point.

19 Q. Once you interviewed Minor1 and conducted that
20 investigation, did you charge the defendant with anything
21 else?

22 A. Yes, ma'am. I charged him with the instances with
23 Minor1 with CSC first degree, several counts, and CSC
24 third degree.

25 Q. And both children were under the age of 11 at the

1 time of the offense?

2 A. Yes, ma'am.

3 Q. How old was the defendant when he was speaking to
4 you?

5 A. He was 21.

6 Q. After the interview, did you allow him to talk to
7 anyone?

8 A. His mother.

9 Q. Was she waiting at the sheriff's office?

10 A. Yes, ma'am.

11 Q. Did you allow them to have conversation?

12 A. Yes, ma'am.

13 Q. Tell me about that.

14 A. She came in the room. And, you know, after I placed
15 him under arrest for the CSCs and stuff, and I had
16 allowed her to come into the room and talk to him. And
17 subsequent from the conversation, you know, he told her
18 he wished he could tell her it wasn't true but he can't.

19 Q. Did you allow them any time together after that?

20 A. Yes, ma'am. We allowed them to speak in our
21 interview room for a little while, and then we took him
22 downstairs and let him smoke. We have -- it's a
23 courtyard kind of thing in the sheriff's office where we
24 have a gazebo. And that's where a lot of people who
25 smoke go smoke, so we let them sit down there and smoke

1 and talk.

2 Q. And what happened after that?

3 A. ' He was taken to the detention center.

4 Q. Please answer any questions Mr. Day may have.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. DAY:

8 Q. Let me make sure I understand this. What time was
9 it that y'all picked Jessie up at the house?

10 A. It was approximately 10:00, between 10:40 and 10:50
11 on the 3rd.

12 Q. Okay. And how was he transported to the sheriff's
13 department?

14 A. He was in Deputy Freeman's vehicle.

15 Q. Now, you weren't in there with him?

16 A. No, sir.

17 Q. Did you arrive at the sheriff's department first or
18 did Deputy Freeman and Mr. Davis?

19 A. They were arrived first.

20 Q. Were did y'all go in the sheriff's department?

21 A. When I got there?

22 Q. Uh-huh.

23 A. They were outside. I let them in investigations.
24 They were in the lobby upstairs.

25 Q. And where in the sheriff's department did you go?

1 A. In the CID investigations. Our investigation area.

2 Q. And that was locked up; you had to use a key to get
3 that into that building?

4 A. To get in, but it's not locked to get out.

5 Q. I see. But you had to use a key to get in?

6 A. It's not a key. It's one of those key cards that
7 does the locks, electronic things.

8 Q. First floor, second floor?

9 A. Second floor.

10 Q. Second floor. So you went up to the second floor,
11 you and Jessie Davis and Deputy Freeman?

12 A. Yes, sir.

13 Q. Anyone else?

14 A. At that time, no, sir.

15 Q. And what did y'all do?

16 A. We came back into the interview room, and we sat
17 down. And like I said, I filled out a record of
18 interview, informed him of the allegations made against
19 him, and then I went into his Miranda rights.

20 Q. And he denied it?

21 A. Denied.

22 Q. Denied those allegations?

23 A. Yes, sir.

24 Q. Now, at some time you said Mr. Lark arrived?

25 A. Yes, sir.

1 Q. And where did he go?

2 A. They went into another interview room that we have
3 at the sheriff's office. We have several of them in a
4 row.

5 Q. So he goes into that room?

6 A. Yes, sir.

7 Q. With Mr. Lark?

8 A. Yes, sir.

9 Q. All right. Do you remember approximately what time
'10 that was?

11 A. I do not.

12 Q. So, now, while he's in there with Mr. Lark, where
13 are you?

14 A. I'm in the CID. We have a conference room where we
15 go to and my office, so I was probably back and forth
16 between all of them. I don't remember exactly where I
17 stayed the whole time.

18 Q. And how long was Mr. Davis in the room with
19 Mr. Lark?

20 A. I believe about an hour and 45 minutes. Somewhere
21 between there and two hours.

22 Q. Did you go into that room during that time?

23 A. At the very end, yes, sir.

24 Q. But not during while he was in there?

25 A. No, sir.

1 Q. Anyone else go in there that you know of?

2 A. No, sir.

3 Q. This was -- now we're talking about an hour and
4 45 minutes, so we're talking somewhere around midnight,
5 he's in there with Mr. Lark for another hour and
6 45 minutes?

7 A. Somewhere around there because my statement started
8 at 1:48 a.m., so it would have been, the few minutes
9 would have been when he ended with Mr. Lark that I talked
10 to him with that statement.

11 Q. Now, when he left you, your presence, he denied
12 these charges; is that correct?

13 A. Yes, sir.

14 Q. And then Mr. Lark apparently comes out and said, Oh,
15 he's now admitted to everything; is that correct?

16 A. He didn't admit to everything, no, sir. He admitted
17 to what he had done, what he says he had done to the
18 girls.

19 Q. Okay. So he changed 180 degrees. He went from "I
20 didn't do it," walking out of the room, says, "Yeah, I
21 did is"; that correct?

22 A. Yes, sir.

23 Q. But you didn't ask him any questions during that
24 time, you or any other police officer?

25 A. During the time he was with Mr. Lark?

1 Q. Yes.

2 A. Not until I went back in the room when he started
3 confessing.

4 Q. Right. But when Mr. Lark came out and said, Yeah,
5 he's admitting to everything, no police officer spoke to
6 him?

7 A. No, sir.

8 Q. And Mr. Lark is an agent of the sheriff's department
9 working for y'all; is that right?

10 A. Yes, sir.

11 Q. He's not a salaried employee, but he is working for
12 y'all at that time?

13 A. Yes, sir. He's contract.

14 Q. Now, once Mr. Lark comes out and says, Oh, he's
15 admitted to everything, what did you do?

16 A. Well, he called me on the telephone and said he was
17 admitting, so I went in there and listened to him telling
18 him what he was telling him. And then we moved into the
19 interview room where we had started with him, and
20 basically we started talking, and he gave me his
21 statement and we wrote it out.

22 Q. Now, prior to this time going in with Mr. Lark and
23 these statements here, you're saying he never asked for a
24 lawyer?

25 A. No, sir.

1 Q. Did he ask for anybody?

2 A. He did. He asked for his mother.

3 Q. And what did you tell him when he asked for his
4 mother?

5 A. I told him he was a grown adult. He was 21 years
6 old. It was his decision if he wanted to talk to me. I
7 was not going to talk to his mother.

8 Q. He didn't ask for you to talk to his mother. He
9 said he wanted to talk to his mother; isn't that right?

10 A. No. He said his mother said not to talk to us until
11 she got there. And I told him, you know, "You're 21.
12 You have to make your own decisions if you're going to
13 talk to me." This is a case involving kids. I'm not
14 going to talk to his mother concerning this case because
15 she's not a party, in the allegations.

16 Q. But he wanted to speak to his mother?

17 A. Yes, sir. Well, he didn't ask me to speak to her.
18 He asked, he said, you know, "My mom said not to talk to
19 you or anybody until she got here."

20 Q. Okay. And you just told him no?

21 A. I told him he was a grown adult. It was his
22 decision whether he was going to talk to me or not.

23 Q. All those words come out n-o, no?

24 A. What's that?

25 Q. All those words you said, when you boil them right

1 down, you said no?

2 A. No, sir. He could have said, "You know what, I'm
3 not going to talk to you. I'm going to go home with my
4 mom," and we would have been done.

5 Q. You're saying he could have?

6 A. He could have, yes, sir.

7 Q. But he asked for his mother and you told him no?

8 A. I didn't tell him no. I told him he's an adult. If
9 he wants to talk to me, he has to make that decision.

10 Q. Right. Say it all you want. Okay.

11 Then you got and wanted a statement from him; is
12 that correct, a written statement?

13 A. At the end, yes, sir.

14 Q. And you asked him to do that?

15 A. I asked him to write a statement, yes, sir, about
16 what he did.

17 Q. But he didn't write one?

18 A. No, sir. He asked me to write it for him.

19 (The defendant left the courtroom.)

20 Q. You sat down, then, you said, and you wrote this for
21 him, and then you wanted him to sign it?

22 A. I wrote it in his words, yes, sir, what he told me
23 to write.

24 Q. Up until that point was he free to leave?

25 A. Oh, yes, sir.

1 Q. Was he under arrest?

2 A. No, sir.

3 Q. So you're saying that in the sheriff's department
4 where you had to go through a locked door to go to the
5 second floor in the middle of the night, that he was free
6 to get up and walk out any time he wanted to?

7 A. Yes, sir. Until he confessed to me, he was free to
8 leave.

9 Q. And did you tell him that?

10 A. I don't remember -- I don't recall telling him that,
11 no, sir.

12 Q. Okay. Now, when -- were you there when supposedly
13 some other statements were written, or was that Deputy
14 Freeman?

15 A. I was there when he was writing them. He asked
16 Deputy Freeman to write those for him. I was there. I
17 don't know if I was there for all of them or I stepped
18 out of the room for some of it.

19 Q. Okay. Did Deputy Freeman -- did Deputy Freeman stay
20 in there with you all during that time?

21 A. Yes, sir.

22 THE COURT: Just a moment. All right.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 I'm going to have to ask you to retire to the jury room,
25 if you would. I'll call you back as soon as I can.

1 Again, do not undertake the discussion of the
2 case among yourselves.

3 (Whereupon, the jury exited the courtroom.
4 at 12:25 p.m.)

5 THE COURT: All right. Do you know what the
6 situation is, Mr. Day?

7 MR. DAY: Apparently he's taken ill, your Honor.
8 They have called EMS just to be sure.

9 THE COURT: All right. We'll stand at ease until
10 we hear. All right. You can step down, Mr. Hawk. You
11 do understand you are under oath, so you cannot discuss
12 your testimony with anyone.

13 THE WITNESS: Yes, your Honor.

14 THE COURT: Very good. Thank you. We'll stand
15 at ease until further notice.

16 (Whereupon, recess taken from 12:26 p.m.
17 to 12:51 p.m.)

18 (Whereupon, the jury came into open court at.
19 approximately 12:51 p.m.)

20 THE COURT: Let the record reflect that the jury
21 and alternates are in the jury box.

22 Mr. Foreman, as you can see, things have sort of
23 cleared out some here. One development we have had is
24 that the defendant apparently is having some health
25 problems, and so we have taken him to be treated and so

1 he's not going to be here.

2 Also it's our understanding that this weather is
3 coming through, apparently is making its presence known
4 now, and the schools, if I'm not mistaken, I think the
5 schools are getting out at 1:00 and then the high school
6 at 1:30. So, obviously, we can't finish this case today,
7 of course. It's not a time to maybe plan on doing
8 anything even tomorrow. So what I'm going to do is
9 excuse you and ask you to call back.

10 Now, Madam Clerk, do they have the numbers? Of
11 course they had the numbers for the balance of the jury
12 panel.

13 THE CLERK: Yes.

14 THE COURT: There is a telephone number that
15 we'll get you a copy of. And call this number not
16 tonight, but let's try for Wednesday night and hopefully
17 everything will be in a better position to complete this
18 case on Thursday. But do not call back tonight, but call
19 Wednesday night after 6 o'clock. There will be a
20 telephone -- it's an answering machine. There will be a
21 message on the telephone. And it will be on all night so
22 keep calling until you finally get through. If you don't
23 get through to a message on Wednesday night, you will
24 have to be back Thursday morning just to get the message.
25 It might be something that some development or something

1 that would take it out altogether, so it would be better
2 to get the message from the machine.

3 All right. Let's hand the numbers out.

4 Does anybody have the old number?

5 JUROR: If it's the same one we got the other
6 day, yes, sir.

7 THE BAILIFF: Who needs one?

8 THE COURT: Everybody that does not have one,
9 raise your hand.

10 THE BAILIFF: Just enough.

11 THE COURT: Now, you do understand what to do.
12 Don't call tonight but call tomorrow night, Wednesday
13 night, after 6 o'clock and there will be a message on
14 there telling you either to come in or giving you some
15 other information, and do whatever the message says.

16 Again, I know this is an inconvenience, but the
17 only thing, unfortunately we don't control the weather
18 and a lot of other things, but we're going to try to see
19 if we can get this matter resolved.

20 As you know, it's a very important case to
21 everybody involved, and it needs to be resolved in the
22 proper fashion, so do not permit anybody to interfere by
23 discussing the case with you.

24 All right. With that, I'll excuse you. And I
25 hope everybody -- get your milk and bread. All right.

1 We're off the record.

2 (Whereupon, the jury exited the courtroom

3 at 12:55 p.m.)

4 THE COURT: We'll stand at ease until further
5 call.

6 (WHEREUPON, proceedings adjourned at 12:56 p.m.)

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Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Oconee

Court of General Sessions

3

4 State of South Carolina,)
5 Plaintiff,) 2013-GS-37-344 to 349
6 -vs-) January 30, 2014
7 Jessie Wayne Davis,) Volume 3: Pgs. 268-404
8 Defendant.) Transcript of Record
9 -----)

10

B E F O R E:

11

The Honorable Alexander S. Macaulay, Judge;
12 and a jury

13

14 A P P E A R A N C E S:

15 Lindsey Satterfield Simmons, Assistant Solicitor
Attorney for the State

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17 R. Daniel Day, Jr., Esquire
Attorney for Defendant

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Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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I N D E X

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E x h i b i t s

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
For the State:			
3	Apology letter to ^{Minor}		314
4	Apology letter to ^{Minor 2}		314
5	Apology letter to		314
6	Apology letter to Chris		314
7	Apology letter to James		314

1 Walhalla, South Carolina; Thursday, January 30, 2014

2

3 (WHEREUPON, court convened without the defendant
4 present and the following proceedings were had
5 commencing at approximately 10:51 a.m.)

6

7 THE COURT: We're back on the case of the State
8 of South Carolina versus Jessie Wayne Davis. Is there
9 anything from the State before we bring the jury back?

10 MS. SIMMONS: No, your Honor.

11 THE COURT: From the defense?

12 MR. DAY: No, your Honor.

13 THE COURT: Except where is the defendant?

14 MR. DAY: They're getting him.

15 THE COURT: Okay.

16 (WHEREUPON, the defendant entered the courtroom.)

17 THE COURT: All right. Now is the defense ready
18 to proceed?

19 MR. DAY: Yes, your Honor.

20 THE COURT: All right. Ask the jury to join us,
21 please.

22 (Whereupon, the jury came into open court at
23 approximately 11:11 a.m.)

24 THE COURT: All right. Let the record reflect
25 the jury and alternates are in the jury box.

1 Mr. Foreman, ladies and gentlemen of the jury, I
2 hope that you all had safe trips and the last couple of
3 days have not been too uncomfortable. We'll now continue
4 with the trial of the case.

5 As you recall, Mr. Hawk was on the stand at the
6 time, so I'm going to ask Mr. Hawk to resume his place on
7 the witness stand. And you do understand you're still
8 under oath.

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Great. Thank you.

11 **GENTRY MORRIS HAWK, II,**

12 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

13

14 THE COURT: All right. You may proceed.

15 CROSS-EXAMINATION (Continued)

16 BY MR. DAY:

17 Q. Okay. Mr. Hawk, here we go again.

18 A. All right.

19 Q. Just to make sure I know where we were when we
20 stopped last time, as I remember, you said that you had
21 Mr. Davis at the sheriff's department, and you arrived
22 there or he arrived there somewhere around 10:30 at night
23 or quarter to 11:00. Does that sound right?

24 A. I believe it was somewhere around a quarter 'til
25 10:00 to 11:00 at night.

1 Q. This was at the sheriff's department?

2 A. Yes, sir.

3 Q. And when you arrived at the sheriff's department,
4 they had to wait for you to get there because you had the
5 key?

6 A. I had the key, yes, sir, to get into investigations.

7 Q. And went up into a conference room up on the second
8 floor?

9 A. Yes, sir.

10 Q. And this is in the criminal investigation division
11 portion of the sheriff's department?

12 A. Yes, sir.

13 Q. Where your office is?

14 A. Yes, sir.

15 Q. Okay. And let's see. At the time in which you
16 arrived or while Mr. Davis was there, there was you,
17 there was Deputy Freeman and Mr. Lark?

18 A. No, sir. Mr. Lark was not there when I arrived
19 there.

20 Q. But eventually he arrived?

21 A. Yes, sir.

22 Q. What, within the hour?

23 A. Within an hour, yes, sir.

24 Q. And this was in a conference room, which you said is
25 maybe nine-by-nine, ten-by-ten, 12, something like that?

1 A. Somewhere between ten-by-ten and 12-by-12. I'm not
2 exactly sure.

3 Q. And this was at night?

4 A. Yes, sir.

5 Q. Now, one of the things you said was that he was free
6 to leave at any time?

7 A. Yes, sir, he was.

8 Q. And make sure I understand it. When you say he was
9 free to leave, one of the things he had asked for and
10 specifically mentioned to you is he wanted to talk to his
11 mother?

12 A. Well, what he told me was his mother had told him
13 not to talk to anyone until she got there. And at that
14 time I told him, you know, "You're 21 years old. You're
15 a grown person. You can make the decision if you're
16 going to talk to me if you want to." And that's when he
17 made the decision and we went through with the interview.

18 Q. And his mother during this time arrived downstairs
19 in the lobby of the sheriff's department, right?

20 A. Sometime during -- I don't remember exactly what
21 time she arrived, but she was downstairs, yes, sir.

22 Q. And were you advised by the officer on duty down in
23 the lobby that she was there?

24 A. We don't have an officer on duty, but I was paged by
25 dispatch that she was down there, yes, sir.

1 Q. Do you remember about when that was?

2 A. No, sir, I don't remember exactly. No, sir.

3 Q. But while he was upstairs with y'all, she was in the
4 lobby?

5 A. Yes, sir. At some time when she got there, yes,
6 sir.

7 Q. All right. Now, did you tell this to Mr. Davis?

8 A. No, sir, I don't believe I did. No, sir.

9 Q. And so he is up there with y'all with your uniformed
10 officers, guns, in a room, and at night, knowing -- you
11 knowing that he said he wanted to speak to his mother and
12 had been instructed by his mother not to say anything
13 until she got there, but you didn't tell him she was
14 there?

15 A. No, sir, I did not.

16 Q. And as I understand it from the timeline from the
17 scenario, you spoke to him. He denied these charges?

18 A. Yes, sir.

19 Q. Then he went into a room with Mr. Lark?

20 A. Yes, sir.

21 Q. And in that room, they closed the door?

22 A. Yes, sir.

23 Q. And who was in that room?

24 A. Just Mr. Davis and Mr. Lark.

25 Q. And they were in there for how long?

1 A. I think between an hour and 45 minutes, somewhere in
2 there, to two hours. I'm not exactly sure of the exact
3 length.

4 Q. But an hour and 45 would be it, give or take a few
5 minutes?

6 A. Yes.

7 Q. Now, you didn't go in there?

8 A. No, sir, not until the end.

9 Q. And then somewhere near the end of this, Mr. Lark
10 comes out and says, Oh, he has admitted to everything?

11 A. Well, he called me on my cell phone because I was
12 down the hallway a little bit. He was still in the room
13 with him and I walked in, and he told me that he had
14 confessed to touching the girls.

15 Q. And at that point you went in the room?

16 A. Yes, sir.

17 Q. Did you again advise him he had a right to remain
18 silent?

19 A. No, sir, I did not.

20 Q. Now, did you take him out of that room into another
21 room?

22 A. I did. I took him back to the room where we first
23 started talking.

24 Q. And so you don't know what went on that hour and
25 45 minutes inside that room as to any interaction between

1 Mr. Davis and Mr. Lark?

2 A. No, sir.

3 Q. But he went in there an hour and 45 minutes before
4 denying all of this, and then he comes back out and
5 Mr. Lark says, Oh, he's admitted to everything?

6 A. Yes, sir.

7 Q. It was at that time that you said you began to
8 prepare a written statement?

9 A. Yes, sir. When we went to the other room, we did.

10 Q. Okay. Did you record any of this?

11 A. No, sir.

12 Q. Neither audio or visual?

13 A. No, sir.

14 Q. When you say that you wrote down what he said and
15 talking to him, was he nervous?

16 A. No, sir.

17 Q. So he was just calm?

18 A. Yes, sir.

19 Q. Where was Mr. Freeman while you were doing this,
20 Deputy Freeman?

21 A. He was with me in the room when we were writing that
22 statement.

23 Q. And he was the one in uniform?

24 A. Yes, sir.

25 Q. And I take it in the sheriff's department y'all

1 carry your weapons?

2 A. Yes, sir.

3 Q. And you had your weapon on?

4 A. I -- I did, I believe. Sometimes I take it off,
5 sometimes I have it on. It just depends on the
6 situation. But I believe that night I had it on.

7 Q. Now, you stated that in the testimony that after he
8 made this statement, did you make the suggestion to him
9 that he should write letters?

10 A. Yes, sir, I did.

11 Q. That was your idea?

12 A. Yes, sir.

13 Q. And up to this point you said he was free to leave?

14 A. Up to the point that he confessed and told me that
15 he had done that to the girls he was, but at that point
16 he was not, no, sir.

17 Q. When did you place him under arrest?

18 A. After he wrote the letters of apology and
19 everything.

20 Q. So you're saying that he did all this before he was
21 put under arrest?

22 A. Yes, sir.

23 Q. The letters that you were talking about of apology,
24 did he write those?

25 A. He wrote three of them. I believe there's five. I

1 would have to look at them again, but I know Deputy
2 Freeman wrote two of them in his words and had written
3 them out for him, and he -- I think he added a line to
4 them and signed them.

5 Q. Okay. And he did that, and Deputy Freeman wrote
6 them out for him?

7 A. Two of them --

8 Q. Two of them?

9 A. -- I believe, yes, sir.

10 Q. Right?

11 A. Uh-huh.

12 Q. And that was in the same room?

13 A. Yes, sir.

14 Q. And you're saying during all of this time that he
15 was calm?

16 A. Yes, sir. I mean, it was a calm conversation.

17 Q. Okay. You didn't suggest to him that if you didn't
18 write out something, he was just going to jail?

19 A. Say again.

20 Q. Did you not suggest to him that if he didn't go
21 ahead and write or sign these, that he was going to jail?

22 A. No, sir, I did not.

23 Q. And while he was in there, at any other time did you
24 tell him if he wanted to get up and leave, he could just
25 go ahead and go home?

1 A. No, sir, I didn't tell him he could get up and go
2 home. I didn't tell him he was under arrest. I was just
3 interviewing him during this time.

4 Q. Other than the time when you said you filled out
5 this form at 11:18 p.m., State's Exhibit Number 1, did
6 you advise him of his right to remain silent again?

7 A. No, sir. At the top of the form, the rights -- of
8 the statement form his rights are there again, but I did
9 not read those to him again, no, sir.

10 Q. Okay. At the top of the statement where it sets out
11 his rights under *Miranda*, et cetera, you did not read
12 that to him again?

13 A. No, sir, I did not.

14 Q. So then what you did is you went through and wrote
15 all this for him on this particular piece of paper? I'm
16 talking about State's Number 2.

17 A. What I do, sir, is I fill out the top part of that,
18 and I tell them, This is the information I've already got
19 from you. Because I do what's called a record of
20 interview before when I'm interviewing him before the
21 Miranda rights form. I tell him, This is the information
22 I've already gotten from you. I say, These are your
23 Miranda rights. I've read them to you before. And then
24 I said, That top part is your Miranda rights. I've
25 already read them to you, and I started the statement,

1 yes, sir. But I did not read it again, no, sir.

2 Q. So before you began writing that, you didn't take
3 him through his Miranda rights again that are on the
4 document that you say he signed?

5 A. No, sir, I did not.

6 Q. At the beginning of your testimony day before
7 yesterday, you said something about you took a gun from
8 him?

9 A. Yeah --

10 Q. Or --

11 A. Deputy Freeman took it from him, yes, sir.

12 Q. Isn't it true that actually it was the defendant who
13 said, I do have a gun in my pocket?

14 A. Oh, yes, sir. He asked us what he should do with
15 his gun. Yes, sir, absolutely.

16 Q. So it wasn't like they grabbed him, took it away
17 from him, held him down or anything?

18 A. Oh, no, sir, nothing like that. It was completely
19 just being a police officer at night in a neighborhood
20 I'm not familiar with, and he tells me he has a gun and
21 has his hands in his pocket puts me on edge. Not
22 anything with him. It's not something I'm comfortable
23 with, but there's no confrontation or anything of that
24 sort.

25 Q. He didn't argue about it?

1 A. No, sir, not at all.

2 Q. He didn't resist in any way?

3 A. No, sir.

4 Q. And just remember -- you know Mr. Lark. Mr. Lark
5 has said when he said something -- well, I say "he."

6 Excuse me. I should use Mr. Davis said something to
7 Mr. Lark about wanting to speak to his mother. He used
8 the same language you did, You're 21 years of age. You
9 can do this on your own?

10 A. Mr. Lark hasn't testified. Are you talking about in
11 here?

12 Q. But you understand he did say that?

13 A. Yes, sir.

14 Q. Okay. Same language you used?

15 A. Yes, sir.

16 Q. Okay. One second, please.

17 That's all the questions I have. Thank you.

18 THE COURT: Re-exam?

19 MS. SIMMONS: Just one question.

20 REDIRECT EXAMINATION

21 BY MS. SIMMONS:

22 Q. Lieutenant Hawk, before the defendant signed his
23 voluntary statement, had you asked him if he could read?

24 A. I don't remember if I asked him if he could read. I
25 asked him his background and schooling, where he had gone

1 to school and stuff.

2 Q. And did he say he graduated?

3 A. Yes, ma'am.

4 Q. Was he given a full and fair opportunity to read
5 that form before he signed it?

6 A. Yes, ma'am.

7 MS. SIMMONS: Thank you.

8 THE COURT: All right. You may step down. Thank
9 you, sir.

10 All right. You may call your next witness.

11 MS. SIMMONS: The state calls Brandy Wright.

12 **BRANDY KAY WRIGHT,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14

15 THE COURT: Give us your full name for the
16 record, spelling your last name, please.

17 THE WITNESS: Brandy Kay Wright, W-r-i-g-h-t.

18 DIRECT EXAMINATION

19 BY MS. SIMMONS:

20 Q. Ms. Wright, what is your profession?

21 A. I'm a registered nurse.

22 Q. Tell me about your education.

23 A. Graduated from Southwestern Community College in
24 '06, and I have been a registered nurse since then.

25 Q. Where are you currently employed?

1 A. Oconee Medical Center ER.

2 Q. Is that where you were working back in 2013?

3 A. Yes, ma'am.

4 Q. Did you have occasion to treat sexual assault
5 victims when you were at the hospital?

6 A. Yes.

7 Q. Do you personally know either the victim or the
8 defendant in this case?

9 A. No, ma'am.

10 Q. Were you on duty at the hospital on January 3rd of
11 2013?

12 A. Yes, ma'am.

13 Q. Do you recall treating Minor 2 that day?

14 A. Yes, ma'am.

15 Q. Were you the nurse specifically assigned to Minor 2
16 ?

17 A. Yes.

18 Q. And what -- is Minor 2 a small child?

19 A. She was.

20 Q. What does treatment of a sexual assault victim
21 entail?

22 A. I go in. I get details of what happened. I try to
23 get to know them one on one first before I get started
24 into details. But I do the assessment and treatment,
25 collection of evidence, and then teach and then

1 documentation and discharge.

2 Q. Do you ask them what happened for the purposes of
3 treating them?

4 A. Yes. We have to know in great detail what happened.

5 Q. Do you also document and chart what they tell you?

6 A. Yes, ma'am.

7 Q. What is the protocol for dealing with a sexual
8 assault victim?

9 A. It's one nurse. Only one deals with it. It's -- if
10 it's 24, 48 hours, we do a collection kit. If it's after
11 that, it's up to them if they want a collection kit or
12 not, depending on how long it's been, the alleged
13 assault. And then I stay with them the whole time.
14 Usually it can range from a little bit to five hours.

15 MR. DAY: I just can't hear, your Honor.

16 THE COURT: All right. Let's see. Either bring
17 the witness closer to the microphone or the microphone
18 closer to the witness.

19 BY MS. SIMMONS:

20 Q. Did you collect a sexual assault kit in this case?

21 A. No, ma'am.

22 Q. Why not?

23 A. To my understanding and back in my notes, she
24 said -- this was on the 3rd, January 3rd, and she said
25 the last time it happened was sometime before Christmas.

1 Q. What was the condition of Minor² when you first saw
2 her in the ER?

3 A. She was a very calm, pleasant little girl. Very
4 talkative. She would talk. Then I got her a coloring
5 book and Crayons just to kind of get to know her better.

6 Q. Was this in the nighttime when she got there?

7 A. Yes. She arrived, by my notes, 8:09 p.m.

8 Q. Can you tell me what she told you had happened to
9 her.

10 MR. DAY: Your Honor, I'm going to have to object
11 at this point.

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, I need to take a matter of law up with the
14 attorneys and before we continue with this witness'
15 testimony, so I'm going to ask you to retire to the jury
16 room while I do that.

17 Again, do not undertake the discussion of the
18 case among yourselves in any way.

19 (Whereupon, the jury exited the courtroom
20 at 11:29 a.m.)

21 THE COURT: State your objection.

22 MR. DAY: Your Honor, I'm going to object to any
23 further testimony by this witness concerning as to what
24 happened, what she says the victim said happened. As I
25 understand, under Rule 801(d)(1) on criminal sexual

1 conduct where the declarant is the alleged victim, and
2 the statement is limited to the time and place of the
3 incident. She didn't ask her about the time and the
4 place. She said, What happened to her? I would,
5 therefore, object to that, your Honor, as to being
6 improper.

7 THE COURT: And you would ask her to restate her
8 question?

9 MR. DAY: That would be correct, your Honor, to
10 stick to just those issues.

11 THE COURT: Well, now, but I'd like to hear the
12 State on that.

13 Do you disagree or do you have a different
14 interpretation of Rule 801?

15 MS. SIMMONS: Your Honor, the State relies on
16 Rule 803(4), statements for the purpose of medical
17 diagnosis or treatment. The witness has testified that
18 in order to treat the victim in the case, she has to know
19 what exactly happened.

20 THE COURT: Now, 803 has to do with the medical
21 records, though --

22 MS. SIMMONS: Judge, this witness --

23 THE COURT: -- for diagnosis. Now, you're
24 qualifying her as --

25 MS. SIMMONS: Judge, we have not moved to qualify

1 her as an expert.

2 THE COURT: That's what I'm -- but I'm curious.

3 How --

4 MS. SIMMONS: Judge, 803(4) says statements made
5 for purposes of medical diagnosis or treatment. And the
6 State's position is in order to adequately treat the
7 victim, Ms. Wright had to ask her the general character
8 of what was wrong with her and why she was there.

9 THE COURT: What do you say, Mr. Day?

10 MR. DAY: Your Honor, I have to again rely back
11 on 801 when it states that -- when it speaks specifically
12 in this case we are talking about the victim as to what
13 the allegations are, that we go right back to the point
14 that it's limited as to that.

15 THE COURT: Obviously you are familiar with *State*
16 *vs. Schumpert* and the cases in that line that the hearsay
17 exception for limited corroborative testimony in a sexual
18 conduct case recognizes the corroboration of statements
19 alleging criminal sexual conduct. Victims are limited to
20 time and place of alleged assault. The rule especially
21 allows the testimony of other witnesses to testify, but
22 only as to time and place. It specifically describes
23 such testimony by excluding details of particulars. This
24 is *State vs. Jeffcoat*, 350 S.C. 392. Among details which
25 must be excluded under the rule is the identity of the

1 alleged perpetrator.

2 Now, again, I'm going to sustain the objection to
3 the question as put to the witness, and I'm going to
4 suggest that the State think carefully about what they
5 want to ask this witness.

6 MS. SIMMONS: Your Honor, just I don't want to
7 tread outside of your ruling, Judge. Just to be clear,
8 this witness is being limited to the time and place of
9 the disclosure; is that correct?

10 THE COURT: Correct, but not as to identity.

11 MS. SIMMONS: Just as to --

12 THE COURT: In other words, that is something
13 that she wouldn't be aware of. That's not information
14 done in the course of a record. She can tell the time,
15 place, and as to whatever, if anything, did occur.
16 That's what she's going to limit her testimony to. Not
17 who did it or what was done.

18 MS. SIMMONS: Time and place.

19 THE COURT: If she has some other qualification
20 to testify as to treatment, then that's something else.
21 I mean, would you like -- have you looked at this
22 decision?

23 MS. SIMMONS: Yes, your Honor.

24 THE COURT: And what did you find?

25 MS. SIMMONS: Judge, I had -- I had planned on

1 relying on that the witness would be able to testify
2 under a hearsay exception because she is the treating
3 nurse for the victim.

4 THE COURT: Well, that's exactly what this case
5 law deals with, that that's not under -- sexual conduct
6 cases, that's the exception to corroboration.

7 I tell you what. Let's do take a short break,
8 and we all have our little computers and all. Do look at
9 *State vs. Jeffcoat.*

10 MS. SIMMONS: *Jeffcoat*, your Honor?

11 THE COURT: *Jeffcoat*, 350 S.C. 392, S.C.App.
12 2002.

13 All right. We'll stand at ease for a few
14 minutes. And you may step down, but you cannot discuss
15 your testimony with anyone. All right?

16 THE WITNESS: Thank you.

17 THE COURT: Do you understand?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you, ma'am.

20 (Whereupon, recess taken from 11:40 a.m.
21 to 11:54 a.m.)

22 THE COURT: All right. We're back on the record.

23 At a sidebar, I took up the objection of the
24 defendant to the proffered testimony of the witness,
25 Ms. Wright, in anticipation of what her testimony might

1 be. And my ruling was that the witness can testify as to
2 what she did, but only as to any corroboration of what
3 she was told by a victim or alleged victim would have to
4 be limited to time and place of the alleged assault
5 without any descriptive terms or identification of anyone
6 who might have allegedly done anything to the victim.

7 So, in other words, I also permitted the
8 Solicitor to advise the witness that that's going to be
9 the limitations on her testimony.

10 All right. Is there anything from the State on
11 the Court's clarification?

12 MS. SIMMONS: No, your Honor.

13 THE COURT: From the defense?

14 MR. DAY: No, your Honor. Thank you.

15 THE COURT: Very good. All right. We may
16 proceed.

17 Ask the jury to join us, please.

18 You do understand you're still under oath?

19 THE WITNESS: Yes. Thank you.

20 (Whereupon, the jury came into open court at
21 approximately 11:56 a.m.)

22 THE COURT: All right. Let the record reflect
23 the jury and alternates are in the jury box.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 we'll now continue with the examination of the witness.

1 You may proceed, Madam Solicitor.

2 MS. SIMMONS: Thank you, Judge.

3 BY MS. SIMMONS:

4 Q. Ms. Wright, again, when did you treat Minor2 ?

5 A. I treated her January 3, 2013.

6 Q. And what did you treat her for?

7 A. She came in saying that she had been sexually
8 assaulted.

9 Q. And did she -- was she able to give you information
10 of when the last incident occurred?

11 A. Yes. After giving great details, towards the end of
12 her detail, she told me the last time that she thought it
13 was was before Christmas.

14 Q. And based on the lag in time frame, is that why no
15 kit was collected?

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

17 Q. Thank you.

18 Please answer any questions Mr. Day may have.

19 MR. DAY: I have no questions, your Honor. Thank
20 you.

21 THE COURT: All right. You may step down. Thank
22 you, ma'am.

23 MR. DAY: And no objection to this witness being
24 excused.

25 THE COURT: She's a local witness, is she not?

1 MS. SIMMONS: Not really. Pickens County.

2 THE COURT: All right.

3 MS. SIMMONS: I think she worked a long time
4 yesterday.

5 THE COURT: Well, I was just going to say subject
6 to recall. In other words, if you would stay in touch
7 with the Solicitor's office.

8 THE WITNESS: Okay.

9 THE COURT: Unless you want her.

10 MS. SIMMONS: Judge, I have never had a problem
11 with her staying in touch.

12 THE COURT: Well, I mean that's it. But do
13 understand that she's not excused, in other words, from
14 her subpoena. She's going to be subject to recall, if
15 necessary.

16 MS. SIMMONS: Thank you, Judge.

17 THE COURT: Thank you, Madam.

18 All right. Next witness.

19 MS. SIMMONS: The State calls Dr. Sally Carter.

20 **SALLY CARTER, M.D.,**

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22

23 THE COURT: If you would, please, ma'am, give us
24 your full name for the record, spelling your last name.

25 THE WITNESS: My name is Sally Carter. Last name

1 is spelled C-a-r-t-e-r.

2 THE COURT: Very good. Thank you, ma'am.

3 DIRECT EXAMINATION

4 BY MS. SIMMONS:

5 Q. Good morning, Dr. Carter.

6 A. Good morning.

7 Q. Are you licensed to practice medicine in the state
8 of South Carolina?

9 A. I am.

10 Q. And how long have you been?

11 A. Since 1989.

12 Q. What medical college did you attend?

13 A. Medical College of Georgia in Augusta.

14 Q. Where did you do your internship or residency?

15 A. Internship was at Emory University in affiliated
16 hospitals in Atlanta, and residency in pediatrics at
17 Yale-New Haven Hospital in New Haven, Connecticut.

18 Q. Since that time, where have you practiced?

19 A. Only in Anderson.

20 Q. During your years in practice, do you have occasion
21 to treat and examine sexual assault victims?

22 A. I do.

23 Q. Do you have specialized training in that area?

24 A. I do.

25 Q. Can you tell us about that.

1 A. I started seeing children specifically with regard
2 to sexual abuse in about 2003. I had basic training at
3 the Midwest Regional Children's Hospital in St. Paul,
4 Minnesota in 2004 and advanced training in 2007 in
5 Atlanta. And I subsequently had about once a year every
6 other year had follow-up training.

7 MS. SIMMONS: Judge, at this time the State would
8 move to qualify Dr. Carter as an expert in the field of
9 medicine.

10 MR. DAY: Your Honor, I would have no objection
11 to that. I know Dr. Carter and have had occasion to
12 speak to her before about her qualifications certainly as
13 a medical doctor and duly licensed to practice in the
14 state of South Carolina.

15 THE COURT: All right. But as a physician? Any
16 particular expertise?

17 MS. SIMMONS: Judge, she testified that she has
18 specialized training in pediatrics, so we would ask for
19 pediatric medicine.

20 MR. DAY: No objection.

21 THE COURT: Very well. The witness will be
22 qualified as an expert in pediatric medicine.

23 Now, Mr. Foreman, ladies and gentlemen of the
24 jury, as you will find through the course of the trial
25 that witnesses are limited to what they know of their own

1 knowledge. In other words, usually what they experience
2 by reason of their senses, touch, and hearing -- not
3 hearing, excuse me, but sight and things of that nature.

4 However, if a witness is qualified as an expert
5 in a particular area by reason of background, training or
6 experience, then they are also given the opportunity to
7 give you their opinion as to that particular area or
8 something that might be related to it.

9 The only thing is that opinion is like any other
10 testimony. They're permitted to give their opinion, but
11 the testimony itself, the opinion itself, is for your
12 evaluations as any other witness' testimony as to the
13 weight to be given that testimony.

14 So with that introduction, the witness,
15 Dr. Carter, is recognized as an expert in pediatric
16 medicine.

17 Very well. You may proceed.

18 BY MS. SIMMONS:

19 Q. Dr. Carter, do you work with a specific
20 organization?

21 A. I do.

22 Q. What's the name of that organization?

23 A. The Foothills Sexual Trauma Center. And underneath
24 that heading is the Child Advocacy Center, child sexual
25 abuse center.

1 Q. On January 14th of 2013, did you have occasion to
2 see **Minor 2** in your professional capacity?

3 A. Yes. I have notes from that day and that
4 evaluation.

5 Q. Where did you see her?

6 A. I saw her at the Child Advocacy Center in Anderson.

7 Q. What was her condition at that time?

8 A. She was healthy, well, interactive.

9 Q. Are you given the specifics as to the allegations
10 the child has made prior to the exam?

11 A. I have that if I want it, but I usually don't access
12 it because my opinion is that I should come at each of
13 these exams as a -- as if I don't know anything about
14 them. I want to be impartial.

15 Q. What kind of examination did you conduct on **Minor 2** ?

16 A. Actually, it's a full pediatric exam. So we start
17 with the head and neck, evaluate the ears, throat, nose,
18 eyes, thyroid, chest, just working down as any physical
19 exam would be, except we explain to the children ahead of
20 time that there is a more thorough evaluation of the
21 genitals including the use of a colposcope, which is an
22 instrument that's used to evaluate a woman's cervix for
23 cancer, and it's also used to give high-powered views of
24 the genital tissues and to take pictures.

25 Q. As to that particular examination on **Minor 2** , did you

1 conduct that exam?

2 A. I did.

3 Q. And what were your findings on that exam?

4 A. She had -- and I wrote it in my assessment, which I
5 have here -- cooperative exam, no history elicited. She
6 has a partial transsection of the hymen at 6 o'clock. No
7 other lesions or discharge. Exam is consistent with
8 sexual abuse.

9 Q. What kind of -- how would the injury to the hymen be
10 caused?

11 A. You know, there are some injuries to the female
12 genital area that can be caused by blunt force trauma,
13 like I've seen it when a child has been hit by a car, for
14 example. And if they have a fracture of the pelvis or
15 very severe trauma, they can have urethral tears or
16 genital tears. I've also seen hymenal tears with
17 waterski injuries, but the most common cause, especially
18 with a history of sexual abuse, would be a penetrating
19 injury.

20 Q. Are you able to establish a time frame on her injury
21 to her hymen?

22 A. No. Once the -- if it's an acute injury, I can say
23 it's an acute injury. There's blood. There's bruising.
24 There's this, that, and the other. But once it's healed,
25 it's healed, and you just describe what you see.

1 Q. In the process of these exams, do you have the
2 luxury of obtaining DNA evidence?

3 A. Well, if it's been more than about three days,
4 especially if the child has showered and bathed, changed
5 clothes, so on and so forth, DNA evidence is not useful.
6 Now, we do evaluate for sexually transmitted infections,
7 which we did on this child, and the tests were negative.
8 And that's a kind of DNA test, but it's the DNA of the
9 gonorrhea or chlamydia that's tested, not the child.

10 Q. And overall would you say the physical examination
11 of Minor 2 's hymen is consistent with sexual abuse?

12 A. Yes.

13 Q. Did you also on January 14, 2013, have occasion to
14 treat Minor 1 ?

15 A. I did.

16 Q. And did you see her in the same place?

17 A. Yes.

18 Q. What was her condition at the time?

19 A. Cooperative and healthy.

20 Q. Did you conduct the same sort of examination on her
21 that you did on Minor 2 ?

22 A. The same exam.

23 Q. Did you have any information as to the allegations
24 on her?

25 A. No history elicited, and I didn't review the

1 allegations.

2 Q. What were your results of the medical exam of
3 Minor 1 ?

4 A. I wrote on her evaluation as a conclusion that she
5 has a thin rim of residual hymen which allows viewing
6 into the vagina. No discharge or other lesions. I
7 discussed this with the dad. This is consistent with
8 sexual abuse.

9 Q. When you describe a thin rim of the hymen, can you
10 be a little more --

11 A. Well, the hymen is just a little flap of tissue that
12 covers the entrance to the vagina. And it's present in
13 all newborn girls. It's present in children. You know,
14 we evaluate children's genital areas as part of a routine
15 pediatric exam. And, so, basically it's something that's
16 always there. It's kind of like the nose or the
17 eyebrows. I mean, it's almost always there with very
18 rare exceptions. And it's usually something that we can
19 see and that basically covers the entrance to the vagina
20 so that you can look at a little girl's genital area and
21 you see a hymen, but you can't look right into the
22 vaginal canal. But in this case I could see this child
23 and look right directly into the vaginal canal. So there
24 was very residual, thin rim of hymen left.

25 Q. Were you able to establish a time frame for

1 Minor 1 's injury?

2 A. No. It was not an acute injury.

3 Q. And overall was her physical exam consistent with
4 sexual abuse?

5 A. Yes.

6 Q. Please answer any questions Mr. Day may have.

7 CROSS-EXAMINATION

8 BY MR. DAY:

9 Q. H1. Dr. Carter, just to make sure I understand
10 this, you work at the CAC?

11 A. I work at the mental health center full-time, but
12 for a half day a week, I'm loaned out to the Child
13 Advocacy Center for child abuse evaluations.

14 Q. Sort of a part-time gig?

15 A. No, sir. It's part of my contract at the mental
16 health center.

17 Q. I see. Okay. So it's part of mental health -- not
18 really part of it, but --

19 A. I was doing the child abuse exams before I started
20 working at mental health, and it seemed to be a valuable
21 service to the community. And the state of South
22 Carolina, Anderson, Oconee, Pickens mental health center
23 was willing to have me continue that work as part of my
24 contract.

25 Q. Okay. In doing the examination, you stated that you

1 found -- speaking as to Minor² , if I may, the first one
2 you testified to, first case -- that what you found was a
3 slight -- was it a tear or a transsection, I think you
4 called it?

5 A. Yeah. We actually don't use the word "slight." We
6 use the word "partial."

7 Q. Partial.

8 A. As partial and full thickness. And those are
9 descriptive terms that are used with regard to
10 lacerations and burns. And, you know, that's kind of a
11 medical description. But full thickness is through all
12 the layers that are present, and partial is through part
13 of the layers that are present.

14 Q. Okay. And in this case you said there was -- was it
15 a partial tear? What would you --

16 A. "Transsection" is the term I used.

17 Q. And you did not see any other physical indication of
18 sexual abuse that would be present?

19 A. As I recall, her -- I don't have the entire chart
20 with me. I believe the Solicitor has it if I need to
21 review it. But as I recall, the lab work was all
22 negative. And I did not see any discharge or any other
23 evidence of sexually transmitted disease or abnormal
24 genitalia or, you know, pre -- early puberty or any other
25 abnormality.

1 Q. Okay. And you stated, I think, in your findings
2 "consistent with." Does that mean to the exclusion of
3 any other possibility?

4 A. No. No, sir.

5 Q. So there are -- it could be other possibilities. In
6 other words, it could be consistent with other type
7 injury?

8 A. Well, and I explained that already. I said, you
9 know, if you have a child that has a blunt force trauma
10 to the -- to the -- let's say is hit by a car or by a
11 school bus and the pelvic girdle is destabilized, there
12 can be some tearing of the urethra or genital tissues.
13 I've seen it with a child who had a water-skiing injury.
14 I've rarely seen it with other types of blunt force
15 trauma like tree branches, falling on tree branches,
16 falling on bicycle handles, or falling on a water faucet,
17 a tub faucet.

18 But usually -- the difference is usually you have
19 a history of that. You know, the child says, "I was out
20 playing in the tree and I fell." That's what we call a
21 straddle injury. And so usually you have a history with
22 that. In this case I didn't have a history consistent
23 with any other injury.

24 Q. But you say that's rarely, but it has happened?

25 A. Oh, yes, sir.

1 Q. Okay. And you said that as both to Minor² and
2 Minor 1 that whatever you saw had been healed?

3 A. Yes, sir.

4 Q. Now, when you say not an acute injury, that just
5 means it didn't happen within a very recent time?

6 A. Right. Acute, you know, like I could see blood or
7 bruising or some evidence that it had been fairly recent.

8 And when I say fairly recent, usually a bruise resolves
9 within a couple of weeks.

10 Q. Okay. One second please, Doc.

11 That's all the questions I have. Thank you.

12 THE COURT: Re-exam?

13 MS. SIMMONS: No, your Honor.

14 THE COURT: Very well. You may step down.

15 MR. DAY: I have no objection to this witness
16 being excused either.

17 MS. SIMMONS: Thank you, Judge.

18 THE COURT: All right. No objection.

19 Does the State request her relieved?

20 MS. SIMMONS: No, your Honor. We would like
21 Dr. Carter to be relieved.

22 THE COURT: Doctor, thank you very much. You
23 will be excused.

24 THE WITNESS: Thank you.

25 THE COURT: Do you have another witness?

1 MS. SIMMONS: One more, your Honor.

2 THE COURT: Would the attorneys approach, please.

3 (WHEREUPON, a bench conference was held off the
4 record in the presence of the jury, but out of the
5 hearing of the jury.)

6 THE COURT: All right. You may call your next
7 case -- your next witness, excuse me.

8 MS. SIMMONS: Thank you, Judge. The State calls
9 Deputy Jay Freeman.

10 **JAMES ALLEN FREEMAN,**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12

13 THE COURT: All right. If you would, please,
14 sir, give us your full name, spelling your last name for
15 the record.

16 THE WITNESS: James Allen Freeman, F-r-e-e-m-a-n.

17 THE COURT: Very good. Thank you, sir.

18 DIRECT EXAMINATION

19 BY MS. SIMMONS:

20 Q. Deputy Freeman, where are you employed?

21 A. The Oconee County Sheriff's Office.

22 Q. How long have you been there?

23 A. I've been full-time with the sheriff's office for
24 about six years now.

25 Q. Tell me a little about your education.

1 A. I graduated from Walhalla High School. I earned a
2 scholarship to play football at Presbyterian. Graduated
3 from there with a degree in psychology and English. Met
4 my better half. We were married, returned home and was
5 employed with the sheriff's office in March of 2008, I
6 believe.

7 Q. What's your current assignment?

8 A. I'm the school resource officer at West-Oak Middle
9 School.

10 Q. Back at the time of this case, what were you
11 assigned to?

12 A. I was assigned the night shift Delta, which is
13 routine road patrol. We came on about 7 o'clock each
14 night and worked until 7:00 in the morning.

15 Q. How did you become involved in this case relating to
16 this defendant?

17 A. A little after 7:00 I received a phone call from
18 dispatch that it was a mother, Ms. Ellison, who stated
19 that her daughter had disclosed to her that she had been
20 abused or felt that she had been sexually abused. She
21 said that she was on her way to the hospital, and I told
22 her that I would meet her there, she wanted her to be
23 checked out, and that I would meet her there and we'd
24 continue talking.

25 Q. Did you meet her there?

1 A. I did, yes, ma'am.

2 Q. Based on your conversation with her, what was your
3 next step?

4 A. She -- she explained what her and her daughter had
5 talked about. I obtained a written statement from that.
6 I called Lieutenant Hawk, who specializes in these type
7 of cases, or he's the sergeant that investigates those,
8 and asked him what he thought would be best to do.

9 Q. And did you understand how ^{Minor 2} and her family
10 knew the defendant?

11 A. She had explained they were next-door neighbors.
12 She had also disclosed -- and the reason that I wanted to
13 talk to Investigator Hawk -- was that there was a
14 possible second victim actually living in the home with
15 the defendant.

16 Q. Did the events that occurred in this case, did they
17 occur in Oconee County?

18 A. Yes, ma'am.

19 Q. What did you and then Sergeant Hawk do next?

20 A. He and I met. We decided that we wanted to try to
21 speak with Jessie Davis at the time that evening. So we
22 met. We went to the house, arrived at the house a little
23 before 11:00 where Jessie Davis lived. At that time
24 Lieutenant Hawk went up on the front porch and knocked on
25 the door.

1 Q. Who was the defendant living with at that time?

2 A. He was living with the -- Minor 1 's father in the
3 home of the second victim.

4 Q. He was also living with Minor 1 ?

5 A. Yes, ma'am.

6 Q. What conversation did you guys have with him at the
7 home?

8 A. He wanted to know what was -- or Jessie had asked
9 what was going on. Lieutenant Hawk had informed him that
10 he -- you know, there were some allegations that had been
11 made. He wanted to talk about it there at the time. It
12 was not safe, not for his safety or our safety. I mean,
13 it was a very private matter, that if it was not true,
14 then, you know, it really didn't need to be talked about
15 within earshot of other neighbors.

16 Q. Did he agree to speak with you further?

17 A. Yes, ma'am.

18 Q. Where did you go next?

19 A. He voluntarily came with us. He said that he would
20 ride with us up to the sheriff's office. He rode in my
21 car, and we arrived -- I don't know. We left about
22 11:00, arrived at the sheriff's office a little after
23 11:00. We went in. I don't have a key. It was after
24 hours. I don't have access to the investigators' wing of
25 the sheriff's office, so we stood upstairs in the lobby

1 until Lieutenant Hawk arrived.

2 Q. Did he -- was he in custody or under arrest or have
3 cuffs on at this time?

4 A. No, ma'am, he did not.

5 Q. Did anything unusual happen before you departed the
6 house?

7 A. Yes, ma'am. We got ready to leave, and he said,
8 Well, what do you want me to do -- or something to the
9 effect, What do you want me to do with the gun or my gun?
10 And it's kind of like, I mean, perfectly within his
11 rights to have it, but we were not expecting that.

12 So he started to pull his hand out of his pocket.
13 I grabbed his wrist, and I said, Wait a minute. I took
14 the gun from him. I said, I'm going to put it in the
15 front seat of my car for my safety, then we can give it
16 back to you when we're done.

17 Q. What did you guys talk about when you arrived at the
18 sheriff's office?

19 A. Just small talk. We stood in the lobby. He again
20 asked, he said, What's going on? I said, Well, you know,
21 I'd rather Lieutenant Hawk be here when we talk about
22 that.

23 Q. Did you and Lieutenant Hawk subsequently advise the
24 defendant of his rights?

25 A. We did, yes, ma'am.

1 Q. I'm going to show you what has been admitted as
2 State's Exhibit 1. Do you recognize this document?

3 A. Yes, ma'am.

4 Q. Is this the form that was used on that day?

5 A. Yes, ma'am.

6 Q. And what date was this form --

7 A. January 3, 2012. It was 2013 at the time.

8 Q. Do you recognize your signature on this document?

9 A. Yes, ma'am.

10 Q. Where were you when this form was read to the
11 defendant?

12 A. We were in the investigation wing in one of the
13 interview rooms, office, conference room, whatever you
14 want to call it.

15 Q. Was the defendant ever denied any comforts like the
16 restroom, something to drink, or a break?

17 A. No, ma'am.

18 Q. Was he in handcuffs during the interview?

19 A. No, ma'am.

20 Q. Was anyone else present in the interview room other
21 than you and Lieutenant Hawk?

22 A. No, ma'am.

23 Q. Are those the rights that Lieutenant Hawk informed
24 him of?

25 A. Yes, ma'am, they are.

1 Q. Did he make sure he understood those rights?

2 A. Yes, ma'am. He actually, when we were seated in the
3 room, the defendant was sitting in front of Lieutenant
4 Hawk. I was sitting beside Lieutenant Hawk to the left.
5 Lieutenant Hawk did most of the conversation. I just sat
6 there and was a witness to it.

7 But Lieutenant Hawk actually took the paper and
8 turned it upside down and read it to him upside down.
9 And after each line that he read, he asked him if he
10 understood it, and if he did, to initial beside each
11 line, which he did.

12 Q. Did the defendant seem to understand his rights?

13 A. Yes, ma'am.

14 Q. Was he intoxicated or under the influence of illegal
15 drugs or alcohol, to the best of your knowledge?

16 A. No, ma'am, he did not appear to be.

17 Q. Did he appear to have average mental capacity?

18 A. Yes, ma'am.

19 Q. And what education level did he tell you he had?

20 A. He -- well, during the record of interview before we
21 even got to this point of reading the rights, just
22 obtaining basic information about his past, he had
23 disclosed that he actually had a high school diploma.

24 Q. Had he worked?

25 A. Yes. I do not remember where exactly. He had told

1 us that he had worked.

2 Q. Did the defendant also sign the form to
3 understand that --

4 A. Yes, ma'am, he did.

5 Q. At any point did you make any threats or promises in
6 order to get the defendant to sign the form?

7 A. No, ma'am.

8 Q. Did you make -- did you intimidate him in any way?

9 A. No, ma'am.

10 Q. Was his waiver of rights voluntary?

11 A. Yes, ma'am.

12 Q. Did at any point he ever indicate he wished to have
13 an attorney?

14 A. No, ma'am, he did not.

15 Q. Who spoke with him after you had reviewed his
16 rights?

17 A. After we -- Lieutenant Hawk did.

18 Q. Did he go speak with anybody else?

19 A. He did. After Lieutenant Hawk spoke with him, he
20 went and spoke with Mike Lark.

21 Q. And he helps with interviews at the sheriff's
22 office?

23 A. Yes, ma'am.

24 Q. Did he ever ask Mr. Lark for an attorney?

25 A. Not that I'm aware of.

1 Q. And would you have heard if Mr. Lark had threatened
2 or yelled at the defendant?

3 A. Well, yes, ma'am, because the room that -- the room
4 that they were in or they were speaking in was, if you
5 walk out of that room and you walk directly across the
6 hall, it's Lieutenant Hawk's office in which, you know,
7 when they were speaking during the time of -- or when
8 Mike Lark was speaking with him, I was in that office at
9 the computer actually filling out the initial report.

10 Q. After speaking with Mr. Lark, did the defendant
11 indicate he wished to give a statement to you and
12 Lieutenant Hawk?

13 A. He indicated that to Lieutenant Hawk, yes, ma'am.

14 Q. And were you present when the defendant gave that
15 statement?

16 A. Yes, ma'am.

17 Q. I want to show you what has been admitted as State's
18 Exhibit 2. Do you recognize this document?

19 A. Yes, ma'am.'

20 Q. And did you sign as a witness?

21 A. Yes, ma'am, I did.

22 Q. Who wrote the statement out?

23 A. Lieutenant Hawk actually wrote the statement in the
24 defendant's words.

25 Q. Did he read it back to the defendant as he wrote it?

1 A. Yes, ma'am, line by line, word for word.

2 Q. Did the defendant indicate that this was his
3 statement?

4 A. Yes, ma'am.

5 Q. How did he do that?

6 A. He signed both on the first and second page twice.
7 And if I remember correctly, there is a couple
8 corrections where he actually initialed where Lieutenant
9 Hawk had made those corrections.

10 Q. At any point did you or Lieutenant Hawk suggest the
11 information that should be included in this?

12 A. No, ma'am.

13 Q. And are these the defendant's own words?

14 A. Yes, ma'am.

15 Q. Did the defendant subsequently write letters of
16 apology in this case?

17 A. Yes, ma'am.

18 Q. I'm going to show you what has been premarked as
19 State's Exhibit 3 through 7. May I approach the witness,
20 your Honor?

21 THE COURT: Certainly.

22 BY MS. SIMMONS:

23 Q. Do you recognize these documents?

24 A. Yes, ma'am. Yes, ma'am.

25 Q. Have they been altered with or tampered in any way

1 since that evening?

2 A. No, ma'am.

3 MS. SIMMONS: Judge, at this time the State would
4 move to admit State's Exhibits 3 through 7.

5 THE COURT: Any objection?

6 MR. DAY: No objection, your Honor.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, State's Exhibit Numbers 3 through 7
9 were admitted into evidence.)

10 BY MS. SIMMONS:

11 Q. How many letters did he write?

12 A. He physically wrote three. I wrote two of them.

13 Q. I'm going to show you what's been marked as State's
14 Exhibit 3. Who wrote this one?

15 A. I wrote -- that's my handwriting. I wrote that one.

16 Q. Did you write it as he spoke to you?

17 A. Yes, ma'am.

18 Q. Are these your words or his words?

19 A. Those are his words that I wrote down.

20 Q. Tell me what it says.

21 A. Dated 1/4 of '13. "Dear ^{Minor 1} I'm sorry that I did
22 everything to you. I'm sorry that I let you do it. I
23 should have stopped you before you started touching me.
24 Please forgive me for everything that I have done. I
25 hope you can forgive me someday." And then he went back

1 after that, after I read it to him, and he -- I asked him
2 to sign it, and he wrote that, you know, if he wanted to
3 sign it, this is what he wanted to do, and then he wrote,
4 "Love you and sorry," and signed his name.

5 Q. I'm going to show you what's been marked State's
6 Exhibit 4. Can you read this one for us.

7 A. Yes, ma'am. Dated 1/4 of '13. "Dear Minor2 ,
8 I'm sorry that I did everything to you. I'm sorry that I
9 let you do it. I should have stopped you before you
10 started touching me. Please forgive me for everything
11 that I have done. I hope you can forgive me someday."

12 Again, once I read that to him, he went back and
13 added the line, "Love you and sorry," and signed his
14 name.

15 Q. Show you what's been marked as State's Exhibit 5.

16 Do you recognize this?

17 A. I do, yes, ma'am. He had asked -- the defendant had
18 asked for a couple more sheets of paper, that he wanted
19 to continue writing some letters of apology. I afforded
20 him those pieces of paper and actually left the room, and
21 when I came back, this is what he had written.

22 Q. Who's Sandy?

23 A. I'm not sure who Sandy is.

24 Q. Can you read this one.

25 A. "I am so sorry for every hurt Minor2 and Minor1 . I

1 know you want to kill me, but the girls need you, Chris,
2 Hillbilly. I know I mess up and should be killed. I
3 know I will be -- I know I will be when I'm in, so please
4 take care of everyone. Sincerely," signed "Jessie
5 Davis."

6 Q. I'm going to show you what's been marked as State's
7 Exhibit 6. Did he write this letter?

8 A. Yes. "Dear Chris, I am sorry for what I did to
9 Minor 2. I know you won't never forgive me for it. Please
10 take care of yourself and the boys, girls, and keep an
11 eye on Hillbilly, please. Sincerely," signed "Jessie'
12 Davis."

13 Q. Who does the defendant refer to as Hillbilly?

14 A. That would be the victim's, Minor 1, the victim
15 Minor 1's father.

16 Q. And State's Exhibit 7 is written to who?

17 A. James. "Dear James, I'm sorry for everything I did
18 to Minor 1. I know you won't never forgive me, but I
19 know I mess up and I am sorry for that. Please take
20 care. I love y'all, both of y'all. Sincerely, Jessie
21 Davis."

22 Q. Is James the proper name for Hillbilly?

23 A. Yes.

24 Q. At any point in time did you suggest what should be
25 included this these letters of apology?

1 A. No, ma'am.

2 Q. Are they the defendant's own words?

3 A. Yes, 'ma'am.

4 MS. SIMMONS: Beg the Court's indulgence for one
5 moment.

6 BY MS. SIMMONS:

7 Q. After you took the letters of apology, did you allow
8 the defendant to see his mother?

9 A. Lieutenant Hawk went out and spoke with his
10 mother -- or asked if he wanted to see his mother. He
11 said yes. He went and -- they went out -- or I assume
12 that Lieutenant went out and spoke with the mother. They
13 came back into the room. And when they did, they had a
14 conversation.

15 Q. In response to her questions, what did he say?

16 A. He said, "I wish I could tell you that I didn't do
17 it, but I can't."

18 Q. At this point did this cease your involvement in the
19 investigation?

20 A. Yes, ma'am.

21 Q. Please answer any questions Mr. Day may have.

22 A. Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MR. DAY:

25 Q. Deputy Freeman, when you went to the house and you

1 spoke to Jessie Davis here --

2 A. Yes, sir.

3 Q. -- was he in any way resistant?

4 A. No. No, sir, he was not.

5 Q. Cooperative?

6 A. Yes, sir, very much so.

7 Q. Followed y'all's instructions?

8 A. Yes, sir.

9 Q. And the thing about the gun, he's the one that told
10 you about the gun, right?

11 A. Yes, sir. Yes, sir, he did.

12 Q. And voluntarily, you know, let you take the gun?

13 A. Yes, sir.

14 Q. You asked him not to touch it?

15 A. Yes, sir.

16 Q. So there was no resistance of any kind there?

17 A. No, sir.

18 Q. Y'all then got into the car?

19 A. Yes, sir.

20 Q. Did he mention wanting to speak to his mother?

21 A. He was -- when we got in the car, he was on the
22 phone with his mother. I have a partition in the -- in
23 my car, and I really -- unless he's yelling and screaming
24 and beating on the partition, I can't hear what he's
25 saying, but he was on the phone in the car, and I'm

1 guessing that was with his mother.

2 Q. The plastic in the partition only covers one half?

3 A. I'm sorry?

4 Q. Isn't there plastic in that partition?

5 A. Well, it's Plexiglas, yes, sir.

6 Q. Does that cover the entire back of the car or just
7 half of it?

8 A. Well, there's a metal base in the bottom, and then
9 it comes up, and there's some supportive -- almost like a
10 noodle from a swimming pool. It's a kind of pad at the
11 top, but it's kind of closed, the entire back of the car.

12 Q. But you could hear him talking to his mother, knew
13 he was talking to his mother?

14 A. I knew he was on the phone because I could see him
15 in the rearview mirror.

16 Q. Did he say anything to you?

17 A. No, sir.

18 Q. You didn't hear him, as he was talking to his mother
19 saying he wanted a lawyer?

20 A. No, sir.

21 Q. Could you hear anyone on the telephone, if it was on
22 speaker phone?

23 A. I couldn't tell if it was on speaker phone or not.

24 Q. So on your way up there, you said you knew he was
25 talking to his mother on the phone but say you didn't

1 hear anything. Was he rowdy in any way?

2 A. No, sir.

3 Q. He wasn't hitting on the partition or kicking or
4 anything?

5 A. No, sir, not at all.

6 Q. When y'all got to the sheriff's department, when you
7 got out of the car, where did you go?

8 A. We went in -- we went in the building, front doors.
9 We went to the elevator, went up to the second floor, the
10 second floor lobby of the sheriff's office. And I had to
11 wait there because I don't have a key to get into the
12 investigators' wing.

13 Q. So you had Mr. Davis there. Was he in handcuffs?

14 A. No, sir.

15 Q. But he was there with you?

16 A. Yes, sir.

17 Q. So if he decided he wanted to get back on the
18 elevator, go back downstairs, go outside, could he have
19 done that?

20 A. Yes, sir.

21 Q. Did you tell him that?

22 A. No, sir.

23 Q. So he's in the sheriff's department with you. You
24 were armed; is that correct?

25 A. I was dressed as I am now, sir.

1 Q. And waited there for Mr. Hawk, who had the key to
2 get into that area of the sheriff's department?

3 A. Yes, sir.

4 Q. When you went in, where did you go in the sheriff's
5 department?

6 A. When we went -- we went into the investigator wing,
7 and then we went to one of the interview rooms.

8 Q. When Mr. Davis was put in the interview room, if I
9 may, and we'll let this be one wall and this be another.
10 I know it's not measured, but for demonstration purposes.
11 That's it. And this back here would be the back wall
12 probably. Is there a window in there?

13 A. No, sir, there is no window.

14 Q. No window. And that's the back wall. And let's say
15 this is the door here. Would that be -- is --

16 A. I don't know. I mean, it's a small office space
17 with a table and some chairs.

18 Q. Right. Where was Mr. Davis sitting? Was he sitting
19 with his back to the wall facing the door?

20 A. No, sir. He was sitting with his -- yes, sir. He
21 was sitting with his back to the door facing Lieutenant
22 Hawk, who was seated in front of him and I was off to
23 would be his right side.

24 Q. So the door was behind him or the wall?

25 A. The door --

1 Q. Talking about Mr. Davis.

2 A. The door was behind him, behind Mr. Davis.

3 Q. Okay. And the door was closed?

4 A. I don't remember if we closed -- we were the only
5 people there. I don't remember if we closed the door or
6 not.

7 Q. Now, during this time did he ask to speak to his
8 mother?

9 A. He -- he made the statement to Lieutenant Hawk that
10 he did not -- or his mother had told him not to talk to
11 anybody until she got there.

12 Q. Okay. And to your knowledge, did his mother and
13 stepfather arrive?

14 A. During the course of speaking with him, I received a
15 page as long as -- as well as Lieutenant Hawk that his
16 mother was downstairs wanting to talk to us or him or
17 somebody. But at that point we were still in a
18 conversation with Mr. Davis.

19 Q. Did you tell Mr. Davis that his mother was
20 downstairs?

21 A. No, sir.

22 Q. So you're still in the room, the two of y'all,
23 Mr. Davis. He's asking to speak to his mother. Doesn't
24 want to say anything until he talks to her. But you
25 didn't tell him she was there?

1 A. He did not ask to speak with his mother. He made
2 the statement that he wanted to -- he should not talk to
3 us until his mother arrived.

4 Q. Now, when y'all -- during this conversation, he
5 denied these allegations, did he not?

6 A. He did to begin with, yes, sir.

7 Q. And y'all were with him for what, approximately an
8 hour?

9 A. No, sir. I would say that it took about ten minutes
10 from the residence to get there, another ten minutes for
11 Lieutenant Hawk to get there because he stayed behind to
12 speak with one of the victim's family members. From the
13 time that we got to that point, I would say roughly
14 30 minutes, 45 minutes from the time that we sat down in
15 the interview room.

16 Q. 30, 45 minutes in the room?

17 A. Yes.

18 Q. Okay. And during that time he never admitted to
19 anything, did he?

20 A. No, sir.

21 Q. He answered your questions about other matters, but
22 he denied these specific allegations?

23 A. That's correct, yes, sir.

24 Q. Then Mr. Lark arrived and took him into another
25 room?

1 A. Yes, sir.

2 Q. Did you go in that other room with Mr. Lark --

3 A. No, sir, I did not.

4 Q. And in that other room was the door closed?

5 A. Yes, sir, the door was closed.

6 Q. Was anyone else in there with Mr. Davis and Mr. Lark
7 that you know of?

8 A. No, sir.

9 Q. Did you go in there?

10 A. Did I go in? No, sir, I did not.

11 Q. Did Mr. Hawk go in there?

12 A. He did at the -- he did when Mr. Lark called him and
13 said that he was confessing.

14 Q. Okay. Now, so that was approximately, according to
15 what we've been able to establish so far, about an hour
16 and 45 minutes?

17 A. I would say that's about right, yes, sir.

18 Q. So for an hour and 45 minutes he's in the room with
19 Mr. Lark, door closed, and you said a minute ago that you
20 were next door, you didn't hear Mr. Lark threaten. Were
21 you listening at the door?

22 A. I was not. I was in -- I was just outside the door
23 at Lieutenant Hawk's office at his computer, which is
24 essentially six feet away from that door.

25 Q. Okay. So you're in another office and you're

1 talking to Mr. Hawk? Or y'all's conversation, whatever?

2 A. In and out, yes, sir. We have another conference
3 room. I believe the TV was on in the back, and we were
4 in and out for that time period.

5 Q. So you don't know of anything firsthand at all that
6 Mr. Lark said to Mr. Davis, do you?

7 A. No, sir.

8 Q. And you didn't hear Mr. Davis, did you?

9 A. No, sir.

10 Q. Okay. Did Mr. Lark come out prior to the time you
11 said when he called for Mr. Hawk?

12 A. I don't remember that.

13 Q. Don't remember him coming out?

14 A. No, sir..

15 Q. You said a minute ago that it looked like he
16 understood what was going on. Did he look like he was
17 tired or sleepy?

18 A. No, sir.

19 Q. So he looked alert?

20 A. Yes, sir.

21 Q. Had you ever seen him before?

22 A. No, sir.

23 Q. So your first encounter, whatever, with Mr. Davis,
24 right?

25 A. Yes, sir.

1 Q. Now, he came out of that room -- or Mr. Hawk went in
2 and got him and brought him out of the room that Lark had
3 him in?

4 A. Yes, sir.

5 Q. And y'all went back into the original room that you
6 were talking about?

7 A. Yes, sir.

8 Q. And at that point you say that, as you remember, he
9 began to do this (indicating); is that correct?

10 A. He began to -- it was not at that point Lieutenant
11 Hawk nor I were asking any questions. He was telling us
12 what happened in more of a narration. And he had asked
13 Lieutenant Hawk to write it for him because he couldn't
14 spell very well. And as he said it, Lieutenant Hawk
15 wrote it down.

16 Q. Okay. So he -- at 1:48, up at the very top, that
17 would be when -- I'll get a little closer.

18 THE COURT: Identify the exhibit you're referring
19 to, please.

20 BY MR. DAY:

21 Q. That's State's Exhibit 2. And up the at the top
22 right it has a time?

23 A. Yes, sir.

24 Q. When he put pen to paper, that would probably be the
25 time that he did that, started filling out everything?

1 A. Be when he first started, 0148.

2 Q. Right, sir. And that's when he would begin writing
3 like the date, where they are, who we're talking about,
4 et cetera?

5 A. Yes, sir.

6 Q. Okay. So at 1:48 he's putting in the date, place,
7 who we're talking about, Jessie Wayne Davis, his date of
8 birth, where he lives, who's writing it down, who's
9 present -- that's you and Mr. Hawk?

10 A. Yes, sir.

11 Q. Identifying himself as investigator with Oconee
12 County Sheriff's Office. And then he starts that. Did
13 he take this statement from Mr. Davis and then start
14 writing it down, or did he do it word by word -- you say
15 it, I write it down? How did he do it?

16 A. I'm sorry, I'm not sure what you're asking.

17 Q. How did he take this statement? Did he take the
18 whole statement at one time or then go back over and --

19 A. No. No. No. He would -- Jessie Davis would start,
20 he would start talking, and he would write down, and he
21 would have to stop him periodically to catch up to what
22 he was trying to say. So it was word for word, line by
23 line. It wasn't that he said it and then he wrote it all
24 down, and then we went back and read it.

25 Q. Right. And according to -- it says was completed at

1 2:09. That's what he put?

2 A. That -- you know --

3 Q. I'm just saying that's what's written down.

4 A. Yes, sir.

5 Q. And as far as you remember, that sounds about right?

6 A. Yes, sir.

7 Q. All right. So you got all the way through there and
8 did that. And you're saying that he asked him to sign
9 it. I think you said he indicated it was what he said by
10 signing?

11 A. That's correct, yes, sir.

12 Q. All right. Now, as to the -- okay. On the other
13 statements that you spoke of, when we're talking about
14 State's Exhibits 3 through 7 --

15 A. Yes, sir.

16 Q. -- on those, you wrote those out for him; is that
17 correct?

18 A. I wrote two of them out.

19 Q. Two of them, excuse me.

20 A. Yes, sir.

21 Q. Right. That would be Nos. 3 and 4?

22 A. Yes, sir, if what the exhibits are.

23 Q. I think that's what it is that you identified.

24 A. Again, he asked me to do that because he couldn't
25 spell very well and he wanted it to be nice.

1 Q. Okay. But then you say he went and wrote out three
2 himself anyway?

3 A. He did. He said he wanted to write some more out
4 after I had left. After I walked out of the room, he
5 said he wanted to write some more out, so we retrieved
6 some more paper and allowed him to write those out.

7 Q. Okay. But even though he didn't -- even though you
8 say he wanted you to write out Nos. 3 and 4; 5, 6 and 7
9 he actually wrote out --

10 A. Yes, sir.

11 Q. -- is that correct?

12 Okay. All right. I just want to make sure,
13 looking back over that, make sure I've got it down right.

14 Now, you said it started at 1:48. And the normal
15 procedure -- and I'm talking about here State's Exhibit
16 Number 2 -- when you do that up at the top, when you say
17 you begin, that's when -- normally the procedure is
18 that's when you start writing? \

19 A. I mean, you know, each officer does it a different
20 way. You could -- I mean, some officers fill out the
21 generic information and then write the time that it was
22 started once they were to hand another -- somebody that's
23 going to give a voluntary statement. I mean, it just --
24 at some point in time during that three or four minutes
25 of gathering basic information of where you live and how

1 old you are, that you put the time of when the statement
2 was to be started.

3 Q. Okay. One second, please.

4 All right, sir, except one thing. While you were
5 playing football at PC, did you play against the Citadel?

6 A. We did not, no, sir.

7 Q. Ah, shucks. No further questions. Thank you.

8 THE COURT: Re-exam?

9 MS. SIMMONS: Nothing further, your Honor. Thank
10 you.

11 THE COURT: You may step down, please.

12 All right. You may call your next witness.

13 MS. SIMMONS: Judge, that concludes the witnesses
14 for the state and the State rests.

15 THE COURT: State rests?

16 MS. SIMMONS: Yes, your Honor.

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, before we continue, I'm going to suggest that
19 we take a lunch break. Now, I have something scheduled
20 I've got to do at 2 o'clock, so I'm going to ask you to
21 take a little bit longer than normal, and if you would
22 please come back at 2:30 and then we should be able to
23 proceed at that time.

24 Again, do not undertake the discussion of the
25 case among yourselves in any way, and I'll see you back

1 at 2:30. \

2 Everyone else remain seated while the jury
3 retires from the courtroom.

4 (Whereupon, the jury exited the courtroom
5 at 12:46 p.m.)

6 THE COURT: All right. Is there anything from
7 the State?

8 MS. SIMMONS: No, your Honor.

9 THE COURT: All right. Mr. Day, do you have any
10 motions?

11 MR. DAY: Yes, your Honor. We make a motion for
12 a finding of a directed verdict at this time of acquittal
13 on the defendant upon the charges that are being
14 presented. We would submit to the Court that they failed
15 to meet the threshold of the necessary evidence for the
16 case to continue on to the jury. We'd ask the Court to
17 at this time grant judgment for acquittal.

18 THE COURT: All right.

19 Madam Solicitor?

20 MS. SIMMONS: Judge, I believe that we have
21 submitted sufficient evidence as to each charge through
22 the medical testimony, the witnesses, law enforcement
23 witnesses, and the defendant's own statement. I believe
24 that we have met the threshold requirements to send this
25 to the jury.

1 THE COURT: Anything else, Mr. Day?

2 MR. DAY: Nothing further, your Honor.

3 THE COURT: Well, I think -- I believe it's Rule
4 19 of the Rules of Criminal Procedure that provides that
5 on a directed verdict, the Court is not concerned about
6 the weight of the evidence, but whether or not there is
7 sufficient evidence to go forward to the jury.

8 And in this case, having given consideration to
9 the evidence, the Court does find there is sufficient
10 evidence to submit it, all six indictments, to the jury
11 for their deliberation.

12 All right. I think I explained to the jury I
13 have a 2 o'clock matter I have to take up, but we should
14 be ready to go -- how long do you think that will last,
15 Madam Solicitor?

16 MS. SIMMONS: 15 minutes, Judge.

17 THE COURT: Let's try to be back at 2:15.

18 We will stand at ease.

19 By the way, any requests for charges from the
20 State?

21 MS. SIMMONS: Judge, I assumed that you were
22 going to charge on the standard testimony, victim may not
23 be corroborated. That would be my only request.

24 THE COURT: Anything from the defense?

25 MR. DAY: Of course, your Honor, on the matter of

1 statements having been given, as you had already advised
2 the jury that it will be their determination as to
3 whether or not --

4 THE COURT: I'll give them more extensive
5 directions as to any statements allegedly made or
6 purported statements.

7 MR. DAY: Your Honor, I apologize. I had some
8 notes for a couple of requests and I walked out and left
9 them over at the office. But during lunch I'll check and
10 see if there's anything beyond --

11 THE COURT: Well, you're not involved in the
12 2 o'clock proceeding? \

13 MR. DAY: Not that I'm aware of.

14 THE COURT: All right. So you have a little time
15 to do that. But once you get them, give them to --

16 MR. DAY: I'll e-mail them if I think it's
17 something I would like to have.

18 THE COURT: I tell you what. We are at that
19 point where the defense goes forward or decides whether
20 or not it wants to go forward. I think I'll instruct the
21 defendant as to his rights to testify or not to testify.

22 MR. DAY: Yes, your Honor.

23 THE COURT: Mr. Davis, if you would please raise
24 your right hand. I'm going to put you under oath again
25 so there won't be any question.

1 (WHEREUPON, the defendant was sworn.)

2 THE COURT: At this time I'm going to explain to
3 you certain of your rights. If you do not understand
4 anything I say, please let me know. If you want me to
5 explain anything in more detail, please let me know.

6 Do you understand this?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We have now reached the stage of the
9 trial where you may present your defense. You have the
10 right to claim the protection given to you by the Fifth
11 Amendment of the Constitution of the United States. This
12 amendment states, in pertinent part, "No person shall be
13 compelled in any criminal case to be a witness against
14 himself."

15 This means that you cannot be required to testify
16 in this case. You have the right to testify on your own
17 behalf; however, no one can make you testify. This is
18 your personal right, and no one can waive this right
19 except you. If you decide to testify, you will be
20 subject to the same rules that govern other witnesses
21 and, you may be examined and cross-examined on any
22 relevant issue in the case.

23 In addition, if you have any convictions
24 involving dishonesty or false statement or for crimes
25 punishable by imprisonment for more than one year, and

1 this Court determines that their probative value of
2 admitting this evidence outweighs its prejudicial effect
3 to you, the Solicitor will be able to introduce your
4 record to attack your credibility.

5 If you decide to testify, this decision on your
6 part must be freely, voluntarily, intelligently made with
7 the knowledge of the protections given to you by the
8 Fifth Amendment and the consequences of your decision to
9 testify.

10 If you decide not to testify, I will instruct the
11 jurors that they cannot give the fact that you did not
12 testify any consideration whatsoever, and that there is
13 to be absolutely no prejudice to you because you did not
14 testify. You may talk with your attorney, your family,
15 and friends and anyone else, but the final decision will
16 be left entirely up to you.

17 Do you understand what I've explained to you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about what
20 I've explained to you?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. With that, I'm going to
23 leave you the opportunity to discuss whether or not you
24 wish to testify, and then I'll further examine you later.

25 All right. Very good. Thank you very much, sir.

1 All right. We'll stand at ease in this case
2 until 2:15.

3 (Whereupon, recess taken from 12:53 p.m.
4 to 2:42 p.m.)

5 THE COURT: We're back on the case of State of
6 South Carolina versus Jessie Wayne Davis. The State has
7 rested.

8 Anything further from the State before we bring
9 the jury back?

10 MS. SIMMONS: No, your Honor.

11 THE COURT: The defendant was advised of his
12 right to testify -- to testify or not to testify in the
13 case prior to the recess.

14 Have you had an opportunity to discuss the matter
15 with the defendant?

16 MR. DAY: I have, your Honor.

17 THE COURT: Has the defendant made a decision as
18 to whether or not he wishes to testify?

19 MR. DAY: Yes, your Honor. He is determined --
20 he has determined he is not going to testify.

21 THE COURT: Very well.

22 Mr. Davis, if you would please stand.

23 Now, you do understand you're still under oath.

24 As I advised you of your right to testify before
25 lunch, that is a decision you must make personally. You

1 cannot rely on anyone else. You can talk to them, but
2 you and you alone are the only one that can determine
3 whether or not you wish to exercise your right under the
4 Fifth Amendment of the Constitution of the United States
5 in not to testify.

6 In fact, the provision even applied not only to
7 testimony, but you don't have to even put up any
8 testimony, any evidence or anything else. And if you
9 decide to exercise that right, it cannot be held against
10 you in any way, and I'll so instruct the jury.

11 However, you do have the opportunity to discuss
12 the matter with members of your family, friends, or your
13 attorney. But do remember it must be your decision and
14 yours alone.

15 Have you had an opportunity to discuss whether or
16 not you should testify with others?

17 THE DEFENDANT: No, sir. I haven't had time to
18 discuss with my mom.

19 THE COURT: Can that be made possible?

20 MR. DAY: He says he would like to just quickly
21 address it with his mother.

22 THE COURT: Very good. All right.

23 Officer, where do you think that might be done?
24 Can he interview him back there? Anybody else in your
25 holding cell?

1 THE BAILIFF: No, sir.

2 THE COURT: Can you do it there? He needs to be
3 private with her.

4 THE BAILIFF: That will be fine.

5 THE COURT: Okay. Very good.

6 (WHEREUPON, the defendant and his mother retired
7 from the courtroom from 2:45 p.m. until 2:50 p.m.)

8 THE COURT: All right. Mr. Davis, have you had
9 an opportunity to discuss whether or not you wish to
10 testify with your mother?

11 THE DEFENDANT: Yes, sir, I have, and I decided
12 not to.

13 THE COURT: You decided not to. All right. Very
14 well.

15 I do find that the defendant knowingly,
16 intelligently, freely, and voluntarily waives his right
17 to testify, and I'll so instruct the jury that it cannot
18 be held against the defendant and that they're not to
19 draw any inference or conclusion or presumption from the
20 failure to testify.

21 Thank you very much, sir. You may be seated.

22 Yes, sir. Mr. Day, you may call your next
23 witness.

24 MR. DAY: Your Honor, the defense rests.

25 THE COURT: All right. Very good.

1 You have some charges?

2 MR. DAY: No, sir. I think the charge, your
3 normal charge is --

4 THE COURT: All right. Well, let me go through
5 my charge book and see.

6 Do you have any, Madam Solicitor?

7 MS. SIMMONS: No, your Honor.

8 THE COURT: All right.

9 The first, of course, will be the credibility of
10 witnesses charge and expert witness. I think we had one
11 witness that was qualified as an expert, so I'll charge
12 expert witness. Obviously, the presumption of innocence
13 charge: Reasonable doubt. Now, I charge the *Manning*
14 charge, which is reasonable doubt is the kind of doubt
15 that would cause a reasonable person to hesitate to act.

16 However, if the jury requests further
17 instructions on reasonable doubt, then I will charge the
18 *State vs. Adams* or *Victor vs. Nebraska* or *State vs.*
19 *Mahoney* in the *Victor vs. Nebraska* charge.

20 Direct and circumstantial evidence, I charge
21 *Logan*. Intent. Multiple indictments. That each
22 indictment must be considered separately and evidence of
23 one is not evidence of the others. So it has to be
24 determined that they can either be -- and the fact they
25 are multiple indictments creates no presumption.

1 I charge the -- now, I charge the statutes really
2 on the language of the statute. I don't want to do too
3 much in the way of amplifying. Of course, if they do
4 require further statement, I think these particular
5 statutes are rather complete. And then, of course, I
6 charge the final charge on the statements, alleged
7 statements made, or purported statements made by the
8 defendant as to what the jury must find beyond a
9 reasonable doubt.

10 Then also I charge the testimony of the children
11 which we've had here. Now, I will charge the special
12 statute that corroborates a witness' testimony in a
13 criminal sexual conduct is not required. And then, of
14 course, the reasonable doubt *Manning* charge which has to
15 do with you can find him guilty on all indictments or
16 guilty on some but not on others or not guilty on all
17 indictments, but you cannot consider one in light of the
18 others.

19 Now, is there anything else from the State?

20 MS. SIMMONS: No, your Honor.

21 THE COURT: From the defense?

22 MR. DAY: No, your Honor.

23 THE COURT: Very good.

24 All right. As much as the defense has not
25 offered any testimony or evidence, obviously the State

1 will open fully both on the law and the evidence and then
2 the defense will close.

3 Any questions from the State?

4 MS. SIMMONS: No, your Honor.

5 THE COURT: From the defense?

6 MR. DAY: None, your Honor.

7 THE COURT: Very good. Ask the jury to join us.

8 (Whereupon, the jury came into open court at
9 approximately 2:58 p.m.)

10 THE COURT: Mr. Day.

11 MR. DAY: Thank you, your Honor. At this time
12 the defense rests.

13 THE COURT: Very well. Thank you very much.

14 Mr. Foreman, ladies and gentlemen of the jury, a
15 defendant has a constitutional right to remain silent, to
16 put up no evidence and require the State to meet its
17 burden of proof beyond a reasonable doubt. The assertion
18 of that constitutional right not to testify or present
19 evidence must not be considered by you in your
20 deliberations.

21 Under the oath that you have taken, you are to
22 draw no conclusions whatsoever from the fact that the
23 defendant in this case did not testify or put up
24 evidence. As I stated, the defendant is not required to
25 prove his innocence, and the burden of proof remains upon

1 the State to prove the guilt of the defendant on all
2 counts and beyond a reasonable doubt.

3 Madam Solicitor, I'll recognize you for your
4 closing argument.

5 MS. SIMMONS: Thank you, your Honor. Mr. Day.

6 Good afternoon, ladies and gentlemen. I want to
7 thank you for your time and attention over the last few
8 days. I know things have gotten a little longer than I
9 promised you they would be, but unfortunately I can't
10 control the weather.

11 First of all, I want to tell you a little bit
12 about the law you will be applying in this case so you
13 can be thinking about it when I tell you why we think we
14 have met the burden of proof in this case.

15 The defendant is charged with multiple counts of
16 criminal sexual conduct with a minor in the first degree.
17 That means the defendant engaged in a sexual battery with
18 a child who is under the age of 11. Sexual battery can
19 mean a number of things. I told you that at the
20 beginning of this case -- sexual intercourse, oral sex,
21 anal intercourse, or the intrusion of anything else into
22 the private parts of another person. So that would be
23 fingers, objects, those kinds of things.

24 He's charged with multiple counts of that. And
25 he's also charged with multiple counts of the

1 third-degree criminal sexual conduct. And that's lewdly
2 committing an act on the body of someone who's under the
3 age of 16 for the purposes of appealing to the lust or
4 desire of the actor or the child. So those are the two
5 crimes you're looking at for the purposes of your
6 deliberations.

7 The judge is also going to tell you that the
8 reasonable doubt standard is what you will apply. Again,
9 I will remind you that reasonable doubt is not beyond all
10 doubt, but it is a common sense standard. Is it
11 reasonable to believe this happened. Is it beyond -- do
12 you have any reasonable doubt. It's not all doubt.

13 And, most importantly, the judge is going to tell
14 you that the law in South Carolina says that the
15 testimony of the victim does not have to be corroborated.
16 In this case you do have corroboration of what the victim
17 has told you.

18 I want to talk to you a little bit about the
19 defense case before I talk to you about our case. I
20 think the tactics the defense has used have been a little
21 bit smoke and mirrors, trying to get you off track to
22 forget what evidence you really heard and what you heard
23 from those little girls on Tuesday. Each child is a
24 witness to the crimes committed against the other one.
25 People don't invite a crowd to molest a child. You do

1 have a witness here that even the defendant's own words
2 tell you no one else was present. Make any issue out of
3 the fact there's no more eyewitnesses makes no sense.

4 The defense will probably attack law enforcement
5 testimony in this case. These officers told you they did
6 not violate the defendant's rights and they conducted a
7 thorough investigation. They're probably going to talk
8 to you about what Mr. Lark did or didn't do. But first
9 Lieutenant Hawk told you the defendant didn't tell
10 Mr. Lark anything that he didn't tell him, and he never
11 asked Mr. Lark for an attorney. The lengthy, detailed
12 confession in this case was taken by Lieutenant Hawk, and
13 he was here and he told you about it.

14 Multiple parties tell you the defendant never
15 asked for an attorney. He asked for his mama and that's
16 it. He's 21 years old. He certainly is capable of
17 talking to the police without his mama. The defense
18 questioned the children about how many times they had
19 been to the Solicitor's office before court. And I think
20 they told you four. It would be unreasonable to take two
21 children under the age of 11, throw them up there on that
22 witness stand for the first time and expect them to tell
23 their story to strangers. Four times is not
24 unreasonable, ladies and gentlemen. And they also told
25 you no one ever told them what to say.

1 I expect the defense may also blame the parents
2 in this case. Maybe they made bad decisions. In
3 hindsight, would they have ever let this person around
4 their children? Absolutely not. But any feelings you
5 have towards the parents of these children should not be
6 held against these two little girls.

7 The defense wants you to pity the defendant, that
8 he just wanted his mama and he's not the smartest guy and
9 he hasn't had it easy. That doesn't -- your background
10 doesn't excuse behavior like this. Nothing in anyone's
11 background is ever acceptable to make what he did
12 acceptable. Look at the little girls' motive to lie.
13 There is none. Is their life any better because of this?
14 Did they enjoy coming up here and telling 14 strangers
15 and a room full of people about the most intimate private
16 details of their life that were intensely embarrassing?
17 Absolutely not. There is no reason to believe that these
18 little girls are not telling the truth.

19 Let's talk about what Minor 2 and Minor 1 told you
20 when they testified. Their facts, their details, and
21 their consistency is good. The courage it takes to come
22 up here and say what they did, most of us wouldn't have
23 it. The details they provided you as to each offense.
24 They used the words "private part," and I want to remind
25 you what Minor 1 and Minor 2 both said from the stand.

1 Minor 1 recounted that the defendant had her perform
2 oral sex on him, had he perform oral sex on her, he
3 touched her private parts in an inappropriate manner, he
4 penetrated her vaginally with his penis and had her
5 masturbate him.

6 Minor 2 told you the defendant touched her private
7 parts with his hands, rubbed her, had her masturbate him,
8 and stuck his finger inside her. All of that testimony
9 proves the elements that are required in this case. The
10 children's recall is good. They can't remember if they
11 went to the lake swimming last summer, but they do
12 remember what happened to them because these are the
13 things you don't forget. It will be burned in their
14 brain forever. There's only one logical explanation why
15 these little girls can give an accurate description of
16 what semen is. It is because they have seen it, and it
17 was his.

18 Dr. Carter was also here to testify. She told
19 you that the examinations that she conducted were
20 consistent with the allegations, and there is no history
21 to indicate the damage to each of these girls' hymens was
22 caused by any other reason other than a sexual injury.
23 Remember, Dr. Carter actually said Minor 1 's hymen was
24 so thin she could see inside her vagina.

25 You also heard from Lieutenant Hawk and Deputy

1 Freeman. They're not bullies. They're not bad cops.
2 They didn't violate anyone's rights. They did their
3 jobs. They got a confession from the defendant. They
4 established a time frame for the offenses based on when
5 the defendant and his mother were living in the home with
6 the victim and her father. They were there about
7 six months, and that's the time frame of these
8 indictments.

9 Let's talk about the defendant's statement one
10 more time. I want to read it to you. These are the
11 words of a guilty man. "I, Jessie Davis, have asked
12 Investigator Hawk to write this in my own words. I was
13 in my room, watching porn, jacking off as usual and drunk
14 as hell. Minor 2 came in and sat on my lap like she
15 usually does, and I told her to get out. She didn't
16 listen, just kept grinding on my lap and asking what I
17 was doing. I threw her off and threw the covers off and
18 I said, 'Are you happy?' And she started looking at it.
19 I had a hard on. She touched my penis and asked what I
20 was doing. I said, 'Jacking off.' She asked, 'What's
21 that?' so I showed her. She started to jack me off. She
22 said she was feeling funny in the front. I told her she
23 was probably getting wet or had to pee. She said, 'What
24 do you mean?' I told her when man and woman rub each
25 other, it feels good. She wanted to see, so she pulled

1 her pants down and my penis rubbed in the crack of her
2 butt. She said her wee-wee and showed it to me, and I
3 pointed it out, and I touched it with the tip of my
4 finger and said it was a pussy or a vagina, and she said
5 it felt weird and I stopped.

6 "Minor 1 walked in when Minor 2 was rubbing on my
7 penis with her pants down and said, 'Minor 2 come over.'
8 Minor 1 said, 'What are you doing?' Minor 2 said, 'It's
9 funny what this thing does.' Minor 1 came over and
10 jacked me off and then took her pants off and rubbed on
11 my penis with her butt. She put my penis in her mouth.
12 I think she was wondering what it tasted like. Her teeth
13 rubbed my penis and I told her not to tell and I was
14 sorry. This happened between October and November at the
15 residence at Drive in Westminster in my room. I
16 don't think anyone else was home. This is the only time
17 it happened."

18 The only thing wrong with this confession is that
19 it's a classic minimization of guilt. He's trying to
20 minimize his guilt and make you, as reasonable people,
21 believe that two children under the age of 11 essentially
22 tried to have a threesome with him. It's absurd and it's
23 sick.

24 Minor 1 also told you that the defendant
25 threatened her with a gun. A gun was recovered in his

1 pocket when he was approached by law enforcement.

2 Minor 1 tells you the defendant threatened her with a
3 knife. She identified the knife, and the knife was found
4 in the house. She says the defendant used baby shampoo
5 as a lubricant. She identified this bottle, and again,
6 it was found in the house.

7 And the words that Minor 1 says the defendant
8 used for a girl's private parts are the same ones that he
9 included in that confession, his own words. And most
10 importantly, taken as a whole, the medical testimony and
11 the evidence in this case corroborates what he says he
12 did and a whole lot more.

13 In a little while you're going to be asked to go
14 to the jury room and deliberate. The most important tool
15 you have is your common sense. You didn't leave it at
16 the door when you came in. Your common sense doesn't
17 believe what the defense is telling you in this case.
18 There's only one verdict in this case and it's guilty.
19 Guilty on all counts.

20 To sum this up, this case is about a man who
21 carried out his sick, adult desires on two helpless
22 little girls. The way little girls trust adults is a
23 hundred percent. It's innocent and pure. He violated
24 that in the worst way imaginable. These girls were so
25 young that they couldn't even appreciate the severity of

1 what was happening to them. But what they did understand
2 is what would happen if they told. That was clear. And
3 that is why it continued. It only stopped when Minor 2 had
4 the courage to tell.

5 Minor 1 is 11 years old. She shouldn't
6 know what the word "rape" means but she does. All
7 because of that man. She thinks about it every single
8 day when she puts on, not one, but two pair of pants and
9 goes to school. She has to think about it every day when
10 she wears those two pair of pants.

11 The defense wants you to show pity and sympathy
12 for the defendant, Jessie Davis. What pity and what
13 sympathy did he show those little girls? Absolutely
14 none, and that's the amount he deserves. Thank you.

15 THE COURT: Mr. Day.

16 MR. DAY: Madam Solicitor, your Honor, ladies and
17 gentlemen, like I said in the beginning, I knew this
18 wasn't going to be easy, that you would have to listen to
19 things no one likes to listen to and consider things no
20 one likes to consider. And the reason you are here is to
21 make a determination.

22 Now, I hope that you don't see any smoke and
23 mirrors. I thought -- if I thought that smoke and
24 mirrors might work, I would bring them in here and show
25 them to you and see what you think. That doesn't happen.

1 What happens is you've got to sit here and look at
2 everything. We thank you. You've been very attentive.
3 I've watched you. You haven't been drifting off. You
4 haven't been daydreaming about other things. You've been
5 listening. You're taking it seriously. We appreciate
6 that very much.

7 The only issue here is whether or not Jessie
8 Davis is guilty of the charges against him. And has the
9 State met its burden of proof to prove that guilt beyond
10 a reasonable doubt. The judge will explain reasonable
11 doubt, and I'll speak about it again in a minute. But
12 that's for all of you, all of you to consider both
13 separately and, as I said before, corporately, all of
14 you. It has to be a unanimous decision. Each of you
15 must come to the same conclusion. And if you have come
16 to a conclusion, the judge will explain to you that's
17 your conclusion, it's based upon what you believe, and
18 that's what you stick with. But make sure that we do it
19 the right way. Okay?

20 Let's look at all the things that are in dispute
21 here. For one, having to watch two little girls sit in a
22 courtroom and talk about this is not easy for any of us,
23 for anybody. It's horrible. Imagine what it's like for
24 my side having to stand there and talk to them about it.
25 I find that very embarrassing. But I have no other

1 choice because we have to get down to what's going on.

2 And Minor 1 got up there. She was trying to
3 explain what went on. She went right down all those
4 questions. The Solicitor would say and she would ask her
5 a question and she'd say yes or no and got all the way
6 through until I asked her how many other people she had
7 told what she was going to say, and she said she never
8 told another soul. Something ain't right about that.
9 Now the Solicitor is saying at least four times. No.

10 Minor 1 never said that. She said she never told
11 anybody. Because I asked her about that, what was she
12 going to say. It's hard to believe.

13 The other thing is we start looking at dates.

14 Do we have the indictments?

15 Your Honor, are those the indictments up there?

16 MS. SIMMONS: Mr. Day, you can use mine.

17 MR. DAY: I'll use these, your Honor.

18 THE COURT: Use this.

19 MR. DAY: I'll use these copies.

20 These are copies of the indictments. The judge
21 explained to you about the indictments when we started
22 this. The indictments are a piece of paper that brings
23 us to this point, which means it's gone to a grand jury,
24 and it says in there what the allegations are against the
25 defendant. When they say what the allegations are, this

1 is what they have got to prove. That's a requirement of
2 the law. Our Constitution, both state and federal, says
3 that you must prove these things to the jury in order for
4 a person to be found guilty if you get beyond a
5 reasonable doubt. You've got to prove all of that.

6 It says that Jessie Wayne Davis did in Oconee
7 County on or between June 18th and January the 3rd.
8 We're talking about the indictment for criminal sexual
9 conduct in the third degree. That it did occur between
10 June 18th and January 3rd. They have got to prove that
11 with some specificity, something you can put your hand
12 on, something you can put in your mind when did this
13 occur.

14 Because when you stop and look at this, these
15 came before you -- come before you. Like I said, this is
16 not evidence by any means. I'm not trying to make you
17 think that there's something about these that creates
18 evidentiary question. It doesn't. But it is an
19 important document because it's what gets us here. And
20 it's in the grand jury. And the witnesses, not Gentry
21 Hawk, but someone named Amanda Tinsley, who never
22 testified in this courtroom or set foot in it that I'm
23 aware of. But here we are.

24 When we get into this, the testimony that you
25 have heard came from Mr. Hawk, Mr. Freeman. Came up here

1 and testified that on the night they were called, they
2 ended up picking up Jessie Davis. Jessie Davis, who was
3 compliant, nonresistive, cooperative. Officers were
4 there. He went with them. He said he had a gun on him.
5 He let them know that. And as they said, he acted
6 properly, let them know, gave up the gun, of course.
7 And, of course, the officer didn't want him carrying a
8 gun. Didn't want anybody carrying a gun when you have
9 them in the police car or anything like that. Officer
10 was doing the right thing there. But he wasn't arguing
11 about that.

12 So they end up taking him to the sheriff's
13 department in the middle of the night, 10:30, 11 o'clock
14 at night, take him into a locked area, take him into a
15 room that has no windows, put him into a room and he
16 began to talk to them. And he denied these allegations.
17 All of these allegations they were making, he denied.
18 No.

19 Well, sometime he goes in, taken into a room with
20 another person, Mr. Lark we were talking about, and he
21 goes into another room with no windows and the door is
22 closed. And an hour and 45 minutes later, out walks
23 Mr. Lark and says he's admitting to everything. And so
24 as soon as he walks out, Mr. Hawk says, Well, here. I'll
25 write it down because he says -- he says, I can't write.

1 I can't spell. You write it down.

2 And he says he then wrote all this down from 1:48
3 in the morning until 2:09 in the morning. And the whole
4 time all he had ever said was up until this point is he
5 wanted to talk to his mother. Middle of the night.
6 Sheriff's department. Locked room. No way out. Can't
7 leave. They say he could leave anytime he wanted to.
8 Both officers sat right up there on the witness stand and
9 said, Well, we never told him he could leave, but he
10 could. But they're the ones that had the guns. They're
11 the ones that had keys to the door. They're the ones
12 that had him inside the sheriff's department in the
13 middle of the night.

14 All of a sudden, he's having someone write down
15 for him what he's being accused of which he's been
16 denying the entire time. So what happened? Doesn't make
17 sense. The other thing, when you think about not making
18 sense, he said he wanted Mr. Hawk to write this down for
19 him. Then they turn around a few minutes later and say,
20 Well, That's true. Deputy Freeman says, He wanted me to
21 write for him letters of apology.

22 Another matter in approaching someone who you're
23 accusing of a crime saying now you have to help the
24 victim. So by doing that, they say, look, why don't we
25 write letters of apology. And, again, they say, You

1 write them for me. They say that Jessie Davis says,
2 Write them for me because I can't write.

3 Then they say, Oh, but then he did write three
4 others. Something is not making sense here. Did he want
5 them to write out everything or did he not? Why would he
6 have them write it out saying that he couldn't and then
7 turn right around and do it himself? And you'll notice
8 that the ones that they say he wrote out were all --
9 after all of these that had been written out by them.
10 They have now backed him into a corner up there in a room
11 with no windows in the middle of the night and said, Now
12 you write it down. Something is not making sense there.
13 It's just not making sense.

14 Let's face it. Remember, he's up there all
15 alone. He's the one who is up there with no friends, and
16 all he wanted to do was speak to his mother, and
17 everybody is telling him, No, you can't do that. You're
18 21 years of age. You're on your own. He wanted to speak
19 to his mother. Doesn't sound to me like he was all that
20 calm. Sounded to me like he was scared. He wanted to
21 talk to his mother. No.

22 Remember when I asked him, Was he free to leave?
23 But of course. Did you tell him he could go? No. I
24 don't know about you, they're the ones with the guns.
25 It's their building, their keys. I don't think you just

1 get up and walk out. Or believe you can.

2 All this is going on. They're saying, He wanted
3 us to write it. No. He wanted to write it. That's not
4 making sense. All this is going on at the sheriff's
5 department where they keep their equipment. There are no
6 recordings of any kind. And don't get me wrong. I'm not
7 going to stand up here and tell you that the law requires
8 that. It doesn't. Some states do. South Carolina does
9 not. There's no law that requires it, but you're in the
10 sheriff's department with all their equipment. Why
11 couldn't you just record it? Would have answered all of
12 these questions. Everything. Could have just played it
13 right up there on that screen, and it would have answered
14 every single question. Then you would know for sure.
15 But we don't. Because it wasn't done.

16 Evidence has come through. You heard from
17 Dr. Carver. Very nice lady. Says what she found. But
18 what she said was consistent, not exclusive, and
19 certainly not conclusive. She says while it may be
20 consistent with, there are other ways in which these
21 things can happen. And she can't rule them out. All of
22 those things have to be considered. That's the evidence
23 that's being presented to you. There's no other forensic
24 evidence of any kind. None.

25 There's nothing else that points directly to

1 Jessie Davis. You heard statements from the little girl,
2 and they got up here and testified, some of which just
3 doesn't make sense. I know it was hard for them to come
4 up there. We all know that. But we don't know what went
5 on in the last year either and what brought them here.

6 What we do know is when you go back there in that
7 room, no one can ask you what you're doing or why you're
8 doing it or how you're doing it. All we're interested in
9 is what comes out. In our country, the only place that
10 is sacrosanct, the only place that is inviolable is that
11 jury room. The government can and apparently has been
12 listening in on your conversations. They can go to a
13 judge. They can place a bug in your bedroom, your car,
14 anywhere you are and listen to you. They can do that.
15 It happens every day. But they can't go back in that
16 jury room. We can't even listen. Nothing.

17 When you walk out of there, if I want to ask you
18 what happened, you don't have to answer any questions
19 from me or the Solicitor, any officer, the judge or
20 anybody. You don't have to answer any questions.
21 Because that place is that important. You must go back
22 there and make a decision. And it's going to be hard.
23 The judge will explain reasonable doubt. If you start to
24 hesitate, you're having doubt. You have got to consider
25 all this. And when you start weighing things, you've got

1 to start thinking about it. And if you start to hesitate
2 and start asking more and more questions about it, then
3 you are beginning to have problems with it, and that's
4 reasonable doubt.

5 Now don't get me wrong. We're not talking about
6 just any kind of doubt as to whether we shall see the sun
7 tomorrow morning or have daylight. I can tell you --
'8 well, we don't know for sure. We could have doubt about
9 that. That's not reasonable. Don't think so. I don't
10 think God has chosen tonight to end the world. So we
11 have to be reasonable. So if you hesitate, you have to
12 give that to the defendant.

13 The burden of proof belongs to the State of South
14 Carolina and all of its power against Jessie Davis. You
15 are the only person that stands between him and all that
16 power. The State has got to come through you first.
17 You've got to be sure. It's that important.

18 We ask that you consider all of this. We ask
19 when you look at that, there are questions there to be
20 answered which have not been answered yet.) We ask you,
21 because of that, to consider that very carefully, and I
22 believe you will see that the State has not gotten past
23 that burden of proof, past that reasonable doubt, and
24 past those things just not making complete sense. It's
25 just not all adding up.

1 We thank you for doing that and hope you never
2 have to find yourself looking in the faces of 12 or 14
3 people and asking that question. Thank you.

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, as jurors in this case, you have certain
6 functions and responsibilities to perform which are
7 entirely separate and distinct from those of mine as the
8 trial judge. I am prohibited by the Constitution of our
9 state from charging you on the facts of this case, and
10 I'm also prohibited from discussing the facts of the case
11 with you or in any way intimating what my feelings, if
12 any, are about the facts of this case.

13 It is your responsibility and yours alone to pass
14 upon all issues of fact presented in the case. I would,
15 therefore, charge you that if during the course of this
16 trial during my charge you have been given or left with
17 the impression or feeling that I do have a personal
18 feeling about the facts of the case, I would specifically
19 instruct you to disregard that feeling or impression.

20 Moreover, you are the sole judges of what the
21 testimony was and not argument of counsel. It is also
22 your duty and yours alone to weigh the testimony and
23 evidence in the case and to pass upon the credibility or
24 believability of the witnesses. In this connection, you
25 have the right to believe all that a witness tells you or

1 to disbelieve it. You have the right to believe a part
2 of what a witness tells you or to disbelieve a part of
3 what a witness tells you. You have the right to take
4 into consideration any bias or prejudice or interest you
5 feel the witness might have in the case. I say this
6 merely to emphasize that the weight you see fit to give
7 to the testimony, to the credibility of the witnesses, as
8 well as all issues of fact, that will be your sole
9 determination.

10 As judges of the facts, you are the sole judges
11 of the credibility, that is, the believability of the
12 witnesses who have testified in this case. In passing
13 upon their credibility, you may take into consideration
14 many things such as the appearance and manner of a
15 witness on the stand, sometimes referred to as the
16 demeanor of the witness. Was the witness forthright or
17 was the witness' testimony consistent or did it contain
18 discrepancies? What was the ability of the witness to
19 the know the facts about which he or she testified? Did
20 the witness have a cause or a reason to be bias or
21 prejudice in favor of the testimony he or she gave? Was
22 the testimony of the witness corroborated or made
23 stronger by other testimony in evidence, or was it made
24 weaker or impeached by such other testimony in evidence?

25 As jurors, you have the right to believe a small

1 portion of a witness' testimony and discard the larger or
2 vice versa. You may believe all that a witness says --
3 all of a witness' testimony or none. You may believe --
4 excuse me. Most certainly you do not determine the
5 matter of credibility or believability by counting up the
6 numbers of witnesses who may have testified on behalf of
7 the parties.

8 Now, the rules of evidence ordinarily do not
9 permit witnesses to testify to opinions or conclusions.
10 An exception to this rule exists for witnesses we call
11 expert witnesses. A witness who has by education and
12 experience has become an expert in some art, science,
13 professional calling may state an opinion as to the
14 relevant and material matter in which the witness claims
15 to be an expert and may also state the reasons for the
16 opinion. You should consider any expert opinion received
17 in evidence in this case, and like any other such
18 evidence, give it the weight you think it deserves. If
19 you decide that the opinion of an expert is not based on
20 sufficient education and experience, or if you conclude
21 that the reasons given in support of the opinion are not
22 sound, or that the opinion is outweighed by other
23 evidence, you may disregard the opinion entirely. An
24 expert witness' testimony is to be given no greater
25 weight than the other witnesses' testimony simply because

1 the witness is an expert. Further, you are not required
2 to accept an expert's opinion even though it is not
3 contradicted.

4 Now, throughout this entire process, you have one
5 single objective, and that is to seek the truth
6 regardless from what witness that testimony may have
7 come. Now, by the same constitutional law which makes
8 you the finders of facts from the evidence as I have
9 discussed with you, I am, as the judge, made the sole and
10 only instructor on the law. You must accept as correct
11 the law which I charge and apply to it the evidence as
12 you find it and reach a verdict. If I should make an
13 error in this law as I instruct it to you, there is
14 another time and place that the error can be corrected or
15 considered or corrected, if necessary. But for the
16 purposes of this case today, you must accept the law as I
17 charge it to you to be the correct law.

18 And, finally, I charge you in this regard, that
19 you nor, for that matter, I should be concerned with what
20 the law ought to be but rather what I charge you the law
21 to be.

22 Now, the defendant has pled not guilty to each of
23 these indictments. And that plea puts the burden of
24 proof on the State to prove his guilt beyond a reasonable
25 doubt. A person charged with committing a criminal

1 offense in South Carolina is never required to prove
2 himself innocent. I charge you that this is an important
3 rule of law, the defendant -- that the defendant in a
4 criminal trial, no matter what the seriousness of the
5 charge may be, will always be presumed innocent of the
6 crime for which the indictment was issued unless guilt
7 has been proven beyond -- by evidence satisfying you of
8 that guilt beyond a reasonable doubt.

9 The presumption of innocence does not end when
10 you begin your deliberations. But it accompanies the
11 defendant throughout the trial until you reach a verdict
12 of guilt beyond -- based upon evidence satisfying you of
13 that guilt beyond a reasonable doubt.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the defendant
16 which remains with the defendant until it is stripped
17 from the defendant by evidence satisfying you of the
18 defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not a mere legal
20 theory. It is not just a legal phrase. It is a
21 substantial right to which every defendant is entitled
22 unless you, the jury, are satisfied that the evidence of
23 the defendant's guilt -- excuse me -- from the evidence
24 of the defendant's guilt beyond a reasonable doubt.

25 What is a reasonable doubt? In the law, a

1 reasonable doubt is the kind of doubt that would cause a
2 reasonable person to hesitate to act. I instruct you and
3 emphasize that the fact the defendant did not testify or
4 put up evidence is not a factor to be considered by you
5 in any way in your deliberations and in your
6 considerations of the question of whether the State has
7 proven the defendant is guilty or not guilty of the
8 charges in each indictment. It must not be considered by
9 you in any manner whatsoever.

10 A defendant has the constitutional right to
11 remain silent, and the exercise of this right must not be
12 considered by you in your deliberations. I repeat:
13 Under your law, your oath, you are to draw no conclusion
14 whatsoever from the fact the defendant in this case did
15 not testify or present evidence. The fact that the
16 defendant did not testify should not even be discussed by
17 you in the jury room.

18 The burden of proof, as I said earlier, is on the
19 State. The defendant is not required to prove his
20 innocence. The burden of proof remains on the State to
21 prove guilt beyond a reasonable doubt.

22 Now, there are two types of evidence which are
23 generally presented during a trial: Direct evidence and
24 circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have an actual

1 knowledge of the facts such as an eyewitness. It is
2 evidence that immediately establishes the main fact to be
3 proven and does not require a deduction.

4 Circumstantial evidence is proof of a chain of
5 facts and circumstances indicating the existence of a
6 fact. It is evidence which immediately establishes
7 collateral facts from which the main fact may be
8 inferred. Circumstantial evidence is based on inference,
9 not on personal knowledge or observation. Crimes may be
10 proven by circumstantial evidence. The law makes no
11 distinction between the weight or value to be given
12 either direct or circumstantial evidence.

13 However, to the extent the State relies on
14 circumstantial evidence, all of the circumstances must be
15 consistent with each other and when taken together point
16 conclusively to the guilt of the accused beyond a
17 reasonable doubt. If these circumstances merely portray
18 the defendant's behavior as suspicion, the proof has
19 failed. The State has the burden of proof of proving the
20 defendant guilty beyond a reasonable doubt. This burden
21 rests upon the State regardless of whether the State
22 relies on direct evidence, circumstantial evidence, or
23 some other combination of the two.

24 You should weigh all the evidence in this case,
25 and after weighing all the evidence, if you are not

1 convinced of the guilt of the defendant beyond a
2 reasonable doubt, you must find the defendant not guilty.

3 In order to establish criminal liability,
4 criminal intent is required. For example, the mental
5 state required to be proven by the State for a particular
6 crime must be purpose, intent or knowledge, reckless or
7 criminal knowledge. Criminal intent must be proven by
8 the State beyond a reasonable doubt. Criminal intent is
9 always a matter that must be determined by the jury from
10 the circumstances surrounding the situation. There is no
11 way we can prove intent to a mathematical certainty.
12 There's no way medical science can dissect a person's
13 brain and determine what the person had in his mind, so
14 the law says the criminal intent may be inferred from the
15 circumstances shown to have existed.

16 This is how you do it or make a determination of
17 whether or not the element requiring intent was present.
18 It is not necessary to publish intent by direct and
19 positive evidence. An intent may be established by an
20 inference in the same way as any other fact, by taking
21 into consideration the acts of the parties and all of the
22 facts and circumstances of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It's up to you to determine what the
25 defendant intended to be based on the circumstances shown

1 to have existed. Criminal intent is a state of mind that
2 operates freely and jointly with an act or omission in
3 the commission of a crime. Criminal intent is a mental
4 state.

5 Criminal liability is normally based on the
6 concurrence of two factions -- an evil-doing mind and an
7 evil-thinking hand. Suspicion, however strong, is not
8 enough to sustain a conviction. The evidence presented
9 by the State must be substantial. Evidence that tends to
10 prove the defendant -- prove the guilt of the defendant
11 beyond a reasonable doubt.

12 Now, the indictments in this case allege several
13 different offenses against the defendant. Indictment
14 Number 2013-GS-37-344, criminal sexual conduct with a
15 minor in the first degree alleged digital penetration of
16 the victim ^{Min}_{or 2}'s vagina. Indictment Number GS-37-345,
17 criminal sexual conduct with a minor in the third degree,
18 allege -- defendant allegedly had victim ^{Minor}₂ masturbate
19 his penis. Indictment number 2013-GS-37-346, criminal
20 sexual conduct with a minor in the first degree, alleged
21 that he had sexual intercourse with the victim ^{Minor}₁
22 Indictment Number 2013-GS-37-347, criminal sexual conduct
23 with a minor in the first degree, defendant allegedly had
24 victim ^{Minor}₁ perform oral sex on penis and mouth on him.
25 Indictment number 2013-GS-37-348, criminal sexual conduct

1 with a minor in the first degree, defendant allegedly
2 performed oral sex on the victim^{Min}_{or}. And in indictment
3 Number 2013-GS-37-349, criminal sexual conduct with a
4 minor in the third degree, the defendant allegedly had
5 victim^{Minor}₁ masturbate his penis. /

6 Each indictment charges a separate and distinct
7 offense. You must decide each indictment separately on
8 the evidence and the law applicable to it uninfluenced by
9 your decision as to any other indictment. The defendant
10 may be convicted or acquitted on all or any of the
11 offenses charged, and you will be asked to write a
12 separate verdict or verdict of guilty or not guilty for
13 each indictment.

14 I remind you that the fact the defendant was
15 arrested, charged and indicted in this case is not
16 evidence in this case and cannot be considered by you as
17 evidence of guilt in this case, nor does it create any
18 presumption to support evidence of guilt. An indictment
19 is simply the document that -- a formal written
20 instrument which contains the charge made against the
21 defendant. It is not the -- it is the formal document by
22 which the case has been brought into court.

23 The defendant is charged with four counts of
24 first-degree criminal sexual conduct and two counts of
25 third-degree criminal sexual conduct. When two or more

1 acts of criminal sexual conduct occur at or about the
2 same time, each act is a separate crime rather than one
3 continuing crime.

4 The defendant is charged with first-degree
5 criminal sexual conduct with a minor. The State must
6 prove beyond a reasonable doubt that the defendant
7 engaged in a sexual battery with the defendant or with
8 the victim. A sexual battery is sexual intercourse,
9 cunnilingus, fellatio, anal intercourse or any intrusion,
10 however slight, of any part of a person's body or any
11 object into the genital or anal openings of another
12 person's body, except when the intrusion is accomplished
13 by medically recognized treatment or diagnostic purposes.

14 The State must then prove beyond a reasonable
15 doubt that the victim was less than 11 years of age at
16 the time of the sexual battery. Consent, willingness,
17 indifference or ignorance on the part of the minor, if
18 any, as to what was taking place does not in any way
19 affect the charge of criminal sexual conduct with a minor
20 because an unmarried woman under the age of 14 cannot
21 legally consent to sexual intercourse.

22 Now, the defendant is also charged with
23 third-degree criminal sexual conduct with a minor. The
24 State must first prove beyond a reasonable doubt the
25 defendant was over the age of 14. Next, the State must

1 prove that the victim was under the age of 16. Next, the
2 State must prove that the defendant willfully and lewdly
3 committed or attempted a lewd or lascivious act on, with
4 the body or its parts of a child under the age of
5 16 years with the intent to arouse, appeal to, or gratify
6 the lust, passions, or sexual desires of the defendant or
7 the child.

8 "Willfully" means voluntarily and intentionally
9 with the specific intent to do something the law forbids.
10 "Lewd" means obscene, lustful, indecent, or lecherous.
11 "Lascivious" means tending to incite lust, lewd,
12 indecent, obscene, or tending to deprave the morals in
13 respect of sexual relations.

14 Now, where the Court has determined admissibility
15 of the evidence in this case, you, the jury, must
16 determine the existence and voluntariness of the waiver
17 of any alleged statement made by the defendant. You must
18 make the ultimate determination of whether or not the
19 defendant, in fact, made the alleged statements. You
20 must then determine whether the statements were made
21 voluntarily.

22 Finally, you will decide what weight, if any,
23 should be given to any of the alleged statements. You
24 must determine whether the alleged statements or a
25 statement was a product of and essentially free from any

1 unconstrained choice by its maker. The State must prove
2 the voluntariness of the statement beyond a reasonable
3 doubt.

4 If you determine beyond a reasonable doubt that a
5 statement was given freely and voluntarily, then you may
6 be -- you may give the statement such further
7 consideration as you deem proper. Or if you determine
8 that the alleged statement was not the free and voluntary
9 will, expression of the defendant, then you should not
10 consider the statement as evidence.

11 In determining whether a defendant's will was
12 overcome in obtaining the statement, the law requires you
13 to consider what is known as the totality of the
14 circumstances. You should consider both the
15 characteristics of the defendant and the characteristics
16 of circumstances surrounding any questioning of the party
17 in an interrogation.

18 Some of the factors the law says you may consider
19 are the age of the defendant, the defendant's educational
20 background, defendant's mental ability or capacity, the
21 defendant's background along with the other facts and
22 circumstances surrounding the making of the alleged
23 statement to include length of custody, police
24 misrepresentations, threats of violence, promises of
25 leniency, and isolation of a minor from her or his

1 parents.

2 In determining the voluntariness of any alleged
3 statement, you should consider whether the defendant was
4 accused of and abuse -- excuse me. You must consider
5 whether the alleged statement was a result of whether the
6 defendant was advised of and understood his
7 constitutional rights. The law requires that before any
8 interrogation or questioning of a person in custody may
9 begin, law enforcement must advise the accused of his
10 Miranda rights.

11 This means that the authorities advise the
12 accused, one, that the accused has the right to remain
13 silent. Two, that the statement should be or could be
14 used against the accused in a court of law. Three, that
15 the accused has the right to have a lawyer present. And
16 if the accused cannot afford a lawyer, then a lawyer will
17 be appointed for the accused to represent him without
18 cost. And that the accused could stop making any
19 statement at any time he wants to.

20 Other factors to be considered are the place and
21 length of questioning and any detention and the nature of
22 the questioning. You must carefully scrutinize all of
23 the surrounding circumstances before you give any weight
24 to an alleged statement. You must be satisfied beyond a
25 reasonable doubt that the statement was made by the

1 defendant uninfluenced by promise of reward or threat of
2 harm or if you find -- and if you find beyond a
3 reasonable doubt that any alleged statement was given
4 voluntarily, then you must decide what weight, if any,
5 should be given to the statement. If you find that the
6 statement was not voluntary, then in that event you must
7 not consider the statement as evidence for any purposes.

8 Now, during this trial you have also heard the
9 testimony from a child. Where a witness is a child, you
10 must determine, as with any witness, whether that
11 testimony is believable. But in deciding believability,
12 you must consider not only facts that have already been
13 discussed with you, but you may also consider the age of
14 the child, the child's ability to observe and remember
15 things, and the child's ability to understand and answer
16 questions. Because young children may not fully
17 understand what is happening here, it is up to you to
18 decide whether the child understood the seriousness of
19 appearing as a witness at this criminal trial, whether
20 the child understood the questions asked, whether the
21 child has a good memory, and whether the child
22 understands the difference between lying and telling the
23 truth.

24 In addition, young children may be influenced by
25 the way that questions are asked. It is up to you to

1 decide whether the child understood the questions asked
2 and did they truthfully respond to those questions.

3 Now, the testimony of a victim in a criminal
4 sexual conduct prosecution need not be corroborated by
5 other testimony or evidence, and I instruct you, you must
6 determine the credibility of all witnesses who have
7 testified in this case. It is your responsibility and
8 yours alone to pass upon all the issues of fact presented
9 in the case.

10 I would, therefore, charge you that if, during
11 the course of this trial or during my charge, you've been
12 given or left with an impression or feeling that I do
13 have a personal feeling about the facts of this case, I
14 would specifically instruct you to disregard that feeling
15 or impression.

16 If you have a reasonable doubt of the defendant's
17 guilt after considering all of the evidence as to any of
18 the indictments, then you must find the defendant not
19 guilty on that indictment. On the other hand, if you
20 have no reasonable doubt or instruments -- excuse me. If
21 you have a reasonable doubt of the defendant's guilt
22 after considering all of the evidence on either or any of
23 the indictments, then you must find the defendant not
24 guilty on that indictment or indictments.

25 On the other hand, if you have a reasonable doubt

1 as to the defendant's guilt -- have no reasonable doubt
2 as to the defendant's guilt after considering all of the
3 evidence on either or any of the indictments, then you
4 must find the defendant guilty on that or those
5 indictments.

6 Mr. Foreman, ladies and gentlemen of the jury,
7 you have been selected as fair and impartial jurors to
8 impartially try and determine the facts of this case.
9 And when you have complied with your oath to do so, then
10 no one will have a right to criticize your verdict and
11 you will have fully discharged your duty as jurors. You
12 should not be influenced by opinions or expressions of
13 opinions, if any, which you may have heard on the
14 outside, but you are to decide this case according to the
15 testimony that you have heard from the lips of the sworn
16 witnesses along with the other evidence that may have
17 been introduced.

18 As I said earlier, you are the judge of the facts
19 in this case or these cases, and you are to determine
20 only if the defendant is guilty or not guilty based on
21 the testimony and evidence presented in this courtroom
22 and after applying the law as I have given it to you to
23 each indictment.

24 If, from the evidence that you have -- if, from
25 the evidence, you have a reasonable doubt as to whether

1 or not the defendant is guilty on any indictment, it is
2 your duty to acquit him, and that is to write the words
3 "not guilty" as to the charges in that indictment.

4 Under the oath you took, you swore to try this
5 case based only and solely on the testimony and evidence
6 and law presented and heard in this courtroom. It is
7 your duty to lay aside all bias or prejudice or sympathy
8 you may have in reaching your verdict. You have no
9 friends to reward or enemies to punish in this case.

10 I might note that the word "verdict" comes from
11 the Latin term "veredictum" which means to speak the
12 truth. And, Mr. Foreman, I have prepared a verdict form
13 for you to use in the jury deliberations. As I
14 mentioned, there are six indictments in this case, and
15 each indictment must be considered separately, and your
16 verdict on each indictment will be separately and apart
17 from any other verdict you have on any other indictment
18 and each -- the elements of each case should be
19 considered separately and independently.

20 As you will note, I start with indictment number
21 2013-GS-37-344, criminal sexual conduct with a minor in
22 the first degree as to the victim^{Minor 2} And you have two
23 possible verdicts in that case. We, the jury,
24 unanimously -- and they have to be unanimous verdicts,
25 all of them. And this is the way it will be expressed:

1 We, the jury, unanimously find on indictment number
2 2013-GS-37-344 that the defendant, Jessie Wayne Davis, is
3 either guilty of criminal sexual conduct with a minor,
4 ^{Minor}₂ who was less than 11 years of age in the first degree
5 by digitally penetrating the vagina of the victim, or not
6 guilty.

7 Then indictment, on the second page,
8 2013-GS-37-345, criminal sexual conduct with a minor in
9 the third degree as to the victim^{Minor 2} We, the jury,
10 unanimously find on indictment number 2013-GS-37-345 that
11 the defendant, Jessie Wayne Davis, is guilty of criminal
12 sexual conduct with a minor in the third degree, the
13 victim being less than 16 years of age and the actor more
14 than 14 years of age, by having the victim masturbate the
15 penis or his penis, or not guilty.

16 And, again, on indictment number 2013-GS-37-346,
17 it would be your verdict: We, the jury, unanimously find
18 on indictment number 2013-GS-37-346 that the defendant,
19 Jessie Wayne Davis, is guilty of criminal sexual conduct
20 with a minor, ^{Minor}₁ who is less than 11 years of age in the
21 first degree by putting his penis inside the vagina of
22 the defendant, or not guilty.

23 And then as to indictment number 2013-GS-37-347,
24 it would be the verdict of the jury unanimously find on
25 that indictment that the defendant, Jessie Wayne Davis,

1 is guilty of criminal sexual conduct with a minor,^{Minor}
2 who was less than 11 years of age in the first degree by
3 having the victim perform oral sex, penis on the mouth on
4 him, or not guilty.

5 And, finally, on indictment number
6 2013-GS-37-348, your verdict would be: We, the jury,
7 unanimously find on indictment number 2013-GS-37-348 the
8 defendant, Jessie Wayne Davis, is either guilty of
9 criminal sexual conduct with a minor,^{Minor 1} who is less
10 than 11 years of age in the first degree by performing
11 oral sex on him, or not guilty.

12 And the last page is indictment number /
13 2013-GS-37-349. And your verdict in that case will
14 either be: We, the jury, unanimously find on indictment
15 number 2013-GS-37-349 that the defendant, Jessie Wayne
16 Davis, is either guilty of criminal sexual conduct with a
17 minor in the third degree, the victim being less than
18 16 years of age and the actor more than 14 years of age,
19 by having the victim masturbate his penis, or not guilty.

20 Once you have completed the entire verdict form
21 as to each indictment -- it's all six indictments -- and
22 marked the appropriate verdict on each of those
23 indictments, then you will sign your name on the line
24 provided, knock on the door, and we'll return you to the
25 jury room to receive your verdict, and if you would,

1 please, pass the verdict form up to the bailiff.

2 And I'm going to have to ask you to retire to the
3 jury room one more time. I need to take up some matters
4 with the attorneys. But once I do that, then I'll send
5 the bailiff in with the exhibits and the verdict form.
6 Once you receive the verdict form and the exhibits, then
7 you begin your deliberations. . And once you have reached
8 a verdict as to each indictment and the verdict form has
9 been completed, you will knock on the door and we'll have
10 you return to receive your verdicts as to all those
11 indictments.

12 So if you could now go with the bailiff. Except
13 for the alternates. The alternates would remain in the
14 courtroom. And do not begin your deliberations until I
15 send in the verdict form together with the exhibits.

16 (Whereupon, the jury exited the courtroom /

17 At 3:57 p.m.)

18 THE COURT: All right. Any exceptions or
19 requests from the State?

20 MS. SIMMONS: No, your Honor.

21 THE COURT: From the defense? /

22 MR. DAY: No, your Honor.

23 THE COURT: Very good. All right. Let's go
24 through the exhibits and be sure all of them are there,
25 that they all go back. The indictments don't go back.

1 All right. Everyone else remain seated until I ,
2 dismiss the alternates.

3 All right. Madam alternate, Mr. Alternate, I
4 think you understand why you were chosen, because,
5 obviously, this case has lasted more than just one day,
6 and we had a lot of different little interruptions. And
7 so in the event that during those events that something
8 might have happened to one of the other jurors, then you
9 would have sat on the jury as an acting juror.

10 Fortunately, that was not necessary and your
11 service, in fact, this week will be completed today.
12 Actually, we only had one more day, so I guess that takes
13 care of it anyway. But the fact is that, although it
14 looks like I'm doing everything else up here in the world
15 but paying attention, I have and do watch what's going on
16 in the courtroom and try to keep up with it.

17 I noticed throughout the trial of this case that
18 both of you paid very careful and close attention to the
19 testimony, the evidence or argument between the counsel,
20 the lawyers themselves, and the Court. And I'm
21 completely satisfied that if you had to sit for one of
22 the other jurors, you would have done an excellent job.
23 You would have been very good jurors. I say that because
24 I know that you had anywhere else you would rather be
25 than where you have been for really the last four days or

1 three days with an interruption. But you came and you
2 did your job as well as anyone possibly could, and for
3 that we're in your debt. Not only Oconee County but the
4 system of justice here in the United States and South
5 Carolina because if we did not have citizen
6 participation, we would not have the justice system that
7 we have, and I thank you for it.

8 Now, there's not anything else that I can do for
9 you; however, if you need a work statement from the
10 clerk's office, it's on the first floor. When you get
11 down to the desk there, they will show you where to go to
12 get that. Otherwise the work statement will be included
13 in your check. You will get the check for your service
14 this week. It won't be any great amount, but you will
15 receive the check and the statement. And as they say,
16 it's in the mail. Eventually.

17 Also, I wish there was something I could do for
18 you, but I trust and I hope that your experience as
19 jurors in this case has been of some benefit to you
20 because, as I said earlier, if we did not have citizen
21 participation, I don't care what case it is, every case
22 is important to the State of South Carolina and the
23 parties involved in the case and needs to be resolved in
24 the proper fashion.

25 So with that, you are excused, and I hope things

1 get a little bit more warm and you have a good weekend.

2 Thank you very much.

3 Everyone else remain seated while the jurors
4 retire from the courtroom.

5 (WHEREUPON, the alternate jurors left
6 the courtroom at 4:02 p.m.)

7 THE COURT: All right. Is there anything else
8 from the State or the defendant?

9 MS. SIMMONS: No, your Honor.

10 MR. DAY: No, your Honor.

11 THE COURT: All right. We'll stand at ease
12 awaiting a verdict.

13 (Whereupon, recess taken from 4:02 p.m.
14 to 4:53 p.m.)

15 THE COURT: I understand the jury has reached
16 verdicts in the case.

17 Is there anything for the State before we ask the
18 jury to join us?

19 MS. SIMMONS: No, your Honor.

20 THE COURT: From the defense?

21 MR. DAY: No, your Honor.

22 THE COURT: Very well. Ask the jury to join us,
23 please.

24 (Whereupon, the jury came into open court at
25 approximately 4:54 p.m.)

1 THE COURT: Mr. Foreman, I understand the jury
2 has reached verdicts in each of the six indictments.

3 JURY FOREMAN: Yes, sir.

4 THE COURT: If you would, please, hand that up to
5 the bailiff.

6 State of South Carolina versus Jessie Wayne
7 Davis, indictment number 2013-GS-37-344: We, the jury,
8 unanimously find on indictment number 2013-GS-37-344 that
9 the defendant, Jessie Wayne Davis, is guilty of criminal
10 sexual conduct with a minor,^{Minor 2} who was less than
11 11 years of age in the first degree by digitally
12 penetrating the vagina of the victim.

13 Indictment number 2013-GS-37-345: We, the jury,
14 unanimously find on indictment number 2013-GS-37-345 that
15 the defendant, Jessie Wayne Davis, is guilty of criminal
16 sexual conduct with a minor in the third degree, the
17 victim being less than 16 years of age and the actor more
18 than 14 years of age by having the victim masturbate his
19 penis.

20 Indictment number 2013-GS-37-346: We, the jury,
21 unanimously find on indictment number 2013-GS-37-346 that
22 the defendant, Jessie Wayne Davis, is guilty of criminal
23 sexual conduct with a minor,^{Minor 1} who was less than
24 11 years of age in the first degree by putting his penis
25 inside the vagina of the victim.

1 Indictment number 2013-GS-37-347: We, the jury,
2 unanimously find on indictment number 2013-GS-37-347 that
3 the defendant, Jessie Wayne Davis, is guilty of criminal
4 sexual conduct with a minor,^{Minor 1} who was less than
5 11 years of age in the first degree by having the victim
6 perform oral sex, penis in mouth, on him.

7 Indictment number 2013-GS-37-348: We, the jury,
8 unanimously find on indictment number 2013-GS-37-348 that
9 the defendant, Jessie Wayne Davis, is guilty of criminal
10 sexual conduct with a minor,^{Minor 1} who was less than
11 11 years of age in the first degree by performing oral
12 sex on the victim.

13 Indictment number 2013-GS-37-349: We, the jury,
14 unanimously find on indictment number 2013-GS-37-349 that
15 the defendant, Jessie Wayne Davis, is guilty of criminal
16 sexual conduct with a minor in the third degree, the
17 victim being less than 16 years of age and the actor more
18 than 14 years of age by having the victim masturbate his
19 penis. Signed Jason M. Barnes, Foreman, Walhalla, South
20 Carolina, January 30th, 2014.

21 Now, Mr. Foreman, ladies and gentlemen of the
22 jury, is this your verdict and are these your verdicts
23 and are they still your verdicts, so say you all. If so,
24 indicate by raising your right hand.

25 Very good. Let the record reflect that all 12

1 members of the jury affirmed the verdicts on each
2 indictment.

3 All right. Is there anything further from the
4 State?

5 MS. SIMMONS: No, your Honor.

6 THE COURT: From the defense?

7 MR. DAY: No, your Honor.

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, the Court is never interested in a verdict or
10 verdicts. I'm only interested in how that verdict is
11 reached. I can assure you, as I explained to the
12 alternate jurors when I released them, that although it
13 looks like I'm doing everything in the world up here
14 except paying attention, I did pay careful attention to
15 what was happening in the courtroom and particularly your
16 reception. And I was satisfied that you gave very
17 careful and close attention to all of the testimony and
18 the evidence of the witnesses, and these were difficult
19 cases, as well as argument by counsel on the different
20 objections and the evidence that was presented.

21 I am satisfied that you gave both the State and
22 the defendant in this case a fair and impartial trial and
23 I find these verdicts are in accordance with your
24 conscience. Having done so, you have fulfilled your duty
25 as jurors, and I thank you. If we did not have citizen

1 participation in the judicial system, it would not be
2 what it is, and it is something that is admired
3 throughout to world. I do wish that there was something
4 I could do for you.

5 Let's see, Madam Clerk, is there anything that
6 you might be able to --

7 THE CLERK: I had the opportunity to print
8 statements, so the bailiff does have copies, that you can
9 give to your employer, and then the original will come
10 with your check in a couple of weeks.

11 THE COURT: Well, about the only thing I can do
12 for you -- well, first of all, I hope that your
13 experience was not without some benefit because, as I
14 say, Oconee County and we all owe a particular debt to
15 you for your service. Y'all would rather have been
16 anyplace else than where you have been these past
17 four days, but I thank you for being available and doing
18 your duty as citizens.

19 I might note the Prime Minster of Great Britain
20 during the Second World War, Winston Churchill, once said
21 that there is no greater service that a citizen can
22 perform in peacetime than that as of a juror because you
23 are the backbone of our civilization, and I thank you.

24 Having said that, obviously, it's not anything I
25 can do for you, except if you remember when I qualified

1 the entire jury panel, I think it was on Monday, I asked
2 how many had served in the last three years. Well, at
3 least there will be another three years before you will
4 even be summoned. But I do thank you for your service,
5 and I hope it has not been without some benefit.

6 You are excused. I hope it's warm outside. I
7 hope you have a very wonderful weekend. Thank you very
8 much.

9 Everyone else remain seated while the jury
10 retires from the courtroom.

11 (Whereupon, the jury exited the courtroom
12 at 5:03 p.m.)

13 THE COURT: All right. Is the State ready to
14 proceed?

15 MS. SIMMONS: Yes, your Honor.

16 THE COURT: All right.

17 MR. DAY: Your Honor, we still have the
18 paperwork.

19 THE COURT: Certainly. Let me know when you're
20 ready.

21 (WHEREUPON, recess taken from 5:03 p.m.
22 to 5:12 p.m.)

23 THE COURT: All right. If we're ready, the State
24 and the defendant come around.

25 All right. Madam Solicitor, anything you would

1 like to say?

2 MS. SIMMONS: Judge, just for the record, the
3 victims' parents are in court today. They do not wish to
4 be heard, but they concur with the comments I have, and
5 Lieutenant Hawk would also like to speak.

6 Judge, over the course of this trial, you have
7 heard about a repeated course of sexual abuse that lasted
8 against these children for almost six months. There were
9 threats of violence made by the defendant. He used
10 knives, he used a gun to intimidate these children until
11 one of them had the courage to tell.

12 You heard the testimony, the evidence, and you
13 even heard from the defendant himself on Monday, your
14 Honor. It is the position of the State that he is
15 clearly a predator. I truly believe that he is the kind
16 of person that would snatch a child from a public place
17 if he's ever free again.

18 Judge, we respectfully request that you impose a
19 life sentence.

20 THE COURT: Mr. Hawk, Lieutenant Hawk?

21 MR. HAWK: Yes, your Honor. I concur with the
22 Solicitor's office. I believe this man is a danger to
23 the children and the young people in our state or any
24 other state within our country.

25 You know, we've heard from the victims, how he

1 threatened them. He threatened them with guns. He
2 threatened them with knives. And anybody who can
3 threaten a six-year-old little girl with a gun or a
4 knife, he doesn't deserve to walk or breathe on earth as
5 a free man, so we'd ask that you impose a life sentence
6 on him as well.

7 THE COURT: All right. Mr. Day?

8 MR. DAY: Yes, your Honor. Your Honor, I call
9 the Court's attention, if I may, prior to the beginning
10 of the trial, made part of the Court's file and a court
11 exhibit, the Department of Mental Health, Dr. Frierson
12 therein, the examination that was made on behalf of the
13 Court. And in that, in his conclusions when he found
14 that he would be competent to stand trial, he also noted,
15 your Honor, that he does not meet the diagnostic criteria
16 for pedophilia. We would submit that to the Court.

17 The Court found, like I said, that he was
18 competent to stand trial, and he has helped me with the
19 trial in that regard, your Honor. We'd ask the Court to
20 consider the fact that he has just now turned -- he's 22
21 years old, about to turn 23.

22 Your Honor, he last worked at Jantzen here in
23 Oconee County. And we'd ask the Court to give
24 consideration to his age, to the fact that his mental
25 evaluation indicated he was not a pedophiliac. We'd ask

1 the Court to consider all that in its considerations.

2 Your Honor, his mother and stepfather are here.

3 I'm not sure if they wish to be heard.

4 THE COURT: First of all, is there any record or
5 any pending charges?

6 MR. DAY: No, your Honor.

7 THE COURT: All right. I would like to hear from
8 anyone who would like to have a part in this decision.

9 If you would, please, ma'am, give us your name
10 for the record.

11 MS. KING: Patti Denise Davis King.

12 THE COURT: Yes, ma'am.

13 MS. KING: I have raised my son by myself. I
14 lost him and his sister for five years in foster care
15 because of people like -- and I fought and I got him
16 back. And my son was ADHD. And me and him worked
17 together to get him off his medicine. And he did great.

18 He fought in school to get good grades, and he
19 tried hard, and I worked with him at home. I sent him to
20 Kentucky to get away from his biological dad and his
21 family because they're white trash also. And I tried to
22 protect my son. Yes, he was away from me for two years,
23 but we called every night. And I sent my son away
24 because I loved him. Because I didn't want him around
25 his family, his daddy's family.

1 And myself and everything that happened, he would
2 call me and ask me what to do. Anything. He's always
3 asked me everything. The first time he had sex, he
4 called me and talked to me about it. And changed his
5 mind. He told me -- my daughter is the same way. And
6 all three of my children I've given birth to and out of
7 all ten of them that I have raised, foster kids,
8 biological kids and stepkids, he's the only one that
9 didn't run off and get married or run off and get a girl
10 pregnant or run off and do drugs or run off and hurt
11 somebody. He went to school.

12 THE COURT: Just a moment.

13 There will be no discussions on anything and
14 particularly no outbursts. If you've got to have a
15 conversation with somebody, take it outside.

16 MS. KING: He went to school. And, yeah, he had
17 graduated high school. But it took a lot and took a lot
18 of me sitting on the phone with him explaining to him
19 what he was doing, what he was reading, what he was
20 comprehending. That's why I'm so involved in his life
21 because it's hard for him to comprehend what he's being
22 told or what he's being read unless it's consistently
23 told him over and over again.

24 I have fought for my son. My son has fought for
25 me. And I tried to protect him. And because someone has

1 a grudge against my husband and me going back to him,
2 they put false charges. And shampoo. That shampoo
3 bottle has been there empty for months. And the knife?
4 Oh, and the gun was used. Why did they turn it back over
5 to me, Judge? Why did they hand me the gun if it was
6 supposal evidence and it was a weapon? I don't
7 understand.

8 I don't understand. I raised a good boy. I
9 took -- Danny Day has done a great job, but I took it as
10 me, if I testified it would help him. But all it did was
11 hurt him. No offense to you, Danny. But that's all it
12 did was hurt him because they didn't hear from the mama.

13 I have literally always decided even the bills.
14 When we were in the same trailer park as them and I had
15 left him, and we were in the trailer park, I was the one
16 that took his debit card and paid his bills. I'm the one
17 that settled up. I tell you, he does not comprehend, and
18 if you send him to prison, he will kill himself. I know
19 he will. He's already tried twice. Because he can't
20 believe that someone accused him of hurting a kid.

21 My foster kid, they said her stepdad hurt her.
22 The DSS caseworker is talking about it. When the father
23 came to pick his other two kids up, Jessie hit him and
24 knocked him back down the steps because he thought he
25 hurt that little girl. I am a child molestation. My son

1 knows that, and he would never do anything to a child.
2 Kid's had a bad life. I know that's so true.

3 Respectfully to the courts and everybody else,
4 there was a lot of lies told here today. And there was a
5 lot of mental anguish on me not being able to talk to my
6 son, which was his right. If he had known I was
7 downstairs, he would have got up, walked downstairs or
8 tried to to get to me if he knew I was downstairs. And
9 that's what's so messed up about this.

10 All they had him on was his confessions. Not
11 even a police officer got them out of him. Some agent
12 that works for them did it. If you're going to use
13 agents, get one that's an official law officer, please,
14 and get some video and some audio so there's no question
15 on y'all's behavior or the defendant's behavior, please,
16 so this won't happen to somebody else again.

17 And I know it works. I've watched it work in
18 Georgia. I used to sit in courtrooms just listening to
19 cases. And I forewarned all my kids about stuff like
20 this. And I forewarned my son. I forewarned all three
21 of my sons. Do not let a kid sit in your lap, girl or
22 boy, because of what happened to me. And I know he
23 listened to it. And I know my other sons listened to it.

24 I love you, Jessie. Don't do nothing crazy. It
25 could be appealed. Please don't do nothing crazy for me.

1 Okay? Please. I will testify next time, I swear.

2 THE COURT: Yes, sir. Your name, please.

3 MR. KING: My name is Sean King. I'm Jessie's
4 stepfather, and I would request before you pass sentence
5 on Jessie, that you review the case of *State vs. Haskell*
6 *LaVerne Clark* on his sentencing. That's all I ask.

7 THE COURT: Is that a South Carolina case?

8 MALE SPEAKER: Yes, sir, Oconee County.

9 THE COURT: Very well.

10 MS. KING: Jessie, do nothing crazy. Jessie, I
11 will if you do, so don't. Promise me on my life.
12 Promise me now. Promise.

13 THE DEFENDANT: I promise.

14 THE COURT: Mr. Day, are you familiar with that
15 case?

16 MS. SIMMONS: I am not, your Honor.

17 THE COURT: Is it a -- consult with Mr. King.
18 Find out if it's a court --

19 THE DEFENDANT: Can I go back there real quick?

20 THE COURT: No.

21 MS. SIMMONS: Judge, the victim's sister does
22 indicate she would like to speak at a time when it's
23 appropriate.

24 THE COURT: Okay. Let's let Mr. Day finish here.

25 MR. DAY: I believe he was speaking of a case

1 that was before this Court but there was no appeal from
2 it. It was a sentence that was handed down. I
3 understand from a guilty plea.

4 MR. KING: Your Honor, may I speak in front of
5 you?

6 THE COURT: You can speak right there.

7 MR. KING: It was my stepdaughter at the time was
8 molested by her uncle, by my ex-wife's uncle. And there
9 was digital penetration. He was represented by Julian
10 Stoudemire. Gentry Hawk himself handled the case. He
11 did not even see the inside of a jail cell, nothing,
12 nada. So based on that, I would ask your Honor to grant
13 leniency to Jessie.

14 MS. KING: And he didn't do it.

15 MR. KING: I seen in the newspaper a deal made a
16 couple days ago where probation was granted. And she's
17 asking for life, to take away the rest of his life. I
18 would ask you to consider leniency, sir.

19 THE COURT: Thank you, sir. All right.
20 Anyone else?

21 MS. WORLEY: My name is Elana Worley. I'm
22 Minor 1 's older sister. And I was going to back up what
23 the Solicitor said about a life sentence because I truly
24 believe that he is that much of a threat to my little
25 sister. She is terrified of him getting out. She's

1 actually terrified of his entire family, and they have
2 made a lot of threats towards her, not only while he was
3 out of jail, but since he's been in jail. And she's
4 just -- she's terrified.

5 Then there's the thought that maybe this could
6 happen to somebody else because it happened to two
7 children, and then there's not too many that we don't
8 know about. And if so he's incompetent that his parents
9 need to be with him for every little step, then maybe
10 jail is the best place for him where he can get that.

11 I'm not trying to sound vulgar or rude, and I'm
12 really sorry that this happened to y'all.

13 But on the behalf of all the parents in here,
14 think about your children. I wouldn't want my daughter
15 around anybody that put that much hurt on somebody. He
16 took away something from those two kids they will never
17 get back. And the way he threatened her with the weapons
18 and told her all the lies, that messes up a child on the
19 inside of their head. That's a lot to try to fix. A lot
20 more than six or 18 months of probation or time served in
21 jail. It's going to take a long time to fix that. We
22 have promised ^{Minor 1} that he will never hurt her again.
23 It's going to be really hard for us to go back and tell
24 her that we have to pack up and move out of state because
25 the Court let the pedophile out.

1 That's all I have to say, your Honor. I just
2 wanted you to reconsider the life sentence. Thank you.

3 THE COURT: Thank you, ma'am. All right.

4 Anyone else?

5 There's been some suggestion that there's been --
6 is there anything else from the State?

7 MR. LINDSEY: No, your Honor.

8 THE COURT: From the defense?

9 MR. DAY: No, your Honor.

10 THE COURT: I would like to hear from the
11 defendant, if he would like to say anything.

12 THE DEFENDANT: Instead of giving me life, if
13 you're going to do that, I would rather have a death
14 sentence, sir.

15 MS. KING: No. Don't say that.

16 THE DEFENDANT: I will not live my life looking
17 behind my back trying to get stabbed. I would just
18 rather get it over with. Thank you.

19 THE COURT: It's interesting that you should say
20 that, Mr. Davis. Your attorney apparently saved you from
21 that possibility of the death sentence. The statute
22 under which you have been convicted and the sentencing
23 provisions, listen carefully. "In the case of a person
24 convicted at trial for a violation of subsection A(1), a
25 person is guilty of criminal sexual conduct with a minor

1 in the first degree, A(1), if the actor engages in sexual
2 battery with a victim who is less than 11 years of age.
3 The judge must make a specific finding on the record
4 regarding the type of conduct that can constitute a
5 sexual battery involved sexual or anal intercourse by a
6 person or intrusion by an object.

7 "In the case of a person convicted at trial for a
8 violation of section A(1), if the person has previously
9 been convicted, pled guilty or nolo contendere to or
10 adjudicated delinquent for a first-degree criminal sexual
11 conduct with a minor who is less than 11 years of age, he
12 must be punished by death or imprisonment for life as
13 provided in this section."

14 Because the State moved to consolidate the cases
15 and your attorney consented, then of course that
16 provision would not be considered. However, if you had
17 gone to trial on the separate indictments,
18 2013-GS-37-344, 346, 347, and 348 separately on any of
19 those indictments and the verdict had been returned as it
20 was in these cases, then you could be looking at a death
21 sentence.

22 Of course, that is out of the question here. So
23 now I have to decide what to do with the circumstances
24 that we have. To say that there was no evidence, the
25 medical testimony was that there was direct, positive

1 evidence I think of a child who was seven years of age --
2 is that right, on one case?

3 MR. LINDSEY: Yes, your Honor.

4 THE COURT: And 10 years of age on the other?

5 MS. SIMMONS: Yes.

6 THE COURT: -- had such damage done to their
7 genitalia that one was ultimately destroyed and the
8 other, there was clear -- and that was on the younger
9 one, the younger child -- that there was no question.

10 So the fact that there was basis for these
11 charges as well as a well-founded verdict by the jury --
12 the Court does take notes -- that's the facts of this
13 case.. And with those facts, I then must approve
14 appropriate verdict in these cases as far as the
15 punishment for those verdicts.

16 And it was for this reason that the Court was
17 very careful about the verdict form it submitted to the
18 jury. The judge must make specific findings on the
19 record regarding whether the type of conduct that
20 constituted the sexual battery involved sexual or anal
21 intercourse by a person or intrusion by an object.

22 Not only did the jury find unanimously that on
23 indictment number 2013-GS-37-344 that the defendant was
24 guilty of criminal sexual conduct with a minor who was
25 less than 11 years of age in the first degree by

1 digitally penetrating the vagina of the victim, and on
2 indictment number 2013-GS-37-346 it was the verdict of
3 the jury that the jury unanimously found on indictment
4 number 2013-GS-37-346 that the defendant was guilty of
5 criminal sexual conduct with a minor in the first degree
6 by putting his penis inside the vagina of the victim,
7 which is a sexual battery, involved sexual intercourse.

8 And on indictment number 2013-GS-37-347, it was
9 the jury's verdict, they unanimously found that the
10 defendant was guilty of criminal sexual conduct with a
11 minor less than 11 years of age in the first degree by
12 having the victim perform oral sex on him, which would
13 also had been a sexual battery. On indictment number
14 2013-GS-37-348, it was the jury's unanimous verdict that
15 the defendant was guilty of criminal sexual conduct with
16 a minor who was less than 11 years of age in the first
17 degree by performing oral sex on him. Not one, not two,
18 but four violations against two children.

19 You know, there's a reason that our legislature
20 provides maximum and minimum sentences. The minimum
21 sentence is for those who deserve some consideration.
22 The maximum, as the statute provides, is for those who
23 meet the criteria. Twenty years ago I put aside those
24 things I would want to do. Now I have to do what I have
25 to do.

1 All right. Is there anything else from the
2 State?

3 MS. SIMMONS: No, your Honor.

4 THE COURT: Anything else, Mr. Day, for the
5 defendant?

6 MR. DAY: No, your Honor.

7 THE COURT: Mr. Davis, anything else you would
8 like to say?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Indictment number 2013-GS-37-349,
11 it's the sentence of the Court the defendant, Jessie
12 Wayne Davis, be committed to the State Department of
13 Corrections for a term of 15 years.

14 Indictment number 2013-GS-37-345, it's the
15 sentence of the Court the defendant, Jessie Wayne Davis,
16 be committed to the State Department of Corrections for a
17 term of 15 years.

18 Indictment number 2013-GS-37-346, it's the
19 sentence of the Court the defendant, Jessie Wayne Davis,
20 be committed to the State Department of Corrections for a
21 term of 25 years.

22 Indictment number 2013-GS-37-347, it's the
23 sentence of the Court the defendant be committed to the
24 State Department of Corrections for a term of 25 years.

25 Indictment number 2013-GS-37-344, it's the

1 sentence of the court the defendant, Jessie Wayne Davis,
2 be committed to the State Department of Corrections for a
3 term of life.

4 The Court has found by the verdict of the jury
5 that the conduct constituted sexual battery.

6 Indictment 2013-GS-37-348, it's the sentence of
7 the Court the defendant, Jessie Wayne Davis, be committed
8 to the State Department of Corrections for a term of
9 life, as construed by -- the sexual conduct construed is
10 sexual battery as found by the verdict of the jury. All
11 sentences to -- I'm sorry. Sexual intercourse on
12 2013-GS-37-348 and 344. All sentences to run concurrent.

13 He will be given credit for time served.

14 MS. SIMMONS: Thank you, judge.

15 THE COURT: All right.

16 Madam Solicitor, anything else?

17 MS. SIMMONS: No, your Honor.

18 THE COURT: Very well. We'll stand in recess
19 until tomorrow.

20 (WHEREUPON, the hearing ended at approximately
21 5:56 p.m.)

22 ***END OF REQUESTED TRANSCRIPT OF RECORD***

23

24

25

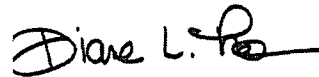
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate, and complete transcript of record of a portion
of the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal, in the
Circuit Court for Oconee County, South Carolina, on the
30th day of January 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 21, 2014



Diane L. Thommes, RPR, CRR
Circuit Court Reporter



OCONEE COUNTY SHERIFF'S DEPARTMENT

300 South Church Street
WALHALLA, SOUTH CAROLINA, 29691

YOUR RIGHTS

Place OC SO
Date 1/23/12
Time 11:15 AM

JD BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

JD YOU HAVE THE RIGHT TO REMAIN SILENT.

JD ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

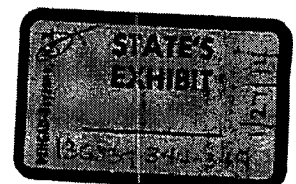
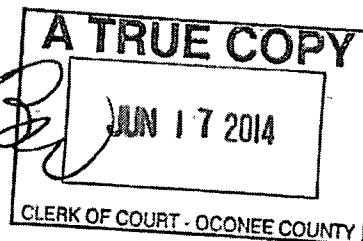
JD YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.

JD IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU WISH.

JD IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME.

JD I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

SIGNED [Signature]
WITNESS [Signature]
WITNESS [Signature]
TIME 11:15 pm



VOLUNTARY STATEMENT

DATE 1/04/13 PLACE CISCO TIME STARTED 8:47 AM
 I, the undersigned, Jessie Wayne Davis, am 21 years of age, my date and place of
 birth being the ___ day of ___, at ___
 I now live at 28 W. Main St. 29693
 Before answering any questions or making statements, Henry Hank, Jr., Foreman

a person who identified himself as a Law. Cisco
 duly warned and advised me, and I know and understand that I have the following rights: That I have a right to remain silent and I do not have to
 answer any questions or make any statements at all: that any statement I make can and will be used against me in court or courts of law for the
 offense or offenses concerning which the following statement is hereinafter made, that I have the right to council with a lawyer of my choice before
 or at anytime during any questioning or statements I make: that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for
 me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me: that I can stop
 answering any questions or making any statements at anytime that I choose, and call for the presence of a lawyer to advise me before continuing any
 more questioning or make any more statements, whether or not I have already answered some questions or made statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while
 I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter
 and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without fear or threat of physical
 harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons whomsoever.

To Jessie Davis have asked Inv. Hank to write
this in my words. After I was in my room watching Porn
fucking off as usual and drunk as hell. Minor 2 came in
sat on my lap like she usually does I told her to get off
she didn't listen just kept grinding on my lap and asking
what I was doing I told her off and then she came off
said are you happy and she started laughing at it I heard a knock
in she touched my penis she asked what I was doing I said
fucking off she asked what's that so I showed her. She then
started to jack me off. She said she was feeling funny in the
front I told her she was probably getting wet it felt like it
she said that ok you man I told her when man & woman
put each other it feels good she wanted to see so she took her
pants down & my penis popped in the upper crotch of her butt

I certify I have received a copy of this statement 2/17/12
 I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials.
 and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before
 or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not
 told or prompted what to say in this statement.

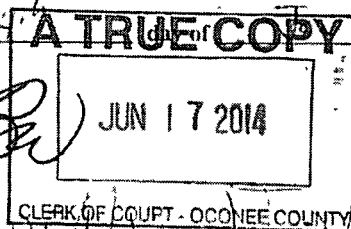
This statement was completed at 02:05 A.M. on the

Notary Public for S.C.

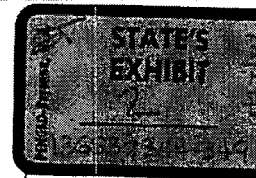
My Commission Expires Sept 17, 2013

WITNESS:

WITNESS:



Signature of person giving voluntary statement



**VOLUNTARY STATEMENT
USED FOR ADDITIONAL PAGES ONLY**

PAGE #

2

she said her niece came and showed me it and I ~~pointed~~ at it and touched with the tip of my finger said it was a kiss or blurring she said it felt like I knew stopped.

Minor 1 walked and when Minor 2 was rubbing on my penis with her pants down and Minor 2 said come here

Minor 1 said what are you doing Minor 2 said it is funny when ~~the~~ this things does Minor 1 come over and tickled me off and then took her pants down and rubbed on my penis without butt she then put my penis in her mouth I think she was wondering what it taste like like the girl tickled my penis I told them not to tell and I was sorry this happened between October and November at the residence Dr. WASHINGTON IN MY ROOM I don't think anyone else was at home. This only happened this one time with both girls.

JJ

End of Statement

JJ

I certify I have received a copy of this statement DEBRA K. KAY

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

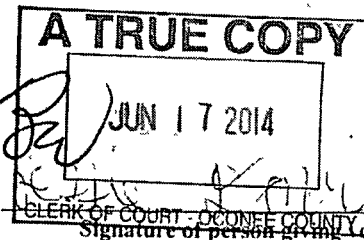
This statement was completed at 02:00 A.M. on the 4th day of Jan, 20 13.

Notary Public for S.C.

My Commission Expires Sept 22, 2013

WITNESS:

WITNESS:



Signature of person giving voluntary statement

01/04/13

DEAR ^{Minor 1}

I'M SORRY THAT I DID EVERYTHING
TO YOU. I'M SORRY THAT I LET YOU DO IT.
IT SHOULD HAVE STOPPED YOU BEFORE YOU STARTED
TROLLING ME. PLEASE FORGIVE ME FOR EVERYTHING
THAT I HAVE DONE. I HOPE YOU CAN FORGIVE
ME SOMEDAY. LOVE YOU AND SORRY

SINCERELY,

JESSIE DAVIS
Jessie Davis

A TRUE COPY

JUN 17 2014

CLERK OF COURT - OCONEE COUNTY

STATES
EXHIBIT

01/01/13

DEAR

Minor 2

I'M SORRY THAT I DID EVERYTHING
TO YOU. I'M SORRY THAT I LET YOU DO IT.
I SHOULD HAVE STOPPED YOU BEFORE YOU STARTED
TOUCHING ME. PLEASE FORGIVE ME FOR EVERYTHING
THAT I HAVE DONE I HOPE YOU CAN FORGIVE
ME SOMEDAY. Love you out ^{sorry} ~~there~~

SINCERELY,

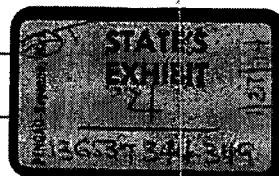
Jessie Davis

Jessie Davis

A TRUE COPY

JUN 17 2014

CLERK OF COURT - OCONEE COUNTY

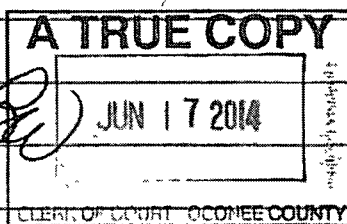
STATES
EXHIBIT

Dear Sandy

I am so sorry ^{for every} ~~that~~ ~~f~~ ~~for~~ hurt Minor 2
 and Minor 1 I know you want to kill me
 but the girls need you, Chris; Hillbilly. I know
 imass up and should be killed I know i will be
 when I'm in so plz take care of everyone

Sincer

Jessie Davis
 Jessie Davis

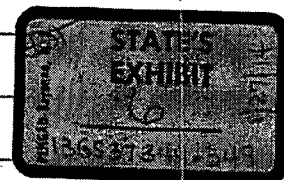
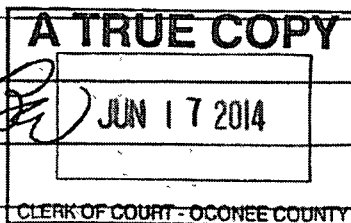


Dear Chris

I am sorry for what I did to
I know you won't never forgive me for-
it plz take care of your self and the boys,
girls and keep an eye on Hillbilly plz.

Minor 2

Sincer
Jessie Davis
Jennie Linniz



Der James

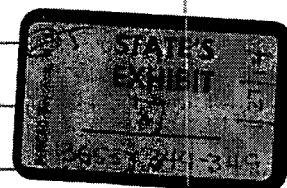
I'm am so sorry for everything
 I did to ^{Minor} I know you won't never for-
 give me but I know I mess up and I am
 sorry for that plz take care I Love
 Ya'll both of ya'll.

Singer
 Jessie Davis
 Demie Lewis

A TRUE COPY

JUN 17 2014

CLERK OF COURT



CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: March 25, 2013

PRESIDING EXAMINER: Richard L. Frierson, M.D., Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Raynia McGee, M. D. Psychiatry Resident,
University of South Carolina School of Medicine

OTHERS PRESENT: Carmela Epright, Ph D., Professor of Philosophy,
Furman University

Katie Chambers, 4th year Medical Student,
University of South Carolina.

DIAGNOSES. AXIS I: Learning Disorder, Not Otherwise Specified
Anxiety Disorder, Not Otherwise Specified

AXIS II: No Diagnosis

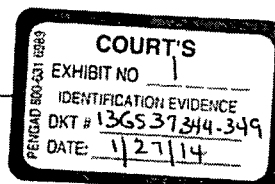
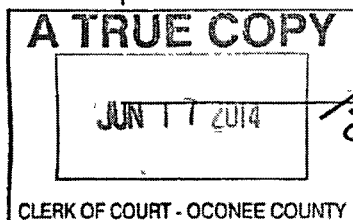
AXIS III: Hypertension
Hypercholesterolemia

OPINION REGARDING CRIMINAL RESPONSIBILITY: Responsible.

OPINION REGARDING CAPACITY TO CONFORM: Capable of conforming.

DISPOSITION. Mr. Davis was returned to the Oconee County Detention Center in the custody of officers.

IDENTIFYING INFORMATION: Jesse Wayne Davis is a 21-year-old Caucasian male who was seen at the Forensic Evaluation Service pursuant to a court order from the Oconee County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about June 1, 2012 and June 18, 2012 pursuant to S.C. Code Ann. §17-23-10 (A) (1976) and S.C. Code Ann. §17-23-20 (A) (1976). He is



DAVIS, WAYNE JESSE
1026-2870
OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 1

currently charged with Criminal Sexual Conduct with a Minor First Degree (four counts) and Criminal Sexual Conduct with a Minor Third Degree (two counts).

STATEMENT OF CONFIDENTIALITY: Prior to participating in the evaluation, Mr. Davis was informed of the limitations of confidentiality. He was informed that the evaluation was court ordered and that the examiners worked for the South Carolina Department of Mental Health and were not paid by his attorney or the solicitor. He was also informed that after the evaluation a report would be submitted to his attorney. He was informed that the report could also go to the solicitor and the judge. He was informed that the evaluators could be called to testify about this report at a trial. He verbalized an understanding of this information and was able to answer questions pertaining to this information accurately. He agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Court Order requesting the evaluation.
2. Arrest Warrant #2013A3710400024 for Criminal Sexual Conduct with a Minor First Degree.
3. Arrest Warrant #2013A3710400025 for Criminal Sexual Conduct with a Minor First Degree.
4. Arrest Warrant #2013A3710400026 for Criminal Sexual Conduct with a Minor First Degree.
5. Arrest Warrant #2013A3710400027 for Criminal Sexual Conduct with a Minor Third Degree.
6. Arrest Warrant #2013A3710400011 for Criminal Sexual Conduct with a Minor First Degree.
7. Arrest Warrant #2013A3710400013 for Criminal Sexual Conduct with a Minor Third Degree.
8. Incident Report related to the alleged offense dated January 04, 2013.
9. Supplemental Incident Report dated January 14, 2013.
10. Defendant Statement dated January 04, 2013.
11. Letters to alleged victims and victims' family signed by the Defendant dated January 04, 2013.
12. Statement by Sandra Kay Ellison dated January 03, 2013.
13. Record of Interview.
14. Social Work History obtained by Carol M. David dated March 13, 2013.
15. Oconee County Detention Center records dated January 04, 2013 through February 18, 2013.
16. A two hour clinical forensic interview on today's date

Note: Records have been requested from the Walton County School District in Monroe, Georgia but have not been received at the time of this report.

CLINICAL AND PSYCHIATRIC HISTORY: Mr. Davis has a history of prior treatment for mental illness which began sometime between the ages of 8 and 9. He reported irritability, instances of anger, and avoidance of people. He also reports a period where he became angry at a teacher and threw a desk at her. He states at that time he had just been returned to his mother after being in foster care. Records indicate he was placed in foster care from the ages of three to eight.

He was hospitalized at a psychiatric hospital in Georgia for six months after he stabbed a female student with a pencil. He relates his difficulty controlling his anger as a child with being told that his

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mother had walked away from him and later that she was dead while he was in foster care. He reports being diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and was placed on dextroamphetamine/amphetamine (Adderall®), clonidine, nefazadone (Serzone®), and "2 other downers" during that admission. We are unable to request records from this facility as neither he nor his foster mother can recall the name of the facility. He continued to take these medications until the age of 13 and reports discontinuing the medication because he "felt like a zombie". He also reports a history of treatment at Walton County Family Services in Georgia.

Of note, Mr. Davis also reports a history of problems related to reading comprehension. He states he was in special education classes throughout his elementary and secondary education for difficulties with reading and spelling. He was reportedly placed in these classes due to difficulty with anger and reading and writing. He reports being tested for learning difficulties while in elementary school. We have requested records from the Walton County School District and Walton County Family Services, but they have not been received at the time of this report.

Mr. Davis was arrested and incarcerated on January 04, 2013. While in the detention center, he was noted to report difficulty controlling his temper. On January 9, 2013 he reported to staff that he took Serzone and clonidine for these symptoms. He was placed on sertraline (Zoloft®) and clonidine on January 15, 2013. On January 19, 2013, he reported chronic headaches due to an assault two to three years ago. He reports after the assault computed tomography (CT) scans were negative. On February 04, 2013, he was placed on Tylenol for symptomatic relief. On February 6, 2013 he was started on topiramate (Topamax®) for better control of his headaches and has been tolerating it well.

On today's date, he presents to our clinical interview verbal and cooperative. He stated his mood is "7 out of 10 because I got to listen to the radio". He reported he had difficulty with sleep. He reported sleeping only four to five hours a night. He reported being "hungry all the time" and adequate energy level. He denied depressed mood. He denied current suicidal and homicidal thoughts. He reported irritability and wanting to avoid being around others. He endorsed repeated nightmares of his foster mom "Rita", whom he reports "beat him with a spoon" while he was in foster care. He endorsed thoughts of "two to three people in the jail out to get me". However, he reports this was due to individuals discovering the nature of his charges. He states he informed the detention officers and the issue has been resolved. He denied symptoms of mania. He denied auditory or visual hallucinations. He denied ideas of reference. He did not endorse delusions.

PSYCHIATRIC HISTORY: We note that he may have received psychiatric treatment during his childhood at a psychiatric hospital in Georgia. Unfortunately neither Mr. Davis nor his mother could remember the name of the hospital. Consequently, we are unable to request records at this time.

ALCOHOL AND DRUG HISTORY: Mr. Davis reports that he drinks tequila "occasionally". He states he drinks on average once per month. He reports drinking on July 4th and New Year's Eve. He reports his last drink was July 2nd, 2013. He denies a history legal issues related to his alcohol use. He states using cannabis "a couple of times" and last use was May of 2013. He states he has



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smoked one pack per day of cigarettes since the age of 9. Mr. David denied using heroin, LSD, cocaine, or any other illicit substances.

MEDICAL HISTORY: Mr. Davis reports a history of hypertension and hypercholesterolemia.

FAMILY HISTORY: His mother is Pattie Denise Davis King, age 41, and his father is Stacey William Offord, age 39. His mother was reportedly hospitalized in a psychiatric hospital after Mr. Davis was placed in foster care. She reportedly has a diagnosis of Bipolar Disorder and history of Alcohol Dependence. His father is also reported to have alcohol and substance related problems. Mr. Davis' maternal grandmother and great maternal grandmother are reported to have Bipolar Disorder as well.

SOCIAL HISTORY: He was born and raised in Loganville, Georgia. He was placed into foster care from the age of three until the age of eight after his mother was reportedly deemed "unfit". He reports that before he was placed in foster care he witnessed his dad and uncle in a fight with knives. He has had recurrent nightmares about this event. He was placed back into his mother's custody at the age of nine. He reports physical abuse while in foster care. Mr. Davis states he was "hit by a spoon by Rita". States he does not remember anything else related to his time in foster care. He denies being sexual abused. He has experienced irritability and impulsiveness as well as nightmares related to this physical abuse. He has a 20 year old sister, Cattie Davis Witt, and a paternal half brother. He has minimal contact with his father. His father is currently in prison for stabbing his step son. Mr. Davis reported that he was placed in special education classes in the third grade after he threw a desk at a teacher. He reports he had significant learning difficulties with reading and spelling although he did very well in math. He was suspended several times for fighting and sleeping in class. There was no childhood history of fire setting, stealing, or cruelty to animals. He did not report symptoms consistent with a conduct disorder. He dropped out of school in the 9th grade. He reportedly has obtained a high school diploma and an additional culinary degree at Morganfield Job Core in Kentucky, but this could not be confirmed. He states it took him two and a half years to complete a one year Job Corp program. He stated he also needed additional assistance with reading and writing while at Job Core. He has held several jobs including Schneider Electric for several months (ending due to a fight with a coworker), Huddle House for two months (ended when he found a better job), Auto Zone and Janzen. His last reported place of employment was Auto Zone. He has no history of military service. He moved from Kentucky to South Carolina in 2012 to live with his mother. He denies past legal charges. He denies ever being married and denies having children.

MENTAL STATUS EXAMINATION: Mr. Davis is a 22 year old Caucasian male who appeared his stated age. He described his mood as a seven out of ten with one being severely depressed and 10 being elated. His affect, or outward expression of mood, was silly at times but euthymic. He would laugh frequently in the evaluation in an odd manner. There was no evidence of psychomotor retardation or psychomotor agitation. His speech was clear and easily understood, but it was slow at times. Mr. Davis was alert and oriented to person, place, month and year. His hygiene was adequate and he made good eye contact. His thought process was logical and goal directed. He was able to register three objects and recalled all three objects after five minutes, displaying adequate short-term

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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
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memory. He was able to recall significant past personal information and we found no evidence of clinically significant memory impairment. His fund of knowledge was average as evidenced by his ability to name the current President, the first President and correctly identifying the President who ended slavery. He was unable to list several past Presidents in chronologic order. He demonstrated capacity for abstract reasoning as evidenced by his interpretation of proverbs. He was able to perform simple calculations quickly and with ease. His performance on concentration was hindered by his learning disability as Mr. Davis had difficulty spelling the word "w-o-r-l-d" forward or backward. He was able to spell his last name "DAVIS and SIVAD". He also demonstrated difficulty when asked to read an information form about the evaluation. He denied suicidal or homicidal ideation. He denied current auditory and visual hallucinations. He did not endorse delusional thinking. There was no evidence of disturbed thought process or thought content.

DIAGNOSTIC IMPRESSION: It was clear during the first few minutes into the interview that Mr. Davis had difficulty with reading comprehension. He also had difficulty with spelling during the examination. These difficulties are countered by his proficiency in math. They likely represent a learning disorder, likely a Reading Disorder and a Disorder of Written Expression. We are assigning a provisional diagnosis of Learning Disorder, Not Otherwise Specified as it is contained in prior histories and school records are not available at this time.

In addition, we are assigning a diagnosis of Anxiety Disorder, Not Otherwise Specified due to irritability, avoidance, recurring nightmares and impulsiveness. These symptoms are the result of his experience with domestic violence and physical abuse while in foster care but they do not meet full diagnostic criteria for Post Traumatic Stress Disorder at this time.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Davis reports that around the time of the alleged offense he had been up for several days drinking "green monsters" (energy drinks) while looking for a job. He states police came to his house and took a pistol from him and took him to the police station. He states he asked the police to speak with both his mother and a lawyer but he alleges the police told him he was 21 and could handle it by himself. He states he was asked if he performed sexual acts on the victims and he told officers that he did not. He states they asked him to take a polygraph and he once again asked for an attorney. He states he took the polygraph from 12 am until 2:30 am and that "we did it five or six times over and over". After the polygraph he states that the police officers / investigators started firing questions at him and wrote out a statement and "made me sign it." He denies having sexual contact with the alleged victims. He also denies being intoxicated or under the influence of alcohol around the time of the alleged offenses. He does not relate symptoms of a mental illness to the alleged offenses. It is our opinion that Mr. Davis would not have lacked the ability to distinguish legal or moral right from legal or moral wrong or the ability to recognize the acts charged as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-23-10 (A) (1976) on the dates of the alleged offenses.

CONCLUSION REGARDING CAPACITY TO CONFORM: Mr. Davis does not relate symptoms of a mental illness to the events of the alleged offenses. Furthermore, he denies the

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allegations against him. Finally, he denies recurrent intense sexual arousing fantasies, urges, or behaviors involving sexual activity with a prepubescent child or children. Therefore he does not meet diagnostic criteria for pedophilia. In summary, we find no evidence of a mental disorder that would have impaired his ability to conform his conduct to the requirements of the law pursuant to S.C. Code Ann. §17-23-20 (A) (1976).



Richard L. Frierson, M.D., DFAPA
Professor of Clinical Psychiatry
University of South Carolina School of Medicine



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1026-2870
OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 6

COMPETENCY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: March 25, 2013

PRESIDING EXAMINER: Richard L. Frierson, M D , Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Raynia McGee, M. D. Psychiatry Resident,
University of South Carolina School of Medicine

OTHERS PRESENT: Carmela Epright, Ph.D , Professor of Philosophy,
Furman University

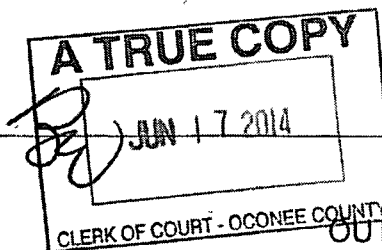
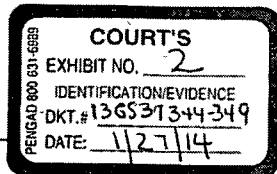
Katie Chambers, 4th year Medical Student,
University of South Carolina

DIAGNOSES: AXIS I Learning Disorder, Not Otherwise Specified
Anxiety Disorder, Not Otherwise Specified
AXIS II No Diagnosis
AXIS III: Hypertension
Hypercholesterolemia

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent

DISPOSITION: Mr Davis was returned to the Oconee County Detention Center in the custody of officers

IDENTIFYING INFORMATION: Jesse Wayne Davis is a 21-year-old Caucasian male who was seen at the Forensic Evaluation Service pursuant to a court order from the Oconee County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S C 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). He is currently charged with Criminal Sexual Conduct with a Minor First Degree (four counts) and Criminal Sexual Conduct with a Minor Third Degree (two counts).



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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
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STATEMENT OF CONFIDENTIALITY: Prior to participating in the evaluation, Mr. Davis was informed of the limitations of confidentiality. He was informed that the evaluation was court ordered and that the examiners worked for the South Carolina Department of Mental Health and were not paid for by his attorney or the solicitor. He was also informed that after the evaluation a report would be submitted to his attorney, the solicitor, and the judge. He was informed that the evaluators could be called to testify about this report at a hearing related to his competency to stand trial. He verbalized an understanding of this information and was able to answer questions pertaining to this information accurately. He agreed to participate in the evaluation.

SOURCES OF INFORMATION:

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He was hospitalized at a psychiatric hospital in Georgia for six months after he stabbed a female student with a pencil. He relates his difficulty controlling his anger as a child with being told that his mother had walked away from him and later that she was dead while he was in foster care. He reports being diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and was placed on dextroamphetamine/amphetamine (Adderall®), clonidine, nefazadone (Serzone®), and "2 other downers" during that admission. We are unable to request records from this facility as neither he nor

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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
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his foster mother can recall the name of the facility. He continued to take these medications until the age of 13 and reports discontinuing the medication because he "felt like a zombie" He also reports a history of treatment at Walton County Family Services in Georgia.

Of note, Mr. Davis also reports a history of problems related to reading comprehension. He states he was in special education classes throughout his elementary and secondary education for difficulties with reading and spelling. He was reportedly placed in these classes due to difficulty with anger and reading and writing. He reports being tested for learning difficulties while in elementary school. We have requested records from the Walton County School District and Walton County Family Services, but they have not been received at the time of this report.

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ALCOHOL AND DRUG HISTORY: Mr. Davis reports that he drinks tequila "occasionally". He states he drinks on average once per month. He reports drinking on July 4th and New Year's Eve. He reports his last drink was July 2nd, 2013. He denies a history legal issues related to his alcohol use. He states using cannabis "a couple of times" and last use was May of 2013. He states he has smoked one pack per day of cigarettes since the age of 9. Mr. David denied using heroin, LSD, cocaine, or any other illicit substances

MEDICAL HISTORY: Mr. Davis reports a history of hypertension and hypercholesterolemia.

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FORENSIC EVALUATION SERVICE 3

FAMILY HISTORY: His mother is Pattie Denise Davis King, age 41, and his father is Stacey William Offord, age 39. His mother was reportedly hospitalized in a psychiatric hospital after Mr. Davis was placed in foster care. She reportedly has a diagnosis of Bipolar Disorder and history of Alcohol Dependence. His father is also reported to have alcohol and substance related problems. Mr. Davis' maternal grandmother and great maternal grandmother are reported to have Bipolar Disorder as well.

SOCIAL HISTORY: He was born and raised in Loganville, Georgia. He was placed into foster care from the age of three until the age of eight after his mother was reportedly deemed "unfit". He reports that before he was placed in foster care he witnessed his dad and uncle in a fight with knives. He has had recurrent nightmares about this event. He was placed back into his mother's custody at the age of nine. He reports physical abuse while in foster care. Mr. Davis states he was "hit by a spoon by Rita". States he does not remember anything else related to his time in foster care. He denies being sexual abused. He has experienced irritability and impulsiveness as well as nightmares related to this physical abuse. He has a 20 year old sister, Cattie Davis Witt, and a paternal half brother. He has minimal contact with his father. His father is currently in prison for stabbing his step son. Mr. Davis reported that he was placed in special education classes in the third grade after he threw a desk at a teacher. He reports he had significant learning difficulties with reading and spelling although he did very well in math. He was suspended several times for fighting and skipping class. There was no childhood history of fire setting, stealing, or cruelty to animals. He did not report symptoms consistent with a conduct disorder. He dropped out of school in the 9th grade. He reportedly has obtained a high school diploma and an additional culinary degree at Morganfield Job Core in Kentucky, but this could not be confirmed. He states it took him two and a half years to complete a one year Job Corp program. He stated he also needed additional assistance with reading and writing while at Job Core. He has held several jobs including Schneider Electric for several months (ending due to a fight with a coworker), Huddle House for two months (ended when he found a better job), Auto Zone and Janzen. His last reported place of employment was Auto Zone. He has no history of military service. He moved from Kentucky to South Carolina in 2012 to live with his mother. He denies past legal charges. He denies ever being married and denies having children.

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OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 4

perform simple calculations quickly and with ease. His performance on concentration was hindered by his learning disability as Mr. Davis had difficulty spelling the word "w-o-r-l-d" forward or backward. He was able to spell his last name "DAVIS and SIVAD". He also demonstrated difficulty when asked to read an information form about the evaluation. He denied suicidal or homicidal ideation. He denied current auditory and visual hallucinations. He did not endorse delusional thinking. There was no evidence of disturbed thought process or thought content.

DIAGNOSTIC IMPRESSION: It was clear during the first few minutes into the interview that Mr. Davis had difficulty with reading comprehension. He also had difficulty with spelling during the examination. These difficulties are countered by his proficiency in math. They likely represent a learning disorder, likely a Reading Disorder and a Disorder of Written Expression. We are assigning a provisional diagnosis of Learning Disorder, Not Otherwise Specified as it is contained in prior histories and school records are not available at this time.

In addition, we are assigning a diagnosis of Anxiety Disorder, Not Otherwise Specified due to irritability, avoidance, recurring nightmares and impulsiveness. These symptoms are the result of his experience with domestic violence and physical abuse while in foster care but they do not meet full diagnostic criteria for Post Traumatic Stress Disorder at this time.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL. At the beginning of his competency interview, Mr. Davis was unable to adequately describe his current charges. He stated, "They said I molested Minor 1 and Minor 2". He was then informed of all current charges pending against him. He stated, "they have given me papers, but I could not read them. I was going to have my mother read them to me". He appropriately identified that guilty and not guilty are possible pleas. He was able to define these pleas and recognized what court proceedings would follow if either of these pleas were entered.

He was able to state his attorney's role of assisting with his defense. He stated that his job is "to defend me and keep me from going to prison". He said he can tell his attorney what he remembers about his case. He acknowledged that the judge was in charge of the courtroom and decided on sentencing in cases. He was able to describe the role of the judge as "to sit there and listen, to keep order and to decide how long you go down the road". He described the job of the jury. However he did not know how many individuals were on a jury. He was informed there were twelve. He was aware of the unanimous requirement for a jury verdict. He stated the job of the solicitor was "to try to convict me".

Mr. Davis was able to solve a hypothetical problem involving the courtroom. He stated he would tell his attorney if a witness was lying on the witness stand. He did have to be educated regarding appropriate courtroom behavior and stated, "It's best if I just sit down and tell my lawyer everything". He was able to explain the concept of plea bargain. He stated, "people are going to take a plea for half the time". He stated a person would have to plead guilty in order to receive a plea bargain. He was able to discuss the concept of evidence, and stated "the evidence is what Minor 1 and Minor 2 said". He indicated ways that his attorney could be able to challenge evidence. For example, he

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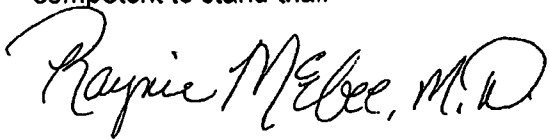
DAVIS, WAYNE JESSE

1026-2870

OUTPATIENT EVALUATION

states that the alleged victims have previously made false allegations of sexual abuse. He also stated that police officers told him he had to sign his statement, even though he did not want to. He states he has told his attorney about this. He was aware that the charges against him were indeed serious and stated, "My mom said I could get 40 years to life".

In summary, based on the data above, it is our opinion that Mr. Davis is not currently experiencing symptoms of mental illness to such an extent that they would significantly compromise his present capacity to understand the proceedings against him or to assist in his own defense if he so chooses. However, given his history of learning and comprehension difficulties and his performance today in this interview, it is our opinion that all written material provided to Mr. Davis be given in oral form to ensure his complete comprehension. With this safeguard in mind, it is our opinion that he is currently competent to stand trial.



Raynia McGee, M.D.
Resident in Psychiatry
University of South Carolina School of Medicine



Richard L. Frierson, M.D., DFAPA
Professor of Clinical Psychiatry
University of South Carolina School of Medicine


DAVIS, WAYNE JESSE
1026-2870

OUTPATIENT EVALUATION

DOCKET NO. 2013G-27 00344

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept

Amanda Tinsley
Amanda Tinsley

ARREST WARRANT NUMBER

2013A3710400011

ACTION OF GRAND JURY

True Bill

Kimberly R. Rie

Foreperson of Grand Jury
Date

APR 8 2013

VERDICT

Foreperson of Petit Jury
Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YEARS OF AGE-
FIRST DEGREE

SC Code 16-03-0655(A)(1)

CDR Code 0385

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

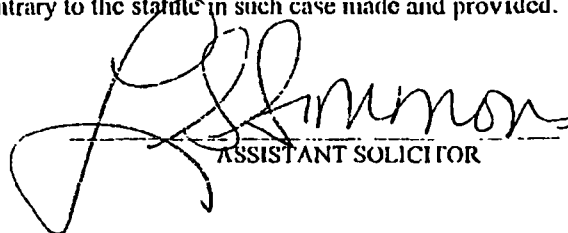
INDICTMENT

At a Court of General Sessions, convened on APR 08 2013, the Grand Jurors of Oconee County present upon their oath:

**SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11
 YEARS OF AGE- FIRST DEGREE**

That **Jessie Wayne Davis** did in Oconee County, South Carolina between **June 1, 2012 and January 3, 2013**, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor ^{Minor 2}, whose date of birth is) in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: defendant did digitally penetrate the vagina of the victim. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

DOCKET NO. 2013G-00345

WITNESSES

Gentry Hawk Oconee Co Sheriff's Dept

Amanda Tinsley
Amanda Tinsley

ARREST WARRANT NUMBER

2013A3710400013

ACTION OF GRAND JURY

True B:11

Kim F. Keene

Foreperson of Grand Jury
Date

APR 8 2013

VERDICT

Foreperson of Petit Jury
Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX/CRIMINAL SEXUAL CONDUCT WITH A
MINOR, 3RD DEGREE-COMMIT/ATTEMPT
LEWD ACT (VICTIM UNDER 16 YRS & ACTOR
OVER 14 YRS)

SC Code 16-03-0655(C)
CDR Code. 3661

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

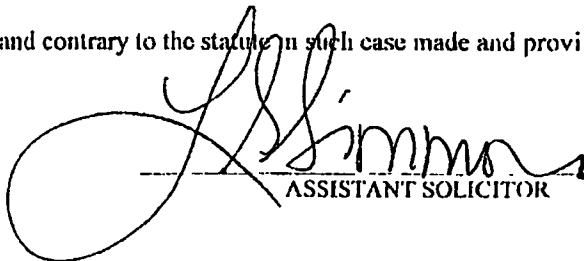
APR 08 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Oconee County present upon their oath:

**Sex/Criminal sexual conduct with a minor, 3rd degree-Commit/attempt
 lewd act (victim under 16 yrs & actor over 14 yrs)**

That **Jessie Wayne Davis (DOB 3/27/1991)** did in Oconee County, on or between June 18, 2012 and January 3, 2013, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon the body or its parts of a minor female, ^{Minor 2} DOB _____). The defendant had the victim masturbate his penis with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of the defendant. This is in violation of 16-03-0655(C) of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

DOCKET NO. 2013G²⁷ 00346

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept

Aminda Tinsley
Aminda Tinsley

ARREST WARRANT NUMBER

2013A371C40C024

ACTION OF GRAND JURY

True Bill

Lisa McKenzie

Foreperson of Grand Jury
Date

APR 8 2013

VERDICT

Foreperson of Petit Jury
Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YEARS OF AGE-
FIRST DEGREE

SC Code: 16-03-0655(A)(1)
CDR Code 0385

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

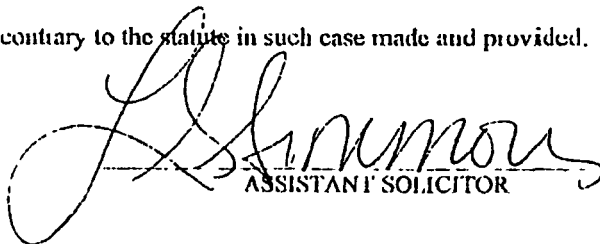
INDICTMENT

At a Court of General Sessions, convened on APR 08 2013, the Grand Jurors of
 Oconee County present upon their oath.

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11
YEARS OF AGE- FIRST DEGREE

That **Jessie Wayne Davis** did in Oconee County, South Carolina
 on or between **June 1, 2012 and January 3, 2013**, willfully and
 unlawfully commit the crime of Criminal Sexual Conduct with a
 minor ^{Minor 1} whose date of birth is) in the first degree
 by engaging in sexual battery with a minor who was less than
 eleven (11) years of age, to wit: defendant did put his penis inside
 the vagina of the victim. This is in violation of 16-3-655(A)(1) of
 the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

DOCKET NO. 2013G-77 00347

WITNESSES

Gentry Hawk Oconee Co Sheriff's Dept

Amanda Tinsley

Amanda Tinsley

ARREST WARRANT NUMBER

2013A3710400025

ACTION OF GRAND JURY

True Bill

Kim McKee

Foreperson of Grand Jury

Date

APR 8 2013

VERDICT

Foreperson of Petit Jury

Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YEARS OF AGE-
FIRST DEGREE

SC Code: 16-03-0655(A)(1)

CDR Code 0385

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

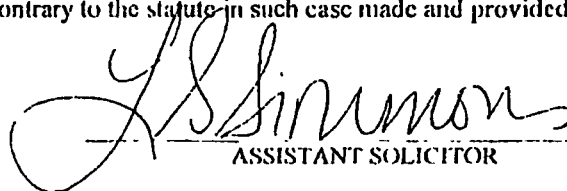
INDICTMENT

At a Court of General Sessions, convened on APR 08 2013, the Grand Jurors of Oconee County present upon their oath.

SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11
YEARS OF AGE- FIRST DEGREE

That **Jessie Wayne Davis** did in Oconee County, South Carolina on or between **June 1, 2012 and January 3, 2013**, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor ^{Minor 1}, whose date of birth is) in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: defendant did have victim perform oral sex (penis in mouth) on him. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided


 ASSISTANT SOLICITOR

DOCKET NO. 2013C-7 00348

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept

Ammanda Tinsley

Ammanda Tinsley

ARREST WARRANT NUMBER

2013A37104C0026

ACTION OF GRAND JURY

True Bill

Kenn McKee

Foreperson of Grand Jury
Date

APR 8 2013

VERDICT

Foreperson of Petit Jury
Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YEARS OF AGE-
FIRST DEGREE

SC Code: 16-03-0655(A)(1)
CDR Code: 0385

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

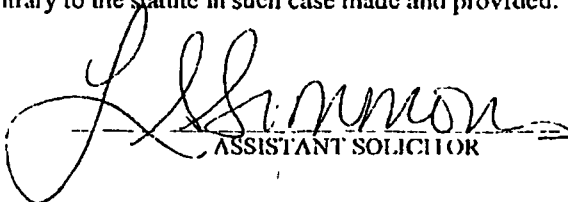
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SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11
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That **Jessie Wayne Davis** did in Oconee County, South Carolina on or between **June 1, 2012 and January 3, 2013**, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor ^{Minor 1}, whose date of birth is) in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: defendant did perform oral sex on the victim. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

DOCKET NO. 2013C 700349

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept

Amanda Tinsley

Amanda Tinsley

ARREST WARRANT NUMBER

2013A3710400027

ACTION OF GRAND JURY

True Bill

Kim McKelvey

Foreperson of Grand Jury
Date

APR 08 2013

VERDICT

Foreperson of Petit Jury
Date

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 08 2013

Term

THE STATE

vs.

JESSIE WAYNE DAVIS

LSS

Indictment for

SEX/CRIMINAL SEXUAL CONDUCT WITH A
MINOR, 3RD DEGREE-COMMIT/ATTEMPT
LEWD ACT (VICTIM UNDER 16 YRS & ACTOR
OVER 14 YRS)

SC Code 15-03-0655(C)
CDR Code 3661

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

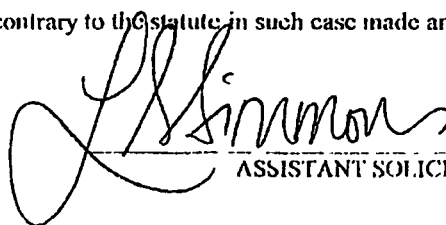
INDICTMENT

At a Court of General Sessions, convened on APR 08 2013, the Grand Jurors of Oconee County present upon their oath.

**Sex/Criminal sexual conduct with a minor, 3rd degree-Commit/attempt
lewd act (victim under 16 yrs & actor over 14 yrs)**

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided



ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 27th, 2014


David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 27th, 2014


David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

RECEIVED

OCT 27 2014

SC Court of Appeals

9
STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

OCT 27 2014

THE STATE OF SOUTH CAROLINA,

RESPONDENT

SC Court of Appeals

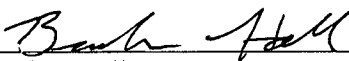
V.

JESSIE WAYNE DAVIS,

APPELLANT

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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Jessie Davis, #358628, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 27th day of October, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of October, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.