

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM PICKENS COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VERNON GLEN EVANS,

APPELLANT

APPELLATE CASE NO. 2014-002747

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 VERNON GLEN EVANS,)
)
 DEFENDANT.)
)
 _____)

2013-GS-39-00550

DECEMBER 16, 17, 18, 2014

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE

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

SAM TOOKER, ESQUIRE
ATTORNEY FOR THE STATE

TEAL JOHNSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
86	Lowrance, Steven C	W	M		x		
121	Roach, Matthew B	W	M				x
14	Bolding, Bennett R	W	M			x	
140	Stewart, Daulten J	W	M				x
78	Kellner, Angela S	W	F				x
157	Williams, Sammy T	W	M				x
7	Bates, Christopher M	W	M				x
28	Colborn, George R	W	M				x
67	Holder, Jason D	W	M		x		
50	Fletcher, Roger A	W	M			x	
69	Holder, Timothy R	W	M				x
118	Rash, Lori E	W	F			x	
127	Seaborn, Joshua D	W	M		x		
4	Anderson, Susan E	A	F				x
150	Wade, James E Jr	W	M			x	
27	Clark, Elizabeth J	W	F				x
3	Anderson, Brandon R	W	M				x
130	Shuler, Susan S	W	F			x	
95	Moncatch, Robert W	W	M		x		
154	Whiteside, Bruce E	W	M				x
138	Spearman, Patricia D	W	F		x		
112	Pfefferkorn, Maria H	W	F			x	
152	Wartak, David C	W	M			x	
59	Hall, Nathan A	W	M			x	
114	Porter, Ashley W	W	F				x
145	Trammell, Michael S	W	M			x	

State of South Carolina -vs- Vernon Glen Evans (2013-GS-39-00550)
Jury Voir Dire

6

29	Coleman, Heather E	W	F			x	
45	Evans, Joy L	W	F				x
15	Bolt, Charles W III	W	M				x

1

DECEMBER 16, 2014

2

(WHEREUPON, Court convened with all parties present

3

and the following proceedings were had.)

4

(WHEREUPON, Court Exhibit Numbers 1 and 2 were marked

5

for identification.)

6

(WHEREUPON, State Exhibit Numbers 1 and 2 were marked

7

for identification.)

8

THE COURT: Solicitor, you may call your next

9

case.

10

MR. TOOKER: Thank you, Your Honor. The State

11

of South Carolina calls the case of the State versus

12

Vernon Glen Evans on indictment 2013-GS-39-0550, criminal

13

sexual conduct with a minor in the first degree.

14

THE COURT: All right. Ladies and gentlemen,

15

welcome back. The state has called for trial the next

16

case -- or the case of State versus Vernon Glen Evans.

17

This case comes into court as the result of an indictment

18

returned by the Grand Jury of Pickens County, charging Mr.

19

Evans with the offense of criminal sexual conduct with a

20

minor first degree. He has pled not guilty to the charge

21

contained in this indictment. He is presumed to be not

22

guilty of the charge contained in the indictment and he

23

cannot be found guilty unless the state presents evidence

24

which convinces a jury of his guilt beyond a reasonable

25

doubt.

1 Our expectation is to go through the jury selection
2 today and excuse the jury panel. Not start the trial
3 today, aside from jury selection, and start the trial
4 first thing tomorrow morning; early tomorrow morning,
5 nine, nine thirty tomorrow morning.

6 Mr. Evans is in court with counsel. Mr. Evans, if
7 you'll stand and face the jury panel, along with counsel.
8 And counsel, if you'll introduce yourself to the jury.

9 MS. JOHNSON: I'm Teal Johnson. I'm a defense
10 attorney here in Pickens County. This is my client,
11 Vernon Glen Evans.

12 THE COURT: All right. And the state is
13 represented through the solicitor's office of the
14 Thirteenth Circuit. Counselor, solicitor, if you'll
15 introduce yourself, as well.

16 MR. TOOKER: Thank you, Your Honor. May it
17 please the court. My name is Sam Tooker. I am the
18 assistant solicitor here in Pickens County.

19 THE COURT: All right. Ladies and gentlemen, if
20 you know the defendant, Mr. Evans, if you're an
21 acquaintance of his; if you know him in anyway, please
22 stand.

23 Okay, ma'am. Tell us your jury number.

24 THE JUROR: 142.

25 THE COURT: And would that fact affect your

1 ability to be a fair and impartial juror?

2 THE JUROR: No, sir.

3 THE COURT: It would not?

4 THE JUROR: No, sir.

5 THE COURT: Would you be able to put aside the
6 fact that you know Mr. Evans and decide the case solely
7 based on the facts and evidence and law applicable to this
8 case?

9 THE JUROR: Yes, sir. I just spoke to him
10 yesterday when I was smoking a cigarette outside. I don't
11 know him personally.

12 THE COURT: And you said you spoke with him
13 yesterday. That's here at the courthouse?

14 THE JUROR: Yes, sir.

15 THE COURT: And did you discuss with him in
16 anyway anything regarding this matter?

17 THE JUROR: No, sir.

18 THE COURT: All right. Thank you very much.

19 If you know any of the lawyers involved, the defense
20 attorney, Ms. Johnson, or the solicitor, Mr. Tooker, if
21 you know them, please stand.

22 (No response.)

23 THE COURT: Now, the following people may
24 testify in this case as witnesses. And if any of them are
25 here, they need to stand, as well. Shauna Galloway-

1 Williams. Is she from the Julie Valentine Center?

2 MR. TOOKER: Yes, sir, the Julie Valentine
3 Center.

4 THE COURT: Say again.

5 MR. TOOKER: Julie Valentine Center.

6 THE COURT: Julie Valentine Center. All right.

7 Shauna Galloway-Williams; Christine Carlberg from the same
8 place, the Julie Valentine Center; Dr. Mary Fran
9 Crosswell, and she's from ...

10 MR. TOOKER: She works both with the Julie
11 Valentine Center and then also with Greenville Health
12 Systems.

13 THE COURT: All right. Greenville Health
14 Systems and the Center. Brian Swafford and Michael Torres
15 from the Pickens County Sheriff's Office; ;
16 Y.B. ; John Berry; Ester McCollum; Florence
17 McCollum; Vernon Glen Evans; Bernice Evans. If you know
18 any of them, if you're an associate of any of them, if you
19 know any of them, if you have -- if you're related to them
20 by blood or marriage or have any other connection with
21 them or know any of them, if so, please stand.

22 Yes, sir.

23 THE JUROR: I know Officer Torres.

24 THE COURT: All right. And your juror number,
25 please.

1 THE JUROR: 59.

2 THE COURT: 59. And how long have you known
3 Officer Torres and how well do you know him?

4 THE JUROR: Probably about two years. He's a
5 family friend. Comes to all my niece's birthday parties
6 and stuff. My stepsister works with the sheriff's
7 department.

8 THE COURT: And would that fact affect your
9 ability to be a fair and impartial juror?

10 THE JUROR: No, sir.

11 THE COURT: All right. Thank you. If any
12 member of the jury panel has -- if you've ever worked in
13 law enforcement or if any member of your immediate family
14 has ever worked in law enforcement on the city, county,
15 state or federal level, or if they are or have ever been
16 employed with a solicitor's office, if so, please stand.

17 Okay. And tell me about it. We'll start with you,
18 Juror Number 59; did you say?

19 THE JUROR: Yes, sir.

20 THE COURT: All right.

21 THE JUROR: My stepsister works dispatch for the
22 sheriff's department in Pickens County. Her husband works
23 for Easley City. And then my brother-in-law works for
24 Pickens County also.

25 THE COURT: All right. Thank you, sir.

1 THE JUROR: Yes, sir, Juror 14, Bennett Bolding.

2 I've got a -- my brother, Brian Bolding, works for Pickens
3 County Sheriff's Office. And then my sister-in-law, Casey
4 Bolding, she works at the desk here at the courthouse.

5 THE COURT: All right. Thank you, sir.

6 THE JUROR: I'm juror number 118. My brother in
7 Los Angeles, California, he's actually pretty distant to
8 us, works as a corporate lawyer for the city attorney's
9 office.

10 THE COURT: All right. Thank you.

11 Yes, ma'am.

12 THE JUROR: My uncle is a retired police
13 officer.

14 THE COURT: All right. Thank you.

15 THE JUROR: I'm number 62. My nephew was a city
16 policeman in Easley.

17 THE COURT: All right. Yes, sir.

18 THE JUROR: My father-in-law was a sheriff in
19 Henderson County, North Carolina; recently retired. My
20 brother-in-law works for Morrisville Police Department in
21 North Carolina. And my uncle works for Fletcher Police
22 Department in North Carolina.

23 THE COURT: All right. Thank you. Your number,
24 sir, is?

25 THE JUROR: 50.

1 THE COURT: Yes, ma'am.

2 THE JUROR: Juror number 112. I did work for a
3 law firm for twelve, thirteen years, sometime ago. I do
4 have two cousins that are police officers or retired
5 police officers in Detroit, Michigan. And my husband's
6 cousin is an -- or was an undercover agent in San
7 Francisco.

8 THE COURT: All right. Thank you.

9 Yes, ma'am.

10 THE JUROR: Juror 120. My son was a former
11 deputy.

12 THE COURT: All right. Thank you.

13 THE JUROR: 115. My cousin is in dispatch for
14 Pickens County. I have another cousin that is in the
15 sheriff's department on Easley dispatch. I have a uncle
16 that is reserve deputy for Richland County. And then I
17 have another cousin in North Carolina, he's a state
18 trooper.

19 THE COURT: All right. Thank you.

20 THE JUROR: 133. I have a cousin and an uncle
21 that are police officers in North Carolina.

22 THE COURT: All right. Thank you.

23 And with regard to the responses that were just given
24 by anyone. If any of that would affect your ability to be
25 fair and impartial, if so, please stand.

1 (No response.)

2 THE COURT: Ladies and gentlemen, the indictment
3 in this case alleges that the defendant committed criminal
4 sexual conduct with a minor who was under the age or less
5 than eleven years of age at the time of the commission of
6 the criminal offense. If there is anything about the
7 nature of the charges against this defendant that would
8 make -- would render you incapable of being a fair and
9 impartial juror, given the nature of the charge, if so,
10 please stand.

11 (No response.)

12 THE COURT: Ladies and gentlemen, as I said to
13 your earlier that some of you -- because some of you
14 weren't here, I guess I said it to the last jury that we
15 selected -- what I said in general qualifications, as
16 well, yesterday, that your oath as jurors require you to
17 give complete and truthful responses to all questions you
18 are asked during the juror qualifications process. And in
19 many instances the questions that are asked are invasive
20 and calls for disclosure of private and personal
21 information. However, the disclosure or the information
22 is essential to assisting the state and the defense in
23 selecting a jury that they both agree to be the most fair
24 and impartial jury that can be selected from those of you
25 here assembled. And as it relates to the next question,

1 if you do not wish to respond openly, and wish to respond
2 at the bench, you may do so.

3 But if any member of the jury panel or any member of
4 your immediate family has ever been the victim of or
5 accused of a sexual offense, been the victim of a sexual
6 battery or sexual offense or being accused of committing a
7 sexual offense that relates to you or any member of your
8 immediate family; if so, please stand.

9 All right. Juror number ...

10 THE JUROR: Juror number 67. I have an uncle
11 that was charged several years ago, and a cousin here
12 recently.

13 THE COURT: And would that fact make -- prevent
14 you from being a fair and impartial juror in this case?

15 THE JUROR: No, sir.

16 THE COURT: Okay. Thank you.

17 Yes, ma'am. I'm going to have you come forward if
18 you would.

19 As it relates to any juror who wishes to disclose any
20 information on the record, please come forward if you
21 will.

22 THE BAILIFF: This is the first juror, 142.

23 THE JUROR: I was abused as a child, sexually
24 abused as a child.

25 THE COURT: Well, do you think that would

1 prevent you from sitting as a fair juror in this sexual
2 abuse case?

3 THE JUROR: No. I don't ---

4 THE COURT: Do you think you could set that
5 aside and still decide the case fairly as to both parties?

6 THE JUROR: Yes, sir.

7 THE COURT: All right. Thank you very much.

8 THE JUROR: Number 29. I was sexually abused as
9 a child. It wouldn't affect me at all. I just feel I
10 should be honest about it.

11 THE COURT: All right. Thank you.

12 Yes, ma'am.

13 THE JUROR: Number 62. My daughter was the
14 victim of rape by a co-worker.

15 THE COURT: And will that fact affect you? You
16 need to be fair and impartial in this case.

17 THE JUROR: Yes.

18 THE COURT: All right. Number 62, strike
19 through her. We won't sit her for this case.

20 THE JUROR: Juror number 20, Christopher M.
21 Bryson.

22 THE COURT: Yes, sir.

23 THE JUROR: Your Honor, my stepsister was raped
24 in Brevard, North Carolina. That's just not my ---

25 THE COURT: That would make it difficult and

1 prevent you from sitting on this case knowing it's a
2 child?

3 THE JUROR: I have a very, very opinionated
4 disposition about something like this. Yes, sir, I
5 believe it would.

6 THE COURT: Okay. Yes, ma'am.

7 THE JUROR: I was molested by my grandfather and
8 uncle and my husband was molested by his uncle. I don't
9 think I could be fair.

10 THE COURT: Juror number 1. Okay. Thank you
11 for telling us. Take her off. Let's see who we've taken
12 off so far. We've got the -- we've already taken off
13 number 20 and number 1 -- excuse me, 62 and number 1.

14 MS. JOHNSON: How about 29? And especially ---

15 THE COURT: Well, Heather said she could be
16 fair.

17 MS. JOHNSON: Well, based on 142's emotional
18 response, Your Honor, I don't think she can be objective
19 with her emotional reaction.

20 MR. TOOKER: I won't fight that.

21 THE COURT: We'll take her out, 142, just to be
22 safe.

23 MS. JOHNSON: I would ask the court to exclude
24 number 29, who said she was molested as a child.

25 MR. TOOKER: I believe she said she could be

1 fair.

2 THE COURT: That can be some of your strikes.

3 How many have you got; ten?

4 MS. JOHNSON: Ten, yes, sir.

5 THE COURT: Well, as long as a juror said they
6 could be fair, then the status doesn't give ground to
7 taking them off.

8 MS. JOHNSON: I understand.

9 THE COURT: Okay. Has any member of the jury
10 panel, either you or maybe -- you or an immediate family
11 member, been the victim of a crime involving sexual
12 assault? If you have ever made a complaint to a law
13 enforcement agency with regard or with reference to any
14 sexual assault cases, please stand.

15 (No response.)

16 THE COURT: If you are aware of any physical,
17 mental or emotional condition that would prevent you from
18 giving both the state and the defense a fair and impartial
19 trial, if you know of any condition that you might have,
20 physical, mental or emotional, that would prevent you from
21 giving both sides a fair and impartial trial or otherwise
22 sitting on this jury, please stand.

23 Thank you. You're juror number?

24 THE JUROR: 1.

25 THE COURT: 1. All right. We've taken you out

1 of the pool. Thank you very much.

2 This alleged offense occurred, the indictment
3 alleges, between August 4th, 2007 and August 2011. In
4 what area of Pickens County, Mr. Solicitor?

5 MR. TOOKER: In Pickens County, but in the
6 general vicinity, I guess, of what would be considered in
7 Easley or suburban area.

8 THE COURT: All right. Does any member of the
9 jury panel know anything about this case or have heard
10 anything about this case or think you've heard something
11 about this case, if so, please stand.

12 (No response.)

13 THE COURT: If you know of any reason why you
14 shouldn't be put on that jury; because you may have a
15 vacation plan starting Thursday; you have an extreme
16 excruciating headache; just don't want to be here. If you
17 know of any reason why you should not be selected to be on
18 this case, please stand.

19 Yes, ma'am. Juror number?

20 THE JUROR: I'm 27. I recently retired from
21 Greenville Health System. I did not recognize the
22 doctor's name that you called out, but I work in medical
23 records. I'm a coder in the medical records department.

24 THE COURT: All right. And you think that would
25 prevent you or should prevent you from serving or just

1 wanted to bring it to our attention?

2 THE JUROR: No. I just wanted to bring it to
3 your attention. I didn't know.

4 THE COURT: All right. Thank you very much.
5 You're juror number?

6 THE JUROR: 27.

7 THE COURT: 27. All right. Thank you.

8 Yes, sir, juror number?

9 THE JUROR: 137.

10 THE COURT: All right, sir. If you would come
11 forward if you would.

12 Yes, sir.

13 THE JUROR: She's not immediate family, but my
14 ex-girlfriend was raped when she was sixteen. I don't
15 think it'll make me impartial, but I still get angry at
16 times.

17 THE COURT: Do you think despite that you could
18 still be a fair and impartial juror in this case?

19 THE JUROR: Yes, sir.

20 THE COURT: Any questions anyone wants to ask?

21 MR. TOOKER: None, Your Honor.

22 MS. JOHNSON: None on behalf of the defense.

23 THE COURT: Okay. Thank you.

24 THE COURT REPORTER: What was his number? 137?

25 THE COURT: Anything else?

1 MR. TOOKER: No, Your Honor.

2 THE COURT: Any additional voir dire or
3 questions by the state or the defense?

4 MR. TOOKER: Nothing from the state, sir.

5 MS. JOHNSON: Nothing from the defense, Your
6 Honor.

7 THE COURT: All right. Mr. Clerk, if you would
8 give us a jury, we would certainly appreciate it.

9 THE CLERK: As I call your name if you would
10 please come up front here and stand so the attorneys can
11 see you.

12 Juror number 86, Steven C. Lowrance.

13 What says the state?

14 MR. TOOKER: Please excuse Mr. Lowrance from the
15 trial of this case.

16 THE CLERK: If you would return to your seat,
17 please, sir.

18 Juror number 121, Matthew B. Roach.

19 What says the state?

20 MR. TOOKER: Please present Mr. Roach.

21 THE CLERK: And the defense?

22 MS. JOHNSON: Please swear the juror.

23 THE CLERK: If you would have a seat in the jury
24 box, sir.

25 Juror number 14, Bennett R. Bolding.

1 What says the state?

2 MR. TOOKER: Please present Mr. Bolding.

3 THE CLERK: And the defense?

4 MS. JOHNSON: Please excuse Mr. Bolding.

5 THE CLERK: If you would return to your seat,
6 please, sir.

7 Juror number 140, Daulten J. Stewart.

8 What says the state?

9 MR. TOOKER: Please present Mr. Stewart.

10 THE CLERK: And the defense?

11 MS. JOHNSON: Please swear the juror.

12 THE CLERK: If you would have a seat in the jury
13 box, sir.

14 Juror number 78, Angela S. Kellner.

15 What says the state?

16 MR. TOOKER: Please present Ms. Kellner.

17 THE CLERK: And the defense?

18 MS. JOHNSON: Please swear the juror.

19 THE CLERK: If you would have a seat in the jury
20 box, please, ma'am.

21 Juror number 157, Sammy T. Williams.

22 What says the state?

23 MR. TOOKER: Please present Mr. Williams.

24 THE CLERK: And the defense?

25 MS. JOHNSON: Please swear the juror.

1 THE CLERK: If you would have a seat in the jury
2 box, sir.

3 Juror number 7, Christopher M. Bates.

4 What says the state?

5 MR. TOOKER: Please present Mr. Bates.

6 THE CLERK: And the defense?

7 MS. JOHNSON: Please swear the juror.

8 THE CLERK: If you would have a seat in the jury
9 box, sir.

10 Juror number 28, George R. Colborn.

11 What says the state?

12 MR. TOOKER: Please present Mr. Colborn.

13 THE CLERK: And the defense?

14 MS. JOHNSON: Please swear the juror.

15 THE CLERK: If you would have a seat in the jury
16 box, sir.

17 Juror number 67, Jason D. Holder.

18 What says the state?

19 MR. TOOKER: Please excuse Mr. Holder from the
20 trial of this case.

21 THE CLERK: If you would return to your seat,
22 please.

23 Juror number 50, Roger A. Fletcher.

24 What says the state?

25 MR. TOOKER: Please present Mr. Fletcher.

1 THE CLERK: And the defense?

2 MS. JOHNSON: Please excuse the juror.

3 THE CLERK: If you would return to your seat,
4 sir.

5 Juror number 69, Timothy R. Holder.

6 What says the state?

7 MR. TOOKER: Please present Mr. Holder.

8 THE CLERK: And the defense?

9 MS. JOHNSON: Please swear the juror.

10 THE CLERK: If you would have a seat in the jury
11 box, sir.

12 Juror number 118, Lori E. Rash.

13 What says the state?

14 MR. TOOKER: Please present Ms. Rash.

15 THE CLERK: And the defense?

16 MS. JOHNSON: Please excuse the juror.

17 THE CLERK: If you would return to your seat,
18 please, ma'am.

19 Juror number 127, Joshua D. Seaborn.

20 What says the state?

21 MR. TOOKER: Please excuse Mr. Seaborn from the
22 trial of this case.

23 THE CLERK: If you would return to your seat,
24 please, sir.

25 Juror number 4, Susan E. Anderson.

1 What says the state?

2 MR. TOOKER: Please present Ms. Anderson.

3 THE CLERK: And the defense?

4 MS. JOHNSON: Please swear the juror.

5 THE CLERK: If you would have a seat in the jury
6 box, ma'am.

7 Juror number 150, James E. Wade, Jr.

8 What says the state?

9 MR. TOOKER: Please present Mr. Wade.

10 THE CLERK: And the defense?

11 MS. JOHNSON: Please excuse the juror.

12 THE CLERK: You can return to your seat, please,
13 sir.

14 Juror number 27, Elizabeth J. Clark.

15 What says the state?

16 MR. TOOKER: Please present Ms. Clark.

17 THE CLERK: And the defense?

18 MS. JOHNSON: Please swear the juror.

19 THE CLERK: If you would have a seat in the jury
20 box, ma'am.

21 Juror number 3, Brandon R. Anderson.

22 What says the state?

23 MR. TOOKER: Please present Mr. Anderson.

24 THE CLERK: And the defense?

25 MS. JOHNSON: Please swear the juror.

1 THE CLERK: If you would have a seat in the jury
2 box, sir.

3 Juror number 130, Susan S. Shuler.

4 What says the state?

5 MR. TOOKER: Please present Ms. Shuler.

6 THE CLERK: And the defense?

7 MS. JOHNSON: Please excuse the juror.

8 THE CLERK: If you would return to your seat,
9 please, ma'am.

10 Juror number 95, Robert W. Moncatch.

11 What says the state?

12 MR. TOOKER: Please excuse Mr. Moncatch from the
13 trial of this case.

14 THE CLERK: If you would return to your seat,
15 sir.

16 Juror number 154, Bruce E. Whiteside.

17 What says the state?

18 MR. TOOKER: Please present Mr. Whiteside.

19 THE CLERK: And the defense?

20 MS. JOHNSON: Please swear the juror.

21 THE CLERK: If you would have a seat in the jury
22 box, sir.

23 Juror number 138, Patricia D. Spearman.

24 What says the state?

25 MR. TOOKER: Please excuse Ms. Spearman from the

1 trial of this case.

2 THE CLERK: If you would return to your seat,
3 ma'am.

4 Juror number 112, Maria H. Pfefferkorn.

5 What says the state?

6 MR. TOOKER: Please present Ms. Pfefferkorn.

7 THE CLERK: And the defense?

8 MS. JOHNSON: Please excuse the juror.

9 THE CLERK: If you would return to your seat,
10 please, ma'am.

11 Juror number 152, David C. Wartak.

12 What says the state?

13 MR. TOOKER: Please present Mr. Wartak.

14 THE CLERK: And the defense?

15 MS. JOHNSON: Please excuse the juror.

16 THE CLERK: If you would return to your seat,
17 sir.

18 Juror number 59, Nathan A. Hall.

19 What says the state?

20 MR. TOOKER: Please present Mr. Hall.

21 THE CLERK: And the defense?

22 MS. JOHNSON: Please excuse the juror.

23 THE CLERK: If you would return to your seat,
24 sir.

25 Juror number 114, Ashley W. Porter.

1 What says the state?

2 MR. TOOKER: Please present Ms. Porter.

3 THE CLERK: And the defense?

4 MS. JOHNSON: Please swear the juror.

5 THE CLERK: If you would have a seat in the jury
6 box, ma'am.

7 This will be for the first alternate.

8 Juror number 145, Michael S. Trammell.

9 What says the state?

10 MR. TOOKER: Please present Mr. Trammell.

11 THE CLERK: And the defense?

12 MS. JOHNSON: Please excuse the juror.

13 THE CLERK: If you would return to your seat,
14 sir.

15 MR. TOOKER: Your Honor, are we one and two on
16 alternates?

17 THE COURT: Yes, sir.

18 THE CLERK: Juror number 29, Heather E. Coleman.

19 What says the state?

20 MR. TOOKER: Please present Ms. Coleman.

21 THE CLERK: And the defense?

22 MS. JOHNSON: Please excuse the juror.

23 THE CLERK: If you would return to your seat,
24 please, ma'am.

25 Juror number 45, Joy L. Evans.

1 What says the state?

2 MR. TOOKER: Please present Ms. Evans.

3 THE CLERK: And the defense?

4 MS. JOHNSON: Please swear the juror.

5 THE CLERK: If you would have a seat in the jury
6 box, ma'am.

7 Juror number 15, Charles W. Bolt, III.

8 What says the state?

9 MR. TOOKER: Please present Mr. Bolt.

10 THE CLERK: And the defense?

11 MS. JOHNSON: Please swear the juror..

12 THE CLERK: If you would have a seat in the jury
13 box, sir.

14 THE COURT: Are there any matters of law
15 regarding the jury selection?

16 MR. TOOKER: Nothing from the state, sir.

17 MS. JOHNSON: Nothing from the defense, Your
18 Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 you all have been selected. You will be the jury in the
21 trial of this case. I'll speak with you momentarily.

22 Those of you who were not selected, I think that'll
23 certainly do it for this day. Do they need to be on
24 standby any further for later in the week or will that do
25 it for them for this week?

1 MR. TOOKER: I'll have to check with my boss,
2 but I believe they'll need to be on standby.

3 THE COURT: Well, ladies and gentlemen, we need
4 you all to call back after six. It's unlikely that we'll
5 use you on anymore cases this week, but we don't know. So
6 please call back after six for further instructions.

7 Thank you very much for coming.

8 (WHEREUPON, the jury panel exited the open court at
9 approximately 1:27 p.m.)

10 THE COURT: Do we have a second jury room around
11 here somewhere.

12 THE CLERK: Yes, sir, the Grand Jury room.

13 THE COURT: All right. Grand Jury room. Ladies
14 and gentlemen, we're going to have you all go to the Grand
15 Jury room to get acquainted with each other. Please do
16 not discuss this matter in any form. Talk about the
17 weather, beautiful weather up here. Do not discuss this
18 case.

19 (WHEREUPON, the jury exited the open court at
20 approximately 1:28 p.m.)

21 THE COURT: Okay. I just got the V sign for a
22 verdict by our deliberating jury. So we're going to stand
23 you all aside for the moment. Well, let's see, before we
24 do that. It'll take a while for everyone to congregate
25 and we're going to let these folks go anyway, so it might

1 be best to deal with them before we bring the jury in. We
2 need Mr. Alexander and Mr. -- what's his name?

3 THE LAW CLERK: Cleveland.

4 THE COURT: No, the other defendant.

5 THE LAW CLERK: Marchbanks.

6 THE COURT: Marchbanks. Well, let's see, y'all
7 stay here for a moment. Is there anything else we need to
8 talk about before we left the jury go?

9 MR. TOOKER: No, sir.

10 MS. JOHNSON: No, Your Honor. We just have the
11 pretrial motions at the appropriate time.

12 THE COURT: All right. I think we'll let them
13 come back at nine thirty tomorrow morning rather than nine
14 o'clock. They might be better at being on time doing
15 that.

16 Well, we sent them back and told them to take a
17 moment to get acquainted with each other. They haven't
18 had time to do that yet, so we'll give them another
19 minute, at least.

20 Okay. Let's bring our jury -- not the ones with the
21 verdict, but the other one, let's get them to come in.

22 (WHEREUPON, the jury entered the open court at
23 approximately 1:31 p.m.)

24 THE COURT: All right. Ladies and gentlemen, I
25 guess you all got a chance to get acquainted with each

1 other. It was kind of quick. But we are through with you
2 all today. We're going to start at nine thirty tomorrow
3 morning.

4 Once you have been selected on a jury, you should not
5 -- in fact, you're prohibited from discussing the case
6 with anyone or allowing anyone to discuss it in your
7 presence or engaging in any form of independent research
8 or investigation into the case. Because you are -- and
9 you will take an oath tomorrow morning to decide the case
10 solely based on the -- based on what you hear in the
11 courtroom, the testimony that you hear and the law that
12 you will be given. So we are in the middle of doing some
13 other things, as well. We have a jury out from this
14 morning. And so we're going to let you all go and have
15 you back at nine thirty tomorrow morning.

16 Is there anyone that cannot be here on time at nine
17 thirty tomorrow morning? Okay. We'll see you all at nine
18 thirty. You will not come through the courtroom. You'll
19 come through the area of the direction that the bailiffs
20 instruct you.

21 Yes, sir, did you want to say something?

22 THE JUROR: Yeah, that's exactly what I was
23 going to ask; was it going to be in here and are we going
24 to go through the back way?

25 THE COURT: Yeah. He'll give you those

1 instructions. You'll never come through the courtroom.
2 You always come through the back way, whatever way that
3 is.

4 We'll see y'all tomorrow morning. What time?

5 THE JURORS: Nine thirty.

6 THE COURT: Nine thirty. Very good.

7 Can I answer a question for you, ma'am?

8 THE JUROR: Yeah, do you know how long we'll be
9 here?

10 THE COURT: Probably a couple of days.

11 THE JUROR: No, I mean through the day; like
12 nine thirty or ---

13 THE COURT: Yeah, nine thirty till we get
14 through, which may be five thirty, six o'clock.

15 THE JUROR: Oh.

16 THE COURT: Be prepared to stay late.

17 (WHEREUPON, the jury exited the open court at
18 approximately 1:34 p.m.)

19 THE COURT: Do you want to start or do you want
20 to wait for your guy?

21 MS. JOHNSON: Judge, I apologize. I'm at the
22 court's disposal.

23 THE COURT: Do you think he'll be mad if we
24 start without him?

25 MS. JOHNSON: No, Your Honor.

1 THE COURT: Okay. Let's just start talking
2 then.

3 MR. TOOKER: Yes, sir. Well, the state would
4 like to begin by calling Ms. Christine Carlberg to the
5 stand.

6 THE COURT: Okay. And this is relating to which
7 motion?

8 MR. TOOKER: I apologize, sir. Before Your
9 Honor, you should have a motion for admission of out-of-
10 court statement of a child pursuant to S.C. Code Section
11 17-23-175. We will just proffer. We have two children in
12 this case. Only one is alleged to have been abused. The
13 other child, her younger sister, claims that on one
14 occasion she witnessed the abuse. Both children, when
15 they were interviewed at the Julie Valentine Center by the
16 forensic interviewer, were less than twelve years of age.
17 And then my proposition would be, I would call the
18 forensic interviewer, have her take the stand, go through
19 her training and experience; how she asks the questions
20 she asks, get her to authenticate the videos. And then at
21 that point I would propose to play those videos for Your
22 Honor so Your Honor can make a determination as to whether
23 or not they meet the criteria outlined in the statute,
24 whether or not they should be admitted in this trial.

25 THE COURT: All right. Let's get on the record

1 before you do that, and Mr. Evans, where is he?

2 MS. JOHNSON: Judge, I told him thirty minutes.

3 I apologize.

4 THE COURT: You told him thirty minutes, and how
5 long -- how long -- what time was that?

6 MS. JOHNSON: That was around thirty-seven
7 minutes ago, Your Honor.

8 THE COURT: Let's have the bailiff take a look
9 and see if he's outside.

10 Mr. Bailiff, did you see Mr. Evans out there any
11 place?

12 THE BAILIFF: No, sir.

13 THE COURT: All right.

14 THE BAILIFF: Your Honor, the detective is going
15 down. He thinks he might be outside smoking.

16 THE COURT: Okay. All right. We'll proceed
17 then with these motions.

18 MR. TOOKER: Yes, sir. Thank you, sir. May it
19 please the court.

20 THE BAILIFF: He's on his way up, Your Honor.

21 THE COURT: He's on his way up. All right. By
22 the time she comes in, he should be in.

23 MR. TOOKER: Yes, sir.

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you're about to give in this case will be the

1 truth, the whole truth and nothing but the truth, so help
2 you God?

3 THE WITNESS: Yes, sir.

4 THE CLERK: If you would have a seat and state
5 your name for the record, please.

6 THE WITNESS: Christine Carlberg.

7 **IN-CAMERA TESTIMONY**

8 **CHRISTINE CARLBERG,**

9 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. TOOKER:**

12 Q. Ms. Carlberg, where do you work, ma'am?

13 A. I'm employed by the Greenville Department of Mental
14 Health and contracted to work at the Julie Valentine
15 Center.

16 Q. And what are your duties at the Julie Valentine
17 Center?

18 A. I'm a forensic interviewer.

19 Q. Okay. What is the Julie Valentine Center?

20 A. The Julie Valentine Center is a center located in
21 Greenville that serves Greenville and Pickens County that
22 deals with sexual assault of children and adults.

23 Q. Okay. And what is a forensic interview?

24 A. A forensic interview is a non-leading, non-
25 suggestive manner of gathering information from a child or

1 we also see delayed adults for purposes of an
2 investigation.

3 Q. Okay. An investigation into what kind of
4 activities?

5 A. We normally deal with allegations of some type of
6 abuse; physical abuse, sexual abuse, neglect, sometimes
7 witnesses to abuse or homicides or things like that.

8 Q. Okay. And what's your educational background?

9 A. I have a bachelor's of science in rehabilitation
10 services education with a minor in psychology from the
11 Pennsylvania State University. And I have a master's of
12 arts in marriage and family therapy from Reformed
13 Theological Seminary in Jackson, Mississippi.

14 Q. Okay. How long have you been doing forensic
15 interviews?

16 A. About fourteen and a half years.

17 Q. Fourteen and a half years?

18 A. Yes.

19 Q. How many forensic interviews do you think you
20 perform yourself every year?

21 A. Every year, usually over -- probably around two
22 hundred twenty, two hundred thirty a year.

23 Q. Okay. So in your career, what's your best estimate
24 as to how many forensic interviews you've performed?

25 A. I have a number of two thousand six hundred and

1 eight.

2 Q. Okay. You counted them all?

3 A. Yes.

4 Q. And those forensic interviews that you performed
5 over the course of your career, is there a specific
6 methodology that you're taught to use when talking to a
7 child in that environment?

8 A. We're using a method called RATAC, which is a five
9 stage semi-structure protocol that stands for rapport,
10 anatomy ID, touch -- I'm sorry -- rapport, abuse -- I'm
11 sorry -- rapport, anatomy ID, touch inquiry, abuse
12 scenario and closure.

13 Q. Okay. And is that something that's taught to other
14 forensic interviewers or is that something that just y'all
15 do or what's the ---

16 A. Yes. It was a leading protocol. They're no longer
17 using RATAC. At the time I did these interviews I was
18 using RATAC. Earlier this year we started using new
19 protocol.

20 Q. Okay. Just to emphasize, the RATAC protocol that
21 you used in this circumstance, in this case, is the
22 protocol that everybody at the Julie Valentine Center was
23 using at that point in time?

24 A. Yeah. Most of our state uses that protocol or did
25 use that protocol and it was a nationally recognized

1 protocol, as well.

2 Q. Okay. I want to go back to something. We talked
3 about your training. Do you have to maintain any kind of
4 licensure to be able to practice forensic interviews?

5 A. There's no licensure for forensic interviewing, so,
6 no, you don't have to have a license to do forensic
7 interviewing.

8 Q. Okay. Do you maintain, I guess, continuing
9 education, or do you go to courses or seminars?

10 A. I do.

11 Q. Okay. What kind of courses and seminars or
12 continuing education events do you attend?

13 A. We go to seminars for like advanced training in
14 forensic interviewing. And then we had our initial
15 forensic interview training when we were first starting to
16 be trained, as well. But then we keep up with what the
17 new protocol is and the new topics that are coming out.

18 Q. Okay. And you're familiar with why you've been
19 called to testify in this case?

20 A. Yes, sir.

21 Q. Okay. Who did you see in this case? Which
22 children?

23 A. I saw both children, Minor and Y.B.

24 Q. Okay. And how old were those children when you saw
25 them?

1 A. Y.B. was ten years old and Minor was eleven
2 years old.

3 Q. Okay. And where did you see them?

4 A. I saw them at the Julie Valentine Center.

5 Q. When you talked to them, were you with the children
6 and other people, or just with the children?

7 A. It was just myself and the child.

8 Q. And you said you used this RATAC protocol. How is
9 it that this RATAC protocol, I guess, doesn't lead the
10 child down sort of a path?

11 A. Well, we're trained not to ask leading questions or
12 suggestive questions. We want to ask open-ended questions
13 to allow them to tell their -- to allow them to tell what
14 happened to them.

15 Q. Okay. Is that what you did with regards to Minor
16 and Y.B. ?

17 A. Yes, sir.

18 Q. Okay. Now, I'm going to show you what's been marked
19 as Court's 1 and Court's 2. Do you recognize Court's 1?

20 A. Yes, sir.

21 Q. What is Court's 1?

22 A. This is a copy of the video of Minor .

23 Q. Okay. And do you recognize Court's 2?

24 A. This is a copy of the video of Y.B. .

25 Q. And how do you know that those items are what you

1 just said they are?

2 A. I viewed them and signed them and initialed -- or
3 initialed them and dated them when I viewed them.

4 Q. Okay. After viewing them would you say that they're
5 fair and accurate copies of the interviews you conducted
6 with Minor and Y.B. in this case?

7 A. Yes, sir.

8 MR. TOOKER: At this point, Your Honor, the
9 state proposes to publish Court's 1 and Court's 2 for Your
10 Honor.

11 THE COURT: What says the defense?

12 MS. JOHNSON: Judge, I've got some major
13 objections with these videos. Do you want to hear me
14 after the videos are played?

15 THE COURT: Yes. They're being offered at this
16 time for what purpose, Mr. ---

17 MR. TOOKER: Just for Your Honor to review.
18 It's my understanding that pursuant to 17-23-175, Your
19 Honor has to consider a multitude of things in determining
20 whether or not the videos should be properly admitted,
21 whether or not the statements are elicited by leading
22 questions, whether the interviewer has been trained in
23 conducting investigative interviews of children, whether
24 the statement contains a detailed account of the offense,
25 whether the statement has internal coherence, and sworn

1 testimony of any participant which may be deemed necessary
2 by the court.

3 And those are not, in and of themselves, the only
4 things you can consider, but ultimately I believe it's up
5 to Your Honor to take it in totality the circumstances and
6 determine whether or not the tapes meet the statute and
7 whether or not they should be admitted because they meet
8 the statute.

9 And so I propose to play the tapes for Your Honor so
10 you can make that determination.

11 THE COURT: What's your response to that,
12 Counselor?

13 MS. JOHNSON: Well, I don't think the videos are
14 admissible. I'm not even going to articulate them at this
15 time. We haven't seen them. I can go over my reasons,
16 but it has to do with the content of those videos.

17 THE COURT: Well, of course, the purpose of the
18 hearing is to determine admissibility. And certainly you
19 understand that if they're not admissible, the jury won't
20 see them. But are you arguing that they're inadmissible
21 in a hearing to determine admissibility?

22 MS. JOHNSON: No, Your Honor. No. But I --
23 just for the jury to see them, I'm arguing they are
24 inadmissible.

25 THE COURT: I understand. And that's the

1 purpose of this hearing, for me to make that
2 determination.

3 MS. JOHNSON: Yes, Your Honor.

4 THE COURT: I understand that you object to the
5 admissibility of them. They'll be marked as a court's
6 exhibit for purposes of this hearing.

7 MR. TOOKER: Yes, sir. And for Your Honor's
8 edification, what I've done with each of these is I've
9 marked them both as Court's 1, Court's 2; Court's 1 being
10 the forensic interview of Minor , Court's 2 being
11 the forensic interview of Y.B. . And then also as
12 State's 1 and State's 2 in the anticipation if we make it
13 out of this hearing and Your Honor permits, I would seek
14 to admit these specific exhibits.

15 THE COURT: Yes, sir, I understand.

16 MR. TOOKER: Okay.

17 THE COURT: You would cross out the court's
18 exhibit and it then becomes a state's exhibit?

19 MR. TOOKER: Yes, sir. Thank you, sir.

20 THE COURT: Prior to my viewing the videos, did
21 you want to cross examine before I view them or after?

22 MS. JOHNSON: Judge, at this time I have no
23 cross examination of this witness.

24 May I move over there?

25 THE COURT: Sure.

1 All right. How long are these interviews?

2 MR. TOOKER: Each one is about a half hour, more
3 or less.

4 THE COURT: All right. Put them on there or the
5 big screen?

6 MR. TOOKER: I was going to use this because I'm
7 comfortable with this technology.

8 THE COURT: All right. Is that what you're
9 going to play for the jury through that machine there?

10 MR. TOOKER: Yes, sir.

11 THE COURT: Okay.

12 (WHEREUPON, Court Exhibit Numbers 1 and 2 were
13 played for the court.)

14 **IN-CAMERA DIRECT EXAMINATION OF**

15 **CHRISTINA CARLBERG CONTINUED**

16 **BY MR. TOOKER:**

17 Q. All right. Ms. Carlberg, with regards to Minor
18 forensic interview, what area was she referring to with
19 regards to her genitals, her word, private area, what was
20 she talking about?

21 A. Her vaginal area.

22 Q. And with regards to Y.B. interview, what words
23 did she use to describe her private parts or genitals?

24 A. She called her vaginal area her thing.

25 Q. Okay. And after you talked to the girls, where did

1 you take them?

2 A. They were -- they went out to the waiting room of
3 the Julie Valentine Center.

4 Q. Okay. Did they have any parents waiting for them?

5 A. The father and his girlfriend were there.

6 Q. So John Berry and Ester McCollum?

7 A. Yes.

8 Q. Okay. And did you have any further involvement in
9 this case?

10 A. Other than writing a report and letting the
11 investigators know what happened, nothing other than that.

12 Q. Didn't you forwarded your information to the law
13 enforcement involved in this case?

14 A. Yes. And DSS.

15 Q. Okay.

16 MR. TOOKER: No further questions at this time,
17 Your Honor.

18 THE COURT: Ms. Johnson.

19 MS. JOHNSON: Judge, at this time, I don't have
20 any cross for Ms. Carlberg. But I do -- or I would like
21 to be heard on an argument.

22 THE COURT: All right. Okay. You may step
23 down.

24 MS. JOHNSON: And I would just like to reserve
25 my ability to cross her tomorrow.

1 THE COURT: During the trial, you mean?

2 MS. JOHNSON: Yes, sir, Your Honor.

3 THE COURT: Certainly. Anything further then,

4 Mr. ---

5 MR. TOOKER: Tooker. It's like looker with a T,
6 sir.

7 Well, so it is the state's understanding that the
8 purpose of these in-camera hearings with regards to the
9 admission of any kind of out-of-court statement made by a
10 child under the age of twelve to a forensic interviewer in
11 these circumstances is that there has to be that
12 particularized guarantee or guarantees of trustworthiness.

13 Now, what the statute in that 17-23-175 provides,
14 Your Honor, are several things that you can consider when
15 looking for that trustworthiness, but ultimately the
16 question is one of the totality of the circumstances.
17 It's the totality of the circumstances as provided both by
18 the interviewer's testimony and by what Your Honor saw on
19 the forensic interviews.

20 Now, it's the state's opinion in this case that based
21 on the totality of these circumstances, based on Ms.
22 Carlberg's training and experience, based on the
23 methodology she used, and then also based on the demeanor,
24 appearance, cohesive nature of the girls' statements and
25 other circumstances that indicate her liability with

1 regards to the statements they made on the forensics tapes
2 that these tapes should be admitted in the trial in the
3 state's case in chief, sir.

4 THE COURT: All right. Yes, ma'am.

5 MS. JOHNSON: May it please the court. At this
6 time, on behalf of Mr. Evans, we respectfully ask the
7 court to exclude or suppress both videos. Our position is
8 that neither video is reliable. And I can go through each
9 video, Your Honor. As to Y.B. video -- and actually
10 this goes to both videos -- the interviewer says, we talk
11 about things that really happen. Your Honor, it's our
12 position that that is a violation of State v. Kromah, and
13 it talks about whether the child was told -- or the child
14 can't be told to be truthful. And that's kind of like a
15 backdoor, hey, you need to be truthful here.

16 There are leading questions throughout these
17 interviews, but especially with Y.B. or with respect
18 to Y.B. interview. The most glaring to me is --
19 these times are approximate Your Honor; they're not exact.
20 But, you know, it takes the interviewer seven minutes to
21 get Y.B. talking about touches, because she is not
22 responding in the way that the interviewer would like her
23 to. Has anything happened to you? Then she denies
24 anything happening to Minor. And then anything else
25 happen to her? She says, no. Again, the interviewer is.

1 trying to pry something out of her. Well, we're going to
2 talk about touches today. The interviewer still can't get
3 her to talk about Minor . And then she finally says,
4 what about your sister? Judge, that is a leading
5 question. A leading question contains the answer. She
6 never says, my sister was touched. She had to ask her
7 about her sister. And it is our position that the whole
8 process is tainted at that point.

9 And another -- you know, this interviewer loves to
10 say, have you ever seen x, have you ever seen y? Those
11 are leading questions. Another thing, she goes through
12 the entire interview, Y.B. says nothing was said,
13 nothing was said. Then she has to ask her. The child
14 never volunteers. Did you -- or did they ask you to join
15 in? That is a leading question. And also, I think that
16 the editorializing at the end that she says, it's not your
17 fault, I think that is clearly improper. And certainly we
18 would ask the court to exclude any extraneous information
19 about the pets. You know, that's just appealing to the
20 passions and prejudice of the jury.

21 As far as Minor video, the biggest problem I
22 have, again, I think the whole thing is unreliable. And,
23 again, my times are not accurate, but as far as Minor
24 video, at one thirty-nine Minor says in response to the
25 interviewer's question, do you know why you're here, and

1 the child answers, my parents basically gave me a rundown
2 about what it would kind of be. Judge, that taint is
3 never explored by this interviewer. And again, this --
4 there's a lot of leading questions. Did anything come out
5 of it? I'm talking about -- you know, that was not
6 volunteered by the child. That was elicited. And there's
7 a huge difference.

8 And also, again, we've got the extraneous information
9 about the pets and about what they do. You know, that's
10 not probative. Again, that's just trying to appeal to the
11 passions and prejudice of the jury. It's our position
12 that everything is -- or that both videos are not
13 reliable; that they are tainted and that they, therefore,
14 should be excluded.

15 THE COURT: Yes, sir, Mr. Tooker.

16 MR. TOOKER: Thank you, sir. I'll take these
17 one by one. First, with regards to the case of State v.
18 Kromah, that was a case where the state introduced the
19 report of the forensic interviewer to bolster the
20 testimony of a witness. And in that report the forensic
21 interviewer said that her conclusion was that there were
22 particular statements or reliability or some such.

23 THE COURT: How do you spell that word?

24 MR. TOOKER: C-r-o-m-a-h, State v. Cromah
25 (verbatim). And it's kind of a similar case ---

1 THE COURT: It's a big one; isn't it?

2 MR. TOOKER: Yes, sir. And so in that case the
3 question was whether or not what the forensic interviewer
4 did was bolstering. And what the court said is, a
5 forensic interviewer can't get up there -- and what used
6 to happen, and I know this from firsthand experience -- a
7 forensic interviewer would get on the stand, get qualified
8 as an expert, and then would be asked about, you know, in
9 her expert opinion was the kid telling the truth. In
10 Kromah they said absolutely not. You cannot do that.
11 That's bolstering.. So what the court also said in Kromah
12 was what you can use a forensic interviewer for is this
13 statute 17-23-175.

14 And so in this case, Ms. Johnson attacked -- well, I
15 guess first I'll go with the pets. So regarding the pets.
16 As Ms. Carlberg testified to, part of the RATAC
17 methodology is developing a rapport; the R is for rapport.
18 So in developing a rapport with a child, you don't just
19 sit a child down and say, hey, did anybody ever molest
20 you? You sit a child down, you start talking to them
21 about things they're comfortable with so they become
22 comfortable with you. So I don't know about the pets.

23 Y.B. . I think Ms. Johnson and I have slightly
24 different definitions of leading questions. And I think
25 leading questions kind of fall on a scale. I'm not sure

1 you can say every questions is either leading or not
2 leading, because I think there's sort of a broad swatch of
3 questions that kind of fall in the middle. For instance,
4 a lot of the questions that Ms. Carlberg asked of these
5 children sort of pose multiple choices. Was it here, was
6 it there, was it somewhere in between? Was it like this,
7 was it like that, was it like some other way?

8 What she has to do is talk to a child in the way the
9 child understands, as opposed to saying, can you please
10 describe to me in these circumstances and explain to me
11 what happened in these circumstances, you know. A child
12 isn't going to think like that. So I don't think that
13 there's enough to indicate that the answers from the kids
14 are not trustworthy. Ultimately in all these videos, the
15 kid said yes to some questions; they said no to some
16 questions. They described in detail their answers to
17 questions that they understood. So those are things that
18 indicate that trustworthiness; that they're able to
19 understand what they're being asked to either affirm or
20 deny.

21 And then with regards to potential taint with regards
22 to Minor forensic interview, where Minor said my mom
23 and dad gave me the rundown about what this was going to
24 be like, I don't think that indicates a lack of
25 trustworthiness from the entire video. Again, I think the

1 questions as asked and answers as provided, indicate
2 trustworthiness. And if there is taint, well, that's
3 proper fodder for cross and I would say Ms. Johnson could
4 pursue that with both the child herself and with the
5 interviewer. That's the state's position with regards to
6 both these tapes.

7 If Your Honor needs to hear anything else from me,
8 I'd be glad to wax poetic a little more.

9 THE COURT: I find that the interviews were done
10 appropriately in accordance with 17-23-175. That the
11 questions posed were not leading questions. That the --
12 to the extent any leading questions were asked, they were
13 just preliminary and was not suggestive of anything of any
14 substance. That the techniques used showed the
15 professionalism of the witness. Showed that she had been
16 properly trained in conducting investigative interviews
17 with children. That the contents of the video were
18 answers given by the children were not solicited by the
19 interviewer. That the trustworthiness test has been met.
20 And the requirements of 17-23-175 have been satisfied and
21 the statements are admissible.

22 MR. TOOKER: Thank you, sir.

23 MS. JOHNSON: And Judge, I don't want to argue
24 with your ruling, I just want to place one other thing on
25 the record.

1 THE COURT: All right. Let me hear that one.

2 MS. JOHNSON: In talking about the -- or
3 referring to the forensic interview statute, Section 17-
4 23-175(c), for purposes of this section, a child is (1) a
5 person who is under the age of twelve years old at the
6 time of making the statement. It is our position that the
7 legislator does not intend for these two children, who are
8 now both over the age of twelve, for their statements to
9 have been -- or to be played in court, because they're
10 over that age at this point in time. I would just like to
11 put that on the record.

12 THE COURT: Well, I don't know; you might be
13 right. What do you base your opinion on, that -- they
14 define a child. A child is a person who is under twelve
15 at the time they made the statement. And the section is
16 admissibility of out-of-court statements of a child under
17 twelve. How -- a literal -- statutes are to be given
18 their literal meaning. Of course, it states the intent.
19 But if there is some hidden legislative intent that I
20 should look at beyond what's in black and white in the
21 statute, I would need to know where to go to find that
22 legislative intent.

23 MS. JOHNSON: And Judge, I don't have that.

24 THE COURT: Okay.

25 MS. JOHNSON: But I just wanted to place that on

1 the record.

2 THE COURT: All right. I understand.

3 All right. We're at a quarter till five. What else
4 do we have today? I know you all -- that's one of many
5 motions.

6 MR. TOOKER: The next thing the state had was
7 just that motion in limine for compliance of the rape
8 field. Ms. Johnson has indicated it's not going to be an
9 issue and I trust her to that effect. I just wanted to
10 put that on the record, sir. I believe Your Honor has a
11 copy of my motion, sir.

12 THE COURT: Yeah, I have a copy of that motion,
13 and I will ensure compliance with the rape shield laws.

14 MR. TOOKER: Thank you, sir.

15 THE COURT: And because it's in the nature of a
16 motion in limine, in the event there's any testimony that
17 anyone seeks to elicit that's beyond what the statute
18 permits, I would expect an immediate objection.

19 MR. TOOKER: Of course. Absolutely.

20 And that's it for the state, sir.

21 THE COURT: All right.

22 MS. JOHNSON: And Judge, just to put on the
23 record, I do -- or I have met with Mr. Tooker, and I do
24 agree to comply with that. To the extent that I'm making
25 that, I guess, stipulation based on an email from Anderson

1 DSS to Mr. Tooker regarding the father of these children
2 who was charged with ABHAN -- or actually he was charged
3 with a sex crime, but he pled to ABHAN. And there were
4 some allegations that he was abusing or neglecting the
5 minor children of Ester McCollum, who is the children's
6 stepmother. And based on an email from DSS or from a DSS
7 attorney, there is -- that information is not valid, I
8 guess is the right ---

9 THE COURT: The children of Ester McCollum,
10 they're not these kids?

11 MS. JOHNSON: No, sir, Your Honor.

12 THE COURT: The stepfather is accused of abusing
13 some other children?

14 MS. JOHNSON: Right. So I don't know what --
15 you know, I don't know what's going to come out in trial.
16 But if anything else comes out, I would ask ---

17 THE COURT: Largely, we can't prove or disprove
18 that case; we'd be here a long time.

19 MR. TOOKER: I was going to say, I think we're
20 kind of talking past each other right now. I believe what
21 Ms. Johnson's commenting on is actually a third-party
22 guilt evidence potentially. And just so the record is
23 clear, the victim's father, John Berry, was charged with
24 criminal sexual conduct when he was in his early twenties
25 with a teenager. It was that charge, enticing a minor to

1 leave school, who was his girlfriend at the time. They
2 had sexual relations. He pled guilty to ABHAN in 1998.

3 THE COURT: You're not going to go into that
4 case; are you?

5 MR. TOOKER: No. No. Since the ten years, he
6 spent five years on probation. The DSS matter in Anderson
7 she mentions is also regarding that same man, the victim's
8 father. And what was brought to the state's attention
9 that we turned over to Ms. Johnson was that the father and
10 stepmother, Beth, so John and Beth sat down with me and I
11 was like, just be honest with me, is there anything I need
12 to know about in anticipation of this trial. And Beth
13 said she thought that somewhere in the DSS records in
14 Anderson, because both of her kids were taken from her;
15 she had to relinquish parental rights. A lot of
16 relinquishing of parental rights in this case. The
17 biological mother of these kids signed over rights, too.
18 But that she thought in that record somewhere, one of the
19 male children complained that John Berry -- again, the
20 father of the victims -- had sexually assaulted him. I
21 called Anderson DSS and talked with their counsel, and I
22 said, you know, comb through everything. She said she
23 wouldn't give me everything, but she said she would comb
24 through everything. I said, well, if there are any
25 indications of sexual abuse or allegations of sexual

1 abuse, please let me know. And so she said there were
2 none, and that's what I forwarded on to Ms. Johnson. And
3 that all, I think, is relevant with regards to potential
4 third-party guilt evidence. I think if that comes up, the
5 proper way to proceed would be to have the jury excused
6 and we could proffer some testimony in-camera for Your
7 Honor, then Your Honor would have to make a determination
8 as to regards the admissibility of that third-party guilt
9 evidence.

10 THE COURT: And I understand, the conditions
11 under which your stipulation is made without trying to --
12 without me trying to go too far down the road and trying
13 to catch those fish.

14 MS. JOHNSON: Thank you, Your Honor.

15 MR. TOOKER: And that's it for the state, sir.

16 THE COURT: All right. Ms. Johnson.

17 MS. JOHNSON: May it please the court. Your
18 Honor, I guess the first motion I have, and this is
19 probably putting the cart before the ox, they've got a sex
20 abuse expert, Shauna Galloway-Williams, from the Julie
21 Valentine Center, who's going to testify about grooming
22 and delayed reporting and recanting. And we object to her
23 testimony in its entirety. She's not going to be able to
24 aid the trier-of-fact. With that information all she's
25 doing is backdoor bolstering and improper vouching for

1 these children. But I realize that that issue is not
2 before us. I just want to make it abundantly clear, we're
3 going to object to everything she says.

4 Judge, I do want ---

5 THE COURT: Of course, I need to know what she's
6 going to say before I rule on it. Particularly, in
7 dealing with experts, I can't rule in limine regard the
8 admissibility of expert testimony.

9 MS. JOHNSON: I understand.

10 THE COURT: Are you -- or at least get a
11 stipulation as to what it is or will be in order for me to
12 rule on it.

13 MS. JOHNSON: I'm just anticipating what she
14 will say.

15 THE COURT: I understand.

16 MS. JOHNSON: And I just -- a running objection.

17 THE COURT: I don't know about a running
18 objection. We haven't seen her yet. We'll hear the first
19 objection before we get the running objection.

20 MS. JOHNSON: I understand, Your Honor.

21 THE COURT: All right.

22 MS. JOHNSON: This is a weird motion. I don't
23 know how to properly make it. But my client is indicted
24 for one count of CSC first. Obviously, the alleged victim
25 talks about three counts -- or three instances. I think

1 that that is certainly prejudicial to my client. It does
2 not go to the probative nature as to one -- to the first
3 charge. It's just a cumulative dump on the whole
4 indictment, I guess. And I'm not making myself very
5 clear. But we would object to the second and the third
6 instances, or any reference by that child, as improper
7 under 404(b), Your Honor. I don't know how the state is
8 trying to get those in. That's ---

9 THE COURT: It says you're going to make that
10 motion and we started just running through cases and it
11 landed me right here in Pickens County with State v.
12 Clasby.

13 MS. JOHNSON: Yes, sir, Your Honor.

14 THE COURT: And then it took me back to
15 Williamsburg County with State v. Taylor. So I came all
16 the way here and went back home. Those are seemingly the
17 two leading cases with some others in there. Of course,
18 I'll have to hear all the arguments on the issue. But
19 again, I knew that this issue always come up because the
20 person is rarely indicted on every specific bad act that
21 they're alleged to have committed in sexual abuse cases
22 and for multiple allegations and multiple acts of criminal
23 sexual conduct, they're not always indicted for each act.
24 So it's often an issue. I do have decent law somewhere on
25 the issue. And it landed me right here to this courthouse

1 in Clasby with a lady and her daughter. Of course, Judge
2 Choppy Patterson said that there's a sort of pattern of
3 grooming that led to the act, among other things, he said.
4 And that took us back to Kingstree with the minister who
5 -- a male minister who did showers and sleepovers and
6 camping trips with the boys and ended up with life without
7 parole. And the first conviction was in Georgetown County
8 because the whole thing borders Georgetown and
9 Williamsburg. He was convicted in Georgetown of CSC
10 second involving a boy. And then it came back to
11 Williamsburg where he was given another life without
12 parole. And he opted for trial and now is convicted and
13 given life.

14 So there are two -- those are two cases that I've
15 looked at that that were of particular interest based on
16 the travels from here and back home.

17 But I'm happy to hear arguments on it either today or
18 tomorrow.

19 MR. TOOKER: Well, the state is prepared to
20 proceed this evening.

21 THE COURT: It seems to be clear, based on
22 what's on the videos what's alleged, the young lady said
23 happened, what; three times?

24 MS. JOHNSON: Yes, Your Honor.

25 THE COURT: And the question is whether or not

1 that would constitute a common scheme or plan as they
2 stated in the cases and where they're given the
3 similarities of all the facts and where it occurred and
4 how it occurred -- how they occurred and allegedly whether
5 or not the probative value outweighs the prejudicial
6 effect.

7 MS. JOHNSON: I guess that's what I'm left with,
8 Your Honor. It would be our position that the probative
9 value does not outweigh the prejudicial effect. It's
10 highly prejudicial. But I certainly understand Your
11 Honor's ruling. I just want to place this on the record.

12 THE COURT: Well, I haven't ruled. I'm just
13 saying that I'm -- I've found the two cases -- two or
14 three that seem to be -- seem to have answered the
15 question where the facts are not in great dispute. So if
16 there's something else, some other facts I need to know,
17 any other law I need to see prior to ruling, then I need
18 to know that today so I can place my ruling on the record
19 in the morning.

20 MR. TOOKER: So if my understanding is correct,
21 the objection is under 404(b), and she's -- the objection
22 is that this evidence, the evidence of all three incidents
23 shouldn't be considered because of 403, in essence; right?

24 THE COURT: Because of what? 403, 404?

25 MR. TOOKER: Yeah, she said ---

1 MS. JOHNSON: Yes, Your Honor.

2 MR. TOOKER: --- unfair prejudice. So that's
3 the trick, too, unfair prejudice; right, whether or not
4 that unfair prejudice is substantially outweighed -- or
5 excuse me -- whether the probative value is substantially
6 outweighed by unfair prejudice.

7 Now, of course, it's prejudicial. I mean it's
8 designed to be prejudicial to Mr. Evans because it's the
9 evidence that we're trying to use to convict him of the
10 crime. But it's also extremely probative, because in this
11 case the allegations are that over a period of time the
12 defendant cultivated a relationship with the victim, and
13 based on that family relationship, got her to perform sex
14 acts on him. Those sex acts constituting a sexual batter.
15 The victim being under the age of eleven at the time. The
16 incidents all occurring at his residence in Pickens
17 County, South Carolina, in the bed that he stayed in.

18 So I can't think of -- if the analysis is under
19 404(b), a clearer common scheme or plan evidence in a sex
20 case. Oftentimes in a sex case, when we're talking about
21 404(b) evidence, it's multiple kids with allegations
22 against one perpetrator; where you've got a seven year
23 old, nine year and twelve year old all saying the
24 perpetrator did stuff to them all of a sexual nature with
25 ---

1 THE COURT: That was the case in Taylor. Once
2 it happened while they were on a camping trip and they
3 went off in the sleeping bags on the camping trip.
4 Another time was when they were showering together and it
5 happened in the shower. And some of them in different
6 counties, as I stated. Some was in Williamsburg, some in
7 Georgetown. So the court ruled that those differing
8 locations did not affect the common scheme or plan since
9 it was -- the same modus operandi took place in both
10 instances.

11 MR. TOOKER: Yes, Your Honor. And that's the
12 state's position.

13 In addition to that, in a case like this where we
14 have, again, the one victim and the one incident location,
15 it almost strikes me a little bit -- it's like res gestae
16 of the crime. You know, we're alleging a period of time
17 as for the duration for bad acts for these things that
18 were said to have transpired. And so when we're talking
19 about the entirety of the case and the res gestae of the
20 case, I think it's important for the jury to understand
21 that these incidents weren't isolated; that they were
22 repetitive events that occurred to this victim on several
23 occasions. So that would be the state's position.

24 And then, I also meant to mention, with regards to
25 Kromah, I believe I spelled it wrong. I looked it up.

1 It's with a K.

2 THE COURT: Yeah. That was written by good
3 friend Justice Beatty. So I've probably read that line
4 for line.

5 Well, the language from one of the cases says, even
6 if evidence of other crimes or acts is admissible as
7 evidence of the common scheme or plan, it must be excluded
8 if its probative value is substantially weighed by the
9 danger of unfair prejudice, which is Clasby, again.
10 However, here where both rapes were committed in an
11 identical manner under almost identical circumstances on
12 the same victim, therefore we conclude the trial court
13 properly found probative value substantially outweighed
14 the danger of unfair prejudice. And that's quoting,
15 again, the Taylor case. And they cited State v. Mathis,
16 as well, a New Orleans case.

17 So, yeah, the courts have pretty much nailed it down
18 as it relates to this particular type of case. Are you
19 now seeking to bring in these similar circumstances, and
20 my other good friend Judge Baxley, recently retired, got
21 reversed when he brought in a case that was dissimilar.
22 There was a CSC in one place and an attempted lewd act on
23 another victim some place else, and of course, those
24 dissimilar cases cannot be used to establish a common
25 scheme or -- and if they did the prejudice would outweigh

1 the probative value because everything between the two
2 cases were dissimilar. And where you have a similar
3 pattern, then the courts have accepted that, of course,
4 it's prejudicial but it's more probative than prejudicial
5 and it meets the 403 test for admissibility. So that's
6 the way I'm leaning. I'll let you know for sure in the
7 morning.

8 MS. JOHNSON: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. TOOKER: Yes, sir. Thank you.

11 THE COURT: Five o'clock here in Pickens County.

12 What time do y'all get off work? We stayed until what
13 time yesterday?

14 THE CLERK: Six.

15 MR. TOOKER: I'm going to be here a little later
16 than that.

17 THE COURT: What else do you have, Ms. Johnson?

18 MS. JOHNSON: My last motion, Your Honor.

19 Judge, at this time we would respectfully move to quash
20 the indictment based on the broad frame alleged in the
21 indictment. Now, I realize the state is going to argue
22 that time is not an essential element of CSC. But four
23 years, Your Honor, I think that is so over-broad.. You
24 know, my client has no opportunity to present any kind of
25 alibi defense just based on the time frame pursuant to

1 Rule 5(e) (1) of the South Carolina Rules of Criminal
2 Procedure. It's just very difficult to prepare a defense
3 when you're dealing with four years. And very ---

4 THE COURT: Assuming that you were successful in
5 this motion to quash the indictment prior to the jury
6 being sworn in a case, what would be the effect of that?

7 MS. JOHNSON: I guess they would re-indict my
8 client, Your Honor. But instead of dealing with this
9 nebulous time frame, I would have a more specific date
10 with which to contend. And you know, my client is just --
11 I feel like he's being deprived of a due process violation
12 in order to properly defend against these allegations and
13 to prepare a defense.

14 THE COURT: All right. Solicitor, what do you
15 say?

16 MR. TOOKER: Yes, sir, Your Honor. And Ms.
17 Johnson stole the words right out of my mouth. Time is
18 not an essential element in the offense. I can appreciate
19 her argument and actually anticipated that. I don't know
20 if Your Honor has a copy of the indictment in front of
21 him.

22 THE COURT: Looking at it. Yes, sir.

23 MR. TOOKER: So the language that I included in
24 the indictment because -- as I say, the reason for the
25 broad time frame is the victim has a difficult time

1 testifying to exactly when this stuff happened. She has a
2 hard time remembering. They move around a lot. She's in
3 a lot of different schools. And so because of that, I
4 went with a very broad time frame. The thing that she was
5 certain about was that she was always at his house when he
6 would babysit her. That's where it always happened. So I
7 put it during this time frame. And while entrusted by the
8 victim's parents to babysit the victim so that we could
9 afford the defendant that information in anticipation and
10 preparation of his defense. I can certainly appreciate
11 the argument. And again, that's the reason for the
12 language that I utilized.

13 But ultimately, in a case like this, I mean it's very
14 seldom that there are allegations that on January 21st,
15 2010, this thing happened to this person at this place.
16 By and large, it's when I was seven, eight or nine these
17 things were happening to me.

18 And so because of the issues regarding memory and
19 regarding the victim's ability to recount the kind of
20 things that have happened to her in a case like this, the
21 state chose to indict with a broad time frame with more
22 specific factual circumstances, thinking that that kind of
23 killed two birds with one stone. So that's sort of my
24 underlying reasoning for the indictment language. I think
25 ultimately the defendant has not been prejudiced anymore

1 than if I had done between , 2007 -- and these
2 dates, , that's her birthday; so ,
3 2007 to , 2011, between seven and eleven, she
4 often -- well, there are just some inconsistencies with
5 the ages that she gives. And so because of those
6 inconsistencies, I went with that broad time frame so as
7 to include the different times she talked about.

8 Ultimately I think that's something that probably
9 benefits the defense because those inconsistencies are
10 things the defense can argue are reasons to doubt.
11 However, I don't think they are reasons to quash an
12 indictment.

13 So for those reasons I would respectfully oppose Ms.
14 Johnson's request.

15 THE COURT: With regard to an allegation
16 regarding the sufficiency of an indictment, 17-19-20 of
17 the code says, every indictment shall be deemed and judged
18 sufficient and good in law which in addition to
19 allegations as to time and place as required by law,
20 charges the crime substantially in the language of the
21 common law of the statute prohibiting the crime or so
22 plainly that the nature of the offense charged may be
23 easily understood. And if the offense be a statutory
24 offense, that the offense be alleged to be contrary to the
25 statute as such case may have provided.

1 And this indictment, with regard to referring to the
2 question as to time and place and the objection as to the
3 time, the indictment is clear as to the place and in
4 violation of 16-3-655 (a) (1) and it is plainly written to
5 inform the defendant of the nature of the offense charged
6 such that he can present any defense that he might have to
7 it.

8 State v. Wilkes says that indictment should be deemed
9 sufficient if it charges the crime substantially in the
10 nature of the common law or the statute prohibiting it and
11 the nature of the offense can be maybe easily understood.
12 And where you have an offense involving allegations of
13 criminal sexual conduct with a minor, it's not at all
14 unusual that the -- and you have an incidence of delayed
15 reporting, it's not at all unusual to have the time
16 alleged to be within a time frame of offenses or four year
17 time frame is just too wide a scope of time. It's
18 bracketed by birthdays on the , did you say?

19 MR. TOOKER: is her birthday, yes,
20 sir.

21 THE COURT: , 2007 and a four-year
22 period. I think given the nature of the allegations where
23 it certainly would be better for the time period to be
24 more limited, I don't think it runs afoul with the
25 statutory requirements for the indictment. And I

1 respectfully deny your motion.

2 MS. JOHNSON: Thank you, Your Honor.

3 THE COURT: All right. Are we through?

4 MR. TOOKER: Yes, sir.

5 THE COURT: All right. So we have the jury
6 coming in at nine thirty. That's the time we need to be
7 here, too.

8 MR. TOOKER: Yes, sir.

9 MS. JOHNSON: Thank you, Your Honor.

10 MR. TOOKER: Thank you, Your Honor.

11 THE COURT: Now, Mr. Evans, let me talk to you
12 for just a moment if you'll stand. And Madam Clerk, do
13 you swear witnesses sometimes?

14 THE CLERK: Yes, sir.

15 THE COURT: All right. Let me hear you swear
16 him then.

17 THE CLERK: Sir, raise your right hand. Do you
18 solemnly swear or affirm the testimony you're about to
19 give in this case be the truth and nothing but the truth,
20 so help you God?

21 THE DEFENDANT: I do.

22 THE CLERK: State your full name for the record.

23 THE DEFENDANT: Vernon Glen Evans.

24 THE COURT: All right. Mr. Evans, are you out
25 of jail on some kind of bond?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What kind of bond do you have?

3 THE DEFENDANT: Surety bond.

4 THE COURT: All right. Now, a bondsman's
5 responsibility is to ensure that you are brought to court
6 for a trial. After he brings you to court for trial, then
7 his job is over unless he agrees to keep you on the bond
8 until the end of the trial. Now, as I understand it, the
9 trial was originally set for tomorrow and your bond was
10 returnable for tomorrow. And Ms. Johnson used a phrase I
11 wasn't familiar with. What did you say?

12 MS. JOHNSON: Bond carded, Your Honor.

13 THE COURT: A bond card for tomorrow. So -- but
14 we've selected the jury today so that we can, hopefully,
15 get through this case by Thursday because I'm not
16 scheduled to be here on Friday. But we have selected the
17 jury, I've ruled on your motions and we are to start with
18 the testimony and opening statements and all tomorrow. Do
19 you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, as a condition of your bond,
22 you must be present. But if you are not -- and I'm
23 ordering you to be present, as a condition of your bond,
24 number one, and informing you that you are required to be
25 present. And also, I'm warning you that should you fail

1 to appear there are three things that can happen. The
2 first thing that will happen is that we're going to
3 proceed with the trial in your absence, even though you're
4 not here. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Secondly, you'll be in contempt of
7 court, because I'm ordering you to be here and you would
8 be disobeying the judge's order. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And then the third thing is that the
11 solicitor can indict you for failure to appear in court,
12 which is a third crime.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And in addition to all of that, your
15 bondsman on that surety that you signed up for -- how much
16 money was that?

17 MS. JOHNSON: Judge, it's a fifteen thousand
18 dollar surety bond.

19 THE COURT: Fifteen thousand dollars, then the
20 bondsman can be called upon to answer as to why they
21 shouldn't have to pay the court fifteen thousand because
22 you didn't appear.

23 Now, do you have anything that would prevent you from
24 being here on time tomorrow?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. So we expect to see you
2 then no later than nine thirty?

3 THE DEFENDANT: I'll be here at nine o'clock.

4 THE COURT: At nine o'clock. Very good. We all
5 probably should be here that early, but we won't be here
6 till close to nine thirty. We'll see you then.

7 All right. Very good. And we are done until that
8 time.

9 (WHEREUPON, court stood at recess for the day.)

10 **DECEMBER 17, 2014**

11 (WHEREUPON, Court convened with all parties present
12 and the following proceedings were had.)

13 THE COURT: Good morning. Okay. Are we ready
14 for the jury?

15 MR. TOOKER: State's ready, sir.

16 MS. JOHNSON: Defense is ready, Your Honor.

17 THE COURT: All right. For all the reasons I
18 stated yesterday, the motion by the defense to exclude --
19 what was officially that motion? To exclude other acts or
20 ---

21 MS. JOHNSON: 404(b), Your Honor.

22 THE COURT: Your 404(b) motion is denied.

23 MS. JOHNSON: Thank you; Your Honor.

24 THE COURT: All right. Yes, sir, I think we're
25 ready for them.

1 (WHEREUPON, the jury entered the open court at
2 approximately 9:47 a.m.)

3 THE COURT: Good morning.

4 THE JURY: Good morning.

5 THE COURT: Welcome back, ladies and gentlemen.
6 If you all will stand to be sworn.

7 THE CLERK: After the oath is administered,
8 answer by saying I will. Raise your right hand.

9 You shall well and truly try the issue joined in this
10 case of the State versus Vernon Glen Evans, and a true
11 verdict render according to law and evidence, so help you
12 God?

13 THE JURY: I do.

14 THE CLERK: Thank you. You may be seated.

15 (WHEREUPON, the jury was duly sworn.)

16 THE COURT: All right. Ladies and gentlemen,
17 we're made it to Wednesday of this week and you all have
18 been selected now to serve as the jury in the trial of
19 this case, the case of the State versus Vernon Glen Evans.
20 Mr. Evans is charged with the offense of criminal sexual
21 conduct with a minor first degree. He has pled not guilty
22 to this charge. He is presumed to be not guilty of the
23 charge and cannot be found guilty unless the state
24 presents evidence which convinces each and every one of
25 you of his guilt beyond a reasonable doubt. And that is

1 the purpose of a trial, to determine whether the state can
2 meet that burden of proof.

3 You, the twelve of you who will deliberate, are the
4 sole judges of the facts of this case and the sole judges
5 of determining whether Mr. Evans is guilty or not guilty
6 of this charge. So obviously you play an essential role
7 in this process because you will make the ultimate
8 determination.

9 Just as only you can determine whether -- the facts
10 of this case, as the presiding judge, I am the sole judge
11 of the law of this case. Your role will be to determine
12 the facts of the case and apply the law as I give it to
13 you at this time, during the trial and then in greater
14 detail at the end of the trial. So mixing the facts with
15 the law, you reach a verdict of guilty or not guilty.

16 Necessarily, you will have to determine the
17 credibility of the witnesses who testify and of the
18 evidence offered during the course of this trial. It is
19 an important rule of the law and our procedure that you
20 not discuss the case at all with each other, with anyone
21 else, or allow anyone else to discuss it with you or in
22 your presence until you have heard all of the testimony
23 and received all of the evidence and heard the arguments
24 of counsel and also heard and received the law from me.
25 After going through that entire process, then and only

1 then you will discuss the case with deliberations with
2 each other in an effort to reach a verdict.

3 I look forward to working with you during this case.
4 Later in the process I will appoint one of you to serve as
5 foreperson of the jury. That person will be the
6 spokesperson for the jury. That person will preside over
7 the jury deliberations. And that person will complete the
8 verdict form representing the final verdict of the jury.

9 We'll move now to opening statements by the state.

10 **OPENING STATEMENT**

11 **BY MR. TOOKER:**

12 Thank you, Your Honor. May it please the court. Ms.
13 Johnson.

14 Ladies and gentlemen of the jury, I introduced myself
15 briefly yesterday, but my name is Sam Tooker. I'm a
16 prosecutor here in Pickens County and I prosecute crimes
17 on behalf of the state of South Carolina.

18 I want to first begin by thanking you for your
19 attention today, your presence. And I do that because the
20 case you're going to hear is not a pleasant case. It's
21 not the kind of case that you can wrap up with a neat
22 little bow and present to people and say, hey, look at it;
23 you know, make a decision. It's something that is
24 emotional and it's something that's serious and it's
25 something that's dark. And so I want to thank you for

1 your attention and your fairness in this case because
2 you're doing great work for the state, for your state, for
3 your community today.

4 As the judge said, you are the judges of the facts.
5 And that is something that we use a lot here in court
6 because His Honor is the judge of the law. We have judges
7 of fact and judges of law. And His Honor is here to
8 determine what kind of evidence is admissible. And if I
9 object to something, he'll say whether or not I'm right or
10 I'm wrong. Same goes for Ms. Johnson. Sometimes there
11 are instances where we'll object to something or we'll
12 need to take up something outside of your presence. And
13 that's not because we're hiding anything from you or we
14 don't want you to know something, but because he has to
15 determine, as the judge of the law, whether or not you can
16 hear certain pieces of testimony. And so that is his
17 role.

18 Now, your role, as the judges of the facts, are to be
19 open-minded and to be equitable and to be fair. You don't
20 have any friends to rewards. You don't have any enemies
21 to punish. Your role as the finders of the facts, as the
22 judges of the facts, is to sit and to listen and to try to
23 be as attentive as possible and as open-minded as
24 possible. Because -- and His Honor will instruct you on
25 this -- you're not to deliberate until after all the

1 evidence is presented. So until that point in time,
2 you're supposed to maintain an open mind. And that's what
3 we would request of you, and I'm sure that's what the
4 defense would request of you, as well.

5 Because ultimately, today is about justice. And
6 justice is not necessarily a result. Justice is a
7 procedure. And it's a procedure that takes place in this
8 courtroom and it's one that is fair. And it's one that is
9 impartial and unbiased. And so to ensure justice, we need
10 that fairness from you. We need that impartiality from
11 you. And so that's what I thank you for.

12 Like I mentioned, these cases, these sexual cases,
13 are different. They're different than other kinds of
14 crimes we prosecute here in this courtroom. We often
15 prosecute crimes like an armed robbery where somebody goes
16 to a convenience store or something and holds a gun on
17 somebody and takes money from them or tries to take money
18 from them. And in cases like that, you know, it's usually
19 kind of -- it's not real emotional. You know, it is
20 somebody coming in and saying, this thing happened.
21 Oftentimes, you'll have video evidence or forensic
22 evidence that kind of verifies that this person is the
23 person that did this thing. But these cases are different
24 from those kinds of cases, because these are cases that
25 happened, you know, within a family or within a group of

1 friends. They're crimes that happened behind closed doors
2 where there's not video, there's not the benefit of
3 impartial or removed eyewitnesses who don't know the
4 parties. And these are cases that are inherently within
5 the realm of the home and within the realm of people who
6 know each other and are comfortable with each other. And
7 so as a result, they are difficult. They're crimes of
8 shame and they're crimes of secrecy.

9 And so keep that in mind when you're listening to the
10 evidence that you hear today and when you hear the
11 testimony, try to think about how it is that these things
12 happened within the environment of the home, within the
13 environment of a family. And I say these things, these
14 crimes -- and I've used the word crime a couple of times.
15 A crime at law is something that is defined. A crime is
16 something the legislature says, if these things happened,
17 then a crime has been committed. And so that means there
18 are certain elements to the offense. And the elements to
19 an offense like this are two-fold. The crime is -- this
20 is the crime alleged. Because the defendant is not guilty
21 yet. He is not guilty until you go into your room and you
22 deliberate and you determine guilt. So as of this point,
23 they're alleged crimes.

24 But the crimes alleged -- or the crime alleged is
25 criminal sexual conduct with a minor in the first degree.

1 And there are two elements. The first is that the victim
2 is under the age of eleven at the time it happens. So
3 she's eleven -- under the age of eleven when the crimes of
4 criminal sexual conduct occur. And the second is if there
5 is a sexual battery or oral sex or cunnilingus. And what
6 that means is for there to be criminal sexual conduct as
7 opposed to another type of sex crime, there has to be
8 either penetration of the vaginal or anal orifices or
9 there has to be oral sex. In this case the allegations
10 are that the defendant had the victim perform oral sex on
11 him a number of times at his residence.

12 Now, I'll give you sort of an overview of the case.
13 I don't want to go too far into the facts. But as alleged
14 by the state, the defendant used to babysit the victim and
15 her sister. The victim and her sister would go to the
16 defendant's house. He would pick them up, go to the
17 defendant's house. He was a friend of their family. Had
18 known the victim -- her father for a long time. They
19 would go to his house and they would spend the night on
20 some weekends. While there, the victim says that the
21 defendant had her perform oral sex on him and that he
22 would sometimes perform what amounts to oral sex on her.

23 So those are the allegations. That's what she says
24 has happened. Her sister, her younger sister, was present
25 in the house during some of those time periods. And she

1 will testify that she saw one of these things happen. She
2 actually saw something like this happen to her sister.
3 And those are the facts that we'll try to show you. Those
4 are the facts that we will present and these witnesses
5 will testify to. Because those are the facts that are
6 necessary to meet the elements; again, that she's under
7 eleven and that there was a sexual battery, oral sex or
8 cunnilingus.

9 Now, we have the burden of proof to show those facts
10 to you. The burden is on us, the state of South Carolina.
11 We've got the burden of proof and we've got to show it to
12 you beyond a reasonable doubt.

13 Now, what does that mean; beyond a reasonable doubt?
14 That means that at the end of this case when you go back
15 into your room to deliberate, you must be firmly
16 convinced. If you are firmly convinced of the defendant's
17 guilt at the close of this case, then it will be your duty
18 -- I mean, you've sworn now; you've been sworn by the
19 clerk of court -- it will be your duty to find him guilty
20 if you're firmly convinced.

21 Now, I don't want you to think that that burden is
22 somehow insurmountable. That it is something that's
23 impossible to reach, because it sounds like a lofty
24 ambition. It sounds like a high ideal. But it is a high
25 ideal. But it's also something that, since the founding

1 of our country, you go back to 1789 and our Constitutional
2 Convention when our judiciary as we know it today was
3 established, in Federal Court, in State Court, and
4 Magistrate and Municipal Court, the burden of proof has
5 always been beyond a reasonable doubt. It's always been
6 on the state. And anytime somebody has been convicted in
7 any of those courts, it's because that burden has been
8 met. So, again, don't think that it's insurmountable.

9 Ultimately, as I said, y'all are the fact finders and
10 I kind of want to reword that. Y'all are the truth
11 finders. Your role here, what you need to do is figure
12 out what the truth is in this case. Because at the end of
13 this case you're going to be asked to render a verdict.
14 And verdict comes from -- and if any of y'all are Latin
15 experts, don't hold me to this, but I believe veritas
16 dictum, which means to speak the truth. So your verdict
17 must speak the truth. And so when you're listen in to
18 these people try to figure out what sounds like the truth
19 to you. Because you don't leave your commonsense at the
20 door. You bring your commonsense, your everyday
21 experiences, into this courtroom and you use them to help
22 you determine what makes sense in this case. That's
23 called witness credibility. You listen to people. And
24 you do this on a day-to-day basis. You encounter people.
25 They talk to you. They tell you things. And you try to

1 determine, does that make sense? Do I believe what
2 they're telling me? And so that's one of those things you
3 do as truth finders. Credibility, that root word creda;
4 right, also, a foundation in truth. So when you're
5 determining the credibility of the witnesses in this case,
6 you know, think about what they're saying. Does what
7 they're saying make sense? What's their demeanor? How
8 are they expressing to you what they're expressing? And
9 ultimately, after doing that, after evaluating their
10 credibility, after listening to the testimony and the
11 evidence, you'll go back in your jury room and at that
12 point deliberate and render a verdict that speaks the
13 truth.

14 I thank you for your time. I appreciate what you're
15 doing here today. And I look forward to working with you
16 over the course of the next day or so. Thank you.

17 MS. JOHNSON: May it please the court?

18 THE COURT: Yes.

19 MS. JOHNSON: Mr. Tooker.

20 **OPENING STATEMENT**

21 **BY MS. JOHNSON:**

22 Ladies and gentlemen, my name is Teal Johnson. It's
23 my pleasure to be here with you today. And it's my
24 pleasure to represent Vernon Glen Evans, an innocent man.
25 Gosh, how in the world can he be innocent? Wasn't he

1 charged; wasn't he arrested; wasn't he indicted? Yes.
2 All that is true. All that has absolutely no meaning,
3 though. This is a copy of the indictment. I could tear
4 it up, because it has no meaning. The only thing that has
5 any meaning is your verdict.

6 Now, how you're going to arrive at that verdict is
7 through the testimony, the evidence that the state
8 presents. And I would just like to remind you, the burden
9 is on the state, the government. It's not on my client.
10 My client has absolutely nothing to prove to you. In that
11 vein, I don't know whether or not he's going to testify.
12 He doesn't have to testify. The burden is on the state.

13 Now, I also want to talk about presumption of
14 innocence. Every man, woman accused of a crime, accused,
15 Pickens County, the United States of America, is presumed
16 innocent. They come in a courtroom presumed innocent.
17 They have nothing to prove. Again, the burden is on the
18 state. You could link it to a robe of righteousness or a
19 cloak of innocence. Nothing to prove to you. The burden
20 is on the state.

21 Now, I don't want to go into these facts. I don't
22 know what -- I mean, I have an idea about the facts. But
23 again, they are not facts right now; they're allegations.
24 You determine the facts. But I ask -- I actually beg you
25 in this case to keep an open mind. This is a very hard

1 case for everybody. Do not shut off. Listen attentively.
2 Pay close attention. Don't shut down just on the nature
3 of the case. Very critical here.

4 I ask that you keep the following things in mind.
5 Again, I'm not going to discuss the facts, because they
6 are not facts yet. Details, discrepancies, and another D
7 word that I'm going to talk about later on at the close of
8 the case. Just keep that in mind.

9 And I also -- I know this is not the place, but I
10 take issue with the verdict; okay? Your verdict is about
11 whether the state has proven my client guilty or not
12 guilty. We're not going to know what the truth is. We
13 probably will never know what the truth is. But that --
14 your job here today is to determine whether or not the
15 state has proven my client guilty beyond a reasonable
16 doubt. And I submit to you they will not be able to meet
17 their burden. And I will come back to you and we'll go
18 over all the evidence.

19 This is a very important day for my client. He's
20 fifty-one years old, a mechanic, jack of all trades. He's
21 waited two years to get here today. This is also an
22 important day for you. You get to participate in the
23 world's greatest justice system. Now, I know that we all
24 complain; right, about America. And I'm about to sound
25 like a sugary commercial. But we have the world's

1 greatest system in place. We have a system designed to
2 keep our government accountable to the principles in our
3 constitution. And you get to participate in that. And in
4 that vein, I ask that you hold them accountable. I don't
5 think they will be accountable.

6 I ask that you keep an open mind, that you do not
7 jump to any conclusions until the close of the case. Get
8 out of monster mode; not that I'm accusing that, but just
9 listen attentively. Give my client the benefit of the
10 doubt. At the end of the case, I will come back to you
11 and I will go over all the reasonable doubts in this case;
12 and there are many, and I will ask that you find my client
13 not guilty.

14 On behalf of Mr. Evans, I thank you.

15 THE COURT: Your first witness.

16 MR. TOOKER: Yes, sir, Your Honor, before we
17 begin. The witnesses have already been instructed to
18 remain outside, but I would just request sequestration for
19 both parties, and Ms. Johnson and I have already talked
20 about that.

21 THE COURT: Is that correct?

22 MS. JOHNSON: Yes, Your Honor.

23 THE COURT: Very well.

24 MR. TOOKER: The State calls Deputy Torres to
25 the stand.

1 THE CLERK: Do you solemnly swear or affirm the
2 testimony you're about to give in this case to be the
3 truth, the whole truth and nothing but the truth, so help
4 you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you, sir. Please have a seat
7 and state your name for the record.

8 THE WITNESS: Deputy First Class Michael Torres,
9 Pickens County Sheriff's Office, Uniform Road Patrol.

10 MICHAEL TORRES,

11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. TOOKER:

14 Q. All right. Deputy Torres, you said Pickens County
15 Sheriff's Office Road Patrol?

16 A. Uniform Road Patrol, yes, sir.

17 Q. Okay. So who is your employer?

18 A. Pickens County Sheriff's Office.

19 Q. How long have you been so employed?

20 A. I've been with the sheriff's office since July 2007.

21 Q. Okay. And as a member of the road patrol, what are
22 your duties?

23 A. We answer primarily calls for service and it can
24 range anywhere from traffic accidents to domestic violence
25 disputes. Also, we can also check on properties and try

1 to keep property safe in between calls.

2 Q. Okay. If there's a case that needs investigation,
3 what do you do?

4 A. Our primary function for a good bit of the calls
5 that we take are to gather the basic information for what
6 is being reported to us. And in gathering that
7 information, doing an initial incident report, which then
8 gets forwarded down to the detectives division for further
9 investigation by a detective.

10 Q. Okay. And do you know why you've been called to
11 testify in this case?

12 A. I'm assuming it has to deal with this case in
13 regards to the information that I collected on April 10,
14 2012.

15 Q. Okay. So were you the first responder in this case?

16 A. Yes.

17 Q. You dispatched?

18 A. Yes.

19 Q. Okay. And what kind of call were you dispatched on?
20 What kind of allegations?

21 A. We received a handle-by-phone type call which is
22 where we're not dispatched to a specific location, but the
23 person that's filing the report or letting us know that
24 they think a crime has occurred will contact us by phone
25 and we talk via telephone.

1 Q. Okay. And after talking to somebody -- well, who
2 did you talk to, I guess is the first thing?

3 A. I spoke with a Ms. Roper by telephone. And she
4 reported what she described as a possible molestation or
5 criminal sexual conduct with a minor.

6 Q. Okay. And were you able to locate the alleged
7 victim in this case?

8 A. Yes. Based off of very limited information that was
9 given during the course of the conversation, I was able to
10 track down the victim and immediate family.

11 Q. Okay. And after you did that, what was the next
12 step for you as the first responder or the person that was
13 dispatched?

14 A. Any information I was able to obtain as far as
15 personal information, name, date of birth, addresses, were
16 then put into the incident report and forwarded down to
17 the detective division. Being it involved a juvenile, it
18 would be then forwarded on to the juvenile investigations
19 unit or special victims unit.

20 Q. Okay. And then investigated by Detective Swafford?

21 A. Yes, sir.

22 Q. Okay. No further questions.

23 MS. JOHNSON: May it please the court.

24 THE COURT: Yes.

25

CROSS EXAMINATION

1 **BY MS. JOHNSON:**

2 Q. Deputy Torres, good morning.

3 A. Good morning.

4 Q. In your initial investigation did you determine who
5 Brittany Roper was?

6 A. As far as?

7 Q. Her relation to the alleged victim?

8 A. As far as I knew she was somehow associated with the
9 family. As far as her actual relationship, no.

10 Q. Okay. And were you able to get a name from Ms.
11 Roper?

12 A. As far as?

13 Q. A suspect?

14 A. No.

15 Q. Okay. And who else did you talk to when this
16 happened? Excuse me, when you were dispatched?

17 A. Like I said, it was very limited information that
18 was given. I was able to get a name of a -- I believe it
19 was the grandmother of the victim.

20 Q. Let me stop you. What's her name?

21 A. Florence McCollum.

22 Q. Okay. And you eventually spoke ---

23 A. I spoke with Ms. McCollum by phone, as well, who was
24 able to give me the name of the parent of the victim.

25 Q. Okay. And you also spoke with the alleged victim

1 and her sister; is that correct?

2 A. Yes.

3 Q. Okay. And they denied ---

4 MR. TOOKER: Judge, objection. She's calling
5 for hearsay.

6 THE COURT: Ms. Johnson.

7 MS. JOHNSON: Yes, sir. Yes, Your Honor.

8 THE COURT: Objection is sustained.

9 Q. But you spoke with both, you spoke with both
10 sisters?

11 A. Yes.

12 Q. Okay. And, let's see, you eventually passed this
13 case off to Detective Swafford?

14 A. Yeah. It was immediately -- once I made contact and
15 established that they were who I was looking for, their
16 information was gathered and an incident report written
17 and filed off to Detective Division.

18 Q. But you do a lot of preliminary investigation,
19 though?

20 A. Yes.

21 Q. Okay. No further questions.

22 THE COURT: Yes, sir.

23 MR. TOOKER: Nothing on redirect, sir. State
24 would request that Deputy Torres be released from his
25 subpoena so he can go to bed.

1 MS. JOHNSON: May I approach, Your Honor?

2 THE COURT: Yes.

3 (WHEREUPON, Ms. Johnson and Mr. Tooker approached the
4 bench.)

5 THE COURT: All right. Thank you, Officer.
6 You're excused as long as you may be available upon a
7 phone call or something.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: All right. Your next witness.

10 MR. TOOKER: Yes, sir, Your Honor.

11 State would next call Minor to the stand.

12 THE CLERK: Place your left hand on the bible
13 and raise your right hand.

14 Do you solemnly swear or affirm the testimony you're
15 about to give in this case to be the truth, the whole
16 truth and nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir.

18 THE CLERK: Thank you. If you would have a seat
19 and state your name for the record, please.

20 THE WITNESS: My name is Minor

21 Minor

22 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MR. TOOKER:**

25 Q. Minor, I'm going to turn that microphone up just a

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- 1 little bit so everybody can hear you loud and clear; okay?
- 2 Why don't you say your name again.
- 3 A. My name is Minor
- 4 Q. Perfect, perfect. Minor, how old are you?
- 5 A. Fourteen.
- 6 Q. And where do you live?
- 7 A. Easley.
- 8 Q. How long have you lived in Easley?
- 9 A. Like two months -- I mean, about two weeks now.
- 10 Q. Two weeks? Where did you live before that?
- 11 A. I lived in Seneca.
- 12 Q. Where do you go to school now?
- 13 A. I go to Easley High School.
- 14 Q. Do you like Easley High School?
- 15 A. It's kind of iffy.
- 16 Q. Iffy?
- 17 A. Yeah.
- 18 Q. Okay. All right. Do you have a favorite class?
- 19 A. Yes.
- 20 Q. What's your favorite class?
- 21 A. Science.
- 22 Q. Why do you like science?
- 23 A. Because I'm interested in -- well, it's like about
- 24 everything.
- 25 Q. Okay. Do you know why you're here today?

1 A. Yes.

2 Q. First I want to ask you; do you understand what the
3 difference is between a truth and a lie?

4 A. Yes, sir.

5 Q. What's the difference between the truth and a lie?

6 A. The truth is something that really happened. A lie
7 is something that's all made up.

8 Q. Okay. So if I were to say that this carpet is red.
9 Would that be a truth or a lie?

10 A. Be a lie.

11 Q. Okay. If I were to say that this bench right here
12 is made out of wood. Would that be a truth or a lie?

13 A. It would be the truth.

14 Q. Okay. You said -- well, first, what is your date of
15 birth? What's your birthday?

16 A.

17 Q. Okay. How old are you today?

18 A. Fourteen right now.

19 Q. Fourteen right now?

20 A. Uh-huh (affirmative).

21 Q. And what grade did you say you're in, again; I'm
22 sorry?

23 A. Ninth.

24 Q. Ninth grade. Okay. You said you know why you've
25 been called to testify here today. Do you know who the

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- 1 defendant is?
- 2 A. Yes.
- 3 Q. What is his name?
- 4 A. Glen.
- 5 Q. Okay. And how do you know Glen?
- 6 A. He's a family friend. Well, he was a family friend.
- 7 Q. Was a family friend. Who are the members of your
- 8 immediate family?
- 9 A. My father John Berry and Papa Buddy and Nana Judy.
- 10 Q. Okay. And those are the members of your family that
- 11 are friends with the defendant?
- 12 A. The ones I know of.
- 13 Q. Okay. Do you have other members of your family that
- 14 you live with?
- 15 A. Yes.
- 16 Q. Who else do you live with?
- 17 A. I live with my sister, Y.B. , and my mother,
- 18 Ester McCollum.
- 19 Q. Now, is Ester your biological mother or something
- 20 else?
- 21 A. Something else.
- 22 Q. Something else?
- 23 A. Yeah.
- 24 Q. Do you have contact with your biological mother at
- 25 all?

- 1 A. No.
- 2 Q. Why not?
- 3 A. I don't really want to.
- 4 Q. Okay. When was the last time you saw your
- 5 biological mother?
- 6 A. I don't know exactly, but a long time ago.
- 7 Q. A long time ago? So for all intents and purposes
- 8 Ester or Beth your mom?
- 9 A. Uh-huh (affirmative).
- 10 Q. Do you have any pets?
- 11 A. Yes.
- 12 Q. What kind of pets do you have?
- 13 A. I have a Chihuahua. Her name is Mimi. I have a
- 14 Chihuahua-Yorkie mix. Her name is Bella. We have a
- 15 brindle pit. Her name is Sheila. And two cats, Battle
- 16 Cat and Simata.
- 17 Q. Battle Cat?
- 18 A. Yeah.
- 19 Q. Who named Battle Cat?
- 20 A. I did.
- 21 Q. You did? Okay. All right. How long did you and
- 22 your family know Glen?
- 23 A. I knew him since I was really small.
- 24 Q. Okay. Did he ever babysit you or your sister?
- 25 A. Yes.

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- 1 Q. When would he babysit you and your sister?
- 2 A. On the weekends.
- 3 Q. Do you remember about how old you were when he would
- 4 babysit you?
- 5 A. Sevenish.
- 6 Q. Until you were how old?
- 7 A. I was about seven.
- 8 Q. And where would he babysit you?
- 9 A. At his house.
- 10 Q. Where was his house? I guess in relation to his
- 11 mother? Where was his house in relation to his mother?
- 12 A. His house in relation to his mother was like just
- 13 diagonal, like really, really close.
- 14 Q. So they were near each other?
- 15 A. Yes.
- 16 Q. And what was his house like? What kind of house?
- 17 A. It was a trailer.
- 18 Q. Was it nice or not so nice?
- 19 A. It was a little -- well, kind of messy.
- 20 Q. Okay. And when he would babysit you, would you go
- 21 there by yourself or would other people go with you?
- 22 A. Y.B. would come with me.
- 23 Q. Y.B. would go with you?
- 24 A. Yeah.
- 25 Q. How would you get over there?

- 1 A. He would come pick us up. . .
- 2 Q. How would he pick you up?
- 3 A. In his truck.
- 4 Q. Okay. And would that be just Glen or would there be
- 5 other adults, too?
- 6 A. It would be just Glen.
- 7 Q. And you said you would go over there on weekends.
- 8 Was it ever longer than a weekend?
- 9 A. No.
- 10 Q. Okay. When you went over there what would you and
- 11 your sister do?
- 12 A. We would play on the computer or play with stuff in
- 13 the house.
- 14 Q. Okay. Where would you guys sleep?
- 15 A. In his bed.
- 16 Q. In his bed?
- 17 A. Yes.
- 18 Q. Would you ever sleep on the floor, too?
- 19 A. I think every now and then we would.
- 20 Q. Okay. Where would Glen sleep?
- 21 A. In his bed.
- 22 Q. Okay. Where would you guys eat?
- 23 A. At his mother's house.
- 24 Q. Why would you eat at his mom's house?
- 25 A. We -- I don't think you could really cook in the

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- 1 kitchen. There was no room in there.
- 2 Q. Okay. Did anything bad ever happen there?
- 3 A. Yes.
- 4 Q. Okay. Do you remember about how old you were when
- 5 the bad things happened?
- 6 A. Still the sevenish age.
- 7 Q. Okay. Do you remember how old your sister was?
- 8 A. Maybe six.
- 9 Q. Okay. Where would the bad things happen to you?
- 10 A. In his room.
- 11 Q. Okay. How many times did the bad things happen to
- 12 you?
- 13 A. Almost every time we went over there.
- 14 Q. Okay. And when you say bad things, what happened?
- 15 A. He would make me put my mouth on his private and he
- 16 would put his mouth on my private.
- 17 Q. Okay. When you say his private, do you know what
- 18 that part of his body is called?
- 19 A. Yes.
- 20 Q. What is it called?
- 21 A. Penis.
- 22 Q. And did anyone ever see any of these things happen
- 23 to you?
- 24 A. Y.B. did once or twice.
- 25 Q. Okay. And where was she when these things would

1 happen?

2 A. In the room playing on the computer.

3 Q. When she saw?

4 A. (Affirmative nod.)

5 Q. Okay. When these things would happen would she be
6 at the house sometimes, too?

7 A. (No verbal response.)

8 Q. So what I'm asking is, you say it happened on the
9 weekends?

10 A. Uh-huh (affirmative).

11 Q. Would it always happen when he was babysitting both
12 of you?

13 A. Oh, oh, whenever we were babysitted by him, he had
14 both of us.

15 Q. Okay. Did you ever see him do anything to Y.B. ?

16 A. No.

17 Q. Do you know if anything ever happened to Y.B. ?

18 A. No. I don't know of it.

19 Q. And you said she was playing on the computer. Is
20 that something she would do often or not very often?

21 A. She always played on the computer. Like always.

22 Q. What kind of games would she play?

23 A. Chess or solitaire.

24 Q. Okay. Did he ever say anything to you about what he
25 was doing to you?

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- 1 A. He told me not to tell anyone.
- 2 Q. Why did he say that?
- 3 A. I don't know.
- 4 Q. Okay. Did he say anything else to you?
- 5 A. He said or else.
- 6 Q. Or else? What did that mean to you?
- 7 A. I really didn't know what it meant at the time.
- 8 Q. Okay. Did he ever say anything to Y.B. ?
- 9 A. I don't know. He might have after in his room, but
- 10 I can't remember if he did.
- 11 Q. Okay. And what happened when he said that?
- 12 A. She -- I think she just turned away and ignored him.
- 13 Q. Okay. Did you ever tell anybody about what had
- 14 happened?
- 15 A. I told Mommy, Daddy, the detective, you, Brittany
- 16 and B-Nana.
- 17 Q. Okay. Who is B-Nana?
- 18 A. My grandmother on my mom's side.
- 19 Q. Okay. And who is Brittany?
- 20 A. My cousin.
- 21 Q. Okay. Is her name Brittany Roper?
- 22 A. Yes.
- 23 Q. And you told the detective. Do you see that person
- 24 in court today?
- 25 A. I can't remember faces.

- 1 Q. You don't remember what he looks like?
- 2 A. No.
- 3 Q. Okay. You said you told your mommy and your daddy.
- 4 When was the first time you told your mommy and your daddy
- 5 about what happened?
- 6 A. Well, the first time they found out, it was my
- 7 sister who brought it up.
- 8 Q. Your sister told them?
- 9 A. Uh-huh (affirmative).
- 10 Q. When she told them what happened?
- 11 A. Well, when she told them there was a lot of talking
- 12 and police stuff. Like I remember talking to -- no, that
- 13 was after. But they kept asking a lot of questions.
- 14 Q. They asked you guys a lot of questions?
- 15 A. Uh-huh (affirmative).
- 16 Q. After the first time that you told did you ever go
- 17 back over to Glen's house?
- 18 A. No.
- 19 Q. After the first time you told did you say that it
- 20 happened continually or did you deny that it happened?
- 21 A. Could you restate the question?
- 22 Q. Yeah, I'm sorry. I said that before. Did -- when
- 23 you told, did you then say it didn't happen after you said
- 24 it did happen?
- 25 A. Yes.

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- 1 Q. Why would you do that?
- 2 A. Because I was really scared.
- 3 Q. Why were you scared?
- 4 A. Because I didn't know what would happen if everyone
- 5 -- well, I didn't know what would happen.
- 6 Q. Okay. How long after that until you told again?
- 7 A. I don't know.
- 8 Q. How is it that it came about that these things got
- 9 brought up again?
- 10 A. Well, Brittany asked us about the whole situation.
- 11 Q. Brittany your cousin?
- 12 A. Yes.
- 13 Q. And did you tell her what happened?
- 14 A. Yes.
- 15 Q. When you told her what happened, did you tell the
- 16 truth?
- 17 A. Yes.
- 18 Q. After you told her what happened, what was the next
- 19 thing you remember happening to you?
- 20 A. The Julie Valentine Center.
- 21 Q. And when you went there did you talk to anybody?
- 22 A. Yes.
- 23 Q. Okay. Do you remember who you talked to?
- 24 A. Some lady.
- 25 Q. Okay. And when you talked to that lady did you tell

- 1 her the truth?
- 2 A. Yes.
- 3 Q. Okay. Did you ever see a detective?
- 4 A. Yes.
- 5 Q. Okay. Where did you see the detective first?
- 6 A. At my school.
- 7 Q. At your school?
- 8 A. Yes.
- 9 Q. Did you tell him what happened at your school?
- 10 A. No.
- 11 Q. How come?
- 12 A. Because it was at my school and that's like my safe
- 13 place. I was kind of scared.
- 14 Q. Okay. So why did you decide to tell him what
- 15 happened?
- 16 A. Well, I feel safer with my parents around.
- 17 Q. Okay. So where did you tell him what had happened?
- 18 A. At our house.
- 19 Q. At your house?
- 20 A. Yeah.
- 21 Q. Okay. And when you told him what happened, what was
- 22 the next thing that happened to you?
- 23 A. A lot of this stuff, the court stuff.
- 24 Q. Do you want to be here today?
- 25 A. Uh-uh (negative).

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- 1 Q. Okay. Do you want to testify before these people?
- 2 A. In a way, yes; but in a way, no.
- 3 Q. And why is that?
- 4 A. Like I really don't want to be here. I'd rather be
- 5 at school. But I think it's something that needs to
- 6 happen.
- 7 Q. Okay. Is there anything else about what happened
- 8 that you shared with us that you didn't tell these people
- 9 that you feel like you need to tell them?
- 10 A. What I was scared about when he said or else is I
- 11 remember he had a -- there was a lake nearby and he said
- 12 we couldn't swim in it because there's sink sand.
- 13 Q. Okay. Why did you think that that had something to
- 14 do with the, or else?
- 15 A. I don't know. I guess he would have showed us that
- 16 for a reason.
- 17 Q. Okay. But did he say that? Did he say, I'm going
- 18 to throw you in the sink sand or anything?
- 19 A. No.
- 20 Q. That's just what you thought in your head?
- 21 A. Yes.
- 22 Q. Okay. Have you told the jury the truth today?
- 23 A. Yes.
- 24 Q. Okay. No further questions.
- 25 MS. JOHNSON: May it please the court.

1 **CROSS EXAMINATION**

2 **BY MS. JOHNSON:**

3 Q. Good morning, Minor

4 A. Good morning.

5 Q. I'm Teal Johnson. Minor you and your sister are
6 close; aren't you?

7 A. Yes.

8 Q. Is she like your best friend?

9 A. Yes.

10 Q. Y'all pretty much do everything together?

11 A. Yeah.

12 Q. Okay. Now, when you would go over to Glen's house,
13 you liked going over to Glen's house?

14 A. No.

15 Q. You weren't happy to go to Glen's house to see him?

16 A. Uh-uh (negative).

17 Q. Okay. And actually y'all didn't just stay at Glen's
18 house when you would go to Glen's house; you would
19 sometimes go to his mom's house?

20 A. Yeah.

21 Q. You would eat at his mom's house; you would bathe at
22 his mom's house; correct?

23 A. Yes.

24 Q. And you would take baths at his -- or take baths at
25 his mom's house?

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- 1 A. Yes, ma'am.
- 2 Q. Take naps at his mom's house?
- 3 A. I don't think we ever took a nap there.
- 4 Q. Okay. But she was around?
- 5 A. Yeah.
- 6 Q. Not all the time, but she was in the picture?
- 7 A. Yes.
- 8 Q. Okay. Now, Glen, he lived in a trailer; is that
- 9 right?
- 10 A. Yes, ma'am.
- 11 Q. Close to his mom's house?
- 12 A. Yes.
- 13 Q. And the reason y'all had to go to his mom's house
- 14 was because a lot of things at his house didn't work; is
- 15 that right?
- 16 A. Yes.
- 17 Q. Like he didn't have a stove that worked?
- 18 A. I don't know if the stove worked. We just -- he
- 19 never used it.
- 20 Q. Okay. But there's no bathroom except for the
- 21 toilet?
- 22 A. Yeah.
- 23 Q. But everything else didn't really work in the house;
- 24 is that right?
- 25 A. As far as I know, yes.

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- 1 Q. And it was kind of a junky house; lot of mess?
- 2 A. Yes.
- 3 Q. Okay. And the kitchen wasn't really operable; is
- 4 that -- would you ---
- 5 A. Yes, that's right.
- 6 Q. And the living room was really junky?
- 7 A. Uh-huh (affirmative).
- 8 Q. And so the only place that you really could go into
- 9 was the bedroom?
- 10 A. Yeah.
- 11 Q. Okay. He's got a kitchen, a bathroom really that
- 12 doesn't work and then a junky living room?
- 13 A. There was an extra bedroom.
- 14 Q. But that wasn't ever ---
- 15 A. Yeah. It had a lot of stuff packed in it, too.
- 16 Q. Okay. Okay. Now -- and I'm sorry for jumping
- 17 around, Minor
- 18 A. That's all right.
- 19 Q. You're real close with Ester, Beth?
- 20 A. Yes.
- 21 Q. And you're real close with B-Nana, Florence?
- 22 A. Yeah.
- 23 Q. Okay. She's technically not your grandmother, but
- 24 you considered her your grandmother; ---
- 25 A. Yeah.

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- 1 Q. Is that right?
- 2 A. Yes.
- 3 Q. Okay. And who is this Brittany Roper?
- 4 A. Okay. That's who I think of as my mom has a sister,
- 5 Tammy, and Brittany is one of her children.
- 6 Q. Okay. And you are real close with her? She's kind
- 7 of a role model for you; older cousin?
- 8 A. In a way, yeah.
- 9 Q. Okay. Now, as far as these allegations, you said
- 10 seven years old?
- 11 A. Yeah, about that.
- 12 Q. Do you remember meeting at one of the Julie
- 13 Valentine Center; do you remember having that meeting?
- 14 A. Yes.
- 15 Q. And you said eight or nine?
- 16 A. Yeah. Well, I can't really remember the age.
- 17 Q. Okay. You would agree you've given different
- 18 accounts as far as the age; your age?
- 19 A. I can't really remember the age.
- 20 Q. Okay. I understand. Now, your mom is -- you
- 21 consider your mom to be Beth?
- 22 A. Yes.
- 23 Q. She's the one that raised you?
- 24 A. Yes.
- 25 Q. Okay. And you had denied this to Beth; is that

1 right?

2 A. Yes.

3 Q. Okay. And you had denied this happening to your
4 dad, John?

5 A. Yes.

6 Q. Okay. And you also denied anything happening with
7 Detective Torres? He's the gentleman that was here
8 earlier, the first police officer you saw?

9 A. Yeah.

10 Q. And you denied seeing any -- or anything happening
11 with Detective Swafford; is that ---

12 A. Yes.

13 Q. Okay. You also at some point denied this happening
14 to B-Nana; is that right, your grandmother?

15 A. I don't think I did.

16 Q. Okay. Do you remember -- and I know this is very
17 confusing. But do you remember having a conversation with
18 the officers and you denied anything happening?

19 MR. TOOKER: Judge, I think that one's asked and
20 answered.

21 THE COURT: Objection's overruled.

22 A. I'm not quite sure how to answer.

23 Q. Okay. And that was a bad question on my part. You
24 told the officers that you denied having a conversation
25 with your grandmother about Glen?

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- 1 A. No.
- 2 Q. Okay. Now, Minor, this has been two years since
- 3 you went to the Julie Valentine Center?
- 4 A. I think that's about right.
- 5 Q. Okay. And you obviously live with your mom and dad
- 6 ---
- 7 A. Yes.
- 8 Q. --- and sister. Do you see your grandmother a lot?
- 9 A. Not a whole lot, but every time my dad can.
- 10 Q. Okay.
- 11 MS. JOHNSON: Beg the court's indulgence.
- 12 Q. Minor, I don't want to be too personal, but you've
- 13 got some medical issues or you had some medical problems
- 14 in the past?
- 15 A. Yes.
- 16 Q. Do you still have those medical problems?
- 17 A. No. My seizures are dormant.
- 18 Q. They're dormant? Do you remember what kind of
- 19 treatment you received?
- 20 A. I had some CAT scans and I had to take Keppra.
- 21 Q. Okay. So you don't take Keppra anymore?
- 22 A. No.
- 23 Q. Were you taking any other kind of medicine?
- 24 A. No. It was only Keppra.
- 25 Q. Okay. And that's all you've ever taken?

1 A. Yes.

2 Q. Okay. I believe that's all I have. Thank you,

3 Minor .

4 MR. TOOKER: Briefly on redirect, sir.

5 THE COURT: Yes, sir.

6 **REDIRECT EXAMINATION**

7 **BY MR. TOOKER:**

8 Q. All right. Minor , so you said it happened and
9 then you said it didn't happen?

10 A. Yes.

11 Q. And then you said it happened again?

12 A. Yes.

13 Q. Why would you say that it didn't happen?

14 A. I was scared and I didn't want to go to court and I
15 didn't know what was going to happen. I thought I might
16 have gotten tooker from my parents.

17 Q. That's okay. When you said that it didn't happen,
18 was that the truth or was that a lie?

19 A. When I said it didn't happen, that was a lie.

20 Q. When you told the jury that it did happen, was that
21 the truth or was that a lie?

22 A. It's the truth.

23 Q. No further questions.

24 THE COURT: Anything further?

25 MS. JOHNSON: No, Your Honor.

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1 THE COURT: All right. Thank you.

2 MR. TOOKER: May she be excused, sir?

3 THE COURT: Yes. You may step down.

4 MR. TOOKER: Your Honor, the state next calls
5 Christine Carlberg to the stand.

6 THE COURT: All right. And as she comes, ladies
7 and gentlemen, let's stand for a moment. Get our blood
8 flowing a little better.

9 Just stand there for just one moment, Mr. Clerk.
10 Just sort of stand there for a moment. We're stretching.

11 THE CLERK: All right.

12 THE COURT: Okay.

13 THE CLERK: Place your left hand on the bible
14 and raise your right hand.

15 Do you solemnly swear or affirm the testimony you're
16 about to give in this case to be the truth, the whole
17 truth and nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you, ma'am. If you would have
20 a seat and state your name for the record, please.

21 THE WITNESS: Christine Carlberg.

22 CHRISTINE CARLBERG,

23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. TOOKER:

1 Q. One moment, Ms. Carlberg. Ms. Carlberg, ma'am,
2 where do you work?

3 A. I'm employed by the Greenville Department of Mental
4 Health and contracted to work at the Julie Valentine
5 Center.

6 Q. How long have you worked there?

7 A. Almost eight years.

8 Q. What do you do at the Julie Valentine Center?

9 A. I'm a forensic interviewer.

10 Q. What does that mean?

11 A. That means I interview children or delayed adults
12 with allegations of abuse for purposes of an
13 investigation.

14 Q. Okay. And how many interviews do you think you do a
15 year?

16 A. Probably between two twenty and two thirty.

17 Q. Okay. Do you have to have any kind of licensing or
18 anything to do that?

19 A. There's not a license, no. We have specific
20 training to do forensic interviewing.

21 Q. And speaking of your training, do you have any kind
22 of -- what's your educational background?

23 A. I have a bachelor's of science in rehabilitation
24 services education with a minor in psychology from the
25 Pennsylvania State University. And I have a master's of

1 arts in marriage and family therapy from Reformed
2 Theological Seminary in Jackson, Mississippi.

3 Q. Okay. How long have you been doing these forensic
4 interviews?

5 A. About fourteen and a half years.

6 Q. So in addition to the time you did them at the Julie
7 Valentine Center, you did them somewhere else?

8 A. I also worked at the Mississippi Children's Advocacy
9 Center in Jackson, Mississippi.

10 Q. Okay. And when you do these things is there some
11 sort of special methodology or how is it that you know how
12 to talk to kids?

13 A. We're trained in a protocol called RATAAC, which is a
14 semi-structured protocol and it stands for rapport,
15 anatomy ID, touch inquiry, abuse scenario and closure.

16 Q. Okay. And is that how you talk to all kids or do
17 you talk to kids with different types of methodologies or
18 do you use that one kind?

19 A. We always use that protocol. Like I said, it's
20 semi-structured, so we can kind of skip stages or move in
21 between them as needed depending on the age and how the
22 interview's going.

23 Q. Okay. And did you talk to Minor in this
24 case?

25 A. Yes, sir.

- 1 Q. Okay. When did you talk to Minor ?
- 2 A. I talked to her on June 21st, 2012.
- 3 Q. Okay. How old was she when you talked to her?
- 4 A. She was eleven.
- 5 Q. She was eleven; okay. And where did you talk to
- 6 her?
- 7 A. At the Julie Valentine Center.
- 8 Q. Okay. When you talked to her was she by herself or
- 9 was she with people?
- 10 A. She was by herself.
- 11 Q. Okay. Who brought her to the Julie Valentine
- 12 Center; do you remember?
- 13 A. Her father, John William Berry, and his girlfriend,
- 14 Ester McCollum.
- 15 Q. Okay. When you talk to them is the conversation you
- 16 have with the child recorded in anyway?
- 17 A. It's videotaped; yes.
- 18 Q. Okay. And was a videotape prepared in this case?
- 19 A. Yes, sir.
- 20 Q. Okay. And I'm going to show you what's been marked
- 21 as State's Number 1.
- 22 MS. JOHNSON: Judge, I just want to renew my
- 23 previous objections.
- 24 THE COURT: Yes. And the objection is
- 25 overruled.

1 MR. TOOKER: Okay. Thank you, sir.

2 MS. JOHNSON: Thank you, Your Honor.

3 Q. I'm going to show you what's been marked as State's
4 Number 1. What is this item right here?

5 A. This is a copy of the video that I did with Minor
6 Minor .

7 Q. How do you know that that's a copy of that video?

8 A. Because I initialed it and dated it the day that I
9 viewed it again.

10 Q. Okay. And would you say upon viewing it that it was
11 a fair and accurate copy of the interview that you had
12 with Minor ?

13 A. Yes, sir.

14 MR. TOOKER: At this point, Your Honor, the
15 state would like to publish -- well, introduce into
16 evidence State's 1 and publish it to the jury.

17 THE COURT: I understand there is an objection
18 noted; is that right?

19 MS. JOHNSON: Yes, Your Honor.

20 THE COURT: And the objection is overruled. And
21 as we prepare to play that, we'll first take a break to
22 give the jury a chance to have a break. We'll take a
23 break now. Please do not discuss the case. We'll take
24 about five minutes or so and then we'll proceed. Go to
25 the jury room, please. Do not discuss the case.

1 (WHEREUPON, the jury exited the open court at
2 approximately 10:42 a.m.)

3 THE COURT: Okay. We'll take a little break.
4 Ma'am, you can take a break. Don't talk to anyone
5 about your testimony.

6 (WHEREUPON, the court stood at recess for a short
7 break.)

8 THE COURT: Are you ready to press on?

9 MR. TOOKER: Yes, sir.

10 MS. JOHNSON: Yes, Your Honor.

11 THE COURT: Okay.

12 (WHEREUPON, the jury entered the open court at
13 approximately 10:56 a.m.)

14 THE COURT: You may proceed.

15 MR. TOOKER: At this point, the state would like
16 to publish State's 1 for the jury.

17 THE COURT: Okay. You may do so.

18 (WHEREUPON, State Exhibit Number 1 was admitted into
19 evidence.)

20 (WHEREUPON, State Exhibit Number 1 was played in
21 open court.)

22 **DIRECT EXAMINATION CONTINUED**

23 **BY MR. TOOKER:**

24 Q. Ms. Carlberg, did you talk to anybody else in this
25 case?

1 A. I got background information prior to the interview
2 from the dad and his girlfriend. And then I made a report
3 to DSS.

4 Q. And did you talk to Y.B. , the sister?

5 A. Yes.

6 Q. And did the same kind of thing with her?

7 A. Yes, sir.

8 Q. Okay.

9 MR. TOOKER: No further questions, sir.

10 MR. TOOKER: May it please the court.

11 **CROSS EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. Ms. Carlberg, before you met with the girls, you
14 read the police reports?

15 A. I think I -- well, I think I only had the first two
16 pages of the police report. I didn't have the whole -- I
17 don't think I had the whole ---

18 Q. But you read some of the police report?

19 A. Yes, ma'am.

20 Q. Okay. And you don't know who the girls talked to
21 before they came to see you?

22 A. Well, when I get that kind of information, I usually
23 ask how it all came out. And so that -- sometimes they
24 tell me who they might have talked to.

25 Q. Well, I'm talking about in the meantime before they

1 came to see you, just anytime, you have no way of knowing
2 who they talked to?

3 A. No. I might not know of everyone.

4 Q. Okay. And you have no way of knowing what was
5 discussed ---

6 A. No, ma'am.

7 Q. --- before they came to see you?

8 A. No, ma'am.

9 Q. Okay. Thank you. That's all I have.

10 THE COURT: Anything further?

11 MR. TOOKER: No, sir. Just ask that she be
12 excused.

13 THE COURT: Thank you. You may step down. Any
14 objections to her being excused?

15 MS. JOHNSON: No, Your Honor.

16 THE COURT: You're excused.

17 You may call your next witness.

18 MR. TOOKER: Yes, sir. The state would next
19 call Y.B.

20 THE COURT: All right.

21 THE CLERK: Place your left hand on the bible
22 and raise your right hand.

23 Do you solemnly swear or affirm the testimony you're
24 about to give in this case to be the truth, the whole
25 truth and nothing but the truth, so help you God?

Y.B. - Direct Examination by Mr. Tooker

1 THE WITNESS: Yes, sir.

2 THE CLERK: Thank you. If you would have a seat
3 and state your name for the record. You're going to have
4 to talk right into the microphone. Scoot right up to it.
5 State your name, please..

6 THE WITNESS: Y.B.

7 Y.B.

8 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **DIRECT EXAMINATION**

10 **BY MR. TOOKER:**

11 Q. Okay. Y.B., how old are you?

12 A. Twelve.

13 Q. And where do you go to school?

14 A. Gettys Middle Schools.

15 Q. What grade are you in?

16 A. Seventh.

17 Q. What's your favorite thing to study in school?

18 A. ELA.

19 Q. What does that mean?

20 A. English language arts.

21 Q. And why do you like ELA?

22 A. Because it involves with reading and writing, and I
23 like to read and write.

24 Q. Okay. And do you know the difference between
25 something that's true and something that's a lie?

- 1 A. Yes.
- 2 Q. What is the truth?
- 3 A. The truth is something that is right and that's non-
- 4 fiction, if it was a book.
- 5 Q. Okay. So if it's a book like in ELA, the truth is
- 6 non-fiction?
- 7 A. Yes.
- 8 Q. What is a lie?
- 9 A. A lie is something that's fake and fiction, if it is
- 10 a book.
- 11 Q. Okay. And if I were to point to this carpet and say
- 12 this carpet is red, would that be the truth or would that
- 13 be a lie?
- 14 A. A lie.
- 15 Q. Why would that be a lie?
- 16 A. Because it's blueish-green.
- 17 Q. Okay. And if I were to point to this bench right
- 18 here and I were to say, this bench is made out of wood.
- 19 Would that be the truth or would that be a lie?
- 20 A. The truth.
- 21 Q. Okay. Do you know why you're in court today?
- 22 A. Yes.
- 23 Q. Do you know who the defendant is?
- 24 A. Yes.
- 25 Q. What's his name?

Y.B. - Direct Examination by Mr. Tooker

- 1 A. I only know his first name.
- 2 Q. Okay. What's his first name?
- 3 A. Glen.
- 4 Q. And how do you know the defendant Glen?
- 5 A. My family.
- 6 Q. Okay. And did you ever spend any time with the
- 7 defendant Glen?
- 8 A. Yes.
- 9 Q. When would you spend time with him?
- 10 A. On the weekends sometimes.
- 11 Q. Okay. Would you spend time with him on the weekend
- 12 sometimes in your house or his house or some other place?
- 13 A. His place.
- 14 Q. Okay. What kind of place did he have?
- 15 A. A trailer.
- 16 Q. Okay. Was it a nice trailer or not so nice trailer?
- 17 A. A not so nice trailer.
- 18 Q. Why was it not so nice?
- 19 A. Because there's things everywhere.
- 20 Q. Okay. When you would go over there would anybody go
- 21 over there with you?
- 22 A. Yes.
- 23 Q. Who would go with you?
- 24 A. My sister.
- 25 Q. How would you guys get over there?

- 1 A. He would drive us.
- 2 Q. Okay. Would he pick you up at your house or some
3 other place?
- 4 A. He would pick me and my sister up at my house and my
5 sister's; my parents' place.
- 6 Q. Your parents' place?
- 7 A. Yes.
- 8 Q. When you would go over there would it be for any
9 time longer than the weekend or just the weekend?
- 10 A. No. It would -- it was just the weekend.
- 11 Q. Okay. And when you would go over there what would
12 you guys do to spend your time?
- 13 A. Play on the computer, play with the dishes that were
14 out and stuff like that.
- 15 Q. Play make believe?
- 16 A. Yeah.
- 17 Q. When you played on the computer, what kind of games
18 did you play?
- 19 A. Chess.
- 20 Q. You like chess?
- 21 A. Yes.
- 22 Q. You said you know why you've been called to testify
23 today. Did anything bad ever happen at Glen's house?
- 24 A. Yes.
- 25 Q. What bad thing happened at Glen's house?

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Y.B. - Direct Examination by Mr. Tooker

1 A. Stuff. I'm sorry (crying).

2 Q. That's okay. You want some water? You want a
3 tissue? When you say stuff, what kind of bad stuff
4 happened?

5 A. (No verbal response.)

6 MR. TOOKER: Your Honor, pursuant to Rule
7 611(c), I'd like permission to ask leading questions to
8 help elicit testimony from this victim.

9 THE COURT: Ms. Johnson.

10 MS. JOHNSON: Judge, I have a matter of law to
11 take outside the presence of the jury.

12 THE COURT: I deny your motion at this time.
13 Proceed with your examination.

14 MR. TOOKER: Okay. You're denying my motion,
15 sir?

16 THE COURT: Yes, sir.

17 MR. TOOKER: Okay.

18 Q. So Y.B. , and I know this is not fun, but you've
19 got to tell the truth, too. What bad thing happened at
20 his house?

21 A. He, he would make my sister do stuff to him.

22 Q. Okay. How do you know he would make your sister do
23 stuff to him?

24 A. Because I seen it once.

25 Q. Where did you see it?

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Y.B. - Direct Examination by Mr. Tooker

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- 1 A. We were in his room.
- 2 Q. Okay. Where were you in his room?
- 3 A. I was at the computer.
- 4 Q. Were you playing chess?
- 5 A. Yes.
- 6 Q. Where was your sister in the room?
- 7 A. On his bed.
- 8 Q. Okay. Where was Glen?
- 9 A. On his bed.
- 10 Q. Okay. What did he make her do to him?
- 11 A. (No verbal response.)
- 12 Q. How about this? Did he have his clothes on or off
- 13 or something else?
- 14 A. He had most of his clothes on. Not a lot of his
- 15 clothes on, but he had his underwear on.
- 16 Q. Okay. And did you see any of his private parts?
- 17 A. Yes.
- 18 Q. Did your sister do anything to his private parts?
- 19 A. Uh-huh (affirmative).
- 20 Q. Is that the bad thing that you were talking about?
- 21 A. Yes.
- 22 Q. Okay. And you saw this one time?
- 23 A. Uh-huh (affirmative).
- 24 Q. Do you remember how long it happened?
- 25 A. Uh-uh (negative).

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Y.B. - Direct Examination by Mr. Tooker

1 Q. Did he say anything when it was happening?

2 A. No.

3 Q. Okay. And what did you do when you saw what was
4 happening?

5 A. I sort of ignored it because I didn't know what was
6 happening.

7 Q. Okay. And after all that happened, did you ever
8 tell anybody about what you saw?

9 A. Yes.

10 Q. Who did you tell?

11 A. I told my parents.

12 Q. Your parents?

13 A. Yes.

14 Q. Okay. And when you told your parents, did Minor
15 talk to your parents, too?

16 A. Yes.

17 Q. Okay. After you and Minor talked to your parents,
18 did you then say that you made it up?

19 A. Yes.

20 Q. Why did y'all say that?

21 A. Because we were scared.

22 MS. JOHNSON: Your Honor, I'm going to object to
23 all this leading.

24 THE COURT: Pardon?

25 MS. JOHNSON: I'm going to object to all this

1 leading.

2 MR. TOOKER: I'm not sure why it's a leading
3 question.

4 THE COURT: You're asking her a question?

5 MR. TOOKER: No, no, no. The question I asked
6 her is why would you ---

7 THE COURT: I heard the question and I heard an
8 objection.

9 MR. TOOKER: Yes, sir. And I'm saying that's
10 not a leading question.

11 THE COURT: I'll entertain counsel at this time.

12 MR. TOOKER: Yes, sir.

13 MS. JOHNSON: It's just leading, Your Honor. I
14 let him get away with it and I realize the nature of the
15 victim -- of the witness.

16 THE COURT: The objection is overruled. You may
17 proceed.

18 Q. So why would you say that it hadn't happened?

19 A. Because we were scared.

20 Q. Okay. Did you ever tell again?

21 A. Yes.

22 Q. And who did you tell when you told again?

23 A. We told Brittany.

24 Q. Okay. Who is Brittany to you?

25 A. My, my -- I don't know.

Y.B. - Direct Examination by Mr. Tooker

1 Q. Is she part of your family or a friend or something
2 else?

3 A. She's my mom's -- well, my stepmom's niece.

4 Q. Okay. And after you told Brittany, who did you
5 tell?

6 A. I told Mommy again.

7 Q. Okay. And did you ever talk to the police?

8 A. Yes.

9 Q. Okay. Where did you talk to the police the first
10 time?

11 A. School, I believe.

12 Q. Okay. And when you met with the detective at school
13 did you tell him at that point what had happened?

14 A. No.

15 Q. How come you didn't tell him then?

16 A. Because I don't like to talk in front of the
17 guidance counselor.

18 Q. Okay. So did you ever tell him what happened?

19 A. Yes.

20 Q. Why did you decide to tell him what happened?

21 A. Because we were not at school.

22 Q. And when you told him what happened, did you tell
23 the truth?

24 A. Yes.

25 Q. And when you said it didn't happen, was that the

1 truth or was that a lie?

2 A. A lie.

3 Q. Okay. And what you told the jury here today, was
4 that the truth or was that a lie?

5 A. The truth.

6 Q. No further questions.

7 THE COURT: Ms. Johnson.

8 MS. JOHNSON: May it please the court.

9 **CROSS EXAMINATION**

10 **BY MS. JOHNSON:**

11 Q. Hi Y.B. . My name is Teal Johnson. I just want
12 to ask you some questions. You and your sister are really
13 close?

14 A. Uh-huh (affirmative).

15 Q. Correct?

16 A. Yes.

17 Q. Is she your best friend?

18 A. I treat her like one.

19 Q. And y'all do everything together?

20 A. Most of the time.

21 Q. Are y'all always together?

22 A. Most of the time.

23 Q. Wherever she goes, you go?

24 A. Yeah.

25 Q. Okay. And you're real close with your grandmother?

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- 1 A. Yes.
- 2 Q. And I realize she's not your real grandmother, but
- 3 you treat her like she's your grandmother?
- 4 A. Yes.
- 5 Q. Okay. And Brittany, she -- you're real close to
- 6 her?
- 7 A. Yes.
- 8 Q. And your mom, Beth, I know she's not your real mom
- 9 but you treat her like she's your mom?
- 10 A. Uh-huh (affirmative).
- 11 Q. Okay. And she's practically raised you; is that
- 12 right?
- 13 A. Uh-huh (affirmative).
- 14 Q. Okay. Now, I want to ask you, who is David?
- 15 A. David is my stepmom's brother.
- 16 Q. Okay. How old is David?
- 17 A. Twenty something.
- 18 Q. Okay. Does he come to the house sometimes? Stay
- 19 with y'all?
- 20 A. He did once.
- 21 Q. Okay. He's not a frequent visitor?
- 22 A. No.
- 23 Q. Okay. And you met with the lady at the Julie
- 24 Valentine Center. Do you remember that?
- 25 A. I don't remember it.

- 1 Q. You don't? That was like two, two and a half years
2 ago?
- 3 A. Yeah.
- 4 Q. Okay. Do you remember talking about movies that you
5 had watched?
- 6 A. No.
- 7 Q. You don't remember talking about any kind of movies?
- 8 A. (Negative nod.)
- 9 A. Okay. You called -- do you remember calling them
10 prissy movies?
- 11 A. Uh-uh (negative).
- 12 Q. You don't remember using that term where people were
13 naked?
- 14 A. I don't remember anything.
- 15 Q. Okay. You don't remember anything?
- 16 A. (Negative nod.)
- 17 Q. Okay. I understand. You don't remember a movie
18 called Jennifer's body?
- 19 A. I know that movie, yeah.
- 20 Q. People take their clothes off?
- 21 A. Yeah.
- 22 Q. Okay. Now, when you were little did you like to go
23 to Glen's house?
- 24 A. Not really.
- 25 Q. Okay. Y'all stayed with his -- or y'all would also

1 interact with his mother?

2 A. Yes.

3 Q. Okay. Y'all would eat over there and bathe over
4 there?

5 A. Yes.

6 Q. Okay. Do a lot of things over there; is that right?

7 A. Uh-huh (affirmative).

8 Q. Okay. Because his house was, for all intents and
9 purposes, not liveable? Is that right?

10 A. Yeah.

11 Q. Only that one room worked for -- not worked, but you
12 could move in that one room; is that right?

13 A. Yeah.

14 Q. Now, you first talked to Officer Torres. Do you
15 remember talking to him?

16 A. Yes.

17 Q. Okay. And you denied seeing anything or anything
18 happening?

19 A. Yes.

20 Q. Okay. And you also talked to Detective Swafford?

21 A. Uh-huh (affirmative).

22 Q. And you denied anything happening?

23 A. Yeah.

24 Q. Okay. Do you remember telling Detective Swafford
25 that you only saw Glen hug Minor ?

1 A. Yeah.

2 Q. Okay. And after that, your mom -- you talked to
3 your mom?

4 A. Uh-huh (affirmative).

5 Q. Okay. She had to make up a game. Do you remember
6 that?

7 A. Yeah.

8 Q. And you also told Detective Swafford that you don't
9 remember who asked you to join. Do you remember telling
10 that to Detective Swafford?

11 A. Yes.

12 Q. Okay. Now, since this -- this has been a while
13 since, you know, you went to the Julie Valentine Center --
14 you've talked with your sister about things?

15 A. Not much. I don't talk to my sister about things
16 like this much.

17 Q. You've talked to your grandmother?

18 A. I don't talk about stuff like this at all, to anyone
19 much.

20 Q. You met with the prosecutor?

21 A. Yes.

22 Q. Okay. And your parents, were they around?

23 A. Yes.

24 Q. Okay. Was Minor around?

25 A. Uh-huh (affirmative).

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Y.B. - Redirect Examination by Mr. Tooker

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1 Q. Okay.

2 MS. JOHNSON: Beg the court's indulgence.

3 Thank you, Y.B. . That's all the questions I have.

4 THE COURT: Any redirect?

5 MR. TOOKER: Briefly, sir.

6 **REDIRECT EXAMINATION**

7 **BY MR. TOOKER:**

8 Q. Ms. Johnson asked you about there only being one
9 room that you could stay in in the house?

10 A. Yeah.

11 Q. Okay. What room would you sleep in?

12 A. His room.

13 Q. Where?

14 A. His bed.

15 Q. Okay. And she asked you something about joining.
16 Do you know what she's talking about?

17 A. A little bit.

18 Q. Did somebody say something to you about that?

19 A. I don't know.

20 Q. Okay. And she asked you about saying stuff didn't
21 happen to the police first; right?

22 A. Can you repeat the question?

23 Q. Uh-huh (affirmative). She asked you about how you
24 didn't tell the police right away about what happened?

25 A. Yeah.

1 Q. How come?

2 A. Because I didn't know what to do. I didn't know
3 what to say. I was scared and everything.

4 Q. Okay. Did you eventually talk to Detective
5 Swafford?

6 A. Yes.

7 Q. Did you tell him about what happened?

8 A. Yes.

9 Q. Okay.

10 MR. TOOKER: No further questions, sir.

11 THE COURT: Anything else?

12 MS. JOHNSON: No, Your Honor.

13 MR. TOOKER: May she be excused, sir?

14 THE COURT: Thank you. You may step down and
15 you may be excused.

16 MS. JOHNSON: Judge, I'm going to object to this
17 exchange with the prosecutor and the witness. It's very
18 inappropriate.

19 MR. TOOKER: I was just telling her she did a
20 good job, sir.

21 THE COURT: Sir?

22 MR. TOOKER: I was just telling her she did a
23 good job.

24 THE COURT: All right. The jury is to disregard
25 the comment of the prosecutor.

1 Next witness.

2 MR. TOOKER: Thank you, sir. The state would
3 call Florence McCollum to the stand.

4 THE COURT: Come forward, ma'am. Come forward.

5 THE CLERK: Come on up here. I need you to
6 place your left hand on the bible and raise your right
7 hand.

8 Do you solemnly swear or affirm the testimony you're
9 about to give in this case to be the truth, the whole
10 truth and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you, ma'am. If you would have
13 a seat and state your name for the record, please.

14 THE WITNESS: My name is Florence McCollum.

15 **FLORENCE MCCOLLUM,**

16 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MR. TOOKER:**

19 Q. Ms. McCollum, what is your relationship with Minor e
20 and Y.B. ?

21 A. I consider myself their grandmother, but they're
22 not. But I feel like they're my grandchildren.

23 Q. Okay. How is it that you are related to them?

24 A. My daughter lives with their father.

25 Q. Okay. How long have your daughter and their father

1 lived together?

2 A. Approximately, I'm really not sure; I'm estimating

3 about eleven years.

4 Q. Okay. And have you seen these girls grow up?

5 A. Yes, sir, I have.

6 Q. Okay. And do you know why you're here in court

7 today?

8 A. Yes, sir.

9 Q. Do you know who the defendant is?

10 A. I don't know him personally, but I know of him.

11 Q. Have you seen him before?

12 A. Yes, sir.

13 Q. Okay. Where have you seen him?

14 A. At John Berry's home.

15 Q. Okay. And did you have conversations with the girls

16 regarding allegations of abuse?

17 A. Yes, sir.

18 Q. Okay. When did those conversations take place?

19 A. I'm not, I'm not really sure. About two years ago.

20 Q. Okay. And who was with you when you had those

21 conversations?

22 A. The first time it was just the girls and I.

23 Q. Okay. After that first time what happened?

24 A. I spoke with my daughter, Ester McCollum, and I told

25 her that the -- what the girls had told me. And I told

1 her she does not need to let them go back over there.

2 Q. Okay. And after these conversations did the police
3 get involved?

4 A. Not the first time.

5 Q. Okay. Were there other conversations about what
6 happened?

7 A. Yes, sir.

8 Q. Were those -- how long after that first conversation
9 were the subsequent conversations?

10 A. I'm not sure on that.

11 Q. Okay. Who was present for those conversations?

12 A. Myself and my granddaughter Brittany Roper.

13 Q. Okay. Brittany Roper, where does she live?

14 A. She lives in North Carolina.

15 Q. And what is her current physical status?

16 A. She just had a baby last week.

17 Q. Last week. Okay. And is she good to travel?

18 A. No, sir.

19 Q. When these conversations between yourself and
20 Brittany and the girls originally happened, what steps did
21 you take and what steps did Brittany take?

22 A. Well, after the girls came back and told me that he
23 really did do it ---

24 MS. JOHNSON: Your Honor, I ---

25 MR. TOOKER: Don't say what other people ---

- 1 A. Excuse me. I'm sorry. I apologize. After this
2 incident happened; is that correct?
- 3 Q. Just don't say what other people say because that's
4 hearsay.
- 5 A. Okay.
- 6 Q. What did you do after you had the conversation?
- 7 A. Brittany and I told Ester.
- 8 Q. Okay. And who contacted law enforcement?
- 9 A. My granddaughter Brittany.
- 10 Q. Okay. Were you nearby?
- 11 A. Yes.
- 12 Q. Okay. Why is it that y'all had to contact law
13 enforcement?
- 14 A. I was waiting for them to do the right thing.
- 15 Q. Who is them?
- 16 A. John and Beth. Ester. I call her Beth.
- 17 Q. And they did not?
- 18 A. No.
- 19 Q. Okay. So after law enforcement got contacted, what
20 was your involvement in this case?
- 21 A. Can you repeat that?
- 22 Q. After law enforcement was contacted, what was your
23 involvement in the case?
- 24 A. What was my involvement?
- 25 Q. Yes, ma'am. Did you talk to the police?

- 1 A. Yes, sir. I gave my statement.
- 2 Q. Okay. And so it was you and Brittany that contacted
- 3 law enforcement?
- 4 A. Yes, sir.
- 5 Q. Because Ester refused to?
- 6 A. (No verbal response.)
- 7 Q. Because Ester refused to?
- 8 A. They didn't -- they just didn't ---
- 9 Q. They didn't do it?
- 10 A. They just didn't do it.
- 11 Q. They didn't do it; okay. Had you ever had any other
- 12 encounters with the defendant?
- 13 A. I saw him once.
- 14 Q. Okay. Where did you see him?
- 15 A. When my daughter and them lived here in Pickens like
- 16 going toward Pumpkintown.
- 17 Q. Okay. And you recognized him on sight?
- 18 A. Yes, sir.
- 19 Q. And that man seated at the counsel table with Ms.
- 20 Johnson is the Glen we're talking about?
- 21 A. Yes, sir.
- 22 Q. Okay. No further questions.
- 23 THE COURT: Defense.
- 24 MS. JOHNSON: May it please the court.
- 25 THE COURT: Yes.

1

CROSS EXAMINATION2 **BY MS. JOHNSON:**

3 Q. Ms. McCollum?

4 A. I can't hear you.

5 Q. Are you Ms. McCollum?

6 A. Yes, ma'am.

7 Q. You are Minor and Y.B. grandmother?

8 A. (No verbal response.)

9 Q. You are Minor and ---

10 A. Not biological.

11 Q. I understand. But you're their grandmother for all
12 intents and purposes?

13 A. Yes, ma'am.

14 Q. Okay. You have a lot to do with their lives or in
15 their lives?

16 A. Yes, ma'am.

17 Q. Okay. Now, when this started -- or let me back up.
18 When Brittany made the call with law enforcement, or to
19 law enforcement, do you remember Officer Torres? You met
20 with Officer Torres or you talked to Officer Torres?

21 A. I don't remember his name, but ...

22 Q. You talked to him?

23 A. Yes.

24 Q. Okay. And you told him that this was all started

25 ---

1 MR. TOOKER: Judge, I think we're getting into
2 an area where we're going to need to take up some
3 testimony outside the jury's presence, proffered before
4 Your Honor, and at that point I might have some objections
5 with regards to that testimony. So at this point, I would
6 request an in-camera review of this testimony, sir.

7 THE COURT: Ms. Johnson.

8 MS. JOHNSON: Judge, this is cross examination.
9 I mean, he went into the ---

10 MR. TOOKER: Well, I'm afraid we're getting into
11 an area where we might ring a bell that we cannot unring.

12 THE COURT: Well, let me hear the question. Do
13 not answer the question ---

14 THE WITNESS: Yes, sir.

15 THE COURT: --- until I rule if there's an
16 objection.

17 Q. When you spoke with Officer Torres, you told him
18 this was ---

19 MR. TOOKER: Judge, I'm going to say the
20 question itself is what's going to ring the bell, because
21 she's saying what she said. Do you understand what I'm
22 saying?

23 THE COURT: All right. Ladies and gentlemen,
24 I'll have you go to the jury room. Please do not discuss
25 the case.

1 (WHEREUPON, the jury exited the open court at
2 approximately 12:03 p.m.)

3 THE COURT: All right. Yes, ma'am. Let me hear
4 that question.

5 MS. JOHNSON: Okay, Your Honor. I was going to
6 ask her, when you spoke with Officer Torres, you told him
7 this was started over an argument between Brittany and
8 Beth?

9 THE WITNESS: Yes, I did.

10 MS. JOHNSON: Okay. You didn't talk ---

11 THE COURT: Just a moment. So that's the
12 question that you object to?

13 MR. TOOKER: Yes, sir. So the question as
14 asked, this -- you told the detective or the officer that
15 this was started as a result of an argument between
16 Brittany and Beth, Brittany and Ester, the mother and the
17 cousin. What that calls for is in essence testimony that
18 is opinion and not based on anything she's observed. So
19 she's then being asked a question as to whether or not
20 these allegations are credible based on, you know, her
21 perception of some sort of disagreement. Does that make
22 sense? And so I don't think that she can be called to
23 evaluate the credibility of allegations, inasmuch as I
24 couldn't say, do you believe the girls are telling the
25 truth, she can't ask a question that in essence elicits an

1 answer that is, do you think this could have been bogus.

2 MS. JOHNSON: Judge, that is ludicrous. I have
3 a right to cross examine her rigorously, vigorously. I
4 don't know -- and that's the first thing she tells law
5 enforcement; not Glen molested these children. It's not
6 -- I mean, I have a right to go into everything; her
7 perceptions, her statements to law enforcement.

8 THE COURT: What was your answer to the
9 question, again?

10 THE WITNESS: Okay.

11 THE COURT: No. Her question, this started
12 based on an argument between ---

13 MS. JOHNSON: Brittany and Beth.

14 THE COURT: --- Brittany and Beth is ...
15 Ask your question one more time.

16 MS. JOHNSON: Ms. McCollum, when you spoke with
17 Michael Torres, you told him this was started over an
18 argument between Beth and Brittany?

19 THE WITNESS: May I explain?

20 THE COURT: You can answer the question.

21 MS. JOHNSON: Answer the question.

22 THE WITNESS: Yeah, I did say that.

23 MS. JOHNSON: Okay.

24 THE COURT: You can explain any answer you want
25 -- that you give.

1 THE WITNESS: Okay.

2 MS. JOHNSON: And Judge, that would be my
3 response to the state's objection. Let her explain it.
4 But this is critical.

5 THE COURT: First, let me do this. I want to --
6 you have the rule book there; don't you?

7 MR. TOOKER: Yes, sir.

8 THE COURT: I want to call your attention to
9 Rule 18(b), Rules of Criminal Procedure. Page 876.

10 MR. TOOKER: Thank you, sir. What rule did you
11 say again, Your Honor?

12 THE COURT: 18(b) of the Rules of Criminal
13 Procedure.

14 MR. TOOKER: No argument shall be made on
15 objections to admissibility of evidence or conduct of
16 trial unless specifically requested by the court.

17 THE COURT: All right.

18 MR. TOOKER: Yes, sir.

19 THE COURT: And then (c), no attorney shall
20 interrupt another in the course of his or her argument.
21 When there's an objection, unless I request a response or
22 an argument, counsel is not to volunteer, interject or
23 attempt to assist the court in anyway in conducting the
24 trial. That's the purpose of that rule. I've notice here
25 there seems to be a lot of -- here as in Pickens County --

1 there seems to be a lot of gratuitous argument by counsel
2 without the court requesting it. So be aware of that
3 rule. Unless I request an argument, I don't want to hear
4 it.

5 Go ahead.

6 MR. TOOKER: Yes, sir. And I apologize, Your
7 Honor.

8 THE COURT: It's all right.

9 MR. TOOKER: So Ms. Johnson's argument is that
10 because this is the first thing she said to law
11 enforcement and because, by the nature of her duty as a
12 defense attorney she needs to vigorously cross examine,
13 that the witness should be permitted to answer a question
14 that elicits improper opinion. And I think that that
15 question, because it elicits opinion, is improper. It
16 takes from the jury their ability to properly find the
17 facts and determine witness credibility as the finders of
18 fact.

19 So if she wants to ask a question about whether or
20 not there had been a disagreement between Beth and
21 Brittany, then she can ask about, did you observe a
22 disagreement? Sure. If she wants to ask whether or not
23 this disagreement was heated, what somebody did
24 immediately after the disagreement. I think those are
25 proper questions, because they're questions based on what

1 the witness observed with her own eyes. But I think when
2 the question calls for her opinion, her opinion as to, in
3 essence, the credibility of a witness, it's improper.
4 It's absolutely improper. And that's my objection, sir.

5 MS. JOHNSON: Judge, I don't have a response. I
6 think that cross examination is broad, and I should be
7 able to cross examine her. This is a ---

8 THE COURT: When you asked the question did this
9 come about as the result of an argument, what are you
10 referring to when you say this?

11 MS. JOHNSON: Judge, when they call law
12 enforcement, they don't -- not they. She doesn't talk
13 about Glen at first. The first thing she says is this
14 argument -- this came about -- it's a denial. It's an
15 explanation.

16 THE COURT: I'm asking, you didn't include it in
17 your question, but you say did this come about as a result
18 of the argument. This referring to what?

19 MS. JOHNSON: Well, with all due respect, Your
20 Honor, I don't know.

21 THE COURT: These allegations or what do you
22 mean when you say this?

23 MS. JOHNSON: That is what she says to Officer
24 Torres in the report. Ms. McCollum stated she felt that
25 Ms. Roper had called and created this incident because of

1 an argument that happened between her and the girls'

2 mother. I have a right to cross ---

3 THE COURT: I'm not asking you -- just answer my
4 question.

5 MS. JOHNSON: I'm sorry, Your Honor.

6 THE COURT: I think you have a right to do many
7 things, but you also have an obligation to answer my
8 question. And Ms. Roper said -- who is Ms. Roper?

9 MS. JOHNSON: Brittany Roper, she's the cousin
10 that's not here. She's in North Carolina, Your Honor.

11 THE COURT: Are you asking this witness about an
12 argument between Brittany Roper and the mother? Brittany
13 Roper and who?

14 MS. JOHNSON: And their mother, the children's
15 mother. And I apologize for interrupting.

16 THE COURT: It's all right.

17 MS. JOHNSON: I mean, it is now, it's a
18 statement that she made.

19 THE COURT: You're asking this witness to
20 comment on a conversation between the child's mother and
21 Brittany Roper? Or an argument between the child's mother
22 and Brittany Roper?

23 MS. JOHNSON: Right. I think it certainly is
24 poignant that that's the first thing she says to law
25 enforcement, her first interaction with law enforcement.

1 I mean, that's her ...

2 THE COURT: So she makes an out-of-court
3 statement to law enforcement -- of course, court
4 statements are hearsay and even if made by the person
5 who's testifying. Tell me how is it admissible other than
6 your desire to vigorously defend your client? Other than
7 your right to vigorously defend Mr. Evans, how is this
8 statement otherwise admissible under what rule or
9 evidence?

10 MS. JOHNSON: Judge, I'm looking at Rule 803(1)
11 present sense impression, a statement describing or
12 explaining an event or condition made while the declarant
13 was perceiving the event or condition, or immediately
14 thereafter. It goes to her perception of what's going on.

15 THE COURT: With an offense that took place
16 three years earlier or some ---

17 MS. JOHNSON: No, Your Honor. This is when she
18 makes the first call to law enforcement. This is what she
19 says. Not -- I mean, I think it's highly relevant, highly
20 probative.

21 THE COURT: All right. Your response, Mr.
22 Solicitor.

23 MR. TOOKER: Yes, sir. That is not what present
24 sense impression is designed for. Present sense
25 impression is her saying, that car that just ran the stop

1 sign is green. Or I'm hot. Or something to that effect.

2 But to say this is all over and this -- of course, she

3 doesn't want to admit, this isn't talking about the

4 allegations or at least the report to law enforcement.

5 This is all over a conversation or an argument between two

6 parties. That's not a present sense impression. That is

7 -- and Your Honor is right, it's hearsay. And I was

8 actually -- I didn't object on hearsay because I think

9 ultimately the underlying issue is the more important one.

10 And again, that is because it's an attempt to backdoor in

11 an attack on credibility and not in anyway that's proper.

12 So, no, I don't believe it's present sense impression.

13 THE COURT: All right. I sustain the objection.

14 MR. TOOKER: Thank you, sir.

15 THE COURT: And we'll take a two minute break.

16 Do you need a two minute break?

17 THE WITNESS: No, sir.

18 THE COURT: All right. You're good to go. You

19 stay there.

20 THE WITNESS: Yes, sir.

21 THE COURT: We'll take a two minute break.

22 MR. TOOKER: Yes, sir.

23 (WHEREUPON, the court stood at recess for a short

24 break.)

25 THE COURT: Thank you.

1 MR. TOOKER: Yes, sir, before the jury comes
2 back.

3 THE COURT: Yes, sir.

4 MR. TOOKER: Ms. Johnson has indicated to me
5 that she might want to recall one of my witnesses. I've
6 already excused her, but she's still here. I was only
7 going to request that we be able to put her on standby so
8 she can go back to work.

9 THE COURT: Who is that?

10 MR. TOOKER: Christine Carlberg.

11 THE COURT: She was the forensic interviewer?

12 MR. TOOKER: Yes, sir.

13 THE COURT: And where is she? Is she in this
14 town or ---

15 MR. TOOKER: In Greenville County about thirty
16 minutes from here.

17 THE COURT: It's fine for any witness not to
18 have to sit around and wait in the event they're called.
19 And she would be part of the defense's case if Ms. Johnson
20 is calling her. But I don't want to have to wait around
21 for people to come like the deputy to wake up and come.
22 So we need some heads-up so we won't have to wait for
23 people who are released to get back here.

24 So that'll be on you, Ms. Johnson, to give us that
25 heads-up if you're going to need someone in a half an hour

1 to come.

2 MS. JOHNSON: Well, I'm at the mercy of the
3 state, Your Honor. I don't know when they're going to
4 finish.

5 THE COURT: Well, you know they're not finishing
6 before lunch, for example. For example, if we don't
7 finish the case today, all the testimony today, and you
8 know that you want the person tomorrow, then the person
9 will just need to be here at nine thirty tomorrow morning.

10 MS. JOHNSON: Yes, Your Honor.

11 THE COURT: If you don't say you want them
12 tomorrow morning, then there's no point -- I don't know.
13 I won't release anyone that she wants to call as a witness
14 and they have to be here when we need them here, but I
15 need counsel to give us thirty minutes heads-up so they
16 can get here. How about that?

17 MR. TOOKER: Sounds good to me, sir.

18 THE COURT: All right. Bring them in.

19 (WHEREUPON, the jury entered the open court at
20 approximately 12:25 p.m.)

21 THE COURT: All right. The jury is back. The
22 objection is sustained.

23 Your next question.

24 FLORENCE MCCOLLUM,

25 CROSS EXAMINATION CONTINUED

1 **BY MS. JOHNSON:**

2 Q. Ms. McCollum, your first contact with Deputy ---

3 A. I'm sorry. I can't hear you.

4 Q. Your first contact with Deputy Torres, you made no
5 mention of Glen?

6 A. I don't remember.

7 Q. Okay. And that was on April 11th, and you were with
8 Brittany Roper at the time?

9 A. I don't remember the day.

10 Q. Okay. But she called law enforcement and you were
11 with her?

12 A. Yes, ma'am.

13 Q. Okay. No mention of Glen?

14 A. (No verbal response.)

15 Q. Correct?

16 A. I don't know if she mentioned Glen or not.

17 Q. Well, I'm asking about you. You made no mention of
18 Glen?

19 A. I didn't know his name at first. I wasn't sure. I
20 know him when I see him.

21 Q. You made no mention of anything about Glen or any of
22 these allegations with Glen?

23 A. I don't recall that.

24 Q. Okay. And you talked to Detective Swafford the next
25 day?

1 A. I don't remember who I talked to.

2 Q. Okay. And you tell them it had been two years?

3 MR. TOOKER: Objection, Judge. That's hearsay.

4 THE COURT: Objection sustained.

5 Q. You gave a statement to law enforcement?

6 A. Yes, I did.

7 Q. And in your statement you indicate that Minor
8 denied ---

9 MR. TOOKER: Judge, again, hearsay.

10 THE COURT: The objection is sustained regarding
11 the statement. You can ask her regarding any
12 conversations she might have had with the alleged victim.

13 Q. You had a conversation with Minor ?

14 A. Yes.

15 Q. And she denied it?

16 A. Not to me.

17 Q. Do you remember giving a statement to Detective
18 Brian Swafford?

19 A. I remember giving a statement. But I am dyslexic.
20 I don't read and write. So he filled out the -- he wrote
21 that out for me and I signed it.

22 Q. Okay. But you told him what to put down on the
23 statement?

24 A. Of what I knew.

25 Q. Okay. Okay. You didn't like Glen being around the

1 girls?

2 A. I didn't -- I don't know him. I know what I -- you
3 know, when I saw him at their house, I know what I saw.

4 Q. You didn't see anything?

5 A. (No verbal response.)

6 Q. You didn't see anything inappropriate?

7 A. When a man takes a child and sits them in his lap
8 between his legs and tickles her. Is that appropriate?

9 Q. You never said that in your statement or anything?
10 Your previous statements?

11 A. Like I said, I don't read and write. I didn't write
12 that statement.

13 Q. Okay. I understand.

14 A. I signed it.

15 Q. You didn't like Glen?

16 A. I can't make that decision on someone I don't know.

17 Q. Okay.

18 MS. JOHNSON: That's all the questions I have,
19 Your Honor.

20 THE COURT: Any redirect?

21 **REDIRECT EXAMINATION**

22 **BY MR. TOOKER:**

23 Q. Yes, ma'am. What's this about him putting her
24 between his legs?

25 A. We were sitting on the front porch and Y.B. , the

1 youngest one, come around when he come up and sit behind
2 me. And he tried to talk to her. And she said -- and she
3 wouldn't go over there and talk to him. Beth said --
4 well, Ester said, y.B. stop acting like that.

5 MS. JOHNSON: Your Honor, I'm going to object to
6 this hearsay.

7 Q. Don't say anything anybody said. We're not trying
8 to elicit that. But what did you see?

9 A. What I saw him do is he sat Minor in his lap like
10 this and proceeded to tickle her and she started squirming
11 around. And I just don't think that was appropriate.

12 Q. Okay. And you observed this with your own eyes?

13 A. Yes.

14 Q. Okay. No further questions.

15 **RECROSS EXAMINATION**

16 **BY MS. JOHNSON:**

17 Q. You never said anything to law enforcement about
18 that until today?

19 A. I don't recall saying it -- or whether I said it or
20 not to him.

21 Q. Thank you.

22 THE COURT: All right. Thank you. You can step
23 down.

24 THE WITNESS: Okay.

25 MR. TOOKER: May she be excused, sir?

1 THE COURT: Any objection to her being excused?

2 MS. JOHNSON: No, Your Honor.

3 THE COURT: You're excused, ma'am.

4 Your next witness.

5 MR. TOOKER: The state next calls Ester McCollum
6 to the stand.

7 THE COURT: All right.

8 THE CLERK: Place your left hand on the bible
9 and raise your right hand.

10 Do you solemnly swear or affirm the testimony you're
11 about to give in this case to be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 THE WITNESS: Yes, sir.

14 THE CLERK: If you would have a seat and state
15 your name for the record, please.

16 THE WITNESS: My name is Ester McCollum.

17 **ESTER MCCOLLUM,**

18 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MR. TOOKER:**

21 Q. All right. Ms. McCollum, where do you live, ma'am?

22 A. I live in Easley, South Carolina.

23 Q. Okay. And make sure you talk nice and loud into
24 that microphone so everybody can hear you; okay? Would
25 you like some water? I don't know whose that is?

- 1 THE CLERK: That's her mother's.
- 2 THE WITNESS: We've got the same germs then.
- 3 A. I live in Easley, South Carolina.
- 4 Q. Okay. And how long have you lived at the address
- 5 you live at now?
- 6 A. Probably about a month now.
- 7 Q. Where did you live before that?
- 8 A. We lived in Seneca, South Carolina.
- 9 Q. Okay. How long did you live there?
- 10 A. We lived there for about a year.
- 11 Q. Okay. Before that?
- 12 A. , also in Seneca, South Carolina.
- 13 Q. Okay. How long did you live there?
- 14 A. Lived there for about a year.
- 15 Q. And where before that?
- 16 A. I can't remember all that well.
- 17 Q. Is it safe to say you've lived in a lot of places?
- 18 A. Yes.
- 19 Q. Okay. The girls change schools a lot?
- 20 A. Yeah, sometimes. But most of the time it was the
- 21 same school.
- 22 Q. Okay. Different houses?
- 23 A. Yeah.
- 24 Q. And do you know why you've been called to testify in
- 25 this case?

- 1 A. Yes, I do.
- 2 Q. Okay. Who's the defendant over there?
- 3 A. Glen Evans.
- 4 Q. And how do you know Glen Evans?
- 5 A. I met him through John.
- 6 Q. Who is John?
- 7 A. John is my boyfriend.
- 8 Q. Boyfriend. Does John have any children?
- 9 A. Yes. He has two.
- 10 Q. All right. What are their names?
- 11 A. Minor and Y.B.
- 12 Q. Okay. How is it that Glen and John are acquainted?
- 13 A. Family friend.
- 14 Q. When was the first time you met Glen?
- 15 A. I can't exactly -- I'm not one hundred percent sure.
- 16 Q. Okay. Was it a long time ago or not so long time
- 17 ago?
- 18 A. It's been a while.
- 19 Q. Okay. And did the girls ever meet Glen?
- 20 A. Yes.
- 21 Q. When did they meet Glen?
- 22 A. Minor was probably about, I want to say five, six
- 23 years old.
- 24 Q. Okay. What about Y.B. ; how old was she?
- 25 A. She was probably about four or five.

- 1 Q. Okay. So they were little?
- 2 A. Yes.
- 3 Q. Did Glen have anything to do with the children?
- 4 A. He would come to our place and see them until we
- 5 actually started letting him take them.
- 6 Q. Okay. Where would he take them to?
- 7 A. He would take them to his house.
- 8 Q. Had you ever been to his house before?
- 9 A. Once.
- 10 Q. Had you seen it?
- 11 A. I've seen the outside of the trailer.
- 12 Q. Okay. You never went inside?
- 13 A. No.
- 14 Q. But you let them go with him to his house?
- 15 A. I've been -- well, from what I knew they were going
- 16 to be staying at his mom's.
- 17 Q. Okay. Since then you've learned that's not true?
- 18 A. Yes.
- 19 Q. Would he pick them up or would y'all drop them off?
- 20 A. He would pick them up most of the time.
- 21 Q. He would pick them up from where?
- 22 A. Our house.
- 23 Q. Your house?
- 24 A. Yes.
- 25 Q. When he picked them up, how long would they be gone

1 for?

2 A. One to two days.

3 Q. Why is it that you would let them to go his house?

4 A. Just to get out of the house, you know, on the
5 weekend. Or I had to clean the house or something that
6 weekend, or whatever.

7 Q. Okay. About how long did this go on?

8 A. Maybe two, maybe three years.

9 Q. Okay. About how old were the girls when this was
10 happening?

11 A. Seven, nine; I think Minor was. And Y.B. was
12 about seven to eight.

13 Q. Okay. So seven to nine for Minor ; seven to eight
14 for Y.B. ?

15 A. Yeah.

16 Q. How far apart in age are those two?

17 A. Minor was born in and Y.B. was born in
18 ; so it's about a year.

19 Q. Year and a half?

20 A. Year and a half.

21 Q. Okay. When was the first time that you were made
22 aware of these allegations?

23 A. We had lived on in not far
24 from my mother's. I'm not exactly sure on the year or
25 date.

- 1 Q. Okay. When you were made aware of the allegations,
2 did anything happen?
- 3 A. Yes. I had told my boyfriend about it.
- 4 Q. I'm going to stop you real quick. Don't say
5 anything you said or anything people said.
- 6 A. Okay.
- 7 Q. But did y'all contact the police?
- 8 A. No.
- 9 Q. You did not contact the police?
- 10 A. No.
- 11 Q. Did the girls deny it?
- 12 A. Yes, at first.
- 13 Q. Did this ever come back up again?
- 14 A. Yes, it came up a second time.
- 15 Q. Okay. About when was that?
- 16 A. That was probably around 2009, 2010.
- 17 Q. Okay. So 2009, 2010 it comes up again. Did y'all
18 call the police?
- 19 A. No.
- 20 Q. Okay. Did you ever call the police?
- 21 A. No.
- 22 Q. You never called the police?
- 23 A. No.
- 24 Q. Okay. With these kind of allegations, you didn't
25 think to contact law enforcement?

1 A. I was leaving it up to John to call them.

2 Q. You were going to leave it up to John?

3 A. Yeah. Because I don't really have -- I mean, I just
4 -- I was scared of what might happen.

5 Q. What were you afraid of?

6 A. I was scared DSS might step in or he might leave me.

7 Q. Okay. All right. After law enforcement got
8 involved in this case, did you cooperate?

9 A. Yes, I did.

10 Q. Did you talk to them when you were supposed to talk
11 to them?

12 A. Yes, I did.

13 Q. Okay. In terms of how Minor is, would you tell
14 the jury, have you noticed any changes in her behavior
15 from when she would go to Glen's house to now?

16 A. Use to ---

17 MS. JOHNSON: Judge, I'm going to object. I've
18 got a matter of law that I'd like to take up outside the
19 presence of the jury.

20 THE COURT: Solicitor.

21 MR. TOOKER: I'm not sure what the matter of law
22 is. I'm asking her about if she noticed any change of
23 behavior in the victim from when she was going to the
24 defendant's house and to now that she's no longer going to
25 the defendant's house.

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1 THE COURT: You may answer yes or no.

2 THE WITNESS: Yes, I do.

3 Q. Okay. Is it a change for the good?

4 A. Not really to my expectations.

5 Q. Okay. Has she been struggling?

6 A. She's just -- it's like used to she would be able to
7 talk to her dad a little bit easier; men in general. And
8 now it's just like she can't do that.

9 Q. Okay. All right. Do y'all talk in your family
10 about it much or not?

11 A. Not really.

12 Q. Okay.

13 MR. TOOKER: No further questions at this time,
14 sir.

15 THE COURT: All right. Ms. Johnson.

16 CROSS EXAMINATION

17 BY MS. JOHNSON:

18 Q. You're Ms. McCollum also? You're Ms. McCollum also?

19 A. Yes, ma'am.

20 Q. Okay. Ms. McCollum, you treat those girls as if
21 they're your own children?

22 A. Yes, ma'am.

23 Q. You love them like they're your own?

24 A. Yes, ma'am.

25 Q. Okay. Now, starting with the initial contact with

- 1 law enforcement, Brittany Roper gave you three days ---
- 2 A. She had told John that he had three days. Not me.
- 3 Q. Okay. But three days to call the police?
- 4 A. Yes, ma'am.
- 5 Q. Nobody called the police?
- 6 A. No, ma'am.
- 7 Q. Okay. I mean, you or John didn't call the police?
- 8 A. Yes, ma'am.
- 9 Q. Okay. Now, you met with Deputy Torres on April
- 10 11th. Do you remember that? The first officer?
- 11 A. Yes, ma'am.
- 12 Q. Okay. You never mentioned Glen?
- 13 A. No, he didn't.
- 14 Q. Okay. You didn't mention Glen?
- 15 A. Oh, no.
- 16 Q. Okay. You had -- and let's talk about that. You
- 17 were with Brittany Roper when she made that conversation?
- 18 A. I was not in the room when she talked to ---
- 19 Q. Were you around her?
- 20 A. When she talked to the girls?
- 21 Q. When she talked to the police?
- 22 A. Oh, no, ma'am.
- 23 Q. Okay. But had you been around her that weekend?
- 24 A. The weekend before, yes.
- 25 Q. Y'all had had an argument?

- 1 A. She had had an argument with the girls.
- 2 Q. Okay. It didn't involve you, though?
- 3 A. No.
- 4 Q. Okay. So after you speak with Deputy Torres, you
- 5 get a phone call from Detective Swafford, who's sitting at
- 6 counsel table. Do you remember that?
- 7 A. Yes.
- 8 Q. Okay. And do you remember what you told him?
- 9 MR. TOOKER: Object to hearsay, sir.
- 10 THE COURT: This is yes or no, if you can
- 11 remember what you told him?
- 12 A. Not off -- not offhand.
- 13 Q. Okay. Do you remember telling him that they never
- 14 made any accusations against Glen?
- 15 MR. TOOKER: Judge, object on hearsay again.
- 16 THE COURT: Your objection is sustained.
- 17 Q. And you had a lot of contact with Detective Swafford
- 18 throughout that period?
- 19 A. I'm pretty sure. I'm not ---
- 20 Q. You talked to them occasionally or once or twice?
- 21 A. Once or twice. It was ...
- 22 Q. Okay. And did you have to make up a game with the
- 23 children?
- 24 A. Yes, I did.
- 25 Q. Okay. And then the detective comes to your house?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And is Minor with you, as well as Y.B. ?
- 3 A. What do you mean?
- 4 Q. When you play the game?
- 5 A. Yes, ma'am.
- 6 Q. Okay. So they're together?
- 7 A. Yes, ma'am.
- 8 Q. And then they're together when you talk to the
- 9 detective?
- 10 A. No. They talked separate, actually.
- 11 Q. Okay. But they're right in the same house?
- 12 A. Yes, ma'am.
- 13 Q. Okay. And you remember making the statement, I
- 14 don't know what to believe?
- 15 MR. TOOKER: Judge, again, hearsay.
- 16 MS. JOHNSON: Judge, this is her statement that
- 17 she made. I have a right to cross examine her on her
- 18 statement.
- 19 THE COURT: Objection is overruled.
- 20 THE WITNESS: Do I answer that?
- 21 THE COURT: Yes.
- 22 A. I do not remember actually saying that.
- 23 Q. Okay. When the girls first started hanging out with
- 24 Glen, they were going to Glen's house and his mother's
- 25 house, they liked going there; didn't they?

1 A. Yes, they did.

2 Q. They really liked going there?

3 A. They did.

4 Q. They liked seeing him and his mother?

5 A. Yes, ma'am.

6 Q. Okay. They welcomed him coming to pick them up?

7 A. They did, at first.

8 Q. Okay. Thank you, Ms. McCollum.

9 A. Thank you.

10 THE COURT: Any redirect?

11 MR. TOOKER: Yes, sir.

12 **REDIRECT EXAMINATION**

13 **BY MR. TOOKER:**

14 Q. So when the girls talked to the detective, they were
15 together or they weren't together?

16 A. They were not in the same room.

17 Q. Okay. And you said you played a game with them to
18 get them to talk. What was that called?

19 A. It was called Honest Abe.

20 Q. Honest Abe?

21 A. Uh-huh (affirmative).

22 Q. Okay. And you said they liked going over there at
23 first?

24 A. Yes, sir.

25 Q. Did things change?

1 A. Yes, it did.

2 Q. Did they stop like going over there?

3 A. They did.

4 Q. Okay. No further questions.

5 THE COURT: Anything further?

6 **RECROSS EXAMINATION**

7 **BY MS. JOHNSON:**

8 Q. You never told that to the officers, that they did
9 not like going over there anymore?

10 A. No, I did not.

11 Q. Okay. Thank you.

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

13 Your next witness.

14 MR. TOOKER: May she be excused, sir?

15 THE COURT: Any objection?

16 MS. JOHNSON: No objection, Your Honor.

17 THE COURT: All right. You're excused, ma'am.

18 MR. TOOKER: The state next calls John Berry to
19 the stand, sir.

20 THE COURT: Okay. John Berry.

21 THE CLERK: If you would place your left hand on
22 the bible and raise your right hand.

23 Do you solemnly swear or affirm the testimony you're
24 about to give in this case to be the truth, the whole
25 truth and nothing but the truth, so help you God?

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1 THE WITNESS: I do.

2 THE CLERK: Thank you, sir. If you would have a
3 seat and state your name for the record, please.

4 THE WITNESS: John Berry.

5 JOHN BERRY,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. TOOKER:

9 Q. All right. Mr. Berry, where do you live, sir?

10 A. Street.

11 Q. Where is that?

12 A. Easley, South Carolina.

13 Q. Okay. How long have you lived there?

14 A. Right around three, four weeks. Not long.

15 Q. Where were you living before that?

16 A. , Seneca.

17 Q. Okay. What about before that?

18 A. , Seneca.

19 Q. What about before that?

20 A. It was , I think, or . I can't remember the
21 road name.

22 Q. Okay. Do you move around a lot?

23 A. We did for a little while.

24 Q. Okay. Do you feel like you've finally got settled?

25 A. Yes.

- 1 Q. Okay. All right. Do you know why you've been
2 called to testify here today?"
- 3 A. Yes, I do.
- 4 Q. Who is that man seated at the defense table?
- 5 A. That's Glen Evans. I know him as Glen.
- 6 Q. You know him as Glen. How do you know Glen Evans?
- 7 A. He was a friend of the family for a long time.
- 8 Q. Long time?
- 9 A. Yes.
- 10 Q. How long?
- 11 A. As far as -- as long as I can remember.
- 12 Q. Even when you were a little kid?
- 13 A. Yeah.
- 14 Q. Okay. When is it that he first started hanging
15 around your daughters; to your knowledge?
- 16 A. (No verbal response.)
- 17 Q. Would they have been little or big?
- 18 A. They was real little the first time he ever seen
19 them.
- 20 Q. Okay. Did he ever babysit them?
- 21 A. Yes, he did.
- 22 Q. When did he start babysitting them?
- 23 A. I'm not exactly sure on the ages.
- 24 Q. Okay. Is it recently or a longer time?
- 25 A. It's been several years ago.

- 1 Q. Okay. When he would babysit them, where would he
2 babysit them?
- 3 A. At -- on his property. I guess it was his or -- it
4 was his and his mom's.
- 5 Q. Okay. Did you ever go over there?
- 6 A. I've been there a couple of times.
- 7 Q. Okay. Where is it?
- 8 A. It's in or Road.
- 9 Q. Okay. Is that in Pickens County, South Carolina?
- 10 A. Yes.
- 11 Q. Okay. And over at that location, would you say it's
12 a nice place or not so nice place?
- 13 A. It was kind of about what I grew up in; junkyard. I
14 never went inside. I was always outside.
- 15 Q. But that was how you grew up?
- 16 A. Yeah.
- 17 Q. You say he's a family friend. What part of -- or
18 member of the family is he friends with?
- 19 A. He was friends with my dad, my uncle. Pretty much
20 everybody, I think.
- 21 Q. Okay. Now, when he was babysitting your daughters,
22 do you remember, do you remember if you guys would drop
23 them off or would he pick them up?
- 24 A. Normally he would come pick them up.
- 25 Q. He would pick them up. Would it be one daughter or

1 both daughters?

2 A. Both daughters at the same time.

3 Q. Okay. And how long or for what periods of time
4 would he babysit them?

5 A. Most of the time he would pick them up like on a
6 Friday evening or Saturday evening; all depending on work
7 schedules. And he would bring them home Sundays.

8 Q. Okay. Was it ever for more than the weekend?

9 A. No.

10 Q. Okay. About how long -- like how long of a time
11 period did he babysit those girls?

12 A. Somewhere around two years, I'd say. I'm not
13 exactly sure. I work a lot, so time just passes by real
14 quick.

15 Q. Okay. And were you ever made aware of these
16 allegations?

17 A. I heard about them, and I've heard more about them
18 since all of this has came up.

19 Q. Okay. Did the girls ever deny what happened to you?

20 A. Yes, they did.

21 Q. Okay. Was that recently or a long time ago?

22 A. It was a long time ago.

23 Q. Okay. After they denied it, did they ever come back
24 and make the allegations again?

25 A. They didn't actually tell me. They told my

1 girlfriend and her mother.

2 Q. Okay. And why didn't you call the police?

3 A. Because I battled DSS to get custody of them, and I
4 didn't want to put them through the DSS thing again.

5 Q. Okay. So you were afraid?

6 A. Yeah.

7 Q. Okay. Did the police get involved?

8 A. The second time, yes.

9 Q. Okay. And when they got involved, did you talk to
10 them?

11 A. I told them what I could tell them.

12 Q. And were you honest with them when you talked to
13 them?

14 A. Yes.

15 Q. All right. Do you remember, do you remember about
16 how old Minor was when she stopped going over there?

17 A. Somewhere around nine years old.

18 Q. Okay. All right. No further questions.

19 THE COURT: Yes, ma'am.

20 **CROSS EXAMINATION**

21 **BY MS. JOHNSON:**

22 Q. Mr. Berry, following up on what you said, Minor
23 admitted to lying about things at first?

24 A. Yes.

25 Q. Okay. And you never called the police?

1 A. No.

2 Q. Okay. Let's talk about your past DSS problems. You
3 and Ester have had past DSS problems; or you and Beth?

4 MR. TOOKER: Judge, I'm going to object on 403.

5 THE COURT: Your objection is overruled.

6 Q. And ---

7 THE COURT: Did you want an answer to the
8 question?

9 MS. JOHNSON: I do, Your Honor. Sorry.

10 THE COURT: All right. Go ahead.

11 Q. You've had past DSS problems -- you and Ester have
12 both had past DSS problems?

13 A. Yeah.

14 Q. Okay. DSS got involved; there was a known sex
15 offender living in your house?

16 A. Well, I was living with them.

17 Q. Okay.

18 A. But that's ---

19 Q. Okay. With your children?

20 A. That's not why the kids were taken.

21 Q. I understand. But DSS was concerned about that?

22 A. Yes.

23 Q. Okay. And Minor got removed from your custody
24 because she was running around outside naked, or without
25 clothes?

- 1 A. She had on a diaper.
- 2 Q. Okay. DSS removed her?
- 3 A. Yes.
- 4 Q. And then I don't know if DSS removed her, but they
- 5 found a cockroach in her book bag and DSS got involved
- 6 again?
- 7 A. No. That was -- they came in, done an
- 8 investigation, closed it.
- 9 Q. Okay. DSS was involved, though?
- 10 A. Yes.
- 11 Q. Okay. And when you say you move around a lot, do
- 12 you have a lot of visitors?
- 13 A. No.
- 14 Q. Okay. Do you have a younger brother that may stay
- 15 with you occasionally?
- 16 A. I have a nephew that used to stay with me every now
- 17 and then.
- 18 Q. Okay. While the children were there?
- 19 A. Sometimes.
- 20 Q. Okay. And do you and Ester watch pornographic
- 21 movies?
- 22 A. Not around them.
- 23 Q. But y'all have porn in the house?
- 24 A. Locked up in my bedroom.
- 25 Q. Okay. But there is porn in the house?

1 A. Yes.

2 Q. Okay. And the kids are in the house? Yes or no?

3 A. Yes.

4 Q. Okay. And at this time Minor had some medical
5 issues. I don't know if she still has them, but she did
6 have some medical issues; is that correct?

7 A. Seizures, yeah.

8 Q. Okay. She was on some medication?

9 A. For a little while. Then she grew out of them.

10 Q. Okay. What kind of medication was she on?

11 A. Depakote, I think, is the name of it.

12 Q. Okay. Was he also on Keppra?

13 A. Yes. She was on Keppra at one time, too.

14 Q. This went on for a while?

15 A. About two years or so.

16 Q. Okay. The girls liked going to Glen's and his
17 mother's house. They wanted to go over there?

18 A. At first.

19 Q. They would run to see him?

20 A. Yeah.

21 Q. They loved him?

22 A. (No verbal response.)

23 MS. JOHNSON: Beg the court's indulgence.

24 THE COURT: Is your statement to counsel or did

25 you ask a question that you want a response to?

1 MS. JOHNSON: I forgot what I asked, Your Honor.

2 THE COURT: You said, they loved him? Was that
3 just a statement or was it a question?

4 Q. To your knowledge, they loved him?

5 A. I'm not sure.

6 Q. They appeared to like him?

7 A. Yeah. They appeared to like him.

8 Q. You never saw anything inappropriate with him and
9 the girls?

10 A. No. I never seen anything inappropriate.

11 Q. Thank you, Mr. Berry.

12 THE COURT: Any redirect?

13 MR. TOOKER: Yes, sir.

14 **REDIRECT EXAMINATION**

15 **BY MR. TOOKER:**

16 Q. So all those DSS problems defense counsel mentioned,
17 how long ago were they?

18 A. Let's see, Minor was -- the first one Minor was
19 about two when I had them. I got custody of them, full
20 custody of them when she was four. And let's see, I think
21 she was about seven with the second one, maybe a little
22 older.

23 Q. Okay. And you got to keep custody?

24 A. Yes.

25 Q. Now, the sex offender, that was back when she was

1 two?

2 A. Yes.

3 Q. And who was that?

4 A. It was my great uncle, Clarence Avis (phonics).

5 Q. Okay. And she was two years old at the time ---

6 A. Yeah.

7 Q. --- when they lived in the house together?

8 A. Yeah. Well, she was right around two. I know

9 Y.B. was six months old when they were taken.

10 Q. Okay. Now, she mentioned that you have pornography
11 in your house?

12 A. Yes.

13 Q. Okay. Do you watch the pornography in front of your
14 children?

15 A. No.

16 Q. Have you ever seen your children watching your
17 pornography?

18 A. No.

19 Q. Okay. And then finally, she asked you whether or
20 not they liked going over there and you said at first.
21 Did it change?

22 A. Towards the end they was getting kind of where they
23 didn't care if they went or not.

24 Q. Okay. All right. No further questions, sir.

25 THE COURT: Anything further?

1 RECROSS EXAMINATION

2 BY MS. JOHNSON:

3 Q. You never told that to law enforcement about toward
4 the end that they didn't care whether they went over there
5 or not?

6 A. I wasn't really asked.

7 Q. Thank you, Mr. Berry.

8 THE COURT: All right. Thank you, sir. You may
9 step down.

10 All right. Your next witness.

11 MR. TOOKER: Yes, sir. State would next call
12 Detective Brian Swafford to the stand.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you're about to give in this case to be the
15 truth, the whole truth and nothing but the truth, so help
16 you God?

17 THE WITNESS: Yes, sir, I do.

18 THE CLERK: Thank you, sir. If you would have a
19 seat and state your name for the record, please.

20 THE WITNESS: Brian Swafford.

21 BRIAN SWAFFORD,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. TOOKER:

25 Q. That might be a little loud for you. Detective

1 Swafford, where do you work, sir?

2 A. Pickens County Sheriff's Office.

3 Q. And how long have you been so employed?

4 A. Since March 2005.

5 Q. And in what capacity are you employed by the
6 sheriff's office?

7 A. I'm a detective in the detective division.

8 Q. Okay. Currently what kind of detective work do you
9 do?

10 A. Currently I'm in property. Before that I was in
11 juvenile division from 2010 to 2012.

12 Q. Juvenile division means what?

13 A. Anything that comes in related to a juvenile, sex
14 crimes, property crimes, that a juvenile did, is forwarded
15 to the juvenile division.

16 Q. Okay. And did you investigate this case?

17 A. I did.

18 Q. Okay. How is it that a case makes its way from
19 initial responding officer to your desk for the purposes
20 of investigation?

21 A. Yes. Whenever the responding officer goes out, he
22 gets all the preliminary details that he can. And then he
23 does a report. And they basically just pass it downstairs
24 and we take it the next day when it comes -- after it
25 comes in.

- 1 Q. Okay. So you or one of the other juvenile ---
- 2 A. That's correct, yes.
- 3 Q. Okay. And in this case, it ended up on your desk?
- 4 A. That's right.
- 5 Q. So what did you do first?
- 6 A. Initially I called back the -- this Brittany Roper
- 7 and spoke to her by phone.
- 8 Q. Okay. And after you talked to her where did you go?
- 9 A. I spoke with the stepmother Ester by phone.
- 10 Q. Okay. And after you talked to them on the phone,
- 11 did you ever have occasion to talk to anyone in person?
- 12 A. I did. I spoke to Ms. McCollum, Florence McCollum,
- 13 at her residence at Circle.
- 14 Q. Okay. And who is Ms. Florence McCollum in relation
- 15 to the girls?
- 16 A. That's who they refer to as B-Nana, their
- 17 grandmother. They refer to her as grandmother.
- 18 Q. Okay. And after you talked to Ms. Florence
- 19 McCollum, where did you go?
- 20 A. I went to Pickens Middle School and met with the
- 21 guidance counselor and with Minor
- 22 Q. Okay. Now, at that point in time did Minor
- 23 disclose any abuse to you?
- 24 A. No, she did not.
- 25 Q. Okay. So what did you do next?

1 A. After speaking with them, we went to Hagood
2 Elementary and spoke with the guidance counselor there and
3 with Y.B.

4 Q. Okay. At that point in time did Y.B. disclose
5 any abuse to you?

6 A. No, she did not.

7 Q. Okay. So once that happens, what's your next step
8 and what's your thought as an investigator? How do you
9 proceed?

10 A. I was concerned because there had been, according to
11 family members, some disclosure. And you know, I was just
12 concerned that they wasn't comfortable with me yet, so I
13 went and spoke with who they refer to as mother Ester and
14 told her about my concerns and what we've done and what I
15 think may need to be done and see if she could talk to
16 them and just see if they could talk to me at home at a
17 later date if they were comfortable.

18 Q. Okay. And so what happened? What was the first
19 thing that happened with regards to the girls and this
20 investigation?

21 A. Well, a couple of days later I received a call from
22 Ester, their mother, and she said that she had played a
23 game with them and that she had -- they had come out and
24 disclosed.

25 MS. JOHNSON: Judge, I'm going to object to this

1 hearsay.

2 THE COURT: Your objection is overruled.

3 Q. You can continue, sir.

4 A. Yes. She told me that the girls had disclosed to
5 them that there was some abuse.

6 Q. Okay. And after that disclosure, what did you do
7 next?

8 A. I set up a time and met with them at their home. I
9 met with Ester and the two girls at their home, and we
10 talked about their disclosure.

11 Q. Okay. When you met with Ester and the two girls,
12 was anybody else there?

13 A. No, sir, there was not.

14 Q. Okay. When you talked to the girls about what
15 happened, what was the situation like with regards to
16 where everybody was?

17 A. Right. Initially when we all met, we were all in
18 the kitchen. I then asked the girls if they wanted their
19 mother to stay there while they talked to me, and they
20 both did. And one girl left and went to their bedroom
21 while me, the mother and one child talked at a time.

22 Q. Okay. So you talked to them each individually?

23 A. Correct.

24 Q. They weren't next to each other?

25 A. No, they were in different rooms.

1 Q. Okay. What's the purpose of the Julie Valentine
2 Center? How do you use them in the course of your
3 investigations?

4 A. It's a children's advocacy center. Anytime there's
5 any disclosure with a child we use them basically as
6 another tool or resource. And when we get things like
7 this, we send them a referral and they contact us with a
8 -- you know, I set up a forensic exam for Y.B. and
9 Minor in this one and a medical exam for Minor.

10 Q. Okay. And were the forensics performed?

11 A. They were.

12 Q. And was that Ms. Christine Carlberg we saw earlier
13 that did the forensics?

14 A. That's correct.

15 Q. And do you remember the name of the doctor that
16 performed the medical?

17 A. Dr. Mary Fran Crosswell.

18 Q. Okay. And so she -- I mean, what does a medical in
19 a case like this consist of?

20 A. Basically I think -- she'd be able to answer this
21 better than I would. But they basically just do a -- they
22 look at the victim's body and see if there's any damage or
23 anything like that.

24 Q. Okay. And they talk to the kid, too?

25 A. Yes, they do.

1 Q. Okay. And when those are done is anybody else in
2 the room with them or ---

3 A. No. No one at all.

4 Q. Okay. And after you got the forensics back and you
5 got the medical report back, what was your next step as an
6 investigator?

7 A. I then speak with the -- I tend to speak with the
8 defendant.

9 Q. Okay. And after that what did you do?

10 A. I got a warrant for the defendant.

11 Q. Okay. No further questions at this time.

12 THE COURT: Cross examination.

13 **CROSS EXAMINATION**

14 **BY MS. JOHNSON:**

15 Q. Detective Swafford, you talked with the girls on two
16 separate occasions; different places?

17 A. Correct.

18 Q. And they both told you nothing happened?

19 A. On the first occasion; correct, at school.

20 Q. Okay. So let's start from the top. You talk to
21 Brittany Roper?

22 A. Right.

23 Q. She's not here today?

24 A. Right.

25 Q. Okay. And then you go to the mom?

- 1 A. Right.
- 2 Q. Okay. Then you go back to the mom?
- 3 A. I went to the grandmother in between times, right,
- 4 then back to mom.
- 5 Q. Okay. Grandmother, mom?
- 6 A. Right.
- 7 Q. Okay. And you go back to the grandmother?
- 8 A. I think I just did the grandmother once.
- 9 Q. Okay.
- 10 A. Florence was one time.
- 11 Q. One time?
- 12 A. When I spoke to her at her residence and obtained
- 13 her statement.
- 14 Q. But you talked to the mom twice, three times?
- 15 A. That's probably -- that's safe to say, yeah, twice.
- 16 Q. Okay. And you get a statement from Florence?
- 17 A. Correct.
- 18 Q. Okay. You go to the middle school and talk to
- 19 Minor ; nothing happened?
- 20 A. Correct.
- 21 Q. Is that right?
- 22 A. That's correct.
- 23 Q. Okay. And you go to the elementary school. They
- 24 don't have cell phones or anything to your knowledge?
- 25 A. No, not to my knowledge they didn't.

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- 1 Q. Okay. And you talked with Y.B. . She wasn't
2 emotional or anything when you talked to her?
3 A. Not just -- they were nervous, I mean, which isn't
4 unusual.
5 Q. I understand. But she wasn't crying or ---
6 A. No.
7 Q. Okay. Nothing happened?
8 A. Correct.
9 Q. Okay. You go back to Beth, Mama; correct, and you
10 mention DSS?
11 A. Right. Yes.
12 Q. You want to refer to your report?
13 A. Yes. I'm familiar.
14 Q. Okay. And you also mention ---
15 MR. TOOKER: Judge, hearsay regarding anything
16 he mentioned.
17 THE COURT: Sir?
18 MR. TOOKER: Hearsay regarding anything he
19 mentioned.
20 THE COURT: Objection overruled.
21 Q. You mentioned DSS and you told them not to be scared
22 of DSS or law enforcement?
23 A. Correct.
24 Q. Okay. And throughout most of your investigation, a
25 lot of people didn't even know Glen's first -- or last

1 name?

2 A. That's correct. Well, they knew him as -- I don't

3 remember -- they just knew him as Glen. That's correct.

4 Q. Okay. And so you get a call back from Beth and she

5 says, I made up this game?

6 A. Right.

7 Q. You're not there during the game?

8 A. No.

9 Q. Okay. And you don't know how the game was played?

10 A. No.

11 Q. You don't know the rules of the game?

12 A. No.

13 Q. You don't know what was said?

14 A. I wasn't there.

15 Q. Okay. And you're summoned back to the Berrys'

16 house?

17 A. Yes. We set up a time to meet later on.

18 Q. Okay. And the children are interviewed in front of

19 their mom?

20 A. Yes.

21 Q. Okay. And mom ---

22 A. But one at a time. Mom was still -- they requested

23 mom stay in the room ---

24 Q. Mom is there ---

25 A. --- while I talked to them.

1 Q. I'm sorry. I didn't mean to interrupt you. But

2 both girls are present at the house?

3 A. Correct.

4 Q. Okay. And when you met with my client, you asked

5 him to come to the LEC?

6 A. That's correct.

7 Q. And he voluntarily went down there?

8 A. I went to his house initially. I believe I spoke,

9 if I remember right, I spoke to his mother at the

10 residence and then he wasn't there or something and he did

11 come to the LEC later on.

12 Q. On his own?

13 A. On his own.

14 Q. Okay. Thank you, Detective Swafford.

15 THE COURT: Any redirect?

16 **REDIRECT EXAMINATION**

17 **BY MR. TOOKER:**

18 Q. Can you describe that game; what was it called?

19 A. The game?

20 Q. Yeah?

21 A. I believe Honest Abe.

22 Q. Honest Abe. Okay.

23 A. Yes.

24 Q. Okay. No further questions.

25 THE COURT: Anything further?

1 MS. JOHNSON: No, Your Honor.

2 THE COURT: All right. Thank you, sir. You may
3 step down.

4 Ladies and gentlemen, I appreciate your cooperation.
5 We've made it to lunch time. We're going to break until
6 two thirty. Please do not discuss the case nor allow
7 anyone to discuss it with you or in your presence.

8 When you return, Mr. Roach, I appoint you to be the
9 foreperson of the jury. If you'll take the foreperson's
10 seat there in the first seat over here. As the
11 foreperson, you'll be the spokesperson for the jury from
12 this point and preside over the jury deliberations and
13 complete the verdict form at the end of the case. Do you
14 understand?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: All right. Very good. We'll see
17 y'all back at two thirty.

18 (WHEREUPON, the jury exited the open court at
19 approximately 1:10 p.m. for a lunch break.)

20 THE COURT: Do y'all have anything that we need
21 to talk about before we leave for lunch?

22 MR. TOOKER: Nothing from the state, sir.

23 MS. JOHNSON: Nothing from the defendant.

24 THE COURT: All right. You indicated that your
25 next witnesses will be here at two thirty or do you have

1 some others before calling them?

2 MR. TOOKER: No. Those will be the last two.
3 They'll be here at two thirty. I'll intend to call our
4 medical doctor first. And after I call the medical
5 doctor, I would propose to call Shauna Galloway-Williams,
6 who is the person that we intend to proffer as an expert.

7 THE COURT: All right. Then we'll some hearing
8 before the jury hears her ---

9 MR. TOOKER: Yes, sir.

10 THE COURT: Very good. We'll have everybody
11 back at two thirty.

12 MR. TOOKER: Thank you, sir.

13 MS. JOHNSON: Thank you, Your Honor.

14 (WHEREUPON, the court stood at recess for a lunch
15 break.)

16 MR. TOOKER: Yes, sir, Your Honor, before we
17 bring the jury back and before we begin with the state's
18 last two witnesses, I had something I wanted to address
19 with Your Honor regarding the testimony of the last
20 State's -- second to last witness, Mr. John Berry. On
21 cross examination Ms. Johnson inquired of him as to
22 whether or not there had been any DSS involvement with his
23 kids and whether they had been taken. And one of the
24 questions she asked him he admitted, yes, there had. They
25 had been removed from the home. One of the subsequent

1 questions she asked was -- and if I remember correctly, I
2 objected under 403. She then asked the question as to
3 whether or not one of the reasons the children had been
4 taken at that point in time, when they were two or three
5 years old, because a sex offender lived in the home.

6 Now, in pre-trial motions, one of the things that we
7 addressed with Your Honor was the potential for third-
8 party guilt evidence. And I believe what we had talked
9 about was that if anybody intended to introduce third-
10 party guilt evidence, well then at that point we would
11 excuse the jury and have a hearing outside their presence
12 so that the admissibility of that evidence, you know, it
13 could be determined by Your Honor.

14 Now, that bell's rung. And on cross examination
15 [sic] I asked the witness to explain his answer because I
16 thought he could. But at this point, I think -- while I
17 think that line of questioning was improper, I would just
18 request of Your Honor a limiting instructing for Ms.
19 Johnson so that that information is not brought up again,
20 particularly in close, because I believe -- I don't
21 believe it's relevant as to whether or not the defendant
22 molested these children. And I certainly believe that
23 under 403 any probative value is substantially outweighed
24 by its potential for unfair prejudice. And if Your Honor
25 wants to hear with regards to the case law on third-party

1 guilt, I have that information in hand, as well.

2 THE COURT: All right. Ms. Johnson?

3 MS. JOHNSON: Judge, my understanding of your
4 ruling was that I was not going to go into the father's
5 prior conviction and I did not. But I needed to go into
6 the DSS issues. I mean, that was fodder for cross
7 examination, Your Honor. It's completely probative,
8 relevant to -- you know, DSS has been brought out by the
9 prosecution. Completely relevant to this case. Is that
10 my entire theory? Absolutely not.

11 THE COURT: Well, the question, the Solicitor
12 asked me to limit you in argument anything concerning a
13 sex offender being in the household when the children were
14 two years old; unless you have some evidence that they
15 were in the household when the children were between the
16 ages of seven and eleven or twelve.

17 MS. JOHNSON: I don't, Your Honor, but, you
18 know, my understanding of the testimony was that he was a
19 family friend -- or a family member. Excuse me. A great
20 uncle. So he could have been around. I mean, I ...

21 THE COURT: And that's where the third-party
22 guilt prohibition comes in. It's speculating without any
23 proof of a third-party guilt.

24 All right. The state asked the witness a question --
25 he elicited from the witness that the reason he didn't

1 tell DSS about them, that he was concerned because he'd
2 had DSS problems and didn't want to involve DSS in his
3 family life. He wanted to be through with DSS. That
4 opened the door for the defense to probe into the nature
5 of his problems with DSS that caused him to have concern
6 with DSS. So, therefore, the general area of the
7 questioning is proper. It is proper direct examination
8 and a proper cross examination for the response to
9 information you elicited on the state's direct
10 examination. The whole question regarding a sex offender
11 in the household, he responded yes, but the children were
12 two years old.

13 Anything beyond that doesn't seem to be relevant at
14 all and I'm not sure why we're wasting time talking about
15 it at this time. We're beyond that point in the trial.
16 If there is a question that's improper then there must be
17 an objection that's made. But to go back to yesterday
18 when someone else was questioning and want me to tell the
19 jury something about it today, or earlier this morning and
20 tell them about it today, I don't see the point in dealing
21 with that, really.

22 MR. TOOKER: Yes, sir, Your Honor. And I'm not
23 requesting of Your Honor a curative instruction --
24 instruction for the jury. I'm merely requesting that the
25 issue of third-party guilt not be one that can be argued

1 in close.

2 THE COURT: Yeah. Well, the jury and the -- we
3 need to get through with the trial before we deal with
4 closing arguments.

5 MR. TOOKER: Yes, sir.

6 THE COURT: What should or shouldn't be argued
7 in closing. Let's just press on.

8 MR. TOOKER: Yes, sir.

9 THE COURT: At some point we'll be at the end,
10 including closing and deliberations.

11 MR. TOOKER: Okay. Then it would be the state's
12 intent to next call Ms. Shauna Galloway-Williams and
13 proffer her testimony for Your Honor.

14 THE COURT: All right. And she is the ---

15 MR. TOOKER: She's the director of the Julie
16 Valentine Center and the witness the state would proffer
17 as an expert.

18 THE COURT: And that's the witness you object
19 to?

20 MS. JOHNSON: Yes, Your Honor.

21 THE COURT: All right. Very good. Let's roll.

22 By the way, in the advance sheets today there's a
23 case that addresses this issue involving delayed reporting
24 witnesses and what they can testify to, and I guess to
25 some extent whether it's proper to qualify them as an

1 expert, expert witness. And that's the case of State v.
2 Arthur Smith. It's the Opinion heard -- Number 5283 heard
3 February 4th, filed December 17th, 2014. So it's fresh
4 off the press. And the view is the same -- some of the
5 same issues that have been raised in this case.

6 MR. TOOKER: May I inquire to Your Honor as to
7 what the Court's ruling was on that case?

8 THE COURT: They affirmed Judge Roger Young in a
9 case out of Beaufort County where a person was convicted
10 of CSC in the first degree. And Judge Young, during the
11 course of the trial, admitted testimony of a forensic
12 interviewer regarding Smith's identity. The Court, the
13 Appellate Court found that that was in error because the
14 testimony being limited to time and place, but it wasn't
15 reversible error due to it being cumulative to other
16 testimony as well as no objection.

17 And he allowed the state's expert to testify
18 regarding the relationship between the length of delay and
19 disclosure of sexual abuse and the credibility of the
20 disclosure. The Appellate Court found that the testimony
21 regarding the credibility of the disclosure was a proper
22 response to a question on cross examination and that the
23 witness who spoke about that credibility of disclosure
24 qualified their response, or their answer.

25 Of course, I think the dissent in that by John

1 Geathers was on point, because he, he said it allowed the
2 state through a back door to having that witness get into.
3 I don't think delayed disclosure have any bearing on the
4 credibility of witnesses. The dissent disagreed and
5 thought that that made it reversible. But it just
6 reviewed the whole what is -- what can be testified to,
7 including an expert on the issue of delay and disclosure.
8 That witness who testified was qualified as an expert in
9 the field of sexual deviancy, I think they called it. It
10 was a sexual deviant expert who provided testimony on
11 delayed disclosure.

12 It's fresh off the press, but it's a Court of Appeals
13 Opinion. All right. Are we ready?

14 MR. TOOKER: Yes, sir.

15 THE COURT: Okay.

16 MR. TOOKER: The state would call Shauna
17 Galloway-Williams to the stand, sir.

18 THE COURT: Okay.

19 THE CLERK: Place your left hand on the bible
20 and raise your right hand.

21 Do you solemnly swear or affirm the testimony you're
22 about to give in this case to be the truth, the whole
23 truth and nothing but the truth, so help you God?

24 THE WITNESS: Yes, I do.

25 THE CLERK: Thank you. If you would have a seat

1 and state your name for the record, please.

2 THE WITNESS: Shauna Galloway-Williams.

3 **IN-CAMERA TESTIMONY**

4 **SHAUNA GALLOWAY-WILLIAMS,**

5 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

6 **DIRECT EXAMINATION**

7 **BY MR. TOOKER:**

8 Q. All right. Ms. Galloway-Williams, where do you
9 work?

10 A. I'm the Executive Director of the Julie Valentine
11 Center.

12 Q. And what are your duties there?

13 A. As Executive Director I'm responsible for all of the
14 administrative responsibilities at the center and the
15 fiscal responsibilities. In addition to that, I still
16 provide some clinical services, so I work directly with
17 the counselors and forensic interviewers. I conduct
18 forensic interviews, as well as providing education in the
19 community, training and groups for non-offending care
20 givers.

21 Q. And you do this at the Julie Valentine Center?

22 A. I do.

23 Q. What is the Julie Valentine Center?

24 A. We are the child abuse and sexual assault recovery
25 center.

- 1 Q. What area do you serve?
- 2 A. We serve Greenville and Pickens Counties; the
- 3 Thirteenth Circuit.
- 4 Q. And what's your title there?
- 5 A. Executive Director.
- 6 Q. What's your educational background?
- 7 A. I have a bachelor's degree in psychology and a
- 8 master's in counseling. I'm also licensed as a
- 9 professional counselor in the state of South Carolina.
- 10 Q. And where did you go to school to get those degrees?
- 11 A. My bachelor's degree is from Winthrop University and
- 12 my master's is from Clemson.
- 13 Q. Okay. And in what areas did you study at those
- 14 schools? I think you said, but I ...
- 15 A. My bachelor's degree is in psychology and my
- 16 master's is in counseling.
- 17 Q. And do you have any kind of specialized training?
- 18 A. The majority of my training has been in child abuse,
- 19 specifically related to forensic interviewing, child
- 20 sexual abuse, development, and most of it related, like I
- 21 said, to the field of child maltreatment.
- 22 Q. Okay. And what kind of training in specific do you
- 23 have with regards to counseling sexually abused children
- 24 or sexually abused adults?
- 25 A. I have over a hundred and fifty hours of skills-

1 based training in forensic interviewing, which involves
2 the dynamics of child sexual abuse or child maltreatment.
3 It involves development, child development, talking with
4 children, addressing working with their care givers;
5 anything related to those issues.

6 Q. Okay. And do you hold any professional licenses?

7 A. I'm licensed as a professional counselor in South
8 Carolina.

9 Q. Okay. And how many years have you been counseling
10 kids and adults that are involved in sexual abuse?

11 A. Overall I've worked in the field of mental health
12 for eighteen years. I've been working specifically with
13 children and adults for thirteen years.

14 Q. Okay.

15 A. I mean children who've been sexually abused or where
16 there are allegations of abuse or neglect, for thirteen
17 years.

18 Q. Okay. I was about to ask what types of people do
19 you counsel?

20 A. Well, most of my work has been working with children
21 and adults where there has either been a mental health
22 condition or some suspicion or allegation of abuse or
23 neglect.

24 Q. Okay. I guess in what circumstances do people come
25 to you or to people at your organization, but you in

1 particular, in need of services?

2 A. At the Julie Valentine Center, most individuals that
3 come to us have been referred by the Department of Social
4 Services or law enforcement if there's been an allegation
5 of abuse or neglect. For our adult services, generally
6 they come to us for counseling to seek help for previous
7 abuse that they may have experienced.

8 Q. Okay. And do you provide any professional training
9 or do you teach any others in your field?

10 A. I do. I'm an adjunct faculty member at the USC
11 Upstate Child Advocacy Studies Program. I teach a course
12 in child maltreatment. I also provide training in
13 mandated reporting, dynamics of child sexual abuse. Most
14 recently, I've worked with the National Child Protection
15 Training Center in training the Greenville County School
16 Administration in recognizing and responding to child
17 sexual abuse within the educational setting.

18 Q. Have you ever testified in court before?

19 A. I have.

20 Q. How many times have you testified in Court?

21 A. I've been qualified in General Sessions twenty-four
22 times.

23 Q. When you say qualified, do you mean qualified as an
24 expert?

25 A. Yes.

1 Q. Okay. And what field are you traditionally
2 qualified as an expert?

3 A. Child abuse dynamics.

4 Q. Okay. And have you ever testified as an expert in
5 other courts in the state?

6 A. No.

7 Q. So twenty-four times you've been qualified as an
8 expert in the field of child abuse dynamics?

9 A. Or something similar to that, counseling.

10 Q. Child abuse dynamics, disclosure?

11 A. Yes.

12 Q. Okay.

13 MR. TOOKER: At this point, Your Honor, the
14 state would request that the witness be qualified as an
15 expert in the field of child abuse, disclosure and
16 dynamics.

17 THE COURT: Ms. Johnson?

18 MS. JOHNSON: Judge, just a general objection to
19 her being qualified as an expert, but also to her entire
20 testimony.

21 THE COURT: Do you have any questions that you
22 -- voir dire of the witness on the issue of her
23 qualifications?

24 MS. JOHNSON: I don't, Your Honor.

25 THE COURT: All right. I find that she is

1 qualified in the area of child abuse dynamics. On the --
2 of course, as I have said a little earlier, the other
3 case, the one that came out today, that witness was
4 qualified in the area of sexual abuse deviancy. So I want
5 to pose a few questions to the witness.

6 You said you have been qualified in various -- as an
7 expert twenty-four times. How many times has it been
8 called different thing, what you were qualified in?

9 THE WITNESS: Well, I've been previously
10 qualified as a forensic interviewer, prior to some of the
11 case law changes. I also have been qualified as, I guess
12 as a counselor in -- child and adolescent counselor. It's
13 been a varying -- there have been a couple of different
14 versions, but it's all been related to child abuse
15 dynamics and related to the area of working with
16 allegations of abuse and neglect.

17 THE COURT: What is your education, training
18 and/or experience on the issue of delayed reporting of
19 abuse?

20 THE WITNESS: That's a core part of all of the
21 training that I have been through, related to forensic
22 interviewing and the dynamics of child sexual abuse.
23 Delayed reporting is a core factor in all of that because
24 the vast majority of children don't report right away.

25 THE COURT: Any further questions by the state?

1 MR. TOOKER: With regards to her testimony, the
2 state would like to proffer ---

3 THE COURT: Any further questions of the
4 witness?

5 MR. TOOKER: Yes, sir.

6 THE COURT: Okay.

7 **DIRECT EXAMINATION CONTINUED**

8 **BY MR. TOOKER:**

9 Q. So did you have any involvement with this case in
10 particular?

11 A. No.

12 Q. You did not. Did you counsel these children at all
13 or do a forensic interview?

14 A. No.

15 Q. Okay. Have you spoken to the victims or their
16 family?

17 A. No.

18 Q. Okay. What do the terms delayed disclosure and
19 delayed reporting mean?

20 A. In the field of child maltreatment, delayed
21 disclosure refers to a child not disclosing right after an
22 abuse act has occurred. That could be days, weeks,
23 months, years between the time that the incident occurred
24 and when the child makes an outcry or a disclosure.

25 Q. Okay. In your experience as an expert in the field

1 of sexual abuse dynamics, how common is delayed reporting
2 among victims of childhood sexual abuse?

3 A. It's much more common that children delay disclosure
4 than to report right away. The vast majority of children
5 do delay disclosure for multiple reasons.

6 Q. Okay. Have there been any sociological or
7 scientific studies regarding delayed disclosure in your
8 field?

9 A. Yeah. There are a number of studies that support
10 that many children don't report right away, that they do
11 delay disclosure. And there's a number of studies that
12 are part of our training that reflect that.

13 Q. Okay. And so you say they reflect that. But what
14 have those studies indicated?

15 A. Well, they indicate that most children don't tell
16 right away. As many as, you know, half or more may not
17 tell right after something occurs. And depending on which
18 study you're looking at, almost all of them indicate that
19 children don't tell right away.

20 Q. Okay. What factors commonly play a role in delayed
21 reporting or delayed disclosure?

22 A. Well, one of the main reasons that children don't
23 tell right away is that they're often abused by someone
24 that they know, that they love, and that they trust.
25 Someone that is known to their family. And those

1 relationship dynamics often have an impact on whether a
2 child will tell right away. Children may have been
3 threatened. They may have been threatened directly or
4 indirectly not to tell. They may be fearful about what
5 will happen to them or the other members of their family
6 or even the person that is alleged to have committed the
7 acts and they may fear what will happen to them. Young
8 children often don't have the words to describe what
9 happened to them. Depending on the age of the child, they
10 may not really understand what's happened and so they may
11 not tell right away. There's also a lot of fear and shame
12 associated with sexual abuse. And so children, even
13 though they're not responsible for what happened may feel
14 some responsibility. And often will not tell because of
15 that. They're ashamed or feel as if they had some role to
16 play in what happened.

17 Q. Okay. And what you just testified to, is that based
18 on these studies or your personal experience as a
19 counselor and an interviewer or some of both?

20 A. It's based on research and studies and also my
21 personal experience in talking with children and
22 conducting interviews and counseling. But it is also
23 common knowledge in our field and there is research to
24 back that up.

25 Q. Okay. And you say that you've -- well, it's

1 something you've experienced in counseling kids. How many
2 kids have you counseled in your career, do you think?

3 A. I have worked with more than a thousand children and
4 families, conducted interviews with probably eight
5 hundred, eighty hundred fifty children.

6 Q. Okay. And what you have testified to is consistent
7 with that experience?

8 A. Yes.

9 Q. Okay. Is disclosure ever a process?

10 A. Disclosure is almost always a process. We don't
11 generally expect the child when they do tell, that they're
12 going to tell every detail about what's happened to them
13 right away. We know that many children will tell a little
14 bit if questioned. And if they're comfortable and feel
15 safe to tell, they may tell more. Sometimes it depends on
16 who's asking the questions and what questions are asked of
17 them whether they tell everything. Sometimes children --
18 what we want to know or what investigators want to know or
19 what parents want to know, is not the same thing that a
20 child would think that we would want to know when you're
21 asking them about an abuse scenario or a particular case.

22 Q. Okay. Does recanting ever play a part in that
23 disclosure process?

24 A. So recanting or taking back a statement is something
25 that is also -- we anticipate that with children because,

1 again, children are often abused by someone that they
2 know, they love, and that is part of their environment.
3 Those kind of things often set up a scenario where they
4 may be at high risk to recant or to take back part of
5 their statement. They may have been influenced by others
6 to take back their statement. They make take their
7 statement back or change part of their statement because
8 they see that things that were threatened actually happen.
9 You know, sometimes children are told that if they tell
10 they'll be removed from their family or their family will
11 be, you know, ripped apart. And sometimes that happens.
12 And that may sometimes influence a child's recantation.

13 Q. Okay.

14 MR. TOOKER: No further questions at this time,
15 sir.

16 THE COURT: Any further questions, Ms. Johnson?

17 MS. JOHNSON: Judge, not at this time. But I do
18 want to renew my objection. Her testimony is nothing but
19 backdoor bolstering, vouching for the credibility of these
20 children for this trial. She has nothing to aid the trier
21 of fact. Her testimony has absolutely nothing to aid the
22 trier of fact. They're deciding whether or not these
23 children were truthful.

24 THE COURT: Well, of course, I didn't hear any
25 questions or responses that would call or seek to have the

1 witness vouch for the victim's veracity or any comment
2 regarding her belief regarding the witness's credibility.
3 The area in which the state seeks to have the witness
4 admitted as an expert witness is an area of recognized
5 expertise in the -- by the courts in the state of South
6 Carolina and throughout the United States. And she is
7 qualified as an expert in the field of -- tell me that
8 field again.

9 MR. TOOKER: Child abuse disclosure dynamics.

10 THE COURT: Child abuse evaluation and
11 disclosure, including dynamics. Child abuse dynamics
12 include testimony regarding delayed disclosure and how
13 that is part of the dynamic. All of this is governed by
14 Rule 702 of the Rules of Evidence, which states that a
15 scientific, technical or other specialized knowledge would
16 assist the trier of fact to understand the evidence or to
17 determine a fact at issue. A witness qualified as an
18 expert by knowledge, skill, experience, training, or
19 education may testify thereto in the form of an opinion or
20 otherwise.

21 The Courts have further developed this issue as to
22 the role of the judge as gatekeeper in determining whether
23 this testimony should be admitted; and in the case of
24 State v. Callison and any number of cases since that time,
25 to included one of the most recent cases, Graves v. CAS.

1 I think CAS Medical. The court is charged with the
2 responsibility of not only determining the qualifications
3 of the witness, but also the reliability of the
4 anticipated testimony based on the -- based on evaluating
5 the means through which the witness has come to form the
6 opinion and the general reliability of the testimony
7 offered. I find that based on this witness's training and
8 experience, her familiarity with the various studies in
9 the area of child abuse delayed disclosure, her having
10 previously been qualified with regard to various aspects
11 of child abuse, some twenty-four times, that she is
12 qualified as an expert in this case and can offer the
13 opinions in the general areas that we've reviewed thus
14 far.

15 MR. TOOKER: Thank you, sir.

16 THE COURT: All right. Okay. You can step down
17 -- was she called already?

18 MR. TOOKER: Well, she'll be my next witness.

19 THE COURT: Yeah. We don't have the jury in
20 yet. She can step down. I'll call them in.

21 Okay. We're going to take like a two-minute break
22 right quick and then we'll start in a couple of minutes.

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

25 THE COURT: And we can bring the jury.

1 THE BAILIFF: Yes, sir.

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

4 THE COURT: All right. Welcome back. Mr.
5 Foreman, how's the jury doing?

6 THE FOREMAN: Good.

7 THE COURT: Very good. All right. We'll
8 proceed with the next witness then. Assistant Solicitor.

9 MR. TOOKER: Thank you, sir. The state would
10 next call Dr. Mary Fran Crosswell.

11 THE COURT: All right. Dr. Crosswell.

12 THE CLERK: Place your left hand on the bible
13 and raise your right hand.

14 Do you solemnly swear or affirm the testimony you're
15 about to give in this case to be the truth, the whole
16 truth and nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you, ma'am. If you would have
19 a seat and state your name for the record, please.

20 THE WITNESS: Mary Fran Crosswell.

21 MARY FRAN CROSSWELL, M.D.,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. TOOKER:

25 Q. All right. Dr. Crosswell, what kind of doctor are

1 you?

2 A. I am a child abuse pediatrician.

3 Q. Okay. What do you have to do to become a child
4 abuse pediatrician?

5 A. I completed medical school, completed a pediatric
6 residency. I am Board Certified in General Pediatrics and
7 then was eligible to sit for the Child Abuse Pediatric
8 Boards. So that's the extent.

9 Q. Okay. So what does a child abuse pediatrician do
10 and what are your duties?

11 A. A child abuse pediatrician evaluates children when
12 there's concerns for some form of child maltreatment.

13 Q. Okay. How many kids do you see a year?

14 A. I would estimate roughly two hundred or more kids a
15 year.

16 Q. Okay. And how long have you been doing this?

17 A. I have been employed in this current role since
18 2006, so a little over eight years.

19 Q. Okay. So in eight years how many kids do you think
20 you've seen for child abuse issues?

21 A. I would say twelve to fourteen hundred, roughly.

22 Q. Okay. Now, most of those kids you see, are they
23 there for physical abuse or some form of sexual abuse or
24 what kind of abuse are we talking about?

25 A. I would say the majority of the kids that are

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1 referred to me for evaluation are for sexual abuse, but I
2 see the full spectrum of child maltreatment.

3 Q. Okay. So the majority of that twelve to fourteen
4 hundred have been for sexual abuse?

5 A. Correct.

6 Q. Who is your employer?

7 A. The Greenville Health System.

8 Q. Okay. And is that who you've worked for this whole
9 time or have you worked for anybody else?

10 A. No, that is who has been my employer.

11 Q. Okay. Well, where did you go to medical school?

12 A. I graduated from the University of Louisville School
13 of Medicine in Louisville, Kentucky.

14 Q. Are you from Kentucky?

15 A. No.

16 Q. Okay. Where did you go to undergrad?

17 A. I graduated from Wake Forest University.

18 Q. Any other training or any other educational
19 background that we need to know about?

20 A. No.

21 Q. Did you do anything in this case?

22 A. Yes.

23 Q. All right. So in this case what party did you have
24 communications with, who did you talk to?

25 A. My patient was referred by the Pickens County

1 Sheriff's Office for evaluation of sexual abuse. So they
2 provided their report for review. She had already had a
3 forensic interview and so some very brief results were
4 provided to me about what type disclosure was made during
5 the interview.

6 Q. Okay. What was her name?

7 A. Minor

8 Q. When you talked to her and saw her, who brought her
9 to see you?

10 A. Her stepmother, Ester McCollum.

11 Q. Okay. And where is it that you get to see somebody
12 in a case like this?

13 A. I see outpatients at the Julie Valentine Center,
14 which is a child advocacy center.

15 Q. Okay. Do you have an examining room there?

16 A. Yes. The hospital contracts with the Julie
17 Valentine Center to allow me to perform my medical
18 evaluations there.

19 Q. Okay. And what does your medical evaluation in a
20 case like this consist of?

21 A. So we have a child life specialists who greets the
22 child and her care giver, brings them back to the exam
23 room and allows the child to go through the entire medical
24 evaluation on a doll so that she understands what is going
25 to happen during the medical exam. Then I take a full

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1 medical history from the care giver, which in this case
2 was Minor stepmother. And then I take additional
3 history from the child independently to help guide my
4 evaluation, my examination and decision-making. Next,
5 I'll perform a complete physical exam, head to toe. The
6 genital portion, I use a piece of medical equipment called
7 a culpascope, which for my purposes is a light source, a
8 magnification system, and ability to photo document any
9 pertinent findings. After that is complete, I will make
10 any recommendations about any additional studies that need
11 to be done or any recommendations for treatment.

12 Q. Okay. You said that you talk to the patient
13 individually?

14 A. Yes.

15 Q. Is the parent there when you talk to them or is the
16 parent not there?

17 A. No, the parent is not there.

18 Q. Okay. So when you talk to the patient is anybody
19 there?

20 A. My child life specialist remains in the room with
21 me.

22 Q. Okay. And when you talk to the patient are there
23 certain things that you need to ascertain for the purposes
24 of medical diagnosis?

25 A. Yes.

1 Q. What kind of things do you need to know for the
2 purposes of a medical diagnosis?

3 A. I need to understand the type and nature of contact
4 that occurred during the abuse so that I understand what
5 types of findings I might expect to see on her physical
6 exam or his physical exam. I also need to know what type
7 of risk factors there are for any sexually transmitted
8 infections.

9 Q. Okay. What do you mean by a risk factor for
10 sexually transmitted infections?

11 A. There are certain types of contact that occur during
12 sexual abuse that can put a child at risk for acquiring a
13 sexually transmitted infection such as genital to genital
14 contact or oral to genital contact, those will put a child
15 at risk for sexually transmitted infections and I would
16 need to test accordingly.

17 Q. So in this particular case for the purposes of a
18 medical diagnosis, did you need to know whether or not the
19 allegations consisted of oral to genital contact?

20 A. Yes, I did.

21 Q. Okay. And what was revealed to you?

22 A. Minor did disclose that there was oral to genital
23 contact.

24 Q. Okay. And is it necessary for you to properly
25 diagnose and treat a patient in circumstances like this to

1 know whether or not there was any kind of bodily fluids
2 exposed?

3 A. Well, contact with bodily fluids does increase the
4 risk of acquiring a sexually transmitted infection. So it
5 is an important piece of information to have, as well.

6 Q. Okay. And did you do that in this case?

7 A. In this particular case she offered that information
8 without me asking it.

9 Q. Okay. So there was exposure to bodily fluids?

10 A. Yes, there was.

11 Q. Okay. As a result of the type of contact that was
12 conveyed to you and the exposure to bodily fluids, what do
13 you have to do to make sure the child is safe and healthy?

14 A. Again, part of the physical exam is just making sure
15 that there was no evidence of injury, but in addition it
16 is testing for specific sexually transmitted infections
17 that she could be placed at risk for.

18 Q. Okay. Did she have any sexually transmitted
19 infections?

20 A. No. The testing that I performed on her did come
21 back negative.

22 Q. Okay. And you mentioned that you used a machine
23 called a colposcope?

24 A. A culpascope.

25 Q. A culpascope?

1 A. Correct.

2 Q. Is that an invasive instrument?

3 A. The way that I use a culpascope, it is not an
4 invasive instrument. It is just, again, a magnification
5 system and a bright light source that allows me to see the
6 genital area in greater detail.

7 Q. Okay. So -- and I beg your pardon for being crude,
8 but is it like in a gynecological exam where the patient's
9 feet have to be elevated and spread so that you can
10 examine that area?

11 A. That is correct. The patient -- we use a
12 gynecologic table so that the child does have her legs in
13 stirrups. And I, with gloved hands use -- you know,
14 spread the tissues apart so that I'm able to visualize the
15 deeper tissues underneath.

16 Q. Okay. And did you see any kind of injury? Was
17 there any injury to her vaginal area?

18 A. There was not any evidence of injury on my physical
19 exam.

20 Q. Okay. And what does that mean to you as somebody
21 examining a child in a case like this?

22 A. It is very uncommon actually to find physical
23 findings as a result of sexual abuse. The medical
24 literature supports that eighty-five to ninety percent of
25 sexual abuse exams do not have any specific findings of

1 abuse. That can be a result of several different factors.

2 The abuse may not cause an injury in the first place. If
3 it did cause an injury, the injuries in this area of the
4 body and in the type of tissue in this part of the body
5 heal very rapidly and can heal without any signs of
6 scarring or evidence of that injury.

7 Q. Okay. In a case where you've got allegations of
8 merely oral to genital contact, would you anticipate
9 findings of injury?

10 A. I would not expect to see evidence of any injury,
11 especially when there's been time elapsed since the abuse
12 was alleged to have occurred.

13 Q. Okay. Is it at all important for you, for the
14 purposes of medical diagnosis and treatment, to ascertain
15 whether or not the abuse was like an isolated incident or
16 if it were a recurring event?

17 A. Well, I think it's important for a couple of
18 different reasons, just that the risks placed for injury
19 because of the repetitive nature. Also for the risk for
20 acquiring a sexually transmitted infection.

21 Q. Okay. And did the victim indicate to you in this
22 case whether or not it was a one-time thing or a repeated
23 thing?

24 A. It was a repeated thing.

25 Q. Okay. All right. Is there anything else you did

1 with Minor that you haven't testified to, to the
2 jury? Any other diagnosis or any other procedures you
3 performed?

4 A. Not that I can recollect.

5 Q. Okay.

6 MR. TOOKER: No further questions at this time,
7 sir.

8 **CROSS EXAMINATION**

9 **BY MS. JOHNSON:**

10 Q. Dr. Crosswell, actually it was a -- happened three
11 times. It was not a repeated thing, as you note in your
12 report?

13 A. Well, I think three times is more than an isolated
14 occasion.

15 Q. But it's not bam, bam, bam, every day. It's three
16 times?

17 A. She described it occurring between the ages of seven
18 and nine. And I didn't actually get an actual number.

19 Q. You had access to the reports?

20 A. I did.

21 Q. Okay. And from the ... Okay. So you were referred
22 by law enforcement?

23 A. Minor was referred by law enforcement.

24 Q. Okay. And Beth, the mother, brought her to the
25 Julie Valentine Center with the father to fill out the

- 1 pre-questionnaire or did both parents bring her to the....
- 2 A. From my documentation in my medical records, I have
- 3 that Ester McCollum, her stepmother, brought her to the
- 4 appointment, but that her father had filled out the
- 5 paperwork on a previous date.
- 6 Q. Okay. And you got a general medical history before
- 7 doing anything, before examining her?
- 8 A. I did.
- 9 Q. There were no complaints of any problems in the
- 10 past, present?
- 11 A. Could you be more specific?
- 12 Q. Problems with her genitalia?
- 13 A. There were no problems reported about her genitalia.
- 14 Q. Okay. No complaints of pain in the past?
- 15 A. Not that was described to me.
- 16 Q. Okay. No indication of any mouth problems, any
- 17 mouth diseases, sores in the past?
- 18 A. No.
- 19 Q. No indication of any yeast infections or any
- 20 infections or no past reports of that?
- 21 A. Not that was reported to me.
- 22 Q. Okay. Her hymen was intact?
- 23 A. Her hymen -- we don't use that terminology. Her
- 24 hymen had smooth regular borders and appeared to be normal
- 25 in appearance.

1 Q. Okay. And no notches?

2 A. No notches.

3 Q. Okay. And you also talked about her medical
4 history?

5 A. Yes.

6 Q. And you gleaned that she had seizures?

7 A. Yes.

8 Q. And that she had been on medications?

9 A. She was on Keppra at the time of the evaluation for
10 her seizures.

11 Q. What kind of medicine is Keppra?

12 A. It's an anti-epileptic or anti-seizure medication.

13 Q. Okay. And what part of the body does that work on?

14 A. I mean, it affects the brain because that's where
15 seizures originate from.

16 Q. Okay. I understand. Did you go into any discussion
17 about if she'd been on any other kind of medicine?

18 A. I don't think I had gone through every medicine that
19 she had been through before; mainly what medicine she was
20 on at the time of the evaluation. And if she had had any
21 other previous medical conditions that would have required
22 significant medication.

23 Q. Okay. You don't know what was said before coming to
24 see you?

25 A. I never know what's been said before coming to see

1 me.

2 Q. Okay. Thank you, Dr. Crosswell.

3 THE COURT: Anything further?

4 MR. TOOKER: Just briefly.

5 **REDIRECT EXAMINATION**

6 **BY MR. TOOKER:**

7 Q. With regards to the victim, you say you don't use
8 the word normal hymen anymore, but ---

9 A. I don't use hymen intact because that's not a
10 medical description of any accuracy.

11 Q. Okay. But with that being said, would you
12 anticipate finding injury with these kind of allegations?

13 A. Not with the allegations that were made in this
14 case.

15 Q. Okay. And with regards to seizures, is Keppra a
16 medication that's traditionally prescribed?

17 A. Yes, it's a very common medication used to treat
18 seizures.

19 Q. Okay. Does it make children make up allegations of
20 sexual abuse?

21 A. Never. I'm not familiar with any cases ---

22 MS. JOHNSON: Judge, I'm going to object to
23 that.

24 A. --- that have been reported.

25 THE COURT: I sustain the objection.

1 MR. TOOKER: Okay.

2 Q. Okay. And with regards to any kind of pain, bodily
3 pain in the genital area, would you associate that with
4 these kind of allegations or not?

5 A. I would not associate with the allegations that she
6 shared with me.

7 Q. Okay.

8 MR. TOOKER: No further questions.

9 **RECROSS EXAMINATION**

10 **BY MS. JOHNSON:**

11 Q. And that was when you saw her after whatever time
12 had passed, but there were no complaints of pain in the
13 past?

14 A. Not that was reported to me.

15 Q. Thank you.

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

17 MR. TOOKER: May she be excused, sir?

18 THE COURT: Yes.

19 MR. TOOKER: The state next calls Shauna
20 Galloway-Williams, sir.

21 THE COURT: All right.

22 THE CLERK: Do you solemnly swear or affirm the
23 testimony you're about to give in this case to be the
24 truth, the whole truth and nothing but the truth, so help
25 you God?

1 THE WITNESS: Yes, I do.

2 THE CLERK: Thank you. If you would have a seat
3 and state your name for the record, please.

4 THE WITNESS: Shauna Galloway-Williams.

5 **SHAUNA GALLOWAY-WILLIAMS,**

6 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

7 **DIRECT EXAMINATION**

8 **BY MR. TOOKER:**

9 MS. JOHNSON: Judge, just so the record is
10 clear, I renew my objection.

11 THE COURT: All right. So noted.

12 MR. TOOKER: May I proceed, sir?

13 THE COURT: Yes.

14 MR. TOOKER: Thank you, Your Honor.

15 Q. Ms. Galloway-Williams, where do you work, ma'am?

16 A. I work at the Julie Valentine Center.

17 Q. What is the Julie Valentine Center?

18 A. We are the child abuse and sexual assault recover
19 center that serves Greenville and Pickens Counties.

20 Q. Okay. And what is your title at the Julie Valentine
21 Center?

22 A. I'm the executive director.

23 Q. How long have you been the executive director?

24 A. I've been executive director for five years. I've
25 worked with the center for ten years now.

1 Q. Okay. And in what capacity do you work for the
2 center?

3 A. Well, as executive director, I am in charge of all
4 of the administrative, fiscal responsibilities related to
5 the center. I also work directly with the clinical staff,
6 which means that I work with the counselors, the forensic
7 interviewers. I still conduct forensic interviews, as
8 well as well as providing group counseling to care givers
9 of children who've been sexually abused. I also do
10 training and education in the community.

11 Q. Okay. Well, what's your educational background?

12 A. I have a bachelor's degree in psychology and a
13 master's degree in counseling.

14 Q. Okay. Where did you go for your bachelor's degree?

15 A. I went to Winthrop University for my bachelor's
16 degree and my master's degree is from Clemson.

17 Q. Okay. And do you have any kind of particular
18 training with regards to counseling sexually abused
19 individuals?

20 A. Most of my training and experience has been in
21 working with children who -- children and adults who have
22 been sexually abused or experienced some type of abuse and
23 neglect.

24 Q. Okay. Do you have a professional licenses?

25 A. I'm licensed as a professional counselor in the

1 state of South Carolina.

2 Q. Okay. How long have you been working with victims
3 of sexual abuse?

4 A. Well, I've been working in the field of mental
5 health for over eighteen years, working with adults and
6 children. Primarily working with children for the past
7 thirteen years, specifically working with children who may
8 have been impacted by abuse and neglect.

9 Q. Do you do continuing education events?

10 A. I do. As part of my licensure, we have to attend
11 continuing education.

12 Q. Okay. The continuing education events you attend,
13 what do they consist of predominately?

14 A. Well, most of the training that I've attended, I've
15 attended over a hundred and fifty hours of skills-based
16 training related to child abuse dynamics. So dealing with
17 the dynamics of not only sexual abuse but physical abuse,
18 neglect, trauma, forensic interviewing, talking with
19 children, understanding that process.

20 Q. If you had to estimate, in your career how many
21 forensic interviews do you think you've done?

22 A. I've probably done over eight hundred and fifty
23 forensic interviews. And I've worked with over a thousand
24 children and families during my time.

25 Q. Okay. All right. And I may have missed it, but how

1 many years have you been counseling kids or working with
2 kids and adults?

3 A. Specifically working with children since 2001; so
4 thirteen years.

5 Q. Okay. Do you work with people other than children?

6 A. Well, I work with their care givers. And my first
7 experience in the field of mental health was working with
8 adults.

9 Q. Okay. Well, when was that experience?

10 A. I primarily worked with adults who were diagnosed
11 with chronic mental health conditions or had experienced
12 some type of trauma as a child.

13 Q. Okay. Well, I guess in your capacity as the
14 Executive Director of the Julie Valentine Center and at
15 your center, what kind of programs or assistance do you
16 provide members of the community?

17 A. Well, in addition to the work that we do at the
18 center, I do a lot of community education and training.
19 Most recently, I've worked with the Greenville County
20 School District training over seven hundred and fifty of
21 their administrative staff in recognizing and responding
22 to child sexual abuse in serving organizations. I'm also
23 an Adjunct Faculty Member at the University of South
24 Carolina Upstate in their Child Advocacy Studies Program.
25 And I primarily teach the child maltreatment course there.

1 Q. Okay. Have you ever testified in court before?

2 A. I have.

3 Q. How many times have you testified in court?

4 A. I've testified twenty-four times in general
5 sessions.

6 Q. All right. And how many of those times were you
7 qualified as an expert?

8 A. Every time.

9 Q. Okay. When you've been qualified as an expert and
10 testified in general sessions, in what kind of fields have
11 you been qualified as an expert?

12 A. Primarily in the field of child abuse dynamics and
13 forensic interviewing.

14 Q. Okay.

15 MR. TOOKER: At this point, Your Honor, the
16 state would request that Ms. Shauna Galloway-Williams be
17 qualified as an expert in the dynamics of child and
18 disclosure, child abuse dynamics and disclosure.

19 THE COURT: All right. Anything on the issue?

20 MS. JOHNSON: No, Your Honor, I just would renew
21 my objection.

22 THE COURT: All right. She's admitted over
23 objection in the area that you are seeking to have her
24 admitted in.

25 Now, ladies and gentlemen, ordinary witnesses cannot

1 testify to opinions. A different rule applies to
2 witnesses who, by virtue of their education, training and
3 experience, have obtained some specialized knowledge in an
4 area. And those witnesses can offer opinions, where lay
5 witnesses cannot. She's an expert witness in the field of
6 child abuse dynamics and delayed reporting.

7 MR. TOOKER: Thank you, sir.

8 THE COURT: Yes, sir.

9 Q. Well, first off, the Julie Valentine Center, where
10 do y'all get your funding?

11 A. We are a non-profit organization. We are a
12 Greenville and Pickens County United Way partner. About a
13 third of our funding comes from the Greenville County
14 United Way. Another third of our funding is federal
15 funding, and the final third is through fund raising and
16 grants.

17 Q. Okay. Are you being paid by the state to be here
18 today?

19 A. I am not.

20 Q. Do you know why you are testifying or why you've
21 been subpoenaed here today?

22 A. The purpose of my testimony is to provide
23 information and education around the dynamics of child
24 sexual abuse.

25 Q. Okay. And who subpoenaed you?

- 1 A. The state.
- 2 Q. Okay. In this case, are you actually familiar with
- 3 the victims or their family?
- 4 A. I'm not.
- 5 Q. Okay. Have you met any of them?
- 6 A. I've not met them or worked with them.
- 7 Q. Okay. Did you do the forensic interview in this
- 8 case?
- 9 A. I did not.
- 10 Q. Have you ever counseled the parents or anyone else
- 11 involved in this case?
- 12 A. No.
- 13 Q. Okay. We've thrown out the term delayed disclosure.
- 14 What does that term mean, delayed disclosure?
- 15 A. Delayed disclosure refers to a child not disclosing
- 16 or telling about an abuse incident right away. It means
- 17 that they don't tell someone right after it happens. It
- 18 may be days, weeks, years. In many cases, children or
- 19 adults never tell.
- 20 Q. Okay. Is that a phenomenon that's been documented
- 21 through research?
- 22 A. It is. It's so common it is -- there's a term for
- 23 it, delayed disclosure. And it is part of our research
- 24 and training. There are research studies. There are
- 25 studies that have been replicated over and over again.

1 And from my own personal experience in the field, it's
2 proven to be common, more common that children don't tell
3 right away than that they do tell right after something
4 happens.

5 Q. Okay. Well, what kind of factors commonly or often
6 will play a role in whether or not a child delays in their
7 disclosure or does not report what's been happening to
8 them immediately?

9 A. Right. Well, most children are abused by someone
10 that they know, they love and trust. And a lot of times,
11 that will factor into whether they tell right away.
12 Children may fear disclosure. They may fear what will
13 happen to them or what will happen to the person that's
14 done this to them if they tell. Children may have been
15 threatened. They may have been told that something would
16 happen to them or someone else that they love if they
17 tell. Young children often don't have the words to tell
18 what's happened to them. They may just not understand or
19 be able to describe what happened. And children may have
20 been threatened. They may have been told again that
21 something would happen to them if they told. The
22 relationship dynamics often have a really powerful effect
23 on children. So that relationship that the person has to
24 them or to other members of their family or their
25 community may directly impact whether they feel

1 comfortable and safe enough to tell what's happened.

2 Q. Okay. Is disclosure a process or does it usually
3 just happen just wham bam?

4 A. Disclosure is almost always a process, meaning that
5 we don't expect that a child is going to tell us every
6 detail about every abuse experience the first time that we
7 talk to them. We know that sometimes children will tell a
8 little bit about what's happened, just sort of test the
9 waters and see how an adult or whoever it is that's asking
10 them will respond to that. Sometimes it's a matter of
11 who's asking the questions and what questions we're
12 asking. Sometimes children report that they didn't tell
13 about something because no one asked them. They don't
14 always know what we want to know, so we may not be asking
15 the right questions of them and may not get all the
16 details right away.

17 Q. Okay. What is recanting?

18 A. Recanting is when a child has made a disclosure or
19 made a statement and then takes some of that or all of
20 that back. It's also something that we anticipate and
21 that we learn about in our training, and that I've
22 experienced. We can anticipate that children may recant
23 again because of those relationship dynamics. Some of the
24 same factors that influence why a child wouldn't tell in
25 the first place influence why they would recant. If the

1 child has been told that something's going to happen, say,
2 for instance that they would have to leave their home or
3 someone else might have to leave their home. And if that
4 does, in fact, happen after they tell, that may lead them
5 to recant. If they've not been supported by their care
6 givers or their community when they've disclose, that may
7 influence them to take their statement back, as well.

8 Q. Okay. So does recanting sometimes play a role in
9 the process of disclosure?

10 A. Yes. Many children may disclose. They may recant
11 or take back part of their statement and then turn around
12 and then re-disclose again or tell their statement. And
13 there are some studies that actually reflect that, where
14 children have disclosed, they've recanted, and then turn
15 around and affirm their own original statements.

16 Q. Okay.

17 MR. TOOKER: No further questions, sir.

18 THE COURT: Ms. Johnson?

19 MS. JOHNSON: May it please the Court?

20 THE COURT: Yes.

21 **CROSS EXAMINATION**

22 **BY MS. JOHNSON:**

23 Q. Ms. Galloway-Williams, you are speaking in broad
24 generalities; correct?

25 A. I am speaking in general terms that are based on

- 1 research and experience, yes.
- 2 Q. But you have no familiarity with this case, so you
3 are speaking in general terms?
- 4 A. Yes. I'm speaking in general terms in the field of
5 child abuse dynamics.
- 6 Q. Okay. And you have no idea what happened in this
7 case and a lot of other cases that you are involved in;
8 you are just receiving information and interpreting that
9 information; correct?
- 10 A. When I'm acting as an ...
- 11 Q. Just today, your testimony today or when you're a
12 counselor. You were not there when the allegations
13 occurred, is what I'm trying to get at?
- 14 A. So you're asking if I was there when the abuse
15 occurred with.---
- 16 Q. Right.
- 17 A. --- the children that I've worked with?
- 18 Q. Correct?
- 19 A. No, I was not there, ever.
- 20 Q. Okay. And children lie. You agree that children
21 lie?
- 22 A. Yes, children lie.
- 23 Q. They could be saying they're telling the truth when
24 they are lying?
- 25 A. Children do lie.

1 Q. Just like adults?

2 A. Yes, adults and ---

3 Q. People lie?

4 A. Yes. People in general lie. However, children are
5 not generally sophisticated liars in the same way that
6 adults might be.

7 Q. But they still lie?

8 A. They do lie.

9 Q. Okay. Children like to please?

10 A. Children do like to please, yes.

11 Q. Children can be influenced?

12 A. Yes.

13 Q. They are highly susceptible to suggestion?

14 A. They can be susceptible to suggestion.

15 Q. Okay. And you have no way of knowing these
16 influences and suggestions a lot of times?

17 A. Well, in my experience and capacity as an
18 interviewer, we do look into particular areas where there
19 may be some influence or suggestibility with a child, if
20 they're making a statement.

21 Q. But you don't have a crystal ball and you're not
22 able to glean all of the influences surrounding the child?

23 A. No. But we do take those things into account when
24 we're evaluating children's statements and when we are
25 looking at cases.

1 Q. Okay. Now, there are false allegations? False
2 allegations do exist?
3 A. Yes.
4 Q. For whatever reason?
5 A. Yes.
6 Q. Okay. On the part of the child, on the part of the
7 parent, false allegations exist?
8 A. Yes, there are false allegations.
9 Q. Okay. Now, children are bombarded with sexuality
10 every day in our society or in our culture. Do you not
11 agree with that?
12 A. Are you asking if children are ---
13 Q. Yes, I am.
14 A. There is -- yes. There are lots of sexual
15 influences in our media.
16 Q. Children have a lot of access to sexuality every day
17 whether it's with parental consent or without parental
18 consent, or parental approval or not parental approval?
19 A. Can you ask that question again so I can be clear
20 that I'm understanding you?
21 Q. Sure. Children are bombarded with sexuality every
22 day, whether they're bombarded with this, whether it's
23 with parental consent or without parental consent?
24 A. So there certainly is access to sexual media out
25 there.

1 Q. Okay.

2 A. Yes.

3 Q. And most of these allegations occur in secrecy,
4 behind closed doors. Is that typically what happens?

5 A. Most of the abuse incidents or the allegations?

6 Q. Abuse.

7 A. Yes. Most abuse occurs in secrecy.

8 Q. Okay. And you work for the Julie Valentine Center?

9 A. I do.

10 Q. Do y'all have an agreement with law enforcement?

11 A. Yes.

12 Q. Okay. Do y'all get any money from law enforcement?

13 A. We do not.

14 Q. Okay. And you've never testified for the defense?

15 A. I've never been subpoenaed by the defense.

16 Q. Okay. Thank you.

17 THE COURT: Yes, sir.

18 MR. TOOKER: Briefly on redirect, sir?

19 THE COURT: Yes, sir.

20 **REDIRECT EXAMINATION**

21 **BY MR. TOOKER:**

22 Q. Ms. Johnson asked you about whether or not children
23 lie. What do you look for in ferreting out whether or not
24 a child is telling the truth or telling a lie?

25 A. Well, I'm not necessarily looking to say whether a

1 child is telling the truth or telling a lie, but what
2 we're looking at is to determine whether the experience
3 that they're relaying to us is something that they've
4 actually experienced themselves or something that
5 someone's told them. So what we're looking at is the kind
6 of details they're going to provide us. We refer to that
7 as looking at core and contextual details. So the core
8 details would be the who, the what, the when. The
9 contextual details are those details that are sensory
10 details. The way things felt, the way things smelled, the
11 way things tasted. The kind of things that a child would
12 only be able to share with you if it's something they,
13 themselves, had experienced. Not something that someone
14 had told them or that they had seen.

15 Q. Okay. And then she also asked you if there are
16 false allegations?

17 A. Yes. There are false allegations and some of the
18 statistics say there's somewhere between two to four
19 percent false allegations in these type of cases.

20 Q. So they're not very common?

21 A. They're not common.

22 Q. All right.

23 MR. TOOKER: No further questions.

24 **RECROSS EXAMINATION**

25 **BY MS. JOHNSON:**

1 Q. But they certainly exist?

2 A.. They do exist.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Thank you.

5 MR. TOOKER: May she be excused, sir?

6 THE COURT: Yes.

7 Your next witness.

8 MR. TOOKER: At this point, Your Honor, the
9 state rests its case.

10 THE COURT: All right. Ladies and gentlemen,
11 you have heard the state's case. I need to discuss some
12 matters with counsel prior to proceeding. We'll take a
13 break now. Please do not discuss the case.

14 (WHEREUPON, the jury exited the open court at
15 approximately 3:44 p.m.)

16 THE COURT: Any matters of law at this time?

17 MS. JOHNSON: Judge, at this time, I would
18 respectfully move for a directed verdict based on the fact
19 that there's no credible evidence from which a jury could
20 return a verdict against my client.

21 THE COURT: Solicitor?

22 MR. TOOKER: Well, I believe credibility is a
23 matter for the jury to determine. And I think the
24 elements have been satisfied by at least one witness. And
25 so based on that, I think we get it to the jury, sir.

1 THE COURT: All right. I deny your motion. The
2 jury will weigh the credibility of the evidence. And if
3 the jury believes the evidence the defendant will likely
4 be found guilty.

5 All right. Are you ready to proceed?

6 MS. JOHNSON: Yes, Your Honor. May I have a
7 minute to talk to my client about what he wants to do.

8 THE COURT: Sure. Yes. Would you like for me
9 to speak with him before or after you speak with him on
10 the issue of whether he is going to testify or ...

11 MS. JOHNSON: I would propose after I speak with
12 him.

13 THE COURT: Okay. All right.

14 We will take a break. And how many minutes do you
15 need?

16 MS. JOHNSON: He says fifteen.

17 THE COURT: Fifteen? All right. We'll take a
18 fifteen minute break.

19 MS. JOHNSON: Thank you, Your Honor.

20 (WHEREUPON, the court stood at recess for a short
21 break.)

22 THE COURT: Let's swear Mr. Evans in.

23 THE CLERK: Please raise your right hand, sir.
24 Do you solemnly swear or affirm the testimony you're about
25 to give in this case will be the truth, the whole truth

1 and nothing but the truth, so help you God?

2 THE DEFENDANT: Yes.

3 (WHEREUPON, the defendant was duly sworn.)

4 THE COURT: All right. Mr. Evans, if you'll
5 remain standing for me for a moment. The state has rested
6 and it's now time for you to present your defense. Now,
7 you have the right to -- I'm going to explain to you
8 certain of your rights at this time. If you do not
9 understand anything that I explain or say, I'll be happy
10 to explain it in more details or answer any questions you
11 might have regarding your right to testify or not testify;
12 you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: As I said, we've reached the stage
15 of the trial where you can present your defense. You have
16 the right to claim the protections afforded you by the
17 Fifth Amendment to the Constitution of the United States.
18 The Fifth Amendment says in part that no person shall be
19 compelled in any criminal case to be a witness against
20 himself. What that means is that you cannot be compelled
21 or required to testify. You do, however, have the right
22 to testify if you want to. And no one can make you
23 testify. Whether or not you testify is a personal right.
24 And no one can waive your right to testify, except you.
25 If you decide to testify, you'll be subject to the same

1 rules that govern other witnesses and you may be examined
2 or cross examined on any relevant issue in this case.

3 In addition, if you have any convictions involving
4 dishonesty or false statements or any convictions for
5 crimes punishable by imprisonment for more than one year,
6 and if I determine that the probative value of admitting
7 that evidence outweighs its prejudicial effect to you, the
8 solicitor then will be able to introduce your record to
9 attack your credibility. If you decide to testify, this
10 decision must be a free, voluntary and intelligent
11 decision made by you with knowledge of the protections
12 given to you by the Fifth Amendment, as well as the
13 consequences of your decision to testify.

14 If you decide not to testify, I will instruct the
15 jurors that they cannot give the fact that you did not
16 testify any consideration whatsoever. And there is to be
17 absolutely no prejudice to you because you did not
18 testify. And it's left totally up to you whether or not
19 you testify.

20 You've had a chance to talk with your lawyer. You
21 can talk with her some more if you want to. You can talk
22 to family, friends, or anyone else. But the final
23 decision of whether or not you testify would be left
24 entirely up to you. Do you understand what I've explained
25 to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about what
3 I've explained to you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you need to talk to your lawyer
6 anymore about whether or not you're going to testify?

7 THE DEFENDANT: No.

8 THE COURT: Do you wish to testify?

9 THE DEFENDANT: Yes, sir. Apparently I'm going
10 to have to.

11 THE COURT: All right. Sir?

12 THE DEFENDANT: I said, apparently, I'm going to
13 have to.

14 THE COURT: Well, whether or not you have to,
15 you understand it's a decision, your decision.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: No one is attempting to make you
18 testify. I certainly understand -- I don't know what
19 advice you may be getting from your lawyer, maybe that you
20 have to or should. I don't know what advice you may be
21 getting. And I don't want to know. I want you to know
22 that the decision to testify is your decision in the end.

23 THE DEFENDANT: I understand.

24 THE COURT: You understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Anything further on this
2 issue counselor?

3 MS. JOHNSON: No, Your Honor.

4 THE COURT: All right. Have you got your ---

5 MS. JOHNSON: Judge, my client has advised me
6 that he will take the stand.

7 THE COURT: Okay. And you're ready to go with
8 your first witness?

9 MS. JOHNSON: It would be Mr. Evans, Your Honor.

10 THE COURT: All right. Thumbs up for the jury.

11 THE BAILIFF: Yes, sir.

12 THE COURT: All right.

13 (WHEREUPON, the jury entered the open court at
14 approximately 4:14 p.m.)

15 THE COURT: Mr. Foreman, and members of the
16 jury, you've heard the state's case. It's now the
17 defense's turn. Ms. Johnson.

18 MS. JOHNSON: At this time, Your Honor, the
19 defense calls Vernon Glen Evans.

20 THE COURT: All right. Mr. Evans, come forward.

21 THE CLERK: Place your left hand on the bible
22 and raise your right hand.

23 Do you solemnly swear or affirm the testimony you're
24 about to give in this case to be the truth, the whole
25 truth and nothing but the truth, so help you God?

1 THE WITNESS: Yes, sir.

2 THE CLERK: Thank you, sir. If you would have a
3 seat and state your name for the record, please.

4 THE WITNESS: Vernon Glen Evans.

5 VERNON GLEN EVANS,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. TOOKER:

9 Q. Mr. Evans, did you mess with Minor ?

10 A. No, ma'am. I've never messed with a child.

11 Q. Let's start from the top, Mr. Evans. How old are
12 you?

13 A. Fifty-one.

14 Q. Where did you go to school?

15 A. In Florida.

16 Q. What brought you to South Carolina?

17 A. I've had family up here for years.

18 Q. Okay. How long you been in South Carolina?

19 A. Over twenty-five years.

20 Q. Okay. And where in South Carolina?

21 A. Right here in Central.

22 Q. What kind of work have you done?

23 A. I've done a little bit of everything from building
24 houses to working on car?

25 Q. You said from what?

- 1 A. Building houses to working on cars.
- 2 Q. Okay. And what do you currently do?
- 3 A. I work on cars.
- 4 Q. Okay. How did you meet the Berry family?
- 5 A. I've known the Berry family for about twenty-two
- 6 years.
- 7 Q. And what kind of activities did y'all do or did you
- 8 do with the Berry family?
- 9 A. Which group?
- 10 Q. What?
- 11 A. Which group of them?
- 12 Q. Well, this Berry family?
- 13 A. This Berry family, I've known them, Minor and
- 14 Y.B., since the day they were born.
- 15 Q. Okay. Well, how did you know their parents?
- 16 A. I knew their father. I knew his father and his
- 17 grandfather. So I've known the family for quite a while.
- 18 We've worked together. We've goofed off. We've played
- 19 together; all kinds of things.
- 20 Q. And how did you get involved with Minor and
- 21 Y.B. ?
- 22 A. Minor and Y.B. were taken from John and his wife
- 23 at the time when she was two years old.
- 24 Q. When who was two years old?
- 25 A. Minor . Y.B. was about six months old then. DSS

1 took them because they were having problems and the kids
2 got away from them. They was out there playing in the
3 road and everything else. So DSS decided they needed to
4 be took. They took them. Subsequently, Diane Berry and
5 John Berry split and John wound up going through and doing
6 what he needed to do to get his girls back. I helped him
7 as much as I could doing that. He had some problems at
8 the time. I helped him with those problems. He got his
9 act together and he got his children back.

10 Q. Okay. When did you start keeping the children?

11 A. I started keeping them children in 2005, right after
12 he got them back.

13 Q. Okay. And it seems like everybody's confused on
14 these time lines, but why did you start keeping the
15 children?

16 A. Well, the kids liked me. John and them knew me.
17 They wanted to try and get a few things straightened out
18 around the house, because quite honestly, the place was
19 crappy. So they were trying to get it fixed up and
20 straightened up. They needed a little time for themselves
21 without having to watch over the girls. So I started
22 keeping them.

23 Q. And how did the girls receive you or treat you?

24 A. The girls loved me.

25 Q. And ---

1 A. Pure and simple. I would do things with the girls
2 that they didn't necessarily get a chance to do with John
3 because John was working most of the time. Ester didn't
4 have a driver's license so she couldn't really go around
5 with them. So I would take them to parks. I'd take them
6 to McDonald's.

7 Q. Was anybody with you on some of these outings?

8 A. Yeah. Ester was with us on some of them.

9 Q. Anybody else?

10 A. No, not really. I mean, we'd run across people we
11 knew and stuff like that, but as far as anybody being
12 actually with us, no, other than Ester.

13 Q. Okay.

14 A. And generally, a lot of times we'd go -- I'd go --
15 when I was taking them home and they'd want to stop at
16 McDonald's, so we'd swing get by and get Ester and we'd
17 all go to McDonald's. They'd play on the playground. Me
18 and Ester would sit there and wait on John. When John got
19 off work, he'd come by and pick them up, they'd all go
20 home. I kept those kids from 2005 to 2009. The only time
21 we ever had any trouble was when their biological mother
22 stayed in the picture. In 2005-06, their biological
23 mother got in some trouble with the court system and all.
24 And got behind on child support and everything else. She
25 wouldn't do what she needed to do to try and get custody

1 of those kids back. She knew John was trying to do it.
2 John did do it. DSS was keeping an eye on things at that
3 time. And she started causing trouble for John, trying to
4 get the kids away from John so she wouldn't have to pay
5 child support and yada, yada, yada. Subsequently, she
6 accused -- she got the girls to accuse me ---

7 MR. TOOKER: Judge, I'm going to object. This
8 is hearsay, in addition to which unless he knows something
9 first-hand, he can't testify to it.

10 Q. Okay. Mr. Evans, talk about ---

11 A. But the problem is, I do know about it first-hand. I
12 was there.

13 THE COURT: Please state the legal basis of any
14 objections only. Now, pose another question, ma'am.

15 Q. Talk about that interaction?

16 A. As far as ...

17 Q. Ms. Berry?

18 A. Ms. Berry?

19 Q. With you and Ms. Berry?

20 A. Ms. Berry, she started out liking me and then when
21 her and John split and I advised John, because at that
22 time that's when John met Ester. And John had
23 confidentially asked me my opinion on whether he should
24 get back with Diane or go with Ester, stay with what he
25 had, which was Ester at the time. And I told him

1 straight-out that he would be stupid to go back to Diane.

2 MR. TOOKER: Judge, object again on hearsay.

3 THE COURT: Your objection is overruled.

4 A. So that really put a fire in the kettle.

5 Q. Okay. Mr. Evans, and you were confronted?

6 A. I was confronted in 2006 by John and Ester after the
7 children had come back from spending the previous weekend
8 with their biological mother. That's when all kind of
9 crap started. The girls accused me of messing with them.
10 John called me and said, we need to talk. I said, all
11 right. So I met him at his house. And when I pulled up,
12 the children was outside playing in the yard. They didn't
13 even let me get out of that truck before they attacked me
14 in the truck wanting to play.

15 Q. They came running to you?

16 A. Yes, ma'am. They come running to me. John walked up
17 there. Me and John was talking. He finally got the girls
18 away from the truck so I could get out. He said, we need
19 to talk; let's go up on the porch. So we went up on the
20 porch and we commenced to have our conversation.
21 Meanwhile the girls were shooed inside by Ester.

22 Q. And what did you tell John?

23 A. I told John at the time, he done bumped his head
24 because I'd never mess with a child. I never have. I
25 never will. I love children but not in that way. I love

1 children because of the laugh and giggle. Any child --
2 that's what makes the world go around right there. But me
3 and John sit down and had our conversation. And during
4 that conversation, Minor come running out. Nobody asked
5 her. Nobody told her. She did it on her own. She come
6 running out of that trailer telling her daddy that it was
7 a lie. It was a lie. Her mama had put her up to it,
8 referring to Diane Berry. All right. I told John, I
9 said, if you think that I've messed with these children, I
10 will pay for you to go and take these children ---

11 MR. TOOKER: Judge, and I hate to be beating a
12 dead horse and I've let a lot go. But, again, these are
13 all out-of-court statements being offered for the truth of
14 the matter asserted.

15 THE COURT: Objection overruled.

16 THE WITNESS: Thank you.

17 THE COURT: You don't need to thank me, sir.

18 A. I told John at the time that I would pay for him to
19 take that girl -- either one of the girls or both, to the
20 doctor to have them checked and examined, do what they
21 need to do. John never did it because John didn't believe
22 it to start with.

23 THE COURT: The objection is sustained as to
24 what John believed.

25 THE WITNESS: Okay. I apologize there.

1 THE COURT: You don't need to apologize.

2 A. But the end result was two weeks later I was still
3 keeping the kids. They voluntarily come back to me. As a
4 matter of fact, John and Ester called me and asked me to
5 babysit that weekend so they could have a night out by
6 themselves. Since then, I've probably kept them children,
7 I'd say sixty times between 2005 and 2009. Different
8 reasons. They'd want to come stay with me. The parents
9 would want a night out or go Christmas shopping, what have
10 you. They'd call me, I'd come get the kids. But as far
11 as any allegations of me messing with them children, it
12 never come up again until this. Never have I ever messed
13 with a child.

14 Q. Mr. Evans, and you've got a criminal record. You've
15 got a petit larceny ---

16 A. Yeah.

17 Q. --- and receiving a stolen car?

18 A. Yeah.

19 Q. Is that true?

20 A. Yes, sir. Yes, ma'am.

21 Q. Okay.

22 A. I've never claimed to be a saint; never have. The
23 one conviction was I bought a truck, got a clear title to
24 it and the owner of the truck come back at me and I wound
25 up doing thirty days, I do believe, in the stockade for

1 that truck.

2 Q. Okay. And what kind of activities would you -- when
3 you kept the kids at your house, what ---

4 A. When I had the kids, we would go to the house. They
5 would play dress-up with my mother. They would watch TV.
6 They'd watch -- play on the computer. They would go out
7 and play with the dogs. We'd take walks. Sometimes I
8 took them to the park if the weather was permitting.
9 Every now and again, we'd get a ride on my tractor. I've
10 got a big backhoe at the house. They loved that big old
11 thing.

12 Q. Where did y'all eat?

13 A. We'd eat at my mother's.

14 Q. Where did the children bathe?

15 A. At my mother's.

16 Q. Did you ever threaten these children?

17 A. I ain't never threatened any child. A grownup,
18 that's a different story. I'll tell you that right quick.
19 But a child, no.

20 Q. Tell me how you found out that Detective Swafford had
21 been to your house or your mother's house?

22 A. Well, my mother told me that Mr. Swafford was looking
23 for me; wouldn't tell her why. But he told her that he
24 needed to get in touch with me.. He left a card with my
25 mother and I called him. And I believe it was the next

1 day. But between our schedules it took us about three
2 tries but we finally got -- met up down at his office.

3 Q. You met him at his office?

4 A. Yes, ma'am.

5 Q. And do you remember what you said to Detective
6 Swafford?

7 A. I told him I'd never messed with a child. It's not
8 in me to do such. And I think I made a comment, you stick
9 me in a room with fifty children, and I'm a happy camper.
10 You stick another adult in there and I'm ready to fight
11 because you got too many adults for kids. And if I'm not
12 mistaken, that's what I said.

13 Q. Do you think that was taken out of context?

14 A. More than likely.

15 Q. How ha this affected your life?

16 A. It's tore my world up. I've known people twenty-five
17 years, done business with them. Helped them on occasion.
18 Now, they turn their back and walk away. They won't even
19 speak to me. As far as trying to get work, I get a little
20 bit here and there. It ain't enough to eat on. As far as
21 my nerves go, I went from smoking one carton of cigarettes
22 a week to four. You tell me how this has affected me
23 because it has tee-totally tore my world all to pieces.
24 I've got people that refuse to work me on account of these
25 charges, just the nature of these charges. And they've

1 known me for years.

2 Q. One thing I forgot to ask, about the sleeping

3 arrangements, Mr. Evans?

4 A. Yeah. I've been informed of those too as far as what
5 the girls are saying. Let me explain something. I'm not
6 a person that can sleep with anybody else. I sleep in an
7 easy chair. I cannot sleep laying flat. That's the
8 reason I go into an easy chair, one of the reasons. I
9 would go in, get the girls settled down, I'd sit there on
10 the bed with them until they fell asleep. Then I'd get
11 up, cut the light off and I'd go out in the living room
12 where I could get in my easy chair. That's how it worked.
13 As far as the girls claiming that they come to my house
14 sleeping on sleeping bags on the floor, they did that one
15 time. One time.

16 Q. Were the girls ever scared of you?

17 A. Not to my knowledge.

18 Q. To your knowledge was there any family feuds going
19 on?

20 A. No. No.

21 Q. Anything else I've left out?

22 A. Yeah. Yeah. Everybody might laugh at this and you
23 might get mad, I don't know. But the expression --

24 Minor made the comment earlier that I called her monkey
25 butt and the other one frog butt. Okay. That's true. I

1 did. I gave them those nicknames. The reason being
2 Y.B. was always jumping on something. She'd jump from
3 this couch to that couch, to that chair, to this, that and
4 the other on the floor. She got called frog. The reason
5 I named Minor monkey butt was because she was climbing
6 all over everything. That girl would climb. She'd climb
7 that wall if you wasn't looking good. That's how they got
8 that nickname.

9 Q. So she was pretty hyper?

10 A. Yeah.

11 Q. Okay. Anything else?

12 A. Not that I know of.

13 Q. Okay. Please answer any questions from Mr. Tooker.

14 THE COURT: MR. Tooker.

15 MR. TOOKER: Thank you, Your Honor.

16 **CROSS EXAMINATION**

17 **BY MR. TOOKER:**

18 Q. All right. So people you've know for years don't
19 trust you now?

20 A. (No verbal response).

21 Q. Isn't that what you testified to on direct?

22 A. Yeah.

23 Q. All right. And you mentioned another time that
24 you've been in trouble with the law; right?

25 A. Yes, sir.

1 Q. And when you were explaining that time, well, it was
2 the other person's fault; not your fault?

3 A. I didn't say that. No, sir. I did not say that. I
4 said he come up claiming that I did not sell him that
5 truck, even though I had title to that truck.

6 Q. He came up claiming, implying that he, whoever he
7 was, was lying; right?

8 A. Yeah.

9 Q. Okay.

10 A. He said I was lying.

11 Q. Sir, I'm going to ask you questions. You answer my
12 questions when I ask them; okay?

13 A. I thought that's what I was doing.

14 Q. So you're saying that it wasn't your fault on that
15 occasion, that that person was the liar; right?

16 A. Yes. Because I was sold the truck and received
17 title.

18 Q. And I'm saying isn't it a coincidence that in this
19 occasion too, it's not your fault, somebody else is lying
20 on you?

21 A. Spin it anyway you want to.

22 Q. Uh-huh (affirmative).

23 A. The facts remain the same.

24 Q. They do; don't they?

25 A. Yeah.

- 1 Q. And those facts, let's talk about those. So the
2 girls have been going over to your house for a while?
3 A. Yeah.
4 Q. And they were going over there before Minor turned
5 eleven?
6 A. Yes.
7 Q. And they stopped going over there before Minor
8 turned eleven?
9 A. Yes.
10 Q. And they would go over to your house where you live
11 close to your mom?
12 A. Yeah.
13 Q. And your house is a trailer near your mom's house?
14 A. Yeah. They're both trailers. One's a double-wide
15 and one's a single-wide.
16 Q. And your house is very messy?
17 A. Yeah. It's used for storage mostly.
18 Q. And you sleep in your house?
19 A. Yes, I do.
20 Q. And the girls would sleep in your house?
21 A. Yes, they did.
22 Q. And the girls would sleep in your house on your bed?
23 A. Yes, they did.
24 Q. And you would lay down with them as they slept in
25 your bed; isn't that right?

1 A. I would sit in that bed until they went to sleep.

2 Then I would get up and go in my easy chair.

3 Q. So your testimony is that you only ever sat in the
4 bed with them. You never laid down?

5 A. I may have stretched back, but as far as sleeping
6 with them children, no.

7 Q. Did you not tell Detective Swafford that you laid in
8 the bed with the girls?

9 A. I may have, but what I mean by that is to lay back in
10 that bed until them girls went to sleep.

11 Q. Sure. And you think that's an appropriate thing to
12 do for a man of your years?

13 A. When you got two children that get scared -- Y.B.
14 Y.B. ---

15 MR. TOOKER: Judge?

16 A. You asked me a question, I'm trying to answer it.

17 MS. JOHNSON: He can explain his answer.

18 THE COURT: Just a moment. When the lawyers
19 start talking then you have to stop.

20 Yes, sir.

21 MR. TOOKER: I would request that you direct the
22 witness to answer my question with a yes or a no and then
23 he'll have an opportunity to explain himself.

24 THE COURT: All right. Let's try the question
25 again.

1 MR. TOOKER: Well, I think I've lost my train of
2 though.

3 THE COURT: You may proceed with the answer
4 then. Proceed, sir.

5 A. When you've got -- Y.B. slept with -- needed to
6 sleep with a light on until she went to sleep, up until
7 she was about six and a half, seven years old. That's how
8 all that got started. I would lay there with them --
9 excuse me. I would be in there with them until they went
10 to sleep. Then I would get up, cut the light off and go
11 in my easy chair. Sometimes I was sitting, sometimes I
12 was reclined back. If you want to call that laying, okay?

13 Q. No, I'm asking what you call it? Did you call it
14 laying?

15 A. As a misstep, yes.

16 Q. Misstep. Careful with your words, sir?

17 A. I try to be.

18 Q. You try to be. You try to be in front of this jury?

19 A. No, I try to be all the time.

20 Q. Okay. And so you like kids a lot; right?

21 A. Yes, I do. I like children. Children are unique.

22 Q. And you like their giggles?

23 A. Oh, I love to hear a child laugh and giggle.

24 Q. Uh-huh (affirmative).

25 A. Tell me somebody who doesn't.

1 Q. You like to tickle them?

2 A. Sometimes.

3 Q. Okay. And you liked to tickle Minor ?

4 A. I like to tickle any child. I love to hear that
5 sound.

6 Q. You like to tickle any child. And you liked to
7 wrestle with the kids too; right?

8 A. Sometimes.

9 Q. In your bed?

10 A. Not necessarily in my bed.

11 Q. Sometimes in your bed?

12 A. If that's where they want to go at it, yeah. I'll be
13 sitting on the bed, they'll go wrestling. I've also sit
14 in John Berry's living room on his couch with his children
15 wrestling.

16 Q. And you touch their monkey butts and their frog
17 butts; right?

18 A. Now, there you're trying to get around the corner.

19 All right.

20 Q. Why don't you answer the question with a yes or a no
21 and then explain yourself?

22 A. All right. Yes, sometimes.

23 Q. Sometimes you would touch the children's butts?

24 A. Yeah. Sometimes.

25 Q. Okay.

1 A. Now, my turn.

2 Q. Please?

3 A. When you've got a child coming at you from every
4 different direction wanting you to catch them, tickle
5 them, they're trying to tackle you, you're grabbing,
6 you're reaching, what are you going to do? You can't say,
7 oh, hang on. I can't touch you there. Wait a minute.
8 Let me get you up here on the head. No, sorry. It don't
9 work that way. Have you ever -- let me ask you something.
10 Do you have children?

11 MR. TOOKER: Your Honor, I'm going to request
12 that you instruct the witness not to ask me questions.

13 THE COURT: Sir, you can't ask questions, you
14 must answer questions.

15 THE WITNESS: All righty. I apologize.

16 Q. You like tickling kids because you don't like adults?

17 A. I did not say I don't like adults.

18 Q. Well, what was it you said?

19 A. I said -- I said if you get a room full of children
20 and you put more than one adult in there, whether it be me
21 or you, you put more than one adult in there, there's
22 going to be chaos because you've got two different
23 opinions there at least. If you've got two grownups in a
24 room with the children, okay? Children will laugh and
25 play and having a good old time, running around, doing --

1 being kids. You've got one over here saying, okay, settle
2 down, settle down. You've got one over here saying, oh,
3 go for it, go for it. What does that do?

4 MR. TOOKER: Judge, again, I'm going to ask that
5 you instruct the witness not to ask me questions.

6 A. Oh, excuse me. I'm sorry. I made a misstep. I'm
7 sorry.

8 Q. You made another misstep, huh? So, you told the
9 detective that you'd like to be in a room with fifty kids
10 but not adults; right?

11 A. Yeah.

12 Q. Because fifty kids is something that's pleasant to
13 you, but adults are not pleasant to you?

14 A. Yeah. Kids make sense.

15 Q. Kids make sense. What about grown women, do grown
16 women make sense to you?

17 A. Depends on the woman.

18 Q. You live by yourself; don't you?

19 A. Yeah.

20 Q. Near your mama?

21 A. Yeah.

22 Q. On your mama's property?

23 A. Yeah.

24 Q. Don't spend a whole lot of time with a lot of grown
25 women; do you?

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- 1 A. Yes, I do.
- 2 Q. You do? You got a lot of girlfriends?
- 3 A. No.
- 4 Q. No, you don't. But you like kids?
- 5 A. I like women too.
- 6 Q. You like lots of kids. You like fifty kids. You
- 7 told the detective that you babysat a lot kids; right?
- 8 A. Yes.
- 9 Q. And he asked you for some information about those
- 10 kids you babysat; right?
- 11 A. Yes, he did.
- 12 Q. Did he ask you to provide the names of these children
- 13 that you babysat, all of these kids you said you babysat:
- 14 right?
- 15 A. Yes, he did.
- 16 Q. And you provided him with one; isn't that right?
- 17 A. Wrong. Two.
- 18 Q. Two. Out of all these kids ---
- 19 A. At that time.
- 20 Q. Okay.
- 21 MR. TOOKER: No further questions, Judge.
- 22 THE DEFENDANT: At that time.
- 23 THE COURT: Redirect.
- 24 **REDIRECT EXAMINATION**
- 25 **BY MS. JOHNSON:**

1 Q. Mr. Evans, you never tickled any children
2 inappropriately?

3 A. No, ma'am.

4 Q. When you were wrestling, you never touched them
5 inappropriately?

6 A. No, ma'am.

7 Q. Would you agree with me that it's normal for fathers
8 to play actively with their children or ---

9 MR. TOOKER: I'm going to object to leading,
10 Judge. It's her witness.

11 THE COURT: Don't lead the witness.

12 Q. And you've had some lady friends in your life?

13 A. Yes, ma'am, I have.

14 Q. Okay.

15 MS. JOHNSON: That's all I have.

16 THE COURT: Thank you.

17 MR. TOOKER: Nothing on recross, sir.

18 THE COURT: All right. Thank you, sir. You my
19 step down.

20 Next witness.

21 MS. JOHNSON: The defense calls Bernice Evans.

22 THE COURT: All right.

23 THE CLERK: Place your left hand on the bible
24 and raise your right hand.

25 Do you solemnly swear or affirm the testimony you're

1 about to give in this case to be the truth, the whole
2 truth and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you, ma'am.

5 BERNICE EVANS,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. JOHNSON:

9 Q. Ms. Evans, please state your full name for the
10 record?

11 A. I'm sorry?

12 Q. Please state your full name for the record?

13 A. Bernice Mobley Evans.

14 Q. And I don't want to be -- or offend you, but how old
15 are you, ma'am?

16 A. I'm seventy-two.

17 Q. Okay. And what is your relationship to Mr. Evans?

18 A. He's my son.

19 Q. How close do you live to your son?

20 A. A little bit farther than that door.

21 Q. Okay. And ---

22 THE COURT: Ma'am, reach for the mic and pull it
23 in front of you a little bit?

24 THE WITNESS: This?

25 THE COURT: Yes.

1 THE WITNESS: Okay.

2 THE COURT: All right.

3 Q. How do you know Minor and Y.B. ?

4 A. Through my son.

5 Q. Okay. And what was your interaction with those two
6 children?

7 A. Every time he'd get them, they'd stay with me mostly.

8 Q. Okay. What would y'all do?

9 A. We'd have a blast. We'd have fashion shows. They
10 eat all their meals there and took their showers and their
11 baths there. We'd play games, watch TV. They loved to
12 pick at him and always had something going on, playing
13 around and everything. And go in and out, playing ball,
14 playing with the dog, watched TV.

15 Q. Were they always together?

16 A. Yeah. They always was.

17 Q. Okay. And what was your impression of their attitude
18 toward Mr. Evans or towards your son? How did they feel
19 toward him?

20 A. They loved him. They was always -- they cried to go
21 with him all the time. They called him Uncle Glen. And
22 if he had to run to town or something and left them there
23 with me for a short while and there was a car come up in
24 the driveway, they'd race through the house to Uncle Glen,
25 Uncle Glen.

1 Q. What would they do when he would come home?

2 A. They'd jump all over him. Start picking at him,
3 playing with him.

4 Q. Okay. You're not lying for your son?

5 A. No.

6 Q. And has Glen had girlfriends over the years?

7 A. Yes.

8 Q. Okay. Thank you, Ms. Evans.

9 THE COURT: Solicitor?

10 MR. TOOKER: Thank you, sir.

11 **CROSS EXAMINATION**

12 **BY MR. TOOKER:**

13 Q. Ms. Evans, do you want any water, ma'am?

14 A. Would you, please?

15 Q. Yes, ma'am.

16 A. Thank you.

17 Q. Yes, ma'am.

18 A. Thank you.

19 Q. Are you okay?

20 A. Yeah.

21 Q. I'll be brief, ma'am?

22 A. Okay.

23 Q. You said that they stayed with you mostly?

24 A. Yes.

25 Q. But they would sleep at his house; right?

- 1 A. Yeah. But they wouldn't be over there very long
2 because they'd stay late at my house watching the TV or
3 playing some games. This is all the time.
4 Q. They played computer games on his computer; right?
5 A. Yes. They did do that because I wouldn't let them
6 get on mine.
7 Q. And his computer's in his bedroom; is that right?
8 A. Yes.
9 Q. Okay. And your place is a bigger place than his
10 place; right?
11 A. Oh, yeah. It's a lot bigger.
12 Q. And I don't mean to sound mean about him or anything,
13 but your place is a nicer place than his place; isn't it?
14 A. Yes.
15 Q. Okay. How many bedrooms do you have?
16 A. Do I have?
17 Q. Yes, ma'am.
18 A. I have three.
19 Q. Three bedrooms?
20 A. Uh-huh (affirmative).
21 Q. Okay. But he stays in his place; right?
22 A. Yes.
23 Q. And his place, he keeps a lot of junk inside?
24 A. Yeah. Well, I got a lot of my stuff stored in there
25 too.

- 1 Q. Okay.
- 2 A. Because that used to be my trailer.
- 3 Q. So there's lot of things inside?
- 4 A. Yeah.
- 5 Q. And it's real crowded in the kitchen and in other
- 6 rooms?
- 7 A. Yeah.
- 8 Q. But he still chooses to sleep in that trailer instead
- 9 of in your place?
- 10 A. Yeah. Yeah. That way we both have our space.
- 11 Q. Yeah. Sure. Sure, sure, sure. And Y.B. and
- 12 Minor , when they would stay there, they would stay in
- 13 his bed; is that right?
- 14 A. Yeah.
- 15 Q. Okay. All right.
- 16 A. Unless they took a nap at my house.
- 17 Q. Okay. And they would eat and stuff at your house
- 18 because his kitchen didn't work?
- 19 A. Yeah. They eat three meals a day plus snacks at my
- 20 house.
- 21 Q. Yeah. Because he couldn't make anything for them in
- 22 his kitchen?
- 23 A. Right.
- 24 Q. Yeah. Okay. And they would shower at your place too
- 25 because only he showered at his house; right?

1 A. No, because he didn't have no water.

2 Q. He didn't have any water?

3 A. No. Everybody took showers and baths at my house.

4 Q. At your house?

5 A. Uh-huh (affirmative).

6 Q. Okay. And then they would come back all squeaky
7 clean to that place and go to sleep?

8 A. Yeah.

9 Q. Okay. All right.

10 MR. TOOKER: No further questions. Actually,
11 one second.

12 Q. Do you have anybody that lives with you?

13 A. Now? No.

14 Q. Okay. Is your husband deceased, ma'am?

15 A. I've been a widow for forty-three years.

16 Q. Okay. All right.

17 A. And Glen's the only one helps me. I can't manage on
18 my own anymore.

19 Q. Yes, ma'am. You love him?

20 A. I'm sorry?

21 Q. You love your son?

22 A. Of course, I love my son.

23 Q. Okay.

24 MR. TOOKER: No further questions.

25

REDIRECT EXAMINATION

1 BY MS. JOHNSON:

2 Q. Ms. Evans, they followed Glen to his house; is that
3 right?

4 A. I'm sorry?

5 Q. They followed Glen to his house?

6 A. Yes.

7 Q. And where did Glen sleep to your knowledge?

8 A. To my knowledge and for many years Glen has slept in
9 a recliner chair. Nobody else is allowed to sit in it but
10 him. He sleeps in there and if he could get away with it,
11 he would eat in there, too.

12 Q. Thank you, Ms. Evans.

13 THE COURT: Anything further?

14 MR. TOOKER: No, sir. May she be excused?

15 THE COURT: All right. Yes. Thank you.

16 MS. JOHNSON: Judge, may we approach?

17 THE COURT: Ladies and gentlemen, I'm going to
18 have you go to the jury room for just a moment. Please do
19 not discuss the case.

20 (WHEREUPON, the jury exited the open court at
21 approximately 4:55 p.m.)

22 THE COURT: Yes, ma'am?

23 (WHEREUPON, Defendant Exhibit Number 1 was marked for
24 identification.)

25 MS. JOHNSON: Judge, at this time I would like

1 to introduce the forensic video on Y.B. . It's my
2 understanding that Mr. Tooker is not going to objection to
3 Ms. Carlberg not being here to lay the foundation.

4 THE COURT: Is that correct?

5 MR. TOOKER: Yes, sir. No foundational
6 objection.

7 THE COURT: Okay. Very good. Of course, I
8 think the foundation has pretty much been laid anyway. If
9 there's no objection, you can introduce it. So do you
10 want to set it up?

11 MS. JOHNSON: Yes, sir, Your Honor.

12 THE COURT: So that when the jury comes in you
13 can push a button.

14 MS. JOHNSON: Yes, sir.

15 THE COURT: I mean, you can say what you're ---

16 MS. JOHNSON: I guess we need to admit it.

17 MR. TOOKER: That was all I was going to say,
18 just formally admit it into evidence on the record and
19 everything in front of the jury.

20 THE COURT: I don't want to prevent her from
21 setting it up now.

22 MR. TOOKER: Of course.

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

25 THE COURT: All right. Are we ready?

1 MS. JOHNSON: Yes, Your Honor.

2 THE COURT: Okay. I'm giving the thumbs up if
3 you're ready. Of course, you'll offer the exhibit and
4 then you'll -- you just have it set up.

5 We're ready for them.

6 THE BAILIFF: Yes, sir.

7 (WHEREUPON, the jury entered the open court at
8 approximately 5:03 p.m.)

9 THE COURT: All right. Thank you. Your next
10 witness.

11 MS. JOHNSON: Judge, at this time, I would move
12 to admit Defense Exhibit 1 into evidence and publish to
13 the jury.

14 THE COURT: Do you have any objection?

15 MR. TOOKER: No objection from the state, sir,
16 and we waive any kind of foundational requirements.

17 THE COURT: All right. It's admitted.

18 (WHEREUPON, Defendant Exhibit Number 1 was admitted
19 into evidence.)

20 (WHEREUPON, Defendant Exhibit Number 1 was published
21 in open court.)

22 THE COURT: All right. Your next witness.

23 MS. JOHNSON: Judge, at this time, the defense
24 rests.

25 THE COURT: All right. Ladies and gentlemen,

1 you have heard the defense's case. Any reply by the
2 state?

3 MR. TOOKER: Yes, sir, Your Honor. Briefly.

4 THE COURT: All right. You may proceed.

5 MR. TOOKER: The state would call Detective
6 Swafford to the stand.

7 THE COURT: All right. Detective Swafford,
8 you're still under oath.

9 **BRIAN SWAFFORD,**

10 **HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MR. TOOKER:**

13 Q. All right. Detective Swafford, you were present for
14 the defendant's testimony?

15 A. Yes, sir.

16 Q. What word did he use to describe the position he was
17 in with the girls in the bed before he went to his chair?

18 A. Laying down.

19 Q. Laying down?

20 A. Yes, sir.

21 Q. Is there any equivocation about that?

22 A. No, sir.

23 Q. Okay. The movie, Jennifer's Body, are you familiar
24 with it?

25 A. I am.

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1 Q. Okay. Is that a pornographic movie?

2 A. No, it's not. It's more a comedy movie.

3 Q. Okay. What's it rated?

4 A. Rated -- I believe it's rated R.

5 Q. Okay. So it's for adults?

6 A. Right.

7 Q. But not pornographic?

8 A. Not pornographic.

9 Q. Okay.

10 MR. TOOKER: No further questions.

11 **CROSS EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. In Jennifer's Body, there's a lesbian love scene?

14 A. I've never seen it myself. I just know it's not a
15 pornographic movie.

16 Q. You have no knowledge or you've never seen it?

17 A. No, I've never watched the movie.

18 Q. So you couldn't say what's in that movie. And, also,
19 my client told you ---

20 MR. TOOKER: Judge.

21 Q. --- he was in an easy chair ---

22 MR. TOOKER: Judge, I'm going to object to
23 hearsay.

24 MS. JOHNSON: Judge, this is a statement. I
25 have a right to cross examine him on his statement.

1 THE COURT: I can't rule without hearing the
2 question.

3 Q. He also told you that he slept in an easy chair?

4 MR. TOOKER: I'll withdraw the objection.
5 That's fine.

6 A. Yes. He did tell me he slept in a chair.

7 MS. JOHNSON: Thank you.

8 THE COURT: All right. Thank you, sir.

9 THE WITNESS: Yes, sir.

10 THE COURT: Any further witnesses?

11 MR. TOOKER: No, sir. That's it.

12 THE COURT: All right. Ladies and gentlemen,
13 you have heard all of the testimony in the case and that
14 brings us to the end of this day. What remains will be
15 the closing arguments, the jury charge and your
16 deliberations.

17 And certainly people who live with you or who might
18 see you when you leave here today may want to know
19 something about the case that you are a juror on. They
20 may want you to tell them about it. But you are to
21 refrain from doing so under your oath, because under our
22 system, you're supposed to discuss the case only with the
23 folks who have heard the same thing that you have heard.
24 It would be unfair to the parties and to your fellow
25 jurors to go home and deliberate or discuss the matter

1 with someone else before discussing it with your fellow
2 jurors. And you're not to discuss it with your fellow
3 jurors until you have heard the closing arguments by the
4 lawyers and I've given you the law, which will take place
5 tomorrow morning at nine thirty. So we're going to quit
6 for the day and we need you back at nine thirty tomorrow
7 morning. We'll see you at that time.

8 (WHEREUPON, the jury exited the open court at
9 approximately 5:46 p.m.)

10 THE COURT: Are there any matters of law?

11 MS. JOHNSON: Judge, at this time, I renew my
12 previous motion for a directed verdict.

13 THE COURT: All right. And it's denied for all
14 the reasons stated before. Credibility is a matter for
15 the jury to determine.

16 Anything regarding requests to charges?

17 MR. TOOKER: I needed to have this on hand, but
18 I'd request -- I'd have to look up the statute section,
19 but there is that statute in the code that says victim
20 testimony in a CSC case need not be corroborated. So I
21 would request that charge.

22 THE COURT: Anything from the defense?

23 MS. JOHNSON: Judge, I would like your standard
24 reasonable doubt charge. This is not a case about proving
25 the truth but about proving my client guilty beyond a

1 reasonable doubt.

2 THE COURT: Basically on the issue of
3 credibility -- I'm sorry. The reasonable doubt standard
4 charge -- what's the other thing you said?

5 MS. JOHNSON: Just that it's the jury's purview
6 to determine whether the state met its burden or not, what
7 the truth is.

8 THE COURT: I think the only time the word truth
9 is mentioned in the jury charge is at the end of the
10 charge when I tell the jury -- well, in the beginning I
11 tell them that it is your duty to determine the effect,
12 the value, the weight and the truth of the evidence
13 presented during this trial. And under testimony of
14 children, it says, children may be influenced by the way
15 questions are asked. It's up to you to decide whether the
16 child -- I'm sorry, before that it says -- it's basically
17 talking about the evaluation of testimony of children in
18 general. Because young children are not fully
19 understanding what is happening here, it is up to you to
20 decide whether the child understood the seriousness of
21 appearing as a witness at this criminal trial, whether the
22 child understood the questions, whether the child has a
23 good memory and whether the child understands the
24 difference between lying and telling the truth. Again,
25 that's another use of the word truth.

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1 And then at the end it says, you are the judges of
2 the facts and your sole interest is to seek the truth from
3 the evidence in this case. And, of course, a
4 conscientious juror in searching for the truth, that's
5 part of the reasonable doubt definition, as well. So you
6 tell me which, if any, of those references to the word
7 truth you might oppose.

8 MS. JOHNSON: I don't, Your Honor. I don't have
9 any opposition.

10 THE COURT: All right. Very good.

11 In connection with credibility, I tell the jury, you
12 must evaluate credibility and the testimony of the alleged
13 victim regardless of whether or not it is corroborated,
14 understanding that the law does not require corroboration.
15 I tell them that is part of credibility definition.

16 MR. TOOKER: That is totally fine with me, sir.

17 THE COURT: It is not a separate charge, so I
18 mask it in credibility.

19 MR. TOOKER: I'm going to be honest. I actually
20 think that's probably best. At some point, I think
21 there's been some concern about using that charge and
22 isolating it too much.

23 THE COURT: Right.

24 MR. TOOKER: It ended up being like that old
25 charge on flight is evidence of guilt, you know, giving it

1 too much weight. And then all of a sudden, the court says
2 no good.

3 THE COURT: So I'll deal with it in that fashion
4 and that's what I'll tell them tomorrow.

5 And basically, you know, the charge itself, criminal
6 sexual conduct with a minor in the first degree, the state
7 must prove beyond a reasonable doubt that the defendant
8 engaged in a sexual battery with the victim. Sexual
9 battery is sexual intercourse, cunnilingus, fellatio, anal
10 intercourse or any intrusion, however slight, of any part
11 of a person's body. Of course, this is the standard for
12 which all of these different words are included. I
13 usually take out some of them. But a sexual battery, I
14 don't know if you all want to use all of these words,
15 sexual intercourse, cunnilingus, fellatio, anal
16 intercourse or any intrusion, however slight, of any part
17 of a person's body or any object into the genital or anal
18 openings of another person's body, except when the
19 intrusion is accomplished for medically recognized
20 treatment or diagnostic purposes. Of course, I can take
21 out the word -- you know, things that obviously do not
22 apply such as anal intercourse or intrusion of any part of
23 a -- with any object into the genital or anal openings of
24 another person's body and leave all of the other words in
25 there.

1 MR. TOOKER: May I be heard, sir?

2 THE COURT: Yes, sir.

3 MR. TOOKER: With regards to anal intercourse, I
4 think it's fine to remove that part of it because I don't
5 think there are any allegations of that. I do believe
6 that in Minor's forensic interview, she said that the
7 defendant's tongue went into her vagina. So, because of
8 that, I would request that Your Honor keep any intrusion,
9 however slight, in the charge.

10 THE COURT: So the tongue would be any object?

11 MR. TOOKER: Yes, sir. That would be the
12 state's position.

13 THE COURT: So any object into the genital
14 openings and not anal opening.

15 MS. JOHNSON: And, Judge, I would respectfully
16 object to that. I think that cunnilingus is the tongue
17 into the vaginal opening. And I think that statute means
18 any kind of extrinsic non-bodily object.

19 THE COURT: That's what it's talking about. The
20 last CSC with a minor case I had, the -- when I read this,
21 that sexual intercourse, cunnilingus, fellatio, the jury
22 sent out a question that says, what is that question?
23 They asked what is cunnilingus? They asked for a
24 definition of cunnilingus. And we scoured the books
25 trying to find a definition in the case. I don't know if

1 that was it or something else. I believe it was fellatio.

2 Fellatio is the oral -- which one is -- what's fellatio?

3 MR. TOOKER: Your Honor, fellatio, if I'm not
4 mistaken, is oral sex performed by an actor upon the body
5 of a man, his penis. Cunnilingus is oral sex performed by
6 an actor on the vaginal area of a woman. Cunnilingus
7 doesn't necessarily have to be an intruding, but it can
8 be.

9 THE COURT: Well, they asked -- maybe -- I think
10 the question was what is fellatio? And that was a
11 question by the jury. And in trying to find a definition
12 in any case -- if you all can find a definition of
13 fellatio in any case in South Carolina, I'd like to see
14 it. Because the assumption is, is that the -- maybe the
15 question was, is oral sex fellatio? My law clerk, who is
16 supposed to be able to remember everything, can't
17 remember. But we just had it. I mean, it was the same
18 issue as this case. And that was a question that we got
19 from the jury. And we had to resort to Black's Law
20 Dictionary or Webster's Dictionary definition and we found
21 a case in North Carolina in which they -- I'm sure she
22 still has her research on her computer somewhere -- where
23 we had to dig up the -- to try to respond to the jury's --
24 I wanted to respond to the jury's question with case
25 authority, rather than the regular dictionary definition.

1 And I don't know -- I can't remember that case in North
2 Carolina, the dictionary definition. I don't know that
3 this Pickens County jury will get as crossed up with those
4 terms as the jury down in Kingstree. That was Kingstree;
5 wasn't it? It threw the jury for a loop for a moment
6 because it involved a male defendant who allegedly had a
7 female perform oral sex on him.

8 But if I say that sexual battery is sexual
9 intercourse, cunnilingus, fellatio, or any intrusion,
10 however slight, of any part of a person's body into the
11 genital openings of another person's body, then that would
12 cover what the state has alleged here. As opposed to
13 saying any part of a person's body or any object into a
14 person's body, since there's no allegation regarding an
15 object. So that's your objection?

16 MS. JOHNSON: Yes, Your Honor.

17 THE COURT: So it's just -- it's usually except
18 where the intrusion is accomplished for medically
19 recognized treatment or purposes. And then the state must
20 prove beyond a reasonable doubt that the victim was less
21 than eleven years of age. Is that it?

22 MR. TOOKER: Yes, sir. CSC with a minor less
23 than eleven.

24 THE COURT: And that makes it first degree. In
25 that case our victim was twelve. It was second degree, so

1 the victim was twelve, I believe.

2 Consent, willingness, indifference or ignorance on
3 the part of the minor, if any, as to what was taking place
4 does not in any way affect the charge of criminal sexual
5 conduct with a minor. Because an unmarried woman under
6 the age of fourteen cannot legally consent to sexual
7 intercourse. And that's basically the charge. And
8 everything else is standard jury charge language.

9 MR. TOOKER: Yes, sir. I would request for my
10 own edification and preparation for closing argument what
11 definition of reasonable doubt that Your Honor uses.

12 THE COURT: I tell them that hesitate to act and
13 also firmly convinced. So a combination of the two.

14 MR. TOOKER: Okay.

15 THE COURT: Yes, ma'am, Ms. Johnson?

16 MS. JOHNSON: Judge, I don't know if we did this
17 or not, but I just want to make sure that it is on the
18 record that the old CSC statute pre-omnibus is applicable
19 here is what Mr. Tooker and I agreed to.

20 MR. TOOKER: Yes, sir. And even if it weren't I
21 gave Ms. Johnson my word on that, so ...

22 THE COURT: Which means that the exposure is ---

23 MR. TOOKER: Zero to thirty.

24 THE COURT: Because otherwise under -- a child
25 under eleven would be up to life in prison?

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1 MS. JOHNSON: Twenty-five to life.

2 THE COURT: Twenty-five to life, right. And
3 we've had some of those. Okay. So, again, if you all --
4 and if you find anything where you want me to further
5 define fellatio where it's recognized, the definition, I,
6 you know, would like to see it. And I'd be happy to
7 consider that the meaning -- that would be a further
8 definition rather than using a big word, so that the
9 people can't decide among each other what it means. We'll
10 tell them what it means, you know, so we'll come up with a
11 definition. And my clerk will look through her notes from
12 Kingstree. With that we can reconvene at nine thirty.

13 MS. JOHNSON: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. TOOKER: Thank you, sir.

16 THE COURT: Mr. Evans.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're still out on bond.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I mean, your bond is returnable for
21 today, actually. Which means technically you don't have a
22 bond.

23 THE DEFENDANT: I'll be here early.

24 THE COURT: I need you here -- what time did you
25 get here today?

1 THE DEFENDANT: I was here at ten minutes till
2 nine.

3 THE COURT: All right.. What time do you need to
4 be here tomorrow?

5 THE DEFENDANT: Same time.

6 THE COURT: All right. See you at ten till nine
7 tomorrow.

8 MS. JOHNSON: Thank you, Your Honor.

9 (WHEREUPON, the court stood at recess for the day at
10 approximately 6:01 p.m.)

11 **DECEMBER 18, 2014**

12 (WHEREUPON, court convened with all parties present
13 and the following proceedings were had.)

14 THE COURT: Good morning.

15 MR. TOOKER: Good morning, sir.

16 THE COURT: All right.. We weren't late. I was
17 down in the garage reading some law that the Solicitor
18 gave me yesterday to read. And we're ready to talk about
19 it.

20 MR. TOOKER: Okay. Let me pull out my summary.
21 I don't remember this stuff well enough on my own. I've
22 got to refer to my notes.

23 So starting with State v. Gregory, which I think is
24 the seminal case in South Carolina, and provided the
25 original framework for South Carolina's current rule

1 regarding the admission of third-party guilt.

2 THE COURT: Yeah. Let me tell you my view on
3 them. I don't -- State v. Gregory was 1940?

4 MR. TOOKER: Yes, sir.

5 THE COURT: I generally don't recognize any law
6 from a period of time when I couldn't go in the
7 courthouse.

8 MR. TOOKER: Okay. Fair enough.

9 THE COURT: So give me something more recent,
10 but go ahead.

11 MR. TOOKER: Yes, sir. I mentioned State v.
12 Gregory because the language in State v. Gregory is
13 consistently cited in the more recent cases. And that
14 language is that evidence offered by the accused as to the
15 commission of the crime by another person must be limited
16 to such facts as are inconsistent with his own guilt and
17 to such facts as raise a reasonable inference or
18 presumption as to his own innocence. Evidence which can
19 have no other effect than to cast a mere suspicion upon
20 another or to raise a conjectural inference as to the
21 commission of the crime by another is not admissible. And
22 that is State v. Gregory, 198 SC 98, the parallel cite is
23 16 S.E.2d 532, 1941. And that's citing the corpus juris
24 from that era. An orderly and unbiased judicial inquiry
25 as to the guilt or innocence of the defendant on trial

1 does not contemplate such defendant be permitted by way of
2 defense to indulge in the conjectural inferences that some
3 other person might have committed the offense for which
4 he's on trial or by fanciful analogy to say to the jury
5 that someone other than he is more probably guilty. That,
6 again, is from that same case, page 105 on the South
7 Carolina cite; page 535 on the S.E.2d cite. Remote acts,
8 disconnected and outside the crime itself cannot be
9 separately proved; again, on that same page.

10 THE COURT: I think the law is pretty clear.

11 MR. TOOKER: Yes, sir.

12 THE COURT: And in State v. Mansfield, that was
13 cited in State v. Lorenzen as the case involving the
14 cigarette butts from the Chester/Lancaster area, York
15 County area. So the law is pretty clear on third-party
16 guilt, I think. Just in relation to what we're dealing
17 with in this case, ---

18 MR. TOOKER: Yes, sir.

19 THE COURT: --- let's get to that part.

20 MR. TOOKER: Okay. Then the state would cite
21 Lorenzen v. State, 376 S.C. ---

22 THE COURT: I said the law is clear, that you
23 cannot -- you know, Lorenzen was -- the judge granted PCR.
24 The state -- and the Supreme Court reversed because the
25 father -- or the defendant could not offer testimony that

1 the father was on a sex offender registry. So it's clear
2 that that just have no bearing on whether or not he was
3 guilty or not guilty of the crime. And, so, therefore
4 Judge Early was reversed.

5 MR. TOOKER: Yes, sir. That's exactly what I
6 was going to say. And I ---

7 THE COURT: So my question to you is how is all
8 that related to this case? Since the law is clear, tie it
9 in with the facts so we can move -- to see whether we
10 really have a controversy or not.

11 MR. TOOKER: Yes, sir.

12 THE COURT: Okay.

13 MR. TOOKER: So regarding the testimony elicited
14 on cross of the victim's father regarding the DSS
15 investigation when the girls were around two years old,
16 there was mention that residing in the house was an uncle
17 who was on the sex offender registry. The state is asking
18 that that information not be information that the defense
19 can use to argue as evidence of third-party guilty because
20 the state believes ---

21 THE COURT: There is no evidence of third-party
22 guilt in this case.

23 MR. TOOKER: Yes, sir.

24 THE COURT: I agree with you. I have heard no
25 evidence of third-party guilt.

1 MR. TOOKER: Okay.

2 THE COURT: So why -- so I'm trying to get to
3 the point of it all so we can proceed ---

4 MR. TOOKER: Yes, sir.

5 THE COURT: --- and not just waste time having
6 an academic argument over something that's not an issue.

7 MR. TOOKER: Okay. Well, again, I'm asking for
8 a limiting instruction from Your Honor to the defense to
9 prohibit the argument of third-party guilt evidence. If
10 Your Honor is saying there is no third-party guilt
11 evidence ---

12 THE COURT: There clearly is no third-party
13 guilt evidence.

14 MR. TOOKER: Okay.

15 THE COURT: No one has -- there's none.

16 MR. TOOKER: Perfect.

17 THE COURT: Zero, in this case. Ms. Johnson?

18 MS. JOHNSON: Judge, I don't have an issue. I'm
19 not going into the sex offender, but I certainly want to
20 go into the DSS implications, not about -- I'm not blaming
21 anything on the sex offender that was living in the house.
22 But I have a right to go into the DSS implications just in
23 total.

24 THE COURT: What do you mean by DSS
25 implications?

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1 MS. JOHNSON: Just the fact that the cop
2 threatened or dropped DSS. Now they're saying they were
3 scared that they would be taken. But, I mean, this is the
4 reason why they delayed reporting. I have no intention
5 ---

6 THE COURT: You have a right to argue
7 credibility of the evidence.

8 MS. JOHNSON: Right. I have no intention of
9 going into anything about a sex offender in the house.

10 MR. TOOKER: Okay.

11 THE COURT: And I agree with that. That's why I
12 allowed your cross examination. The father said he was
13 concerned about DSS taking his children. He'd just gotten
14 them back and that's why he didn't report it, et cetera.
15 I mean, you have -- you know, obviously you have a right
16 to present a full and complete defense. And I don't want
17 to attempt to screen or limit -- I don't attempt to screen
18 or limit arguments by putting words in the lawyers' mouths
19 as to what they can say or cannot say. And that's why we
20 have objections. All right.

21 MS. JOHNSON: Yes, sir.

22 THE COURT: What else?

23 MR. TOOKER: I think we're all on the same page.

24 THE COURT: Okay. All right. Now we're going
25 to define the two terms. We sent you the cases, the one

1 case anyway. As I was discussing the term, the only case
2 that defined fellatio that we could find was a North
3 Carolina case. And I -- whereas, we all may assume that
4 everyone knows what it is, considering I had a question in
5 the last case asking me to define the meaning of -- and
6 I'm so sorry. We gave the court reporter the notes. I
7 probably should have kept a copy of that one. I don't
8 know if they asked me to define oral sex or define the
9 meaning of the term fellatio. And so in this case we have
10 evidence of fellatio and cunnilingus, and we're going to
11 define those terms to the jury as part of the instruction.
12 And ---

13 MS. JOHNSON: And, Judge, just so the record is
14 clear, at this point I would object to those definitions.
15 And I would ask the court to read the statute and then if
16 they come back with a question, then we could potentially
17 cross that bridge.

18 THE COURT: I don't solicit questions. I give
19 instructions that hopefully has the effect of eliminating
20 the need of asking questions. And to use a term that
21 doesn't have a common and ordinary meaning, it's proper
22 for the court to define the meaning of the term. If I
23 were to ask twelve people here, what is cunnilingus, maybe
24 half of us would get it right. Half of us wouldn't.
25 What's cunnilingus, what's fellatio? You know, people get

1 them crossed. They may not know what they are. They're
2 not terms that are used in a common everyday manner. So
3 I'll define them, over your objection.

4 MS. JOHNSON: Thank you, Your Honor.

5 THE COURT: Fellatio is defined as oral
6 stimulation or manipulation of the penis. It doesn't say
7 by a male or a female, just oral stimulation of the penis.
8 And oral as given through or affecting the mouth. I don't
9 think I -- I think just saying oral stimulation of the
10 penis covers fellatio. And cunnilingus is -- cunnilingus
11 indicates in State v. Morgan, stimulation of the vulva or
12 clitoris with the lips or tongue. So those are the two
13 definitions that I will give after stating in the charge
14 that the -- that a sexual battery is cunnilingus,
15 fellatio, or any intrusion, however slight, of any part of
16 the person's body into the genital openings of another
17 person's body, except when the intrusion is accomplished
18 for medically recognized treatment or diagnostic purposes.
19 And I'll define cunnilingus and fellatio. The state must
20 prove beyond a reasonable doubt the victim was less than
21 eleven at the time. All right. Anything else?

22 MS. JOHNSON: No, Your Honor.

23 THE COURT: And I give the jury a copy of the
24 jury charge. Any objection to that?

25 MR. TOOKER: No objection from the state?

1 MS. JOHNSON: At this time, no objection, Your
2 Honor.

3 THE COURT: Okay. All right. Thumbs up.

4 THE BAILIFF: Yes, sir.

5 THE COURT: Are you opening on the law?

6 MR. TOOKER: The state's going to waive opening
7 on the law.

8 THE COURT: Okay. Mr. Bailiff, if you would
9 move that board there ---

10 MS. JOHNSON: Judge, I was going to use that
11 board.

12 THE COURT: You are perfectly -- use whatever
13 you'd like, but you don't block the Judge's view.

14 MS. JOHNSON: I'm sorry, Your Honor.

15 THE COURT: Especially the foreperson of the
16 jury.

17 (WHEREUPON, the jury entered the open court at
18 approximately 10:04 a.m.)

19 THE COURT: Good morning.

20 THE JURY: Good morning.

21 THE COURT: Welcome back, ladies and gentlemen.

22 You have heard all of the evidence -- all of the
23 testimony. You've received all of the evidence. It's now
24 time for closing arguments. The state waives the opening
25 on closing, and the defense will proceed with closing.

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1 After the defense, you'll hear from the state. Please
2 give them your attention.

3 Yes, ma'am.

4 MS. JOHNSON: May it please the Court?

5 THE COURT: Yes.

6 MS. JOHNSON: Mr. Tooker.

7 **CLOSING STATEMENT**

8 **BY MS. JOHNSON:**

9 Mr. Foreman, ladies and gentlemen of the jury, in the
10 state's opening you heard all of -- they said we're going
11 to tell you the truth. We're going to show you the truth.
12 And yesterday, the defense had to play a video of a
13 witness in this case. They weren't showing you the truth.
14 And I want to tell you why. They didn't want you to see
15 all the discrepancies between the sisters' testimony.
16 Now, you may remember this from school. It's a venn
17 diagram.

18 MR. TOOKER: Your Honor. May I move to ...

19 THE COURT: Yes, sir.

20 **CLOSING STATEMENT CONTINUED**

21 **BY MS. JOHNSON:**

22 So if this is the case -- and I'm sorry that it's
23 wrinkled up -- if this is the case, this is the state's
24 case and this is all the reasonable doubt in this case.
25 And I'm going to show you why.

1 You saw both videos of the two girls in this case.
2 How can they be so different? We've got Minor saying
3 this happened three times. Y.B. says once. Now, this
4 was all on the video. Now Minor came into court and
5 said every time. She comes into court two and a half
6 years later and says every time. We've got Minor saying
7 the defendant was only wearing boxers. Now we've got
8 Y.B. saying he's naked. How can two people perceive
9 the same event so differently. Ask the state that. We've
10 got Y.B. -- Minor , I'm sorry -- saying there was
11 white stuff. No indication of any white stuff from
12 Y.B. . And this is the one that's hard to believe.
13 Minor says there were hands by my side. My hands were
14 by my side. Or his hands were by my side. You're the
15 jury. You're the finder of fact. You saw the video.
16 Y.B. says, pushing her down. That is a huge
17 discrepancy. Minor says, he told me not to tell or
18 else. Y.B. says, didn't say anything but a clinging
19 noise. She's supposed to be in the room. In the room.
20 Minor says oral sex on her. There's no indication from
21 Y.B. that there's any oral sex. Spitting from Minor ,
22 no spitting or any noise from Y.B. . And I know this is
23 very difficult. I understand that. But there's so many
24 discrepancies in this case. Clothes are off according to
25 Minor . No indication from Y.B. . And let's go back

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1 to this three versus one. This is such a big deal, ladies
2 and gentlemen, because they are together at all times.
3 These sisters are best friends. They are together at all
4 times. They're not going to leave each other's side. The
5 one thing they are -- one of the things they can say is
6 that a penis is long. Ladies and gentlemen, most
7 children, most people would describe a penis as being
8 long.

9 And then you get more discrepancies in the videos.
10 We got Minor denying porn exposure, but we've got
11 Y.B. saying that there's porn or adult movies that we
12 know she's seen. Yet we know she's seen these adult
13 movies. We know that. There's no denial about that. And
14 they're together. Minor says, my parents gave me a
15 rundown. And that leads me into another topic I'm going
16 to talk about, which is contamination. And then Y.B.
17 says, I don't know why I'm here. Again, they're together
18 all the time. Night, day. Minor says nothing works,
19 but then Y.B. says he comes out of the shower and
20 that's when I see him naked. The shower doesn't work in
21 the house. It won't hurt, it will help when she comes
22 into court two years later and says it's a threat.
23 There's no mention of that by Y.B., the supposed
24 witness. How can two people get something of the same
25 event or events completely different? Because it didn't

1 happen. We've got this join in. Y.B. only volunteered
2 that in the video when she was asked. And she also told
3 Detective Swafford that she didn't remember who asked her
4 that.

5 So ask the state why they didn't want you to see
6 that? And I know that Y.B. was emotional yesterday. I
7 understand that. Don't be swayed by the emotions. Look
8 at the facts. She was never emotional before. There was
9 no indication that she was emotional with her family or
10 the detectives.

11 Another problem with this case -- and I'm sorry for
12 being so jumbled and disorganized, but I want to make sure
13 I get the points across to you. These ages are insane.
14 And I apologize for using that word. Minor on the
15 video, eight/nine, nine/ten. Two and a half years later
16 Minor says she's seven. Y.B. says that Y.B.
17 eight and Minor is nine or ten. Just nobody knows.

18 These are more reasonable doubts. And there are a
19 ton of reasonable doubts in this case. And I'm going to
20 go everyone of them.

21 Now, I told you before the case, I said I was going
22 to talk about three d-words. And those d-words are
23 discrepancy, which I've already talked about, details and
24 the mystery d-word is DSS. And we're going to go through
25 those. Okay. Well, let's go over these reasonable doubts

1 first. Number one, the parents don't even believe their
2 own children. These parents love their children and they
3 didn't believe them? Why? And the state wants you to
4 believe them. Number two, I want you to ask the state
5 where's Brittany? She's the cause of all this. Why
6 wasn't she here? Number three. Number three is a very
7 big one, contamination. There's so much contamination in
8 this case. We've got Brittany who's not here. We've got
9 Florence who is here, but, you know, she doesn't remember
10 and she didn't write this statement. A detective wrote
11 this statement. We've got mama. We've got daddy. All of
12 these people are talking to these children. Number four,
13 we've got a cop that won't quit like the energizer bunny.
14 He will not quit. And I'm going to show you in my next
15 slide why. He will not give up until he gets a yes.
16 Until he gets -- until he finds what he's looking for.
17 We want cops to investigate cases, not pressure people.
18 And I submit to you that is what he did. Number five, age
19 problems and time problems. I'll go into that in more
20 detail. Number six, the major discrepancies, I just went
21 over those. Major discrepancies in these videos. DSS is
22 a huge one. DSS is the line in the sand. Once that cop
23 said DSS, mama says, game's on. Is that right? They run
24 for cover. But these parents love their children, but
25 they do not want -- they want to get the heat off them,

1 DSS.

2 And let's talk about it. These girls are smart.
3 They know that Glen and DSS, there's no connection, ladies
4 and gentlemen, absolutely no connection. They're not
5 going to be taken away from their parents because of Glen.
6 This is a jumbled up time line of the case. And what we
7 have is girls tell mom dad, denied. They go to Florence,
8 denied. And let me back up. This was our interpretation
9 of what happened. Again, you are the fact-finders. But
10 it's just such a mess. They got to Florence and Brittany,
11 cops. They go to Brittany. Where is she? Why isn't she
12 here? So we got a denial here. We go to Torres, we got a
13 denial. He passes it off to Swafford. We got another
14 denial. He goes to Beth. He goes to Beth. He goes to
15 Beth. He goes to Beth. He goes to Florence. You heard
16 the testimony. He says DSS. Mama whips out game board,
17 now we got a charge.

18 Other reasonable doubts. I mean, these are major.
19 Now two and a half years later Minor says every time she
20 went over to Glen's house. That's a far cry from three
21 times in her video when she was closer to the alleged
22 incident. Now two and a half years later she's scared.
23 And there's a lot of explanations, excuses, that she
24 gives, I just ask that you parse through them. Again, the
25 girls are always together and their stories don't match

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1 up. Do not be swayed by the emotion. Look at the facts.

2 Another important thing that I found -- excuse me --
3 that came out is Minor says I lied to the cops because I
4 could only tell my parents. She lied to her parents
5 before. And this is just a repeat. There's no indication
6 that Y.B. was emotional about allegations before this
7 court procedure. I just would ask you to keep that in
8 mind and look at her discrepancies, look at the problems.
9 And ask the state why they didn't want to show you those
10 discrepancies.

11 Credibility. It's very difficult to talk about
12 credibility of children. Everybody wants to believe that
13 children tell the truth. But in this case we know that
14 there are credibility issues. We've got an extended
15 period of denials. Children don't always tell the truth.
16 We know that the truth can be fabricated, manipulated from
17 the state's very own witness, expert witness. We've got a
18 cop, pressure that they're feeling, come on, come on, come
19 up with a story. Florence doesn't like Glen. Brittany
20 and Beth, I don't make light of this but it's in the
21 video, have been abused. One says something and the other
22 one says another. They can't get on the same page. You
23 can't believe both and you can't believe either one.

24 Now, you heard from my client yesterday. And the
25 prosecutor had a good time playing with the word mistake.

1 And he wanted to trip my client up on that word or that
2 term. Ask the prosecutor is it okay for children to
3 misstate three or more times together, but not Glen. His
4 comments were taking out of context and the prosecutor is
5 going to try to make a mountain out of a mole hill.

6 Another thing is the state wants you to believe that
7 every man, whether it be uncles, brothers, dads, anybody
8 who tickles, wrestles with their children, okay, they're
9 going to be -- they're a pedophile. That's a scary world.
10 A very scary world. And I'm sure that the state is going
11 to paint a picture of my client as this monster and he
12 lured the children over to his house at nighttime. And
13 mama had three bedrooms at her house. The children loved
14 Glen. That came out through his -- through the children's
15 own parents. Nobody forced them to do anything. Again,
16 the girls are never scared of Glen. Never scared of Glen
17 until court.

18 And I also want to talk about something that's pretty
19 important that I picked up on. When the cop testified
20 yesterday during the state's rebuttal, he was talking
21 about a video that he hadn't even seen. And I thought
22 that was very prescient about the whole case. We've got
23 somebody testifying about something he doesn't even know
24 anything about. We've got a doctor who's going to say,
25 well, there were no injuries, but this could have

1 happened. She doesn't know. We've got an expert who
2 wasn't there. Essentially, she's testifying about
3 something she has no knowledge of. And that kind of plays
4 into this contamination. You've got all of this
5 contamination in this case. We've got contamination with
6 the sisters, with the family members, with law
7 enforcement. And I'm not alleging any impropriety, but
8 you saw the greeting with the prosecutor and the witness
9 on the stand yesterday. Contamination all over the place.

10 I did fail to talk about details. And that was one
11 of my big d-words that went along with discrepancies,
12 details and DSS. We've got a very generic description of
13 a penis. Long. No knowledge of whether it's hard. We've
14 got no -- any indication of a beard touching her private
15 parts. Those are core contextual details. The details
16 that they provided are very generic or that they could
17 have picked up in their house or exposure to pornography.

18 Now, the Judge is going to charge you on reasonable
19 doubt. He's not going to charge you on the truth. Your
20 job is not to determine the truth. We're never going to
21 know the truth. He's going to charge you on reasonable
22 doubt, whether the state of South Carolina proved my
23 client guilty beyond a reasonable doubt. Ladies and
24 gentlemen, I submit to you they did not for the reasons I
25 explained.

1 And I want to end on this. Make the state explain
2 that it's not a coincidence that the girls described -- or
3 denied three times or more, then disclosed together. They
4 deny together and they disclose together. Make the state
5 explain that connection. Shauna Galloway-Williams talked
6 about that two to four percent are false allegations. My
7 client is that two to four percent.

8 And on behalf of Mr. Evans, I thank you for your time
9 and your service. And I ask that you find my client not
10 guilty. Thank you.

11 THE COURT: Solicitor.

12 MR. TOOKER: Thank you, Your Honor, and may it
13 please the Court. Ms. Johnson.

14 **CLOSING STATEMENT**

15 **BY MR. TOOKER:**

16 Mr. Foreman, ladies and gentlemen of the jury, good
17 morning to you. I know that this has been a long day and
18 change. This is not, I would imagine, how you would
19 prefer to spend your time. But, again, it is extremely
20 important what you are doing here. So, again, I extend my
21 thanks.

22 The question in this trial; right, either guilty or
23 not guilty. It's like Hamlet. Guilty or not guilty,
24 that's the question. And it's a question that y'all have
25 to figure out when you go into your deliberation room and

1 you think about the testimony and you think about the
2 evidence and you think about how the testimony is applied
3 to the law, how the evidence is applied to law, and
4 whether or not the elements are satisfied.

5 So first thing I want to do is show you guys sort of
6 my breakdown of what the law is in this case. And I want
7 to say, too, if what I say differs from what His Honor
8 says in any way, you, of course, take what His Honor says
9 as the word because he is the expert on the law and he is
10 the judge of the law, just as you are the judges of the
11 facts. But I think this is, at least a decent summary.

12 So, criminal sexual conduct with a minor in the first
13 degree, a person is guilty of criminal sexual conduct with
14 a minor in the first degree if the actor engages in a
15 sexual battery with a victim who is less than eleven.
16 Now, in this case I don't think there's a dispute that the
17 victim was less than eleven when she was going over to the
18 defendant's house. That's not an issue. Age is not an
19 issue. The issue is whether or not the sexual battery
20 occurred.

21 Now, what is a sexual battery? Sexual battery is
22 defined as sexual intercourse, fellatio, cunnilingus, or
23 any intrusion, however slight, into the genitals of
24 another. And I know it's going to sound crude, but
25 fellatio, because it's not a word we use a lot, it's a

1 blow job. It's oral sex performed on the penis of a man.
2 Cunnilingus is oral sex performed on the private parts of
3 a female. That's what those two words mean. So if
4 there's oral sex in any form, performed on somebody and a
5 child less than eleven is involved, it's criminal sexual
6 conduct with a minor in the first degree.

7 In addition to that, the testimony of the victim need
8 not be corroborated. You can determine, based on what you
9 hear, that that is enough. I mean, we put other witnesses
10 on the stand. We called the doctor. We called the family
11 members. We called the officers. We called the expert in
12 the field of child abuse disclosure and dynamics. We
13 called these witnesses, but ultimately all we needed to
14 call in this case is one person and that is Minor ,
15 because you can be convinced beyond a reasonable doubt
16 that the defendant is guilty on her testimony alone.

17 Now, we include the other stuff because, of course,
18 the burden's on us. And that burden is to prove the
19 defendant guilty beyond a reasonable doubt. And that
20 means when you go into your jury deliberation room and you
21 talk about whether or not he's guilty, you need to be
22 firmly convinced of his guilt. So if, when considering
23 all the evidence and considering the testimony and
24 considering the credibility of the witnesses, you are
25 firmly convinced that he did it, then it is your

1 obligation to find him guilty.

2 Well, Ms. Johnson talked about some stuff that's
3 disputed. Let's talk about what's undisputed first.
4 What's undisputed in this case is that the defendant had
5 been family friends with the victim's family for a long
6 time; right? That they had known each other for a long
7 time, that the girls were comfortable with him, that he
8 had pretty much seen them grow up; undisputed testimony.
9 Undisputed that he would babysit them some weekends;
10 right? That part of the testimony was undisputed. The
11 defendant admitted to that fact. Undisputed that he would
12 pick them up and take them to his house. That's
13 undisputed. The girls description of the derelict nature,
14 the fact that there's stuff everywhere and it's not
15 particularly liveable in the defendant's trailer, also
16 undisputed. The defendant admits to that much, his mother
17 admits that. Also undisputed that the girls, when they
18 would go there, would sleep in his bed. Now, the
19 defendant says I would fall asleep or they would fall
20 asleep with me in the bed and then I would get up and go
21 to my chair. The girls say he slept with us. Well, what
22 does the girl, know; right? I mean, she lies down, the
23 man's next to her in the bed, laying down. She goes to
24 sleep and then when she wakes up, you know, I mean, he's
25 not there anymore. But based on how I would imagine a

1 child perceiving that event, if you go to bed and
2 somebody's in that bed with you, you went to bed with that
3 person; right? So Y.B. and Minor said that. He says
4 he laid down with them but he didn't sleep. He let them
5 sleep and then he went to his chair. Also, I think
6 something that you can argue is not in dispute. What else
7 is not in dispute? That they always did that in his
8 trailer; right? They didn't sleep in mom's trailer. They
9 didn't sleep outside in a tent, anything else, that it was
10 there. They played there and they would go eat at mom's
11 house. These are all undisputed things. What else is
12 undisputed? That the victims disclosed. That they
13 disclosed and then they recanted. And then they disclosed
14 again. And then they wouldn't say what happened to law
15 enforcement. And then finally, they came forward and said
16 what happened; right? These are undisputed facts in this
17 case.

18 Now, like I said in the beginning of this trial, the
19 credibility is the most important thing that you have to
20 discern. And you use your common sense. Like I said, you
21 don't leave your common sense at the door when you come
22 into this courthouse. You use your common sense when
23 evaluating credibility.

24 Ms. Johnson was trying to hit on me for talking about
25 truth. I say truth because when I talk about credibility

1 I think you can determine who's telling the truth based on
2 who you see talk, how they talk, and what their motives
3 are. Me, myself, when I'm assessing someone's
4 credibility, when I'm trying to figure out whether or not
5 they're being truthful with me, how do they talk to me?
6 What's their demeanor? Do they seem like they're trying
7 to convince me or do they seem like things are the case,
8 whatever they may be? Something happened, whatever that
9 thing was, and they're just telling me about that, as if
10 recounting some other thing that happened in their life.

11 So when people persuade, I think that's indicative of a
12 false nature. When people explain, I don't think that's
13 indicative of that same false nature.

14 What do they have to lose or to gain in testifying or
15 in saying anything. When you think about whether or not
16 somebody's telling the truth, you try to evaluate their
17 motives; right? If a car salesman comes to you and you're
18 in a car lot and he's like, I want to put you in this car
19 right here. And you're looking at it and it looks
20 terrible. And it looks absolutely terrible. And he's
21 saying, no, no, it's in great shape. We've rebuilt the
22 motor, we've rebuilt the tranny; everything is in absolute
23 tip-top condition. You think to yourself, well, what's he
24 got to gain by saying that to me. A sale; right? He's
25 getting commission. He says that. He makes a sale. He

1 gets his commission. You're going to walk off with a
2 lemon; right? The same's true in court. What did the
3 victims have to lose or gain by testifying in this trial?
4 What benefit did they receive by coming in front of a
5 group of strangers, with whom they are not familiar, and
6 explaining something that is both disturbing and
7 humiliating? They gained nothing. And I say, too, y'all
8 all had to stand up here at one point; right? You had to
9 come up and Ms. Johnson and I evaluated you when we were
10 picking a jury. And that's a thing that's uncomfortable.
11 I mean, you've got all those people, all your fellow
12 jurors out there in the pool looking at you. You've got
13 myself, you've got Ms. Johnson, we're looking at you. And
14 that's the kind of thing that makes you a little nervous.
15 Imagine how much more nervous you are when you're sitting
16 in that chair, you're a fourteen-year-old girl or a
17 twelve-year-old girl and you're talking about somebody
18 doing something so vile and disgusting that you have
19 trouble articulating exactly what it is they did. Think
20 about that. Why do that? Why put yourself through it
21 unless it happened, unless it were the truth?

22 Defense talked about that they had the -- the venn
23 diagrams; right? And I want y'all to imagine this
24 circumstances, I mean, really try to picture in your head
25 the layout of this place, the fact there's a bedroom.

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1 Like mom said, there's a computer in the bedroom. And so
2 Y.B. says I saw it happen one time. Minor says
3 Y.B. saw it happen one time, maybe she saw it happen
4 another time. Minor doesn't say Y.B. saw it happen
5 three times. Minor says she thinks she saw it happen
6 once, maybe twice. Y.B. says, I definitely saw it
7 happen once. The fact that it happened to Minor three
8 times but Y.B. only saw it once, does not make the fact
9 that it happened to her three times less true. If
10 somebody goes and robs a gas station three times, Monday,
11 Tuesday, Wednesday, rob a gas station each time, and
12 there's only a witness to witness the third robbery, that
13 doesn't mean they didn't rob the gas station on the other
14 two occasions. That's one of the interesting things about
15 this case. Almost invariably in these CSC trials, I'm
16 standing up here saying we've got this victim. She says
17 this thing happened. And you have to believe her based on
18 her credibility. The interesting thing about this trial
19 is we actually have an eyewitness. We have someone who
20 was there, who witnessed the abuse, who came and testified
21 about that abuse. Somebody who doesn't have a reason to
22 lie, who doesn't have a reason to fabricate. When we're
23 talking about credibility again, we're talking about
24 Y.B. being on the stand. And I can't tell you -- I
25 mean, it seemed like ages to me that she wouldn't even

1 talk. I mean, she didn't say anything. I asked if
2 something bad happened and she shut down. I mean, shut
3 down. If she's lying, if this is some grand scheme that
4 these girls have concocted or someone has concocted for
5 them for some unknown reason, then she proffered that
6 testimony willingly; right? She'd be like, oh, yeah, he
7 did. blah, blah, blah. I saw him make her perform oral sex
8 on him; right? I mean, she would say these things like
9 that (click of fingers). Because that's what somebody
10 who's lying, who's trying to persuade you, would say.
11 Somebody who's talking about the truth is going to be
12 reticent, is going to be hesitant, is going to be not
13 particularly comfortable explaining to a group of
14 strangers a very embarrassing and emotional thing. That,
15 too, is interesting. Ms. Johnson says, there's no emotion
16 in this case. Where was the emotion? Well, I saw the
17 emotion on the stand and I saw the emotion in that tape.
18 In that tape of Y.B. , same thing. When the forensic
19 interviewer starts trying to talk to her about what
20 happened, Y.B. freezes. I mean, she freezes. There
21 was an awkward silence longer than the silence we
22 experienced in this courtroom. And that silence was only
23 punctuated by the forensic interviewer asking, I'm sorry,
24 did you say something? No, she didn't. She sat there
25 quiet. She put her head down. She weeped. I mean, she

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1 took a tissue to her face; right? And if y'all saw what I
2 did, that is what I remember. And the good thing, too, is
3 you get these things going back into evidence. So these
4 two exhibits that are marked are the two exhibits that
5 y'all will have back in your jury deliberation room. And
6 you can watch the video as many times as you want to. I,
7 myself, watched it once and had it cemented in my mind,
8 but everybody's different. People remember things
9 differently. But you have that and you have the
10 testimony. And you evaluate what happened based on what
11 you have and what you heard.

12 Now, the defense is saying, you know, their side's
13 the truth. I mean, because eventually this is what this
14 boils down to. We heard from the victims and we heard
15 from the defendant, and it's incumbent upon y'all to
16 figure out, you know, which side is the side that's
17 telling the truth. If the state's side is telling the
18 truth, then you should be firmly convinced that the
19 defendant is guilty of this thing. If he's telling the
20 truth, then the verdict is not guilty. Maybe I'm wrong,
21 but it seems as simple as that to me. So the defense says
22 the truth is that, well, the mom, the biological mother
23 put the kids up to this; right? That was some of the
24 testimony from the defendant. He was saying I think it
25 was their biological mother. She concocted this story.

1 What did the victims say about the biological mama; right?
2 She's been out of the picture for years. And she's signed
3 off her rights. That she hasn't seen her since she was,
4 like, a little kid. So the theory is biological mom
5 somehow puts this seed in the child's mind and six years
6 later -- no, five years later the child then comes into
7 court and says, yes, this happened? Come on. The child
8 comes into court, she starts crying about her fear that
9 she's going to be taken by DSS; right? Because that's
10 what Minor did; right? Minor explained why she was
11 hesitant in talking to law enforcement. Minor explained
12 why it was that she was concerned about talking to the
13 counselor. Minor explained why it was that she recanted
14 initially. She said she didn't want to get taken. Why?
15 Because she'd been taken before. And what happened to
16 that little girl? I mean, that little girl has had a
17 rough life, a rough life no doubt, she and both her
18 sister. Taken from their home as small children because
19 the conditions were not satisfactory, because the people
20 who were there were bad. And that's something else that
21 came out that I want to address.

22 There was testimony that a sex offender lived in the
23 home of the victims when the victims were two and one;
24 right? Would that make the defendant's guilt any more or
25 less likely? That being the case, would it be less likely

1 that the defendant committed these crimes? Absolutely
2 not. And why not? Because how would that make a two-
3 year-old then say at the age of fourteen that she was
4 molested by a man that babysat her; right? Has his
5 identity been at issue at all in this entire case, in this
6 entire case? Not once. There's no question that the
7 girls identified Glen. They never identified another
8 party as the perpetrator. So because there's a lack of an
9 alternative, the only question is are they telling the
10 truth or are they lying about what happened?

11 I want to go back, too, to that venn diagram. I kind
12 of got off topic and that's what happens when you start
13 waxing poetically like this. You know, she was talking
14 about these inconsistencies. And we heard from Shauna
15 Galloway-Williams that when you're trying to evaluate the
16 credibility of a child, you're looking for those core and
17 contextual details. Now, the core is the who, what, when,
18 where; right? And then how, right? So those questions
19 that you need to answer in determining the general
20 circumstance. The contextual details are those details
21 that describe the particulars, the sensory perceptions, I
22 believe was Ms. Galloway-Williams' testimony. So she says
23 Minor says it was Glen. It happened at Glen's house on
24 Glen's bed while he was babysitting us. And that he made
25 me put my mouth on his penis. That's the who, what,

1 where, when and how. Those are the core details. The
2 core details are also echoed by Y.B. Who, it was
3 Glen. In his bedroom, on his bed, at his house while I
4 was sitting at the computer. Again, information echoed by
5 the defense's own witnesses. So the core details are the
6 same. Now, the defense wants you to think, well, the
7 contextual details need to be the same as well. Now, why
8 would that not be the case? Well, that would not be the
9 case because the sensory perceptions of each party are
10 different. The sensory experiences of the child being
11 abused are not the same sensory experiences of the child
12 who witnessed the abuse. So Y.B. says she's sitting at
13 the computer. And what are the sensory perceptions? She
14 says she's playing games on the computer, chess. She said
15 she loved playing chess on the computer. That's her
16 sensory perception. Her sensory perception is then she
17 saw something gross and yucky, something bad; right? She
18 saw the defendant have the victim perform oral sex on him.
19 Now, she says she saw the defendant's hand on the back of
20 the victim's head. Now, let's think about how this
21 situation would transpire. Minor testified and I hate
22 to be as graphic as this, but in the video she said her
23 hands are on the bed and her head is down like this;
24 right? And what does a man do when he's having a female
25 perform oral sex sometimes? He'll put his hand on the

1 back of her head; right? Y.B. , using her six, seven-
2 year old perceptions, tries to analyze this however she
3 can and then convey it to you. I mean, this is what we
4 have. We have the recollections of the one child and the
5 recollections of a slightly older child. What else does
6 she say? She says he's naked; right? I mean, that was
7 one of the big discrepancies from the defense. That the
8 victim said that he had on his underwear and his penis
9 came out of his underwear. And she said he's naked. To a
10 six-year-old child, how does a grown man sitting there in
11 his underwear look? He looks naked. He looks naked.
12 When she looks over, she sees this thing happening and she
13 looks back, because what did she say? She said it was
14 yucky. She was scared. She didn't like how it made her
15 feel. She turns back around. What she saw was her sister
16 doing something to somebody who looked like he was naked;
17 right? She says, I think he must have come out of the
18 shower; right? Because why else, to a six-year-old child,
19 would a grown man be naked? A grown man would be naked
20 because he had recently had gotten out of the shower;
21 right? That's how you explain that stuff -- or that thing
22 to yourself as a child.

23 Now Minor sensory perceptions are different
24 because Minor sensory experience was different.
25 Minor because she was the one being abused, had the

1 ability and the opportunity to explain other senses. When
2 we talk about senses, we talk about see, smell, sound,
3 taste, and touch; right? So what does she see? She sees
4 that he's wearing boxers; right? That they had a tight
5 black band around the waist. Now, I can only speak from
6 my own personal experience but that is how my boxers are.
7 I have boxers with a tight black band around the top.
8 That is an accurate description of boxers. A child who
9 just thinks about someone in underwear, what do they
10 think? They probably think about just underwear. They
11 don't think about the color of the shorts or the color of
12 the waistband or the fact that there is a slit up front.
13 A slit up front, through which he inserted his penis. And
14 what did she say about his penis? What did she say about
15 his penis that only she could see because she was the one
16 who had it in her face? That it had a hole in the tip;
17 right? A hole in the tip. Now, if the theory from the
18 defense is they're watching adult movies, rated R movies
19 or something at the house and the girls are supposed to
20 close their eyes and they don't close their eyes in time
21 and they see a love scene or something, are they going to
22 see a penis? I mean, in a rated R movie, are you going to
23 see a penis? No. You don't see male anatomy in movies
24 that are offered for general release. Are you going to
25 see the hole in the tip of the penis? Absolutely not.

1 Sensory perceptions include taste, as well. What did she
2 say? She said it tasted slimy and salty. Let's say she's
3 seen pornography. How is she going to know that it taste
4 slimy and salty? How is a child going to have access to
5 that information had she not been made to experience it
6 for herself? She said that white stuff came out and she
7 spit it out. She spit out the white stuff. And then more
8 white stuff came out. Why? Because ejaculation is a
9 process; because that's how ejaculation works.

10 I want to say something, too, about people not saying
11 everything exactly the same. You know, Ms. Johnson looks
12 at the information and looks at the story as not been
13 exactly perfect. Well, she sees liars. I, myself, look
14 at that information, look at things not matching up
15 exactly perfect, and that indicates to me more
16 truthfulness. Because liars can form their stories. Say
17 these girls are together all the time, they decide they
18 want to lie on this guy, they want to make this thing up,
19 then they would get together and they would come up with a
20 story and it would be the exact same story. And that
21 exact same story would be recounted by both victims to the
22 forensic interviewer and to y'all. I mean, if that's
23 what's going to happen, that's how it would happen.
24 That's how children would lie. What did Shauna Galloway-
25 Williams say, too? Children are not sophisticated liars.

1 Children say, oh, this bad thing happened. Well, let's
2 say they've seen sex before. Let's say both children had
3 seen sex and they decided they didn't like Glen anymore
4 and they wanted to get him in trouble. What would they
5 say? They would say Glen had sex with me; right? Glen
6 got on top of me and had sex with me; right? If they
7 wanted to get him in trouble, why not go full bore and say
8 he did it to both girls? If it's a story they're making
9 up, why not say, yeah, he did it to me and he did it to
10 me, too. No. The fact that he did it to one and not the
11 other is further evidence of the truthfulness of what
12 they're saying. When we talk about stories not matching
13 perfectly and the truth being the truth because people who
14 tell the truth perceive things differently, I think an
15 appropriate example, and I'm not, you know, I'm not the
16 best churchgoer all the time, but I know a little bit
17 about the Bible. And in the Gospels, we've got four
18 Gospels, and all four Gospels have a recount of the, in
19 essence, torture and crucifixion and death of Jesus
20 Christ; right? All four Gospels have an account of it.
21 And if you read them, all four Gospels are different. In
22 Matthew, Mark, Luke, and John, we've got in one account he
23 wears a crown of thorns and a purple cloak. In another
24 account it is a crown of thorns and a gorgeous cloak. In
25 another account, there's no mention of a crown of thorns

1 and it's a cloak of many colors, or something to that
2 effect. And in another account, they say purple robe and
3 a crown. They don't mention thorns. So there are the
4 core details that are the same, but some of the
5 perceptions are different, because two people perceiving
6 an event can perceive that event differently.

7 Ultimately, how do we know what the truth is in this
8 case; right? I mean, how do we know what the truth is?
9 How did those girls appear to you? I mean, what did you
10 feel when you saw them?

11 MS. JOHNSON: Judge, I'm going to object to
12 this. This is appealing to the passion and prejudice of
13 the jury and it's totally unacceptable.

14 THE COURT: When you say this, what do you mean?

15 MS. JOHNSON: Sir?

16 THE COURT: You object to this. What do you
17 mean?

18 MS. JOHNSON: To this appeal to the passions and
19 prejudices of the jury.

20 MR. TOOKER: It's closing argument, Judge.

21 THE COURT: I understand it's closing argument.

22 MS. JOHNSON: The golden rule, how do you feel?
23 Put yourself in their shoes.

24 MR. TOOKER: That's not what I'm asking.

25 THE COURT: Proceed with your closing.

1 MR. TOOKER: Thank you, sir.

2 CLOSING STATEMENT CONTINUED

3 BY MR. TOOKER:

4 So what I'm saying is, you know, we've got hearts and
5 minds; right? I mean, these are the two things that you
6 rely on in making decisions everyday, is your emotional
7 sense and your intellectual one. And you need to apply
8 both in evaluating the credibility. When I said, how do
9 you feel about what they say? I mean, how is that
10 resonating with you emotionally? Did it resonate with you
11 as something that is truthful or did it resonate with you
12 as something that was not true?

13 Now, the girls, when all of this finally came to a
14 head -- and I want to talk to you about Shauna Galloway-
15 Williams. We heard from Shauna Galloway-Williams, an
16 expert in the field; right? I mean, somebody who's been
17 doing this for some fifteen something years, who does not
18 but talk to kids and adults who've been sexually abused.
19 And what did she say? She said, disclosure is a process,
20 that oftentimes children recant. Come forward and say
21 something happened, say it didn't happen. That being
22 abused by someone you know, love, and trust can affect
23 disclosure. The kids don't want to tell on people that
24 they care about. Because I've got no doubt that these
25 kids, somewhere in their heart, care for this man. I have

1 absolutely no doubt of that fact because I think that
2 oftentimes in these circumstances when you have somebody
3 with a predilection, with something that motivates them to
4 do something bad, and they utilize a unique relationship
5 with a child to take advantage of that child to exercise
6 that predilection.

7 In this case, he used his unique situation, his
8 unique relationship with these kids to make them
9 comfortable, to make them love him. I'm sure they did. I
10 mean, I really believe that. To make them really care
11 about him. And then he exploited it. And he exploited it
12 because of whatever is going on up here. And I can't
13 speak to that. But Shauna Galloway-Williams says
14 recanting is commonplace, that most kids delay in
15 disclosure. And that, what did Ms. Johnson say, two to
16 four percent of the cases are lies? So that means we're
17 starting with a ninety-six to ninety-eight percent chance
18 that they're telling the truth. So couple that with every
19 other thing you heard and saw and you'll be firmly
20 convinced, you'll be firmly convinced, of the defendant's
21 guilt.

22 The girls, when they finally decided to tell, told
23 their parents. They told their grandma. They told
24 Brittany. Oh, and Ms. Johnson mentioned Brittany. What
25 did grandma say? She said she had a baby last week and

1 she's not medically capable of traveling; right? And
2 that's what she said. What is it that Brittany could tell
3 us? Could she tell us anything differently than what the
4 grandma said? Grandma said they were there together when
5 the girls disclosed. Grandma says they were there when --
6 she was there with her when they called the police.
7 Grandma said she's with her pretty much the entire time.
8 So what else is it that Brittany could have added to this
9 case that she didn't? I mean, what else could there have
10 been? I mean, I can't fathom anything. If I could have
11 thought of something, I would have figured out a way to
12 get this woman who had recently given birth to come here.
13 But I didn't think it was necessary. That was my call.
14 That was my call as a prosecutor. My call as a person who
15 subpoenas witnesses. That was my decision. And it was a
16 strategic one. It was a strategic one because I didn't
17 think it was worthwhile inconveniencing that woman, that
18 woman who just had a child to come in and testify when we
19 had another witness who could explain the exact same
20 thing.

21 Now, she tells grandma and Brittany. They tell mom.
22 They get to school and they don't tell at school; right?
23 They don't tell at school when Brian Swafford comes. And
24 why? Because they're scared. They're scared they're
25 going to get taken. But Brian Swafford talks to the

1 mother; says, you don't need to be afraid. You don't need
2 to be afraid. And because you don't need to be afraid,
3 you need to make sure these girls don't need to be afraid.
4 And so the mom goes and she talks to the girls. And they
5 played, what is that game called, Honest Abe or something,
6 about telling the truth. And the girls tell the truth.
7 And then they tell the truth to him. It's interesting,
8 too, when they told the truth to him, they're separated;
9 right? Ms. Johnson talks about them always being together
10 and this is some sort of concoction, some sort of
11 formulation. Well, if that's the case, then separating
12 them, wouldn't that defeat that? I mean, if that's how
13 it's going to be, wouldn't separating them kind of take
14 the wind from their sails. But he talks to them
15 individually. And when he talks to them individually,
16 they both disclose. And then after that, they go to the
17 Julie Valentine Center. They make the tapes that you've
18 seen. The tape, too, she's like, why wouldn't the
19 prosecutor introduce it into evidence? Well, again, we're
20 talking trial strategy here, but I wanted it to come in
21 last because I wanted one of the last things for you to
22 hear to be the story of these children. I didn't want it
23 to get obfuscated or mistaken or smeared or anything by
24 what the defendant said. I wanted you to hear from them
25 last because this is their story. It's not his story.

1 It's about what happened to them. They go to the Julie
2 Valentine Center and give the exams. Minor is examined
3 medically, head to toe. If she's not telling the truth,
4 would she submit to a head to toe examination of her body?
5 Naked examination, head to toe, where they have to look
6 into her vagina. I mean, is that something that somebody
7 who's not telling the truth would do? Would they
8 voluntarily submit to that? The doctor who talked to her
9 away from her parents, away from Y.B., says that
10 Minor disclosed abuse. I believe on cross examination
11 Ms. Johnson elicited that it was three times. That the
12 abuse resulted in ejaculation. That she was exposed to
13 bodily fluids. And that there was no damage. There were
14 no injuries to her body parts. And that was consistent
15 with these allegations. Because these allegations aren't
16 ones of sexual penetration of the defendant inserting his,
17 what the girls called long penis, into Minor's vagina.
18 That, we would think, would cause an injury; right? But
19 there are allegations of oral sex. They're allegations of
20 oral touching. Those allegations of oral touching, per
21 the doctor, wouldn't result in injury.

22 I've talked for a long while. And what I really want
23 to finish with is you guys have an important
24 responsibility here. You've got an important thing you've
25 got to do. I mean, you've got to go back and you've got

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1 to think about what happened to these kids. And you've
2 got to think about why some people in this case would have
3 a reason to lie and why some people have got no reason to
4 lie. You've got to think about that and you've got to
5 evaluate credibility. And you've got to do it in a case
6 that is sensitive, a case that is difficult, a case that
7 is not a pleasant thing to talk about, but you have to
8 talk about it with each other. You've got to talk about
9 it freely. Probably going to have to use words that you
10 don't like using in pleasant company all the time. But
11 you have to do it because that's what justice requires and
12 that's what we require from you as the state in this case.

13 And I believe firmly that when you get back in that
14 room, and you think about it, and you think with this and
15 with this, then you're going to be firmly convinced the
16 defendant did molest Minor . That he did do it
17 repeatedly. That he had her perform oral sex on his
18 person. That he performed oral sex on her person. And
19 that had it not been disclosed, had they not stopped going
20 over there, I mean, knows when it would have stopped. So
21 I ask you to find the defendant guilty. Thank you.

22 THE COURT: Now, Mr. Foreman, and members of the
23 jury, we're going to take a two minute break, four minute
24 break. Please go to your jury room. Please do not
25 discuss the case.

1 (WHEREUPON, the jury exited the open court at
2 approximately 11:03 a.m.)

3 THE COURT: We're going to take a few minutes,
4 just a few minutes.

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

7 THE BAILIFF: Is everyone ready, Your Honor?

8 THE COURT: Yes, sir.

9 (WHEREUPON, the jury entered the open court at
10 approximately 11:10 a.m.)

11 **CHARGE**

12 **BY THE COURT:**

13 Mr. Foreman, and members of the jury, you have heard
14 the testimony, received the evidence and heard the
15 arguments of the state and the defendant. I will now
16 explain to you the law that applies to this case.

17 Under the Constitution and laws of South Carolina, as
18 I stated earlier, you are the finders of the facts in this
19 case. I do not have the right to pass upon the facts or
20 even to express any opinion that I might have as to them
21 because this is a matter solely for you, the jury, to
22 determine. As jurors, then, it is your duty to determine
23 the effect, the value, the weight, and the truth of the
24 evidence presented during this trial.

25 Now, as the trial judge, it is my responsibility to

1 preside over the trial of this case and to rule upon the
2 admissibility of the evidence offered during the trial.
3 You are to consider only the testimony which has been
4 presented from this witness stand, together with any
5 exhibits which have been made a part of the record.
6 Additionally, I have the duty to charge you the law
7 applicable to this case. And as the presiding judge, I am
8 the sole judge of the law of this case. It is your duty
9 as jurors to accept as correct and apply the law as I now
10 state it to you and then reach your verdict. Finally, I
11 charge you in this regard that you should not be concerned
12 with what you think the law ought to be, but rather what I
13 charge you that the law is.

14 You are also the judges, the sole judges of the
15 credibility, that is the believability, of the witnesses
16 who have testified and of the evidence which has been
17 presented during this trial. You must evaluate the
18 credibility and the testimony of the alleged victim
19 regardless of whether or not it is corroborated,
20 understanding that the law does not require corroboration.

21 In evaluating credibility, you may take into
22 consideration many things, such as the demeanor or manner
23 of testifying, whether the witness had reason to be biased
24 or prejudiced or whether the testimony of a witness was
25 contradicted on the one hand or supported and corroborated

1 on the other hand. All these things you will consider,
2 bearing in mind that you should give the defendant the
3 benefit of any reasonable doubt. It becomes your duty as
4 jurors to analyze and to evaluate the evidence and
5 determine that evidence which convinces you of its truth.

6 During this trial you've heard testimony from
7 children. Where a witness is a child, you must determine
8 as with any witness whether that testimony is believable.
9 In deciding believability, you may consider not only
10 matters that I have already discussed with you, but you
11 may also consider the age of the child. The child's
12 ability to observe and remember facts and the child's
13 ability to understand and answer questions. Because young
14 children may not fully understand what is happening here,
15 it is up to you to decide whether this child understood
16 the seriousness of appearing as a witness at a criminal
17 trial. Whether the child understood the questions,
18 whether the child had a good memory, and whether the child
19 understands the difference between lying and telling the
20 truth. In addition, young children may be influenced by
21 the way that questions are asked. It is up to you to
22 decide whether the child understood the questions asked.

23 Now, normally, a person cannot give opinion
24 testimony. Normally, when a person testifies, they must
25 testify as to what they either saw, heard, sensed,

1 smelled, or something of that nature. However, there is
2 an exception when somebody is qualified because of
3 education or experience. They are permitted to give their
4 opinion in certain areas if the court qualifies them that
5 way. In this case, witnesses have been qualified to give
6 an opinion testimony. This does not mean that you must
7 accept the opinion, but it is evidence for you to use in
8 any way you see fit and for you to give it the weight and
9 credibility you believe is appropriate.

10 You've heard evidence that the defendant was
11 convicted of a crime other than the one for which the
12 defendant is now on trial. That evidence may be
13 considered by you if you conclude it is true, only in
14 deciding whether the defendant's testimony is believable
15 and for no other purpose. You must not consider the
16 defendant's prior record as any evidence of the
17 defendant's guilt of the charge we are trying today.

18 Now, the fact that the defendant, Vernon Glen Evans,
19 was charged and indicted in this case, it is not evidence
20 in this case, nor does it create any presumption or
21 inference of guilt. This indictment, this document right
22 here, is simply the formal written instrument which
23 contains the charge made against the defendant. This
24 indictment is the formal document by which this case is
25 brought to this court. The defendant has pled not guilty

1 to the charge alleged against him. The burden is on the
2 state to prove the defendant guilty. A person charged
3 with committing a criminal offense in South Carolina is
4 never required to prove himself innocent. And I charge
5 you that it is an important rule of the law that the
6 defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be presumed
8 to be innocent of a crime for which the indictment was
9 issued unless guilt has been proven by evidence satisfying
10 you of that guilt beyond a reasonable doubt. This
11 presumption of innocence does not end when you begin your
12 deliberations but it accompanies the defendant throughout
13 the trial until you reach a verdict of guilt based on
14 evidence satisfying you of that guilt beyond a reasonable
15 doubt. This presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the defendant,
17 which remains with the defendant until it has been
18 stripped from the defendant by evidence satisfying you of
19 the defendant's guilt beyond a reasonable doubt.

20 The presumption of innocence is not just a mere legal
21 theory. It's not just a legal phrase. It is a
22 substantial right to which every defendant is entitled
23 unless you, the jury, are satisfied from the evidence of
24 the defendant's guilt beyond a reasonable doubt. The
25 state must prove the defendant guilty beyond a reasonable

1 doubt.

2 So what is a reasonable doubt in the law? A
3 reasonable doubt is a doubt which makes an honest,
4 sincere, conscientious juror in search of the truth to
5 hesitate to act. Proof beyond a reasonable doubt must
6 therefore be proof of such a convincing character that a
7 reasonable person would not hesitate to rely and act upon
8 it in the most important of his or her own affairs. Proof
9 beyond a reasonable doubt can also be described as proof
10 that leaves you firmly convinced of the defendant's guilt.

11 Now, there are very few things in this world that we
12 know with absolute certainty. And in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt. If based on your consideration of the evidence,
15 you are firmly convinced that the defendant is guilty,
16 then you must find him guilty. If, on the other hand, you
17 think there is a real possibility that he is not guilty,
18 then you must give him the benefit of the doubt and find
19 him not guilty.

20 The defendant is charged with criminal sexual conduct
21 with a minor in the first degree. The state must prove
22 beyond a reasonable doubt that the defendant engaged in a
23 sexual battery with the victim. A sexual battery is
24 sexual intercourse, cunnilingus, fellatio, or any
25 intrusion, however slight, of any part of a person's body

1 into the genital openings of another person's body, except
2 when the intrusion is accomplished for medically
3 recognized treatment or diagnostic purposes.

4 Cunnilingus is defined as stimulation of the vulva or
5 clitoris with the lips or tongue. Fellatio, is defined as
6 oral stimulation of the penis. The state must then prove
7 beyond a reasonable doubt that the victim was less than
8 eleven years of age at the time of the sexual battery.
9 Consent, willingness, indifference, or ignorance on the
10 part of the minor, if any, as to what was taking place
11 does not in any way affect the charge of criminal sexual
12 conduct with a minor. Because an unmarried woman under
13 the age of fourteen cannot legally consent to sexual
14 intercourse or to fellatio or to cunnilingus.

15 Now, while argument of counsel is a beneficial part
16 of every trial, you should remember that the statements
17 made by counsel are not evidence. In presenting arguments
18 counsel often refer to the evidence. However, you should
19 base your verdict on the evidence as you remember it.
20 Therefore, if there are any conflicts between the
21 recollection of counsel about the evidence and your own
22 recollection, you should rely on your own understanding of
23 the evidence.

24 Now, you've been chosen and sworn to give the parties
25 in this case a fair and impartial trial. When you have

1 done so, you will have complied with your oath and no one
2 will have a right to criticize your verdict. You must not
3 be influenced by opinions or expressions of opinions you
4 may have heard outside of the courtroom, but rather should
5 base your verdict solely on the testimony of the sworn
6 witnesses who took the stand, the exhibits received into
7 evidence, and the law which I have stated. You should not
8 be swayed by caprice, passion, prejudice or improper
9 sympathy for or against anyone in this case. Remember,
10 you have no friends to reward or enemies to punish and all
11 parties are entitled to a fair and impartial trial. It is
12 your duty as jurors to consult with one another and to
13 deliberate in an effort to reach an agreement. Each of
14 you must decide this case for yourself, but only after an
15 impartial consideration of all of the evidence with your
16 fellow jurors.

17 In the course of your deliberations, do not hesitate
18 to re-examine your own views and change your opinion if
19 you become convinced it is erroneous. However, do not
20 surrender your honest conviction as to the weight or
21 effect of the evidence solely because of the opinion of
22 your fellow jurors or for the mere purpose of returning a
23 verdict.

24 As I stated earlier, you are the judges, judges of
25 the facts. Your sole interest is to seek the truth from

1 the evidence in this case. Your verdict must represent
2 the considered judgment of each juror. In other words,
3 your verdict must be unanimous.

4 Now, you may have noticed that I have read these
5 instructions. I do so to give you the law as accurately
6 as possible. I will give you a copy of these instructions
7 to have in the jury room. You may refer to these
8 instructions to assist you in your deliberations. You
9 must consider the instructions as a whole and not follow
10 some and ignore others.

11 Now, Mr. Foreman, it will be your duty to preside
12 over the deliberations of the jury. If during your
13 deliberations you should desire to communicate with the
14 Court, please reduce your message or question to writing,
15 signed by your foreperson and pass the note to the bailiff
16 who will bring it to my attention. I will then respond as
17 promptly as possible, either in writing or by having you
18 return to the courtroom. I caution you, however, with
19 regard to any message or question you might send that you
20 should never state or specify your numerical division at
21 the time.

22 Now, you've heard the evidence and now you have heard
23 the law. Whatever your verdict, guilty or not guilty, Mr.
24 Foreman, you will indicate it on the indictment in the
25 verdict area and then sign and date your verdict. And

1 that's the verdict area of the indictment.

2 Remember that although the foreperson is the only
3 juror who writes the verdict, it is not his alone. The
4 verdict has to be unanimous. Mr. Foreman, you're not
5 authorized to write the verdict until all of you have
6 agreed on the verdict.

7 Now, ladies and gentlemen, I'm going to send you to
8 your jury room, all of you except the last two jurors
9 selected, but do not begin your deliberations until you
10 have received a copy of this jury charge, the indictment,
11 and the exhibits. Once you receive these things, that
12 will be your signal to begin your deliberations. Once you
13 begin deliberations, you will deliberate until you have
14 reached a verdict. After you have reached a verdict, you
15 will knock on the door, advise the bailiffs and we will
16 bring you out to receive your verdict. And we're mindful
17 of the time and also what time people typically eat lunch
18 and we will deal with all of those issues and you will not
19 need to be concerned about that as you are deliberating.

20 Now, we selected fourteen jurors. We selected
21 fourteen jurors, but we only can use twelve to participate
22 in the deliberations. So if out of the first twelve
23 jurors, if any of you cannot continue to deliberate or
24 continue with the deliberations, we'll plug either one or
25 two of the alternates in to participate in the

1 deliberations. So if anyone out of the first twelve
2 cannot participate or continue with deliberations, please
3 let me know by raising your hand if you cannot participate
4 in deliberations.

5 THE JUROR: (Raises hand)

6 THE COURT: And, ma'am, you cannot participate
7 in deliberations.

8 THE JUROR: No.

9 THE COURT: Pardon.

10 THE JUROR: No.

11 THE COURT: All right. If you will approach
12 along with counsel. If you will come around.

13 (WHEREUPON, the juror and counsel approached the
14 bar.)

15 THE COURT: All right. Come as close this way
16 as possible.

17 THE JUROR: I just don't know a lot of the
18 language and whatnot. And I just don't feel, you know, to
19 be, you know, to that person or to that person, I just ---

20 THE COURT: Have you understood ---

21 THE JUROR: I do in some ways, but most -- some
22 of it I don't know the whole language.

23 THE COURT: What's your nationality?

24 THE JUROR: I'm from Hong Kong.

25 THE COURT: Okay.

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1 THE JUROR: I mean, I've been here in this
2 country over fifty years, but I just -- I don't have the
3 brain, I should say. I'm not smart. I mean, I do
4 understand in some ways but if I'm trying to -- you know,
5 I don't feel comfortable to, you know.

6 THE COURT: Any questions?

7 MR. TOOKER: Uh-uh (negative).

8 THE JUROR: So you want me to stay?

9 THE COURT: You're talking to me. Only to me.

10 THE JUROR: I just, you know, ...

11 THE COURT: If you'll just stand right by the
12 jury box, not in the jury box, just stand right over
13 there.

14 What says the state?

15 MR. TOOKER: I believe she's been here fifty
16 years, I think she could do fine, but I don't want
17 somebody to have to stay on it that don't feel like they
18 can do it, though.

19 THE COURT: Some people are here for a lifetime
20 and they never learn English.

21 MR. TOOKER: That's true.

22 MS. JOHNSON: Judge, I'd echo what Mr. Tooker
23 said. But why didn't she point that out initially?
24 That's my concern. I mean, we selected her.

25 THE COURT: Actually at the end fo the first

1 day, she asked a question, how long have I got to be here?

2 MS. JOHNSON: Oh, okay.

3 THE COURT: She did. She said, how long have we
4 got to be here? I told her as long as it takes. That's
5 what she said the first day. She didn't want to be here
6 then. Any objection to us plugging in an alternate?

7 MR. TOOKER: No objection from the state, sir.

8 MS. JOHNSON: Judge, just to protect myself, I
9 do object.

10 THE COURT: Well, I may keep her in there if you
11 object. I don't know. She's just -- she's just going to
12 be a filler anyway. She's not going to -- she's going to
13 go along with what everybody wants. She's not going to --
14 you know, how can she saying anything other than what
15 everyone else says. I mean, but the question is whether
16 you want meaningful jurors or just someone who's existing.

17 MR. TOOKER: If she's going to object, then
18 let's keep her on.

19 THE COURT: You know, just a notion of objecting
20 just to be objecting, does not play a meaningful role in
21 the process.

22 MS. JOHNSON: No, I understand.

23 THE COURT: If you have a reason, I ---

24 MS. JOHNSON: I don't. I'll withdraw the
25 objection, Your Honor. I've never been in this situation.

1 THE COURT: Well, that's the reason you do it at
2 this time and the reason you have alternates. So that if
3 you just have someone who's just not tuned in, they don't
4 have to do anything. They just show up, then you all put
5 them on there. And they're in the box. And sometimes you
6 don't know what you have until this moment. That's why
7 you give them this moment to go through that.

8 MS. JOHNSON: I'll withdraw the objection, Your
9 Honor, and allow you to plug in an alternate.

10 THE COURT: Okay. So the alternates are
11 selected by lot. The clerk will need to pick -- Mr.
12 Clerk, we're going to remove her and plug someone in. So
13 we need to do it by lot. We can put the two in the hat.
14 What process do y'all want to use to pick the -- who do
15 you want to pick it? Madam Court Reporter?

16 THE REPORTER: I don't have a hand.

17 THE CLERK: I'll hold that for you.

18 THE COURT: Okay. Ma'am, thank you very much
19 for your service, Ms. ---

20 THE JUROR: I'm Susan Anderson.

21 THE COURT: Ms. Anderson, we're going to excuse
22 you.

23 THE JUROR: Thank you very much.

24 THE COURT: Yes, ma'am. And you can give your
25 tag to the bailiff and he will get your things from the

1 jury room and you are free to leave.

2 THE JUROR: Thank you very much.

3 THE COURT: Thank you very much. We appreciate
4 your honesty and being here with us.

5 Everyday is an experience.

6 MR. TOOKER: That's absolutely true.

7 THE COURT: And whatever the experiences are,
8 you roll with it.

9 MR. TOOKER: Yeah.

10 (WHEREUPON, alternate juror chosen.)

11 THE COURT: All right. Mr. Charles Bolt. All
12 right. That's your seat right there. So Mr. Bolt, you
13 will be a member of the deliberating jury panel and that
14 will leave us with the one alternate as the others retire
15 to the jury room. So please go to the jury room at this
16 time and wait for the jury charges, exhibits and
17 indictment and that'll be your signal to begin
18 deliberating. Thank you very much.

19 (WHEREUPON, the jury exited the open court at
20 approximately 11:38 a.m.)

21 THE COURT: Are there any additions or
22 exceptions to the charge?

23 MR. TOOKER: Nothing from the state, sir.

24 MS. JOHNSON: Nothing from the defense, Your
25 Honor.

1 THE COURT: All right. Very well. Well, we
2 will -- here are the jury charges and you have the
3 exhibits and we'll -- I didn't get an opportunity to give
4 my -- I notice that video over there. I didn't get an
5 opportunity to give speech to the parties about the
6 necessity of introducing playback means into evidence
7 because jury deliberations are to take place in the jury
8 room and not in the courtroom. So I'll comment on that in
9 just a moment. But you can give that to the jury and they
10 can press on with the deliberations. I'll finish my
11 speech on that in a minute as they begin their
12 deliberations.

13 (WHEREUPON, the jury began deliberations at
14 approximately 11:40 a.m.)

15 THE COURT: All right. Madam Joy L. Evans,
16 thank you very much. We have -- as you see, we picked
17 fourteen, sometimes thirteen. The law says you can't pick
18 more than two alternates. At one time I used to pick
19 three alternates on real long trials and a solicitor
20 pointed out the statute saying we can only pick two
21 alternates. But we pick alternates so that in the event
22 something might happen to one of the jurors, we'll have
23 enough. Now, this lady, Ms. Anderson, said that she was
24 from Hong Kong and she really doesn't understand and she
25 didn't think she had enough understanding to participate

1 in the process and that's how Mr. Bolt got put in there.
2 The law also says that in criminal cases you pick the
3 alternates randomly. When we have two, you shake them up
4 in a box and pick one. And whoever's name pops up that
5 person is the alternate, and that was Mr. Bolt. So we
6 want to thank you for your service. You won't be able to
7 participate in the jury deliberations. And you're done
8 with jury service for this week as far as the jury. So
9 Mr. Clerk will make any final comments he has for you and
10 then you are good to go.

11 THE CLERK: I just want to thank you and if you
12 need a statement for work, you can pick one up in the
13 clerk's office on the first floor.

14 THE COURT: Okay. Thank you, ma'am.

15 (WHEREUPON, the alternate juror was dismissed.)

16 THE COURT: On this issue of playback materials
17 being -- something being introduced into evidence so that
18 the jury can deliberate without having to come into the
19 courtroom, that's sort of something I have been harping on
20 lately. So usually when I go someplace and in advance
21 I'll send out something called Newman's Rules of Court.
22 And in that is a paragraph that says, it is the
23 responsibility of counsel to arrange equipment for replay
24 of audio or video evidence by the jury in the jury room
25 during deliberations. The playback equipment must either

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1 be admitted into evidence or prior to the submission of
2 the case to the jury, the parties must stipulate to the
3 equipment that the jury will use to view evidence, as
4 during deliberations the jury is entitled to view all
5 evidence in the jury room. And the purpose of that is
6 that it avoids the necessity of the jury coming into the
7 jury room [sic] and they say, well, Judge we want to look
8 at that -- we want to look at the video again. And then,
9 of course, the traditional means of that -- with which
10 that is done is that the jury is then brought into the
11 courtroom during deliberations and it's played on the
12 screen here in the courtroom during deliberations, in
13 effect, because it is -- the jury is now deliberating.
14 And, of course, the parties are, you know, looking at the
15 jurors trying to figure out what it means to which juror
16 and in observing the jury during this process that they're
17 deliberating. And at some point in time, well, the Judge
18 might say, well if you want me to stop it then -- if you
19 want me to stop it, please let me know. Or the question
20 might come out, we want to hear the direct exam of the
21 child, well, that's a different situation. And then
22 someone says, no, I want to play the whole thing. And
23 then the foreperson says, okay, that's enough. But the
24 whole notion of it is, is that during the process of
25 things being played back in the courtroom, the jury cannot

1 deliberate. They are -- but if they have it in the jury
2 room, they can stop it. They can discuss what they're
3 seeing. It's the evidence. And we're giving them the
4 evidence to use during deliberations. So the effort that
5 I am encouraging wherever I go is for counsel to be more
6 mindful of that so that the -- and in some places they
7 have a -- in federal courts, in some federal courts they
8 have an evidence preservation system or whatever the name
9 of it is. It's a type of system where when it goes into
10 the jury room, the jurors punch the button and they can
11 see the video and they have it for their use. And we want
12 to reach a point at some point in time, particularly with
13 all the technological advances and the fact that we have
14 so much technology being offered during the trial, so many
15 videos, audios, clips, this and that, that the jury can
16 use those things as they should be able to use them during
17 deliberations in the jury room without having to come into
18 the courtroom.

19 And then quite often we have a situation in many
20 cases, is the state presenting the video evidence of one
21 sort or another. It could be a DUI trail and presenting a
22 road stop. And the only thing that's available is the
23 state says, well, we'll send in a laptop. They can watch
24 it on the laptop. And the defense object because they
25 think there might be something else on the computer or may

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1 even be ten road stops on the computer and the jury has to
2 try to find that one or you don't have a clean computer.
3 So it's a challenge. But we need to endeavor to reach a
4 point where jurors can deliberate with evidence in the
5 jury room. In order to do that, I think if the -- during
6 the course of the trial if parties are mindful of it and
7 will -- for playback purposes and admitting this laptop
8 into evidence for that purpose and counsel has had an
9 opportunity to look at it to ensure that there's nothing
10 else on this laptop; it's totally clean, then that can be
11 done. Because we should not have to, in this case, if the
12 jurors decide they want to watch these children's videos,
13 and they're each about forty-five minutes a piece, that we
14 should be in here for an hour and a half while they're
15 looking at the videos. But if it's in the jury room they
16 can look at it all they want. Watch this one for a while,
17 then compare it with that one. It's within the jury's
18 prerogative not for us to be a part of that process.

19 You get what I mean, Solicitor?

20 MR. TOOKER: Yes, sir. And this is a bit of a
21 novel issue for me. And I totally appreciate what Your
22 Honor is saying.

23 THE COURT: Well, it's something that quite
24 often counsel -- you know, you spend all your time
25 preparing the presentation of your case, but you don't

1 always spend much time focusing on how the jury is going
2 to use that during deliberations. So this is -- and the
3 interruption for the court often is -- and many judges
4 say, well, I can't do anything. I've got a deliberating
5 jury. I've got a place, when the jury starts
6 deliberating, I might take ten guilty pleas while they're
7 out. Some judges say, well, my jury's deliberating. I
8 can't do anything. They might have a question. They
9 might want to watch a video. They should be able to do
10 all that in the jury room because they're deliberating.
11 So we're trying to get to that point. Isn't that right,
12 Jasmine?

13 LAW CLERK: Yes.

14 THE COURT: All right. How about it, Ms.
15 Johnson?

16 MS. JOHNSON: No objection, Your Honor.

17 THE COURT: All right. Just a word to the wise.
18 We'll get there.

19 MR. TOOKER: Well, I was going to say if Ms.
20 Johnson and I can agree about the technology, would Your
21 Honor have any objection with us sending the TV back?
22 That's something we kind of do as a matter of course here.

23 THE COURT: All right.

24 MR. TOOKER: No objection?

25 THE COURT: No.

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1 MR. TOOKER: Okay.

2 MS. JOHNSON: Thank you, Your Honor.

3 THE COURT: I see you all are not as they are in
4 Richland County where the public defender won't agree to
5 anything. Judge, I object. I think there's something
6 planted on that machine.

7 MR. TOOKER: I did write guilty in Sharpie
8 underneath it, so if they lift the TV up they'll see that.

9 THE COURT: The lawyers should be aware that
10 what you have introduced into evidence is a video. They
11 have no way of considering it. And so it's part of your
12 presentation -- and we're through with the case at this
13 point in time. I know the court reporters want to know
14 when they can go off the record and stop talking.

15 (WHEREUPON, court stood at recess awaiting the
16 verdict of the jury.)

17 (WHEREUPON, the jury entered the open court at
18 approximately 1:04 p.m.)

19 THE COURT: Mr. Foreman, if you'll stand for me,
20 please?

21 THE FOREMAN: (Stands)

22 THE COURT: Have you reached a verdict?

23 THE FOREMAN: Yes, sir.

24 THE COURT: Is it unanimous?

25 THE FOREMAN: Yes, sir.

1 THE COURT: All right. Thank you very much. If
2 you'll pass that up.

3 If the defendant will stand.

4 THE DEFENDANT: (Stands)

5 THE COURT: And you may be seated?

6 THE FOREMAN: (Seated)

7 THE COURT: All right. Mr. Clerk, you may
8 publish the verdict.

9 THE CLERK: Thank you, sir.

10 This is case number 2013-GS-39-0550, the State versus
11 Vernon Glen Evans. As to the charge of criminal sexual
12 conduct with a minor first degree, we, the jury, find the
13 defendant guilty.

14 Is this your verdict and still your verdict, say so
15 you all by raising your right hand.

16 (WHEREUPON, all jurors' right hand were raised.)

17 THE CLERK: Thank you very much.

18 THE COURT: All right. Thank you. It appears
19 to be a unanimous verdict. Do you request individual
20 polling of the jurors, Ms. Johnson?

21 MS. JOHNSON: I do, Your Honor.

22 THE COURT: All right. Mr. Clerk, if you will
23 poll each juror individually?

24 THE CLERK: Mr. Roach, is this your verdict and
25 still your verdict?

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1 THE JUROR: Yes, sir.

2 THE CLERK: Mr. Stewart, is this your verdict

3 and still your verdict?

4 THE JUROR: Yes, sir.

5 THE CLERK: Ms. Kellner, is this your verdict

6 and still your verdict?

7 THE JUROR: Yes, sir.

8 THE CLERK: Mr. Williams, is this your verdict

9 and still your verdict?

10 THE JUROR: Yes, sir.

11 THE CLERK: Mr. Bates, is this your verdict and

12 still your verdict?

13 THE JUROR: Yes, sir.

14 THE CLERK: Mr. Colborn, is this your verdict

15 and still your verdict?

16 THE JUROR: Yes, sir.

17 THE CLERK: Mr. Holder, is this your verdict and

18 still your verdict?

19 THE JUROR: Yes, sir.

20 THE CLERK: Ms. Clark, is this your verdict and

21 still your verdict?

22 THE JUROR: Yes, sir.

23 THE CLERK: Mr. Anderson, is this your verdict

24 and still your verdict?

25 THE JUROR: Yes, sir.

1 THE CLERK: Mr. Whiteside, is this your verdict
2 and still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Ms. Porter, is this your verdict and
5 still verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: And Mr. Bolt, is this your verdict
8 and still your verdict?

9 THE JUROR: Yes, sir.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right. Thank you. And the
12 verdict is a unanimous verdict. Any post-trial motions?

13 MS. JOHNSON: Judge, at this time I respectfully
14 request a new trial on behalf of Mr. Evans.

15 THE COURT: On what basis?

16 MS. JOHNSON: That the -- based on the evidence,
17 the jury could not have reached the verdict they did.

18 THE COURT: All right. What do you say about
19 that, Mr. Tooker?

20 MR. TOOKER: Your Honor, we gave the jury the
21 case we have and they concluded that the defendant is
22 guilty. I think based on the facts, testimony and
23 evidence presented that's the only verdict in this case.

24 THE COURT: All right. As I stated to the jury
25 during the instructions, that this was a matter solely for

1 the jury to determine, they were to determine the case
2 based on evaluating the credibility of the witnesses who
3 testified, applying the law. The law is clear that it's
4 illegal for an adult or any person to engage in a sexual
5 battery of a child under the age of eleven and if they do,
6 they're guilty of the crime of criminal sexual conduct
7 with a minor first degree. The jury had to consider the
8 testimony of all the witnesses, particularly the testimony
9 of the children who testified, as well as the testimony of
10 the defendant who testified. The children were highly
11 credible witnesses. They were -- it was clear that they
12 were testifying truthfully and it's clear also that Mr.
13 Evans is guilty, and that the jury reached a proper
14 verdict.

15 So I respectfully deny your motion for a new trial.

16 MS. JOHNSON: Thank you, Your Honor.

17 THE COURT: All right. Now, ladies and
18 gentlemen, when you have found a person guilty, then it
19 becomes my responsibility to impose a sentence. My
20 experience is that jurors are usually interested in, not
21 only deciding the case, but then also the end of the case
22 as to what ultimately happens in the case as far as
23 sentence. It's my responsibility to sentence Mr. Evans
24 for this crime. The law says that a person who is guilty
25 of criminal sexual conduct with a minor under the age of

1 eleven under the law that existed at the time that this
2 offense occurred may be sentenced up to thirty years in
3 prison. The law was amended in -- what year was that?

4 MR. TOOKER: Sir, I believe it was 2010.

5 THE COURT: After this offense. In 2010 or so
6 the law was amended and if that crime were committed
7 today, there would be a mandatory minimum of twenty-five
8 years and a maximum of life in prison for this offense.
9 The Legislature realized -- recognized that the offense of
10 criminal sexual conduct on small children was so bad that
11 -- so heinous that not only did they make it twenty-five
12 years to life, but if the offender was a repeat offender,
13 they are facing the death penalty. South Carolina is one
14 of the states where a person can receive the death penalty
15 if they are a repeat offender involving small children.

16 Mr. Evans, based on the year, the uncertainty as to
17 whether this occurred under the old law or the new law,
18 the state agreed that he would face only up to thirty
19 years in prison as opposed to a mandatory minimum of
20 twenty-five years and a maximum of life. So he's facing
21 up to thirty years in prison and we'll proceed with
22 sentencing at that time. If you'll bring him around.

23 (WHEREUPON, Mr. Tooker, Ms. Johnson and the defendant
24 approached the bar.)

25 THE COURT: All right. Thank you. And I

1 recognize you, Mr. Solicitor.

2 MR. TOOKER: Thank you, Your Honor, may it
3 please the court. The victim's family is present in the
4 court. They do not wish to address the court. And I
5 don't think I can as eloquently explain my position as
6 Your Honor has. The legislature did recognize how
7 particularly heinous these crimes are in amending the
8 sentencing range for criminal sexual conduct with a minor
9 in the first degree. I think that is something -- or I
10 would at least request Your Honor to consider that in
11 sentencing. I think anything less than twenty-five on
12 this case is insufficient given the nature and severity of
13 the offenses. And so the state would request minimum
14 sentence of incarceration of twenty-five years.

15 THE COURT: Does he have a prior record?

16 MR. TOOKER: The prior record is just what Your
17 Honor heard, a simple larceny and a -- I believe it was
18 receiving stolen goods.

19 THE COURT: Ms. Johnson.

20 MS. JOHNSON: May it please the Court?

21 THE COURT: Yes.

22 MS. JOHNSON: Your Honor, while we certainly
23 disagree with the jury's verdict, we accept it. As Your
24 Honor gleaned my client is fifty-one years old. He's
25 single. He has lived in Central, South Carolina most of

1 his life, working on cars and other odd jobs, construction
2 work. Judge, he has been an ideal client as far as coming
3 to see me. In my practice as a public defender, I don't
4 have a lot of that, a lot of cooperation sometimes. I
5 don't know whether or not he would like to address the
6 court. I would like to confer with him first. But I do
7 know that his mother, Bernice Evans, would like to address
8 the court. She is a widow and she tells me she just lost
9 her son, another son this year. She is handicapped or
10 incapacitated or immobile and heavily relies on her son.

11 Judge, we would certainly ask for a minimal sentence
12 in this case, but we leave it in the court's discretion.
13 I know Ms. Evans would like to address the court at the
14 appropriate time.

15 THE COURT: All right.

16 MS. JOHNSON: Would you like for her to come ---

17 THE COURT: Yes, ma'am. You can get your motor
18 scooter -- can you crank it up? Yes, ma'am.

19 MS. EVANS: Your Honor, I come to your plea
20 here. My son is a total care giver to me. Without him, I
21 don't have nobody. I've already lost one son this year.

22 THE COURT: What happened to him?

23 MS. EVANS: He got killed.

24 THE COURT: How was that?

25 MS. EVANS: Heavy equipment. That was only in

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1 June. But my son here, he cooks and everything for me.

2 THE COURT: Are you going to be able to collect
3 for him being killed in heavy equipment?

4 MS. EVANS: No, sir.

5 THE COURT: It didn't happen on the job or
6 anything?

7 MS. EVANS: He was married.

8 THE COURT: Pardon?

9 MS. EVANS: He was married.

10 THE COURT: He was married. I understand.

11 MS. EVANS: But without him, I can't survive. I
12 live in the country by myself.

13 THE COURT: You don't have other relatives
14 around?

15 MS. EVANS: No, sir. They're all dead and gone.
16 I live in the country in the woods, far off from the main
17 road. Glen, he's taken care of me for some time because
18 my health just keeps going further down. And without him,
19 I won't survive. So please have mercy on him.

20 THE COURT: All right. Well, thank you very
21 much.

22 MS. EVANS: Thank you, Your Honor.

23 MS. JOHNSON: Judge, my client informs me that
24 he wishes to preserve the record for appeal and does not
25 wish to address the court at this time.

1 THE COURT: All right. Of course, the record is
2 preserved whether he speaks or not. But that's certainly
3 his option.

4 MS. JOHNSON: I understand, Your Honor.

5 THE COURT: All right. You have nothing to say,
6 Mr. Evans?

7 MR. EVANS: Not at this time, Your Honor.

8 THE COURT: Anything further in response, Mr.
9 Solicitor?

10 MR. TOOKER: No, sir.

11 THE COURT: Certainly I understand the concern
12 of the mother and it happens so frequently that people who
13 come before the court to be sentenced, their loved ones
14 who love them and need them and will miss them, but
15 despite that the court still has to perform its duties.
16 Through the course of the testimony, the mother said what
17 she just said, that is that she relies on him and needs
18 him and that can often be the basis for sympathy in some
19 instances, even by a jury. And I'm sympathetic to that,
20 as well. But the fact of the matter is, is that the
21 impact that criminal sexual conduct has on minor children,
22 any number of studies have revealed that children who are
23 victims of sexual assaults invariably become batterers or
24 assaulters themselves. They invariably have problems
25 having normal relationships. They invariably suffer

1 depression. And in many instances they become suicidal.
2 They need psychiatric treatment. And it has a lifelong
3 effect on them. So while considering certainly, Mr.
4 Evans, that at age fifty-one your mother needing you, then
5 I have to also consider the effect, the impact that you
6 have had on these children that will last them, if they
7 have a normal life span, for the next seventy, seventy-
8 five years. It'll affect them in ways we'll never know.
9 But you opted to abuse these children or abuse this child,
10 this one victim, particularly, and it's had the effect on
11 another child who witnessed it, and it's quite apparent
12 through her testimony. So, you know, I think you, as
13 other abusers, obviously realize that you're intentionally
14 committing a crime, knowing that if you get caught, you're
15 going to get punished. And despite that, you take the
16 risk of doing it anyway. So that means once you're
17 caught, then you have to accept the punishment, whatever
18 it is. The child said that she thought about the sand
19 pit, the quicksand, whatever that was, and thought that
20 she -- had she told that she might just disappear. So she
21 had the fright that caused her to delay, among other
22 factors as the witnesses testified, that caused her to
23 delay. But nevertheless, it's been brought to light and
24 it's right here for us to deal with today.
25 You've had the benefit of effective and competent

1 counsel. Ms. Johnson has done her very best.
2 Unfortunately, she didn't have very much to work with,
3 with your case, because the children were witnesses who
4 were so believable. So you decided to have a jury trial
5 and you've had a jury trial. It's time now to sentence
6 you at this time. And I sentence you to the State
7 Department of Corrections for the maximum period of time
8 allowed under law; the sentence is thirty years. You'll
9 get credit for the time that you've served.

10 MS. JOHNSON: Thank you, Your Honor.

11 MR. TOOKER: Thank you, Your Honor.

12 THE COURT: Good luck to you.

13 MS. EVANS: Your Honor, may I please hug my son
14 before he leaves.

15 THE COURT: Officer, let's give her one
16 opportunity. She's incapacitated. That's fine with me.

17 (WHEREUPON, the court stood at ease.)

18 THE COURT: All right. Well, thank you, ladies
19 and gentlemen. You didn't volunteer for this. You were
20 drafted. But you responded to the call of duty and we
21 appreciate your service. Thank you on behalf of the other
22 citizens of your county.

23 We are through with your jury duty. And as I am
24 going through the juror qualifications process the other
25 day, among all of the questions I asked were have you

1 served on jury duty within the past calendar year. If so,
2 you're disqualified for serving for the next year. Then a
3 further question was have you served within the last three
4 years? If so, you are exempted from service if you want
5 to claim the exemption because no person is required to
6 serve more often than every three years and many people
7 never get called. You've been called and you've served
8 and thank you for that. And you are dismissed. I want to
9 speak to the Foreperson for just a moment to give the
10 clerk an opportunity to say his goodbyes, along with
11 anything else he would like to say to you all.

12 THE CLERK: I just wanted to thank y'all again
13 for being here. I know it was a hard case to listen
14 through. Appreciate your attention. If anybody does need
15 a statement for work, you can pick one up in my office
16 down on the first floor, the clerk of court's office.

17 And I really appreciate y'all being here. Thank you.

18 THE COURT: All right. And ladies and
19 gentlemen, I was always saying don't talk about the case,
20 don't talk about the case. You can, at this point, talk
21 about the case with anyone you want to talk about the case
22 with, but no one should harass or annoy you concerning the
23 case. Thank you and you all are good to go.

24 (WHEREUPON, the jury was dismissed at approximately
25 1:23 p.m.)

State of South Carolina -vs- Vernon Glen Evans (2013-GS-39-00550)
Verdict

366

1

[END OF REQUESTED TRANSCRIPT OF RECORD]

1

CERTIFICATE OF REPORTER

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I, the undersigned Danette P. Hanks, 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 all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 16th day of December, 2014.

11

12

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

13

14

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

15

16

17

18

19

March 6, 2015

A handwritten signature in cursive script, reading "Susan Danette Hanks". The signature is written in dark ink and is positioned above the printed name of the reporter.

Circuit Court Reporter

WITNESSES

Brian Swafford

Pickens County Sheriff's Office

7/16/2012

ARREST WARRANT NUMBER

2012A3910600016

ACTION OF GRAND JURY

TRUE BILL
Date

NOV 12 2014

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

AMENDED DOCKET NO. 2013-GS-39-0550

SBT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 12 2014

TERM 2013

THE STATE

vs.

VERNON GLEN EVANS

Amended Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

INDICTED

STATE OF SOUTH CAROLINA)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

COUNTY OF PICKENS)

At a Court of General Sessions, convened on

NOV 12 2014

the Grand Jurors of Pickens

County present upon their oath:

That VERNON GLEN EVANS did in Pickens County, between the dates of August 4th, 2007 and August 4th, 2011, while entrusted by the Victim's parents to babysit the Victim, commit a sexual battery on ! , a minor child, who was less than eleven years of age at the time. This is in violation of §16-3-655(A)(1) [formerly 16-3-655(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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Vernon Glen Evans

AKA:

Race: WHITE Sex: M Age: 51

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Central, SC 29630-8526

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Tooker, Sam

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3900550

A/W#: 2012A3910600016

Date of Offense: 1/1/2007

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

0-30 YEARS

☒ CONVICTED OF or ☐ PLEADS

0385

Mandatory GPS(CSC w/minor 1st or Lewd Act)

§17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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Tooker, Sam

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
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3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Certified Copy
Handed P. Walker
Clerk of Court
Pickens County, SC
Dated

C. Walker

2 1 2 7

12/18/14

ARREST WARRANT

2012A3910600016 1703

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

2012-08186

against

Vernon Glen Evans

Address:

Central, SC 29630-8526

Phone: SSN:

Sex: M Race: W Height: 5 11 Weight: 160

DL State: SC DL #:

DOB: Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Brian Swafford - 0260

Offense: Sex / Criminal sexual conduct with minor or

Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on

VERNON EVANS

7-15-12

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Session
P.O. Box 215
Pickens, SC 29671

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Brian Swafford

who

being duly sworn deposes and says that defendant Vernon Glen Evans

did within this county and state on or about 1/1/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on unspecified dates between January 1, 2007 and December 31, 2008 in the county of Pickens, one Vernon Glen Evans did
engage in sexual battery with a minor, the victim being less than eleven years old and the defendant being more than three years
older. The defendant who during this time was charged with the care of the victim, did perform oral sex on the victim, and had the
victim perform oral sex on himself. The victim and her younger sister were left at the defendant's residence for the purposes of
babysitting. This offense occurred within Pickens County SC. Probable cause based upon: 1) PCSO incident #12-08186, 2) Victim's
disclosure, 3) Witness disclosure, 4) Forensic interview.

Signature of Affiant

Brian Swafford

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofPickens Co
Sheriff's Office

Pickens

JUL 2012

Affiant's Address 216 Lec Road
Pickens, SC 29671-

Affiant's Telephone (864)898-5500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2007

defendant Vernon Glen Evans

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Pickens

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 7/5/2012

Signature of Issuing Judge

Michael Baker

Judge Code: 7257

(L.S.)

Judge's Address West End Hall
Easley, SC 29640-2901

Judge's Telephone (864)850-7076

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

371

ARREST WARRANT

2012A39106000171704

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

against

2012-08186

Vernon Glen Evans

Address:

Central, SC 29630-8526

Phone:

SSN:

Sex: M Race: W Height: 5 11 Weight: 160

DL State: SC DL #:

DOB:

Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff

Prosecuting Officer: Brian Swafford - 0260

Offense: Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

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The accused

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(L.S.)

Signature of Judge

Date:

RETURN

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defendant

on

Vernon Evans

7-15-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Session

P O Box 215

Pickens, SC 29671

ORIGINAL

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

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Personally appeared before me the affiant Brian Swafford

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babysitting. This offense occurred within Pickens County SC. Probable cause based upon: 1) PCSO incident #12-08186, 2) Victim's
disclosure, 3) Witness disclosure, 4) Forensic interview.

Signature of Affiant

Affiant's Address 216 Lec Road
Pickens, SC 29671-
Affiant's Telephone (864)898-5500

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Pickens Co
Sheriff's Office
JUL 2012

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

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Sworn to and subscribed before me

on 7/5/2012

Signature of Issuing Judge

Michael Baker

Judge Code: 7257

Judge's Address West End Hall
Easley, SC 29640-2901

Judge's Telephone (864)850-7076

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

I am approved by
S.C. Attorney General
April 21, 2003
SCCA 518

372

ARREST WARRANT

2012A3910600018 1705

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

2012-08186

against

Vernon Glen Evans

Address:

Central, SC 29630-8526

Phone: _____ SSN: _____
Sex: M Race: W Height: 5 11 Weight: 160DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0390000Prosecuting Agency: Pickens County SheriffProsecuting Officer: Brian Swafford - 0260Offense: Sex / Criminal sexual conduct with minor orAttempt - victim under 11 yrs of age - First degreeOffense Code: 0385Code/Ordinance Sec: 16-03-0655(A)(1)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
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on 7-15-12

Signature of Constable/Law Enforcement Officer

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General Session
P O Box 215
Pickens, SC 29671

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

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Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address 216 Lec Road
Pickens, SC 29671-
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soon thereafter as is practicable

Sworn to and subscribed before me

on 7/5/2012

Signature of Issuing Judge (L.S.)

Michael Baker

Judge Code: 7257Judge's Address West End Hall
Easley, SC 29640-2901Judge's Telephone (864)850-7076Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ORIGINAL

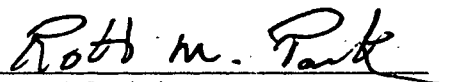
AFFIDAVIT

373

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."

June 4th, 2015.



Robert M. Pachak
Appellate Defender

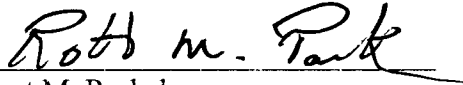
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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."

June 4th, 2015.



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Pickens County

Clifton Newman, Circuit Court Judge

RECEIVED

JUN 04 2015

SC Court of Appeals
RESPONDENT

THE STATE,

V.

VERNON GLEN EVANS,

APPELLANT

APPELLATE CASE NO. 2014-002747

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 4th day of June, 2015.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.