

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

Opinion No. 2015-UP-477 (S.C. Ct. App. filed 10/07/15)

09-GS-24-00543
09-GS-24-00633

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

PETITIONER

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

William Donald Bolt, Appellant.

Appellate Case No. 2013-002164

Appeal From Greenwood County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion No. 2015-UP-477
Heard September 10, 2015 – Filed October 7, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor David Matthew Stumbo,
of Greenwood, for Respondent.

PER CURIAM: William Donald Bolt appeals his convictions and sentences for
second-degree criminal sexual conduct (CSC) with a minor and committing a lewd

act upon a child. Bolt contends the trial court erred in (1) admitting his oral and written statements, which were obtained in violation of *Missouri v. Seibert*, 542 U.S. 600 (2004), and *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010); and (2) denying his motion for a directed verdict on the lewd act charge under the *corpus delicti* rule. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the admission of Bolt's statements: *State v. Hewins*, 409 S.C. 93, 103, 760 S.E.2d 814, 819 (2014) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the decision of the trial court is based upon an error of law or upon factual findings that are without evidentiary support."); *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("When seeking to introduce a confession, the State must prove that the statement was voluntary and taken in compliance with [*Miranda v. Arizona*, 384 U.S. 436 (1966)]."). We find Bolt's reliance on *Seibert* and *Navy* is misplaced because Bolt was advised of and voluntarily waived his *Miranda* rights before he was interrogated by law enforcement. *See id.* ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession."); *id.* ("When reviewing a trial [court's] ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial [court's] ruling is supported by any evidence."); *id.* at 602, 683 S.E.2d at 508 ("Once a voluntary waiver is made, it continues until the individual being questioned indicates he wants to revoke the waiver and remain silent or circumstances exist which establish that his will has been overborne and his capacity for self-determination critically impaired."); *State v. Williams*, 405 S.C. 263, 272, 747 S.E.2d 194, 199 (Ct. App. 2013) ("The State may not use statements stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." (citing *Miranda*, 384 U.S. at 444)).

2. As to the trial court's denial of Bolt's motion for a directed verdict: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* ("A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged."); *id.* ("When reviewing a denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the

[S]tate."); *State v. Bailey*, 368 S.C. 39, 45, 626 S.E.2d 898, 901 (Ct. App. 2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); *State v. Abraham*, 408 S.C. 589, 592, 759 S.E.2d 440, 441 (Ct. App. 2014) ("It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*"); *id.* at 593, 759 S.E.2d at 442 ("[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements and, together with such statements, permits a reasonable belief that the crime occurred." (alteration by court)); *id.* at 592 n.1, 759 S.E.2d at 441 n.1 ("[T]he corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*." (quoting *Opper v. United States*, 348 U.S. 84, 93 (1954))); *id.* ("It is necessary, therefore, to require the [State] to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." (quoting *Opper*, 348 U.S. at 93)); *State v. Nicholson*, 366 S.C. 568, 575-76, 623 S.E.2d 100, 103 (Ct. App. 2005) ("Any concerns about contradictory statements by the accuser . . . [are] ultimately about [the accuser's] credibility and therefore in the domain of the jury."); *State v. Wade*, 306 S.C. 79, 85, 409 S.E.2d 780, 783 (1991) (explaining when prosecuting a crime, the State is not required "to prove the precise day or even year laid in the indictment, except where time enters into the nature of the offense, or is made part of the description of it").

AFFIRMED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

APPELLANT

APPELLATE CASE NO. 2013-002164

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

Opinion No. 2015-UP-477

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing on both issues. Respectfully, the Court's opinion overlooks key points that necessitate reversal of appellant's conviction.

Issue 1

The Court's opinion erroneously holds that the initial Miranda waiver remained valid and foreclosed appellant's arguments pursuant to Missouri v. Seibert, 542 U.S. 600 (2004) and Miranda v. Arizona, 384 U.S. 436 (1966). In Seibert, 542 U.S. 600 (2004), the United States Supreme Court condemned a deliberate practice used in police departments throughout the

country meant to circumvent Miranda. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not to give Miranda warnings until after arrestees have confessed. Id. at 610. The Court listed multiple sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court called this practice "question-first" and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." Id.

South Carolina recognized the impact of Siebert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). Kenneth Navy was convicted of suffocating his two year old son. Id. at 296, 688 S.E.2d at 838. EMS responded to Navy's house and found him giving the child CPR. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them that the child died from suffocation. Id.

With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-40. The Court found that “[a]t this juncture, the nature of the interrogation and respondent’s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation.” Id. Without giving Miranda warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Siebert and were inadmissible. Id. at 301-04, 688 S.E.2d at 841-43.

While the police strategy in this case is the same as in Siebert and Navy, the mechanics were slightly changed in an effort to avoid their application. Investigator Strickland gave Bolt Miranda warnings when he first arrived at the station, but then after Bolt denied the allegations, let Bolt spend the rest of the day and night in jail. Bolt was then confronted with a different questioner—the private contractor, Owen—who did not give Bolt Miranda warnings. The police not only switched questioners, they switched the **kind** of interrogation used: from straightforward police questioning to a lie detector test. Switching investigators is relevant to the Miranda inquiry. State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). In Evans, the original interrogators left the room and sent in a female SLED agent, who used a sympathy tactic. Id. The Evans Court found that the police’s purpose was important and used the fact that they challenged the defendant’s story and switched officers to divine the officers’ intent. Id.

The failure to give Miranda warnings before the polygraph examination also departs from established police practice. As early as 1972, courts recognized that “prudent police practice requires that when polygraph examinations are to be given persons in custody under

investigation for suspected criminal conduct, they should be given Miranda warnings before the commencement of such examinations.” People v. Algien, 501 P.2d 468, 472 (Colo. 1972). Multiple South Carolina decisions state that the polygrapher gave Miranda warnings before the exam. State v. Saltz, 346 S.C. 114, 135, 551 S.E.2d 240, 252 (2001) (noting that defendant was given Miranda warnings before polygraph exam); State v. Harvin, 345 S.C. 190, 192, 547 S.E.2d 497, 498-99 (2001) (recounting that suspect was administered Miranda warnings immediately before polygraph even though warnings had previously been given); State v. McCray, 332 S.C. 536, 543, 506 S.E.2d 301, 304 (1998) (noting that defendant was given Miranda warnings by a SLED polygrapher—Hartley, Bolt’s expert in this case); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 694 (1996) (noting that defendant was given Miranda warnings at SLED before the test was administered); State v. Rochester, 301 S.C. 196, 198, 391 S.E.2d 244, 246 (1990) (noting that in a SLED-administered exam, “Prior to being tested, the polygraph examiner administered the Miranda warnings); State v. Grizzle, 293 S.C. 19, 20, 358 S.E.2d 388, 389 (1987) (noting that SLED polygrapher gave Miranda warnings); State v. Smith, 268 S.C. 349, 353, 234 S.E.2d 19, 20 (1977) (noting that in a SLED-administered exam, the defendant was advised of his rights before the examination and given a written waiver which contained Miranda warnings); State v. Samuel, 400 S.C. 593, 596, 735 S.E.2d 541, 543 (Ct. App. 2012) (stating that polygraph examiner issued Miranda warnings before the exam); State v. Cope, 385 S.C. 274, 291, 684 S.E.2d 177, 186 (Ct. App. 2009) (stating that polygrapher issued Miranda warnings before the exam).

The giving of Miranda warnings during Bolt’s first, brief encounter with Investigator Strickland was insufficient under the totality of the circumstances. Rochester at 200, 391 S.E.2d at 246-47 (stating totality of the circumstances test). See also State v. DeWeese, 582 S.E.2d 786,

797-99 (W.Va. 2003) (holding that failure to give Miranda warnings prior to a polygraph examination rendered statements inadmissible despite prior Miranda warning given by police officers). Taking into account the fact that Bolt was functionally illiterate and of limited intelligence, Miranda warnings were required before the polygraph examination. Since these statements were taken in violation of Bolt's Fifth Amendment rights, the later statement was tainted and inadmissible pursuant to Siebert and Navy. This Court should grant rehearing and reverse.

Issue 2

Respectfully, the Court mistakenly construes Minor's statements as contradictory. Minor's statements were not contradictory—her latter specific response on cross-examination unequivocally clarified her earlier vague statement on direct-examination. During her direct-examination, Minor testified that during the “summer of 2006” Bolt began to touch her in a way that made her feel uncomfortable. R. 131, ll. 1 – 5. On cross-examination, Minor was much more specific concerning the dates of the abuse. R. 159, ll. 2 – 15. She testified as follows:

Q. And going back to your testimony again about when this was. You say that the night he came in the room you were sleeping and that was somewhere around June 1 of 2006?

A. Yes, ma'am.

Q. And you mentioned these other incidents where he would have you on his lap and be touching you?

A. Yes, ma'am.

Q. All of those incidents happened before that date, right?

A. Yes, ma'am.

Q. All of them prior to June 1st of 2006?

A. Yes, ma'am.

Q. Nothing after?

A. No, ma'am.

Q. And you said you went – you might have gone there occasionally after that June 1st incident but there – there was never another time that you say he inappropriately touched you; is that correct?

A. Yes, ma'am.

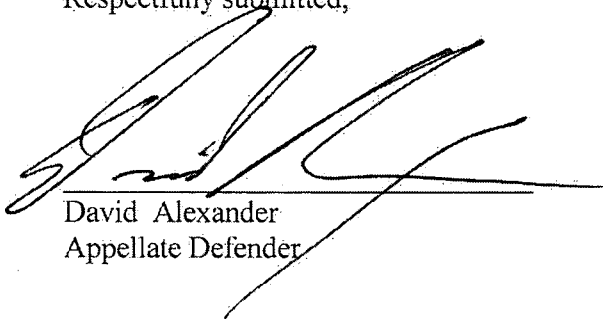
R. 159, ll. 2 – 20 (emphasis added). This was no offhand remark, or, as suggested at oral argument by the State, the result of clever cross-examination by trial counsel. Minor responded to **three** clear, succinct questions concerning the dates she alleged the lewd act took place. Nothing in her answers indicates any equivocation. Nor do her answers conflict with her earlier testimony concerning the “summer.” Had Minor instead testified that the lewd acts occurred around the July 4th holiday, around Labor Day, or in August, there would be conflicting evidence. Minor clarified her earlier general statement about the “summer” and nothing in her responses on cross-examination indicate that she was confused.

Without any conflict in the evidence about when the lewd acts occurred, appellant was entitled to a directed verdict under the *corpus delicti* rule because the only evidence against him were his statements to Owen. “It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*.” State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014). The corroboration rule applies to statements and confessions. State v. Osborne, 335 S.C. 172, 178, 516 S.E.2d 201, 204 (1999). To satisfy the corroboration rule, the State must provide “sufficient independent evidence which serves to corroborate the defendant’s extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred.” Id. at 180, 516 S.E.2d at 205.

In Abraham, this Court conducted an in-depth analysis of the corroboration rule as described by our Supreme Court in Osborne and held that the State must introduce “substantial independent evidence which would tend to establish the trustworthiness of the statement.” Abraham at n.2, citing Opper v. United States, 348 U.S. 84 (1954) (stating that the government must introduce “substantial independent evidence”). No substantial independent evidence exists in this case.

The Court also mistakenly adopted the State’s argument that time is not an element of the offense. In the case cited by the Court, the appellant argued that the indictment should have been quashed because the two-year time frame was overly broad. State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991). The Court rejected this argument. Id. However, nothing in Wade supports the notion that a defendant can be tried for allegations that occur **outside of the time frame alleged in the indictment**. If this were the rule, then the entire concept of notice that is the primary purpose of an indictment would be meaningless. This Court should grant rehearing and reverse appellant’s conviction.

Respectfully submitted,



David Alexander
Appellate Defender

This 22nd day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

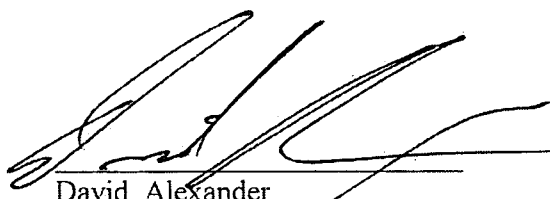
WILLIAM DONALD BOLT,

APPELLANT

APPELLATE CASE NO. 2013-002164

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, this 22nd day of October, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of October, 2015.

Heaven Pennington (L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Respondent,

v.

William Donald Bolt, Appellant.

Appellate Case No. 2013-002164

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Luff J.
H. B. Wooten J.
Paul D. Thomas J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Deborah R.J. Shupe, Esquire
David Matthew Stumbo, Esquire
Angela M. Woodhurst

FILED
November 19, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

APPELLANT

APPELLATE CASE NO. 2013-002164

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
PLAINTIFF,)
)
)
-VS-)
)
WILLIAM DONALD BOLT,)
)
DEFENDANT.)
_____)

2009-GS-24-00543

2009-GS-24-00633

TRANSCRIPT OF RECORD

 ORIGINAL

SEPTEMBER 3-5, 2013
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

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CAM MORROW, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

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SHANE GORANSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 THE COURT: Well, I hate losing an hour to get something
2 done in the case, but I don't want the jury to sit back
3 there for an hour.

4 MR. SHEEK: I don't know if you want to let them go and
5 ask them to come back. It's up to you, Judge. I'll do it
6 however you want.

7 MS. NELSON: We will too.

8 THE COURT: Is there anything else we can do after the
9 *Jackson v. Denno*? Have you got anything else we can hash
10 around?

11 MS. NELSON: The only other thing I would have is a
12 motion to sequester the witnesses. That's not going to take
13 up --

14 MR. SHEEK: And I'll consent to that.

15 THE COURT: What about -- you mentioned the possibility
16 of a continuance request because of some records that you
17 were waiting on. Is that still --

18 MS. NELSON: I got the counseling records and those have
19 been provided to Mr. Sheek. So we got those. That's not a
20 problem. The only other thing I was concerned about would
21 have to do with this *Jackson v. Denno* hearing. That is that
22 just today I saw the file of the polygrapher, Mr. Owen. I
23 did not realize until last Friday that this statement that
24 -- I didn't know the State was going to try to use this
25 statement, for one thing. Once I learned they were going to

1 try to use the statement, my understanding for the first
2 time was that there probably was no one else in the room
3 with Mr. Owen when he was questioning Mr. Bolt. Mr. Owen
4 obtained a statement from Mr. Bolt after giving him a
5 polygraph exam and telling him that he failed the polygraph
6 exam. I would like to have an opportunity to get the
7 polygraph charts, which I still don't -- I don't have those
8 because I think they're kind of difficult to copy. But I'd
9 like to have an opportunity to have my own independent
10 polygrapher take a look at those charts and see if they
11 score it in the same way that Mr. Owen did.

12 MR. SHEEK: It's inadmissible evidence, Judge.

13 MS. NELSON: It goes to voluntariness of the statement.

14 MR. SHEEK: Well, I'm not sure how it does. Because
15 even if someone had lied to him from law enforcement, the
16 law says you can do that. Tell him he failed it when he
17 didn't.

18 THE COURT: Basically where you're coming from is the
19 examiner said you failed it, and that would bear on the --
20 because evidently the defendant then made some statement as
21 a result of that; correct?

22 MS. NELSON: That the State wants to use. Yes, sir.

23 THE COURT: That the State wants to use.

24 MS. NELSON: They have a -- there are two statements
25 that he made that they want to use. One is the one that he

1 made to Mr. Owen after the polygraph that was un-Mirandized
2 and was given after he was told he failed the polygraph.
3 The second one was later that afternoon to Investigator
4 Brandon Strickland, and Miranda warnings were given for that
5 one, but it was also subsequent to that polygraph exam.

6 MR. SHEEK: For clarification, Judge, I would point out
7 he was Mirandized before he gave the first statement to the
8 polygrapher.

9 MS. NELSON: The day before.

10 MR. SHEEK: Well, they last.

11 MS. NELSON: I think there's some attenuation.

12 THE COURT: So you're wanting somebody to take a look at
13 the -- you refer to them as charts. The showing of the
14 responses?

15 MS. NELSON: The responses. Yes, sir.

16 THE COURT: To where possibly you would have a person to
17 say, "No. You look at that. I would not consider that to
18 have been failing the test." Is that basically where you're
19 coming to?

20 MS. NELSON: Yes. Yes, sir.

21 THE COURT: Well, I think at this stage I would allow
22 her the opportunity to review that. They cannot be copied?
23 So the only set is the originals that you're wanting to take
24 possession of.

25 MS. NELSON: Mr. Owen would have to answer that, I think

1 better than I could. My understanding is that they're on
2 these strips that would probably make it difficult to copy.
3 I would think -- I'm not a polygrapher, but I would think
4 somebody would want to actually see the -- am I correct in
5 that?

6 MR. OWEN: They can be copied.

7 THE COURT: Let's do this. I'm going to go ahead and
8 excuse the jury for the remainder of the day. Let me bring
9 them out. I'm still not going to swear them in until we
10 bring them back in the morning. Is 9:00 okay with everybody
11 or is that too early to start back in the morning?

12 MR. SHEEK: It's fine with me, Judge.

13 THE COURT: I'm going to tell them to be back then at
14 nine in the morning.

15 MS. NELSON: Yes, sir.

16 THE COURT: Bring the jury out, please.

17 (Whereupon, at 2:57 p.m. the jury entered the
18 courtroom.)

19 THE COURT: Let the record reflect that the jury is back
20 in the courtroom. Ladies and gentlemen, I've got some
21 pretty good news for you. We're going to excuse you for the
22 remainder of the afternoon. The reason being is I've got
23 some work to do with the lawyers on this case and we didn't
24 feel like you would want us to keep you sitting back in the
25 jury room probably over an hour while we're out here doing

1 the work. So we decided that it would be best for you guys
2 that we go ahead and excuse you for the remainder of the
3 day, but we need you back at nine o'clock in the morning.
4 We're going to be working this afternoon, but y'all can take
5 off and I hope you have a good afternoon. Again, I'll
6 remind you even though you know very little, if anything,
7 about this case do not talk among yourselves about the case.
8 Do not talk with any family members or friends when you get
9 home. We'll see you at nine o'clock in the morning. Have a
10 good evening.

11 (Whereupon, the jury was released for the day at 2:59
12 p.m.)

13 THE COURT: We've got the issue about some statements
14 the defendant has made. Ms. Nelson, you mentioned about
15 wanting possibly for some independent expert of yours to
16 look at the documents as a result of the polygraph test that
17 was done that might bear on the issue of voluntariness. Of
18 course, that is certainly the key issue in the *Jackson v.*
19 *Denno*. Would we be able to deal with that now without you
20 having an opportunity to do whatever you feel like you need
21 to do on that?

22 MS. NELSON: To deal with a *Jackson v. Denno*?

23 THE COURT: Yes, because a *Jackson v. Denno*, of course,
24 as you know voluntariness of the statement is one key
25 component. If you're wanting someone to look at the

1 examiner's test results that may go on the issue of
2 voluntariness. Then can we do a *Jackson v. Denno* today?

3 MS. NELSON: I would prefer to get the results looked at
4 first. I suppose if we started the hearing then I would
5 need to -- which I had intended to do everything I could to
6 get somebody to look at it very quickly. I was hoping I
7 could have it in somebody's hands later this evening or
8 tomorrow morning to see if somebody would rush it for me, to
9 take a look at it. I suppose if we went forward, my
10 suggestion would be that whatever -- if you made a ruling
11 about admitting the statement that was taken after the
12 polygraph that if I had some results to put up as a result
13 of the expert taking a look at the chart that I be afforded
14 an opportunity to reopen the record and have that
15 considered, Your Honor.

16 THE COURT: Okay.

17 MR. SHEEK: May I address that, Judge?

18 THE COURT: Certainly, Solicitor.

19 MR. SHEEK: If we think this through, Your Honor, what
20 she's asking to have done -- regardless of the outcome of
21 her expert looking at it, it's completely inadmissible. The
22 report of Daryl Owen says, and I'll quote, "Based on the
23 results of the polygraph chart it is the opinion of this
24 examiner that Mr. Bolt exhibited spiked physiological
25 reactions and the responses normally associated with

1 deception." It is the opinion. So the question was, was it
2 his opinion that the results indicated deception, and did he
3 relay that to Mr. Bolt. And that may be irrelevant in the
4 *Jackson v. Denno*. Obviously, we can't bring it in the trial
5 at all.

6 THE COURT: Sure.

7 MR. SHEEK: But let's suppose the defense gets an expert
8 that says, "Well, in my opinion it doesn't indicate
9 deception." What does that have to do with the question at
10 hand? The question at hand was, was Mr. Bolt informed by
11 this guy that in his opinion it indicated deception. Did he
12 make the statement? Were the rights given? Was it
13 voluntary? Something we discover now by having a second
14 expert look at it and inform Mr. Bolt of now has absolutely
15 no bearing on what he did back on December 5, 2008. There's
16 nothing an expert can say now that would have any bearing on
17 that, and that's the only question we have to answer here
18 today. Now, when we go on to trial that testimony will be
19 completely inadmissible in any way, shape, or form. So the
20 only issue that it could be relevant before this court is on
21 the issue of *Jackson v. Denno* and what we discover now, or
22 an expert says now, has no bearing on what decision was made
23 in December of '08.

24 THE COURT: Right. Well, I think, and I'm certainly not
25 speaking for Ms. Nelson, but I think where she's coming from

1 is -- and I'm not suggesting that I agree. But I think
2 where she's coming from is that by virtue of being told that
3 he failed the test that the examiner should not have told
4 him that. Therefore, that -- I hate to use the word
5 coerced, but in some manner got the defendant to make that
6 statement when, in fact, based upon another expert he
7 shouldn't have been told that he had failed.

8 MR. SHEEK: But if we follow that logically, let's say
9 he goes in with Detective Strickland and Detective
10 Strickland, after being told by this polygrapher that he
11 passed the test, Detective Strickland looks at him and goes,
12 "You failed. You lied. Now tell me what really happened."
13 Let's suppose that's what happened. And then Mr. Bolt makes
14 a statement. It's not involuntary, because the law says the
15 detective can lie to him. You can tell him a co-defendant
16 has given a statement. You can tell him he failed a
17 polygraph. Does it invalidate the voluntariness of the
18 statement?

19 THE COURT: What about that point?

20 MS. NELSON: It's a totality of the circumstances test,
21 Your Honor. It's not automatic that it's still voluntary if
22 somebody lies to you. You look at all of the circumstances
23 to determine voluntariness. I think that this would be one
24 of the circumstances. I have no idea whether somebody else
25 is going to agree with Mr. Owens' opinion that William

1 failed the test. But I think it does go to the totality of
2 the circumstances and is a factor for the court to consider
3 if another expert looks at it and comes to a different
4 opinion..

5 MR. SHEEK: Well, actually, the only thing for the court
6 to consider in a *Jackson v. Denno* was what was going on at
7 the time and what Mr. Bolt knew or didn't know. The fact
8 that we can come back in and hire an expert later that may
9 have a different opinion has no bearing on whether or not he
10 voluntarily gave a statement. The State will concede, for
11 the purpose of this argument, that *Daryl* Owen told him he
12 failed. And that Brandon Strickland told him he failed. So
13 the question of whether or not he really failed has no
14 bearing on that. The question is what was in Mr. Bolt's
15 mind at that time, and I doubt Mr. Bolt was sitting there
16 thinking, "Well, I wonder if I really got an expert to look
17 at it what they would say."

18 THE COURT: Give me just a second, please.

19 (PAUSE)

20 THE COURT: If I make a finding after a *Jackson v. Denno*
21 hearing that the statement was voluntarily made, that's just
22 my initial determination in order for the jury to be able to
23 hear it.

24 MR. SHEEK: Correct.

25 THE COURT: But the jury also has to make a finding

1 beyond a reasonable doubt. And I'm not saying this trying
2 to educate you. Y'all know this, but it's just kind of
3 leading up to my point. So they have to make the
4 determination beyond a reasonable doubt that the confession
5 or statement was voluntary. The jury then has to basically
6 consider what the court considered in determining
7 voluntariness. Correct? And the jury cannot consider
8 anything related to a polygraph exam being administered. So
9 the problem that we would be faced with, if I allow the
10 defense to hire an independent expert to review these test
11 results, and this expert comes back and says, "Yeah, he
12 shouldn't have told him he failed because in fact he didn't
13 fail. He passed it based upon this stuff." And the jury
14 can't hear that, then we've got a big issue. So it's almost
15 a situation that all I can hear and consider on the issue of
16 voluntariness would be anything that would be admissible,
17 especially if I elect to allow the jury to hear it.

18 MR. SHEEK: I agree, Your Honor. And that's the reason
19 I say the whole polygraph is out.

20 THE COURT: So help me out with this, Ms. Nelson. I'm
21 inclined to deny you -- if you need the record protected, I
22 guess I can allow you to go find you an expert and get the
23 test results and have them looked at so you could protect
24 the record. But I'm inclined not to even get into it
25 because of where it's going to lead us if we let the jury

1 make that determination on voluntariness.

2 MS. NELSON: Your Honor, I would agree that none of the
3 polygraph stuff can come in front of the jury. My
4 understanding is that Mr. Sheek doesn't intend to even
5 attempt that. I'm not going to attempt it, but I do think
6 for purposes of the *Jackson v. Denno* that the court can be
7 apprised of those circumstances, even if the jury cannot.
8 That's where I was asking to use it, is in the initial
9 voluntariness determination that the court makes.

10 THE COURT: So what you're telling me then is, you
11 present that at *Jackson v. Denno* and I determine that the
12 statement was voluntary and it goes to the jury, then you're
13 okay with the fact that you're not going to be able to put
14 your expert on the stand before the jury and for him to say
15 that the first examiner shouldn't have said that the test
16 was failed because, in fact, it was not based upon the test
17 records.

18 MS. NELSON: I don't think it's admissible. I don't
19 think the stuff about the polygraph is admissible. Your
20 Honor, what you're talking about goes to part of the
21 argument I'd be making at the end of this *Jackson v. Denno*,
22 that this statement shouldn't have come in at all because it
23 does put the defendant in such an untenable position.
24 You've got this choice between trying to get unreliable
25 evidence in front of a jury, no matter who the expert is, or

1 --

2 MR. SHEEK: But Judge, for *Jackson v. Denno* the only
3 issue is the voluntariness of the statement. Whether or not
4 the polygrapher correctly or accurately interpreted the
5 results has no bearing on that. He was given a polygraph
6 and told he failed. Whether or not he really failed or
7 another one disagrees has nothing to do with what he was
8 told in a situation that occurred on that day. And that's
9 the only issues you have to ask.

10 THE COURT: Well, what I want to do -- and I'm certainly
11 not pre-judging the issue by any means, but I will say that
12 I think you've got an uphill battle on that particular
13 point, to show that being told that he failed would somehow
14 or another cause the statement to be involuntarily made by
15 your client. But, with that said, I'm going to give you
16 every bite at the apple you can take. So I will allow you
17 to get -- if copies of that can be made and if you can get
18 somebody to look at it before we start back in the morning,
19 which may be a pretty strong task. I will allow that to be
20 done. So if we want to go forward with the *Jackson v.*
21 *Denno*, understanding that Ms. Nelson would have the right to
22 resurrect that issue, depending upon what you've been able
23 to accomplish.

24 MS. NELSON: Thank you, Your Honor.

25 MR. SHEEK: Are you ready to proceed, Judge?

1 THE COURT: Yes, sir.

2 MR. SHEEK: The State calls Investigator Brandon
3 Strickland to the stand.

4 **BRANDON STRICKLAND**, first being
5 duly sworn testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHEEK:

8 Q. State your name for the record, please, sir.

9 A. Brandon Strickland.

10 Q. With whom are you currently employed?

11 A. The Greenwood County Sheriff's Office.

12 Q. How long have you been in law enforcement now, Mr.
13 Strickland?

14 A. I'm in my fifteenth year.

15 Q. What is your current rank with the Sheriff's
16 Department?

17 A. I'm Lieutenant over the Drug Enforcement Unit.

18 Q. How long have you been involved in criminal
19 investigations for the sheriff's department?

20 A. Since 2004.

21 Q. Were you employed with the sheriff's department as a
22 criminal investigator back in December 2008?

23 A. I was.

24 Q. Do you recall if you had an opportunity to be assigned
25 the case of *State vs. William Bolt* for investigation

- 1 purposes?
- 2 A. Yes, sir.
- 3 Q. Were you the lead investigator on that?
- 4 A. I was.
- 5 Q. To your knowledge, were there any other investigators
6 involved in it?
- 7 A. I don't think so.
- 8 Q. Did you have an opportunity to conduct an interview
9 with William Donald Bolt?
- 10 A. Yes, sir.
- 11 Q. For the record, is Mr. Bolt sitting in the courtroom
12 today?
- 13 A. He is.
- 14 Q. Could you point him out, please?
- 15 A. The gentleman to the right of Shane Goranson. He has a
16 mustache and what appears to be overalls maybe.
- 17 Q. Where did that interview occur?
- 18 A. At the Greenwood Law Enforcement Center.
- 19 Q. When you brought Mr. Bolt in did you actually go get
20 him and bring him in or did he come at your request on
21 his own?
- 22 A. I'm not positive on that, but I'm pretty sure that we
23 went and got him.
- 24 Q. Was he placed under arrest?
- 25 A. I think so.

1 Q. So he would've been in custody?

2 A. Yes, sir.

3 Q. Did you actually go over his rights with him before
4 asking him any questions?

5 A. I did.

6 Q. Did you use a written Greenwood County Sheriff's Office
7 advice of rights form?

8 A. Yes, sir.

9 Q. I'm going to hand you this document and ask you if you
10 recognize that.

11 A. I do.

12 Q. What is that document?

13 A. It is a Miranda warning with five rights that we read
14 to them. The last couple being making sure he
15 understands his rights.

16 Q. And what rights did you actually read? Let me ask you
17 this, did you read to him the rights off of that form?

18 A. I did.

19 Q. And what were the rights that you read to him?

20 A. You have the right to remain silent. Anything you say
21 can be used for or against you in court. You have the
22 right to talk to a lawyer for advice before we ask you
23 any questions, and to have him or her with you during
24 any questions. If you cannot afford a lawyer one will
25 be appointed for you before any questioning if you

1 wish. If you decide to answer questions without a
2 lawyer present you will still have the right to stop
3 answering at any time. You also have the right to stop
4 answering at any time until you talk to a lawyer.

5 Q. Are each one of those have a check mark beside them?

6 A. Yes, sir. They do.

7 Q. Do you recall who made those check marks?

8 A. Mr. Bolt.

9 Q. Did he check those as you went over those rights with
10 him?

11 A. He did. Yes.

12 Q. At the bottom of that sheet does it have a section
13 marked waiver of rights?

14 A. Yes, sir.

15 Q. What is that? Read it for us, if you would.

16 A. I have read the statement of my rights and I understand
17 what my rights are. I am willing to make a statement,
18 answer questions. I do not want a lawyer at this time.
19 I understand and know what I am doing. No promises or
20 threats have been made to me and no pressure or
21 coercion of any kind has been used against me.

22 Q. Did you actually read that to Mr. Bolt?

23 A. I did.

24 Q. Did he sign that document?

25 A. He did sign it. Yes, sir.

1 Q. Did you also sign it?

2 A. I did.

3 Q. Was it dated?

4 A. It was.

5 Q. What's the date on that?

6 A. December 4, 2008.

7 Q. Do you recall if anybody else was present during this
8 interview?

9 A. I do not think so.

10 Q. Did you make any threats of any kind against Mr. Bolt
11 to make him check or sign this document?

12 A. No, sir.

13 Q. Did you make him any promises of anything that would
14 happen if he did go ahead and sign it for you?

15 A. No, sir.

16 Q. Did he do that of his own free will?

17 A. He did.

18 MR. SHEEK: Your Honor, we would move to have this
19 marked for identification purposes as State's Exhibit Number
20 1.

21 THE COURT: It will be marked as State's Exhibit Number
22 1 for identification purposes only.

23 (Whereupon, a Miranda warning was marked as State's
24 Exhibit 1 for identification.)

25 Q. Now, did you take any written or recorded statements of

- 1 Mr. Bolt on December 4th?
- 2 A. I think it was December 5th.
- 3 Q. So you had him come back on the second day?
- 4 A. Yes, sir.
- 5 Q. Did you discuss with Mr. Bolt going and actually
- 6 meeting with Mr. Daryl Owen?
- 7 A. Yes, sir.
- 8 Q. Mr. Owen, is he a sheriff's department employee?
- 9 A. He is not.
- 10 Q. He is somebody that you use on a contract basis?
- 11 A. We do. He's an independent investigation agency.
- 12 Q. Did you meet with Mr. Bolt after he had met with Mr.
- 13 Owen?
- 14 A. I did.
- 15 Q. At that time -- you said that was December 5, 2008?
- 16 A. I believe it was.
- 17 Q. I'm going to hand you that document and ask you if you
- 18 recognize that.
- 19 A. I do.
- 20 Q. Is that an identical advise of rights form to the one
- 21 that you filled out on December 4th?
- 22 A. It is.
- 23 Q. You went back over each of those rights with Mr. Bolt
- 24 on December 5th?
- 25 A. I did.

1 Q. Did he make those marks on that document?

2 A. Yes, sir.

3 Q. Is that his signature at the bottom?

4 A. It is.

5 Q. You signed it also?

6 A. I did.

7 Q. At that time, December 5, 2008, did you make any
8 threats against Mr. Bolt if he did not speak to you or
9 sign this document?

10 A. No, sir.

11 Q. Did you make him any promises if he did, that you would
12 do something for him?

13 A. No, sir.

14 MR. SHEEK: Your Honor, we would move to have this
15 marked for identification purposes as State's Exhibit Number
16 2.

17 THE COURT: It will be marked as State's 2 for
18 identification purposes only.

19 (Whereupon, Miranda warning was marked as State's
20 Exhibit Number 2 for identification.)

21 Q. Now, on December 5, 2008 did Mr. Bolt actually then
22 give you a signed written statement?

23 A. He did.

24 Q. I'm going to hand you this third document and ask you
25 if you recognize that.

1 A. Yes, sir.

2 Q. Is that a written statement form from the Greenwood
3 County Sheriff's Department?

4 A. It is.

5 Q. Is that the one that you filled out with Mr. Bolt on
6 December 5, 2008?

7 A. Yes, sir.

8 Q. Now, who actually wrote down the body of that
9 statement?

10 A. I did.

11 Q. Why did you write it?

12 A. He stated he didn't write very well.

13 Q. When you wrote it, did you paraphrase what he had told
14 you through an interview? How did you come to put
15 those words on that piece of paper?

16 A. I wrote the words that he used to me.

17 Q. So it is a verbatim transcription of an oral statement?

18 A. Yes, sir. There's words in here that I do not use that
19 he would've told me to use.

20 Q. Like what, for instance?

21 A. Like pajama britches.

22 Q. That's not something you normally use?

23 A. No, sir.

24 Q. After you wrote that down, did you read it back to him?

25 A. I did.

- 1 Q. Did you ask him if he wanted to make any corrections,
2 modifications?
- 3 A. Yes, sir.
- 4 Q. Additions?
- 5 A. Yes, sir.
- 6 Q. Did he indicate that he disagreed with anything that
7 you had read back to him?
- 8 A. He did not.
- 9 Q. I notice when you get to the end of the sentences
10 you've written there is a line that says, "NFR." What
11 does NFR stand for?
- 12 A. No further report. He wrote that.
- 13 Q. What is the purpose of putting that on that paper?
- 14 A. Anytime you finish a statement before you're at the
15 very end of the body of the paper you draw a line
16 through it so nothing can be added.
- 17 Q. That was done so that nobody could come back later and
18 add another sentence and say, "Oh, yeah. I also robbed
19 a bank."
- 20 A. That's correct.
- 21 Q. Was that also done -- you say he wrote that?
- 22 A. He did.
- 23 Q. Is that y'all's normal practice that you let the person
24 giving the statement mark a line?
- 25 A. Yes, sir.

1 Q. Did he sign that piece of paper?

2 A. He did.

3 Q. At the time you conducted that interview, did you
4 threaten Mr. Bolt in any way?

5 A. No, sir.

6 Q. Promise him anything to get him to give you a
7 statement?

8 A. No, sir.

9 Q. If you would, Detective Strickland, read to the court
10 what it was -- the written statement that he signed for
11 you that day.

12 A. The first part of the statement says, "Investigator
13 Strickland is writing a statement for Donald Bolt due
14 to Bolt not being able to write." Then it starts a new
15 paragraph. "I, Donald Bolt, did on the night in
16 question go into the bedroom where Minor was in
17 bed with her sister, Christy, and brother, M. . I
18 sat down beside where she was laying. She appeared to
19 be asleep. I pulled her pajama britches down and
20 touched her private area. I put one finger inside her
21 vagina. This was very quick and I then pulled her
22 pants back up and went back to bed." Then a line with
23 no further report.

24 Q. At the time you took that statement were you even aware
25 that he referred to the victim as Minor ?

1 A. No, sir.

2 Q. Was that a name she had ever given you or used with
3 you?

4 A. No, sir.

5 MR. SHEEK: Your Honor, we would move to have this
6 marked for identification purposes as State's 3.

7 THE COURT: Marked as State's 3 for identification
8 purposes only.

9 (Whereupon, written statement was marked as State's
10 Exhibit 3 for identification.)

11 Q. After taking that written statement, was there any
12 other interview of Mr. Bolt?

13 A. Not to my knowledge.

14 Q. To your knowledge, did you or anybody else at the
15 sheriff's department ever bring him back and have any
16 other interviews, take any other statements?

17 A. I don't believe so.

18 Q. Now, at the time this was taken, was there any video or
19 audio recordings of the interview made?

20 A. No, sir.

21 Q. Do you recall why?

22 A. My standard is to record all interviews. If there's no
23 recording of this, which there was not, then it
24 would've had a malfunction or not been in working order
25 at that time.

1 Q. Thank you, Detective Strickland. Please answer
2 anything that Ms. Nelson may have.

3 MS. NELSON: Mr. Goranson will be doing cross-
4 examination, Your Honor.

5 THE COURT: Mr. Goranson.

6 CROSS-EXAMINATION

7 BY MR. GORANSON:

8 Q. You've had some training during your time as an
9 employee at the sheriff's office; correct?

10 A. I have.

11 Q. You have some basic training?

12 A. I do.

13 Q. You get that when you first start working for the
14 sheriff's office, right? As a deputy?

15 A. Yes, sir.

16 Q. Can you describe that briefly.

17 A. I went through that in 1999. It was nine weeks of
18 training, physical and mental. A lot of laws,
19 practical problems, a combination of both.

20 Q. And you learned the basic functions of being a
21 sheriff's deputy; right?

22 A. Yes.

23 Q. You learned how to respond to complaints?

24 A. Yes.

25 Q. And you learned how to write down incident reports so

- 1 you can keep notes of everything.
- 2 A. Yes, sir.
- 3 Q. And you did that for five years? '99 to 2004 you were
- 4 a sheriff's deputy.
- 5 A. I was in uniform patrol, yes.
- 6 Q. Then you became an investigator.
- 7 A. Yes, sir.
- 8 Q. And you got more training.
- 9 A. Yes, sir.
- 10 Q. Can you tell us about your training to be an
- 11 investigator.
- 12 A. Well, there is no certain training. You can get sent
- 13 to training. I guess it's just whether your agency
- 14 sends you or don't.
- 15 Q. Have you been sent to training?
- 16 A. I've been sent to some investigator training. Yes,
- 17 sir.
- 18 Q. What did that cover?
- 19 A. Just investigating different types of crimes.
- 20 Q. A big part of investigating cases is speaking to
- 21 witnesses; right?
- 22 A. Yes.
- 23 Q. And you take down witness statements; right?
- 24 A. That's correct.
- 25 Q. And you question suspects?

- 1 A. Yes.
- 2 Q. Have you had any training in that area?
- 3 A. I have.
- 4 Q. How would you describe that training?
- 5 A. Just different approaches. Different schools teach
6 different approaches on how to interview people.
- 7 Q. What school do you use?
- 8 A. I'm not sure at that time if I had been through it, but
9 the Reid Technique is the last school that I've been
10 through. Interview and interrogation.
- 11 Q. Can you approximate when you took that course?
- 12 A. I really can't. Probably close to that time frame.
- 13 Q. How do they define interrogation in those schools?
- 14 A. I think when you develop enough to where you can switch
15 gears from questioning them to more of -- going at them
16 a little stronger as being the suspect, more so than
17 just a person you're interviewing.
- 18 Q. How would that manifest?
- 19 A. I think when the interview gets to the interrogation
20 point is when you, in my opinion, is when you feel
21 comfortable to take it to the next step. As accusing
22 them and going to a more harsher approach. Just more
23 blunt.
- 24 Q. And part of that is refusing to believe a denial.
- 25 A. I guess it could.

1 Q. So before you questioned Don you were aware that this
2 case was based on a statement from one witness who said
3 it happened two to three years ago.

4 A. That's correct. Yes.

5 Q. There's no other evidence in this case.

6 A. Not that I was provided, no.

7 Q. You didn't go to the scene of the alleged incident.

8 A. No.

9 Q. You didn't take any pictures there obviously.

10 A. No.

11 Q. You didn't speak with any of the other people who were
12 involved in this incident supposedly.

13 A. Maybe the -- well, there was only two involved in the
14 incident, and I spoke to both of them.

15 Q. When you took Minor statement, she told you
16 that ---

17 MR. SHEEK: Your Honor, I'm going to object at this
18 point. I don't -- what does this have to do with *Jackson v.*
19 *Denno*?

20 MR. GORANSON: I'm getting to that.

21 THE COURT: I think maybe he's laying a little
22 foundation. I'll give wide latitude since this is an out of
23 the jury hearing. You may proceed.

24 MR. GORANSON: Thank you.

25 Q. You didn't take any DNA. No fingerprints.

- 1 A. No.
- 2 Q. And there was no contraband of any kind in this case.
- 3 A. No.
- 4 Q. So it's only the statement from Don in this case, and
5 the statement from Minor ?
- 6 A. Correct. And the mother.
- 7 Q. And the mother. But she was not there the night of the
8 incident.
- 9 A. That's correct.
- 10 Q. And so Don came to the sheriff's office.
- 11 A. Yes, sir.
- 12 Q. On December 4th. Yes, sir.
- 13 Q. And he came to your office.
- 14 A. Yes, sir.
- 15 Q. Because you wanted to see him.
- 16 A. Correct.
- 17 Q. And he came into your personal office? Did you go to
18 an interrogation room?
- 19 A. I'm not sure. It says Greenwood Law Enforcement
20 Center. My office is inside the law enforcement
21 center. The interview room is also inside it. I would
22 say that we did go into the interview room.
- 23 Q. Was anybody else present?
- 24 A. No.
- 25 Q. And you read him his Miranda warnings.

1 A. Correct.

2 Q. And at that point he was free to leave.

3 A. Without looking at the warrant, when it was served, I'm
4 not sure. I'm not sure if he left that day or --

5 THE COURT: Are you talking about the fourth or the
6 fifth?

7 MR. GORANSON: The fourth. December 4 when he --

8 THE COURT: I thought maybe you said the fifth in your
9 question.

10 MR. GORANSON: I apologize.

11 THE COURT: That's okay.

12 MR. GORANSON: The fourth.

13 Q. Do you have notes from that day?

14 A. I think there are some notes, yes, sir. I don't know
15 if there are notes from that day. There's some notes
16 on the case I think.

17 Q. Will you make those available to the Defense after you
18 leave here today?

19 A. Sure.

20 Q. What time did he come in?

21 A. I'm not sure of the time of the day.

22 Q. He signed a waiver? Don signed the waiver?

23 A. Yes, sir.

24 Q. And you asked him some questions about this incident?

25 A. Yes, sir.

- 1 Q. And as you stated you didn't record those questions.
- 2 A. No..
- 3 Q. And you didn't record his responses.
- 4 A. No, sir.
- 5 Q. Please give us a complete list of the questions you
- 6 asked him.
- 7 A. I don't have the questions I asked him that day, on the
- 8 fourth.
- 9 Q. He denied any wrongdoing.
- 10 A. He did.
- 11 Q. And then he was put in jail.
- 12 A. That's -- if the warrant says the fourth then that's
- 13 what happened.
- 14 Q. And he spent the night there.
- 15 A. Correct.
- 16 Q. The next day he bonded out, but he had not been
- 17 released when you spoke to him.
- 18 A. Okay. I'm not positive on that, but -
- 19 Q. And you spoke to him again.
- 20 A. Correct.
- 21 Q. And at that point you and he were alone.
- 22 A. When we spoke, yes.
- 23 Q. And you told him that you were going to jack up his
- 24 bond if he didn't give you a statement.
- 25 A. No. I did not say that.

- 1 Q. This interview was not recorded.
- 2 A. No, sir.
- 3 Q. He told you he couldn't write.
- 4 A. Yes, sir.
- 5 Q. Did that make you question about whether he could read?
- 6 A. No, sir. He said he could not write a statement..
- 7 Q. But you had him sign another Miranda form before
- 8 questioning him again.
- 9 A. Yes.
- 10 Q. And you asked him some questions.
- 11 A. Yes.
- 12 Q. Did you switch to the interrogation mode at that point?
- 13 A. He was truthful at that time.
- 14 Q. Can you tell us the questions you asked him at that
- 15 point?
- 16 A. I asked him to tell me about what happened that night.
- 17 I asked him, you know, did you do this. Did you do
- 18 this. He answered.
- 19 Q. You wrote out a statement.
- 20 A. I wrote out what he said for me to write out, yes.
- 21 Q. And it's your testimony here today under oath that he
- 22 said, "on the night in question." That those were his
- 23 words.
- 24 A. I asked him on the night in question and he said yes.
- 25 Q. You're saying that his words were -- those words came

1 from you. He agreed.

2 A. The night in question, yes.

3 Q. She appeared to be asleep?

4 A. Yes.

5 Q. That was what you said to Don.

6 A. That's what he told me to write, she appeared to be
7 asleep.

8 Q. When you're going through this statement and you're
9 writing out the statement for him, you make a statement
10 and you wait for him to agree? Is that how it went?

11 A. That's how it went before the statement was written.
12 We talked. We had conversation. But when we wrote
13 that, I wrote, "On the night in question," and then he
14 said the things -- how it transpired.

15 Q. Who read the statement when you finished writing it?

16 A. I don't guess anyone read it. It was put into
17 evidence.

18 Q. And then he was released after you spoke with him.

19 A. I'm not positive on when he was released.

20 Q. How long did you speak with him the first interview on
21 December 4?

22 A. It's brief I think. I don't think it was a lengthy
23 interview.

24 Q. And the second? When you spoke with him on the fifth
25 how long did you speak with him?

- 1 A. It was not long either. Fifteen minutes, maybe thirty.
2 I'm not positive on that.
- 3 Q. How many investigators work at the sheriff's office?
4 A. Eight or nine.
- 5 Q. Is that about the same staff you had in 2008?
6 A. Close.
- 7 Q. Between eight or nine detectives, how many of them are
8 working at one given shift?
- 9 A. Normally all but two. Normally, two would work night
10 shift.
- 11 Q. So it's going to be six to seven during the day, and
12 you spoke to Mr. Bolt during the day.
- 13 A. I did, yes.
- 14 Q. You had one tape recorder for all six or seven
15 investigators?
- 16 A. I don't know who had tape recorders and who did not.
- 17 Q. But you said all --
- 18 A. The machine that we record on, and it's audio and
19 video. That's the machine that we use.
- 20 Q. So was he in that room?
21 A. He was.
- 22 Q. Okay. So he was in that room?
23 A. Yeah.
- 24 MS. NELSON: Just one moment, Your Honor.
25 THE COURT: Certainly. Take your time.

- 1 Q. Now that you've had a moment to think about it, can you
2 remember the time that Donald Bolt came and talked to
3 you on December 4th?
- 4 A. I do not.
- 5 Q. If you look at what's been marked as -- if I show you
6 State's Exhibit 1, would that refresh your recollection
7 as to what time you might've come in there?
- 8 A. It should have a time on the top.
- 9 Q. So if I showed it to you, you would know?
- 10 A. I can read off that paper. Yes, sir, 9:40.
- 11 Q. And you had a brief discussion with him after that.
- 12 A. During that time. Yes, sir.
- 13 Q. Were you asking him questions before -
- 14 A. No.
- 15 Q. - before you got the waiver signed?
- 16 A. (No response.)
- 17 Q. The jail keeps records of when people enter the jail,
18 right?
- 19 A. Yes, sir.
- 20 Q. If I showed you a prisoner control record, would that
21 help you know when he was booked in?
- 22 A. It would know what time the paperwork was processed.
23 Yes, sir. It says 9:58.
- 24 Q. Thank you. So you contacted Investigator Owen at some
25 point?

- 1 A. I would have.
- 2 Q. What time did you set the interview up with him?
- 3 A. I do not remember.
- 4 Q. Do you remember talking to him at all that day?
- 5 A. I do not remember making the call, but if he conducted
- 6 one it would be because I called him.
- 7 Q. Did you talk to him that day? Investigator Owen.
- 8 A. Yeah, I would've talked --
- 9 Q. Did you talk to Investigator Owen on December 5th?
- 10 A. Yes.
- 11 Q. What time did you talk to him?
- 12 A. I'm not sure of the time, but it would've been in the
- 13 morning time. He would always set them up in the
- 14 mornings normally.
- 15 Q. Have you had time to think about what time you talked
- 16 to Donald Bolt on December 5th?
- 17 A. It should be on the Miranda form. It says 1500 hours.
- 18 Q. Did you talk to Owen after he finished the polygraph?
- 19 A. Yes.
- 20 Q. You have no recollection of what time it was.
- 21 A. I do not.
- 22 Q. Do you know what the results of the polygraph were?
- 23 Did you know at the time?
- 24 A. He would've came out and told me that he showed
- 25 deception.

1 Q. Are you saying that's what he did?

2 A. Yes.

3 Q. He told you that there was deception?

4 A. Yes, sir.

5 Q. When was the first time you saw Don Bolt on December
6 5th?

7 A. He was in the jail. I think we would've gotten him out
8 of the jail for the polygraph exam.

9 Q. So you saw him before the polygraph exam?

10 A. Yes. I would've had to get him out.

11 Q. Did you say anything to him?

12 A. No. I would've escorted him down to the exam room.

13 MR. GORANSON: No further questions at this time.

14 THE COURT: Redirect?

15 MR. SHEEK: No redirect, Your Honor. The State calls
16 Daryl Owen to the stand.

17 THE COURT: Come around, please, sir.

18 **DARYL OWEN**, being first duly sworn
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHEEK:

22 Q. State your name for the record.

23 A. Daryl Owen.

24 Q. Mr. Owen, you're from the Greenville area?

25 A. That's correct.

- 1 Q. What do you do in Greenville for a living?
- 2 A. I'm an investigator.
- 3 Q. Where are you employed?
- 4 A. I was employed by myself. I am semi-retired.
- 5 Q. When you had your office going full time, what was it
- 6 called?
- 7 A. Owen Investigative Agency.
- 8 Q. What were some of the services you offered as a private
- 9 investigator?
- 10 A. All types of investigative work as well as polygraph.
- 11 Q. How long have you been a polygrapher ?
- 12 A. Thirty-nine years almost.
- 13 Q. Where did you receive your training in polygraphy?
- 14 A. Through the Zion Institute of Polygraph in Atlanta,
- 15 which is now out of business. They have been for
- 16 several years. I was also licensed by SLED.
- 17 Q. Do you recall when you were first licensed by SLED?
- 18 A. I think the license was effective in January of '74.
- 19 Q. Prior to your private investigative work, did you serve
- 20 some government service?
- 21 A. I was with the state patrol here for three and a half
- 22 years, and also two and a half years with NSA in
- 23 Maryland.
- 24 Q. Back in 2008 were your services utilized from time to
- 25 time by the Greenwood County Sheriff's Department as a

1 polygrapher ?

2 A. Yes, sir.

3 Q. Do you recall whether or not you had an opportunity to
4 perform a polygraph examination on a William Donald
5 Bolt?

6 A. I did.

7 Q. Did that occur at the Greenwood County Law Enforcement
8 Center?

9 A. Yes, sir.

10 Q. Do you recall what room that would've been in? I know
11 it's been a while.

12 A. It's always in the interview room just off of the
13 Detective Captain's office.

14 Q. On the date in question, was Mr. Bolt brought to you?

15 A. He was.

16 Q. While the interview was given, was anybody else in the
17 room besides you and Mr. Bolt?

18 A. No, sir.

19 Q. Did you witness anybody threatening Mr. Bolt, or
20 telling him he had to come take a polygraph?

21 A. No, sir.

22 Q. Did you yourself tell him he had to take it or threaten
23 him in any way if he didn't take it?

24 A. No, sir.

25 Q. Did you witness any promises made to Mr. Bolt regarding

1 what would happen if he took a polygraph and let's say,
2 if you pass it we'll drop the charges. Did you see
3 anything of that nature?

4 A. No, sir.

5 Q. Did you yourself make him any promises?

6 A. No, sir.

7 Q. Is it your normal practice to make any type of promises
8 of reward?

9 A. None whatsoever.

10 Q. Could you have followed through if you did make a
11 promise?

12 A. No, sir.

13 Q. On the date in question, when you perform a polygraph
14 like this where do you get your basic information?

15 A. The basic information comes from the investigator
16 that's actually in charge of the case. On this date it
17 was Detective Strickland.

18 Q. Do you then, from that information, formulate the
19 questions that you're going to ask the defendant?

20 A. Yes, sir.

21 Q. Did you perform a polygraph examination on William
22 Donald Bolt?

23 A. I did.

24 Q. Is that the gentleman sitting over here beside Mr.
25 Goranson, previously identified by Mr. Strickland?

1 A. It is.

2 Q. About how long does it take to take a polygraph?

3 A. It varies depending on how talkative the person is or
4 how many issues have to be covered. With this
5 particular one I think it took roughly 45 minutes to an
6 hour.

7 Q. After he took the polygraph, then do you take a little
8 bit of time to look at the results and reach a
9 conclusion?

10 A. Normally the results are interpreted as the test is in
11 progress. When it's over then they're scored, and then
12 he's confronted with the results of the test.

13 Q. Did you confront him with the results on this day?

14 A. I did.

15 Q. Did you in fact on this day inform him that his
16 responses to your questions indicated deception?

17 A. I did.

18 Q. After informing him of that, did you give him an
19 opportunity to explain himself?

20 A. Yes, sir.

21 Q. When you give him the opportunity to explain himself,
22 do you actually interrogate him or how does that work?

23 A. I just very casually tell him that he's failed the
24 test. That he needs to explain why the response is
25 there to give a reasonable explanation of why he's

1 failing the test. There's no real heavy interrogation.

2 Q. On the date in question do you recall what Mr. Bolt
3 told you in response to the allegations?

4 A. Yes, sir.

5 Q. Did you make notes of what he told you?

6 A. I did.

7 Q. You put that in your report?

8 A. That's in the report submitted to the sheriff's office.

9 Q. What did he tell you had happened on the date in
10 question?

11 A. Mr. Bolt admitted that on the night in question that he
12 had consumed at least twelve beers and was pretty
13 drunk. He stated that Minor had sat on his lap and
14 that he experienced an erection. He also admitted that
15 he put his arm around her upper body and squeezed her
16 breast. He stated she didn't move away from him, but a
17 short time later she went to bed. Mr. Bolt stated that
18 he knows that he got up to use the bathroom during the
19 night, went into the room, and covered the kids up with
20 a blanket. He stated he could've possibly touched
21 Minor on the vagina, but denied putting his finger in
22 her vagina. He stated he believes she was wearing
23 pajamas, but isn't sure. He continued to deny putting
24 his finger in her vagina. All attempts to resolve the
25 reaction resulted in no additional admissions.

1 Q. After that, was there any more interview conducted of
2 Mr. Bolt by you?

3 A. Not by me. No, sir.

4 Q. Did you witness anymore interview by anybody else?

5 A. No, sir.

6 MR. SHEEK: Thank you, Mr. Owen. Please answer anything
7 the defense counsel may have.

8 THE COURT: Cross-examination?

9 MS. NELSON: Yes, sir, Your Honor. Thank you.

10 CROSS-EXAMINATION BY MS. NELSON

11 Q. May it please the court. Mr. Owen, do your notes
12 reflect approximately what time you started speaking
13 with Mr. Bolt?

14 A. I believe it started at 11:45 a.m. That's correct.

15 Q. Would that have been when you started having a pre-test
16 interview with him?

17 A. That's correct.

18 Q. Now, before you went in with Mr. Bolt at 1:45 I assume
19 you met with Mr. Strickland to get the facts of the
20 case as Mr. Strickland believed them to be.

21 A. That's correct.

22 Q. You took some notes about that, right?

23 A. Yes, ma'am.

24 Q. He told you that this had happened some time in the
25 summer of 2006?

- 1 A. Correct.
- 2 Q. And that the young lady involved was named Minor
- 3 ?
- 4 A. Correct.
- 5 Q. And that she was age 12 at the time?
- 6 A. That's correct.
- 7 Q. He told you that she had said there was digital
- 8 penetration?
- 9 A. Yes, ma'am.
- 10 Q. And so you designed your questions to ask about digital
- 11 penetration of the vagina?
- 12 A. That's correct.
- 13 Q. Your notes don't say of the vagina, but based on your
- 14 questions do you believe that's what Mr. Strickland
- 15 told you?
- 16 A. Yes.
- 17 Q. Mr. Strickland told you that Mr. Bolt was accused of
- 18 coming into the room where she was in bed and she
- 19 pretended to be asleep?
- 20 A. Repeat that.
- 21 Q. Mr. Strickland told you that Mr. Bolt was accused of
- 22 coming into the room where she was in bed and she
- 23 pretended to be asleep?
- 24 A. Correct.
- 25 Q. And he told you that -- I believe this says the

- 1 forensic shows he did it. Is that what that says?
- 2 A. That's correct.
- 3 Q. He says he didn't.
- 4 A. Correct.
- 5 Q. So Mr. Strickland told you that Don had denied the
- 6 allegations at that point.
- 7 A. Right.
- 8 Q. And then it looks like victim was spending night there
- 9 with. Am I reading that right on your notes?
- 10 A. With Bolt family.
- 11 Q. With the Bolt family?
- 12 A. Right.
- 13 Q. Were you told who was supposed to be there?
- 14 A. I was not told all of the names of the people who were
- 15 there, no.
- 16 Q. So, based on that information that Mr. Strickland gave
- 17 you, you formulated your test questions?
- 18 A. That's correct.
- 19 Q. Do you formulate those questions before you actually go
- 20 in and meet Mr. Bolt?
- 21 A. No. I actually formulate those as I'm talking with him
- 22 after the pretest has been completed. In other words,
- 23 during the pretest I'm asking him different knowledge
- 24 of what the accusations and his involvement. At that
- 25 point in time I go into the actual formulation of the

1 questions. Each one of those are reviewed with him
2 before the test is ever conducted so he knows in
3 advance what's going to be asked.

4 Q. So your report talks about what you discussed in the
5 pretest interview?

6 A. Yes.

7 Q. At that point Mr. Bolt related to you that there was a
8 cookout at his house and that some people spent the
9 night, including Minor s parents?

10 A. Correct.

11 Q. He said that Minor s parents were there.

12 A. That's correct.

13 Q. And he said he and his wife and three children were
14 also there.

15 A. That is correct.

16 Q. He believed that all the kids slept together, but
17 doesn't remember who slept where.

18 A. That's correct.

19 Q. At that point in the pretest interview he was denying
20 putting his finger into Minor n's vagina as she was
21 accusing him of doing.

22 A. That's correct.

23 Q. And he, according to what you wrote in your report,
24 you're saying Mr. Bolt said they still come to his
25 house and the last time they were there was about three

1 weeks ago.

2 A. That's correct.

3 Q. Do you know who he meant by they?

4 A. The entire family I'm assuming.

5 Q. Do you know who that consists of?

6 A. No.

7 Q. And so you formulated ten questions based on that
8 pretest interview.

9 A. Correct.

10 Q. And I don't know really much about polygraphs, but some
11 of those questions are sort of test questions? Is that
12 --

13 A. Some questions on there are neutral questions, which is
14 basically, "Is your first name William? Is your last
15 name Bolt? Do you live in the state of South
16 Carolina?" Those are neutral type questions which
17 basically forms a norm pattern on our chart. There's
18 also control questions on there, which are basically
19 what we refer to as non-lie questions. In other words,
20 most people would obviously lie to those questions.
21 They may have done something in the past and those are
22 exempted. Like, with this particular it happened in
23 2006 so the control questions on there would be outside
24 of the scope of that time period. So those questions
25 are control questions. Then you have the relevant

1 questions, which are the ones dealing with specific
2 issues such as this accusation.

3 Q. And all of those -- I'm sorry, the relevant questions,
4 all of those relevant questions had to do with --

5 A. William.

6 Q. With him putting his finger inside Minor's vagina.

7 A. Right.

8 Q. And those were questions number 5, 7, and 10?

9 A. Correct.

10 Q. Is that right?

11 MS. NELSON: May I approach, Your Honor?

12 THE COURT: Certainly.

13 Q. Would you take a look at that, Mr. Owen, and let me
14 know if that's the form that you wrote those questions
15 on?

16 A. That is a copy of my original question formulation
17 sheet.

18 Q. And your understanding is I made that from you giving
19 me a copy of your original.

20 A. That's correct.

21 MS. NELSON: I'd move to introduce it for purposes of
22 identification, Defense Exhibit 1.

23 THE COURT: Defense Exhibit 1 for ID only.

24 (Whereupon, polygraph question formulation marked
25 Defense Exhibit 1 for identification.)

1 Q. And the questions that you talked about expecting a --
2 you kind of expect someone to be untruthful on. Did
3 you call those control questions?

4 A. Those are control questions.

5 Q. And that's a question like number 4?

6 A. Four, six, and nine.

7 Q. Where you asked him about engaging in unusual sex acts?

8 A. Right.

9 Q. Or asking if he had masturbated in someone's presence?

10 A. That's correct.

11 Q. Or if he had committed a crime?

12 A. That's correct.

13 Q. These say B-2005. Does that mean you asked him before
14 2005?

15 A. Before. Shorthand.

16 MS. NELSON: May I approach, Your Honor?

17 THE COURT: Certainly.

18 Q. I'd like to show you another form that is a copy of
19 something you provided to me. Is that something you
20 gave to Mr. Bolt to sign at some point during?

21 A. Yes. That's done before any question is asked.

22 Q. So this would've been the very very first thing you
23 did?

24 A. That's the very first thing. Excuse me, that's the
25 second thing. The first thing I get biographical

1 information: his name, his address, and so forth.

2 Q. This is essentially a consent to let you administer the
3 polygraph examination?

4 A. That's correct, and give the results to the sheriff's
5 office.

6 Q. These are not Miranda warnings are they?

7 A. No, they aren't.

8 Q. And there's no where in here where Mr. Bolt was
9 informed that anything he discussed with you could be
10 used against him?

11 A. No, there's nothing in there.

12 Q. Is this something you read out loud to Mr. Bolt?

13 A. No. I actually inform him verbally that this is a form
14 authorizing me to give him the examination, give the
15 results to the sheriff's office, but he does not have
16 to go through the test. No one can force him to go
17 through it. I also inform him that he will be asked no
18 personal or embarrassing questions except those
19 necessary for the testing process, and he signs it.

20 Q. And pretty much all the questions you asked him could
21 be considered personal or embarrassing because of the
22 nature of the allegations; right?

23 A. Necessary for the testing process; that's correct.

24 Q. So you essentially paraphrase some of the things in
25 this form -

1 A. That's correct.

2 Q. -- for him. You didn't read this aloud to him?

3 A. No. I was not aware that he was not a reader.

4 Q. So when you did the biographical information and the
5 pretest interview you didn't get any information about
6 his educational level or ability to read and write?

7 A. As far as whether he could read and write I don't
8 recall him giving any information about that. He
9 indicated to me he had a tenth grade education.

10 Q. He told you he had a tenth grade education?

11 A. That's correct.

12 Q. Where are you finding that?

13 A. On my biographical sheet.

14 Q. Is that something that you provided to me earlier
15 today?

16 A. I don't know if you got that one or not.

17 Q. Can I show you what I have and you let me know if it's
18 in there?

19 (Hands witness document.)

20 A. The biographical sheet is not in there.

21 Q. May I take a look at it?

22 A. Sure. You'll find what you just asked about?

23 Q. I'm sorry, find...

24 A. You'll find his education circled here.

25 Q. It's -- did he circle that or did you?

1 A. No, I circled that based on what he told me.

2 Q. And that's high school, two. Your interpretation of
3 that is finishing tenth grade?

4 A. Tenth grade. If he'd said ninth I'd circle number one.

5 MS. NELSON: Your Honor, at this time I'd move to admit
6 for identification purposes only the form that Mr. Owens
7 testified he had Mr. Bolt sign.

8 THE COURT: The consent form will be Defense Number 2
9 for ID only.

10 (Whereupon, polygraph consent form was marked Defense
11 Exhibit Number 2 for identification.)

12 Q. Do you know what time you finished -- well, let me go
13 back. After you finished the test, and my
14 understanding from talking to you before is that you go
15 through these ten questions three times.

16 A. For the actual test.

17 Q. For the test, and then you score the results?

18 A. Correct.

19 Q. After that you made the conclusion that Mr. Bolt had
20 failed the test because his responses to the relevant
21 questions showed deception in your opinion.

22 A. Correct.

23 Q. And after you told him that he made these disclosures
24 that you've testified to for Mr. Sheek.

25 A. That's correct.

1 Q. Did you give him any of the information that Mr.
2 Strickland had given to you prior to the test about
3 what the accusations were?

4 A. No. We discussed that during the pretest interview as
5 far as the accusations. That's why the test was being
6 conducted, based on the accusations.

7 Q. What did you tell him the accusations were?

8 A. That he was being accused of penetrating her vagina.

9 Q. And you told him who's -

10 A. Correct.

11 Q. -- vagina. And what else did you tell him? Any other
12 details that Mr. Strickland had given you?

13 A. That's pretty much it. At that point in time I let him
14 tell what he remembers or recalls about the night in
15 question.

16 Q. So after you get through with the test then you had
17 this discussion that you've testified to. After that's
18 over with, do you go and make a report to -- at any
19 time during this thing, after he -- after you determine
20 he fails the test, do you go make that report to
21 Investigator Strickland at that point?

22 A. Most of the time I go out just after I finish the
23 polygraph test. I don't recall if I went out after I
24 finished the polygraph test or after he made the
25 admissions, to inform Detective Strickland of the

1 results of the test. Sometimes I go out in between.

2 Sometimes it's afterwards.

3 Q. And you just don't remember in this case?

4 A. I don't remember.

5 Q. You don't have any notes that tell you?

6 A. No.

7 Q. Do you sometimes, after you complete the test, do you
8 sometimes bring law enforcement into the room with you
9 to have the post-test interview?

10 A. Very rarely does that occur. Normally they do what
11 they do after I finish. If they need to take a
12 statement that's done after I finish with everything
13 that I do.

14 Q. Would it have been your normal practice to go and tell
15 Mr. Strickland something at some point when you were
16 done talking to Mr. Bolt?

17 A. Oh, yes. Absolutely.

18 Q. Do you believe you reported to him at least immediately
19 after you were done, or do you know?

20 A. I assume that I reported to him immediately after the
21 test was over. Then I probably went back in and
22 confronted Mr. Bolt regarding the results of the test.

23 Q. Would you have then gone and told Mr. Strickland what
24 Mr. Bolt had supposedly said to you when you talked to
25 him?

1 A. That's correct. Yeah.

2 Q. What time did you finish talking to Mr. Bolt?

3 A. I'm not sure of the exact time. I know I finished the
4 polygraph test itself at 12:21 p.m., but I'm not sure
5 how long after that I quit talking to Mr. Bolt.

6 Normally it's just a few minutes, maybe ten or fifteen
7 minutes.

8 Q. So you think it only took ten or fifteen minutes for
9 you to elicit those comments from Mr. Bolt?

10 A. Yes, because I never spend a half a day, or two or
11 three hours, you know, interrogating the person
12 regarding any tests that I do. It's normally a very
13 quiet talk, interview-type situation. When he's
14 finished telling me that's all I've got to say then I
15 go talk to law enforcement.

16 Q. In this case, after he told you he was through you
17 continued questioning him about the digital
18 penetration; didn't you?

19 A. No, ma'am. When I decide to stop is when he stops
20 talking about what he's done or what he remembers about
21 that particular incident. If he says, "That's all," is
22 when I turn it over to the investigator.

23 Q. So what does it mean in your report, "All attempts to
24 resolve the reactions regarding this issue were
25 exhausted with no additional admissions."

1 A. I ask him, "Is there anything else you forgot to tell
2 me that you need to tell me?" He says no, then that's
3 the last sentence.

4 Q. But that doesn't mean that you continue searching for
5 admissions?

6 A. No, it does not.

7 Q. After you were done with the discussion with Mr. Bolt
8 after the test, and then you communicated that with Mr.
9 Strickland, did you have any further involvement with
10 this case?

11 A. None whatsoever.

12 Q. At any point during the time you talked with Mr. Bolt
13 did you ever read him any Miranda warnings?

14 A. No, I do not.

15 Q. Did you ever tell him that the things he was saying
16 could be used against him?

17 A. No, I did not.

18 Q. Did you ever mention again during the -- after the
19 polygraph test was over did you tell him he could stop
20 talking to you if he wanted to?

21 A. I didn't retell him that. I told him that when we
22 started that he didn't have to go through the test.

23 MS. NELSON: Just one moment, Your Honor. Thank you,

24 Mr. Owen. I don't have anything else.

25 THE COURT: Anything in redirect, Solicitor?

1 MR. SHEEK: Nothing on redirect, Your Honor.

2 THE COURT: You can step down, sir.

3 MR. SHEEK: In regards to *Jackson v. Denno* we have no
4 other witnesses, Your Honor.

5 THE COURT: Anything from the defense?

6 MS. NELSON: We will put up Mr. Bolt, Your Honor. May I
7 ask for a quick bathroom break, if that's okay. I need to
8 also see how I go about getting the polygraph charts from
9 Mr. Owen.

10 THE COURT: We'll be in recess for about ten minutes.

11 (Whereupon, the court was in recess until 4:20 p.m.)

12 THE COURT: We're back on the record. Ms. Nelson?

13 MS. NELSON: Thank you very much, Your Honor. We'll
14 call William Donald Bolt to the stand, Your Honor.

15 THE COURT: For the record, since this is a hearing
16 outside the presence of the jury, I'm not going to give him
17 his instructions concerning his Fifth Amendment rights. I
18 will certainly do that at that appropriate stage of this
19 case, but I'm not going to do that since we are conducting a
20 hearing outside of the presence of the jury.

21 MS. NELSON: I understand. That's fine, Your Honor.
22 Thank you.

23 THE COURT: State your name, please, sir.

24 MR. BOLT: William Donald Bolt.

25 **WILLIAM DONALD BOLT**, having first been

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By MS. NELSON:

4 Q. Don, how old are you?

5 A. I am 57.

6 Q. How far did you go in school?

7 A. I didn't finish the seventh grade.

8 Q. Did you start the seventh grade?

9 A. I started.

10 Q. So you finished sixth grade?

11 A. The sixth, yes.

12 Q. And then what happened with seventh grade? Tell me
13 about that.

14 A. I went to seventh grade and I didn't pass seventh
15 grade. Went to start back and I just quit. I didn't
16 go back.

17 Q. How old were you at that point?

18 A. Fourteen, fifteen.

19 Q. Had you ever failed any other grades other than seventh
20 grade?

21 A. Just the seventh.

22 Q. That was the only one?

23 A. Uh-huh. (Affirmative.)

24 Q. How good are you at reading and writing?

25 A. I'm not real good at all. I can read a little bit, but

1 I really can't write besides my name.

2 Q. Going back to December 4, 2008, do you remember that
3 day as the day you went to the sheriff's department?

4 A. Yes.

5 Q. Tell me about that. Why did you go to the sheriff's
6 department that day?

7 A. I was at work and I had received a call from my wife
8 that the sheriff's department come out to the house.
9 They were supposed to be looking for A. , my son, but
10 then come to find out they was looking for me. So she
11 had called me and I had went to the jailhouse. Well,
12 sheriff's department.

13 Q. So your wife, Cheryl, called you and told you the law
14 enforcement was looking for you?

15 A. Uh-huh. (Affirmative)

16 Q. And you were where at the time you heard that?

17 A. I was at work, right around the corner there on Maxwell
18 Street.

19 Q. Who did you work for at that time?

20 A. Town & Country Construction.

21 Q. Do you still work for them?

22 A. No, ma'am. I have lost my job.

23 Q. When did you quit working?

24 A. About three, maybe three and a half, years ago.

25 Q. Are you able to work now?

1 A. No, ma'am.

2 Q. Why is that?

3 A. I can't walk. I can't breathe. I've got severe CPOP.

4 However you pronounce it.

5 Q. Are you talking about Chronic Obstructive Pulmonary

6 Disease?

7 A. Yes.

8 Q. I can't say the words either. COPD?

9 A. Yeah. I've got circulation problems in my leg. I'm
10 not able to really walk that far. Therefore I can't
11 breathe either, so it affects that also.

12 Q. December 4, 2008 you were still working for Town &
13 Country?

14 A. Yes.

15 Q. And you went to the sheriff's department on your own
16 voluntarily?

17 A. Yes.

18 Q. They didn't come pick you up and arrest you, did they?

19 A. No.

20 Q. Tell me what happened when you got -- do you have any
21 idea about what time that would've been that you got to
22 the sheriff's department that day?

23 A. It was before lunch. It probably was after the break.

24 Q. Sometime in the morning?

25 A. Yes. Sometime in the morning.

1 Q. Tell me what happened when you got there.

2 A. I went in there and went to the little window where
3 they sit there and told them, "I heard y'all was
4 looking for me."

5 Q. What happened after you told them that at the window?

6 A. Then I went to the right over here and talked to
7 somebody. They said that I had to go talk to that man
8 there.

9 Q. You're talking about Brandon Strickland?

10 A. Yes, ma'am.

11 Q. And you don't remember the name of the other person you
12 talked to?

13 A. No, ma'am. I don't.

14 Q. So what happened? Did Mr. Strickland come out there to
15 get you to talk to you?

16 A. The other guy that I was talking with he took me out of
17 them two doors, then I went through another door where
18 Mr. Strickland was.

19 Q. Did this other fellow that escorted you down there stay
20 in the room with y'all?

21 A. He actually -- I think he arrested me right there at
22 that room.

23 Q. You think you were arrested right after you got there?

24 A. Yeah, because he still had the warrant under my son's
25 name.

1 Q. Why does the name help you remember when you were
2 served with the warrant?

3 A. Because it's like, okay, why have you got A. n's name
4 down here and you're serving me, and my name ain't
5 A.

6 Q. Did they fix that on the warrant?

7 A. I believe they fixed it. They did fix it, because, you
8 know.

9 Q. Do you remember Mr. Strickland -- you heard him testify
10 that he read your rights to you.

11 A. Yes.

12 Q. Like, that you had the right to have a lawyer and that
13 you had a -- and that what you said could be used
14 against you. Do you remember that?

15 A. I remember him reading some of that, yes.

16 Q. Do you -- could you read that form?

17 A. No, ma'am.

18 Q. Did you sign that form before or after they gave you
19 that warrant?

20 A. I really can't remember, 'cause by that time I was --
21 I'd never been in trouble before and I was just, like,
22 totally terrified and I didn't know what I was going
23 through.

24 Q. When they gave you the warrant, did they tell you what
25 you were being accused of?

1 A. They told me what I was being accused of.

2 Q. And what did you -- did you say anything to Mr.
3 Strickland at that point about the accusations?

4 A. I told him it wasn't true.

5 Q. You told him it wasn't true and then what happened?
6 Did they book you into the jail?

7 A. Then I got put in jail.

8 Q. And that was all on December 4?

9 A. Yes, ma'am.

10 Q. As far as you can remember, did anybody else ever come
11 back and talk to you that whole day?

12 A. Huh-uh. (Negative)

13 Q. And you believe that all happened in the morning on the
14 fourth?

15 A. Yes, ma'am.

16 Q. Now, the next day do you recall Mr. Strickland coming
17 and getting you to take you to meet with Mr. Daryl
18 Owen?

19 A. Yes, ma'am. I asked for a test to prove myself.

20 Q. But the test didn't go the way you thought, right?

21 A. No, ma'am.

22 Q. Do you remember it being Mr. Strickland who came and
23 got you for the test?

24 A. I believe it was. Where's he at?

25 Q. He's sitting right here. He just raised his hand to

1 you.

2 A. Oh, okay. Yeah. I believe that was him.

3 Q. When he took you to go do the polygraph, did you just
4 meet with Mr. Owen by yourself or was there anybody
5 else in there?

6 A. Yes. Just him.

7 Q. Do you remember taking the polygraph exam?

8 A. I remember taking a test, yeah.

9 Q. How were you feeling at that point?

10 A. I was just - actually, I was terrified.

11 Q. What were you afraid of?

12 A. I'm a family man. I mean, I love my family. I've
13 always had a hard time paying my bills. I'm worried
14 about getting home and taking care of my family, making
15 money, paying my bills to stay afloat.

16 Q. Was there anybody else at home that earned any money?

17 A. No, ma'am.

18 Q. Who else did you have to -- you mentioned your wife,
19 Cheryl. Who else did you have to take care of?

20 A. My wife, Cheryl. My son, C. I believe her mother
21 was still alive, that was living there too.

22 Q. You mentioned your son, A. Was he still living at
23 home?

24 A. He was a teenager. He was off in and out. He really
25 didn't -- might wash clothes there and that's about it.

- 1 You know, but he was around.
- 2 Q. Do you recall Mr. Owen telling you that you failed the
- 3 polygraph?
- 4 A. Yes.
- 5 Q. How did you feel when he told you that?
- 6 A. Not too good.
- 7 Q. What was going through your mind?
- 8 A. I was like, oh, what the heck. I know and God knows I
- 9 didn't do nothing. Why is this man trying to tell me
- 10 that I did.
- 11 Q. You've heard the things that he testified that you said
- 12 to him, right?
- 13 A. Uh-huh. (Affirmative)
- 14 Q. That you said that you had about twelve beers that
- 15 night.
- 16 A. Yeah.
- 17 Q. And that Minor sat on your lap and you got an erection.
- 18 Did you hear him testify to that?
- 19 A. I heard him testify to that.
- 20 Q. Did you tell him that?
- 21 A. I told him at one time they were telling me what I was
- 22 supposed to have done and I finally got at one time I
- 23 said, "Whatever y'all want to hear. I just need to go
- 24 home."
- 25 Q. Was the situation where you were ---

1 A. I was scared. I mean...

2 Q. Were you giving Mr. Owen information or was he giving
3 you information about what was supposed to have
4 happened?

5 A. He was giving me information about what was happen. I
6 just went on from that.

7 Q. Do you remember at any point anybody telling you that
8 you had a right to remain silent during that polygraph
9 exam?

10 A. Now that I really can't remember. I believe they did
11 tell me I had a right to be silent, but I had nothing
12 to hide.

13 Q. Did you understand at the time that you took that
14 polygraph that it could come back and be talked about
15 in court?

16 A. No, ma'am. I didn't understand that.

17 Q. Did you understand that the things that you talked to
18 Mr. Owen about after the polygraph exam could come back
19 and be used against you in court?

20 A. No, ma'am.

21 Q. Did anybody ever tell you they could be?

22 A. I don't recollect.

23 Q. You remember the form that Mr. Strickland talked about
24 going over with you on December 4 when you were
25 arrested?

1 A. I believe so, yeah.

2 Q. Mr. Owen didn't go over a form like that with you, did
3 he?

4 A. I don't believe he did.

5 MR. SHEEK: Objection to the leading, Your Honor.

6 THE COURT: I'll allow some leading because we're
7 outside the presence of the jury, but just be careful.

8 MS. NELSON: Yes, sir, Your Honor.

9 Q. After you took the polygraph exam, tell me what
10 happened. After Mr. Owen got through talking to you,
11 tell me what happened then.

12 A. I went back to the jail cell and stayed there, like,
13 all afternoon and finally my wife and son went and got
14 a bondsman and got me bonded out.

15 Q. So did you leave at that point?

16 A. Well, I was going to, but I got stopped.

17 Q. Well, explain that to me in more detail. What do you
18 mean you were going to leave but you got stopped?

19 A. They told me I was bonded out and I was going out, and
20 they got this little room with a barrel where you've
21 got to throw your pillow and stuff in. I got to right
22 there and -- I can't remember the officer. He told me
23 well I can't leave yet until Brandon got back.

24 Q. Somebody told you that you couldn't leave until Brandon
25 got back?

- 1 A. Yeah, because he wanted to talk to me. Supposedly I
2 had been bailed out because I was going to get out.
- 3 Q. So you're saying it was your understanding you were
4 getting ready to leave?
- 5 A. Yes, ma'am.
- 6 Q. And then you were stopped?
- 7 A. Uh-huh. (Affirmative)
- 8 Q. Then what happened after you were told ---
- 9 A. I had to wait and wait and wait 'til he got back and
10 then he took me back to that little old conference room
11 or wherever. Then that's when he started getting real
12 hateful and stuff. He told me, he said, "I know you
13 did something. You did something. You're going to
14 tell me what I want to hear or I'm going to put your
15 bond so high you'll never get out." That's the exact
16 words he told me.
- 17 Q. Did you believe him?
- 18 A. Yes, ma'am.
- 19 Q. What did you think about that?
- 20 A. I think, well, how can this fellow do this.
- 21 Q. Did you believe he could do it?
- 22 A. And then I got to thinking, well, he's with the
23 sheriff's department. They can do anything they want
24 to.
- 25 Q. So are you saying --

1 A. You know.

2 Q. Are you saying you believed he could get your bond
3 raised?

4 A. Yeah. Yeah.

5 Q. How did that make you feel to think that your bond
6 would be higher?

7 A. That didn't make me feel good at all.

8 Q. So what did you do?

9 A. I mean, I told him what he wanted to hear.

10 Q. And --

11 A. Based on what they had told me I was alleged for I said
12 well -- I told him, I said, well, whatever you want to
13 hear, here. I've got to go home. I've got to get out
14 and take care of my family.

15 Q. Did Mr. Strickland say statements and have you agree
16 with them? Is that what happened?

17 A. He wrote down stuff on a piece of paper and went
18 through a little bit of it and had me sign it.

19 Q. Did he read that out loud to you?

20 A. He read some of it out loud.

21 Q. Did you read it after he was done writing it?

22 A. I can't read. I couldn't read it.

23 Q. So you don't have any way of knowing on your own, if
24 you were to look at it right now, what it says?

25 A. No.

1 Q. Did Mr. Strickland ever ask you how far you'd gone in
2 school?

3 A. Not that I remember.

4 Q. Did he ever ask you whether you could read?

5 A. I don't think he did.

6 Q. Did you ask him to write the statement for you?

7 A. No, ma'am. I told him I couldn't write.

8 Q. And so he offered to write the statement?

9 A. Yeah, he wrote it.

10 Q. You heard him read the statement from the stand, right?

11 A. Yes, ma'am.

12 Q. Is that statement true?

13 A. No, ma'am.

14 Q. What happened after you signed that statement that Mr.
15 Strickland wrote for you?

16 A. Then I -- I think that's when I was going out and then
17 I got out.

18 Q. You got to go home after you signed it.

19 A. I got to go home then because the bondsman was even
20 wondering why I was taking so long after he done, you
21 know, put my bond up. Then I went home and went back
22 to work the following day.

23 MS. NELSON. That's all I have, Your Honor. Don, you
24 need to answer any questions Mr. Sheek has for you, okay?

25 THE COURT: Solicitor?

1 CROSS-EXAMINATION

2 BY MR. SHEEK:

3 Q. Where did you go to school, Mr. Bolt?

4 A. (No verbal response.)

5 Q. Where did you go to school?

6 A. Woodfields Elementary.

7 Q. Where did you go to junior high?

8 A. Woodfields.

9 Q. And you actually completed, did you not, the ninth
10 grade?

11 A. Not to my recollection, no.

12 Q. What do you mean not to your recollection? Did you go
13 to high school or not?14 A. Do you know how long that's been? I went to junior
15 high. That's seventh grade, sir.16 Q. I understand what junior high is, but what I'm asking
17 you is if I check the school records for Greenwood
18 County am I going to find you, in fact, completed the
19 ninth grade?

20 A. I'm not sure if you will or not. I cannot recall.

21 Q. Well, you just testified to this judge that --

22 A. I remember seventh grade.

23 Q. Are you going to let me finish the question?

24 A. Yeah.

25 Q. You just testified to this judge, did you not, that you

- 1 quit school in the seventh grade.
- 2 A. Seventh grade.
- 3 Q. Okay. My question to you is, you just said to me you
- 4 can't recollect whether you went to the ninth grade or
- 5 not. Is that what you just told me?
- 6 A. I went back to school, but I didn't stay.
- 7 Q. Okay. In fact, the records of Greenwood County are
- 8 going to show that you completed the ninth grade aren't
- 9 they?
- 10 A. I don't know.
- 11 Q. Do you dispute that you completed the ninth grade?
- 12 A. What did he say?
- 13 Q. Do you dispute that you completed the ninth grade?
- 14 A. I don't remember finishing no ninth grade.
- 15 Q. Okay, so your testimony under oath to this judge is you
- 16 might have completed the ninth grade?
- 17 A. I don't remember if I did or not.
- 18 Q. Okay. But it's your testimony that you went into the
- 19 seventh grade without being able to read?
- 20 A. I went to the seventh grade.
- 21 Q. And you could not read?
- 22 A. A little. Very little.
- 23 Q. Well, I'm curious. When you took tests, how did you do
- 24 that?
- 25 A. I flunked my tests.

1 Q. So how did you pass sixth grade? No explanation for
2 that? No explanation for how you passed sixth grade?

3 A. No, sir.

4 Q. You flunked all your tests in sixth grade?

5 A. Well, you can read a little bit. You can't read a
6 whole lot.

7 Q. Okay, well if you can read a little bit, when you got
8 processed out of the jail did they return to you your
9 clothes?

10 A. My clothes?

11 Q. Yes, sir.

12 A. Yeah.

13 Q. Didn't they have you in an orange jumpsuit while you
14 were in the jail?

15 A. Yes.

16 Q. Okay. And when they processed you out they returned
17 your clothes, right?

18 A. Yeah.

19 Q. And is it your testimony they returned your clothes,
20 but you had to wait on Brandon Strickland to come see
21 you? Is that what you testified to?

22 A. Yeah.

23 Q. I'm going to hand you the inmate intake sheet that your
24 lawyer referred to.

25 A. No, I didn't have my clothes returned until I went out

1 the door.

2 Q. How do you know where I'm going with this?

3 A. I don't know. I just told you what I said.

4 Q. Because you know that you didn't get your clothes back
5 until 4:39. You know that, don't you?

6 A. I got my clothes back after I talked with him.

7 Q. That's right. You weren't processed out --

8 A. That's when it was.

9 Q. -- when you talked to ---

10 THE COURT: Wait a minute. Both of you can't speak at
11 the same time.

12 WITNESS: I'm sorry, Your Honor.

13 THE COURT: So you make sure, Mr. Bolt, that the
14 Solicitor is finished the question, and then he'll wait on
15 you to give the answer.

16 WITNESS: Okay. I apologize.

17 MS. NELSON: Your Honor, I'm going to make an objection
18 at this time. Mr. Bolt said he was on his way out. He
19 never said he got processed out. He said he went to drop
20 off his pillow and then he got stopped.

21 MR. SHEEK: Your Honor, for the record, "That's not what
22 he said," is not a proper objection.

23 THE COURT: Well, for whatever it's worth, my notes
24 indicated that he testified that he had bonded out and on
25 his way out an officer said he could not leave until -- I

1 think he called him Brandon -- came back. That's according
2 to my notes of what he testified to.

3 Q. So you will admit, for the purposes of this hearing,
4 that you didn't get your clothes and belongings
5 returned to you until 4:39; correct?

6 A. I guess that was the time. I don't know what time it
7 was.

8 Q. And you interviewed with Detective Strickland at about
9 3:00; correct?

10 A. Is that the time he says? I don't know what time.

11 Q. So you weren't changed out, waiting to go out the door
12 and somebody stopped you, were you?

13 A. No. I wasn't changed. No, sir.

14 Q. When you went in to talk to Detective Strickland on the
15 fourth, the day you got arrested, did he go over these
16 rights with you that he testified about?

17 A. I believe he did.

18 Q. Well, is that your signature on that piece of paper?

19 A. You're going to have my signature on all kind of pieces
20 of paper, sir.

21 Q. I didn't ask you that. I asked you if that's your
22 signature right there.

23 A. I'm just telling you the truth, sir. I'm not trying to
24 be smart. That looks like my signature.

25 Q. Okay. So referring to what's been marked for

1 identification as State's Exhibit Number 1, you signed
2 that piece of paper, correct?

3 A. Yes, sir.

4 Q. And I believe in talking to your attorney a minute ago
5 when asked about given those rights you said that you
6 remember him reading at least some of those; correct?

7 A. (No verbal response.)

8 Q. And in regards to whether or not you were given the
9 rights the next day you said, "I don't recollect." Is
10 that what you said?

11 A. (No verbal response.)

12 Q. Is that a yes? You've got to say out loud so this lady
13 can take it down.

14 A. I don't recollect. I was guessing what day it was. I
15 knew one day I was given. I don't remember when I was
16 given again or what.

17 Q. So for the purposes of this hearing you don't dispute
18 this officer's testimony that he gave you all your
19 Miranda rights on December 4, 2008; correct?

20 A. I don't believe he gave me all of them.

21 Q. Well, which ones do you think he did not give you?

22 A. I got them, my rights, when I went in there and got
23 arrested.

24 Q. Okay. That was December 4; correct?

25 A. That would be the fourth.

1 Q. Right. And he gave you all your rights; correct?

2 A. I believe so.

3 Q. And did you understand them?

4 A. I guess. I don't know.

5 Q. So you understood you had the right to remain silent;

6 correct?

7 A. Yeah.

8 Q. And you had the right to have an attorney; right?

9 A. I reckon.

10 Q. And you understood that anything you said could and

11 would be used against you in a court of law. Is that

12 correct?

13 A. (No verbal response.)

14 Q. And you understood that on December 4, 2008, prior to

15 ever giving any statement to Investigator Strickland;

16 correct?

17 A. Yeah.

18 Q. And you understood those rights prior to giving any

19 statements to Daryl Owen; correct?

20 A. I guess.

21 Q. Are you telling this judge that Daryl Owen threatened

22 you into giving a statement?

23 A. Which one is Daryl?

24 Q. Mr. Owen, the person that gave you the polygraph

25 examination, sitting right over here.

1 A. Oh, did he threaten me?

2 Q. Yeah. Did he threaten you?

3 A. He didn't threaten me. No, sir.

4 Q. Did he promise you some reward?

5 A. No. He didn't promise me nothing.

6 Q. Okay, so he didn't threaten you and he didn't promise
7 you anything when you made those statements to Private
8 Investigator Daryl Owen; correct?

9 A. (No verbal response)

10 Q. All right. When you went in to talk to Investigator
11 Strickland, did he threaten you?

12 A. When I was going out he did.

13 Q. Okay, and that's after you had given the statement;
14 correct?

15 A. Yes.

16 Q. Okay, so before that no threats of any kind?

17 A. No, but he was just agitated.

18 MR. SHEEK: I've got no further questions, Your Honor.

19 THE COURT: Any redirect?

20 MS. NELSON: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 By MS. NELSON:

23 Q. Don, you just said that -- let's go back and clarify,
24 because you gave several statements. The first
25 statement you gave on December 4 was that you didn't do

1 anything; right?

2 A. Yes, ma'am.

3 Q. And then you talked to Mr. Owen; right?

4 A. Yes, ma'am.

5 Q. And then you talked to Brandon again.

6 A. Yes, ma'am.

7 Q. When did this threat about jacking up your bond happen?

8 A. When I was supposed to be headed outside, headed out.

9 Q. Before Mr. Strickland took your statement or
10 afterwards?

11 A. Afterwards.

12 Q. So he came in and talked to you and took your -- wrote
13 down that statement ---

14 A. Yeah, 'cause I was supposed to be going out. I was
15 supposed to be bonded out.

16 Q. Well, what you testified to -- right. You were
17 supposed to be bonding out, but what you testified to
18 earlier was that you were getting ready to leave ---

19 MR. SHEEK: Objection, Your Honor. That's not the
20 proper form of the question.

21 THE COURT: Well, again, a little leeway since we're
22 outside the presence of the jury. I understand what he's
23 testified to and I understand what his attorney is trying to
24 do as well. You may proceed.

25 Q. You remember when Brandon took you in and wrote down

1 the statement?

2 A. He was writing the statement.

3 Q. And you signed it.

4 A. I signed it. Yeah.

5 Q. Did he talk about jacking up your bond before or after
6 he wrote that statement?

7 A. After.

8 Q. Okay. So what did you mean earlier when you said you
9 were scared about him jacking up your bond so you said
10 whatever he wanted you to say?

11 A. Well, he had me scared. See, I'm totally losing it
12 now. I am so confused, because it's been so long.

13 Q. I am too.

14 A. It's been so long and they had me so scared.. I've
15 never been in trouble in my life. And I'm trying to
16 sit up here and say the right thing to you, Your Honor.
17 To the best of my knowledge.

18 Q. I'm just trying to understand, because I understood you
19 to say earlier that the reason you signed that
20 statement was because of what was said to you about
21 your bond.

22 A. Yes.

23 Q. And now you're saying that wasn't --

24 A. See, I'm -- my head's not right right now.

25 Q. Well, which way was it?

1 A. I mean, he -- the statement was after he told me that.

2 Q. So he told you that about your bond ---

3 A. He said that I know you did something, and you're going
4 to tell me you did something. That you did something.
5 That's when I was scared more than I already was.

6 Q. And so what did you do because you were scared?

7 A. So I just told him just whatever you want to hear.
8 Just whatever. Just put it down. Whatever.

9 Q. And then after you ---

10 A. Then I signed a piece of paper. Then I was actually --
11 got out.

12 Q. Thank you, sir.

13 A. I'm sorry, Your Honor. I'm confused.

14 THE COURT: Anything in recross, Solicitor?

15 MR. SHEEK: Based on this story, yes, sir.

16 RECCROSS-EXAMINATION

17 By MR. SHEEK:

18 Q. Okay, so he threatened you and then you made a
19 statement; correct?

20 A. Yes.

21 Q. What did you tell him happened?

22 A. They already told me what I was being accused of, so I
23 just told them whatever you want to hear. Whatever
24 this is, what y'all accusing me of. So...

25 Q. So what you're asking this court to accept is, because

1 you were scared of getting in trouble; correct?

2 A. Yes, sir.

3 Q. Since you were scared of getting in trouble you agreed
4 to sign a piece of paper admitting to sexually
5 assaulting an 11-year-old child?

6 A. Not thinking about it. I mean, I just had one thing on
7 my mind.

8 MR. SHEEK: No further questions, Judge.

9 THE COURT: Thank you, Mr. Bolt. You can step down.
10 Anything further from the defense?

11 MS. NELSON: No other witnesses, Your Honor.

12 THE COURT: I'll be glad to hear an argument from the
13 Solicitor first.

14 MR. SHEEK: Thank you, Your Honor. I think the clear
15 and convincing evidence that's been presented is that these
16 statements were given after obviously written Miranda
17 warnings were given, each of them orally read to the
18 defendant, and that he indicated he understood. He signed
19 his statement, both on the fourth and on the fifth. He was
20 clearly given Miranda warnings prior to any statements being
21 made. There is no indication of any types of threats or
22 coercion or anything else. Even his own testimony seemed to
23 be consistent with that, until on recross his attorney said
24 I understood this is the way it happened. He said yeah,
25 yeah, that's what happened.

1 I don't think there's any substantial evidence of any
2 kind of threats made whatsoever to get him to make this
3 statement. He says I made it because I wanted to go home.
4 He can certainly tell the jury that, but I think the clear
5 and convincing evidence was he was given his Miranda
6 warnings, he indicated he understood them, he signed the
7 advice of rights, and he gave the two statements that are in
8 question.

9 THE COURT: Okay. Defense?

10 MS. NELSON: Thank you, Your Honor. Judge, we're asking
11 that you exclude both the statement made to Mr. Owen and the
12 subsequent statement made to Mr. Strickland. What we're
13 relying on is *State v. Navy*, Your Honor, which is 370-SC-
14 398. It's a 2006 case that relies on the US Supreme Court
15 case of *Missouri v. Seibert*. Your Honor, what happened here
16 is that Mr. Bolt voluntarily went in. It appears from the
17 timing on the -- despite his memory, which is not good -- it
18 appears from the time on the Miranda sheet and the time on
19 the booking that he was read the Miranda before he was
20 booked in and served with the warrant. But regardless that
21 happened on the morning of December 4, and then the next
22 day, without any subsequent warnings after spending the
23 night in jail and not talking to anyone else -- with no
24 subsequent warnings he's talking to a completely different
25 person who Mr. Strickland has arranged to be there and give

1 him a polygraph exam. Although he is given a form to
2 consent to taking the exam, it is never explained to him
3 that the fruits of that exam could be used against him in
4 court. It's never explained to him that anything he said to
5 Mr. Owen could be used against him. He was not in a
6 position to understand, Your Honor. It is our position that
7 he was unable to understand that Mr. Owen was operating as
8 an agent of the State at that point, in being called there
9 to do something to further the investigation.

10 It's pretty clear from Mr. Owen's testimony that there
11 was no Miranda warning given at any time when Mr. Owen
12 talked to him. Then after he elicits some incriminating
13 statements by telling Mr. Bolt that he has failed a
14 polygraph, after that Mr. Bolt is again questioned by
15 Investigator Strickland. It does appear from the Miranda
16 form that he was read his rights again at that point.

17 Your Honor, apparently Mr. Strickland felt like the
18 time lapse from him being read the rights the day before
19 was, given all the intervening circumstances, that he needed
20 to Mirandize him again before he took the written statement.
21 Under Navy, Your Honor, once you have elicited incriminating
22 statements, it can be -- even if you get a subsequent waiver
23 and then take further statements, if you examine the
24 totality of the circumstances the court found in that
25 particular case that the mid-interrogation waiver did not

1 make the statement voluntary.

2 What we've got here is the State attempting to put a
3 statement up that Mr. Bolt made on December 5 without any
4 Miranda warnings whatsoever. As I eluded to earlier, this
5 statement was made because he was told that he failed a
6 polygraph exam and we are in the untenable position of being
7 unable to explain that to a jury, because the results of the
8 polygraph are inadmissible. So we are unable to address
9 that properly in front of the jury because of the
10 circumstances under which that statement was taken.

11 It's our position, Your Honor, that because of that
12 violating Mr. Bolt's due process rights, and because there
13 was no Miranda waiver given when he talked to this
14 completely different person the next day -- even Miranda
15 itself, Your Honor, mentions that sometimes subsequent
16 waivers are needed. In this case it's our position it's too
17 attenuated and that the first waiver that was given by
18 Brandon Strickland the day before when Mr. Bolt denied all
19 of the allegations could not operate to make him understand
20 that what he was telling Mr. Owen would be admissible
21 against him.

22 THE COURT: Are you relying on *State v. Navy* to support
23 your position that Miranda was necessary when the statement
24 to Mr. Owen was given? I've just pulled the case up.
25 Haven't had an opportunity to read it yet, but I just wanted

1 to know if that's your use of that.

2 MS. NELSON: Yes, sir. I believe Miranda would've been
3 necessary before that statement for it to come in because it
4 was a custodial statement made by someone at the behest of
5 law enforcement and who was working under a contract for the
6 sheriff's department. I also believe where Navy comes in to
7 play is the fact that once that statement was obtained,
8 after Mr. Bolt was told he failed the polygraph, then that
9 subsequent Miranda warning also would operate to exclude the
10 statement that he gave to Mr. Strickland. He was never told
11 by Mr. Strickland that anything that he was not Mirandized
12 for during the polygraph would not be able to be used
13 against him or would possibly not be admissible because he
14 was not Mirandized. He gave that statement to Mr.
15 Strickland partially because he had been told he failed a
16 polygraph and also because as he was getting ready to leave
17 he was told that his bond would be increased, and he knew
18 that he was the sole support at home.

19 So I think we have no Miranda for the polygraph
20 statement. I think Navy comes in to play to exclude the
21 statement that he subsequently gave to Mr. Strickland,
22 because it was a continued interrogation process. Mr. Owen
23 was there at Brandon's request. He interrogated Mr. Bolt
24 based on information he got from Brandon, and then Brandon
25 came in, essentially, and continued the interrogation once

1 the polygraph was over. It's our position that under the
2 totality of the circumstances and under *State v. Navy* that
3 that mid-interrogation waiver would not be sufficient to
4 render that second statement voluntary.

5 Also, it's our position, Your Honor, that because of
6 the things that Mr. Bolt testified that Brandon said to him
7 about his bond and his need to get back home and support his
8 family, that his will was overborne when he gave that second
9 statement to Mr. Strickland. That's under *Register* and *Van*
10 *Dohlen*. That he was essentially -- he wasn't told a lie
11 about evidence against him, which has been found
12 permissible, he was told if you don't talk to me I'm going
13 to get your bond raised and you won't be able to go home.
14 So it's our position that that statement should be excluded
15 under those cases, because of his will being overborne and
16 that that was not a voluntary statement.

17 I also think the time lapse, Your Honor, would be
18 significant. That first Miranda warning that was given on
19 December 4. There are cases that have held that when
20 Miranda is given thirty minutes before a statement or maybe
21 four hours before a statement that you don't need to re-
22 Mirandize, but I think we're operating under a totally
23 different situation here where you're looking at something
24 the next day. Where a new person has become involved, and
25 where somebody has not been told the implications of that

1 second statement they gave, which then led to the third
2 statement. We're seeking exclusion of both the statements
3 to Mr. Owen and the written statement that Investigator
4 Strickland wrote out and Mr. Bolt signed on the fifth.

5 THE COURT: Do we have a case that kind of sets the
6 parameters for when someone needs to be Mirandized again and
7 when it's not necessary? I know you just eluded to thirty
8 minutes typically, that cases may say you don't need to
9 Mirandize again. Do we have any cases that we can look at
10 that will set some parameters in determining -- and I know
11 there's not going to be a case that says, all right, the
12 next day you have to Mirandize, necessarily. But set some
13 guidelines for us for when it needs to be and when not. I
14 just need some help here.

15 MR. SHEEK: Actually, Judge, if you'll look at *State v.*
16 *Rochester*, which is 301-SC-196.

17 THE COURT: 301-SC...

18 MR. SHEEK: 196. I've got the Southeastern site if you
19 need that.

20 THE COURT: No, that's fine.

21 MR. SHEEK: And *State v. Ballington*. That's 346-SC-262.
22 Those cases indicate that once a voluntary and intelligent
23 waiver of Miranda is made the waiver continues until the
24 accused indicates that he wants to revoke the waiver and
25 remain silent. And Navy kind of touches on this, but not

1 that explicitly.

2 In regards to the motion just made by defense, first
3 the defense argues based upon the erroneous position that
4 Daryl Owen was working on behest or at the request or
5 suggestion of law enforcement, when in fact the defendant
6 himself just testified to you he's the one that suggested a
7 polygraph and wanted to get somebody down here. While the
8 State did make the arrangements, since he was in custody, to
9 get him down here it was at the defendant's request and
10 behest, not theirs. To then argue that I've asked for it
11 and I want this person to come in and then I make statements
12 to him but he didn't give me my Miranda, I think, is an
13 erroneous interpretation of when Miranda is required. I
14 don't think it's required in that aspect at all. However,
15 if we were to assume that it was required, the Miranda was
16 obviously given. That's uncontradicted by the defendant
17 himself who said, yeah, I believe he read some of that. I
18 can't remember if he read it all or not. But he couldn't
19 dispute that he was given the Miranda. That he signed the
20 paperwork. And it was given to him on December 4 when he
21 was taken into custody.

22 Now, turning to Navy, which the defense said they want
23 to rely on. If you actually look at Navy, Judge, what
24 happened in the Navy case was somebody was taken into
25 custody and was interrogated without being given his Miranda

1 warnings. And then, of course, the question became was it
2 custodial. The court discusses when someone's liberty or
3 rights to leave are significantly impaired then it becomes
4 custodial and Miranda should be given at that time. In the
5 Navy case the man was never given his Miranda warnings.
6 Then they went on to discuss a second and a third statement
7 where he made incriminating statements that the State wanted
8 to use. Those statements were obtained based on information
9 they got in the first statement that the court had already
10 said was made after custody and without Miranda. What the
11 court goes on to say when the defense refers to the *Missouri*
12 *v. Seibert* case, the quote out of Navy that's operative here
13 is, "However, the United States Supreme Court has recently
14 held unconstitutional the police tactic of quote question
15 first where officers intentionally question a suspect until
16 inculpatory information is given and then provide Miranda
17 warnings prior to having the suspect repeat the inculpatory
18 information."

19 So what they were getting at, and what the *Missouri v.*
20 *Seibert* got at, is where police officers were bringing them
21 in, questioning them without giving them Miranda warnings,
22 getting whatever information they needed, then they were
23 given Miranda warnings saying now repeat what you told me.
24 Of course that clearly circumvented the intent of Miranda.
25 So that's the Navy case. In this case we've got somebody

1 being brought in and given his Miranda warnings from the get
2 go, orally and in writing, and signing off on those
3 warnings. So to say we're going to rest our argument and on
4 *Missouri v. Seiberg* is resting on the proposition of a case
5 that operated on a completely different set of
6 circumstances.

7 If Brandon Strickland had brought him in, never given
8 him his Miranda warnings, took a statement that was
9 inculpatory, and then said okay, let me give you your rights
10 and I want to give a statement, he clearly falls under the
11 provisions of *Navy* and *Seibert* and we've got a problem. But
12 here he was given his Miranda warnings, he understood them,
13 he never communicated and no where did he ever testify that
14 he communicated any right to invoke his right to an
15 attorney, to remain silent, or invoke his right to otherwise
16 not give any information. He never said he did any of that.
17 So if you operate under the cases I just quoted to you,
18 Miranda was effective. Miranda is not required with Daryl
19 Owen, but it was effective anyway. Then Miranda warning is
20 given a second time before he gives the written statement to
21 Brandon Strickland. So under the auspices of *Navy*, *Seibert*,
22 and the facts of this case, the statements were clearly made
23 after Miranda were given.

24 THE COURT: Thank you. Anything in response?

25 MS. NELSON: Yes, sir, Your Honor. Miranda was given on

1 the 4th and Mr. Bolt denied all the accusations and the
2 questioning stopped. The next day he's talking to somebody
3 completely different and he's given a form to sign that Mr.
4 Owen goes over with him that is different from Miranda. It
5 is a consent form. It does tell him he can stop taking the
6 test, but it says absolutely nothing about having the right
7 to a lawyer to be with him. Having the right that whatever
8 he says can be used against him in court. Absolutely
9 nothing in that form. So he's presented with something
10 totally different by a different person. And it's our
11 position that that is the interrogation that applies under
12 Navy. That that interrogation starts.

13 Yes, I do understand that Mr. Bolt consented to take
14 the polygraph, but he didn't make the arrangements for Mr.
15 Owen to come and talk to him that day. That wasn't a call
16 that he made or arrangements he made. That was something
17 made by law enforcement. What was presented to him at that
18 time was not Miranda, clearly, from what Mr. Owen has
19 testified to in the form that is in evidence, Your Honor.

20 There's also a -- you asked earlier about the
21 attenuation of the time and it's our argument that once that
22 questioning stopped on the 4th and he was then booked into
23 the jail and taken into custody, that once he was in custody
24 at that point any subsequent questioning he would have
25 needed to be re-advised of his Miranda. Apparently

1 Investigator Strickland agrees with that because he saw fit
2 to Mirandize him again the next day before he wrote the
3 statement down. There is a case, *State v. Smith*, which is
4 at 259-SC-496, where a 13-year-old charged with murder
5 consented to a polygraph and he was Mirandized prior to the
6 polygraph. Then he was questioned immediately after being
7 told he failed and the court held that he did not need to be
8 re-Mirandized in that context because he was Mirandized
9 before the polygraph and then only 30 minutes passed. But
10 we've got a completely different situation here where those
11 warnings were not given before that polygraph exam. Navy
12 requires you to look at the totality of the circumstances
13 and whether there is overlap in the statements, whether
14 there is some continuity. How much time has passed. It's
15 our position that that does apply to exclude both
16 statements, certainly at a minimum the statement given to
17 Mr. Owen which was not Mirandized.

18 It would not have been clear to Mr. Bolt that the
19 Miranda warnings the previous day from Mr. Strickland
20 would've applied during that lie detector exam and
21 subsequent interrogation. He testified that he didn't
22 understand that all that applied. Your Honor, at a minimum
23 that statement should be excluded, and also for the reason
24 that as I mentioned earlier we are in the position where we
25 cannot explain that to the jury without bringing up an

1 inadmissible polygraph.

2 THE COURT: Thank you very much. I appreciate your good
3 arguments from both sides. I'm going to take it under
4 advisement. I don't think you will be prejudiced either way
5 by waiting until first thing in the morning for me to give
6 my ruling on the admissibility of one or both of the
7 statements or none. So I'm going to read these cases that
8 you've given to me, give it some thought, and I'll give my
9 ruling first thing in the morning. Do we need to take up
10 anything for the record before we adjourn for today?

11 MR. SHEEK: The defendant's bond situation.

12 THE COURT: Well, the fact that this is a five-year-old
13 case.

14 MS. NELSON: He was arrested in '08, Your Honor. Never
15 any subsequent trouble.

16 THE COURT: I'm not going to revoke bond. I'll allow
17 you to remain out, Mr. Bolt. You be back here every time
18 your lawyer tells you to be back, okay?

19 MR. BOLT: Yes, sir.

20 THE COURT: Because the option of what the Solicitor had
21 requested was that your bond be revoked, which a lot of
22 times that happens when a trial starts. I could revoke your
23 bond and keep you in jail until this case is concluded, but
24 since this case is so old and you've been out for the last
25 five years I'm not going to do that. However, if you were

1 to fail to show up then I could revoke your bond and keep
2 you in jail. The bottom line is, every time your lawyers
3 tell you to be here -- are you having a hard time hearing
4 me?

5 MR. BOLT: Just a little bit. I can hear you, sir.

6 THE COURT: You're the first person that's said that
7 they couldn't hear me.

8 MR. BOLT: I'm sorry.

9 THE COURT: No, you don't need to apologize. The bottom
10 line is that anytime your lawyers tell you to be in this
11 courtroom you be here.

12 MR. BOLT: Okay.

13 THE COURT: Understand that?

14 MR. BOLT: Yes, sir. Thank you, Your Honor.

15 THE COURT: Anything further before we adjourn for the
16 afternoon?

17 MR. SHEEK: Nothing from the State, Your Honor.

18 THE COURT: We'll be in recess until 9:00 in the
19 morning.

20 MS. NELSON: I believe -- is my motion for sequestration
21 and Lance's consent already on the record?

22 THE COURT: I know it was mentioned and the Solicitor
23 indicated his consent. I don't know if we were on the
24 record, but it's now on the record and so that will be so
25 ordered. I guess, too, if there's any work you need to do

1 along the lines of another polygraph expert you can
2 certainly pursue that. Again, not knowing exactly what my
3 ruling is going to be.

4 MS. NELSON: I'm working on it, Your Honor, and they've
5 been nice enough to get me copies.

6 THE COURT: Very good.

7 MR. SHEEK: Judge, for the sequestration issue, I want
8 to clarify. The chief investigating officer and the victim
9 are always allowed to be in the courtroom.

10 MS. NELSON: That is my understanding.

11 THE COURT: Right, but other than that all other
12 witnesses shall be sequestered. I'm not sure exactly how
13 the mechanics of that work as far as where the rooms are,
14 where they'll be. I'll let y'all work all that out.

15 MS. NELSON: You want defense witnesses sequestered as
16 well? I don't want to make a mistake on that.

17 THE COURT: These apply both ways.

18 MS. NELSON: Yes, sir. Just making sure.

19 THE COURT: We'll be adjourned until 9:00 in the
20 morning.

21 DAY 2: 9/4/2013

22 THE COURT: Thank you very much. Have a seat. Okay.

23 We're on the record in I guess, Day 2 of the State v.

24 William Donald Bolt case. I think I allowed the record to

25 remain open with respect to the Jackson v. Denno hearing

1 that we had yesterday afternoon to give defense an
2 opportunity to consult with their own polygraph expert, so
3 where are we on that?

4 MS. NELSON: I would like to call Mr. Hartley to
5 testify.

6 THE COURT: Okay. All right. Come around please, sir.
7 You need to be sworn in front to the clerk here.

8 JOHNNY HARTLEY, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. NELSON:

12 Q. Thank you, Your Honor. Mr. Hartley, what do you do for
13 a living?

14 A. I'm retired from the South Carolina Law Enforcement
15 Division as their chief polygraph examiner. Now I'm a
16 private examiner.

17 Q. How long were you at SLED?

18 A. Twenty-seven and a half years.

19 Q. What kind of, you said you were their chief polygraph
20 examiner?

21 A. Yes, ma'am.

22 Q. How long did you have that title?

23 A. Eighteen and a half years.

24 Q. Did you go through any training in order to be able to
25 hold that title?

1 A. Yes, ma'am. I graduated from the New York Center of
2 Lie Detection in 1975. I also graduated from the FBI
3 Advanced Polygraph School in Quantico, Virginia. Also
4 graduated from the Department of Defense Computerized
5 Polygraph School in Alabama.

6 Q. How long have you been doing polygraph examinations?

7 A. Approximately 38 years.

8 Q. About how many have you done over the course of that
9 time?

10 A. When I retired at SLED, I had conducted and reviewed,
11 since I was a quality control officer, over 30,000
12 polygraphs exams.

13 Q. Were you ever responsible for training other people in
14 how to conduct polygraphs?

15 A. Yes, ma'am. SLED is responsible for licensing all the
16 polygraph examiners in South Carolina, and also
17 monitoring their internships when a new examiner gets
18 his internship license.

19 Q. And you became involved in this case at my request?

20 A. Yes, ma'am.

21 Q. And I asked you to review the polygraph chart that Mr.
22 Daryl Owen did when he conducted an exam on Mr. Donald
23 Bolt back in 2008?

24 A. Yes, ma'am.

25 Q. Did you have an opportunity to review that chart?

1 A. I did.

2 Q. Were you provided with the questions that were used in
3 the conduction of the exam?

4 A. Yes, ma'am.

5 Q. I'd like to show you what's been marked as Defense
6 Exhibit No. 3 for identification. Would you take a
7 look at that and let me know if that is the chart that
8 you reviewed?

9 A. Yes, ma'am.

10 Q. Now, in taking a look at that, can you tell what kind
11 of instrument was used to conduct the polygraph exam?

12 A. Well, I do know from looking at the chart that it is
13 not a computerized polygraph. It's an older polygraph
14 instrument, which is a pen and ink. And on his chart
15 paper, it's got Stoelting, which basically are two
16 brands of polygraph. Stoelting and Lafayette. We, at
17 SLED, and I think pretty much all the Federal agencies
18 stopped using the pen and ink polygraphs in the early
19 90's after the National Security Agency and Johns
20 Hopkins University conducted research on computerized
21 polygraphs for seven and a half years. So at that
22 time, I think the federal government mandated that all
23 federal agents had to use a computerized polygraph.
24 But I can tell that this is not a computerized
25 polygraph because the numbers and the markings on it

1 are hand written.

2 Q. And on a computerized polygraph, are you suggesting
3 they wouldn't be hand written?

4 A. On a computerized polygraph, when you hit the enter key
5 to ask the question it shades out the part of the chart
6 that you're asking, the duration that you're asking
7 that question, and when you hit the key to end that
8 question it starts back with a normal tracings where
9 you have the vertical lines and the horizontal lines on
10 the chart paper. But with the computerized polygraph,
11 yes, the computer automatically marks the number and
12 the question that you asked, and the answer with a plus
13 or minus.

14 Q. So you wouldn't see those pen and ink markings on a
15 computer instrument?

16 A. Not at all.

17 Q. And you said the computerized instruments became more
18 of the standard in the early 90s?

19 A. Yes.

20 Q. So how would you characterize this kind of pen and ink
21 instrument in your practice?

22 A. Well, we used it at SLED ever since I was there in
23 1974. It's just with the computerized, excuse me, with
24 the pen and ink, basically you have 22 criteria to
25 decide if someone is deceptive or not being deceptive,

1 and that criteria is by your interpretation of the
2 tracings on the chart. So visually you look at the
3 chart and see if you're doing a one point scale, which
4 I'm sure that's what this was, you visually look at the
5 chart at the relevant questions as compared to the
6 controlled questions and you look and you say, well is
7 this a higher reaction here or is this a longer
8 reaction here, what changes or any difference between
9 the two. With the computer polygraph, the scientists
10 have said that there are over 200 criteria that the
11 computer uses because the computer is a monitor and
12 it's broken down into thousands of pixels and the
13 computer can tell, count the difference of how many
14 pixels were used.

15 Q. In 2008 was that an antiquated instrument?

16 A. Yes.

17 Q. Besides the fact that it's not the standard and it's
18 not capable of giving you as much detail as a computer
19 instrument would today, do you see any other problems
20 with that chart?

21 A. Whether it's a computerized or, you know, the older
22 type, you still get, I mean you can still get good
23 recordings with the pen and ink. It's just depends on
24 how the test is given. The only problem I see with
25 this test, I think the questions were appropriate.

1 They were asked in the right manner. The only thing I
2 see is we had rules and regulations for licensing, and
3 you had to have at least 15 seconds between questions,
4 and that was to give the person, the examinee, time to
5 hear the question, time to react, and time for the
6 computer to record the responses. With the
7 computerized polygraph, you have to give 25 seconds or
8 else it will not score the chart. Okay. And that's
9 the only problem I see with this, some of the questions
10 are 11 seconds apart, some are 14, some are 15, some
11 are 18. And talking with SLED now, they require at
12 least 20 seconds between questions to evaluate the
13 chart.

14 Q. So do you know how long that 20 second requirement has
15 been in effect by SLED?

16 A. I do not know. I know that in '99 we had at least 15
17 to 25.

18 Q. '99 was 15 to 25?

19 A. Yes, and I think most of the schools require 20 seconds
20 that are taught, and I think the examiner that
21 conducted this test, I think he went to Frank
22 Argenbright School in Atlanta. I'm not sure, but I
23 think so. And I am certain that they require at least
24 15 seconds.

25 Q. And if you go by the 20 second rule that SLED requires,

1 you're not finding 20 seconds between any of those
2 questions on that chart, are you?

3 A. There may be one out of the 40 questions that they
4 asked him. There may have been one.

5 Q. And how are you -- can you explain to the judge now
6 you're able to tell how much time passes between
7 questions by looking at that chart?

8 A. Yes, ma'am. On the chart, the chart paper, you have
9 horizontal lines coming down, and between these
10 horizontal lines, black lines here, is five seconds,
11 okay. And so what you do, this is hand marked right
12 here where he started to ask the question, that's where
13 he ended the question and then he put the number of the
14 question, which was number four. He put the answer
15 above the question, which a minus means no. So between
16 where he ended the question, you go five seconds, ten
17 seconds, not even fifteen seconds, between where he
18 ended the question and he started the next question.
19 So if you look at his markings, you'll see on every
20 question where he started to ask the question, where he
21 ended asking the question and how long in between
22 before he started the next question.

23 Q. And on most of those questions, there's just not the
24 required, the standard amount of time that you should
25 allow.

- 1 A. Not enough for me to interpret the chart.
- 2 Q. So what you're -- is it correct that you're saying that
3 the way you look at this chart it can't be validly
4 scored?
- 5 A. No, ma'am.
- 6 Q. If you can't validly score a chart, you don't know
7 whether somebody passes or fails, do you?
- 8 A. It's inconclusive. That would be the ruling. If I was
9 the quality control review officer on this, it would be
10 inconclusive based on lack of spacing time for the
11 questions.
- 12 Q. And again, the reason for that time between questions
13 is to give the person time to have the reactions for
14 the machine to measure it.
- 15 A. When you ask a question, the question is a stimulus,
16 and so when your brain receives that stimulus, it sends
17 out signals or messages to different parts of your
18 body, physiologically telling them how to react, such
19 as the pupils of your eyes dilate. Supposedly your
20 pupils of your eyes dilate 100% of the time when you
21 think of a lie or also may a tremor increase, a blood
22 volume increase. The one thing that is interesting,
23 though, what the scientist found out, that your pulse
24 rate does not change from the time you start this test
25 to the time you end this test. So the 25 seconds is

1 not going to matter if I ask you a relevant question
2 and that stimulus is a little bit stronger. The pulse
3 rate doesn't change. Your blood volume might change.
4 In other words, your heart might pump out more blood to
5 that duration of that time. The reason why you want to
6 give enough spacing is you want to make sure that if
7 you ask a question and they are reacting to it, you
8 don't want that reaction to carry over into the next
9 question.

10 Q. Okay. So looking at this, with your years of
11 experience, and the number of polygraphs you've
12 reviewed, you would not have been able to tell Don Bolt
13 that he failed this exam because it's inconclusive.

14 A. It would've been inconclusive.

15 MS. NELSON: That's all I have. Please answer any
16 questions.

17 THE COURT: Cross-examination, Solicitor?

18 MR. SHEEK: Beg the court's indulgence just one second?

19 THE COURT: Sure.

20 CROSS EXAMINATION

21 BY MR. SHEEK:

22 Q. So your testimony is you can't say that the results are
23 invalid, just that the length of time between the
24 questions was not what SLED says should happen?

25 A. Not only SLED, probably every polygraph school, every

- 1 Federal agency, every State agency.
- 2 Q. Do you have any of those guidelines here to present to
3 The Court today?
- 4 A. No, I do not.
- 5 Q. When did you retire from SLED?
- 6 A. 1999.
- 7 Q. And what were the reasons for your retirement?
- 8 A. I was starting private practice.
- 9 Q. Anything else?
- 10 A. No.
- 11 Q. You were put on indefinite suspension in May of '99,
12 correct?
- 13 A. Yeah.
- 14 Q. And you were put on indefinite suspension because you
15 were charged with forgery and falsifying a drivers
16 license for your son.
- 17 A. Right.
- 18 Q. What happened to those criminal charges?
- 19 A. I didn't go to court.
- 20 Q. Did you do PTI or what did you do with it?
- 21 A. Yes.
- 22 Q. Did you in fact falsify license for your son?
- 23 A. I did not give any license. I did not produce any.
- 24 MR. SHEEK: No further question, Your Honor.
- 25 THE COURT: Anything to redirect?

1 MS. NELSON: No, sir, Your Honor.

2 THE COURT: Thank you, sir, for your testimony.

3 Anything further concerning the *Jackson v. Denno* hearing?

4 MS. NELSON: No, sir, Your Honor. I just ask that the
5 court take this additional information into consideration
6 under the totality of the circumstances test.

7 THE COURT: Thank you very much. Solicitor, anything
8 further concerning the *Jackson v. Denno* hearing?

9 MR. SHEEK: No, sir.

10 THE COURT: I spent a fair amount of time, as did my law
11 clerk, concerning the two statements. I'm going to call
12 them the Owen statement and the strickland Statement. We
13 read all those cases that were provided to the court, and we
14 found some additional cases as well. Based upon a totality
15 of the circumstances, which is the standard that I'm
16 supposed to consider, I find that both statements were
17 knowingly, intelligently and voluntarily made by Mr. Bolt.
18 I find it significant that on December 4th, Miranda was
19 given and he waived his right to remain silent by stating
20 that he denied the allegations. I find that to be a waiver
21 of his Miranda rights, and based upon the *Rochester* case and
22 the *Ballington* case, that waiver would remain until it was
23 revoked.

24 Consequently, I find that Miranda was not necessary to
25 be given again at the time of the Owens polygraph

1 examination. Consequently, I don't find that the Owens
2 statement in any way tainted the second statement made to
3 Officer Strickland. In further support of the voluntariness
4 of the confession, I find that there's only one possible
5 threat, and I'll put threat in quotation marks, that was
6 brought out in the testimony, that being from the defendant,
7 that officer Strickland had threatened to jack the bond up
8 if he did not make some sort of confession. But also based
9 upon the defendant's testimony is that he had already bonded
10 out prior to the time that that threat was allegedly made.

11 So I find that since he had already met his bond
12 obligations, even if the threat were made, it would have no
13 significance concerning the voluntariness of the confession.

14 I find it also significant that Miranda was once again
15 given by Officer Strickland when the second statement was
16 made. Why it was given again, if Officer Strickland felt
17 like it had to be given or just out of an abundance of
18 caution, I don't know. But nonetheless, it was given. I
19 also find it significant that the Defendant, his own
20 admission was, is that he -- let me see if I can quote what
21 he said. That he asked himself for the polygraph
22 examination to be done to "prove myself". I find that is
23 significant.

24 And finally, I find it very significant, even though
25 maybe admirable to some extent, but pretty dangerous, is

1 that he said several times that he would, and I'm
2 paraphrasing, I'm not quoting, paraphrasing, that you know,
3 whatever you want me to say fine, I'll say it, because I
4 want to go home to my family. Also, I told him whatever he
5 wanted to hear so I could go home to my family to support my
6 family. That's pretty risky. That's pretty risky to be
7 done. But nonetheless, that's what he said.

8 And finally, the Defendant admitted that he understood
9 his rights. He specifically said this. He understood his
10 rights prior to both statements being given, Owens and
11 Strickland. So viewing all of that, which would consist of
12 the totality of the circumstances, I find that both
13 statements are admissible. Certainly the jury, and they'll
14 be so instructed, as counsel knows, that they'll be
15 instructed that they'll have to make the determination as to
16 voluntariness beyond a reasonable doubt standard. But my
17 finding is they were voluntarily, intelligently, and
18 knowingly made and they will be admitted into evidence. All
19 right. Do we need to take up anything else before we bring
20 the jury in, have the jury sworn, opening statements and
21 preliminary charge? From the State?

22 MR. SHEEK: Don't need to take up anything, Your Honor.
23 I will hand up the indictments for you as far as opening
24 statements to the jury.

25 THE COURT: I was going to ask that. From Defense?

1 MS. NELSON: Your Honor, yes, given that the statements
2 are coming in over our objection, of course.

3 THE COURT: Certainly.

4 MS. NELSON: I feel like now that I've been able to
5 speak with Mr. Hartley and he's got an interpretation of the
6 test that was given, I feel like he has no alternative but
7 to ask to be allowed to present the evidence about the
8 polygraph to the jury so that he can explain. So that we'll
9 have an explanation for why he gave these statements. I
10 know that polygraphs have been found to be generally
11 inadmissable because they haven't been deemed to be
12 scientifically reliable under 702 and the Jones factors. We
13 would not be attempting to introduce evidence of the
14 polygraph to actually show whether Mr. Bolt was lying or
15 telling the truth. It would be that we would need to
16 present to the jury the whole picture to explain why he
17 suddenly started making these statements. Without that, I
18 mean, and I think it puts him in a terrible position and
19 that this is prejudicial to him, but if the statements are
20 coming in I don't see how we have any alternative but to
21 request that we be allowed to include that in our defense.
22 And, I'm sorry.

23 Your Honor, I think we also presented rule 403 as an
24 argument for keeping out the Owens statement, as you've put
25 it, and I don't know if your findings actually address that.

1 I assume you're ruling on that is that ---

2 THE COURT: I believe that certainly it's prejudicial.
3 Any time that there's a confession by a defendant, it's
4 prejudicial. But certainly the probative value would
5 outweigh the prejudice involved. I'm going to deny your
6 request, and I know why you're wanting it to be put in,
7 again, on the question of the voluntariness, but I think
8 we're crossing the line as far as getting into polygraph
9 examination results. I think if we do that then I think
10 we're just treading on thin ice, if I allow you to, you know
11 -- they'll put their expert up, and he's going to defend his
12 test results, and then you put this gentleman up and he's
13 going to counter that. I think we're just creating some
14 problems that I want to avoid. Solicitor?

15 MR. SHEEK: Your Honor, I'll be happy to say -- I
16 respect your ruling. I don't object if they want to put it
17 in if they think that will clear up any appellate issue on
18 not being able to talk about it. I think since it's a
19 defense request, any appellate issue on the admissibility of
20 the polygraph or any testimony about it is obviously waived,
21 so we don't object.

22 THE COURT: Certainly if I have an agreement between the
23 lawyers to allow the polygraph results in evidence and allow
24 each side to put up their experts and, I mean, the door's
25 completely wide open. If there's an agreement to that, then

1 I have no problem. I just didn't expect the Solicitor to be
2 in agreement. But if that is it, the door's completely
3 open. Everything about polygraph examinations is going to
4 be admissible.

5 MS. NELSON: And I feel like it's, I mean, I struggled
6 with this greatly last night because obviously I would
7 prefer that the jury not hear a lot of things.

8 THE COURT: I understand.

9 MS. NELSON: I prefer that they not hear Mr. Owens say
10 that Don failed a polygraph, but under the circumstances,
11 strategically, I feel like we don't really have any choice.

12 THE COURT: Listen, I understand your position
13 completely, and both of y'all are working very hard on
14 behalf of your cases, and I appreciate that. I really do.
15 And so long as we have the agreement, the stipulation that
16 any and all evidence related to polygraph examination that
17 was done by Mr. Owens certainly countered by your expert is
18 going to be admissible, then we'll proceed in that
19 direction.

20 MS. NELSON: Thank you, Your Honor.

21 THE COURT: Okay. Now, with that said, I want to bring
22 the jury out, get them sworn and let's get a preliminary
23 charge and opening statements and then take a break because
24 I promised some folks that I would approve a couple of civil
25 matters and when I said start back at nine o'clock, I'd

1 completely forgotten that we had -- they're going to be
2 brief. They're not going to delay things, but we'll need to
3 do that during the break. So with that said, anything else
4 on the record before we bring the jury out? From the State?
5 From the defense? Okay. Bring the jury out, please.

6 (Whereupon, the jury entered the courtroom at 9:37
7 a.m.)

8 All right. Let the record reflect that the entire jury
9 is back in the courtroom, and good morning.

10 JURY: Good morning.

11 THE COURT: I hope everyone had a restful evening and
12 that you're ready to get to work. We had some legal matters
13 that I had to take up with the attorneys. We've got
14 excellent attorneys, and as a consequence of that, they work
15 the judge pretty hard, okay. So we had some matters that we
16 had to take up with them, and that's why you had to wait in
17 the jury room a little bit longer than we had anticipated.
18 Now, Tonya Murray. I am going to appoint -- you're not in
19 trouble. I'm going to appoint you as the forelady of the
20 jury, okay? And what that role consists of is you will be
21 the spokesperson on behalf of the jury, okay?

22 If there are any matters that the court needs to be
23 aware of while the case is going on, then you will be the
24 spokesperson. Certainly at the end of the case when you're
25 instructed to begin your deliberations, then you will lead

1 bit more, not for purposes of your objection, but certainly
2 I want to make sure that if I'm giving an improper
3 preliminary charge then I want to make sure that I correct
4 that in the future.

5 MS. NELSON: And just for informational purposes, I
6 think -- I don't know if our other local judges are still
7 using that language. I'm pretty sure that Judge Addy has
8 removed it from his preliminary instructions. I don't say
9 that to try to say you're supposed to be doing what other
10 judges do. I'm just giving it to you for information.

11 THE COURT: Right. Thank you. Let's bring the jury
12 out.

13 (Whereupon, the jury entered the courtroom at 9:59
14 a.m.)

15 THE COURT: Let the record reflect that the jury is
16 back in. Madame Forelady, ladies and gentleman of the jury,
17 just one final comment before the attorneys make their
18 opening arguments to you. You are the sole judges of the
19 facts and it is your responsibility to determine whether or
20 not the State has met its burden of proof in proving each
21 and every element of the offenses beyond a reasonable doubt.
22 That is your job. Solicitor, you may proceed with your
23 opening.

24 MR. SHEEK: Thank you, Your Honor. May it please this
25 court? Madame Forelady and ladies and gentleman of the

1 jury, again, my name is Lance Sheek. I work here in the
2 Eighth Circuit as an Assistant Solicitor along with my co-
3 counsel, Cam Morrow, sitting right there at the table beside
4 me. Now, the Eighth Circuit is comprised of Greenwood,
5 Abbeville, Laurens and Newberry. The state is divided up
6 into 16 circuits, and you have a circuit Solicitor, David
7 Stumbo, who is elected by the people as a chief prosecutor
8 for all General Sessions crimes in the circuit, and then we
9 work for David in a job of prosecuting those cases, bringing
10 them to court, bringing them to trial. Exactly what we've
11 all been gathered here to do today. And I want to thank
12 each one of you for being back here today because in our
13 system of justice we don't go forward without a jury. That
14 is what we have centered our system of justice around, is
15 the jury system, where we the people, the members of our
16 community, the citizens that live here and sit as a jury in
17 any case where someone is charged with a crime. And that's
18 what you've been gathered here today for.

19 Now, I watch people as we do jury qualification as we
20 do jury selection, and the vast majority of the reaction
21 people give when they are chosen for a jury is, oh, man. I
22 know it's not exciting, but I do want to thank you for your
23 time here because it is very important to everybody that's
24 involved in this case. To the defendant who's involved in
25 this case, William Donald Bolt. The gentleman sitting right

1 over there beside his two attorneys. And what you've been
2 chosen to hear is a criminal case of the *State of South*
3 *Carolina versus William Donald Bolt*.

4 Now, what is Mr. Bolt accused of. The judge gave you
5 some preliminary instructions. And what he told you is Mr.
6 Bolt has two indictments. Indictments are simply a manner
7 by which charges are brought in the Court of General
8 Sessions. It's not evidence of a crime. It's just the way
9 the charges are brought. What is it that the State accuses
10 Mr. Bolt of? What are you, the jury, going to be asked to
11 sit and listen to? Well, you've got indictment 2009-543 and
12 a 2009-633.

13 2009-543 accuses Mr. Bolt of a lewd act on a minor.
14 What does that mean? The judge gave you some preliminary
15 instructions and he read to you the indictment. And I'll go
16 ahead and tell you at the end of the case he's going to
17 charge you in the law. What that means is after you've
18 heard all the evidence and all the testimony from this stand
19 right here, and all the arguments are done, the judge is
20 actually going to read to you the laws in the State of South
21 Carolina that you need to apply. Because everybody's got a
22 little bit different job in this courtroom.

23 You, as the Judge just told you, are the judges of the
24 facts. What does that mean? As the State presents the
25 case, because the State has the burden of proof. The

1 Defendant comes into court, the defense will tell you
2 presumed innocent and that is fundamental to our system of
3 justice. Any defendant is presumed innocent. And he comes
4 into court with that presumption, and when you look at him
5 right now he has that presumption. The only people that can
6 remove that presumption from a defendant is you, the jury.
7 Now, how do you do that?

8 Well, the State's got to present to you evidence.
9 We've got to bring to you the tools that we're going to ask
10 you to use at the end of this case to determine the guilt of
11 the Defendant. And that's all going to come from witnesses
12 who sit on this stand right up here. They're going to come
13 sit in this chair right beside the judge and they're going
14 to testify to you. They'll swear to tell the truth under
15 oath and they will testify.

16 If you have documents or other pieces of evidence that
17 you can look at, they'll be entered through somebody on that
18 stand, so that's where you want to direct your most
19 attention. At the end of the case, we're going to ask you
20 to deliberate. We're going to ask you to reach a verdict, a
21 word that literally means to speak the truth. And
22 ultimately, that's what we want. So what is the State going
23 to bring you? Because, the State has to equip you to do
24 that job. The defense doesn't have to do anything. He
25 doesn't have to testify. He doesn't have to offer any

1 information. He has a fundamental right to remain silent
2 and sit there and not participate. He doesn't have to. The
3 State has to prove him guilty, and that's what we're going
4 to do.

5 Now, we're going to do that through testimony. The
6 indictment of lewd act on a minor says that William Donald
7 Bolt did back in 2006 commit a lewd act of a minor on a
8 person named Minor. Minor turned 19 years old

9 She got to spend half of her birthday sitting up
10 here talking to me. That's not what she would have wanted
11 to do. But in a search for justice, she's come to do it.
12 Minor n's going to tell you about what happened back in 2006
13 when she was 11 years old, a couple months shy of turning
14 12.

15 The defendant, William Donald Bolt, was the step-father
16 of Minor n's brother-in-law. Minor s sister married his step-
17 son. And from time to time Minor would go over and visit
18 with her sister, brother-in-law, and they would go over to
19 the house where Mr. Bolt lived, and sometimes they would
20 spend the night. And I'm going to tell you what Mr. Bolt
21 would do to Minor. Minor s going to tell you what he would
22 do. Get her to sit in his lap, rub on her, rub her breasts,
23 rub places that he's not supposed to touch. That's the lewd
24 act, touching in a sexual manner for the purpose of
25 gratifying his own sexual interests on this 11-year-old.

1 Then she's going to tell you that on or about June 1st it
2 went further. That on that day she was spending the night
3 over there, that she went to bed. She was in the room
4 watching TV. She heard him coming in the room. She
5 pretended to be asleep because of what had been going on.
6 He comes over and sits on the bed and sits there for a few
7 minutes.

8 She's going to tell you that she pretended to be
9 asleep, that he pulled her pants, her pajama bottoms, and
10 her underwear down, he began to rub her, including rubbing
11 her in her vagina and took his finger and inserted it in her
12 vagina. That's the criminal sexual conduct. It's the
13 committing of a sexual battery on this 11-year-old child.
14 Sexual battery means penetration, however slight, into the
15 vaginal opening in this case. So Minor says it happens.

16 It doesn't come out initially. As a lot of 11-year
17 olds do, doesn't report it initially. She reports it some
18 time later to her mother. The police are called. They do
19 their investigation. Now, in this case, you're also going
20 to hear from the police that did the investigation, who
21 talked to Mr. Bolt. And you're going to hear what Mr. Bolt
22 told them happened. You're going to hear a progression of a
23 story over a two-day period, from I don't know, nothing
24 happened to I got her in my lap, I'd been drinking. I got
25 sexually aroused, got an erection. I rubbed her on her

1 breast, but that was it. To, okay, I went in her room
2 later. She was asleep, just like she said, she pretended to
3 be, I pulled her pants down. I stuck my finger in her
4 vagina real quick and then I left. That's his story.
5 That's the defendant's story that you're going to hear
6 through an investigator and you're going to hear from this
7 man sitting right back here, Daryl Owen. Daryl works up at
8 the detective agency in Greenville. He comes down. The
9 police are going to tell you that Mr. Bolt said, hey,
10 initially I didn't do it. Get me somebody down here to give
11 me a polygraph to prove myself.

12 He comes down because that's what he's been doing for
13 the last 39 years. He gives a polygraph that Mr. Bolt
14 doesn't pass. And then it's after that that he gives Mr.
15 Owen a statement about I was drinking, got the erection and
16 then he goes in and tells Brandon Strickland at the
17 sheriff's department, I went in there. I pulled her pants
18 down, stuck my finger in her vagina, just like she said.
19 That's what you're going to hear over today and
20 approximately into tomorrow. It's not pleasant. It's not
21 fun to listen to. As the judge told you, it's not high
22 drama. It's not even something you want to sit here and
23 listen to or have a child, well 19-year-old now, to have sit
24 up and tell you about what happened when she was 11. But
25 it's necessary as our search for justice moves forward.

1 That's why we're here. We're searching for justice.

2 The State welcomes the burden that has been placed on
3 us, to prove beyond a reasonable doubt. We're going to
4 bring you the testimony and evidence to do that. I want to
5 ask that as we go through the next day and possibly into
6 Thursday, just pay close attention to the testimony.
7 Because what we're doing here is very important. We thank
8 you for your time and your attention. We'll try not to
9 waste any of it, but as we do search for justice we're going
10 to be thorough. Thank you.

11 MR. GORANSON: Don didn't do that. He didn't do it.
12 I've been waiting for weeks to get up here and tell you
13 that. Don didn't do it. We've been looking forward to this
14 trial, presenting the case to you, community of his peers.
15 My name is Shane Goranson and that's Janna Nelson sitting
16 there with Don, and it's our pleasure to represent him. To
17 this case, I think there is one concept that ties all of it
18 together, that is the concept of home. There's no place
19 like home.

20 Say home and you can feel it in your chest. It has a
21 powerful meaning. And for two people in this case it has an
22 extremely powerful meaning. For Don, and for the
23 complainant in this, Minor . And they're both in
24 desperate situations. And that concept is so powerful to
25 them that it brings you today a false accusation, a false

1 investigation, and a false confession. When these
2 allegations came up, Minor was 14 years old. She was
3 living with her mother and her mother's abusive boyfriend.
4 She'd been living there for about a year and a half. It was
5 a house. She lived in her mom's house, but it wasn't a
6 home.

7 She'd never lived in a home. When she was 5 years old
8 the complaining witness was taken away from her mother
9 because her mother couldn't provide a home. She lived with
10 her father. She lived with her grandmother. She lived at
11 Connie Maxwell for two years, where she was when this event
12 supposedly happened. And then she was living with her
13 mother and her mother's abusive boyfriend for a year and a
14 half in their house, but it wasn't home.

15 She was desperate to get out of that house, so she
16 started scratching on herself. Scratching. Her mom noticed
17 and finally she was getting sympathy and the attention that
18 she needed to try and get some control over her life. She
19 couldn't tell her mom what happened, that it was her mom
20 making her want to get out of that house, because she was
21 scared her mom would have a relapse. So she made up a story
22 about Don. Now, I don't know why. We may never know why.

23 MR. SHEEK: Your Honor, I've got issues with The Court.

24 THE COURT: Just approach and let's see if we can deal
25 with it.

1 (Whereupon, a bench conference was held in the presence
2 of the jury, but out of the hearing of the jury.)

3 THE COURT: Okay. You may proceed.

4 MR. GORANSON: So what the evidence will show is that
5 she made up a story. She told this story. And that's when
6 the false investigation comes up. Now, Mr. Strickland goes
7 out to their house, takes a statement from Minor and
8 Minor , the mother. And he learns where these events
9 supposedly took place, when this event supposedly took
10 place. And you're going to hear, in testimony on the
11 witness stand, who all was in the house. Did Mr. Strickland
12 go out and interview any of those people? Did he go to the
13 scene? No. You're going to hear evidence that he didn't do
14 any of that. I don't know why. Maybe he just wanted to go
15 home. Don got a call, and this is where the false
16 confession comes in. Don got a phone call December 4th, and
17 he learned that somebody from the sheriff's office was
18 looking for him. So he went to the sheriff's office
19 himself. He went and volunteered himself. He gave up his
20 rights to talk to them. But they didn't want to listen. He
21 said nothing happened, but they didn't want to listen. He
22 told them I will take a lie detector test. He volunteered
23 that.

24 Don, you're going to hear, has a family. He's got a
25 home. He's got bills to pay. And by the time the

1 investigator wouldn't take no for an answer, and by the time
2 he's told that his bond is going to be jacked up if he
3 doesn't tell a story. He's desperate. He would've signed
4 anything to get out of there to take care of his family and
5 to get home. Don put his faith in another day, a day when
6 he would come before the jury to get a fair chance. Please
7 listen to all the testimony and be aware of the danger of
8 wrongfully convicting an innocent man.

9 THE COURT: Now, Forelady and ladies and gentleman of
10 the jury, we're going to take a 15 minute break. I've got
11 to deal with a couple of other matters unrelated to this
12 case. So we're going to take about a 15 minute break, and I
13 will instruct you as I will do throughout the course of this
14 trial not to begin your deliberations. Don't discuss any
15 issue or facts involved in this case. We'll start back in
16 about 15 to 20 minutes. Thank you.

17 (Whereupon, the jury exited the courtroom at 10:15
18 a.m.)

19 (Whereupon, the jury entered the courtroom at 10:43
20 a.m.)

21 THE COURT: Let the record reflect that the entire jury
22 is back in. Turn the record over to the State. You ready?

23 MR. SHEEK: The State's ready, Your Honor. The State
24 calls Minor to the stand.

25 Minor, being first duly sworn,

1 testified as follows:

2 THE COURT: Could you state your name, please, ma'am.

3 THE WITNESS: Minor

4 DIRECT EXAMINATION

5 By MR. SHEEK:

6 Q Min , you normally go by the name Minor ?

7 A Yes, sir.

8 Q Okay. You turned 19 ?

9 A Yes, sir.

10 Q Okay. As you talk to me I'll need you to always answer
11 with a verbal answer instead of nodding the head so that
12 this young lady can take it down. Okay?

13 A Okay.

14 Q And if you need to take a break you'll let us know?

15 A Yes, sir.

16 Q Okay. You live here in Greenwood, Minor ?

17 A Yes, sir.

18 Q You work?

19 A Yes, sir.

20 Q Okay. And when did you graduate from school?

21 A I got my GED year before last, 2011.

22 Q Okay. Now, in June of 2006, you correct me if I'm
23 wrong, you would have been 11 years old?

24 A Yes, sir.

25 Q Turned 12 in , correct?

- 1 A Yes, sir.
- 2 Q At that time, Minor , where were you living?
- 3 A I was staying in Connie Maxwell Children's Home and
- 4 with my sister and her husband.
- 5 Q Your mom had some issues and you had to go live
- 6 somewhere else?
- 7 A Yes, sir.
- 8 Q And so, you said you stayed at Connie Maxwell
- 9 Children's Home here in Greenwood?
- 10 A Yes, sir.
- 11 Q And then you said you also stayed some with your
- 12 sister?
- 13 A And her husband. Yes, sir.
- 14 Q And what was your sister's name?
- 15 A Shannon Oakley. Well, it was Shannon Cobb. It's
- 16 Shannon Oakley now.
- 17 Q And her husband at that time, what was his name?
- 18 A Brandon Oakley.
- 19 Q Are they still together?
- 20 A Yes, sir.
- 21 Q Okay. Brandon, did he have a step-father and a mother
- 22 that lived in town?
- 23 A Yes, sir.
- 24 Q Okay. And what was his mother and step-father's name?
- 25 A Cheryl and -- I don't know his real name. They always

1 called him Rooster.

2 Q Okay. And do you see the person that you knew as
3 Rooster sitting in the courtroom today?

4 A Yes, sir.

5 Q And can you tell me where he's sitting?

6 (Whereupon, Witness points at Defendant.)

7 Q Okay. And are you pointing to the man in the
8 suspenders and the flannel shirt sitting here beside this
9 young attorney?

10 A Yes, sir.

11 MR. SHEEK: Okay. And if the record can reflect, Your
12 Honor, that the Defendant has pointed to the -- I'm sorry,
13 that the witness has pointed to the Defendant.

14 THE COURT: The record so shall reflect that.

15 Q During this period of time, the summer of 2006, did you
16 ever have an occasion to actually go stay at the home of the
17 Defendant and his wife?

18 A Yes, sir.

19 Q Okay. Well, tell me about that. Why would you go over
20 there and stay sometimes?

21 A It was my sister's husband's family and they had me to
22 go over there during the summer.

23 Q Okay. And at any time would you also stay there and
24 spend the night?

25 A Yes, sir.

1 Q At some point in time, from the summer of 2006 did the
2 Defendant in this case, Mr. Bolt, the one you call Rooster,
3 did he ever begin to touch you in a way that made you feel
4 uncomfortable?

5 A Yes, sir.

6 Q Okay. Tell the jury about that.

7 A Different times, like when we'd go over there to swim
8 or I'd be sitting in the livingroom watching TV.

9 Q Take your time.

10 A He would just come in there and he would sit me on his
11 lap and he would rub on me and stuff.

12 Q And when you say he would rub on you, where would he
13 rub you?

14 A In my breasts.

15 Q Okay. And was this type of rubbing that you think may
16 have been accidental or inadvertent, or was -- what made you
17 think he was intentionally rubbing you on your breast?

18 A He would just sit me on his lap and -- I mean, it
19 couldn't have been an accident.

20 Q Was it a quick brush or would he rub for some extended
21 time?

22 A Yes, sir.

23 Q And in June of 2006 was there an occasion where
24 something more than just the rubbing on your breast
25 occurred?

1 A Yes, sir.

2 Q Okay. I know you don't like talking about this, but if
3 you would tell the jury what happened sometime around June
4 of '06.

5 A We had went and spent the night there --

6 THE COURT: Sit a little closer to the microphone,
7 please, if you can.

8 THE WITNESS: Yes, sir.

9 A Me and my little brother and my sister and her husband
10 went and stayed the night there. And that night, me and my
11 little brother and my -- my sister's husband's niece, E. ,
12 we were in the back bedroom sleeping. We were watching TV.
13 And after they had fell asleep I had stayed up watching TV
14 that night. And when I heard somebody walking in the room I
15 didn't know who it was, so I acted like I was sleeping so I
16 wouldn't get in trouble. And I didn't know who it was at
17 first when he came in there. And -- I'm sorry. I can't
18 breath.

19 Q At some point were you able to tell who it was?

20 A Yes, sir.

21 Q And who was it?

22 A It was Rooster.

23 Q Referring to the Defendant here?

24 A Yes, sir.

25 Q Okay. What happened?

1 A And he came in there and he waited a couple of minutes.
2 I don't know what he was doing. I just heard somebody come
3 in there. And then he stood there a couple of minutes and
4 then he pulled -- he took the blanket off of me and he
5 pulled down my pajama shorts and then he started rubbing on
6 me. And he went down to my vagina and he stuck his finger
7 in me.

8 Q And do you know how long this went on?

9 A I'm not sure.

10 Q Okay. After he did that what did he do?

11 A He stood there for a couple more minutes, or he pulled
12 the blanket back up on me. He walked into his room.

13 Q Did you say anything to him during this time?

14 A Huh-uh. I didn't even move.

15 Q And why was that?

16 A I was scared.

17 Q And you were 11 at this time?

18 A Yes, sir.

19 Q Did you immediately tell your mom or your sister or
20 your brother-in-law, anybody, what happened?

21 A No, sir. I didn't tell anybody. That night I had went
22 in -- my sister and her husband were -- they were sleeping,
23 and I woke them up and told them I wasn't feeling well, but
24 I never said anything else.

25 Q And why is that, Minor ? Why didn't you tell somebody

1 right then what was happening?

2 A I was just scared to say anything. I honestly don't
3 know why I didn't tell them but I know I was scared to tell
4 them.

5 Q At some point later did you tell what had happened?

6 A I told my mother.

7 Q And what was going on in your life at that time that
8 prompted you to tell?

9 A I was -- I lived with my mom and her boyfriend and I
10 was going to Ware Shoals and I had started thinking about it
11 more. I guess I realized what had happened then. And then
12 -- and I'd get so angry and start thinking about it. And I
13 didn't want to tell anyone because I started cutting myself.

14 Q You started cutting yourself? And did your mother talk
15 to you about the cutting?

16 A Yes, sir.

17 Q And is that when you told her what had happened with
18 the Defendant?

19 A Yes, sir.

20 Q And at some point did you go in and talk to the police?

21 A Yes, sir.

22 Q Did you tell them what had happened?

23 A Yes, sir.

24 Q And I believe you even gave them a written statement to
25 that effect?

1 A I did.

2 Q Minor , you understand your obligation to tell the truth
3 here today?

4 A Yes, sir.

5 Q And you and I have talked about this prior to coming
6 into the courtroom as we've gotten ready for this trial,
7 correct?

8 A Yes, sir.

9 Q What have I told you that I want you to tell me? What
10 have I told you?

11 A The truth.

12 Q And you understood that if it didn't happen you could -
13 -

14 MS. NELSON: Objection bolstering, Your Honor.

15 THE COURT: Okay. Rephrase, please.

16 Q Understanding your obligation to tell the truth, when
17 you say this man rubbed you on your breast intentionally,
18 did that happen?

19 A Yes, sir.

20 Q When you say that this man seated right here came into
21 your room, pulled your pants down and put his finger inside
22 your vagina, did that happen?

23 A Yes, sir.

24 Q Now, at the time this happened it happened at his
25 house?

1 A Yes, sir.

2 Q Was his house located here in Greenwood County?

3 A I don't think it was Greenwood County. It was out by
4 the lake.

5 Q Okay. So you're not sure which county it was in?

6 A No, sir. I haven't been there since and that was a
7 long time ago.

8 MR. SHEEK: That's fine. That's fine. Would you
9 please answer anything Defense counsel may have.

10 THE COURT: Cross-examination.

11 MS. NELSON: Thank you very much, Your Honor. May it
12 please the court.

13 CROSS-EXAMINATION

14 BY MS. NELSON:

15 Q Hi, Ms. Kracji.

16 A Hey.

17 Q What I'm going to try to do is talk to you some more
18 about the -- about what you say happened so that we can get
19 through that, and then I'd like to go back and talk to you
20 about some other things. Okay?

21 A Okay.

22 Q First of all, the Bolt's home, and you're not sure
23 exactly what county that's in, but the home that Don and his
24 wife and other -- their children live in is out by the lake;
25 is that right?

- 1 A Yes, ma'am.
- 2 Q It's a small house, isn't it?
- 3 A It was three bedrooms. It wasn't real small.
- 4 Q It's not a big house?
- 5 A Huh-uh.
- 6 Q And when you come in the front door you sort of go into
- 7 this small rectangular livingroom area?
- 8 A When you go in front it was a kitchen.
- 9 Q Isn't the kitchen off to the right over here?
- 10 A Well, the door that they use as the front door, when
- 11 you first walk in is the kitchen and then the livingroom.
- 12 Q Are you talking about the one off the deck?
- 13 A No. The door by the driveway that everybody would go
- 14 into.
- 15 Q Okay. So you're talking about like the side door into
- 16 the kitchen?
- 17 A Yeah. That's the one everybody used for the front
- 18 door.
- 19 Q Okay. There's another door that goes directly into the
- 20 livingroom, isn't there?
- 21 A Yes, ma'am.
- 22 Q On the very front of the house?
- 23 A Yes, ma'am.
- 24 Q Okay. That's the one I'm trying to --
- 25 A Okay.

- 1 Q That's the one I'm envisioning because that's the one I
2 went in. So you go in that front door and it comes right
3 into a small rectangular livingroom?
- 4 A Yes, ma'am.
- 5 Q And the kitchen is over here with a door out to the
6 side --
- 7 A Yes, ma'am.
- 8 Q -- by the driveway. When you walk through the
9 livingroom there's a little area back here on the right side
10 of the house where there are two bedrooms, right?
- 11 A Yes, ma'am.
- 12 Q With a bathroom in between?
- 13 A Yes, ma'am.
- 14 Q You -- when that -- when you spent the night that time
15 you didn't sleep in those two back bedrooms on the right,
16 did you?
- 17 A No, ma'am.
- 18 Q Okay. Those were Mr. Bolt's sons' rooms --
- 19 A Yes.
- 20 Q -- A. and C. ?
- 21 A Yes, ma'am. One of those rooms is where my sister and
22 her husband were.
- 23 Q Okay. The room you were in was back on this left side
24 of the house, right?
- 25 A Yes, ma'am.

1 Q And when you go through the livingroom and -- I'm sorry
2 I don't have a diagram or something to make this easier.

3 But you go through the livingroom toward this side of the
4 house and you go into Don and Cheryl's bedroom, right?

5 A Yes, ma'am.

6 Q And then there's a door from that bedroom that goes
7 into a little backroom that used to be a screened in porch?

8 A Yes, ma'am.

9 Q When you were there that had been closed in to a
10 regular little room, right?

11 A Yes, ma'am.

12 Q And that's the room where you and the kids were
13 sleeping?

14 A Yes, ma'am.

15 Q Now, the only way out of that room is to go through Don
16 and Cheryl's bedroom; is that right?

17 A Well, there's another door that leads outside. But
18 yes, ma'am.

19 Q Right. The only way back into the house --

20 A Yes, ma'am.

21 Q -- is through their bedroom? And then there's a door
22 in that room that used to be a screened in porch that just
23 goes out to the back?

24 A Yes, ma'am.

25 Q And then that was back where they used to have the --

1 the above ground pool --

2 A Yes, ma'am.

3 Q -- that you'd swim in. And it's your testimony that
4 after this happened around June 1st of 2006 that you were
5 never back there at that house?

6 A I went there occasionally. I tried not to, because I
7 hadn't told anyone that, so they'd still make me go with
8 them sometimes. But every time they'd go over there I tried
9 to go somewhere else.

10 Q Didn't you even go over there and go swimming with your
11 sister Christy after Don was arrested for this?

12 A No, ma'am.

13 Q That's -- you don't --

14 A After I told my mother, I never went back over there.

15 Q All right. And speaking of your sister, Christy, let
16 me just go ahead and ask you about your family members.

17 You've got -- your mother is also -- your name is Tammy
18 Minor . Your mother's name is Tammy Denise?

19 A Yes, ma'am.

20 Q Does she -- you go by Minor and she goes by Tammy?

21 A Yes, ma'am.

22 Q And then you have an older sister, Shannon, who Mr.
23 Sheek mentioned, right?

24 A Yes, ma'am.

25 Q How old is Shannon now? In her late 20s?

1 A Yes, ma'am.

2 Q And then you have a sister who's a year older named
3 Christy?

4 A Yes, ma'am.

5 Q And Christy -- Christy and Shannon would go with you
6 when you went to Mr. Bolt's house, right?

7 A Yes, ma'am.

8 Q And then you have a younger brother named M. who
9 is four years younger than you?

10 A Yes, ma'am.

11 Q And M. would go, too?

12 A Yes, ma'am.

13 Q Now, you've -- you testified today that you had on
14 pajama shorts; is that right?

15 A I had pajamas on. I'm pretty sure they were shorts
16 because that's what I would wear and sleep in because it was
17 summertime. But I'm not exactly sure if I had on pajama
18 pants or pajama shorts.

19 Q Okay. Well, when you talked to the police you just
20 described them as shorts, didn't you?

21 A Yes, ma'am.

22 Q You didn't call them pajamas at all; is that right?

23 A Yes, ma'am.

24 Q And you said that Don came into the room -- when you
25 talked to the police back in 2008 you said that he was able

1 to pull down your shorts and then he was able to pull down
2 your panties?

3 A Yes, ma'am.

4 Q And at some point you told -- let me check and see. At
5 some point you told someone during the course of this
6 investigation that he pulled them back up before he left the
7 room, right?

8 A Yes, ma'am.

9 Q And you also testified that you -- from the time you
10 heard somebody coming in you pretended to be asleep?

11 A Yes, ma'am.

12 Q And you -- throughout this entire thing you continued
13 to pretend to be asleep?

14 A Yes, ma'am. I didn't move.

15 Q You didn't move at all?

16 A No, ma'am.

17 Q Were you laying on your back, or your side, or your
18 stomach?

19 A I was laying on my back.

20 Q So you were able to not move the whole time he was
21 taking your clothes off?

22 A Yes, ma'am.

23 Q And you were able to not move while he penetrated your
24 vagina?

25 A (No Verbal Response.)

1 Q Okay. And you didn't open your eyes or ever indicate
2 you were awake in any way.

3 A I opened my eyes at one point before that part happened
4 to see who it was.

5 Q Did you ever tell anybody that before today, that you
6 opened your eyes to see who it was?

7 A Yes, ma'am. Whenever I talked to my mother and
8 everybody about it I told them exactly word for word what
9 happened.

10 Q Did you tell Investigator Brandon Strickland that you
11 opened your eyes?

12 A I'm not sure. That was years ago when I made that
13 statement and I don't remember.

14 Q Well, you just told me you remember telling other
15 people.

16 A Yes, ma'am.

17 Q Do you remember the statement you wrote for Mr.
18 Strickland --

19 A Yes, ma'am.

20 Q -- about what happened? Did you ever say in that
21 statement that you opened your eyes?

22 A I'm not sure. I don't believe I put that in there.

23 MR. SHEEK: I would ask that you give her a copy of her
24 statement.

25 THE COURT: Okay.

1 MS. NELSON: Yes, sir.

2 Q If I hand you that statement, as Mr. Sheek has just
3 suggested, would that help refresh your memory?

4 A Yes, ma'am.

5 MS. NELSON: If I could have that marked for just
6 identification, please.

7 (Whereupon, witness's statement was marked Defendant's
8 Exhibit 4 for identification.)

9 MS. NELSON: May I approach, Your Honor?

10 THE COURT: Certainly.

11 Q Min I'd like to show you what's been marked as
12 Defendant's Exhibit No. 4 for identification. Do you
13 recognize that as the written statement that you gave to Mr.
14 Strickland?

15 A Yes, ma'am.

16 Q Can you take a look at that and let me know if it says
17 that you opened your eyes?

18 A Yes, ma'am.

19 Q Thank you, ma'am. Just let me know when you're ready.

20 A No, ma'am. I did not say that.

21 Q Thank you, ma'am. And I don't think you testified to
22 this. But when you talked to law enforcement you told them
23 that your brother, M. L, was also in the room?

24 A Yes, ma'am.

25 Q And you told them that your -- I think you describe her

- 1 as your niece, E. , was in the room?
- 2 A Yes.
- 3 Q And E. is also younger than you, right?
- 4 A Yes, ma'am.
- 5 Q Is she -- do you know if she's younger or older than
- 6 M. ?
- 7 A I believe they're about the same age.
- 8 Q About the --
- 9 A M. might be a little older.
- 10 Q And E. is Don's step-daughter's child, right?
- 11 A Yes, ma'am.
- 12 Q E. is Don's granddaughter? And there were --
- 13 besides you and M. and E. there were a lot of other
- 14 people there that night, weren't there?
- 15 A Yes, ma'am.
- 16 Q Don and Cheryl were there?
- 17 A I know he was. I'm not sure. I don't remember who all
- 18 was there that night.
- 19 Q You don't remember Cheryl being there?
- 20 A No, ma'am.
- 21 Q Do you remember Don's sons being there; A. and C. ?
- 22 A I'm not sure. It was a while back. I know I was there
- 23 with my sister and her husband.
- 24 Q Shannon and Brandon were there?
- 25 A Yes, ma'am.

- 1 Q Because you came with them, right?
- 2 A Yes, ma'am.
- 3 Q So you remember them. You remember M. and E.
- 4 Christy was there?
- 5 A I'm not sure if --
- 6 Q You're not sure.
- 7 A -- she was there that night or not.
- 8 Q Okay. So you're sure about some people and not others?
- 9 A Yes, ma'am.
- 10 Q And what you said in your statement was that you and
- 11 M. and E. were sleeping in a bed in that back room?
- 12 A Yes, ma'am.
- 13 Q And that you say that somebody came in and you believe
- 14 it was Don and sat down on the bed next to you in your
- 15 statement?
- 16 A Yes, ma'am.
- 17 Q Okay. And you also said in your statement that you had
- 18 been watching TV.
- 19 A Yes, ma'am.
- 20 Q In that back room?
- 21 A Yes, ma'am.
- 22 Q M. or E. ever say anything to you about Don
- 23 coming in the room that night?
- 24 A No, ma'am. They were asleep.
- 25 Q You believe they were asleep?

1 A Yes, ma'am.

2 Q And I'm not sure if this was your testimony or in your
3 statement, but you said that after this is supposed to have
4 happened you went to the room where Shannon and Brandon were
5 sleeping and you told them you didn't feel good?

6 A Yes, ma'am.

7 Q Did they just tell you to go back to bed?

8 A Yes, ma'am.

9 Q Okay. And you went back to bed back in that room?

10 A No, ma'am.

11 Q Where did you go to bed?

12 A I sat there beside them all night.

13 Q You sat -- you stayed in their room? Did you ever tell
14 anybody that before today that you stayed there?

15 A My mother. And I talked to my sister about it.

16 Q Which one?

17 A Shannon.

18 Q Well, Shannon would have -- Shannon was in the room,
19 too, right, and she would have --

20 A She was in with her husband.

21 Q She would have known you were in there if you stayed
22 there?

23 A Yes, ma'am.

24 Q Okay. Talking about -- going to the time that you
25 first told somebody that this is supposed to have happened,

1 the only -- the reason you told somebody about it was
2 because somebody at your school had noticed the marks on
3 your arm; is that right?

4 A Yes, ma'am. It was the school counselor.

5 Q And did the school -- did he notice it or did somebody
6 else tell him about it, or do you know?

7 A He noticed it.

8 Q All right. And you had, I believe, cut yourself with a
9 thumbtack?

10 A Yes, ma'am.

11 Q And you had -- you had, I don't know -- I don't know
12 how many marks. Less than five marks on your arm here where
13 you did that?

14 A Yes, ma'am.

15 Q So he noticed that and he told your mother?

16 A Yes, ma'am.

17 Q And that was around -- you say this happened around
18 June 1st of 2006, the incident with Don?

19 A Yes, ma'am.

20 Q And the cutting yourself with the tacks happened in
21 around September of 2008; is that right?

22 A Yes, ma'am.

23 Q And when the counselor told your mother, the counselor
24 also recommended that you get some services from the Beckman
25 Center. Do you remember that?

1 A No, ma'am. I wasn't -- I didn't -- I wasn't there for
2 their conversation. She just told me that he had called
3 her.

4 Q Do you remember ending up talking to some people from
5 the Beckman Center?

6 A No, ma'am.

7 Q You don't remember a lady named Kasha Arnold that you
8 talked to in 2008?

9 A She was at the school. I didn't know she was from the
10 Beckman Center. She came to the school to talk to me.

11 Q And she did family counseling with you there at the
12 school?

13 A Yes, ma'am. I've seen her twice, I think.

14 Q And so, you don't really -- you didn't really know who
15 recommended that counseling, I guess?

16 A No, ma'am.

17 Q Okay. She saw you -- you saw her twice at the school;
18 is that right?

19 A Yes, ma'am.

20 Q And your mother participated in one of those meetings?

21 A Yes, ma'am.

22 Q And then you -- do you remember talking to a lady named
23 Martha Moore at Beckman?

24 A No, ma'am.

25 Q You don't remember going to see her at least five times

1 through the course of late 2008 until the very beginning of
2 2009?

3 A No, ma'am. The only people I remember talking to is
4 the one you just named and the people from the Child's
5 Place.

6 Q So you don't remember having conversations with Ms.
7 Martha Moore about how you wanted to get out of the house
8 you were living in with your mother and Greg Bond?

9 A No, ma'am.

10 Q And you don't remember that you only went to see her
11 about five times and your mother quit taking you?

12 A I don't remember seeing her.

13 Q You don't remember any of that?

14 A No, ma'am.

15 Q You've talked about -- I just want to talk to you some
16 about your background. Your -- and I -- you know, I know a
17 lot of this isn't pleasant, but because of the nature of
18 these charges I've got to ask you about these things.

19 Your mother, Tammy, has had a drinking problem for as
20 long as you can remember, hasn't she?

21 MR. SHEEK: Your Honor, I'm going to pose an objection.
22 We have a matter for the court.

23 THE COURT: Okay. Can we deal with it sidebar or do
24 you want the jury excused?

25 MR. SHEEK: I'll be happy to try a sidebar, Judge.

1 THE COURT: All right.

2 (Whereupon, a sidebar was held.)

3 THE COURT: Minor , just have a seat back there for just
4 a moment.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 THE COURT: I understand that bathroom facilities are
8 needed, so let's take a -- we'll take a brief -- about a
9 five minute break and then we'll start back up. Okay?

10 Again, I remind everybody on the jury not to discuss
11 this case, any issues, anything related to this case among
12 yourselves. All right. Short break.

13 (Whereupon, the jury exited the courtroom at 11:15
14 a.m.)

15 THE COURT: Solicitor, you want to go ahead and just
16 put your objection on the record and then I can explain on
17 the record what we discussed at sidebar?

18 MR. SHEEK: Yes, sir. My objection was the Defense, as
19 I anticipate, because I don't know for sure where they're
20 going, is going to go into specific incidences of alleged
21 bad conduct on the part of the victim's mother. And I
22 understand that they're going to use this as a basis for the
23 reason the victim made up a story to get away from this
24 harmful environment. My concern is going into the specific
25 incidences of conduct I think is irrelevant to the issue at

1 hand. And that was the basis for my objection.

2 THE COURT: Right. And basically what we discussed at
3 sidebar is at the present time I'll allow Defense to explore
4 that. Number one, it is cross-examination. And number two,
5 it was at least the court's opinion that the State's
6 position would be that any issues such as the cutting and
7 maybe other issues that this young lady experienced was a
8 result of the allegations made by her and the Defense is
9 attempting to show that possibly her issues are a result of
10 something else.

11 MS. NELSON: Yes, Your Honor. That's exactly it. And
12 I think for -- we're not attempting to show her bad
13 character certainly. Not Minor 's bad character. And it's
14 not being offered for the purposes of showing bad character.
15 It's being offered for the purposes of a defense and an
16 alternate explanation for why this accusation could have
17 been made.

18 THE COURT: Right. And so, I'm allowing it at this
19 point. Certainly, Solicitor, you have every right, which
20 I'm sure that you'll exercise if you feel like they're
21 getting too far afield with it and then I'll deal with it at
22 that time.

23 MR. SHEEK: Yes, sir.

24 THE COURT: Okay. Well, everybody be at ease for just
25 a moment.

1 (Whereupon, the court was in recess at 11:24 a.m.)

2 (Whereupon, the jury entered the courtroom at 11:29
3 a.m.)

4 THE COURT: Let the record reflect the entire jury is
5 back. Ms. Nelson, resume your cross.

6 MS. NELSON: Thank you, Your Honor. May it please the
7 court.

8 CROSS-EXAMINATION RESUMED

9 BY MS. NELSON:

10 Q Min , before I go back to what I was going to
11 talk about before we broke, you testified earlier -- going
12 back to the night that you say this happened. You testified
13 earlier that you never moved after Don came into the room?

14 A Yes, ma'am. Not that I remember.

15 Q You just got a chance to look at your statement. Do
16 you remember in the statement where you said, "I got scared
17 so I acted like I was still sleeping and I just turned over
18 the other way."?

19 A Yes, ma'am. That was in my statement. I don't
20 remember doing that. I just know I was acting like I was
21 sleeping and I tried not to move.

22 Q You remember writing the statement though --

23 A Yes, ma'am.

24 Q -- where you said you turned over?

25 A Yes, ma'am.

1 Q So do you know today which it was, whether you stayed
2 still or whether you turned over?

3 A I'm not sure. I know I tried to stay still. I acted
4 like I was sleeping.

5 Q Okay. Is your microphone on?

6 A I'm not sure.

7 MS. NELSON: Your Honor, Mr. Goranson just mentioned to
8 me he thought maybe her microphone might be off.

9 THE COURT: There we go. Thank you.

10 MS. NELSON: Thank you.

11 Q So going back again to -- I just need to ask you some
12 questions about growing up and your background and some --
13 some things with you -- your relationship with your mother.

14 A Okay.

15 Q So I think the question that I asked before we broke
16 was that you -- your mother has had a problem with drinking
17 -- with alcoholism for as long as you can remember; isn't
18 that right?

19 A Yes, ma'am.

20 Q Has she also had a prescription drug problem for as
21 long as you can remember?

22 A Yes, ma'am.

23 Q She's been -- throughout your life she's been in and
24 out of rehab and treatment programs for those problems,
25 hasn't she?

1 A Yes, ma'am.

2 Q And during the times that she would go and do that she
3 wouldn't be able to take care of you and your brother and
4 sisters?

5 A No, ma'am.

6 Q As far as her relationship -- going back to her
7 relationship with your father. Her relationships with men
8 have always been problematic and abusive, haven't they?

9 A Yes, ma'am.

10 Q She and your father broke up when you were very young
11 because the relationship was violent?

12 A Yes, ma'am.

13 Q I don't know if you'll remember this, but do you recall
14 DSS becoming involved in your home when you were about five
15 years old?

16 A No, ma'am.

17 Q You don't remember that? You don't remember a time
18 when you went to live with your father, Henry, and your
19 grandmother, Marie?

20 A No, ma'am. I don't remember.

21 Q All right. Do you -- now, you testified that you were
22 at Connie Maxwell when you say this happened at Mr. Bolt's
23 house. That you were actually -- obviously you weren't at
24 both places at once. But you were living at Connie Maxwell
25 during that time period, right?

1 A Yes, ma'am.

2 Q You were there at Connie Maxwell from November of 2005
3 until May of 2007, right?

4 A Yes, ma'am.

5 Q And you went in to Connie Maxwell because your mother
6 had given temporary custody to your sister, Shannon, earlier
7 --

8 A Yes, ma'am.

9 Q -- in 2005?

10 A Yes, ma'am.

11 Q And what happened? Did Shannon have trouble taking
12 care of all of you all?

13 A Yes. Me and my little brother moved in with my sister
14 and she couldn't afford to take care of us no more, so we
15 went to Connie Maxwell.

16 Q But she was really still young herself at that time,
17 wasn't she?

18 A Yes, ma'am.

19 Q So she asked for you and M. and Christy all to go
20 live at Connie Maxwell so that you'd all be in the same
21 place together basically?

22 A Yes, ma'am.

23 Q Before that, because it was hard for Shannon to take
24 care of you and your mother couldn't take care of you, the
25 three of you had kind of been split up between Shannon and

1 your grandmother, Lena Scott, and your aunt Angie; is that
2 right?

3 A Yes, ma'am.

4 Q So being at Connie Maxwell at least let you all all be
5 in the same place?

6 A Yes, ma'am.

7 Q And you lived there continuously during that whole time
8 period, didn't you?

9 A Yes, ma'am.

10 Q You might visit your family, but you lived at Connie
11 Maxwell?

12 A Yes, ma'am. Every weekend I'd go home. Go stay with
13 family.

14 Q You're sure it was every weekend?

15 A It was every weekend or every other weekend.

16 Q And that was mostly Shannon that you were staying with?

17 A Yes, ma'am.

18 Q If you had your preference, Shannon would have been who
19 you would have been living with; is that right?

20 A Yes, ma'am.

21 Q And while you were at Connie Maxwell from 2005 to 2007
22 they sent you to see a counselor while you were -- while you
23 were living there, didn't they?

24 A Yes, ma'am.

25 Q And --

1 MS. NELSON: May I have just a moment, Your Honor.

2 THE COURT: Sure.

3 Q And you saw that counselor from -- that was at Piedmont
4 Health Group Counseling?

5 A Yes, ma'am.

6 Q And you saw her from March of 2006 all the way through
7 May of 2007, right, before you left Connie Maxwell; is that
8 right?

9 A Yes, ma'am.

10 Q That lady's name was Jennifer Duffy who you saw?

11 A Yes, ma'am.

12 Q And you talked to her pretty frequently, at least once
13 a month while you were at Connie Maxwell, right?

14 A Yes, ma'am.

15 Q Didn't have to worry about anybody taking you to the
16 appointments because they took care of that?

17 A Yes, ma'am.

18 Q And during all that time, from March of 2006 to May of
19 2007, you didn't ever tell Ms. Duffy anything about this
20 supposed incident with Mr. Bolt, did you?

21 A No, ma'am.

22 Q And again, you met with her at least once a month?

23 A Yes, ma'am.

24 Q And this was during the time period when you say this
25 happened?

1 A Yes, ma'am.

2 Q And going back to your testimony again about when this
3 was. You say that the night he came in the room you were
4 sleeping and that was somewhere around June 1st of 2006?

5 A Yes, ma'am.

6 Q And you mention these other incidents where he would
7 have you on his lap and be touching you?

8 A Yes, ma'am.

9 Q All of those incidents happened before that date,
10 right?

11 A Yes, ma'am.

12 Q All of them prior to June 1st of 2006?

13 A Yes, ma'am.

14 Q Nothing after?

15 A No, ma'am.

16 Q And you said you went -- you might have gone there
17 occasionally after that June 1st incident but there -- there
18 was never another time that you say he inappropriately
19 touched you; is that correct?

20 A Yes, ma'am.

21 Q Okay. I'll try to quit having to ask you about that.
22 I just keep thinking of other things. Now, after you got
23 out of your -- your mother had gone through rehab when you
24 were in Connie Maxwell and then lived at a shelter for a
25 while?

- 1 A Yes, ma'am.
- 2 Q And then at some point during that time, she met Greg
- 3 Bond?
- 4 A Yes, ma'am.
- 5 Q And she started living with him in Hodges?
- 6 A Yes, ma'am.
- 7 Q So when you got out of Connie Maxwell that was the
- 8 house you went to with your mother and Greg Bond?
- 9 A Yes, ma'am.
- 10 Q And your brother, M. went along with you?
- 11 A Yes, ma'am.
- 12 Q Christy decided to stay at Connie Maxwell a little bit
- 13 longer. Do you remember that?
- 14 A Yes, ma'am.
- 15 Q Now, when you went to the house where your mother and
- 16 Greg were living in Hodges at that time who else was there
- 17 besides your mother, Greg, you, and M. ? Did Greg's
- 18 children come and visit, too?
- 19 A Occasionally. They had moved in at one point, but then
- 20 his ex-wife got them back. They moved back and forth, but
- 21 they'd visit every now and then.
- 22 Q And you agree with me that the relationship between
- 23 your mother and Greg was full of a lot of fighting?
- 24 A Yes, ma'am.
- 25 Q And they had arguments to the point sometimes where the

1 police would have to be called?

2 A Yes, ma'am.

3 Q And you don't -- again, I know I've asked you this
4 before. But you don't remember going to talk to Marie Moore
5 at Beckman during this time that you were living with your
6 mother and Greg?

7 A No, ma'am. The only places I remember going for
8 counseling was at Connie Maxwell and I went to the Piedmont
9 Health Group and then Child's Place.

10 Q If I showed you the records from Beckman do you think
11 it might refresh your memory?

12 A It might. I'm not sure.

13 MS. NELSON: It will be just a moment, Your Honor.

14 THE COURT: Certainly.

15 MS. NELSON: I'm sorry. I called her Marie, but I
16 believe her name is actually Martha.

17 THE COURT: I thought that's what you said the first
18 time.

19 MS. NELSON: That's -- it's Martha. If I could have
20 that marked for identification, please, ma'am.

21 (Whereupon, counseling record was marked as Defendant's
22 Exhibit 5 for identification.)

23 MS. NELSON: May I approach, Your Honor?

24 THE COURT: Certainly.

25 Q I'd like to show you what's been marked as Defendant's

1 Exhibit 5 for identification. Would you just take a look at
2 that and let me know when you're finished.

3 A Yes, ma'am.

4 MS. NELSON: May I approach?

5 THE COURT: Sure.

6 Q And that's a note about a meeting with you that Ms.
7 Moore had --

8 A Yes, ma'am.

9 Q -- is that right? And that was -- did you see the date
10 of October 31, 2008 on there?

11 A Yes, ma'am.

12 Q Do you think maybe this is where -- when you're
13 thinking about going to the Child's Place for counseling?

14 A Yes, ma'am. It might have been.

15 Q Okay. And is it correct that you went to see somebody
16 there about five times?

17 A Yes, ma'am.

18 Q And your -- the things that you talked to them about
19 when you went there for that treatment, you wanted to stop
20 this cutting behavior, right?

21 A Yes, ma'am.

22 Q And you did do that?

23 A Yes, ma'am.

24 Q And you wanted to get out of the house that you were
25 living in with your mother and Greg, because it was

1 difficult to live there?

2 A Yes, ma'am.

3 Q Now, it was around, again, the end of September when
4 your guidance counselor discovered these marks and told your
5 mother about them and this counseling started?

6 A Yes, ma'am.

7 Q And you told the police about it when your mother took
8 you to the sheriff's department on October 17th, right?

9 A Yes, ma'am.

10 Q So by that time it was over two years since you say
11 something happened?

12 A Yes, ma'am.

13 Q And I'm sorry to be this personal. At the time that
14 you went in to -- I know no woman likes to be asked about
15 her weight, and I don't either. But at the time you went
16 into Connie Maxwell Children's Home would you agree with me
17 that you weighed maybe a little over 100 pounds?

18 A I'm not sure. I don't remember.

19 Q When you were 14 and you told people about this alleged
20 incident did you weigh around -- between 145, 155 around
21 that time, when you were 14?

22 A Yes, ma'am. I guess so.

23 Q Were you present in December of 2008 when Shannon had
24 to call the police about your mother being intoxicated and
25 out of control at Melinda -

1 MR. SHEEK: Objection. Assumes facts not in evidence,
2 Your Honor.

3 THE COURT: I'll overrule it. Repeat the question
4 again.

5 Q Were you there in December of 2008 when your sister had
6 to call the police about your mother being intoxicated and
7 not wanting -- and argumentative with people at Melinda
8 Hieg's house in Hodges?

9 A Yes, ma'am.

10 Q You were present that day?

11 A Yes, ma'am.

12 Q You were there in May of 2009 when Greg called the
13 police because he and your mother had been fighting and it
14 got physical?

15 A Most likely. I don't remember.

16 Q You don't remember that one? Do you remember the time
17 in December of 2009 when the police had to be called and an
18 ambulance came for Greg because your mother had kicked a
19 door down and it fell on him?

20 A Yes, ma'am.

21 Q Remember talking to the police about what happened?

22 A Yes, ma'am.

23 Q And those problems sort of continued the whole time you
24 lived with your mother and Greg, didn't they?

25 A It was occasionally. She got stressed mainly around

1 Christmas time or her birthday when she'd get real stressed
2 out.

3 Q When you were in tenth grade, this would have been in
4 2010 and 2011, there came a point during that school year
5 when you went to live with your grandmother, Lena, right?

6 A Yes, ma'am.

7 Q And that was because, again, your mother was having
8 trouble with transportation and money and giving you the
9 things that you needed to have?

10 A Yes, ma'am.

11 Q So you went to stay with your grandmother and you
12 transferred to Emerald?

13 A Yes, ma'am.

14 Q Now, for your eleventh grade year, which would have
15 been 2011 and '12, were you kind of back and forth between
16 your mother's and your grandmother's?

17 A Yes, ma'am.

18 Q And you eventually got back to your grandmother's
19 around the springtime of 2012, and that was when you decided
20 to leave school and pursue a GED?

21 A Yes, ma'am.

22 MR. SHEEK: Your Honor, at this point I'm going to
23 object. We're talking about six years after the alleged
24 incident.

25 THE COURT: Yeah. I'm trying to figure out the

1 relevancy of this, because I don't know if the counseling
2 continued or whatever during this point in time. So we may
3 have gone a little far afield with that.

4 MS. NELSON: I understand, Your Honor. I think I was
5 pretty much up to date anyway, so...

6 THE COURT: Okay. All right.

7 MS. NELSON: May I have just a moment, Your Honor?

8 THE COURT: Sure.

9 Q Minor , I think I'm just about finished. Just to recap.
10 You say this happened -- the incident where he came into the
11 room and pulled your pajama shorts down around June of 2006.
12 The other incidents, the touching incidents, are all -- all
13 happened before that date --

14 A Yes, ma'am.

15 Q -- is that right?

16 A Yes, ma'am.

17 Q And I guess it's fair to say that aside from that
18 incident you had a lot of other things going on in your life
19 that you had to deal with; isn't that true?

20 A Yes, ma'am.

21 MS. NELSON: Thank you very much.

22 THE COURT: Solicitor, any redirect from this witness?

23 MR. SHEEK: No, sir.

24 THE COURT: Okay. You can step down, ma'am.

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 THE COURT: Solicitor, do you anticipate that there may
3 be a reply from this witness? If so, then --

4 MR. SHEEK: There might be, Your Honor.

5 THE COURT: Okay. All right. So if you'll just tell
6 them they'll need to --

7 MR. SHEEK: As a victim I think she gets to --

8 THE COURT: Hadn't she been sequestered?

9 MR. SHEEK: Well, I think under the Victim's Rights
10 Act, Your Honor, the victim and chief investigating officer
11 get to stay.

12 THE COURT: And that's fine. I just thought she
13 initially was sequestered.

14 MS. NELSON: I had -- that's my understanding of the
15 requirement as well, Your Honor --

16 THE COURT: Right.

17 MS. NELSON: -- that Min as the alleged victim -
18 -

19 THE COURT: Right.

20 MS. NELSON: -- does get to be in the courtroom.

21 THE COURT: Right. And that's my understanding, too.
22 I just assumed that for whatever reason she was being
23 sequestered along with the other witnesses, and so --

24 MS. NELSON: I think she may have just chosen not to be
25 in here at that time.

1 MR. SHEEK: She chose to step out while we talked about
2 some of the allegations.

3 THE COURT: Got you. Okay. She can remain then.

4 MR. MORROW: Thank you, Your Honor. I'm going to go
5 get our next witness.

6 THE COURT: Okay.

7 (Off the Record)

8 MR. MORROW: Your Honor, the State calls Daryl Owen.

9 Daryl OWEN, being first duly sworn,
10 testified as follows:

11 THE COURT: Could you state your name, please, sir.

12 THE WITNESS: Daryl Owen.

13 THE COURT: You may proceed, sir.

14 DIRECT EXAMINATION

15 BY MR. MORROW:

16 Q Mr. Owen, what is your occupation?

17 A I'm a polygraph examiner.

18 Q Okay. And are you employed by someone or --

19 A I'm self-employed.

20 Q Self-employed. And do you -- how long have you been a
21 polygraph examiner?

22 A Thirty-nine years.

23 Q Okay. And for that entire time have you been self-
24 employed or --

25 A I have, yes.

1 Q Okay. What was your job prior to being self-employed
2 and being a --

3 A I was a state trooper for three and a half years, and
4 before that I worked for NSA in Maryland for two and a half
5 years.

6 Q How many polygraph tests have you administered?

7 A Thirty-five to 40,000 probably. Somewhere in that
8 neighborhood. It might be a little more or a little less.

9 Q Could you explain the process of administering a
10 polygraph test?

11 A A polygraph is based on physiological reactions in the
12 body when a stimulus is applied, being a question. In other
13 words, when a question is asked and a person understands
14 that question then physically their body responds to that.
15 The heart, sweating and respiration are being monitored at
16 the point where the person answers the question. Simply
17 put, if they understand the question then physically they're
18 either going to react to the question or not react to it.

19 Q Okay. Well, what is the goal of a -- what is the end
20 result of a polygraph examination?

21 A The end result of a polygraph examination is to
22 determine if there is sufficient physiological reaction to
23 the questions to render an opinion.

24 Q Did you become involved in a CSC with a minor case, a
25 lewd act, in December of 2008?

1 A I did.

2 Q Okay. How did you become involved?

3 A I was called to Greenwood by the sheriff's office to
4 conduct an investigation -- or a polygraph investigation on
5 a Mr. William Bolt.

6 Q Okay. And did you administer a polygraph test on Mr.
7 William Bolt?

8 A I did.

9 Q And that took place on December --

10 A December the 5th of '08.

11 Q Okay. Is William Bolt in the courtroom today?

12 A He is.

13 Q Could you identify him?

14 A The gentleman sitting over there with the mustache.

15 MR. MORROW: Your Honor, I'd like the record to reflect
16 that he identified the Defendant.

17 THE COURT: So noted.

18 Q Could you describe your interactions with Mr. Bolt?

19 A The first thing that I do when I get there is go into
20 the interview room with the investigator and he briefs me on
21 what the case is about. I look over the notes and I bring
22 the subject in, being Mr. Bolt in this case, and get
23 biographical information from him; his education, his
24 address and so forth. A very casual conversations with him
25 at that point. Then I ask him to tell me what he is aware

1 of as far as the charges are concerned. At that point then
2 he has an opportunity to discuss all those details or say I
3 don't know anything about it. After that's done then I go
4 into a question formulation phase where I write out the
5 questions that I'm going to actually ask on the polygraph
6 test and those are reviewed with him in detail before the
7 actual test ever starts.

8 Then once I start the test I go through all those
9 questions with him on the actual test. I'll have a resting
10 period where he's -- where I stop and let him relax for
11 three, four, five minutes. I'll do the same questions
12 again, and then repeat the same series the third time.

13 Q And that's the procedure that you followed with Mr.
14 Bolt?

15 A That is correct.

16 Q And what were the results of Mr. Bolt's polygraph
17 examination?

18 A The results showed a clear deception on the three
19 relevant questions regarding the incident that he is being
20 tried for.

21 Q Okay. And when you say the results showed indication
22 of deception, what do you mean? What is -- how do you
23 determine that?

24 A In other words, the criteria set forth with a polygraph
25 examination is there's three possibilities for the outcome

1 of the polygraph test. It's either inclusive, meaning
2 there's not enough physiological reactions to render a
3 conclusive opinion, or there's enough indication to show
4 that there's no deception indicating, or the third one is
5 there is conclusive responses to show deception.

6 Q After you administered the polygraph test and you
7 determine that his responses indicate deception, what did
8 you do next?

9 A At that point, after I made that determination, I
10 confront Mr. Bolt with the results of the polygraph test.
11 In this case I had scored the test at a minus 16. Now, a
12 minus 16 is almost -- well, it's actually three times the
13 necessary amount to show conclusive deception.

14 Anything that's minus five or greater is considered to
15 be deception. Anything minus -- plus four -- or plus five,
16 excuse me. Plus five or greater is conclusively no
17 deception. In between those two figures, plus and minus
18 five, is called inconclusive. When it's plus five or minus
19 five or greater, then that's conclusive deception. So he
20 scored minus 16.

21 He was not advised it was minus 16. He was just told
22 that he didn't pass the test. At that point then I
23 confronted him with the results of the test and asked him to
24 explain why he had failed the test. Then he told me, in his
25 own words, that on the night in question that he had been

1 drinking and had consumed approximately 12 beers and was
2 pretty drunk. He stated that Minor the girl in question,
3 came in and sat on his lap and he experienced an erection.
4 He also admitted that he put his arms around her upper body
5 and squeezed her breast. He stated that she didn't move
6 away from him but a short time later she got up and went to
7 bed. He stated that he knows that he got up and used the
8 restroom several times during the night and then went into
9 the room -- that he went into the room where she was and
10 covered the kids up with a blanket.

11 He stated that he could possibly have touched her on
12 the vagina during that time period, but denied that he put
13 his finger in her vagina.

14 Q So after you informed him that he failed the polygraph
15 test the Defendant admitted that he had the victim, Ms.
16 Minor , sit in his lap and that he fondled her? That he
17 massaged her breast?

18 A Correct.

19 Q And following that he admitted also to you that he
20 entered the room --

21 A During the night.

22 Q -- during the night?

23 A That's correct.

24 Q And further he admitted that he entered the room and
25 was going to cover them up with a blanket and could have

1 possibly touched the victim's --

2 A That is correct.

3 Q -- or Min vagina?

4 A That's correct.

5 MR. MORROW: Beg the court's indulgence.

6 A And those admissions could have explained why he had
7 actually failed the test, because he did not tell me those
8 until after the test had been completed.

9 MR. MORROW: Beg the court's indulgence.

10 THE COURT: Certainly.

11 MR. MORROW: No further questions for this witness.
12 Please answer any questions Defense counsel may have for
13 you.

14 THE COURT: Cross examination.

15 MS. NELSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. NELSON:

18 Q Hi, Mr. Owen. The reason that you were here in
19 Greenwood on December 5th is because Investigator Brandon
20 Strickland with the sheriff's department called you to come,
21 right?

22 A That's right.

23 Q It wasn't a call that you received from Mr. Bolt or his
24 family, right?

25 A That's right.

1 Q So Mr. -- Investigator Strickland set that up?

2 A That is correct.

3 Q And you do polygraphs on a fairly regular basis for the
4 Greenwood Sheriff's Office, don't you?

5 A Occasionally, yes. As needed.

6 Q And did you testify earlier that you do a thousand
7 polygraphs a year?

8 A No. I did not testify to that.

9 Q Okay. I may have misheard. I think I was reading
10 something else while you were talking. Did you say
11 something about 1,000 polygraphs?

12 A No.

13 Q No? Okay.

14 THE COURT: I think he gave a total number that he had
15 done during his career.

16 MS. NELSON: Okay. Okay.

17 Q And that total number doesn't come out to about 1,000 a
18 year?

19 A I've never calculated it. There's years when I do
20 more, years when I do less. The past two and a half years -
21 - I'm semi-retired, so I don't do near as many as I did.

22 Q All right. Now, when you came into the jail to prepare
23 to speak to Mr. Bolt you met with Investigator Strickland
24 before that, right?

25 A That's correct.

1 Q And he gave you essentially his -- his version of what
2 he believed happened?

3 A That's correct.

4 Q And you took some notes about your conversation with
5 him, didn't you?

6 A I did.

7 Q He told you that this happened on June 1st of 2006?

8 A Yes, that's correct.

9 Q He said that -- that Minor was 12 at the
10 time?

11 A Yes, ma'am.

12 Q And he said that there was -- that there was -- the
13 accusation was digital penetration.

14 A That is correct.

15 Q He told you that -- that Mr. Strickland's -- the facts
16 that Mr. Strickland believed were that Don came into the
17 room while she was in bed and she pretended to be asleep?

18 A That's correct.

19 Q And he told you that Don had said he did not do
20 anything?

21 A That's correct.

22 Q So those were -- that was all information that you got
23 prior to ever seeing Mr. Bolt for the first time?

24 A That's pretty much it, yes.

25 Q And then when you started talking to him before you

1 actually conducted the test he explained that there had been
2 a cookout at his house and that Minor 's family was there,
3 including her parents?

4 A Correct.

5 Q So he said that Minor 's parents were at the house?

6 A That's correct.

7 Q Or at least that's what your report says?

8 A That's correct.

9 Q He says his wife was there and his three children were
10 there?

11 A Correct.

12 Q He believes that all the kids slept together?

13 A Correct.

14 Q And he -- he denied -- before you administered the
15 test, he denied ever touching her inappropriately; is that
16 right?

17 A That is correct.

18 Q Now, the test that you used -- the instrument that you
19 used was not a computerized instrument, was it?

20 A It was not. It's an analog instrument made by
21 Stoelting. A highly accurate and used by most everyone in
22 the industry up until the mid '90s when a lot of the
23 examiners switched over to computerized testing.

24 Q So computerized testing came about in the early to mid
25 '90s?

1 A Right.

2 Q And yours, you say it was analog. Does it look like
3 the things you see sometimes where there's a -- where
4 there's a pen drawing on a piece of --

5 A That's correct.

6 Q -- or several pens drawing on a piece of paper --

7 A That's correct.

8 Q -- and it goes through? So you don't see anything on a
9 computer screen?

10 A No, you do not.

11 Q And there was not a computer scoring the test that you
12 administer?

13 A No.

14 Q You scored it yourself?

15 A That's correct.

16 Q Would you agree with me that there's at least some
17 degree of subjectivity among polygraph operators? That
18 people might not always score things exactly the same way?

19 A That's pretty much correct. The scoring system, the
20 way it's based, one examiner, such as myself, I scored that
21 a minus 16. Another examiner may come behind me and score
22 it minus 14 or minus 18. There's a little variance in each
23 examiner's interpretation. Whereas the computer polygraph
24 examination is done and the computer actually gives one
25 score, period. There's no interpretation to that.

1 Q Because there's no subjectivity?

2 A No subjectivity to it. The scoring system, the way
3 this test was done --

4 THE COURT: Let me just stop you one second. Make sure
5 everybody's cell phone is off. Proceed. Apologize.

6 A When this score system was done there's subjectivity to
7 it. But when I see a minus 16 there's not much room for --

8 Q I understand that it's your opinion --

9 A -- variance with that.

10 Q I understand it's your opinion that that's a -- that
11 that's a failure. It's -- it's also -- you mentioned
12 earlier that within -- with the numbers coming into certain
13 ranges the test would be inconclusive.

14 A That's correct.

15 Q So if there was some subjective variance of a point or
16 two here and there, that could take a test from -- from not
17 deceptive to inconclusive --

18 A That's correct.

19 Q -- or it can take a test from inclusive to deceptive?

20 A That's correct. One or two points the margin error.

21 Q Would you agree with me that -- that a polygraph is
22 often used as an interrogation tool? It often occurs in the
23 context of someone being interrogated as a suspect in a
24 crime?

25 A It reaches a point of helping to make a determination,

1 when it's done if he had shown no deception there would've
2 been no interrogation or interview post test.

3 Q By you?

4 A Correct.

5 Q You might not have interviewed him post test.

6 A That's correct.

7 Q But that doesn't mean that law enforcement wouldn't
8 have continued to interview him?

9 A That's correct.

10 Q So after you make this determination that he -- that he
11 did not pass you tell him that, right?

12 A That's correct.

13 Q And then after he's told, hey, you failed this
14 polygraph exam, then he tells you some other things?

15 A That is correct.

16 Q After the test was concluded you -- you talked to him
17 for maybe 10 or 15 minutes to elicit those admissions?

18 A I would say yes. There was no record actually made of
19 how long I actually talked to him before he was turned over
20 to Detective Strickland.

21 Q That's your estimate, that it maybe took 10 or 15
22 minutes?

23 A About 10 or 15 minutes normally.

24 Q And then you -- you mentioned just now then he was
25 turned over to Investigator Strickland?

- 1 A Correct.
- 2 Q And you, of course, communicated your opinion of the
3 test and you communicated your post test interview? You told
4 Investigator Strickland all of that, right?
- 5 A Absolutely, yes.
- 6 Q Was anybody else in the room with you when the testing
7 and interviews took place?
- 8 A No.
- 9 Q Was there any audio or video recording of the testing
10 or the interviewing?
- 11 A Not to my knowledge.
- 12 Q You didn't do any?
- 13 A No.
- 14 Q If somebody else was recording it you didn't know about
15 it?
- 16 A I didn't know.
- 17 Q And would you agree with me that -- that typically
18 polygraph results don't get to come into evidence because --
19 because of the reliability?
- 20 A Typically polygraph evidence is not submitted in court
21 for whatever reason. Not necessarily reliability, but for
22 other reasons.
- 23 Q Is -- reliability can be a reason?
- 24 A It can be a reason.
- 25 MS. NELSON: Just one moment.

1 THE COURT: Certainly.

2 MS. NELSON: I don't have anything else, Your Honor.

3 THE COURT: Solicitor, any redirect?

4 MR. MORROW: Briefly, Your Honor.

5 THE COURT: Certainly.

6 REDIRECT EXAMINATION

7 BY MR. MORROW:

8 Q In addition to doing polygraph examinations for the
9 state do you also do polygraph examinations for private
10 individuals?

11 A I do a lot of -- or have in the past done a lot of
12 individual type testing for not just individuals but
13 attorneys, different law enforcement agencies throughout the
14 upper part of the state for years.

15 MR. MORROW: Thank you. No further questions for this
16 witness.

17 THE COURT: Thank you for your testimony. You can step
18 down.

19 MS. NELSON: May I ask one followup?

20 THE COURT: Oh, sure. Go ahead.

21 RECROSS-EXAMINATION

22 BY MS. NELSON:

23 Q At any point during the testing did you advise Mr. Bolt
24 of his right to remain silent?

25 A No. I'm an individual. I'm not law enforcement, so I

1 don't advise anyone of their rights.

2 Q Did you advise him of his right to have a lawyer
3 present with him while he was questioned?

4 A That is in the consent form that I have him sign.

5 Q He signed a form that consented to the polygraph but it
6 wasn't a Miranda waiver of rights?

7 A It's not a Miranda waiver of rights, no.

8 MS. NELSON: Thank you, sir.

9 THE COURT: You may step down, sir. Thank you for your
10 testimony.

11 MR. MORROW: We'd ask that this witness be allowed to
12 be excused.

13 THE COURT: Any objection from the Defense?

14 MS. NELSON: No, sir, Your Honor.

15 THE COURT: All right. You're excused, sir.

16 THE WITNESS: Thank you, Your Honor.

17 MR. SHEEK: The State calls Brandon Strickland to the
18 stand.

19 THE COURT: Come around, sir.

20 **BRANDON STRICKLAND**, first being
21 duly sworn testified as follows:

22 MR. SHEEK: Judge, may we approach one moment for just
23 planning purposes?

24 THE COURT: Certainly.

25 (Whereupon, a sidebar was held.)

1 THE COURT: State your name, sir.

2 THE WITNESS: Brandon Strickland.

3 DIRECT EXAMINATION

4 BY MR. SHEEK:

5 Q And, Mr. Strickland, where do you work?

6 A Greenwood County Sheriff's Office.

7 Q And how long have you been at the sheriff's department?

8 A Since May of 1999.

9 Q And what is your position with the sheriff's
10 department?

11 A Currently I'm Lieutenant over the Drug Enforcement
12 Unit.

13 Q And in 2008, specifically December of 2008, what was
14 your position?

15 A Criminal investigator.

16 Q And as part of a criminal investigator would it be part
17 of your job to investigate various complaints citizens made
18 regarding possible crimes?

19 A Yes, sir.

20 Q And as part of your duties as a criminal investigator
21 did you come in contact with Minor , the young lady
22 that testified earlier?

23 A I did.

24 Q And how did you become involved with Min ?

25 A They came into the sheriff's office to file a report of

1 sexual assault and I was in the office. Instead of having a
2 uniformed patrol officer come and type the report I just
3 took the case at the very beginning.

4 Q And did she tell you who had allegedly sexually
5 assaulted her?

6 A She did.

7 Q And who was that person?

8 A Donald Bolt, or Rooster is his nickname.

9 Q And she identified the Defendant, Mr. Bolt, in this
10 courtroom as the one that abused her. Is that your
11 understanding?

12 A That's correct.

13 Q And is that the gentleman sitting over here beside his
14 attorney?

15 A It is. Yes, sir.

16 Q And in part of your investigation did you ask where
17 this had happened?

18 A I did.

19 Q And was it Mr. Bolt's house out near the lake?

20 A Yes, sir.

21 Q And did you determine what county that was in?

22 A It's in Greenwood County. Yes, sir.

23 Q So the Greenwood County side of the lake?

24 A That's correct.

25 Q What did Minor tell you had occurred?

1 A She stated that she was in bed with the two siblings,
2 two family members, and at some point during the night Mr.
3 Bolt came into her room and pulled her pants and underwear
4 down and rubbed her vagina and her breast as well as stuck
5 his finger in her vagina. I think the report, or the
6 statement says it lasted about 10 or 15 minutes, and then he
7 pulled her pants back up and left the room.

8 Q And did she also indicate in this timeframe, this
9 general timeframe, that he had also engaged in rubbing and
10 touching her on other occasions?

11 A I believe that's correct.

12 Q Did you interview Mr. Bolt regarding these allegations?

13 A I did.

14 Q And where did that interview occur?

15 A At the Greenwood Sheriff's Office.

16 Q Do you recall what date was the first date you
17 interviewed him?

18 A I think December 4th of '08.

19 Q I'm going to hand you what's been marked for
20 identification purposes as State's Exhibit No. 1 and ask if
21 you recognize that?

22 A I do.

23 Q And what is that form?

24 A It's a waiver of rights. The Miranda form is on here.
25 It has the different rights that we read, and if they

1 understand their rights they sign it, and we sign it also as
2 a witness.

3 Q And is that a form that the sheriff's department keeps
4 for interviewing people that are accused of crimes?

5 A Yes, sir.

6 Q And did you read the rights on that form to Mr. Bolt?

7 A I did.

8 Q And would you mind just very quickly reading for the
9 jury what rights you informed him of.

10 A "Before we ask you any questions you must understand
11 your rights. You have the right to remain silent. Anything
12 you say can be used for or against you in court. You have
13 the right to talk to a lawyer for advice before we ask you
14 any questions and to have then him or her with you during
15 any questioning. If you cannot afford a lawyer, one will be
16 appointed to you before any questioning if you wish. If you
17 decide to answer questions now without a lawyer present you
18 will have -- still have the right to stop answering any at
19 any time. You also have the right to stop answering at any
20 time until you talk to a lawyer." That's the five waivers.
21 And then the waiver of rights is below it. "I have read
22 this statement of my rights and I understand what my rights
23 are. I am willing to make a statement and answer questions.
24 I do not want a lawyer at this time. I understand and I
25 know what I am doing. No promises or threats have been made

1 to me and no pressure or coercion of any kind issued --" I
2 mean, "-- have been used against me."

3 Q When you were going over that form do you get certain
4 information from Mr. Bolt such as age, how far he went to
5 school, anything like that?

6 A Not this form, but the -- a statement form we do.

7 Q Okay. At that time did he -- I noticed checkmarks
8 beside each of the rights. Who made those checkmarks?

9 A Mr. Bolt.

10 Q And were those actually read to him by you or did he
11 read them himself?

12 A Initially they were read to him by me.

13 Q And did he sign that waiver at the bottom?

14 A He did.

15 Q Did he indicate that he wished to go ahead and talk to
16 you?

17 A He did.

18 Q Okay. Did he admit to doing anything wrong in regards
19 to touching Minor in any inappropriate way at that time?

20 A No, sir.

21 Q Did he deny that he had done that?

22 A Yes, sir.

23 Q Did he make any other statements to you at that time
24 about giving a polygraph or something of that nature?

25 A He stated he would take a polygraph, yes.

1 Q And did you make a call to arrange for him to have a
2 polygraph examination?

3 A I did.

4 Q And was that Mr. Owen that just testified?

5 A Yes, sir.

6 Q And how did you come about choosing Mr. Owen to do it?

7 A Mr. Owen is what we would just call a civilian
8 independent investigator. He's not affiliated or tied with
9 law enforcement or anyone else. We use him because he's
10 going to give a fair and accurate result of the test.

11 MS. NELSON: Object to the speculation.

12 THE COURT: I'll sustain.

13 MS. NELSON: Move to strike that, Your Honor, as well.

14 THE COURT: That portion of the witness's testimony be
15 stricken from the record and the jury is instructed to
16 disregard it.

17 Q Are there polygram examiners that are employed by the
18 State Law Division, commonly called SLED?

19 A They are.

20 Q And are those available to you if you call for
21 assistance?

22 A Yes, sir.

23 Q Did you use any of the State Law Enforcement
24 polygraphers?

25 A No, sir.

1 Q You say you chose an independent person?

2 A That's correct.

3 Q And did Mr. Owen come down the following day and meet
4 with you?

5 A Yes, sir.

6 Q And at that time you went over the allegation with Mr.
7 Owen?

8 A I did.

9 Q At that point in time did you inform Mr. Owen that
10 there had been any admissions made by Mr. Bolt?

11 A No, sir.

12 Q Were you present during the administration of the
13 polygraph?

14 A No, sir.

15 Q Did you talk to Mr. Bolt after the polygraph?

16 A Yes, sir.

17 Q Did you get a chance to talk to Mr. Owen prior to
18 talking to Mr. Bolt?

19 A I did.

20 Q Did he inform you of the results of the polygraph?

21 A Yes, sir.

22 Q When you brought Mr. Bolt back in, was this the
23 following day on December the 5th?

24 A It was.

25 Q I'm going to hand you that document and ask you about

1 it. That. Do you recognize that document?

2 A Yes, sir.

3 Q Okay. And what is that document I just handed you?

4 A It is the exact same form as the one I previously read,
5 but this is done on the day after, December 5th.

6 Q Okay. And did you go over his rights with him again on
7 December the 5th?

8 A Yes, sir.

9 Q And he indicated that he understood those rights?

10 A He did.

11 Q Did he agree to talk to you?

12 A Yes, sir.

13 Q Did he sign that form saying that he waived his rights?

14 A He did.

15 MR. SHEEK: Your Honor, I would move to have both of
16 these forms, what's been marked for identification as
17 State's No. 1 and State's No. 2 into evidence.

18 THE COURT: What says the Defense?

19 MS. NELSON: No objection.

20 THE COURT: Without objection, to be admitted into
21 evidence as State's 1 and 2.

22 (Whereupon, State's Exhibits 1 and 2 were entered into
23 evidence.)

24 THE COURT: Solicitor, could I see those, please?

25 MR. SHEEK: Absolutely, Your Honor.

1 THE COURT: Thank you.

2 Q I'm going to hand you what's been marked for
3 identification as State's Exhibit No. 3 and ask you if you
4 recognize that.

5 A Yes, sir.

6 Q Now, what is that document you're holding there?

7 A This is a statement form where a written statement
8 would be given. The top of part of it is things of date and
9 times, place, his information -- or the Defendant's
10 information, and then there's just lines below it for a
11 written statement.

12 Q And who gave you that information?

13 A Mr. Bolt.

14 Q And how old was Mr. Bolt at the time? Does it say?

15 A Fifty-two years of age.

16 Q And how far did he go in school?

17 A It says completed the ninth grade.

18 Q And did you write that information down for Mr. Bolt?

19 A I did.

20 Q Why did you write it down?

21 A He stated -- the top of a question it has a -- after
22 you give his name, date of birth and age and address it --
23 the next is I, and it has a blank, read and write, and he
24 stated that he did not write, so I have cannot write. And
25 write is circled, read is not. Having said that, he stated

1 that he could not write the statement, and he provided me
2 the information and I wrote it myself.

3 Q And did you write a paraphrased version of what he was
4 telling you? Did you write verbatim what he said? How did
5 you come about writing that down?

6 A I started the -- I wrote -- I sort of paraphrased at
7 the beginning where I wrote what I thought needed to be in
8 there. And then the facts of the night in question he told
9 me and I wrote them down.

10 Q And did you go over that statement with him?

11 A I did.

12 Q And did he sign it?

13 A He did..

14 Q Now, I notice there's a line on that document from the
15 last sentence through the rest of the document. It says
16 "NFR." Do you see that?

17 A Yes, sir.

18 Q Who wrote that line and those letters?

19 A He did.

20 Q And what does NFR stand for?

21 A No further report.

22 Q Why do you have somebody draw a line through the page
23 and write that on there?

24 A Because when a statement is complete before you're on
25 the last line there's -- you know, it could be five or six

1 or seven lines left blank. So we have them draw a line
2 through the remaining lines so that it shows no one can add
3 anything after the statement has been given, and then just
4 put the NFR, or NF, just depending on who's taking it, for
5 nothing further or no further report.

6 Q So that's done for his protection?

7 A Yes, sir.

8 Q If you had wanted to create a false report would you
9 have left that blank so you could fill in whatever you
10 wanted?

11 A I think if someone would then they would leave that
12 blank.

13 Q Did you accurately portray what he told you?

14 A Yes, sir.

15 Q The words that are used, are they your normal word
16 usage or his?

17 A At the beginning it's my words. But that wasn't the
18 facts of the -- of this statement are in his words.

19 Q Of the night in question?

20 A Yes, sir.

21 Q And if you would, read to the jury what he told you
22 happened on the day in question.

23 A The beginning of the statement says, "Investigator
24 Strickland is writing statement for Donald Bolt due to Bolt
25 not being able to write." The next paragraph, "I, Donald

1 Bolt, did the night in question go into the bedroom where
2 Minor was in bed with her sister Christy and brother
3 M. I sat down beside where she was laying and she
4 appeared to be asleep. I pulled her pajama britches down
5 and touched her private area. I put one finger inside her
6 vagina. This was very quick and I then pulled her pants
7 back up and I went back to bed." And then a line and "no
8 further report."

9 Q And had you ever referred to Minor as Minor ?

10 A No, sir.

11 Q Is that something you got from him?

12 A Yes, sir.

13 Q Now, did you tell him what he needed to say?

14 A No, sir.

15 Q Did you tell him that you were somehow going to cause
16 him harm if he didn't admit to sexually assaulting that
17 child?

18 A No, sir.

19 Q You were here when we made our opening statements?

20 A I was not.

21 Q Okay. Have you ever, to Mr. Bolt, used the term "I'm
22 going to jack up your bond," or something to that effect, if
23 you don't admit to sexually assaulting this child?

24 A No, sir. I have not.

25 Q In fact, when you interviewed Mr. Bolt had his bond

1 already been set?

2 A That's correct.

3 Q And do you as a sheriff's deputy, as an investigator,
4 lieutenant now, do you get to set bonds?

5 A No, sir.

6 Q Who sets the bonds?

7 A In the case -- a county case, it would have been a
8 Magistrate Judge.

9 Q Can you go back and change that amount if you wanted
10 to?

11 A No, sir.

12 Q Did you ever promise Mr. Bolt anything, that if you
13 confess to it I'm going to help you out?

14 A No, sir.

15 Q And he indicated to you that he did, in fact, go in
16 that room and put his fingers inside that child's vagina?

17 A Yes, he did.

18 Q And he signed his name to a statement saying he did
19 that?

20 A Yes, sir.

21 Q And that was after he was given his rights on two
22 different occasions?

23 A That's correct.

24 MR. SHEEK: Please answer anything Defense counsel may
25 have.

1 CROSS-EXAMINATION

2 BY MR. GORANSON:

3 Q You had two discussions with Don Bolt?

4 A Yes, sir.

5 Q And you never videotaped either interview?

6 A That's correct.

7 Q You never audio taped either interview?

8 A That's correct.

9 Q And you were alone when you interrogated him?

10 A That's correct.

11 Q All right. Let's talk a little bit about your
12 training. You're an investigator, and as an investigator
13 you collect different types of evidence, right, in a general
14 case?

15 A That's correct.

16 Q Fingerprints? You collect fingerprints, in general?
17 I'm speaking in general. Not in this case in particular.

18 A That's correct.

19 Q DNA?

20 A Yes, sir.

21 Q And pictures? You'll take pictures of crime scenes?

22 A That's correct.

23 Q You'll do photo lineups to help identify people?

24 A That's correct.

25 Q You'll collect witness statements?

1 A Yes, sir.

2 Q And you will collect physical evidence; weapons, drugs,
3 stolen goods, that sort of thing?

4 A Yes, sir.

5 Q And you collect all that evidence so you can help
6 establish whether somebody is guilty or innocent?

7 A Sure.

8 Q And you would agree with me that some of the best
9 possible evidence you could have is somebody on videotape?

10 A That's correct.

11 Q And, in fact, we require that in some cases for there
12 to always be a video, so it doesn't turn into a swearing
13 contest between people, right? Like DUI stops?

14 A Yeah, I think so.

15 Q Okay. So you had an initial training where you learned
16 to -- how to organize an investigation?

17 A Sure.

18 Q And you learned how to collect evidence?

19 A Yes, sir.

20 Q You learned how to preserve evidence?

21 A Yes, sir.

22 Q And there's a method to doing that, right?

23 A Yes.

24 Q And it involves recording everything in an incident
25 report?

1 A It does.

2 Q And you document all your steps. And you keep track of,
3 all the facts in each case so that guilty people are caught?

4 A That's correct.

5 Q And innocent people are acquitted, right?

6 A Yes, sir.

7 Q And you do that documentation so that all citizens are
8 treated fairly?

9 A That's correct.

10 Q And you've investigated many cases before this case?

11 A I have.

12 Q And many since.

13 A Sure.

14 Q And this case now is five years old, six years old?

15 A Five or six years, yes.

16 Q Five years old. And the incident supposedly happened
17 two years prior to the report, right?

18 A That's correct.

19 Q So -- okay. And each facts -- the facts in each case
20 are going to be important to a proper and just resolution,
21 right?

22 A Yes, sir.

23 Q And when an important fact you put it in your incident
24 report so it's preserved?

25 A That's correct.

1 Q Because sometimes it takes months to get to trial?

2 A Yes.

3 Q Sometimes it takes years?

4 A Correct.

5 Q And the sheriff's office doesn't control that?

6 A Correct.

7 Q The solicitor's office does, right?

8 A Yes, sir.

9 Q So with all the passage of time and all the facts and
10 all the investigations that you do it becomes extremely
11 important to document everything?

12 A That's correct.

13 Q And you have training. You've -- how many hours of
14 training do you have?

15 A I just would be scared to answer that, because we have
16 training hours we're required --

17 Q Many years, right?

18 A Yes, sir.

19 Q So you know about what the law is?

20 A Yes, sir.

21 Q And you probably know it more than ordinary citizens
22 who walk down the street?

23 A I'd like to think so.

24 Q Right. And so, if you've told somebody what the law
25 was they might trust you and believe you?

1 A I would hope.

2 Q All right. Let's talk about -- let's go ahead and talk
3 about this case. On October 17th, 2008 you didn't just
4 speak with one witness, right? You spoke with two?

5 A I think I spoke with two.

6 Q You took a statement from Minor , correct?

7 A Yes, sir.

8 Q And you took a statement from Tammy Denise Kracji?

9 A Yes, sir.

10 Q And you learned that Tammy Kracji wasn't present on the
11 night of the incident?

12 A I believe that's correct, yes.

13 Q But you did take a statement from her anyway?

14 A Correct.

15 Q And that's because you wanted to get as much evidence
16 as possible to help your investigation?

17 A That's because she was who it was disclosed to first.

18 Q Right. But you didn't just ball that up and throw it
19 away? It was important to your investigation?

20 A That's correct.

21 Q Tammy Kracji told you where this supposedly happened?
22 Where this incident supposedly happened?

23 A She did.

24 Q And she gave you a list of people who were present that
25 night?

1 A If the statement says then that's correct.

2 Q I can show it to you if you need it to refresh your
3 recollection. Would it -- if I showed it to you would it
4 refresh your recollection?

5 A Yes, it would.

6 MR. GORANSON: If I could have this marked as Defense
7 Exhibit --

8 THE COURT: Six.

9 MR. GORANSON: -- 6.

10 (Whereupon, the statement of Tammy Kracji was marked as
11 Defendant's Exhibit 6 for identification.)

12 MR. GORANSON: May I approach the witness?

13 THE COURT: Yes, sir.

14 MR. GORANSON: I'm approaching the witness with what's
15 been marked as Defense Exhibit 6.

16 THE COURT: For identification.

17 MR. GORANSON: For identification purpose, the
18 statement of Tammy Denise Kracji.

19 Q If you look on page two, I think.

20 A It has her listed as well. I'm not sure if this is the
21 people there.

22 Q Those are the people that she believed were there that
23 night.

24 A Yeah, and then her name below.

25 Q Okay.

1 A So, yes.

2 Q Thank you. And she told you that Shannon Oakley was
3 there?

4 A At least that's with the names listed, yes.

5 Q She told you that Brandon Oakley was there?

6 . A If his name is listed, yes.

7 Q I'll show that to you again.

8 A That's correct.

9 Q Told you that M. was there?

10 A Correct.

11 Q E. Oakley was there?

12 A That's correct.

13 Q Cheryl Bolt was there?

14 A That's correct.

15 Q Okay. And you took that statement at their -- at the
16 Kracji house?

17 A I think the statement was at the Law Enforcement
18 Center. It should be documented on the form. The top of
19 the statement form.

20 Q It's got the address _____ Road. In any
21 event, you did go to the Kracji's house initially?

22 A Yes.

23 Q Okay. And you also took a statement from the
24 complaining witness that -- right?

25 A The victim.

1 Q Yes. Minor ?

2 A Right.

3 Q And she told you that two years prior Donald Bolt had
4 touched her inappropriately?

5 A Yes, sir.

6 Q And she told you where it supposedly happened?

7 A That's correct.

8 Q She told you some of the people that were supposed to
9 be at the house the night of the supposed incident?

10 A Yes, sir.

11 Q And what address did she give?

12 A Road.

13 Q But you never went to that house, Road?

14 A I'm not sure that I ever went to that house.

15 Q You didn't document it in any incident report, did you?

16 A I would have to see the incident report, but I don't
17 recall going to that address..

18 MR. GORANSON: I just request that this incident report
19 dated October 17th, 2008, it's the incident report wrote out
20 by Brandon Strickland, I'd like that to be marked as Defense
21 Exhibit 7 for identification.

22 (Whereupon, an incident report was marked as
23 Defendant's Exhibit 7 for identification.)

24 Q If I showed you this would it refresh your
25 recollection?

1 A Yes.

2 Q Thank you.

3 A It does not reflect that I went to Road.

4 Q But if it was an important detail you would have
5 included it in that incident report, as you testified?

6 A If I had gone I would.

7 Q And you never took any pictures of the house?

8 A No, sir.

9 Q You never took any pictures of the room where this
10 supposedly happened?

11 A No, sir.

12 Q And she told you she was in the room with M.
13 when this supposedly happened?

14 A Yes, sir.

15 Q And she told you she was in the room with E. Oakley
16 when this supposedly happened?

17 A I think that's correct, yes.

18 Q And in the -- in her statement she -- in Minor
19 statement she told you that she woke up two other people
20 that were in the house, Brandon Oakley and Shannon Oakley?

21 A After the incident, yes.

22 Q Right. And she said she told them she didn't feel
23 well?

24 A Correct.

25 Q You never asked Shannon Oakley about that?

- 1 A No, sir.
- 2 Q You never asked Brandon Oakley about that?
- 3 A No, sir.
- 4 Q In her statement the complaining witness said that Don
5 made -- had come in the room. You never asked Cheryl Bolt
6 about that, did you?
- 7 A No, sir.
- 8 Q You never asked anyone else about that, did you?
- 9 A I did not.
- 10 Q So as of December 3rd, 2008 you had spoken to Minor
11 . She was the only person that was in the house that
12 you had spoken to? That was in the night --
- 13 A Correct.
- 14 Q -- in the house on the night of the supposed incident?
- 15 A That's correct.
- 16 Q And you spoke to one other witness in this case, Don
17 Bolt?
- 18 A That's correct.
- 19 Q You spoke to him two times?
- 20 A Yes, sir.
- 21 Q Once on December 4th, 2008?
- 22 A Yes, sir.
- 23 Q And once on December 5th, 2008?
- 24 A Correct.
- 25 Q And you didn't record either conversation?

1 A No, sir.

2 Q And between nine detectives that work in the sheriff's
3 office you couldn't find one recording device with which to
4 record that?

5 A The recording device that I used was not working at
6 that time.

7 Q You made no mention of that in your incident report?

8 A I did not.

9 Q In your incident report you state, "Minor started to
10 have some emotional problems leading to some self-mutilation
11 and depression while keeping this bottled up inside."

12 A Yes, sir.

13 Q You didn't know about her past family situation when
14 you wrote that, did you?

15 A No, sir.

16 Q And you didn't know about the DSS removal of the kids
17 from her home? Tammy's home?

18 A No, sir.

19 Q And that she had to live with her grandmother and
20 father for a period of time?

21 A No, sir.

22 Q That she had to live at Connie Maxwell for a period of
23 time?

24 A I did not.

25 Q So at the end of your investigation in December of 2008

1 you charged Don with committing a lewd act on a minor?

2 A That's correct.

3 Q And you did not charge him at that point in time with
4 criminal sexual conduct?

5 A I had listed on the victim's report CSC with a minor
6 and lewd act. I'm not -- I don't know why that CSC warrant
7 was not signed, but --

8 Q It wasn't.

9 A It wasn't.

10 Q And on May 8th, 2009 you presented an indictment for
11 lewd acts to the grand jury in Greenwood?

12 A I'm not positive on that. I don't know that I did.

13 MR. GORANSON: Do we have those?

14 THE COURT: The indictments.

15 Q If I showed you the indictment with your name on it,
16 would that refresh your recollection?

17 A It would.

18 MR. GORANSON: Do I need to have these marked, Your
19 Honor, or is it a court's exhibit? I'm sorry.

20 THE COURT: Well, it's an unmarked court's exhibit. If
21 you would like one marked you're certainly free to do that.

22 MR. GORANSON: Well, I would like to have that marked
23 as Defense Exhibit 7.

24 THE COURT: Which indictment is that?

25 MR. GORANSON: It's 8, excuse me. Defense Exhibit 8.

1 This is the indictment for lewd act on a minor.

2 THE COURT: Okay.

3 (Whereupon, an indictment was marked as Defendant's
4 Exhibit 8 for identification.)

5 A Yeah, I see my name on the top of that. Those
6 witnesses.

7 Q And that's from May 8th, 2009, correct?

8 A That's correct.

9 Q And then a month later you made a presentment to the
10 grand jury in Greenwood for criminal sexual conduct?

11 A I could have. I was a court -- I was court officer for
12 the county for a while and I presented all grand jury cases
13 to the grand jury.

14 (Whereupon, an indictment was marked as Defendant's
15 Exhibit 9 for identification.)

16 Q I'll show you what's been marked as Defense Exhibit 9
17 which is an indictment with the County of Greenwood for
18 criminal sexual conduct --

19 A Yes, sir.

20 Q -- dated --

21 A 6/12/09.

22 Q Okay. Let's talk about this false confession. Don
23 came to the sheriff's office --

24 MR. SHEEK: Objection to the form of the question.

25 THE COURT: I sustain.

- 1 Q Don came to the sheriff's office on his own on December
2 4th?
- 3 A That's correct.
- 4 Q And you met with him?
- 5 A I did.
- 6 Q You had him sign a waiver of rights form?
- 7 A Yes, sir.
- 8 Q And you told him he was free to leave if he wanted to
9 leave?
- 10 A I read him the Miranda form.
- 11 Q At that point was he free to leave?
- 12 A He was not.
- 13 Q And he -- you and him were alone, right?
- 14 A That's correct.
- 15 Q And he agreed to speak with you?
- 16 A He did.
- 17 Q And you asked him about the alleged incident?
- 18 A Yes, sir.
- 19 Q And he denied doing anything wrong?
- 20 A That's correct.
- 21 Q And you then arrested him and put him in jail?
- 22 A Yes, sir.
- 23 Q And he spent the night in jail?
- 24 A Correct.
- 25 Q You spoke with him the next day?

- 1 A I did.
- 2 Q And you told him you didn't believe him?
- 3 A Correct.
- 4 Q And you told him you were going to jack his bond up if
- 5 he didn't tell you what you wanted to hear?
- 6 A I did not tell him that.
- 7 Q You spoke to Don for 30 minutes?
- 8 A I'm not sure of the time, but maybe.
- 9 Q He told you he had a ninth grade education?
- 10 A Yeah. I have that documented.
- 11 Q He told you he couldn't write?
- 12 A Yes, sir.
- 13 Q You wrote out a 13 line statement?
- 14 A Yes, sir. This statement here.
- 15 Q And the first three lines are you explaining that you
- 16 are writing it?
- 17 A Correct.
- 18 Q And you wrote out that statement for him?
- 19 A Yes, sir.
- 20 Q And you wrote -- and you wrote it out and then read it
- 21 to him?
- 22 A Yes, sir.
- 23 Q And he agreed?
- 24 A I mean, I didn't just write it while he sat quietly.
- 25 He was telling me what to put down and I was writing it.

1 And then I reread all of it.

2 Q And he signed it?

3 A He did sign it.

4 Q And then he was released from the jail?

5 A He was put back in the jail. I'm not sure of the
6 release. I don't know the procedures.

7 Q And the door was shut when you were talking with him?

8 A Yes.

9 Q And the tape recorder was off or not working?

10 A It is a -- it is a system built in the room.

11 Q And you -- neither you nor nine other detectives had an
12 alternative means for recording?

13 A I did not have a means at that time.

14 MR. GORANSON: No further questions for this witness.

15 THE COURT: Any redirect?

16 MR. SHEEK: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. SHEEK:

19 Q Investigator Strickland, when you first talked with Mr.
20 Bolt did you give him the details of what Minor said he did?

21 A No, sir.

22 Q Did you ever tell him that she says you came in the
23 room and she was pretending to be asleep?

24 A No, sir.

25 Q Did you tell him she says you pulled her shorts and her

1 underwear down and stuck your finger in her vagina?

2 A No, sir.

3 Q Who gave you that information?

4 A Mr. Bolt did.

5 MR. SHEEK: No further questions.

6 THE COURT: Is that statement into evidence?

7 MR. SHEEK: Yes, sir. That -- that's one of the --

8 THE COURT: It was put into evidence?

9 MR. SHEEK: Let me make sure. State's 1, 2 and 3
10 should have been moved into evidence.

11 THE COURT: One and 2 was. It was published but I
12 don't think it was actually --

13 MR. SHEEK: Okay. I apologize then. I would move
14 State's 3 into evidence.

15 THE COURT: Any objections?

16 MS. NELSON: Just the same objection that we made in
17 pretrial motions, Your Honor.

18 THE COURT: Certainly. Certainly. Everything would be
19 subject to pretrial. Certainly.

20 MS. NELSON: Yes, sir.

21 (Whereupon, State's Exhibit 3 was entered into
22 evidence.)

23 MR. SHEEK: Thank you, Your Honor.

24 THE COURT: Mr. Goranson, any recross?

25 MR. GORANSON: No, sir.

1 THE COURT: You can step down, sir. Thank you for your
2 testimony.

3 Okay. Madame Forelady and ladies and gentlemen of the
4 jury, it looks like we're at a pretty good stopping point
5 for lunch. My clock says about 12 until 1:00. I would ask
6 that you be promptly back at 2:00. Again, I remind you not
7 to discuss anything about this case among yourselves or with
8 anybody that you may come in contact with over your lunch
9 break. Hope you have a good lunch and we'll see you back at
10 2:00. Thank you.

11 (Whereupon, the jury exited the courtroom at 12:47
12 p.m.)

13 THE COURT: Okay. Anything we need to take up on the
14 record from the State?

15 MR. SHEEK: Nothing from the State, Your Honor.

16 THE COURT: And for the Defense?

17 MS. NELSON: No, sir, Your Honor.

18 THE COURT: Okay. Off the record.

19 (Whereupon, the court was in recess until 2:00 p.m.)

20 THE COURT: All right. Back on the record. Anything
21 from the State before we bring the jury out?

22 MR. SHEEK: Nothing from the State, Your Honor.

23 THE COURT: Defense?

24 MS. NELSON: No, sir.

25 THE COURT: Okay. Bring the jury out, please.

1 (Whereupon, the jury entered the courtroom at 2:06
2 p.m.)

3 THE COURT: Let the record reflect that the entire jury
4 is back in. Hope everybody had a good lunch and ready to
5 get back to work this afternoon. We're still in the State's
6 Case. Solicitor?

7 MR. MORROW: Thank you, Your Honor. The State calls
8 Dr. Lyle Pritchard.

9 THE COURT: Okay. Come around, please, ma'am.

10 DR. LYLE PRITCHARD, first being
11 duly sworn testified as follows:

12 THE COURT: Ma'am, if you would state your name,
13 please.

14 THE WITNESS: Lyle Pritchard.

15 THE COURT: You may proceed, Solicitor.

16 DIRECT EXAMINATION

17 BY MR. MORROW:

18 Q Dr. Pritchard, where do you work?

19 A South Regional Healthcare.

20 Q And how long have you worked there?

21 A I have worked there for 17 years.

22 Q Okay. And what kind of doctor are you?

23 A I'm a pediatrician.

24 Q Okay. And what is your educational background?

25 A I attended college, and then I attended four years of

1 medical school, and then I did three years pediatric
2 residency training.

3 Q Okay. Where did you attend medical school?

4 A In the Medical University of South Carolina at
5 Charleston.

6 Q Okay. And as part of your board requirements are you
7 required to attend additional training or education?

8 A After I am board certified in pediatrics, which I am,
9 I'm required every year to have continuing education.

10 Q Okay. Have you ever been qualified as an expert?

11 A I have.

12 Q How many times?

13 A More than 10.

14 MR. MORROW: Okay. At this time the State moves that
15 Dr. Pritchard be qualified as an expert in child abuse
16 pediatric medicine.

17 THE COURT: Okay. Defense?

18 MS. NELSON: No objection, Your Honor.

19 THE COURT: Okay. Without objection, this witness is
20 so qualified.

21 Q Dr. Pritchard, did you have an occasion to examine
22 Minor

23 A I did.

24 Q Okay. When was that?

25 A November 11th, 2008.

1 Q Okay. What were the results of that examination?

2 A She had basically a normal physical exam. She had a --
3 on her genital exam she had a minor cleft on the hymen. The
4 hymen is the tissue that surrounds the opening of the
5 vagina, and a cleft is just a nonspecific little dent in the
6 hymen, which is found in normal children and children who
7 have been sexually abused. It's a nonspecific finding.

8 Q And based on your experience and in your opinion, why
9 would you expect -- or would you expect to find evidence of
10 trauma in a digital penetration case?

11 A No. Digital penetration of the vagina does not
12 normally result in abnormal physical findings, any kind of
13 permanent scarring or defect.

14 Q And why is that?

15 A The hymen, which is the tissue surrounding the opening
16 of the vagina, is real stretchable and elastic and something
17 can be put inside of it that doesn't cause any kind of tear
18 or injury. So on exam there may be no evidence of any kind
19 of scarring or defect.

20 MR. MORROW: I beg the court's indulgence.

21 THE COURT: Certainly.

22 MR. MORROW: No further questions for this witness.

23 Please answer --

24 THE COURT: Cross-examination?

25 MS. NELSON: Thank you very much, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. NELSON:

3 Q Hi, Dr. Pritchard.

4 A Hi.

5 Q Essentially when -- was it your understanding that the
6 allegation was that the incident had occurred back in June
7 of 2006?

8 A Let me check my records since you want specifics.

9 Q Okay.

10 A My understanding was that the mother first learned of
11 the allegations in the fall of 2008 and that it had occurred
12 prior to that.

13 Q And you don't have any -- you don't have any records
14 about when it's alleged to have occurred?

15 A No, not specific dates.

16 Q Okay. Well, if you assume that the incident is alleged
17 to have occurred on June 1st of 2006, let's make that
18 assumption, if you examine someone almost two and a half
19 years later, if the allegation is digital penetration you
20 wouldn't necessarily expect to find anything abnormal, would
21 you?

22 A That's correct.

23 Q It'd be pretty much impossible to tell at that point
24 whether anything had happened two and a half years before?

25 A That's correct. As I said, with digital penetration

1 there rarely are any physical findings.

2 Q On -- I'm looking at your -- at the 12 page form that
3 you completed when you did this exam.

4 A Right.

5 Q On page two of that form, under the reason for referral
6 section --

7 A Uh-huh. (Affirmative)

8 Q -- it looks like -- and did you fill this form out, Dr.
9 Pritchard?

10 A Yes, I did.

11 Q It looks like the sexual abuse is checked as a reason
12 for the referral?

13 A That's correct.

14 Q And then you have fondling checked?

15 A That's correct.

16 Q There is a place to check vaginal penetration, but that
17 is not checked, is it?

18 A That's correct. This is the referral information, so
19 that's the information that's given to our department from
20 law enforcement. Now, I did take my own history.

21 Q Okay. But the information that you had from law
22 enforcement was -- was --

23 A Nonspecific as far as what kind of fondling was
24 involved.

25 Q Okay. And you took a -- part of this form has a social

1 history on the -- on the person you're examining? That's at
2 page four?

3 A Yes.

4 Q And you noted in that social history that there had
5 been exposure of the child to parental substance abuse? Or,
6 I guess, you didn't note it. You checked -- you checked
7 that?

8 A Right. And then below in the comments I described
9 specifically.

10 Q And what did you describe?

11 A An age before five years the biological father had a
12 substance abuse problem, crack, and the parents separated
13 afterward.

14 Q You also checked that there had been prior law
15 enforcement involvement in the social history. Did you make
16 a note about that?

17 A Right. That the biological father was violent toward
18 the mother and police were involved.

19 Q And then you made a note of prior history of abuse in
20 the caretaker. Not in the child, but in the caretaker; is
21 that right?

22 A That's correct. In the mother.

23 Q At page six in the physical ROS section, is that rule
24 out symptoms?

25 A Review of symptoms.

1 Q Review of symptoms. Did you note there that -- and I
2 don't know exactly how to pronounce this, but the age of
3 menarche? Is that how you say it?

4 A That's correct.

5 Q And that's basically when somebody starts having a
6 menstrual period, right?

7 A Correct.

8 Q And that was 13?

9 A That's correct.

10 Q On the physical exam on page seven you -- it's noted
11 that Min weighed 146.5 pounds on that date?

12 A Correct.

13 Q And again, you did not find any -- the findings you
14 made about her -- her vaginal examination were -- were
15 completely normal. She had the kind of hymen you would
16 expect to see in a person that age?

17 A At 13, yes.

18 MS. NELSON: I think that's all I have, Dr. Pritchard.
19 Just give me one moment, please. That's it. Thank you very
20 much.

21 THE COURT: Any redirect?

22 MR. MORROW: Yes, Your Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. MORROW:

1 Q Dr. Pritchard, what did your own history that you took
2 from the patient reveal regarding the allegations?

3 A I asked the patient to tell me why she was seeing me
4 that day and she said that her brother-in-law's step-father
5 had used his fingers down there. I asked if he had put them
6 inside her and she said yes. She denied he put anything
7 other than his fingers in her, and she denied he put
8 anything in her bottom in the back. She denied she saw his
9 private part. She said he rubbed on her chest sometimes
10 when no one was looking.

11 Q Let me show you for -- what's been marked for
12 identification purposes as State's Exhibit 4. Would you
13 review it and tell me what it is?

14 A This is the child maltreatment protocol which is the
15 form we use to fill out a history and physical on this
16 patient, Tammy Kracji.

17 Q So that's the report that you would have done the day
18 that she came in?

19 A That's correct.

20 MR. MORROW: Your Honor, at this time the State moves
21 that this be entered into evidence.

22 THE COURT: All right. If you'd let counsel take a
23 look at it, please.

24 MS. NELSON: Your Honor, we would object on the basis
25 that it's hearsay and that she's already testified to

1 everything essential that's in it anyway.

2 THE COURT: Okay. All right.

3 MS. NELSON: So it's cumulative.

4 THE COURT: Can we deal with that maybe at the next
5 break, or do we need to deal with it now before this witness
6 finishes her testimony? I mean, she's already identified it
7 as a matter of --

8 MR. MORROW: We can deal with it in the next break,
9 Your Honor.

10 MS. NELSON: Sure. That's fine.

11 THE COURT: Sure. Okay. Anything further?

12 MR. MORROW: Nothing further, Your Honor.

13 THE COURT: Okay. Any further recross?

14 MS. NELSON: No, sir, Your Honor.

15 THE COURT: Okay. You can step down, Doctor. Thank
16 you very much.

17 MR. MORROW: We'd ask that Dr. Pritchard be excused,
18 Your Honor.

19 THE WITNESS: Thank you.

20 THE COURT: There's no objection this witness this
21 witness can be excused? No objection?

22 MS. NELSON: No objection.

23 THE COURT: Thank you, Doctor.

24 MR. MORROW: State rests, Your Honor.

25 THE COURT: Okay. Madame Forelady and ladies and

1 gentlemen of the jury, the State has now rested their case.
2 There are some matters that I'll need to take up with the
3 lawyers. So if you will retire to your jury room and
4 hopefully we won't keep you back there very long. Again, I
5 remind you do not start your deliberations. Don't have any
6 discussions concerning anything about the case.

7 (Whereupon, the jury exits the courtroom at 2:20 p.m.)

8 THE COURT: Okay. Anything from the Defense?

9 MS. NELSON: Yes, sir, Your Honor. First of all, I
10 could be mistaken about this and I may have missed it, but I
11 didn't hear testimony establishing venue, and I don't know
12 if I missed that testimony or not.

13 THE COURT: No. And you -- I believe you did, because
14 the Solicitor attempted to get that out from the child, but
15 she --

16 MS. NELSON: Did it come out in Mr. Strickland?

17 THE COURT: -- but Officer Strickland verified that.

18 MS. NELSON: We thought that he might have. I just --

19 THE COURT: Right. I got you. Yeah.

20 MS. NELSON: -- that's why I would be couching it by
21 saying I wasn't sure if I caught it.

22 We would move for a directed verdict at this time, Your
23 Honor, particularly as to the lewd act. The -- on the lewd
24 act charge the indictment puts us on notice of a lewd act
25 occurring between June 1st of 2006 and October 17th of 2008.

1 The testimony from Min was that in the -- on certain
2 days leading up to the incident that forms the factual basis
3 for the CSC charge, that in days leading up to that that
4 there were times when she says that Mr. Bolt would touch her
5 inappropriately when nobody was looking. The indictment did
6 not put us on notice of anything occurring to the CSC
7 charge. The CSC with a minor is alleged to have occurred on
8 or about June 1st of 2006. The lewd act indictment covers a
9 period after that time, from that date until the date that
10 the incident was reported to law enforcement. So we were
11 not put on notice under -- of any lewd act occurring after
12 the alleged CSC with a minor.

13 If we had been put on notice of lewd acts occurring
14 prior to that time we would have been prepared to defend
15 against that because we have records of when Min was
16 checked out of the Connie Maxwell Children's Home, and we
17 would have been prepared to address that. But there -- my
18 understanding of the testimony was that after the alleged
19 CSC occurred there was no further physical contact alleged
20 by the victim, by Min. She said that after that
21 incident happened where he supposed came into the room and
22 digitally penetrated her that she was there only
23 occasionally after that and that nothing else ever happened.
24 So, Your Honor, we're asking for a directed verdict as
25 to the lewd act charge based on the evidence not supporting

1 anything in that timeframe, and would also ask for a
2 directed verdict as to the CSC based on insufficiency of
3 evidence, Your Honor.

4 THE COURT: Okay. Solicitor?

5 MR. SHEEK: Thank you, Your Honor. Taking the evidence
6 in the light most favorable to the State, which is proper
7 standard at this point, and looking at the standard of what
8 -- the existence of the evidence as opposed to the weight of
9 the evidence, we have clear testimony from the Defendant
10 himself. There's statements that have been placed into
11 evidence that he rubbed her breasts, grabbed her breasts.
12 Massaged, I think, is one word used. And that this occurred
13 on the same day that he went into her room and inserted his
14 fingers into her vagina. So assuming a strict
15 constructionist view of the lewd act as the defense argues
16 for, that testimony in and of itself places it on June 1st.
17 Beyond that I think the case law is clear that a timeframe
18 or date in an indictment is not strictly controlling in
19 cases like this, but merely the indictment must put the
20 Defendant on notice of the offense for which he is to defend
21 himself. And I think his argument maybe it happened the day
22 before and, therefore, I shouldn't be on notice of it. I
23 don't think that's afforded by the case law, Judge.

24 MS. NELSON: Your Honor, I would just submit to you as
25 far as Don's statement of what happened that day, there's no

1 -- under the corpus delicti rule there's no other testimony
2 whatsoever corroborating that Minor sat on his lap that day
3 and that he got an erection and touched her breasts at some
4 point during the day. The only evidence of that is that one
5 statement to Mr. Owen after the polygraph. I didn't object
6 to that earlier on that basis because, for one thing, the
7 court had already ruled the statement was going to come in,
8 and for another, I expect Mr. Bolt to testify and knew that,
9 you know, if he said nothing happened it was going to be
10 able to be used for impeachment anyway. But if you're --
11 we're looking at this from what evidence has been presented,
12 and Minor testified that those incidents occurred prior to
13 that date, and she didn't say a day before. She didn't --
14 it wasn't -- it wasn't brought out how long before the
15 alleged CSC -- the alleged penetration incident. That was
16 never discussed.

17 And I do understand that timeframes can be fuzzy with
18 these kinds of cases and that that's accepted, but this
19 timeframe specifically covered a later period and the
20 indictment was specific on that. And that is what we were
21 on notice for. It's the same time period that was alleged
22 in the warrant as well, for whatever that's worth.

23 THE COURT: Now, my notes indicate that when Minor
24 testified she said in the summer of 2006..

25 MR. SHEEK: Correct.

1 THE COURT: Sat on lap. I'm going to read exactly what
2 my notes say. I've got summer 2006. I've got sit on lap,
3 rub breasts, intentional. Out to the right of it I've got
4 age 11. That's what I wrote when she was testifying. I
5 don't recall, at least my notes don't indicate, a day or
6 even a month, but the summer of 2006.

7 MR. SHEEK: That is correct. She says -- in addressing
8 the corpus delicti issue, the question is is there evidence
9 of the corpus delicti outside the extraditial statement of
10 the Defendant. If there is, then the statement comes in.
11 She does say in the summer. She says in the report that
12 they brought out about 10 times previously. Didn't put a
13 date on it. He put a date on it. And once the -- it
14 occurred, it occurred in the summer this is what he did is
15 established, and then he puts a date on it, and that
16 statement comes in and it's proper.

17 THE COURT: Right

18 MS. NELSON: May I say -- I'm sorry.

19 THE COURT: Yeah. No, go ahead. Go ahead.

20 MS. NELSON: On cross-examination I specifically asked
21 her if the incident in the bedroom happened on June 1st of
22 2006. And then -- and I asked her if all of the other
23 touching incidents happened prior to that and she said that
24 they did.

25 THE COURT: Right. And I agree with you to the extent

1 that there was some conflict in her very own testimony. But
2 nonetheless, if I view the evidence in a light most
3 favorable to the State, not considering the weight but the
4 existence of any evidence, and there was the existence,
5 however conflicting, but the existence of the evidence based
6 on direct, then I would have to deny your motion. And would
7 deny your motion on the CSC as well. But it's certainly
8 noted on the record.

9 MR. SHEEK: Now, in regards to this protocol we've
10 moved into evidence, Your Honor. I think the Defense has
11 objected on the grounds of hearsay. We've got a couple of
12 issues. I'll briefly address that.

13 THE COURT: Yeah. We'll need to -- let me -- can I
14 just look at --

15 MR. SHEEK: Sure. It's right here, Judge.

16 THE COURT: Okay. As I understand the objection from
17 the Defense is that the -- this is Dr. Pritchard's report,
18 correct?

19 MR. SHEEK: That's correct, yes.

20 THE COURT: And it's objected to because of hearsay; is
21 that correct?

22 MS. NELSON: And it's cumulative. She already has
23 testified to everything pertinent in it. Everything that
24 can even reasonably be deemed as pertinent. And so,
25 admitting it doesn't really assist the jury in any way

1 beyond the testimony she's already given.

2 MR. SHEEK: Your Honor, in regard to that. First of
3 all, I don't think it would be equitable to allow the
4 Defense to question her about her report and then object to
5 it being on the grounds of hearsay because they're the ones
6 that asked her about what was in it.

7 THE COURT: Right.

8 MR. SHEEK: And specifically, if it were to be
9 considered hearsay there's a couple of reasons it would be
10 an exception to hearsay. One, it's a document kept in the
11 normal course of business. She identified it as the child
12 sexual assault protocol that they use. Secondly, of course,
13 it's statements made in the aide of a medical diagnosis,
14 which would also take it outside the realm of a hearsay.
15 And then in regards to it as being cumulative and all
16 pertinent parts have been testified to, then that simply
17 shows there would be no prejudice to Defendant to allow them
18 to see it.

19 THE COURT: Let me just look at it just a moment.
20 Everybody be at ease.

21 (Off the Record)

22 THE COURT: Let me ask this. A question to the State
23 and one to the Defense.

24 Ms. Nelson, if you're entitled to ask the doctor
25 questions about her report, and I know you were thumbing

1 through the pages and going through and asking her
2 questions, then is it -- I hate to use the word unfair, but
3 I'm going to use it and just understand the -- try to
4 understand my question. Is it unfair to the State then to
5 prevent them from putting the report into evidence? Of
6 course, after the doctor authenticates it, is it not unfair
7 to the State to prevent them from putting the report in
8 after you've already had an opportunity to cross-examine her
9 about the report?

10 MS. NELSON: I don't --

11 THE COURT: And maybe you're not too concerned about
12 the fairness aspect of the -- the fairness argument as it
13 concerns the State, but you know where I'm coming from.

14 MS. NELSON: Well, I think it would be unfair if there
15 was something in there that contradicted anything I brought
16 out. If there were -- you know, if I got her to testify to
17 something wrong that her report is supposed to correct. But
18 basically just read from the report, and she didn't -- there
19 wasn't any testimony elicited from her about it being a
20 business record or --

21 THE COURT: Right.

22 MS. NELSON: I mean, you can infer it was made for
23 medical diagnosis and treatment, but that wasn't ever said.

24 THE COURT: Well, then that kind of goes to my next
25 question is -- and we may be splitting hairs here but, you

1 know, the typical questions to get a document in under the
2 Business Records Act was really not -- not covered with the
3 witness. And there are some things in here that really has
4 not been brought out at all. And I'm not necessarily
5 suggesting that it's information that would be helpful or
6 damaging to either side. But nonetheless, I just see some
7 things in here that I don't recall having heard from any of
8 the witnesses thus far.

9 MR. SHEEK: I think there's a rule that says whenever
10 one part of document is entered then, in fairness, the whole
11 thing should be entered, be considered, and that's the way
12 we do it.

13 They specifically went for -- and I understood their
14 strategy of what they were doing, well, you didn't check
15 vaginal penetration, did you. The inference they weren't
16 told, or the doctor wasn't told that there was actual
17 penetration when, in fact, the history clearly shows that
18 the child told her a story very consistent of what happened.

19 MS. NELSON: And she testified to that.

20 THE COURT: All right. Let me do this. Let me -- let
21 me take this under advisement. I don't anticipate any
22 immediate need for ruling on this, and let me -- let me just
23 take that under advisement and let you all know something.
24 Okay?

25 MR. SHEEK: Yes, sir.

1 THE COURT: All right. So now I assume that the
2 Defense will be putting up a case?

3 MS. NELSON: Yes, sir, Your Honor.

4 THE COURT: Are you ready to get started? Do you need
5 any break time before you start with your witnesses?

6 MS. NELSON: I would love just a very quick restroom
7 break and to check and see if --

8 THE COURT: Sure.

9 MS. NELSON: -- if Mr. Hartley is out there, if that's
10 okay.

11 THE COURT: Sure. And, of course, you had a pretty
12 lengthy list of potential witnesses. Do you have kind of
13 just a general idea of about how many you think you may be
14 calling?

15 MS. NELSON: I don't think there'll be more than about
16 four.

17 THE COURT: Okay. All right. Let me ask you this. Do
18 you think that possibly we could finish your case this
19 afternoon? If we can't, we can't, but --

20 MS. NELSON: I expect so. We were -- we were figuring
21 we'd be done. Yes, sir.

22 THE COURT: All right. And then we could argue and
23 charge then in the morning maybe. Hopefully.

24 MR. SHEEK: Yes, sir.

25 THE COURT: Okay.

1 MS. NELSON: Okay. So we're not going to -- we're
2 going to just stop with testimony today?

3 THE COURT: Yeah. Yeah. That would -- because I
4 imagine you're going to put your client up. I don't know.

5 MS. NELSON: Planning to.

6 THE COURT: Right.

7 MS. NELSON: Unless he changes his mind after you
8 advise him.

9 THE COURT: Right.

10 MS. NELSON: But I expect he will.

11 THE COURT: Right. Yeah, I figure we'd probably get
12 through most the afternoon with testimony. That will give
13 us an opportunity -- what I like to do is provide you all
14 with a copy of my charge in draft form and we can, you know,
15 discuss it and work on it and that sort of thing. But
16 basically what I'm going to do, so you'll know in advance
17 what I'm going to charge. And, you know, I mean, you all
18 have been doing this a long time. You know basically what
19 I'm going to charge, and I don't think there's necessarily
20 any unique issues or areas that -- or you're going to want
21 in there.

22 But nonetheless -- and probably have you something, you
23 know, first thing in the morning and we can deal with that.
24 May even have -- because I'm doing that Laurens plea at
25 9:00, may even have the jury not come in until about 10:00.

1 That'll give us enough time to work on the charge and all.

2 MS. NELSON: Okay.

3 MR. SHEEK: Yes, sir.

4 THE COURT: Okay. Good enough? All right. Let's be
5 at ease for about 10 minutes.

6 MS. NELSON: Thank you, Your Honor.

7 MR. SHEEK: Yes, sir.

8 (Whereupon, the court was in recess until 3:00 p.m.)

9 THE COURT: Anything from the State, Defense?

10 MR. SHEEK: Nothing from the State, Your Honor.

11 MS. NELSON: I'd like to raise one matter before the
12 Jury comes back in, if that's okay, regarding Mr. Hartley's
13 testimony.

14 THE COURT: That's your expert?

15 MS. NELSON: The polygraph. Yes, sir. I would move to
16 preclude Mr. Sheek from talking about the charge that Mr.
17 Hartley went through PTI on. It's not a conviction. The
18 charge was dismissed. It should be unavailable in any kind
19 of public record.

20 THE COURT: Right.

21 MS. NELSON: And I move to preclude any mention of
22 that.

23 THE COURT: Yeah. I don't think under the rules that
24 would come into play as to a witness's -- it was not a
25 conviction.

1 MR. SHEEK: Well, here's how I think it comes in.

2 THE COURT: All right. We're going to get creative
3 here I'm thinking.

4 MR. SHEEK: This man testified under oath in this
5 courtroom that he left at his own volition to start private
6 practice. That's simply not true. It goes to his
7 credibility.

8 THE COURT: Right. I don't know if he -- I don't know
9 if he said I went into private practice by my own volition.
10 He just -- you know, he was with SLED for x-number of years
11 and then went into private practice.

12 MR. SHEEK: Well, I said why did you leave SLED. He
13 said to start my private practice. And I said were there
14 any other reasons. He said not at all. I said were you not
15 charged with this.

16 THE COURT: Well, but still, I mean, it goes back to
17 the rules allowing for convictions to impeach the
18 credibility of a witness to come in to evidence. I mean,
19 that's kind of almost like a -- kind of a backdoor way --
20 I'm not being critical. But it's kind of a backdoor way to
21 get the conviction in.

22 MS. NELSON: And he wasn't fired from SLED, Your Honor.
23 He did resign and went into private practice.

24 THE COURT: Yeah.

25 MR. SHEEK: He was put on indefinite unpaid suspension

1 and ultimately on his own left. I think it goes to -- when
2 he's the chief polygrapher and he's testifying as an expert
3 witness we're in a different ball game than a fact witness.
4 As an expert polygrapher who has lost his job for
5 professional misconduct, I think it's relevant.

6 THE COURT: I don't think -- and find me something to
7 convince me otherwise. I don't think that an expert witness
8 and a lay witness are treated differently insofar as
9 convictions to impeach their credibility.

10 MR. SHEEK: Okay. We have one other issue. I think
11 under the rules of court I'm entitled to notice when they're
12 going to call an expert, which I've learned about this as of
13 today.

14 MS. NELSON: The only thing I can say to that is I gave
15 the court and Mr. Sheek notice as soon as I -- as soon as I
16 knew I needed one once I got the -- the complete file from
17 their polygrapher.

18 THE COURT: Right. You got that yesterday, I think,
19 correct? The copies of the results?

20 MS. NELSON: Yes, sir. The only thing I had before
21 that was his report. I wouldn't have had anything for
22 another expert to be able to look at and make any kind of
23 determination.

24 THE COURT: Okay. You got the report, Mr. Owen's
25 report, yesterday?

1 MR. SHEEK: No.

2 THE COURT: No?

3 MR. SHEEK: She got Mr. Owen's report quite some time
4 ago.

5 MS. NELSON: The report --

6 MR. SHEEK: She didn't see the graph that she's talking
7 about until yesterday.

8 MS. NELSON: Right.

9 MR. SHEEK: But my understanding was that was never
10 requested or subpoenaed either.

11 MS. NELSON: I had a subpoena ready for him when he
12 came here yesterday and he told me he didn't need it and he
13 turned over the file to me.

14 MR. SHEEK: But this is the situation it puts the State
15 in. We've got a person that the Defense is wanting to
16 present as an expert, based on a report that they were given
17 a long time ago in discovery, that I've not been put on
18 notice of. And the rules are pretty clear if you're going
19 to call an expert on what you've got to provide, and I don't
20 have it.

21 THE COURT: Yeah.

22 MS. NELSON: Well, he's heard it in *Jackson v. Denno*,
23 Your Honor, and he had his -- he heard everything Mr.
24 Hartley is going to say in *Jackson v. Denno* when the court
25 allowed us to do that. And when I didn't move for a

1 continuance of the entire trial, which would have given Mr.
2 Sheek more notice of that expert, and we very rapidly
3 obtained somebody to look at it and had him here today, and
4 Mr. Sheek has heard all the testimony and had his own person
5 who, if he wanted to try to refute anything Mr. Hartley was
6 saying, was here in the courtroom earlier today. And it was
7 all -- I mean, I'm not bringing up anything that wasn't all
8 raised yesterday this morning.

9 THE COURT: Yeah. If I remember correctly, we were
10 back in chambers before we even -- well, we may be -- we
11 probably did pick a -- no. We didn't pick a jury. This was
12 before we even qualified the jury. And I think we met in
13 chambers and it was discussed about possibly trying to find
14 an expert to counter State's expert that Defense may be
15 seeking a continuance just depending upon how everything
16 shook out. And so, we had the discussion then. I don't
17 recall, Solicitor, any objections at that time to even
18 letting the Defense go forward on that.

19 MR. SHEEK: Well --

20 THE COURT: Let me just finish.

21 MR. SHEEK: I'm sorry.

22 THE COURT: And then we had some discussion about the
23 defense doing that, and I think I used the term giving the
24 Defense every bite at the apple. I don't know why I termed
25 it that way, but that's what I said and that's just kind of

1 what's come back to mind. And again, I don't remember any
2 objection to -- and I'm not saying you waived anything,
3 Solicitor. I'm not suggesting that. But no objection was
4 made to the Defense going in that direction. I remember
5 there was some question of whether or not the results -- Mr.
6 Owen's results could be copied, and I remember Mr. Owen's
7 sitting back there and said, yes, they can be copied. And
8 again, no -- no objection. So I'm trying to figure out --
9 because basically the bottom line, the fact that the court
10 has to look at, is prejudice to the side making the
11 objection to this witness being allowed to testify.

12 What rule is it that -- as far as putting you on
13 notice, Solicitor, of this expert being called? What rule
14 is that?

15 MR. SHEEK: Your Honor, that would be in --

16 THE COURT: Help me out.

17 MR. SHEEK: It would be in the Criminal Practice Rule
18 5.

19 THE COURT: Is it 5?

20 MR. SHEEK: Yes, sir.

21 MS. NELSON: Yes, sir. And I don't dispute that at
22 all. But the only other thing I would add, Your Honor, is
23 this was all discussed before the trial started after we
24 finished the *Jackson v. Denno* with Mr. Hartley's testimony,
25 and I brought up to the court that at that point, since I

1 had found this expert who had something to say, that I felt
2 that that was something we needed to put in front of the
3 jury. And there wasn't any objection made at that point
4 either to lack of notice.

5 MR. SHEEK: Judge, if I may address that issue.

6 THE COURT: Hold that thought just a minute, Solicitor.
7 Now, I'm looking at Rule 5. Unless I'm missing it, which
8 may -- as far as a time factor involved with respect to
9 disclosure of an expert. Am I missing something? Is there
10 a time limit, Solicitor?

11 MR. SHEEK: I beg the court's indulgence for one
12 moment.

13 THE COURT: Sure. Take your time.

14 MS. NELSON: I think what's required to be disclosed is
15 reports.

16 THE COURT: Yeah. That's what I'm looking at.

17 MS. NELSON: And we didn't have one obviously.

18 MR. SHEEK: That's fine. If the Defense is asserting
19 we'll be calling an expert who's made no examinations, tests
20 or anything else, then I'll withdraw my objection.

21 THE COURT: Okay. All right. Well, that --

22 MS. NELSON: Well, I'm certainly not saying he hasn't
23 reviewed things and hasn't an opinion. We've all heard it
24 this morning.

25 THE COURT: Right.

1 MR. SHEEK: The rule --

2 THE COURT: Right. So basically what Solicitor is
3 conceding is that if you had some reports by this witness
4 then, of course, that would have to be disclosed. But the
5 fact that he just reviewed it and he's testified, and based
6 upon his review then that objection has been withdrawn.

7 All right. So we're going back to the Defense motion
8 to prevent examination of Mr. Hartley concerning this
9 incident that he received PTI. I believe the rules would
10 prohibit that, so I would instruct the State not to question
11 Mr. Hartley about that particular incident.

12 MR. SHEEK: Your Honor, if we could address the Rule 5
13 issue.

14 THE COURT: I thought you had conceded.

15 MR. SHEEK: I said if there are no reports. If he's
16 saying he's conducted no investigation, examinations, and
17 there's no reports, we withdraw. If they're saying there is
18 a report, is my understanding --

19 MS. NELSON: No. There's not --

20 MR. SHEEK: And it doesn't mean written. It doesn't
21 say anywhere in the rule that it's got to be a written
22 report. It says you've got to give me the substance of any
23 reports.

24 MS. NELSON: He -- all I can say, Your Honor, is I
25 don't expect Mr. Hartley to testify to anything new that he

1 hasn't already said that the State heard this morning.

2 THE COURT: Right.

3 MS. NELSON: And without a prior objection to this
4 allowing us to agree that the polygraph evidence comes in,
5 knowing what our intention was --

6 THE COURT: Yeah.

7 MS. NELSON: -- letting us argue to the jury that we
8 were going to give him this evidence, and then to now
9 complain about it seems like -- I mean, if we're not going
10 to be allowed to go forward with it, it seems like a
11 mistrial to me.

12 THE COURT: Yeah. Well --

13 MR. SHEEK: Well, Judge, first of all, when we
14 discussed pretrial experts the only expert that State had to
15 present was the medical doctor that just testified as an
16 expert. We never even moved to qualify Mr. Owen as an
17 expert, nor was he ever intended to testify as a poly-
18 graphologist. In fact, throughout the pretrial and into the
19 trial I argued again and again it's not admissible, so why
20 does it matter. It's not admissible, so why does it matter.
21 So there was no concession at all whatsoever regarding the
22 polygraph. Then the motion that was actually made by the
23 Defense was, Judge, we're in a untenable position if I can't
24 talk about the fact that he took a polygraph because I can't
25 explain why he then made these statements we say are false,

1 and I said if they feel like they need to put it in, they
2 can put it in. But again, there was no consent by the State
3 to then call their own expert witness to try to discredit
4 the very evidence they asked to be put in.

5 So here's the situation I'm in.

6 MS. NELSON: We asked for it to be out.

7 MS. SHEEK: Here's the situation I'm in. We came to
8 court and all on a separate matter, and an alibi wasn't
9 presented until we were at trial. And I understand that
10 strategically because the argument made by Defense was there
11 was no reciprocal 5 served so, you know, we didn't have to
12 turn it over, and they were correct. I very carefully
13 filed, by hand, a Rule 5 motion, reciprocal Rule 5 on this
14 particular case, and now I'm at the trial being told there's
15 an expert beginning to testify. I don't even know where the
16 man works. And by virtue of him testifying at *Jackson vs.*
17 *Denno*, which is a completely separate issue from the guilt
18 issue, does not mean the State concedes that he can be
19 called during the testimonial trial stage.

20 THE COURT: Well, let me address two points and I think
21 I can handle this. As far as -- you know, Rule 5 certainly
22 intends for reports to be written reports when it refers to
23 copy -- to inspect and copy. That would certainly -- the
24 inference that can be made that's a written report as
25 opposed to any sort of oral report. So that's what Rule 5

1 deals with. There is no written report that Defense counsel
2 has indicated that they have. All they have would be just
3 the verbal testimony of Mr. Hartley.

4 So now, and my understanding is that at the conclusion
5 of the *Jackson vs. Denno* hearing, which included Mr.
6 Hartley's testimony, it was agreed by both sides that all
7 polygraph evidence would be admissible. Well, all polygraph
8 evidence would be Mr. Owen's testimony and Mr. Hartley's
9 testimony. So, you know, that was certainly my
10 understanding. And maybe the court did a poor job on
11 clarifying that stipulation that it included Mr. Hartley and
12 Mr. Owens, but I thought we were all on the same page
13 because Mr. Hartley had just testified 10 minutes prior to
14 that.

15 MR. SHEEK: And if that was the court's understanding
16 then I withdraw my objection to clean up this issue and we
17 can just move on, Judge.

18 THE COURT: Okay. All right. Well, thank you,
19 Solicitor. I appreciate that.

20 All right. Now, you going to wait until the end of
21 your case, Ms. Nelson, concerning the Defendant or do I need
22 to go ahead and --

23 MS. NELSON: We're going to call him first, Your Honor.

24 THE COURT: You're going to call him first?

25 MS. NELSON: Yes, sir.

1 THE COURT: Okay. Let me get to my little script and
2 then we'll do that before the jury is brought back out.

3 Okay. Mr. Bolt, would you please stand. And you'll
4 need to be sworn in and I need to ask you some questions.

5 MR. BOLT: Yes, sir.

6 **WILLIAM DONALD BOLT**, first being
7 duly sworn testified as follows:

8 THE COURT: You are William Donald Bolt?

9 MR. BOLT: Yes, sir.

10 THE COURT: Okay. At this time I'm going to explain to
11 you certain of your rights. If you do not understand
12 anything I say please let me know. If you cannot hear me,
13 please let me know.

14 MR. BOLT: Yes. Yes.

15 THE COURT: If you want me to explain anything in more
16 detail, please let me know. Do you understand?

17 MR. BOLT: Yes, sir.

18 THE COURT: We have now reached the stage of the trial
19 wherein you may present your defense. You have the right to
20 claim the protections given to you by the Fifth Amendment to
21 the Constitution of the United States. This Amendment
22 states in part, "No person shall be compelled in any
23 criminal case to be a witness against himself." This means
24 that you cannot be required to testify in this case. You
25 have the right to testify on your own behalf; however, no

1 one can make you testify. This is a personal right and no
2 one can waive this right except you. If you decide to
3 testify you'll be subject to the same rules that govern
4 other witnesses and you may be examined and cross examined
5 on any relevant issue in this case.

6 Let's go off the record for just a second.

7 (Off the Record)

8 THE COURT: Ms. Nelson, do I need to start back? My
9 law clerk indicated that he might be unable to hear me. Has
10 he heard me?

11 MS. NELSON: Do you want us to step closer and maybe
12 that will help some?

13 THE COURT: Yeah, how about -- yeah, come -- let's get
14 right up here.

15 MS. NELSON: You want us to come all the way up?

16 THE COURT: Please.

17 THE BAILIFF: Judge, we can put them in another room,
18 if you like.

19 THE COURT: Well, I just -- getting on the microphone I
20 really thing was going to get pretty loud, but let's see.

21 Mr. Bolt, have you heard me so far?

22 MR. BOLT: Yes, sir.

23 THE COURT: Okay. All right. If you decide to testify
24 you will be subject to the same rules that govern other
25 witnesses and you may be examined and cross examined on any

1 relevant issue in this case. In addition, if you have any
2 convictions involving dishonesty or false statement or for
3 crimes punishable by imprisonment for more than one year and
4 the court determines that the probative value of admitting
5 this evidence outweighs it's prejudicial effect to you, the
6 Solicitor will be able to introduce your record to attack
7 your credibility.

8 If you decide to testify, this decision on your part
9 must be freely, voluntarily and intelligently made with
10 knowledge of the protections given to you by the Fifth
11 Amendment and the consequences of your decision to testify.

12 If you decide to not testify, I will instruct the jury
13 that they cannot give the fact that you did not testify any
14 consideration whatsoever and that there is to be absolutely
15 no prejudice to you because you did not testify. It is left
16 entirely up to you whether or not you testify.

17 Now, you can -- I'm sure you've already talked with
18 your attorneys and you can talk with them some more. You
19 can talk with -- I think your wife has been in the courtroom
20 some. You can talk with her or anybody else you want to
21 talk to before making the final decision whether or not you
22 will testify. Okay?

23 Have you understood everything I've --

24 MR. BOLT: Yes, sir.

25 THE COURT: Okay. Do you have any questions at all

1 about what I've explained to you?

2 MR. BOLT: No, sir.

3 THE COURT: Okay. And have you discussed with your
4 attorneys whether or not you should testify?

5 MR. BOLT: Can I have just a few more seconds, please?

6 THE COURT: Yeah. Why don't you go back to your table
7 with your lawyers and then you can come back up after you've
8 talked with them. Okay?

9 MR. BOLT: Thank you.

10 MS. NELSON: And, Your Honor, while we're talking about
11 this, just for the record. It's my understanding that he
12 doesn't have any prior convictions that would be used -- be
13 able to be used for impeachment.

14 MR. SHEEK: Well --

15 MS. NELSON: Correct me if I'm wrong.

16 MR. SHEEK: Well, he doesn't have one that would come
17 under the rules of prior conviction. However, if he
18 testifies in front the jury the way he did at the *Jackson*
19 *vs. Denno*, "I was so scared because I've never been in
20 trouble before," he's got a prior conviction that I will ask
21 him about. So he needs to stay away from that line of
22 testimony if he doesn't want it brought up.

23 MS. NELSON: Would you consider him to have been in
24 serious trouble before?

25 MR. SHEEK: Anytime I get put in handcuffs I consider

1 serious.

2 THE COURT: Well, I think what I'm hearing the
3 Solicitor say, we're not even going to have to get into it
4 if he just doesn't make that comment that I've not been in
5 any trouble before. So maybe you can just caution him about
6 that.

7 MS. NELSON: Yes, sir.

8 THE COURT: If he decides to testify. We're going to
9 be off the record for just a moment and give you all a
10 chance to talk.

11 MS. NELSON: Thank you, Your Honor.

12 (Off the Record)

13 THE COURT: Okay. Mr. Bolt, we're back on the record.
14 You've had an opportunity to talk with your lawyers more --

15 MR. BOLT: Yes, sir.

16 THE COURT: -- about this issue of whether or not you're
17 going to testify. And what has been your decision whether
18 or not you're going to testify?

19 MR. BOLT: I'm going to testify.

20 THE COURT: You're going to testify?

21 MR. BOLT: Yes, sir.

22 THE COURT: Very good. Go back to your seat. Thank
23 you very much, sir.

24 MR. BOLT: Thank you.

25 THE COURT: Anything further from the State before we

1 bring the jury out?

2 MR. SHEEK: Nothing from State, Your Honor.

3 THE COURT: Defense?

4 MS. NELSON: No, sir, Your Honor.

5 THE COURT: Okay. Bring the jury out, please.

6 (Whereupon, the jury enters the courtroom at 3:15 p.m.)

7 THE COURT: Okay. Let the record reflect that the
8 entire jury is back in the courtroom and now we're in the
9 Defense case. So call your first witness.

10 MS. NELSON: Thank you, Your Honor. We'll call Don
11 Bolt to the stand.

12 THE COURT: Okay. Come around, please, sir.

13 **WILLIAM DONALD BOLT**, first being
14 duly sworn testified as follows:

15 THE COURT: And state your name for the record, please,
16 sir.

17 THE WITNESS: William Donald Bolt.

18 THE COURT: All right. You may proceed.

19 MS. NELSON: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. NELSON:

22 Q Don, how old are you?

23 A I'm 57.

24 Q Can you hear me if I stand -- from here?

25 A Yes, I can hear you.

- 1 Q Okay. Tell me where you live?
- 2 A Road.
- 3 Q Who do you live there with?
- 4 A My wife and my son, C.
- 5 Q How many children do you and your wife have together?
- 6 A Altogether it's six.
- 7 Q Which ones are yours and Cheryl's?
- 8 A A. and C.
- 9 Q Okay. And then there are four other children in
- 10 addition to that?
- 11 A (Non verbal affirmative.)
- 12 Q Did you help raise all six of those children?
- 13 A No. One son that lives down -- that we haven't raised.
- 14 But the rest of them, yes.
- 15 Q Okay. Do you have grandchildren?
- 16 A Yes, ma'am.
- 17 Q How many?
- 18 A Five.
- 19 Q Five grandchildren?
- 20 A (Non verbal affirmative.)
- 21 THE COURT: You need to make sure you give a verbal
- 22 response -- a verbal answer instead of the nod of the head.
- 23 Okay?
- 24 THE WITNESS: I'm sorry.
- 25 THE COURT: That's okay. That's all right.

1 A Five.

2 Q Thank you. Are you able to work at this point in your
3 life, Don?

4 A No, ma'am.

5 Q Why is that?

6 A I guess that be where I'm COPD and high blood pressure
7 and poor circulation in my leg.

8 Q And when you say COPD do you mean chronic obstructive
9 pulmonary disease?

10 A Yes, sir.

11 Q Back in -- back in December of 2008 were you able to
12 work then?

13 A I was working then.

14 Q What did you do?

15 A I did work with a construction company here in
16 Greenwood, Town & Country.

17 Q Did you finish high school, Mr. Bolt?

18 A No, ma'am.

19 Q Do you -- this doesn't sound like a very nice question,
20 but do you consider yourself a smart person?

21 A I'm not very smart.

22 Q Have you ever had any other schooling after you dropped
23 out of school?

24 A No, ma'am.

25 Q Can you remember exactly which grade you finished in

1 school?

2 A No, ma'am. I cannot.

3 Q Do you feel like you did or didn't make it to high
4 school?

5 A I feel like I made it to junior high.

6 Q Okay. How long have you and Cheryl been married?

7 A Twenty-five years.

8 Q Now, going back to when Min says this incident
9 happened back in 2006. Do you remember a night when she
10 spent the night at your house?

11 A She has spent nights there several nights.

12 Q Was there -- do you remember if she spent the night who
13 else would have been there? This night that she's talking
14 about.

15 A Probably all of the kids.

16 Q And by all the kids, who do you mean?

17 A That would be all the grandkids, and plus C.

18 Q And how -- how many grandkids is that? You said five?

19 A Yes, ma'am.

20 Q What about anybody else in --

21 A Excuse me. The two little ones wasn't born yet. So
22 that'd be the three -- I'm sorry. It would been the three
23 grandkids there.

24 Q And when you say three, are you talking about E. ?

25 A E. -- D. , E. and Stacie. When Stacie was a

- 1 baby.
- 2 Q Are those children all Heather's children?
- 3 A Yes, ma'am.
- 4 Q Heather is your step-daughter?
- 5 A Yes, ma'am.
- 6 Q And what other kids would have been there besides those
- 7 grandkids and -- would there have been any other kids there
- 8 besides them and , Minor ?
- 9 A Her brother and sister and that would be about it. And
- 10 C. . My son, C. . He was there.
- 11 Q And you say her brother and sister. Do you mean
- 12 M. ?
- 13 A Yes, ma'am.
- 14 Q And do you mean Christy?
- 15 A Yes, ma'am.
- 16 Q What about -- did you hear her testify that she would
- 17 have come there with Shannon?
- 18 A Yes, ma'am.
- 19 Q Do you know if Shannon and Brandon were there?
- 20 A Yeah, Shannon and Brandon I believe was there.
- 21 Q So you had a house full of people?
- 22 A Yeah, I had a house full of people.
- 23 Q All right.
- 24 A We usually did all the time.
- 25 Q So the first time you ever heard that Minor had said

1 anything about this was not until December of 2008; is that
2 right?

3 A Yes. Yes, ma'am.

4 Q And how did you hear about it?

5 A They had come out to arrest my son and my wife had
6 called me and told me that. So I had went to the jailhouse
7 myself.

8 Q And it turned out they were actually looking for you?

9 A It turned out they was actually looking for me.

10 Q They just had the name wrong?

11 A Yes, ma'am.

12 Q So when you heard they were looking for you what did
13 you do?

14 A I went and turned myself in.

15 Q And when you turned yourself in did you find out what
16 you were being accused of?

17 A They -- when I sat down and talked with them they was
18 accusing me of like a -- touching her.

19 Q So you got told what you were being accused of?

20 A Yeah.

21 Q Did Investigator Brandon Strickland tell you what --

22 A Yes.

23 Q -- Minor was saying you did? So from the time you
24 first went in there on December 4th you heard about what she
25 was claiming you did?

- 1 A Yes, ma'am.
- 2 Q All right. When you -- and you voluntarily --
- 3 Investigator Strickland asked you to talk to him and you
- 4 agreed?
- 5 A Yes, ma'am.
- 6 Q And you waived all your Constitutional rights?
- 7 MR. SHEEK: Objection to the leading, Your Honor.
- 8 A Yes, ma'am.
- 9 THE COURT: Try to rephrase and maybe -- I'll allow a
- 10 little leading, but try to rephrase, please, ma'am.
- 11 Q Did he ask you to give up some of your rights?
- 12 A No, ma'am.
- 13 Q He didn't?
- 14 A Not giving my rights up. No, he didn't.
- 15 Q Did he tell you you had the right to remain silent?
- 16 A He hadn't told me I had -- he read me my rights, but I
- 17 totally did not understand the consequences of that.
- 18 Q Did you talk to him after he read you your rights?
- 19 A A little, yes.
- 20 Q And what did you tell him, on December 4th?
- 21 A I told him that I didn't do anything.
- 22 Q Was that the truth?
- 23 A Yes, ma'am.
- 24 Q Is that still the truth?
- 25 A Yes, ma'am.

1 Q And what happened when you told him you didn't do
2 anything?

3 A I went back and they put me in jail.

4 Q So it didn't matter that you didn't tell him that you
5 didn't do anything?

6 A No, ma'am. It didn't.

7 Q It's not -- it's not like once you told him the truth
8 you got to go home, was it?

9 A No, ma'am.

10 Q Now, the next day they had Mr. Daryl Owen come and talk
11 to you. Do you remember that?

12 A Yes, ma'am.

13 Q And what did you do with Mr. Owen?

14 A I went in there and took -- took the test.

15 Q Are you talking about the polygraph test?

16 A Yes, ma'am.

17 Q What happened after that?

18 A He asked all the question he had told me that I didn't
19 pass.

20 Q Well, what did you think about that?

21 A I was scared to death. I was thinking, well, why come
22 I didn't pass this, and I just made it up, what I thought
23 they wanted to hear so I could get out of there and get back
24 to my family.

25 Q Why did you need to get out of there and get back to my

1 family?

2 A I had -- I'm the sole provider of my family.

3 Q And that was your --

4 A That's my sole purpose on this earth is to take care of
5 my family.

6 Q Who all were you taking care of at that point in time?

7 A At that point I was taking care of my wife, C. , and
8 my mother-in-law was there with us.

9 Q So there were four of you all in the house at that
10 time?

11 A Yes, ma'am.

12 Q And you were the only one making any money?

13 A Yes, ma'am.

14 Q How did you feel when you found out on December 4th
15 what you were being arrested for?

16 A Terrible. I was scared. I just didn't know what to
17 do, what to say. It's like my mind just -- I just totally
18 lost my mind.

19 Q Okay. Back to December 5th after you took this
20 polygraph exam, and you were told you failed it?

21 A Yes, ma'am.

22 Q And then, I believe, your testimony was that you -- you
23 just said whatever they wanted to hear so you could get out
24 of there?

25 A Yes, ma'am.

1 Q And you heard Mr. Owen earlier today. You were in here
2 when he testified that he'd already been given the details
3 about what --

4 A Yes, ma'am.

5 Q So he knew that before you ever --

6 A Yes. Yes, ma'am.

7 Q -- went in the room with him? Did he tell you that,
8 what details he knew?

9 A He was saying -- with the questions he was asking he
10 might as well been, you know, telling me.

11 Q Questions like did you put your finger into Minor 's
12 vagina?

13 A Yeah. Yes, ma'am. Stuff like that.

14 Q All right. So after you take this polygraph exam and
15 speak to Mr. Owen what happened after that?

16 A Then I go back in the jail cell.

17 Q How long did you stay there?

18 A Overnight.

19 Q On December 5th?

20 A Oh, no. No, ma'am. I stayed there until that
21 afternoon. I'm sorry. I thought you was talking about the
22 4th.

23 Q I'm still talking about the 5th when you took the
24 polygraph.

25 A Yes, ma'am. Okay.

1 Q And I know it's -- I know it gets confusing. So after
2 the polygraph did you go back to your jail cell?

3 A Yes, ma'am.

4 Q And how long did you stay there?

5 A I was in there all afternoon.

6 Q And then what happened?

7 A And then they had to come get me because somebody was
8 coming to bond me out. And I got to this little room with a
9 trash can or something where you thrown your bedroll or your
10 pillow or something in it, and I was stopped right there and
11 told I had to go back and wait for Mr. Strickland to come
12 back.

13 Q So are you saying you thought somebody was there to
14 post your bond?

15 A Yes, ma'am.

16 Q But you hadn't gotten out yet?

17 A I hadn't signed out.

18 Q You were still -- you were still in your orange outfit?

19 A Yes, ma'am.

20 Q You were still in the jail?

21 A Yes, ma'am.

22 Q And somebody came and said you needed to talk to Mr.
23 Strickland again?

24 A Yes, ma'am.

25 Q Had you asked anybody to let you talk to Mr.

1 Strickland?

2 A No, ma'am.

3 Q Okay. Did you ask to talk to anybody after that --

4 A No, ma'am.

5 Q -- polygraph?

6 A No, ma'am.

7 Q So what happens next after you get told that you need
8 to talk to Mr. Strickland?

9 A Well, I go back and wait, and it seemed like forever
10 until he got back. Then he takes me into this little
11 conference room and he says, I know you did something.
12 You're going to tell me what you did. And I was still
13 scared. That made me more scared. The main thing that was
14 on my mind was getting home and getting back to work.
15 Getting home with my family. Not realizing whatever I might
16 have said would be used against me.

17 Q Did he say anything else to you other than I know you
18 did something?

19 A He said I know you know something. He said I'm going
20 to raise your bond so high that you won't get out.

21 Q He told you he was going to raise up your bond so high
22 you couldn't get out?

23 A Yes, ma'am.

24 Q How did that make you feel?

25 A Like bad. Really, really bad and scared, like well,

1 why is he going to do this, I mean.

2 Q Did you -- did you think he could do that?

3 A Yes, ma'am.

4 Q So you're saying that even though somebody was there to
5 post your bond and your bond had already been set, you
6 didn't realize that it could be messed with -- that it
7 couldn't be messed with?

8 A No, ma'am.

9 Q So when he told you that you believed him?

10 A Yes, ma'am.

11 Q And so he's told you he knows you did something else
12 and you're going to tell him what it is?

13 A Yes, ma'am.

14 Q And if you don't tell him you're not going to go home?

15 A Yes, ma'am.

16 Q You're not going to be able to take care of your
17 family?

18 A Yes, ma'am.

19 Q So what did you do then?

20 A I just basically -- from what he had told -- said and
21 everything, and I just basically told him, whatever you want
22 to hear. I don't care. I need to go home.

23 Q And then he --

24 A And he started writing.

25 Q He started writing?

- 1 A Yes, ma'am.
- 2 Q And when he got through writing he asked you to sign
- 3 the paper?
- 4 A Yes, ma'am.
- 5 Q And you did?
- 6 A And I signed it. Because I was ready to go home.
- 7 Q After you signed that paper what did you get to do?
- 8 A After I signed the paper I went right across the little
- 9 hall to a little office and I was able to sign out.
- 10 Q You got to go home?
- 11 A Then I got to go get my clothes and stuff and go home.
- 12 Q Now, you've heard that one of the things that -- and I
- 13 know this is a really personal question.
- 14 A Yes, ma'am.
- 15 Q But all of this is personal.
- 16 A I have no problem with it.
- 17 Q One of the things that you've heard Mr. Owens say is
- 18 that you claimed that Minor sat on your lap that day and you
- 19 got an erection. Do you remember hearing that?
- 20 A I was just making that up just trying to get home. I
- 21 didn't know.
- 22 Q How do you know that can't be true? Or can -- is that
- 23 true?
- 24 A No, ma'am. I don't know how to pronounce this, Judge.
- 25 My stuff ain't worked in years.

- 1 Q What do you mean by my stuff ain't worked?
- 2 A I don't know how to pronounce this in court.
- 3 Q Are you trying to say that you don't get an erection?
- 4 A Yes. Yes.
- 5 Q How long has that been going on, Mr. Bolt?
- 6 A That's been going on 10 maybe 11 years now.
- 7 Q Have you tried to do anything about that?
- 8 A Yes, ma'am. I have. And it's not succeeded to work.
- 9 Q And what did you try?
- 10 A I have tried Viagra.
- 11 Q And you said it didn't work?
- 12 A It didn't do nothing. And then I tried Cialis and it
- 13 didn't work either, so I just gave up.
- 14 Q So back in -- this has been a long time ago, in 2006.
- 15 Are you telling the jury that you were not able to get an
- 16 erection at that point?
- 17 A That's correct.
- 18 Q Let's go to your house and this room that Minor says
- 19 she was sleeping in. Is that -- you heard me describe your
- 20 house to Minor ?
- 21 A Yes, ma'am.
- 22 Q Is that -- is that pretty accurate?
- 23 A Yes, ma'am.
- 24 Q So the room that -- what room were the kids in?
- 25 A They was actually in the -- in the backroom.

1 Q And by backroom?

2 A A storage room.

3 Q Are you talking about the one that's adjacent to your
4 bedroom?

5 A Yes, ma'am.

6 Q And you called it a storage room?

7 A Yes, ma'am.

8 Q Is that what you use it for now?

9 A Yes, ma'am.

10 Q At the -- back in 2006 what did you use that room for?

11 A It was a storage room and the kids would put a pallet
12 down or something when there was a bunch of them spending
13 the night.

14 Q Is it unusual for you to have kids at your house at
15 your house spending the night?

16 A No, ma'am.

17 Q Okay.

18 A All the time.

19 Q So you said that room -- that kids would put pallets
20 down in there?

21 A Yes, ma'am.

22 Q Was there a bed in there in 2006?

23 A No, ma'am.

24 Q Has there ever been a bed in that storage room?

25 A Not until maybe a year ago.

1 Q Why was there a bed in there then?

2 A My son had moved back in for a little while.

3 Q And he --

4 A He didn't stay but a couple of months and he packed up
5 and left again.

6 Q And that -- has that room always from the time you --
7 well, how long have you been living at that house?

8 A About 18 years.

9 Q Has that room always looked like it did in 2006?

10 A No, ma'am. It used to be a screened in porch.

11 Q Did you close it in?

12 A Yes, ma'am. I closed it in.

13 Q Okay. And that was before 2006 that you closed it in?

14 A Yes, ma'am.

15 Q And has -- other than your son, A. , using it
16 temporarily as a bedroom has it ever been used by anybody
17 else as a bedroom?

18 A No, ma'am.

19 Q So tell me again when there would have been a bed in
20 that room?

21 A It probably might have been maybe a year or two ago.

22 Q And that's the only time?

23 A That's the only time. I'm not sure of the date.

24 Q What about a television? Is there a TV in that room?

25 A No, ma'am. There's never been a TV in that room.

1 Q Why don't y'all have a TV in there?

2 A Well, when I wired it I didn't wire it right and the
3 receptacles never worked and it's never been cable in there
4 because there's now ay to get any.

5 Q There's no cable in there?

6 A There's no cable in that room there. There's no power
7 in there.

8 Q So a TV, even if you put one in there, it wouldn't
9 work?

10 A It wouldn't work.

11 MS. NELSON: May I have just a second, Don. Okay?

12 THE WITNESS: All right.

13 Q Going back to December 5th when you talked to Mr. Owen
14 and you had the lie detector test, was that something you
15 wanted to do?

16 A Yes, ma'am. I asked for it to prove myself.

17 Q Why -- and what do you mean by prove yourself?

18 A To prove that I was innocent. That I didn't do
19 anything.

20 Q Okay. So that was something that you offered to do?

21 A Yes, ma'am.

22 Q And, Don, one more time. Is there -- is what Minor
23 says happened, is that the truth?

24 A No, ma'am.

25 Q Did you ever do anything like that to Minor ?

1 A No, ma'am.

2 Q Why did you say you did?

3 A Because I was scared. I wanted to get out and go home.

4 MS. NELSON: Please answer any questions Mr. Sheek has
5 for you.

6 THE COURT: All right. Cross examination by the State.

7 MR. SHEEK: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. SHEEK:

10 Q So, Mr. Bolt, is what you're telling this jury right
11 here that when you're scared and you want to go home, get
12 out of trouble, you'll lie? Is that what you're telling us?

13 A I didn't know what to do.

14 Q Okay. Well, the question is fairly simple. Are you
15 telling this jury that when you're scared and you just want
16 to go home, you'll lie? Yes or no?

17 A At that consequence, all was in my mind was to get out
18 of there and go home.

19 Q Okay. Here's my question. Are you telling this jury
20 that when you're scared and you just want to go home, you'll
21 lie? Yes or no?

22 A No. I'm not saying I'll do that all the time. I did
23 that to get home at that time.

24 Q Just when it's real important?

25 A Sir?

1 Q Just when it's really important?

2 A No, sir. Then, at that time.

3 Q Okay. So you'll lie about criminal charges if you
4 think it'll get you home? That's what you're telling us?

5 A I wasn't realizing that. I was just worried about
6 getting to the house with my family. I wasn't worried about
7 the outcome.

8 Q So your thought processes were I want to go home so I
9 will say I stuck my fingers in the vagina of an 11-year-old
10 child? That's what you were thinking?

11 A Basically, not realizing what --

12 Q Well, if Brandon had said you were accused of bank
13 robbery would you say I robbed a bank? Would you have told
14 him that? I did it.

15 A Might of had, might of not. Don't know.

16 Q Because you thought the quickest way to get home would
17 be admit to committing a crime, right?

18 A Yes, sir.

19 Q And how did you arrive at that conclusion?

20 A It just come to me. I don't know. I was just -- like
21 I said, I was scared half to death. Not thinking right.

22 Q What were you scared of?

23 A Not getting to go home.

24 Q You were scared of not getting to go home so you
25 decided to admit to what she said --

1 A Yes, sir.

2 Q -- you did? And you will agree to this jury that you
3 told Brandon Strickland that you stuck your fingers in that
4 child's vagina. You told him that, didn't you?

5 A I told him what he wanted -- whatever he wanted to
6 hear.

7 Q Okay. Listen to my question.

8 A I'm listening.

9 Q Did you tell Brandon Strickland you stuck your fingers
10 in that child's vagina? Yes or no? Did you tell him that?

11 A I told him -- what he wrote in the report I agreed with
12 it.

13 Q Okay. So if he wrote on the report that you said you
14 stuck your fingers in her vagina you told him that, didn't
15 you?

16 A I agreed with the report he wrote.

17 Q Now, you testified to your attorney that when you were
18 talking to Daryl Owen that you made your admission to him
19 based on the questions he asked you; is that right?

20 A Yes, sir.

21 Q Okay. And that's how you knew what to say to him is
22 because of the question he asked you, right?

23 A I knew exactly what to say. I was just trying to --

24 Q Well, do you -- go ahead. Finish your answer.

25 A Go ahead. I'm done.

1 Q Do you recall his question regarding Minor , did you put
2 your finger in her vagina. Do you recall that question?

3 A I remember he asked me all kind of questions. Not just
4 one.

5 Q Well, what other questions do you recall him asking you
6 then?

7 A I mean -- I don't remember.

8 Q Well, you just said you remember him asking you all
9 kinds of questions. Tell me one of them.

10 A I don't remember basically any.

11 Q Anything that you remember?

12 A All of it. Anything.

13 Q That's fine if you can't remember all of them. I don't
14 expect you to. Tell me the ones you do remember.

15 A I remember he asked me did I do anything to that girl
16 and I told him no.

17 Q Okay. What else?

18 A That's basically all I remember. Because I was just
19 like rattling stuff off. All this stuff.

20 Q So to him you said you got her in your lap. Got an
21 arousal, got an erection, and you rubbed her breast.

22 Remember saying that to him?

23 A I might of had. I'm not -- really not sure.

24 Q How would you know to say that if that wasn't included
25 in the questions he asked you?

1 A I just come up with it.

2 Q Just come up with it? It just --

3 A Based on what they were trying -- you know.

4 Q And it just happened to coincide with what she had told
5 the police? You hadn't heard that before. It's just a big
6 coincidence that what you told him is what she had told
7 Brandon; is that right?

8 A He had said things about what supposed to have been
9 done.

10 Q Well, sir, I just asked you to tell this jury to the
11 best of your recollection what you can remember him saying.
12 Now you remember him telling you that?

13 A I don't understand.

14 Q I asked you to tell this jury everything you can
15 remember that man saying to you. Remember that?

16 A I remember him saying things about that. I can't
17 remember exactly everything I had repeat and told him.

18 Q You said you were medically unable to get an erection?

19 A Yes, sir.

20 Q Were you under a treating -- care of a physician for
21 that?

22 A For that now?

23 Q At any time have you been under the care of a physician
24 for any erectile dysfunction? For not being able to get an
25 erection?

1 A Yes, sir. I have, but not for long. I tried it and it
2 didn't work.

3 Q Who was your treating physician?

4 A Dahlberg.

5 Q Where does he practice?

6 A Uptown Family Physicians.

7 Q Okay. And you were under treatment for that for 2006?

8 A I'm not sure of the year.

9 Q Now, you testified also to your attorney specifically
10 where these children were. Who was in your house and where
11 they were sleeping. Do you remember that?

12 A They always stay in the backroom when the kids go over
13 there.

14 Q She asked you -- on the day in question she asked you
15 where they were sleeping. Do you recall that?

16 A Yes.

17 Q Okay. And could you tell her on the day in question
18 where they were sleeping?

19 A They all slept in the backroom.

20 Q And who was "they"?

21 A It would be all the kids. It would be Christy,

22 M. , Minor , D. and E.

23 Q And how do you know that?

24 A I live there.

25 Q No. How do you know on the day of question they were

1 all there?

2 A I know who's in my house.

3 Q Now, you're giving these statements in December of '08,
4 correct?

5 A Of '08?

6 Q December of 2008 is when you talked to the police,
7 correct? Did you talk to the police about these allegations
8 prior to December of 2008?

9 A That's when I was arrested.

10 Q Okay. Had you talked to anyone about these allegations
11 prior to 2008?

12 A No.

13 Q Okay. Because you just testified to your attorney that
14 the first you had heard about Minor 's accusations was
15 December of 2008, correct?

16 A Yes, sir.

17 Q But you could remember who was at your house on June
18 1st of 2006?

19 A Yeah. We have kids over every weekend.

20 Q Okay. Well, that's what I don't understand. If you
21 have kids there all the time, what about this particular
22 night makes it stand out in your mind?

23 A It's just a night. It's a weekend night.

24 Q So you can tell me who was there June 1st of 2011?

25 A Usually when they come everybody comes. And everybody

1 stays

2 Q I'm not asking usually. You said you could tell her
3 where people were sleeping on this particular night, right?
4 Isn't that what you said?

5 A Yeah.

6 Q I want to know what about June of 2006 made that night
7 stand out in your mind a year and a half later.

8 A Because that's when it was supposed to be happening.

9 Q Two and a half years later.

10 A Evidently I guess, yeah. I don't know.

11 Q It stands out in your mind because something happened,
12 right?

13 A No, sir.

14 Q Nothing happened at all?

15 A No, sir.

16 Q And Minor 's making it up?

17 A Yes, sir.

18 Q She just said -- what she said wasn't true?

19 A Yes, sir.

20 Q But you told the police it was true?

21 A Yes.

22 Q Now, there was some questions earlier about a cookout.
23 Was there a cookout at your house on this day?

24 A There's always a cookout at my house on the weekends.

25 Q So you don't remember --

1 A During the summer and everything anyway.

2 Q So you don't remember if there was a cookout on June
3 1st of 2006 or not?

4 A If everybody was over spending the night there would
5 have been a cookout.

6 Q Well, I'm asking you --

7 A That's what I'm telling you.

8 Q Was everybody over?

9 A Yeah.

10 Q Okay. And you remember that day specifically?

11 A I remember everybody went over to the house and having
12 a cookout.

13 Q And nothing makes that day stand out in your mind at
14 all?

15 A No.

16 Q Okay. Now, when Brandon Strickland talked to you on
17 December the 5th, the second time when you made this
18 statement to him. What did he tell you? To the best of
19 your ability right now I want you to tell the jury
20 everything you can remember him telling you prior to you
21 making that statement?

22 A He told me what I was being arrested for.

23 Q Okay. Well, I want you to tell me what he said to the
24 best of your recollection.

25 A He said I was arrested for touching a minor.

1 Q Well, you were arrested the day before, correct? On
2 December 4th?

3 A Yes, okay. I'm sorry. December 4th.

4 Q On the 5th when he brings you back in to talk to him
5 the second time, the date you made the written statement, I
6 want you to tell me -- well, I tell you what. Do this. Tell
7 me everything you can remember him telling you about the
8 accusations up to that point.

9 A I remember -- I remember when I took that test I went
10 back to the jail and -- when I talked to him -- I went back
11 after I talked -- took the lie detector test and Brandon --
12 I went back to the jail. I remember the next day when I was
13 supposed to been bond out that he told me that I had did
14 something. I know you did something. I'm going to make
15 your bail so high that you're not going to get out.

16 Q Okay. What else did he tell you? Prior to you making
17 that written statement, I want you to tell me everything you
18 can remember.

19 A And that's what I remember.

20 Q And what did he tell you about what Minor had said?
21 What did he tell you about the accusations?

22 A He told me what I supposed to have done.

23 Q Okay. And what did he say is what I'm asking you.

24 A That I had supposed to went in the bedroom and pulled
25 her pants down and stuff and supposedly putting my finger in

1 her vagina.

2 Q He told you that when?

3 A I believe it was on the 5th.

4 Q Okay. And you said, yeah, I did all that?

5 A I agreed with him to get out of jail.

6 Q Okay. What about --

7 A I didn't want to stay there.

8 Q Did you tell him it was the truth?

9 A No, sir.

10 Q You didn't?

11 A I just told him that just to --

12 Q Now, a second ago to your attorney you said when you
13 were gave these rights on December the 4th of '08 that you
14 didn't understand them. Is that what you just testified to?

15 A I didn't understand the consequences of that.

16 Q But you didn't understand that if you told Brandon that
17 you did what you did that it was going to be used against
18 you in court?

19 A I didn't understand the full outcome of what that
20 involved.

21 Q What did you think was going to happen with your
22 written statement?

23 A Pardon?

24 Q What did you think was going to happen? When you gave
25 a written statement to that deputy from the jail saying you

1 sexually molested an 11-year-old, what did you think was
2 going to happen with it?

3 A I just figured they would go through and investigate it
4 and investigate her and find out that it wasn't true and
5 it'd be over with.

6 Q Okay. So at that point in your mindset you had been
7 arrested because a child has accused you of molesting her.
8 You knew that, correct?

9 A Yes, sir.

10 Q You asked for a polygraph?

11 A Yes, sir. I asked for it.

12 Q Which you failed? You knew that, correct? Right?

13 A According to what he said.

14 Q Right. You failed. And then you tell the police
15 officer that you did it. You agree that you told him that,
16 correct?

17 A Yes, sir. Because I was scared.

18 Q And you thought that was the best way to get this
19 resolved?

20 A To get it resolved just to go home. I'm not that --
21 I'm not that very smart.

22 Q Because the best way to prove your innocence would be
23 to tell everybody what you did, correct?

24 A No, sir. Not -- not for real. I just wasn't thinking.

25 MR. SHEEK: No further questions, Your Honor.

1 THE COURT: Redirect?

2 MS. NELSON: Just very brief.

3 THE COURT: Sure.

4 RECROSS-EXAMINATION

5 BY MS. NELSON:

6 Q Don, are you able to tell the jury the exact days that
7 Minor was at your house?

8 A I'm just going by what they're telling me what days, or
9 the dates.

10 Q The few times that she spent the night there, where did
11 she sleep every time?

12 A Mostly they all slept up in the backroom.

13 Q So that was just common practice whenever somebody
14 stayed there?

15 A That was just common practice, yeah. Don't be hanging
16 out in the livingroom floor where everybody's got to walk.
17 We just go back there in the backroom, you know, where the
18 pallets supposed to be at.

19 Q Don --

20 A Cheryl usually made the pallets for them and stuff.

21 Q Can you read and write, Don?

22 A I can read very little. I can't write that much at all.

23 MS. NELSON: Thank you, sir.

24 THE COURT: Recross?

25 MR. SHEEK: No recross, Your Honor.

1 THE COURT: You can step down, sir. Thank you.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Any other witnesses from the Defense?

4 MS. NELSON: Your Honor, we call Johnny Hartley.

5 THE COURT: Okay. I understand the jury needs to take
6 a short break. So -- that's all right. You can just have a
7 seat out in the gallery. Okay?

8 Madame Forelady and ladies and gentlemen of the jury,
9 we're going to take a very short break. So if you'll retire
10 to the jury room again. I'll admonish you, as I have
11 throughout this trial, not to discuss anything about this
12 case among yourselves and try to just start it back very
13 soon. Thank you.

14 (Whereupon the jury exited the courtroom at 3:48 p.m.)

15 (Off the record)

16 THE COURT: We're back on the record. Before we bring
17 the jury back out in want to go ahead and address the
18 State's Exhibit Number 4. I believe because it contains
19 information that -- or some information -- the report has
20 some information that has not been brought out by any other
21 witness, and because of the foundation was not made to get
22 it in under the business records -- I've been a little
23 technical here. I realize that. Because the doctor was
24 questioned about this report. She did look at it. But to
25 get it into evidence under the Business Records Act the

1 foundation was not made. And if it was just merely
2 cumulative, having all the same information that has been
3 brought out by other witnesses, I really wouldn't have a
4 problem with it going in. But because it does and we did
5 not get into the Business Records Act, I'm going to deny the
6 admissibility of this. However, I'll allow the State, if
7 they want to proffer this document, then I'll allow that to
8 be so noted as a proffered exhibit not into evidence. What
9 says the State?

10 MR. SHEEK: We don't need to proffer it, Judge.

11 THE COURT: Okay. All right. Let's bring the jury out.
12 And we'll deal with this motion about argument, we'll deal
13 with that in the morning. In the morning.

14 MS. NELSON: Either way, Your Honor.

15 THE COURT: Yeah. I think we'll just do it in the
16 morning.

17 MS. NELSON: Okay.

18 (Whereupon, the jury entered the courtroom at 4:00
19 p.m.)

20 THE COURT: Let the record reflect the entire jury is
21 present. Is Defense ready?

22 MS. NELSON: Yes, sir, Your Honor. Thank you. We call
23 Johnny Hartley.

24 THE COURT: Come around, Mr. Hartley.

25 **JOHNNY HARTLEY**, first being duly

1 sworn testified as follows:

2 THE COURT: And please state your name for the record,
3 sir.

4 THE WITNESS: Johnny Hartley.

5 DIRECT EXAMINATION

6 BY MS. NELSON:

7 Q Mr. Hartley, what do you do for a living?

8 A I'm retired from SLED as a polygraph examiner and now I
9 conduct private polygraph exams. When I was with SLED I was
10 the chief polygraph examiner for the state of South
11 Carolina.

12 Q How long were you the chief polygraph examiner at SLED?

13 A Approximately 18 and a half years.

14 Q And in your job as chief polygraph examiner what kind
15 of duties did you have?

16 A SLED is responsible for licensing all the new examiners
17 in South Carolina and setting up a program for an internship
18 program in South Carolina. The law is that you have to do
19 an internship for six months to a year under the direct
20 supervision of a licensed polygraph examiner that had been
21 licensed for two years, so we were responsible for setting
22 up the internship with the new examiners coming in and
23 checking their work over the period of their internship.

24 Q In your capacity as chief polygraph examiner did you
25 ever conduct or review polygraph exams?

1 A Yes. I also developed a quality control program for
2 SLED while I was there where the chief examiner reviewed all
3 polygraph exams that were conducted by SLED and signed off.
4 And so, I reviewed every examination that the guys that
5 worked with me and the ones that I did, obviously.

6 Q And you left SLED when?

7 A In 1999.

8 Q And again, what did you leave to do?

9 A To do private polygraph exams.

10 Q And how did you become to be involved in this
11 particular case?

12 A You called me last night and asked me to look at some
13 polygraph charts that were conducted by another examiner in
14 South Carolina.

15 Q And did you do that?

16 A Yes, I did.

17 Q And can you tell us what you reviewed at my request?

18 A Yes, ma'am. I reviewed a score sheet, numerical score
19 sheet. I reviewed -- I think it was a total of six pages,
20 and there was some polygraph charts in that. And I reviewed
21 those. And that was pretty much it.

22 Q Can you tell the jury about your education and training
23 as a polygraph examiner?

24 A Yes, ma'am. I graduated from the New York Center of
25 Lie Detection in New York City. I graduated from the

1 Advance Polygraph -- the FBI Advanced Polygraph School in
2 Quantico, Virginia. And I graduated from DODPI, Department
3 of Defense Polygraph Institute, on computerized polygraphs
4 in Alabama.

5 Q And have you ever testified in court before regarding
6 polygraph examinations?

7 A Yes, ma'am.

8 Q How many times?

9 A I'm not sure of the times. Most recent one was in
10 Lexington County, and the one before that was in a
11 sentencing here in Federal Court in Georgia. Augusta,
12 Georgia.

13 Q So have you testified more than those two times?

14 A Yes, ma'am.

15 Q Do you know -- I mean, can you say -- can you give an
16 approximate number? Is it closer to 100 or is it closer to
17 10?

18 A Normally we do not testify with a polygraph that much,
19 because even at SLED we are -- we work as an assistance
20 agent. We assisted other law enforcement agencies, and
21 their investigators would bring their suspects to us. And
22 if we gave a polygraph examination, if they were deceptive
23 we would give them the report and they would handle their
24 own case. If there was a post test admission or a
25 confession, or even a pre-test admission, confession, we

1 would take the statement -- we would take it in front of the
2 investigating officer, and very seldom do we get called to
3 court to testify on the polygraph.

4 Q And it's really -- would you agree with me that it's
5 not typical for evidence about polygraphs to come in in
6 court proceeding?

7 A Yes, ma'am. That's correct.

8 MS. NELSON: Your Honor, at this time I'd move to have
9 Mr. Hartley qualified as an expert in the field of polygraph
10 examining.

11 THE COURT: Okay. What says the State on
12 qualification?

13 MR. SHEEK: I don't object, Your Honor.

14 THE COURT: Okay. So qualified as an expert in the
15 area of polygraph examination.

16 Q Mr. Hartley, you testified that you were able to look
17 at the polygraph chart that was used in Mr. Bolt's polygraph
18 examination?

19 A Yes, ma'am.

20 Q And do you recall what date that examination was
21 conducted?

22 A I do not. I actually have it with me though. But I do
23 not -- I think maybe May or something like that. I'm not
24 sure of the date.

25 Q Can your notes to see?

1 A Yes.

2 Q If that -- will that refresh your memory?

3 A I think it's on the polygraph charts itself.

4 Q Oh, on the chart? If I show you the chart will that --

5 A I have the copy.

6 Q Okay.

7 A I have the copy. Actually, the examiner did not mark
8 the date this examination was conducted, nor did he put the
9 examinee's name on it, nor did he put his name on it.

10 Q I think I might be able to help you with some of that.
11 Maybe it's not showing up on your copy.

12 MS. NELSON: May I approach, Your Honor?

13 THE COURT: Certainly.

14 Q I'd like to show you what's been marked as Defendant's
15 Exhibit No. 3 for identification. Can you take a look at
16 that and see if you can it on that copy?

17 A Yes. 12/5/06.

18 Q '06 or --

19 A '08. Excuse me. 12/5/08.

20 Q So you're looking at a chart from a polygraph that was
21 conducted on December 5th of 2008?

22 A Yes.

23 Q And I've represented to you that that Mr. Bolt's
24 polygraph exam?

25 A Yes, ma'am.

1 Q After having an opportunity to take a look at that
2 chart can you tell what kind of polygraph instrument was
3 used to generate it?

4 A Yes, ma'am. The chart paper actually lists the type of
5 instrument that this was, and this was a Stoelting. That's
6 the name brand. With the type of polygraphs that you may be
7 familiar with that are not computerized are Stoelting and
8 Lafayette. Those are the two names. And this was a
9 Stoelting polygraph. It's not a computerized polygraph.
10 It's the pen and ink type that you might see on TV or
11 something.

12 Q Now, how would you -- can you tell us about the
13 differences between a pen and ink Stoelting like what you're
14 looking at and a computerized polygraph?

15 A Basically the biggest difference is with -- with the
16 polygraph with the pen and ink the examiner looks at the
17 recordings, the tracings when he asks -- he or she asks a
18 question to the examinee the polygraph is recording their
19 reactions. So whenever the examiner gets through with the -
20 - with the polygraph administration, the polygraph, he goes
21 back and he reviews the tracings and he visually looks at it
22 to see which one he thinks is greater at what point. And
23 based on that he makes the decision whether the person's a
24 deceptive or non-deceptive. With a pen and ink polygraph
25 basically there's 22 criteria that you look for with the

1 naked eye to see if that person's being deceptive. When I'm
2 comparing relevant questions, and we call those the real
3 questions, those are the questions that are at issue. Okay?
4 When you look at those you look for the reactions at that
5 particular area as compared to a comparison question, and
6 you decide which one you think has the largest reaction or
7 the longest reaction. There are four components that are
8 being recorded. There are two convoluted rubber tubes, and
9 they're called pneumo tubes. A pneumograph. One's upper
10 pneumo and one's the lower pneumo. And basically what they
11 do, they measure any kind of -- I mean, do you want me to
12 tell what it does?

13 Q Just -- can you condense what they measure.

14 A Okay. That's two of the components. Then -- and they
15 measure any kind breathing, talking, sneezing, hiccup. Any
16 kind of movement. Anything that happens along your spine.
17 If you wiggle your toe, you're going to get a reaction. So
18 anything like that is going to cause a reaction. So the
19 examiner has to be able to look at that tracing while he's
20 looking at the examinee and see at that particular time if
21 that examinee did something that might have caused that
22 reaction. If there's a reaction there it doesn't mean that
23 person is lying or telling the truth if the reaction is
24 because they moved. There's a distinct difference between
25 deception reactions and movement reactions.

1 The other component -- another component we use is
2 called galvanic skin response, or GSR for abbreviation.
3 It's two electrodes. One goes on your ring finger and one
4 goes on your pointer finger. When you ask a question the
5 brain -- it's a stimulus to the brain. The brain receives
6 that -- a question, or that stimulus, and it sends out
7 signals to different parts of the body telling them how to
8 react, such as the pupils of your eyelids, the increase in
9 adrenalin, increase in blood volume. So it's different
10 physiological things that it's sending out to measure.

11 And the last component is a cardio cuff. It's the same
12 type of cuff that you use when you go to a doctor or the
13 hospital. But the difference is, contrary to what most
14 people think, the polygraph does not measure blood pressure.
15 There is not stethoscope that the examiner is putting on the
16 brachial artery to check your blood pressure. If you have
17 high blood pressure, it's okay. If you have low blood
18 pressure, it's okay. Most people my age are on some kind of
19 blood pressure medicine anyway, okay. So, but what it does
20 do, it measures your pulse rate. And average pulse rate is
21 72 beats per minute, unless you're on some kind of
22 medication or beta blockers.

23 So, why do we use the cardio cuff if all it does it
24 measure the pulse rate. The pulse rate does not change from
25 the start of the polygraph examination to the end of the

1 polygraph examination. If your pulse rate is 90, it's going
2 to be 90 when you get through. What can change is the
3 amount of blood that's being pumped from your heart at the
4 same rate, and that's called a blood volume increase.

5 So, with this type of polygraph instrument we have 22
6 things that we look for. And I'm very familiar with this
7 because I used it for a number of years at SLED. We
8 conducted research for a computerized polygraph after I
9 graduated from the DODPI, Polygraph Institute of
10 Computerized. We conducted research for the National
11 Security Agency in Washington in Johns Hopkins University.
12 There were 12 examiners in the United States that conducted
13 this research. Myself and three guys that worked for me and
14 eight other examiners in the United States. So South
15 Carolina had four of these examiners. We conducted real
16 cases, criminal cases. We sent the data to the scientists
17 at Johns Hopkins University and they developed algorithms.
18 We did this for seven and a half years. Based on that, the
19 algorithms, according to Johns Hopkins Applied Physics and
20 Science Labs, we're 99.3 accurate on confirmed cases. Cases
21 that we new the answer to.

22 Also based on the research, I'm pretty certain that the
23 federal government mandated that all their agency have to
24 use a computerized polygraph for a number of reasons. With
25 the pen and ink you have dials that you turn to set the

1 sensitivity. I could -- I could turn the dial and you --
2 there's nothing to tell you that I turned that dial to
3 increase that sensitivity, or I could lower it. As opposed
4 to the computerized polygraph, any markings -- or any
5 changes that you make during the examination is permanently
6 marked on that chart on a hard drive. And any examiner can
7 come back and see that it had been changed.

8 And the last, with the computerized polygraph it's said
9 that it's over 200 criteria that it uses for -- to detect
10 deception or non-deception because you're using a computer
11 monitor and it's broken down into thousands and thousands of
12 pixels that the polygraph program can measure how many, the
13 duration and the length of the reaction.

14 Q When did computerized polygraphs start becoming the
15 norm?

16 A It's probably going to be in -- I'm going to say the
17 mid '90s. Research was done before then. But more and more
18 people started getting away with the older type and going to
19 the computerized polygraph. Some organizations now you
20 cannot be a member of if you don't use the newest
21 computerized polygraph.

22 Q So by 2008 when this polygraph was conducted the
23 computer polygraph was standard?

24 A Very few people used the pen and ink.

25 Q So would you characterize that as antiquated?

1 A It's definitely not modern.

2 Q So aside from the fact that the examiner was using kind
3 of an old fashioned instrument, did you see any other issues
4 with this particular polygraph chart?

5 A Yes, ma'am. The main issue -- I don't have a problem
6 with them using -- with any examiner using pen and ink,
7 because you can still get very good examinations. The
8 problem I have in reviewing this chart is you have to give a
9 person time to react when you ask a question. You have to
10 give them time to react and finish that reaction before you
11 ask another question. The polygraph examination, especially
12 this technique that this examiner used is called a zone
13 comparison, where you have a comparison question, a relevant
14 question, and a comparison question. So you have a little
15 zone there. So you want to measure all of the reactions
16 from all of those questions in that zone, and the zone
17 comparison is broken down into three zones. But the problem
18 I have, if you ask the comparison question and you reacted
19 and you do not give it time to finish the reaction before
20 you ask a relevant question you're getting a carry over into
21 the relevant question.

22 So most schools -- and I know rules and regulations say
23 that it has to be at least 15 seconds. SLED now says 20
24 seconds. Computerized polygraph is 25 seconds. On this
25 chart, on these charts, on questions, 11 seconds, with the

1 norm being 14 and 15 seconds. So the spacing was not enough
2 for the reactions to finish.

3 Q So kind of in a nutshell, what you're saying is if you
4 don't give somebody long enough for the response you can't
5 really make a good judgement about the reactions?

6 A You can't interpret the chart correctly.

7 Q So with these times between the questions being so
8 short, and shorter than what SLED recommends, what does that
9 say about this particular test?

10 A That I can't score it. I can't give you an
11 interpretation of it, of deception or non-deception, because
12 I see too many problems with the questions running into each
13 other.

14 Q Is -- if you were looking at that -- at that chart as a
15 quality control examiner what would your conclusion be about
16 it?

17 A Inconclusive.

18 Q That it's an inclusive test?

19 A Exactly. Any test that you have like this that's not -
20 - the spacings not right, the questions aren't proper, if
21 someone's actually trying to use counter measures to beat
22 the polygraph, and a lot of people do that, you don't score
23 that chart. It's nonconclusive.

24 Q So with an inconclusive chart it wouldn't be proper to
25 tell somebody that they had failed it, would it?

1 A No.

2 MS. NELSON: Give me just one moment, Your Honor.

3 THE COURT: Sure.

4 MS. NELSON: That's all I have. Please answer any
5 questions that the prosecution might have for you.

6 THE COURT: Does the State have any cross-examination?

7 MR. SHEEK: Thank you, yes.

8 CROSS-EXAMINATION

9 BY MR. SHEEK:

10 Q Now, Defense counsel asked you is it typical that
11 polygraphs are inadmissible in court, correct?

12 A Yes.

13 Q That's what she asked you. And were you made aware
14 that the Defense is the one that asked that this be
15 admitted?

16 A Yes, sir.

17 Q Okay. So it was admitted at their request, not the
18 State's?

19 A Yes, sir.

20 Q And it was admitted for the purpose of calling you to
21 come in and try to attack it?

22 A I guess so.

23 Q Okay. Now, if you could, taking this one out, if you
24 will just tell us what the results on the polygraph that you
25 ran on the Defendant were?

1 A I did not run one, but I would love to.

2 Q Oh, you didn't?

3 A No. But I'd love to. I have my polygraph in the car.

4 Q How much -- I'm not the one asking you to do that or
5 not do it. How much are you charging for your testimony?

6 A I haven't told her yet. Normally I charge \$450. I
7 charge the same amount that I charge for a polygraph
8 examination. And a polygraph examination definitely doesn't
9 take up as much time as a day in court.

10 Q Okay. So my question would be how much are you
11 charging for your testimony?

12 A I'm going to bill her for \$450.

13 Q Okay. Now, when you reviewed this chart would you
14 agree that on the pen and ink -- let's assume for a second
15 that the reading was a negative 16. Would that indicate
16 deception?

17 A If it was a negative 16? Oh, yes. Even if it was a
18 negative three it would indicate deception. But I could
19 point out and go through that chart, even though you cannot
20 score that chart, there's no way that's a negative 16.

21 Q Well, you said you can't score that chart.

22 A I said -- you're right. I cannot interpret that chart
23 for an accurate opinion.

24 Q But you cannot testify about whether or not Daryl Owen
25 can score that chart?

- 1 A I can say he scored it improperly.
- 2 Q And based on what?
- 3 A Based because it's not a properly conducted chart.
- 4 Q Based on what regulation?
- 5 A The questions are not spaced long enough to allow the
- 6 reactions to finish.
- 7 Q Well, I think you testified that some say 15 seconds,
- 8 some say 20, SLED says 25.
- 9 A No, no. SLED says 20. The computerized polygraph says
- 10 25. There are rules and regulations, when I was in charge,
- 11 that it had to be at least 15.
- 12 Q Whose rules and regulations?
- 13 A The state's.
- 14 Q Okay. Now, does the state issue rules and regulations
- 15 for private polygraphers?
- 16 A Yes, sir.
- 17 Q Okay. And where can they be found?
- 18 A You can check with them.
- 19 Q Now -- well, I'm just --
- 20 A I'm not -- they've changed some of their rules and
- 21 regulations. For example, you used to have to conduct 200
- 22 polygraph exams while you were doing your internship. Two
- 23 hundred within that six months to a year's period. They've
- 24 changed that, I think now, to 50. Okay? Also they used --
- 25 we used to do a quality control on private examiners, and

1 now they do not do quality control on private examiners.

2 Q Well, my question is this. You've been called and
3 qualified as an expert at the behest of the Defense,
4 correct?

5 A Yes.

6 Q An expert in polygraphy, former chief of polygraphs
7 from SLED --

8 A Yes, sir.

9 Q -- and you cannot tell this jury where to find the
10 regulation that says Daryl Owen conducted this polygraph
11 incorrectly?

12 A It's not my regulation.

13 Q Well, I'm not asking whose regulation it is. I'm
14 asking can you --

15 A Know what I can do? What I can do? I can call SLED.
16 I have a direct number to the polygraph department. We can
17 talk with Brian who's in charge of the polygraph department
18 and he can tell you the same thing that he told me this
19 morning, that it's 20 seconds.

20 MR. SHEEK: Judge, this is completely non-responsive.

21 THE COURT: Okay. Just respond --

22 THE WITNESS: I'm sorry.

23 THE COURT: -- respond to his questions.

24 Q Were you surprised --

25 THE COURT: Respond to his questions.

1 Q Were you surprised at being called to the stand today
2 or did you know it was coming?

3 A I did not know I was going to be called to the stand.

4 Q Then how did you know to be here? I mean, were you
5 just hanging around the courthouse and they found you or did
6 they call and ask you to come?

7 A She asked me last night if I could come.

8 Q Okay. And you're charging them for being here,
9 correct?

10 A Exactly.

11 Q And you knew what you were going to be asked to testify
12 to, correct?

13 A I did not know I was going to testify in front of a
14 jury. She asked me this morning, when you all recessed, if
15 I could stick around to testify this afternoon.

16 Q And she never asked you what you were going to testify
17 about? You all have never discussed this 15 second --

18 A Yes, yes, yes.

19 Q Okay. And in preparing for that testimony my question
20 again is, you can't tell me where this regulation is that's
21 been violated?

22 A It's at SLED in their policies and procedures.

23 Q But you understand Daryl Owen doesn't work for SLED?

24 A Exactly. But also he graduated from a polygraph school
25 that said 15 seconds, Argenbright School in Atlanta.

1 Q Well, can you tell me which questions had the 15
2 seconds -- because you said the majority of them were 14 or
3 15.

4 A Oh, yes, I can. Sure I can go through and point out.
5 There's more than one.

6 Q Okay. Can you tell me what those questions were?

7 A Yeah. I can go through them.

8 Q Okay.

9 A I can point them out.

10 Q And he's got written what the -- the body of the
11 question was. If he was asking what your name is or -- you
12 can tell me that?

13 A I can tell you five -- four, five, six, seven, nine and
14 10. Those are controlled and relevant questions. I can
15 tell you every one of those.

16 Q Okay. You can tell me which ones are the relevant
17 questions?

18 A Yes.

19 Q Okay. And you can tell me the time between those?

20 A Yes, I can.

21 Q Okay.

22 A And I'm going to turn this upside down at first. See
23 where these lines --

24 Q That's actually not entered into evidence, so I'm not
25 asking you to show it to the jury.

1 A Okay. Do you want me to just tell you about the exam
2 or tell the jury?

3 Q You said you can tell me the time between the relevant
4 questions --

5 A I can.

6 Q Okay. And how can you tell it's a relevant question?

7 A Because on this chart, this chart paper, is broken down
8 into multiple lines. Horizontal lines and vertical lines.
9 Okay. Each line that comes down, little black line, between
10 this line and that line is five seconds. Between each line
11 is five seconds. So if you take the reaction where he
12 marked on his chart with his hand, his pen, he marks the
13 time he starts the question, which I can see right here, and
14 then he marks when he ends the question. And then after he
15 ends it he puts the question number beyond it and puts the
16 answer on top of it. Then you go over and then see how much
17 time has elapsed before he asks the next question. So I can
18 count those -- in between those black lines coming down is
19 each five seconds. So if I count them it's five, 10, 13
20 seconds for -- between question nine and question 10, 13
21 seconds.

22 Q But do you know what question nine and question 10
23 were?

24 A Nine is a control question and 10 is a relevant
25 question.

- 1 Q Okay. But do you know what they were?
- 2 A Yes. I have them written down.
- 3 Q Okay. That's what I was asking.
- 4 A Yes.
- 5 Q Okay. So between the first and second relevant
- 6 question how much time passed?
- 7 A The first and second one?
- 8 Q Yes.
- 9 A Four and six. On which test?
- 10 Q The initial test.
- 11 A Okay. Between -- between four and five or four and
- 12 six?
- 13 Q Well, between -- you said you can tell which ones are
- 14 relevant and which ones are --
- 15 A Right.
- 16 Q The first and second questions.
- 17 A Okay. Between four and five you got five, 10, 14
- 18 seconds.
- 19 Q Okay. And so, you're saying that that one second
- 20 difference is what made the difference?
- 21 A I'm saying when I look through this chart -- excuse me.
- 22 When I look through this chart and I see a control question,
- 23 a comparison question, which is six, and I see the reactions
- 24 going up and they're continuing going up, and before they
- 25 finish going up he asks a relevant question five before he's

1 finished. I can see that plainly.

2 Q Okay. When you say you see it going up, is that going
3 up into the positive numbers? Indication of truthfulness?

4 A No, sir. That's a blood volume change.

5 Q Okay. Well, we testified that negative 16 would
6 indicate deception.

7 A But that negative, sir, is for the comparison which
8 compares to the five. So if you get more reaction to the
9 comparison question than you do the relevant question, the
10 person has passed. I'll try it again.

11 Q No. I understand.

12 A Okay.

13 Q So your testimony is that 14 seconds inclusive. At 15
14 we're good to go?

15 A At 15 is good to go? Not necessarily. I said 15 is
16 the minimum. But what I did tell you is if -- the problem I
17 have, if you're reacting, if you're still reacting, you do
18 not start another question in the middle of the reaction.
19 I've had some reactions last 35 seconds, and so, I didn't
20 start asking another question until that reaction's
21 finished.

22 Q So you would agree with the chart that he read a
23 negative 16. You just disagree with whether or not he
24 waited enough time?

25 A No, sir. I will not agree that this is a negative 16

1 chart.

2 Q What do you think it is?

3 A It's nothing to me, because how can -- you can't give
4 it a negative when you're using -- the positive, the
5 comparison question, you're using that reaction into your
6 relevant question to give it a negative.

7 Q Who do you work for now?

8 A Myself.

9 Q What's the name of your company?

10 A Polygraph Exams.

11 Q And you're out of where?

12 A Columbia.

13 Q And you do private work now?

14 A Yes, I do.

15 Q And you do work for law enforcement?

16 A I've done some.

17 Q Okay. Well, how much of your work is for law
18 enforcement?

19 A Not that much. I do it for public defenders, Conway,
20 York County. I do it mainly for attorneys.

21 Q Okay. Because the majority of your work is doing
22 exactly what you're doing here today, right?

23 A Not testifying in court. No, sir.

24 Q Well, no. The majority -- well, you're getting paid
25 \$450 to come say this polygraph's no good. Correct?

1 A I'm getting paid \$450 to come tell you that the
2 questions were not spaced properly and therefore I cannot
3 give an opinion on whether this person is deceptive or non-
4 deceptive because it was improperly run. That's what I'm
5 here for.

6 Q And when is the first time you saw that chart?

7 A This chart today. A copy of it last night from an
8 email.

9 Q You saw an emailed copy of it?

10 A Yes, sir.

11 MR. SHEEK: I've got no further questions.

12 THE COURT: Anything in redirect from the Defense?

13 MS. NELSON: Only just very briefly.

14 REDIRECT EXAMINATION

15 BY MS. NELSON:

16 Q When you and I talked did we make some arrangement that
17 if I paid your bill for your time that you were going to
18 give me some kind of testimony?

19 A Absolutely not.

20 Q Did we discuss your findings on the copy of the chart
21 before we ever even discussed what your bill would be?

22 A No, ma'am.

23 Q And did we discuss your bill first or your findings on
24 the chart first?

25 A We didn't -- we haven't really even discussed the bill

1 yet. This -- the amount I just told you is new to you, I'm
2 sure, because I just told you.

3 Q Is it typical for people in private practice doing this
4 kind of work to be paid for their time?

5 A Normally for court appearances it's \$600.

6 Q Well, what I'm asking you is, is it typical for
7 somebody who does what you do -- you do this to make a
8 living?

9 A Sure. Just like Mr. Owens. I'm sure he didn't do it
10 free, absolutely.

11 MS. NELSON: Thank you, sir.

12 THE COURT: Thank you, sir, for your testimony. You
13 can step down. If there's no objection, may this witness be
14 excused?

15 MR. SHEEK: No objection, Your Honor.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You can be excused, sir, or you're welcome
18 to stay if you like.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: Call your next witness, please.

21 MS. NELSON: I'm sorry, Your Honor.

22 THE COURT: That's okay.

23 MS. NELSON: Your Honor, we're calling Cheryl Bolt, who
24 should be in the hallway.

25 **CHERYL BOLT**, first being duly sworn

1 testified as follows:

2 THE COURT: State your name for the record, please,
3 ma'am.

4 THE WITNESS: Cheryl Bolt.

5 THE COURT: Your witness.

6 MR. GORANSON: Thank you.

7 DIRECT EXAMINATION

8 BY MR. GORANSON:

9 Q How do you know Mr. Bolt?

10 A I'm married to him.

11 Q How long have you all been married?

12 A Twenty-five years.

13 Q How long have you know him?

14 A About 26.

15 Q And where do you live?

16 A At Road.

17 Q And how long have you lived there?

18 A Sixteen years, I think.

19 Q Can you give us a brief description of your house?

20 A It's kind of small on the inside. It's four bedroom.

21 Q And how many bedrooms did it have when you got that
22 house?

23 A It only had three when we got it and we enclosed a
24 porch.

25 Q Is it a single-story house, two-story?

- 1 A Single.
- 2 Q Single. Back in 2008 who provided for your family?
- 3 A My husband.
- 4 Q Did anybody else have an income?
- 5 A No.
- 6 Q And when he was arrested did you go to the jail?
- 7 A I went there to get him out. You know, the next day to
- 8 bond him out.
- 9 Q When was that?
- 10 A The day after they arrested him.
- 11 Q December 5th?
- 12 A 5th.
- 13 Q Do you remember what time?
- 14 A I don't remember what time. I know it was in the
- 15 afternoon. I'm thinking anyway.
- 16 Q And during 2006 or, you know, before that, did you have
- 17 family spend the night at your house?
- 18 A Yeah.
- 19 Q Was that a frequent occurrence?
- 20 A Well, my two -- my grandson and my granddaughter stay
- 21 every weekend.
- 22 Q Okay. And who do you mean by your grandson and
- 23 granddaughter?
- 24 A My daughter's children.
- 25 Q What are their names?

1 A D. and E. .

2 THE COURT: You need to speak up just a little bit
3 louder, please, ma'am.

4 THE WITNESS: Okay.

5 Q And would Oakleys -- the Oakleys, did they come spend
6 the night there?

7 A No. They just -- they did one time.

8 Q Are you talking about Shannon and --

9 A Yeah, Shannon and Brandon and the kids. They just
10 spent the night one time.

11 Q Okay. And where -- where did their kids sleep?

12 A They all slept in the backroom that we use for a
13 storage room.

14 Q And what did they sleep on?

15 A As far as I can remember we had a pallet back there.
16 We had to move stuff out of the way.

17 Q Have you ever had a bed in that room?

18 A Only when my son moves in.

19 Q When was that?

20 A At that time I think he lived next door in my mother-
21 in-law's house after she passed away. So it was like a year
22 after that. So it was -- I don't know. 2007, something
23 like that, when he moved back in.

24 Q In the 18 years you lived there, the bed was in there
25 maybe in 2007, maybe?

1 A In 2007, yeah, one time for a short period, until he
2 got a place of his own.

3 Q Has that room ever had a TV in it?

4 A Not that I can ever remember.

5 Q Does the room have a working wall outlet?

6 A No. When we've had to use lights back there we run an
7 extension cord.

8 Q And what kind of -- what kind of sleeper are you?

9 A I'm a very light sleeper.

10 Q So if Don gets up in the night what happens?

11 A He's got to crawl over top of me. And back at that
12 time he would pass out every night on a weekend. So he
13 would definitely wake me up.

14 Q And sorry to have to get into this. But what kind of
15 relationship do you and he have? Do you have any sexual
16 relations?

17 A You mean now or do you mean --

18 Q Now. Are you having any now?

19 A Not much of any.

20 Q Were you able -- was he able to then back in 2006?

21 A No.

22 Q If somebody had sat in Don's lap would that have gone
23 unnoticed?

24 A Not in my house it couldn't have because there's too
25 many in there.

1 Q It sounds like on the weekends when people came over
2 there were there a lot of people there?

3 A Yeah.

4 Q And where would people hang out on the weekends?

5 A Either out by the pool, which had a deck on it, or in
6 the house. But mostly outside.

7 Q And if they're in the house, where?

8 A In the livingroom. Livingroom or kitchen.

9 Q Was there ever a time after October 2008 where Minor
10 came over?

11 A Yeah, her and Christy and Brandon -- Christy would come
12 over and go swimming.

13 Q How many times do you think that happened?

14 A It happened, at that time, twice. And, you know, then
15 when my husband come home he said they got to go.

16 Q He told them they had to leave?

17 A So I told them they had to leave.

18 MR. GORANSON: Please answer any questions of Mr.

19 Sheek.

20 THE COURT: Any cross-examination?

21 MR. SHEEK: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SHEEK:

24 Q You said during this timeframe he'd pass out pretty
25 much every night of the weekend?

1 A On a weekend yeah, because that's when he did his
2 drinking most.

3 Q So he would pass out when he was drunk, is what you're
4 saying?

5 A Yeah.

6 Q And this is something he did habitually?

7 A Yes, sir.

8 Q What's he like when he gets drunk?

9 A Back then it was just kind of like a happy slobbery
10 pass out drunk.

11 Q Happy slobbery not paying attention to what you're
12 doing kind of drunk?

13 A Yeah. I mean, we've had to pick him up out of the yard
14 a few times and take him in to the bed. But since he's
15 gotten real sick, you know, he doesn't drink hardly at all
16 anymore. Just a few a night.

17 Q So when he said that -- to Daryl Owens that he was real
18 drunk that night, that would probably have been accurate?

19 A Yeah.

20 Q And did I understand you correctly to say that Minor
21 and her sister and her brother-in-law only came over and
22 spent the night once?

23 A That I can remember one time. Because they came over
24 with Shannon and Brandon. I don't -- I only remember Shannon
25 and Brandon coming over with the kids and staying all night

1 once.

2 Q But you would know if that happened more than once?

3 A Yeah.

4 Q But to your recollection it only happened that one
5 time?

6 A I'm thinking it did, yeah. I mean, that's a long time
7 back. And we had family in and out all the time.

8 Q Now, is Donald the type that would admit to sexually
9 assaulting an 11-year-old if he didn't do it?

10 A If it's going to get him out of jail he would, yeah.

11 Q And do you think he's the type that would think
12 admitting to sexually assaulting an 11-year-old would get
13 you out of trouble?

14 A At that time, the way he was thinking, it was just get
15 him out of jail. That's all he cared about.

16 Q What about his thinking was going on? What -- I don't
17 understand that. You said at that time the way he was
18 thinking. How was he thinking?

19 A The only thing he was thinking was I got to get out of
20 here.

21 Q How do you know that?

22 A Because that's what he told me.

23 Q Okay. So you --

24 A And, I mean, the shape that he was in when he come out
25 of there.

1 Q And what shape was that?

2 A Shaking and I almost had to pick him up. He almost
3 passed out.

4 Q You had talked to him before then though, right?
5 Before you picked him up?

6 A On the phone.

7 Q Yeah.

8 A Yeah.

9 Q He called you?

10 A Yeah.

11 Q Did you all talk about it then, the accusations?

12 A No. He just told me to try and get him out. He
13 couldn't take it anymore.

14 Q And you didn't ask him if he had done it?

15 A No.

16 Q That wasn't a concern of yours?

17 A No.

18 Q Were you surprised when you learned he had told the
19 police officers he stuck his fingers in this 11-year-old's
20 vagina?

21 A Yeah.

22 Q That's not the kind of stuff Don would normally do?

23 A Pardon?

24 Q That's not the kind of stuff Don would normally do?

25 A No.

1 Q Not even happy sloppy falling down drunk Donald?

2 A No.

3 MR. SHEEK: Thank you. That's all the questions I
4 have.

5 THE COURT: Redirect, Mr. Goranson?

6 MR. GORANSON: Nothing further for this witness.

7 THE COURT: You can step down. Thank you for your
8 testimony.

9 MS. NELSON: We call Casey Laughlin, Your Honor.

10 **CASEY LAUGHLIN**, first being duly
11 sworn testified as follows:

12 DIRECT EXAMINATION

13 BY MS. NELSON:

14 Q Will you give your name for the record, please, ma'am.

15 A Casey Laughlin.

16 Q Do you know Don and Cheryl Bolt?

17 A Yes, ma'am.

18 Q How do you know Donald Bolt?

19 A Their son is my husband's best -- childhood best
20 friend.

21 Q Which son?

22 A A.

23 Q AA. and your husband are friends since childhood?

24 A Yes, ma'am.

25 Q So how long -- how long have you been with your

1 husband?

2 A Twelve years.

3 Q So how long have you known Mr. and Mrs. Bolt?

4 A Twelve years.

5 Q You're aware of what he's charged with and why we're

6 here in court, right?

7 A Yes, ma'am.

8 Q Have you been aware of that for a long time?

9 A Yes, ma'am.

10 Q Have -- do you and your husband have any children?

11 A Yes. We have an eight and a six-year-old.

12 Q Is -- are Don and Cheryl folks that you let your
13 children be around?

14 A Yes.

15 Q Do you know Don's reputation for truthfulness?

16 A Yes, ma'am.

17 Q What is that reputation?

18 A He's always been honest to me, you know, as far as I --
19 you know, he's always been an honest man. Good man. Like I
20 said, he's good to my kids. Good to me and my husband.
21 They'll introduce my husband as their son.

22 MS. NELSON: Thank you, Ms. Laughlin. Please answer
23 anything the State has for you.

24 THE COURT: Any cross from the State?

25 MR. SHEEK: Yes, sir.

CROSS EXAMINATION

1

2 BY MR. SHEEK:

3 Q Ms. Laughlin, you say his reputation for truthfulness
4 is good?

5 A Yes, sir.

6 Q And how do you know that reputation?

7 A He's never lied to any of my family or my husband's
8 family, and he's always worked hard, and if you needed help
9 he was there to help us or, you know.

10 Q Well, I'm not asking what he's done with you. I'm
11 asking about how you know his reputation. You hear his
12 reputation from other people?

13 A I mean, we live out at the lake. I mean, ain't nobody
14 said anything about him. I mean, there's a lot of people
15 that know each other and stuff like that.

16 Q So what you're saying is you believe if he says he did
17 something, you think he did it?

18 A Yeah. If he said it. You know, I would trust him and
19 believe him.

20 Q Okay. So if he said to you that he molested an 11-
21 year-old girl would you believe it?

22 A Yeah, I mean, if he said he did.

23 MR. SHEEK: Okay. Thank you. That's all I have.

24 THE COURT: Anything on redirect?

25

REDIRECT EXAMINATION

1 BY MS. NELSON:

2 Q If he told you he didn't do that, Ms. Laughlin, would
3 you believe him?

4 A Yes. I mean --

5 MS. NELSON: Thank you, ma'am.

6 THE COURT: Thank you, ma'am. You can step down.
7 Thank you for your testimony.

8 MS. NELSON: Your Honor, we have no other witnesses.

9 THE COURT: The Defense rests? Okay..

10 MS. NELSON: The Defense rests. Okay. Does the State
11 have any reply case?

12 MR. SHEEK: No, sir.

13 THE COURT: Okay. Madame Forelady and ladies and
14 gentlemen of the jury, the evidentiary record is now closed.
15 In other words, both sides have put up everything that they
16 want to put up by way of testimony of witnesses and other
17 evidence. We're going to go ahead and adjourn for today and
18 resume the case tomorrow by way of closing arguments by the
19 lawyers and then the court's final charge to you before you
20 start your deliberations. So I'm going to excuse you for
21 the evening. Ask that you return at 10:00 in the morning.
22 We've got some work to do on this case outside of your
23 presence, and I've got a couple other little things I think
24 have been scheduled. So if you'll be back promptly at 10:00
25 in the morning.

1 And again, I know I sound like a broken record, as they
2 say, but I admonish you not to discuss anything about this
3 case, either among yourselves or with any family members,
4 friends, anybody that you may come in contact with before
5 returning tomorrow. So I hope everyone has a good evening.

6 (Whereupon, the jury exits the courtroom at 4:46 p.m.)

7 THE COURT: Okay. Any matters we need to take up
8 before we adjourn for the evening?

9 MR. SHEEK: No, sir.

10 THE COURT: None from the State?

11 MS. NELSON: Your Honor, we'd renew our directed
12 verdict motions --

13 THE COURT: Sure.

14 MS. NELSON: -- on the same grounds that's argued
15 previously.

16 THE COURT: So noted and denied. Thank you.

17 MS. NELSON: Yes, sir.

18 THE COURT: And again, we will deal with -- in the
19 morning I trust, Solicitor, you have been served with a copy
20 of this motion?

21 MR. SHEEK: I have, Your Honor.

22 THE COURT: Okay. And we'll deal with that. Hopefully
23 first thing we'll have you a draft of our final charge for
24 both sides to look at. I think I had mentioned to you that
25 I've got a Laurens plea that's coming in at 9:00 that I need

1 to deal with. So I will do that, and then we can discuss
2 the charge and any other matters that we need to take up
3 before we bring the jury out at 10:00. Okay?

4 MR. SHEEK: Yes, sir.

5 MS. NELSON: Thank you, Your Honor.

6 THE COURT: Thank you. I hope everybody has a great
7 evening. We'll be in recess until in the morning at 10:00.

8 DAY 3: 9/5/2013

9 THE COURT: We're going to go ahead and get started.
10 Even though Lynn's not back let's see if we can -- we've got
11 a motion to deal with, and then if you've had an opportunity
12 to review the final charge we need to make sure you're okay
13 with that, if you are okay. So let's do the motion first,
14 Ms. Nelson. Okay?

15 MS. NELSON: Thank you, Your Honor. I would just -- I
16 don't really have much to add to the written motion --

17 THE COURT: Right.

18 MS. NELSON: -- that isn't already in there. But I
19 would just point out to the court that the rule of what
20 we're asking for is that the State open fully --

21 THE COURT: Right.

22 MS. NELSON: -- and then we give our -- that they do a
23 full closing argument on the facts and the law, that we then
24 do our closing, and then that the State would have an
25 opportunity to come back and do a final rebuttal --

1 THE COURT: Right.

2 MS. NELSON: -- and just limit it to rebuttal so that
3 the Defendant has an opportunity to respond to whatever the
4 State is going to say in closing. And mainly our position
5 is that since there's a rule allowing this in civil cases,
6 which certainly do not carry the same kinds of consequences
7 as a civil case and you don't have the same kinds of
8 constitutional rights in play, that that rule should be
9 followed in criminal cases as well and the practice should
10 be changed to allow that. And that's essentially the basis
11 for the motion, Your Honor.

12 THE COURT: Thank you. Solicitor, any response to that
13 motion and argument?

14 MR. SHEEK: Well, simply, Your Honor, because obviously
15 the rules do not require -- when they passed the civil rule
16 it was specifically in the rules of civil procedure because
17 the standard approved the manner, the right to remain
18 silent, everything's completely different obviously in a
19 general sessions case. The longstanding process has always
20 been that the State opens on the law, then the Defense has
21 their closing argument, and then the State does their
22 closing. And I think that's well recognized and what should
23 be followed.

24 THE COURT: Okay. We did find a case, *State versus*
25 *Rogers*, that talks about the right to open and close is a

1 substantial right, if the Defense has put in any evidence.
2 Now, quite candidly I think the better way -- and I'm not
3 going to require this. I think the better way is to make
4 the State -- if the State has to put up their full case in
5 chief and then the Defense puts up theirs and then they
6 reply, I think the manner of final argument should follow
7 that. That's just kind of my personal opinion. But based
8 upon *State versus Rogers*, along with the standing tradition
9 and however the tradition came about, people a lot smarter
10 than I am, I'm going to keep it the same. But certainly a
11 valid argument from the Defense, but I'll deny that motion.

12 MS. NELSON: Thank you, Your Honor.

13 THE COURT: All right. Solicitor, have you had a
14 chance to review the final charges? And, of course, as
15 you've noticed, some of the blanks have been filed in.

16 MR. SHEEK: Yes, sir.

17 THE COURT: Any problems, any objections to that?

18 MR. SHEEK: No, sir. Not at all.

19 THE COURT: And we've also provided you with a verdict
20 form.

21 MR. SHEEK: Correct.

22 THE COURT: And I think what you have does not have the
23 letter B on the -- on number two.

24 MR. SHEEK: It did, and at one point --

25 THE COURT: I think it was taken out. But we're going

1 to keep it in?

2 MR. SHEEK: That's right. They told me that -- your
3 clerk told me you was going to put it back in. So that's
4 fine, Judge.

5 THE COURT: Okay. Any objections to the verdict form?

6 MR. SHEEK: Not at all, Judge.

7 THE COURT: Okay. Now, from the Defense. Have you
8 have an opportunity to review the charges?

9 MS. NELSON: Yes, sir, Your Honor. And there are a
10 couple of additions we would like you to make.

11 THE COURT: Okay. Do you have any written additions or
12 do you want to --

13 MS. NELSON: I didn't -- I have them pulled up here,
14 but I didn't prepare them in writing, Your Honor. I'm sorry
15 about that.

16 THE COURT: Are they lengthy?

17 MS. NELSON: No, sir. No, sir.

18 THE COURT: Okay. Is this something -- if I were to
19 agree with what you propose is it something that I can pin
20 on my copy or not?

21 MS. NELSON: Sure. Sure.

22 THE COURT: Okay. Well, tell me what you got.

23 MS. NELSON: First of all, on the reasonable doubt
24 charge, we would just ask that you add the hesitate to act
25 language.

1 THE COURT: Yeah. And that's been requested in a prior
2 case I did last week, and I think there's a case that says
3 that that's discretionary with the court. Solicitor, do you
4 have any objections or problems with adding the -- it's like
5 a one line hesitate to act explanation for reasonable doubt?

6 MR. SHEEK: Actually, I do, Judge. I think the reason
7 the court's gone away from that as a standard charge is
8 because the hesitate to act is somewhat misleading. Any time
9 there's a decision made I think most people hesitate because
10 they want to carefully consider it and I think it's
11 confusing to the jury to believe that if they sit back there
12 and carefully consider it then therefore they've hesitated,
13 therefore there's reasonable doubt.

14 THE COURT: Yeah. Because of the reasonable doubt
15 charge that I have I think that adequately defines what
16 reasonable doubt is, and it is discretionary whether or not
17 to define reasonable doubt at all, so I'm going to deny that
18 request. But so noted for the record.

19 MS. NELSON: Thank you, Your Honor.

20 THE COURT: And you said you had another one?

21 MS. NELSON: Yes, sir. Just -- there's a charge in
22 there on direct and circumstantial evidence.

23 THE COURT: Right. And I may be missing something. I
24 think most of -- I think most everything is direct evidence.
25 I'm not sure if -- if there's a whole lot of --

1 THE COURT: Are you --

2 MS. NELSON: -- circumstantial, but --

3 THE COURT: Okay.. Are you suggesting -- if, in fact,
4 there was -- as you believe, there was no circumstantial
5 evidence that you don't want a charge on circumstantial
6 evidence? Is that basically what you're saying?

7 MS. NELSON: I wouldn't think it would be necessary if
8 there -- if it doesn't really play in, but I may be missing
9 --

10 THE COURT: You know, it seems like to me just about
11 every case is going to have some form of circumstantial
12 evidence. It just seems like to me. Solicitor, you have
13 any idea about that?

14 MR. SHEEK: No, I don't believe there is much
15 circumstantial evidence, if any, in this case. However, I
16 think in defining the types of evidence that the jury can
17 consider, I think removing it gets to be problematic,
18 because it's not misleading to say there's two types of
19 evidence. I mean, that's what the law is. So generally my
20 practice is I agree to it being charged that way regardless.

21 MS. NELSON: And that's -- if it stays that way that's
22 fine. I would just ask that the court add the language that
23 was suggested in *State versus Logan* which is a recent --

24 THE COURT: Right.

25 MS. NELSON: -- 2013 case.

1 THE COURT: And we will do that. Basically *State*
2 *versus Logan* says you don't have to add that additional
3 language unless it's requested.

4 MS. NELSON: Yes, sir.

5 THE COURT: So what we've typically been doing in my
6 short career is not adding it unless it's been requested.
7 So we're going to need a few minutes to get that additional
8 language, let both sides look at it to make sure you're okay
9 with that, so...

10 MS. NELSON: Do you need me to get it into a document
11 form for you?

12 THE COURT: Well, if you want to -- yeah, if you can
13 print it out.

14 MS. NELSON: And I apologize for not getting that done
15 ahead of time.

16 THE COURT: That's okay. We think that that case that
17 you alluded to, actually that circumstantial evidence charge
18 replaces the circumstantial evidence charge that I've got as
19 opposed to adding to it. I think that's what that case
20 says.

21 MR. SHEEK: That's my understanding.

22 THE COURT: So we just --

23 MS. NELSON: I just -- I just sent Shane off with the
24 computer to do it. But I will -- we'll take a look at it.
25 You're probably right, Your Honor.

1 THE COURT: We've got the case. Let's go off the
2 record for just a minute, Madame Court Reporter.

3 (Whereupon, the brief discussion was held off the
4 record.)

5 THE COURT: Back on the record. So as I understand it,
6 that both the State and the Defense is okay with the Logan
7 directed circumstantial evidence charge. Three paragraphs
8 actually taken from the case itself to replace page six and
9 seven directed circumstantial charge. Correct from the
10 State?

11 MR. SHEEK: That is correct.

12 THE COURT: And from the Defense?

13 MS. NELSON: Yes, Your Honor.

14 THE COURT: Okay. And are there any other objections
15 to the proposed jury charge or verdict form?

16 MS. NELSON: No, sir.

17 THE COURT: Okay, all right. On other, and my very
18 able law clerk mentioned this to me and we need to be in
19 agreement. Look on page 11 on the voluntariness of the
20 statement. I think we need to have an agreement do we want
21 to keep both words in, their statements and admissions, or
22 take one out.

23 MR. SHEEK: I'm fine with both of them, Judge. I think
24 it's accurate.

25 THE COURT: And it should be beyond a reasonable doubt.

1 Add in doubt. That was just a typo. You're fine with both?

2 MR. SHEEK: Yes, sir.

3 MS. NELSON: I prefer that it just say statement since
4 the second sentence also says statement.

5 THE COURT: Okay. I think I would feel more
6 comfortable using statement, just simply because -- I mean,
7 it's up to them if -- how they want to treat what he said,
8 whether it was an admission or not. So let's just go with
9 statements?

10 MS. NELSON: Thank you, sir.

11 THE COURT: All right. Ready for closing? Need any
12 time to prepare for that?

13 MR. SHEEK: Yes, sir.

14 MS. NELSON: We're ready.

15 THE COURT: All right. We're going to make sure that
16 the jury takes care of all bathroom issues before they come
17 out, so it'll be just a moment. If anybody else needs a
18 bathroom break, do it now.

19 MR. SHEEK: Do you have the indictments?

20 THE COURT: I got them. Do you need them?

21 MR. SHEEK: I do. And while the --

22 MS. NELSON: Will the indictments go back with the
23 jury?

24 THE COURT: Yes.

25 MR. SHEEK: And if we can clarify before the jury is

1 out here, the only -- my understanding is the only documents
2 shown to a jury in closing would be those that have been
3 entered into evidence, because we've got some that are
4 marked for identification and never entered into evidence.

5 THE COURT: Right. I think that's correct.

6 MS. NELSON: The ones that were entered were the
7 Miranda warnings and the statement.

8 MR. SHEEK: That's correct.

9 MS. NELSON: His false statement, right?

10 MR. SHEEK: Yeah, that's the only thing entered into
11 evidence.

12 THE COURT: I've got three -- three exhibits into
13 evidence.

14 MR. SHEEK: That's correct.

15 THE COURT: The two Miranda waivers and the one
16 statement.

17 MS. NELSON: And I won't -- I won't show them anything
18 that's not entered.

19 Did you get the indictments?

20 THE COURT: Did Lance not need them?

21 MS. NELSON: Oh, they were just right here.

22 THE COURT: I mean, I'm going to need them, too, but --
23 do you need the indictments? Why don't we make a copy,
24 because I need them, too.

25 MR. SHEEK: Yeah, why don't I just do that real quick.

1 And that will --

2 THE COURT: Yeah, make a copy. All right. We're at
3 ease. Off the record.)

4 (Off the Record)

5 THE COURT: Just one housekeeping matter. I've just
6 been handed a media request. Who is the gentleman from the
7 Index Journal?

8 BAILIFF: Here, sir.

9 THE COURT: Okay. Yeah, that's fine. I've signed this
10 order. I just need to make sure that there's no media
11 coverage in any form of the jury. So I don't know -- where
12 do you plan to set up?

13 REPORTER: Right here.

14 THE COURT: Okay. Well, if you're going to be filming
15 in this direction then you're going to be picking up the
16 jury?

17 REPORTER: I'm just going to shoot here.

18 THE COURT: You're just going to shoot out that way?

19 MR. REPORTER: Yes.

20 THE COURT: All right. That's granted. Any objections
21 from the State?

22 MR. SHEEK: No, sir.

23 THE COURT: Any from the Defense?

24 MS. NELSON: I don't like it, but I don't think I have
25 a legal basis for objection, Your Honor.

1 THE COURT: Right. But I still feel like I need to
2 give each side an opportunity to stay whatever they'd like
3 to on that. All right. We're going to bring the jury out.

4 (Whereupon, the jury enters the courtroom at 10:47
5 a.m.)

6 THE COURT: Let the record reflect that the entire jury
7 is present. Good morning.

8 (Whereupon, the jury panel responds.)

9 THE COURT: We're at the final stage of this trial. I
10 think I maybe mentioned to you yesterday before you -- we
11 adjourned that each of the parties will make their closing
12 arguments to you. Solicitor Sheek on behalf of the State
13 and Ms. Nelson on behalf of the Defense will be the ones to
14 make their closing arguments. After that is done then the
15 court will charge you on the law applicable to this case.
16 So I admonish you to please pay very close attention to the
17 closing arguments that both the lawyers will make to you, in
18 addition to paying very close attention to the court's jury
19 charge. Okay? The parties may proceed.

20 MR. SHEEK: Thank you, Your Honor.

21 CLOSING ARGUMENTS

22 BY MR. SHEEK: Madame Forelady and ladies and gentleman of
23 the jury, good morning. As we start our third day here
24 today -- I know you've had two long days and starting your
25 third day, and again, I want to thank you for your time and

1 attention as we've gone through this matter. I've sat right
2 here near you and I've watched a lot of the testimony going
3 on and I've seen how much attention people have paid and I
4 really appreciate that. Because as we've come to this
5 courtroom over the last two days and today we've had the
6 convergence of a lot of rights. We'll hear about rights as
7 we go through trial. And we really meet here together. We
8 have a victim's search for some sense of resolution and
9 closure to this chapter in her life to what happened to her
10 when she was an 11-year-old child. We have society's rights
11 to seek justice, because ultimately that's what this system
12 is all about. We at the Solicitor's Office represent the
13 people of the state of South Carolina, because the only
14 thing that stands between us and chaos is that we are a
15 society of laws, and it's the enforcement of those laws and
16 the appearance of those laws that gives us the order to live
17 in the town and the community that we live in and I've come
18 to love so much. And so, we have society's rights to seek
19 and to serve justice. What's hanging on the wall of my
20 office is a picture that my mother gave me when I graduated
21 law school that she asked me to hang in my office and I
22 always keep there, and it's Micah 6:68 and it says, "The
23 Lord has shown you what is good," on there, and what does he
24 require you do? That you love mercy, to do justice and walk
25 humbly with thy God, and she said, "Son, just follow this."

1 And ultimately that's what we, as a society, want is to do
2 justice. Do justice. And that's what we're here about
3 today and that's what we're seeking. And we have the
4 Defendant's rights. The Defendant who is charged with a
5 crime has the right to seek a trial by his peers. Members
6 of his community. That's you people. Chosen to sit here
7 and sit as the judges of the facts. So as we come here
8 today and do what we're going to do over the next couple of
9 hours keep that goal in mind. We're here to enforce
10 justice.

11 Now, what are we asking for? The State, I told you,
12 has brought two indictments. The indictment 2009-GS-24-543,
13 lewd act upon a minor, 2009-GS-24-633, criminal sexual
14 conduct in the second degree. I want to talk to you for a
15 few minutes about the law that the State relies on that
16 we're asking you to convict this man of violating, and then
17 the Defense will get a chance to talk to you about what
18 their view of the evidence is, and then I'll come back and
19 talk to you at the end and the judge will charge you. So
20 keep in mind, again, the judge is going to charge you on the
21 law. In detail will read to you the law that you're going
22 to apply. But here's what it is.

23 Lewd act upon a minor says that this man here
24 intentionally improperly touched a minor child, in this
25 case, Minor , who testified to you who was 11-years-

1 old at the time, and that he did it with the intent of
2 arousing or satisfying his sexual lust or prurient interest
3 basically. The judge will give you a more detailed
4 definition, but you know what it is. It's the molesting. In
5 this case it is the sitting on the lap, it's the rubbing of
6 the chest, it's the grabbing of the breast, the massaging of
7 the breast. However he wanted to put it. Lewd act upon a
8 minor.

9 The difference between that and the criminal sexual
10 conduct is criminal sexual conduct entails a sexual battery.
11 That's the second charge. It's a sexual battery upon a
12 child between the ages of 11 and 14 with the Defendant being
13 over the age of 14. The testimony in this case is he was 50
14 at the time. She was 11 at the time. That he goes into the
15 room, he pulls her pants down, takes his hand and begins to
16 rub her genital area, rubs her vagina, and then inserts his
17 fingers. It's the penetration, and the judge will tell you
18 however slight, into the vaginal opening in this case that
19 is the sexual battery. And when a person over the age of 14
20 commits a sexual battery on a child between the ages of 11
21 and 14. You've got to be three years older than the victim,
22 then you have a criminal sexual conduct.

23 So we have the two instances that the Defendant told
24 you about in his own words, when he sat her in his lap,
25 became sexually aroused, massaged her breast, and then went

1 into the room later, pulled her pants down and stuck his
2 fingers in her vagina, as he described in his own words.

3 Now, what does the State have to prove? What level do
4 we have to go? You'll hear this from the Defense, and I
5 agree with them. We've got to prove it beyond a reasonable
6 doubt. Now, the judge is going to tell you. He's going to
7 give you a definition of a reasonable doubt. And it's been
8 defined a lot of ways. I think most of you probably know
9 what a reasonable doubt is when you walk into a courtroom.
10 Some people will say it's the kind of doubt -- or the kind
11 of evidence that leaves you firmly convinced of a fact.
12 Some will say a reasonable doubt is the kind of doubt that
13 will cause a reasonable person to hesitate to act. And
14 there's a couple of definitions about this. But what I want
15 to tell you up front is nothing has to be proven beyond any
16 doubt.

17 You can have a doubt about all kinds of things, however
18 fanciful. But don't think for a second if you go back there
19 and carefully consider the evidence, which is what I want
20 you to do, that you're somehow hesitating to act. Any time
21 I have a very important decision in life I carefully
22 consider it. And just because I may slow down before making
23 that important decision doesn't mean I'm hesitating to act.
24 This is the kind of doubt, the kind of proof that is met
25 every time anybody is convicted of any crime in this state.

1 And the Defense often will want to make out like it is such
2 a high lofty station that we can't get to. But I submit to
3 you, when they come to you with the statement of the
4 Defendant that in his own words says it happened, that is
5 the kind of prove that will leave you permanently convinced.

6 And I'll come back and talk to you about the evidence
7 and what it showed in a little bit. But I want you to think
8 about the two offenses that he's charged, the standard of
9 proof the State's got to meet, and then I'll talk to you in
10 a few minutes. Thank you.

11 THE COURT: I'm sorry.

12 MS. NELSON: I didn't want to go without you telling me
13 to.

14 THE COURT: I'm sorry. We were just -- we were looking
15 at something relevant to this case. We weren't --

16 MS. NELSON: Yes, sir. Are you ready?

17 THE COURT: Yes, ma'am. I apologize.

18 MS. NELSON: May it please the court.

19 CLOSING ARGUMENT

20 BY MS. NELSON: The folks in this case are a lot like
21 Dorothy Gale in the Wizard of Oz. They just want to click
22 their heels together three times and magically go home. And
23 Minor has struggled all her life to find a real home.
24 She -- Lord knows it wasn't her fault. She didn't choose
25 her parents. But she grew up with an alcoholic addicted

1 mother and addicted father. Parents who split up at an
2 early age, and then seeing her mother in relationships with
3 abusive men. It being commonplace for the police to be
4 called out. There was a whole lot going on in Minor 's life
5 by the time her school counselor saw those marks on her arm.
6 It was a whole lot going on that could have caused her to be
7 depressed and angry, because she was searching for that home
8 that she'll never get the benefit of having.

9 I want you to think about the story that Minor told
10 back in October of 2008 after her -- not her mother saw
11 those marks, but the counselor at school saw them and
12 referred her for some counseling at that point. Think about
13 the fact that she is saying this happened back in June of
14 2006. Over two years before the time she finally tells
15 somebody about it. She's staying at Connie Maxwell
16 Children's home during that time because, once again, her
17 mother wasn't in a position to be able to take care of her.
18 The best home she had was with her older sister Shannon who
19 was barely an adult herself at the time. So she's at the
20 children's home. And the children's home sends her to a
21 regular counselor starting in March. March 1st of 2006 all
22 the way up to April 23rd, 2007. Right before she left
23 there. Regularly going to see somebody to talk about
24 anything that's bothering her all during this timeframe when
25 she says this incident occurred and there's never one word.

1 Never one word about Don Bolt or any accusation of Don Bolt
2 doing anything wrong to her that whole time. Over a year of
3 regular counseling not a word.

4 But then in 2008 when these marks are seen, these marks
5 that could have been caused by all these other frustrations
6 and problems that Minor has dealt with growing up, when that
7 happens and her -- the school counselor calls her mother and
8 her mother asked her where those marks -- what's going on.
9 In spite of all this, Minor loves her mother. She doesn't
10 want to look at her mother and say you're my problem.
11 You're the reason for this. She don't want to do that. And
12 so, she tells this story about something that supposedly
13 happened two summers before that she's never told anyone
14 before. And I want you to think about the story that she
15 tells and some of the -- some of the differences in what she
16 says and what Don is supposedly saying. The Solicitor said
17 they were Don's words, but they're Brandon Strickland's
18 words and they're -- and they're Mr. Owen's words is what
19 were testified to.

20 Minor says she's over there at Don and Cheryl's house
21 around June 1st of 2006 and that she's in this back bedroom
22 that's adjacent to Don and Cheryl's bedroom, and that she
23 says E. and M. are in the room with her. M. is
24 her younger brother. E. is Don's granddaughter. She says
25 they're in the room with her. Brandon Strickland writes

1 down that Christie and M. are in that room with her.
2 And then you hear Cheryl and Don talk about the other kids
3 that were there. We've got -- we've got Minor , we've got
4 Christie, we've got M. we've got E. , and we've got
5 E. 's younger son D. . And Don and Cheryl had told you
6 that when the children are there they're all sleeping in
7 that back bedroom. So in that room the night this was
8 supposed to have happened we've got anywhere from three to
9 five kids in that room. LMinor being one of them. And Don
10 supposedly comes in that room and Minor pretends to be
11 asleep when she hears somebody come in the room. She says
12 she's -- she's the only one up.

13 She's watching TV in a room that's never had
14 television. In a room that doesn't have a working outlet
15 that -- it was added on as a screened in porch and doesn't
16 have working power. Doesn't have a cable. But she's
17 watching a non-existent television and she hears somebody
18 comes in and pretends to be asleep. Closes her eyes. She
19 testified to you on the stand that at some -- you know, how
20 did you know it was Don. Well, I opened my eyes and then
21 closed my eyes again. That was the first time she said that
22 during the course of this case. She never -- she didn't
23 ever tell Brandon Strickland. She read -- she sat there and
24 read her statement and she couldn't find anywhere where she
25 had said I opened my eyes and saw who it was. What she said

1 was she that she pretended to be asleep from the time she
2 heard somebody come in the room.

3 And then he's supposed to sit down beside her on the
4 bed. This non-existent bed. You heard Don and Cheryl talk
5 about how the kids would sleep on pallets back there on the
6 floor, and that the only time there's been a bed was
7 recently when -- when their son A. stayed in that room for
8 a short time. There wasn't a bed there in 2006. Nobody
9 came and sat down on the bed beside Minor because she wasn't
10 in a bed. But he -- her story is that he sits down next to
11 her, pulls the covers off of her. And this -- this all
12 sounds -- I need you to think really hard back there when
13 you're talking about this about the mechanics of what she
14 says happen. It sounds really simple. He came in there, he
15 sat down, he pulls off my shorts, he pulls off my panties,
16 rubs me, sticks his finger inside my vagina, then he pulls
17 my clothes back up and he leaves. And that lasts about 10
18 or 15 minutes.

19 Think about a person lying still on the bed. She told
20 you on the stand that she didn't move from the time she
21 heard somebody come in. There was something in her
22 statement written back in 2008 about turning over, but she
23 told you on the stand that she didn't move from the time the
24 person came in. Somebody's laying prone on the floor, the
25 bed, wherever you want to think she was laying on. They're

1 not helping in any way with you being able to get -- to get
2 their clothes off of them. Think about how easy or
3 difficult you think it might be to pull clothes down off of
4 someone who's laying there pretending to be asleep who
5 weighs somewhere between 100 and 145-ish pounds. You get
6 those down and then you have to get the panties down, too.
7 And then think about the fact that this is an 11-year-old
8 who -- there's been no testimony about when -- when or if
9 she ever started having any sexual activity, but I think
10 we're all assuming at this point that at 11 she hasn't had
11 sex. Her hymen's intact. Dr. Pritchard explained to you
12 that the hymen is the tissue around the opening of the
13 vagina. If anybody had come in there and penetrated a child
14 that young who had never had sex, whose -- her period had
15 not started at that point so there's been no -- she's never
16 used a tampon, we can assume. He's able to do that to her
17 and she doesn't talk about any discomfort or pain. She
18 doesn't talk about him having to adjust her body in any way.
19 How does -- how does he accomplish this while she lies
20 still, prone, not moving and manages to pretend to be asleep
21 through all of that.

22 I just want you to think about that realistically and
23 decide if it's really as simple as it sounds, because it's
24 not. And then after that happens he manages to get
25 everything pulled back up while she's still laying on the

1 bed pretending to be asleep not moving. He manages to get
2 all of that back up and then he leaves the room.

3 And then after that's happened to her she decides she
4 wants to go tell her sister and -- and you heard how the
5 only way out of that room to the rest of the house was to go
6 back through Don and Cheryl's bedroom. You can only go back
7 through their bedroom or out the backdoor into the yard.
8 And after this man has come in here and done this to her she
9 walks into his bedroom, where presumably he's gone back in
10 and gone to sleep, so that she can go into the room where
11 Shannon and Brandon are. Shannon and Brandon aren't here to
12 tell you that she came in their room.

13 I just want you to think about how something that
14 sounds so simple might not be so simple after all, and that
15 you need to question and scrutinize the story that she told
16 over two years after this supposedly happened to her.

17 Mr. Sheek has talked to you about the two charges that
18 were brought. When Don was arrested on December 4th in 2008
19 he was only charged with a lewd act, which is the charge
20 about inappropriate touching. He was charged with a lewd
21 act in the arrest warrant, and then several months later in
22 May of 2009, you'll see the indictments -- and as the judge
23 has told you, they're -- they're not evidence. They're the
24 formal charging document is what they are. That's just what
25 -- it says what the basis of the charge is. Brandon

1 Strickland went in front of the Greenwood County Grand Jury
2 in May of 2009 and got an indictment for a lewd act on a
3 minor, which is what she was charged with. And you'll see
4 the timeframe in that indictment is from June 1st of 2006
5 through October 17th of 2008, which is the date she first
6 disclosed this story.

7 The testimony you got from Minor on the stand was that
8 any of this supposed improper touching all occurred before
9 this incident in the bedroom. Mr. Strickland went back a
10 month later to a different grand jury and got an indictment
11 for criminal sexual conduct with a minor, which is a charge
12 that requires a sexual battery. Some kind of penetration,
13 or some kind of -- the judge will tell you what all the
14 types of sexual batter are that -- that's alleged in this
15 case is penetration with a finger into the vagina. So he
16 goes back and gets that later. Something that Don was never
17 charged with until months after his arrest. The date on
18 that charge is June 1st of 2006. And again, the date on the
19 lewd act charge begins that day and runs through October of
20 2008.

21 Folks, there's no evidence before you that Don
22 committed a lewd act on Min. after the date she says
23 that criminal conduct occurred. After the date of the
24 bedroom incident she specifically said on the stand that she
25 may have gone over there occasionally after that but there

1 was no further physical contact from Don. So there's no
2 evidence before you that you can use to convict him of that
3 lewd act charge during that timeframe, because Minor told
4 you herself that after the incident in the bedroom nothing
5 else happened.

6 The other thing I want to talk to you about are the
7 things that Don is supposed to have said. So let's talk
8 about Don and what Don did and said, or what Don didn't say.
9 December 4th, after never hearing any inkling of anything
10 like this ever happening, when Minor 's been back to his
11 house after the incident supposedly occurs, his step-son
12 Brandon is married to Minor 's older sister, and Don's heard
13 not one word of any accusation being made against him in all
14 that time. But he hears on December 4th of 2008 the police
15 are -- Cheryl calls him and says the police are looking for
16 you. So what does he do? He leaves work and drives over
17 here to the sheriff's department and says here I am. I hear
18 you're looking for me. That's not something a guilty person
19 does. A guilty person runs away from the law. They run
20 away. They don't confront the police. They don't come in
21 and say here I am. What do you need. They arrest him on
22 the lewd act charge. He signs away all his rights.

23 And you've had an opportunity to listen to Don. You
24 can make your judgements about how -- how bright you think
25 he is. But I guarantee you, everybody he encountered on

1 December 4th and December 5th was more educated and more
2 intelligent than he was. And he signed away his right to
3 have a lawyer with him. He signed away his right to remain
4 silent and said yes, I'll talk to you. And maybe you
5 believe Don understood all the implications of that -- of
6 what he signed. But you do get to determine that. You get
7 to decide if the things that he supposed said to the police
8 were done voluntarily and freely, or whether those things
9 were the product of him being coerced or browbeat into
10 saying the things he said or signing the things he signed.
11 You get to decide that.

12 So he gives up all those rights whether -- whether he
13 understands them or not. Signs the form that says I don't
14 need any of that. I'll talk to you. And he tells them --
15 he tells them I didn't do this. And the State wants you to
16 think that Don didn't know the details about what he was
17 accused of when he was arrested. They want you to think
18 that all of these -- these things that were written down
19 that he said were just spontaneous utterances that he made.
20 But he -- of course he was told what he was accused of
21 doing. Of course he was told this is Minor who is
22 saying that you did this to her around this time. How do
23 you deny something if you don't know what you're being --
24 what you're being accused of. So of course he's told the
25 details. And he says no, I didn't do this. And that

1 doesn't matter that he says he didn't do it. They've got
2 the warrant ready and they lock him up.

3 The next day he -- trying to prove himself, as he put
4 it, trying to let them know that he was telling the truth,
5 he says, well, I'll take a polygraph test. And again, some
6 of us may know that a polygraph test is not a reliable way
7 to determine if somebody is telling the truth or not.
8 That's why juries don't usually hear about them, because
9 they're not a reliable determination of credibility. You're
10 the determiners of the credibility, not -- not a polygraph
11 machine. It's not proven science. But Don doesn't know
12 that. So he thinks that's the way to let them know that
13 he's telling the truth and he says I'll take a polygraph.
14 The police -- Brandon Strickland calls the guy they always
15 use and he comes in and he gets told by Brandon Strickland
16 what the -- what the facts are. What Minor has said
17 happened to her.

18 So Don gets told again by Mr. Owen what's supposed to
19 have happened. So he knows that Minor is saying that he put
20 her on his -- that he put her on his lap and touched her
21 inappropriately. She -- he knows that Minor is saying that
22 he came into the bedroom and touched her and put his finger
23 in her vagina.

24 He takes the polygraph. He agrees to take it. And
25 then he's told you failed. You failed and you tell me why.

1 An what Don doesn't know is that he's given a polygraph with
2 a dinosaur of a machine, an antiquated machine that people
3 stopped using in the early to mid '90s because now they have
4 better stuff to use on a computer that can give you better
5 measurements and wait the right amount of time between
6 questions you ask. So the fellow uses an old machine and
7 doesn't wait the proper amount of time between questions and
8 -- you heard Mr. Hartley explain to you that the reason you
9 have to wait is to see what the -- to give the reaction the
10 full time it takes to finish. And you don't start asking a
11 question when somebody's still reacting to the previous
12 question. And those were things that were all done wrong.
13 And because they were done wrong you can't depend on that
14 test.

15 But not knowing any of that, Don gets told you failed
16 and he's -- he panics. He's scared. And we don't know what
17 he did or didn't say to Mr. Owen because it's not recorded
18 by any -- anything that you can watch. You don't get to --
19 you don't get to see it, because all that happened is that
20 Mr. Owen wrote down things and put them in a report. And
21 one of the things -- one of the ways you know it's hard to
22 depend on what's said in there is because she wrote down
23 that Don said Minor 's parents were there. Minor wasn't even
24 living with her mother at the time. Her mom and dad had
25 been divorced for years. Her parents weren't there. But

1 that's what Mr. Owen wrote down that Don said. That's one
2 of the things he wrote. And even after that, even after
3 Don's told you -- you flunked that test. Now, you tell me
4 why you flunked it. Even after that he still says I did not
5 put my finger in her vagina. Something accident could have
6 happened, but I didn't do that.

7 He does supposedly make this statement about her
8 sitting on his lap. He says that was earlier that day.
9 That's not consistent with what Minor 's told you. That's
10 not what she says. Then that's not enough either. That's
11 not enough, so Brandon Strickland has to talk to him again.
12 He's getting ready -- Don's getting ready to go turn his --
13 turn his jail stuff in, his pillow, his shoes. He's getting
14 his -- his wife and a bondsman are there getting ready to
15 bond him out so he can come home. And he's told you can't
16 leave until you talk to Brandon. And then Brandon
17 Strickland tells him I know you did something. I know
18 you're lying to me. You don't tell me what happened I'm
19 going to get your bond jacked up and you won't get out of
20 here.

21 And we -- we've already talked about Don's intelligence
22 level. He's -- he's never been put in jail for anything
23 like this before. Does he -- does he know that Brandon
24 doesn't have the power to do that? No, he doesn't. He
25 believes it. He would have signed whatever Brandon put in

1 front of him in order to get home to his family and take
2 care of them. And so, Brandon puts a statement in front of
3 him, and he can stand there all day long and tell you that
4 those are Don's words, but you look -- you'll have that
5 statement back there with you. You look at it and see if
6 you think Don said those things. If you think Don said,
7 "on the night in question", or "she appeared to be asleep".
8 And you know those words are Brandon's words. He wrote them
9 himself. And he said one of the most telling things that I
10 heard during the course of this trial. I wrote it down.
11 You heard him say, "I wrote what I thought needed to be
12 there." I wrote what I thought needed to be there. And
13 what needed to be there was that there was a finger in her
14 vagina. And so, that's what Brandon Strickland wrote down.

15 Now, why in the world -- why in the world would anybody
16 ever say they did something like this. And I want to come
17 back to that in just a minute. I forgot to mention that I -
18 - Mr. Sheek may say something to you about the fact that Mr.
19 Hartley came in and didn't give Don another polygraph. And
20 that's true. We -- we, as you heard, got a hold of Mr.
21 Hartley the night before he testified and we were in the
22 middle of this trial. That's one reason we didn't do it.
23 But another reason is after what happened to Don on December
24 5th why in the world would he ever take another polygraph.
25 And finally, as I told you before and as you heard from both

1 of the polygraph guys, this isn't a reliable way to
2 determine whether somebody's telling the truth or lying.
3 And again, you're the ones who get to do that. You get to
4 decide on the credibility of everybody you've heard from
5 based on your human experience. Your collective knowledge
6 and your ability to judge the people that were on the stand.
7 So don't let that throw you.

8 So again, why in the world would anybody ever admit to
9 something this terrible. Why would they do it. Probably
10 can't imagine any situation where anybody would want to do
11 that unless they were being thumbscrewed. Well, for -- for
12 Don Bolt that was the only thing he knew to do at that
13 point. He wasn't thinking about this day five years in the
14 future when the State finally decided to bring this case to
15 you for trial. He was thinking about his wife. He was
16 thinking about his mother-in-law who was living with him at
17 the time. He was thinking about his child. He's thinking
18 about him being the only way that bread got put on the table
19 in that house. He's the only one earning any money.

20 He was thinking about the fact that it didn't matter
21 what he said, they kept coming back for more. They kept not
22 taking no for an answer. He was thinking about going home.
23 He was in a desperate situation and he did something stupid
24 so that he could get out of that jail and get back home to
25 his family. It may not be something everybody would do in

1 that situation. But for Don and his thought processes at
2 the time, he would have signed anything to get out of that
3 jail and that's what he did. Brandon Strickland wrote down
4 the statement for him and he put his name on it. And guess
5 what happened after that. He got to go home. After he
6 finally said what they wanted to hear.

7 Folks, I'm asking you to really take a look -- a hard
8 look at everything that's in front of you. And we're asking
9 that at the end of this case that you tell Don again that he
10 can go home and that you find him not guilty.

11 THE COURT: Thank you, Ms. Nelson. Solicitor?

12 MR. SHEEK: Thank you, Your Honor. If it may please
13 the court.

14 CLOSING ARGUMENT

15 BY MR. SHEEK: So many times when I come into a courtroom in
16 front of a jury we'll talk about reason. We'll talk about
17 logic. We'll talk about using your common sense. And that
18 is an important tool in a criminal case, or in any case we
19 say use the jury's common sense. But really, folks, how do
20 we use reason. How do we use logic. How do we think about
21 what's normal when we're dealing with a 50-year-old man that
22 would victimize an 11-year-old girl. Is that ever
23 reasonable? Is that ever logical? Do those people even
24 think like normal people think? They don't. They don't. A
25 grown man that would go into the room of a sleeping 11-year-

1 old girl and put his fingers in her vagina doesn't think
2 like a normal person. He thinks like a sexual predator, and
3 that's not normal and it's not reasonable. And it's not
4 going to make sense to normal and reasonable people.

5 I sat there and I listened to Ms. Nelson, who's a good
6 lawyer, defending her client as she threw everybody under
7 the bus that was involved in this case starting with the
8 victim. Let's destroy of victim first. This 11-year-old
9 child. Well, she had a troubled live. She had a bad home.
10 She was at Connie Mac. Her daddy did drugs. Her momma
11 drank. So, therefore, she's lying about it. Well, isn't it
12 -- think about it. A sexual predator is no different than a
13 predator in nature. If you watch the TV like my kids do,
14 love this nature channel, who do predators in the wild go
15 after? They go after the weak. The stragglers. The young.
16 The ones that can't protect themselves. The Apostle Paul in
17 the first century church said take care of the widows and
18 the orphans. And it wasn't because Paul thought that widows
19 or orphans in and of themselves were more valuable than
20 anybody else. It's just in that society widows and orphans
21 had nobody to stand up for them. And William Donald Bolt
22 knew that Minor had nobody to stand up for her at
23 that time, did she? At least he thought she wasn't.

24 And let's say because this 11-year-old child who had
25 been victimized by a 50-year-old man doesn't know what to do

1 and is scared and doesn't tell. Let's say then that it must
2 be a lie. Oh, I wish that every child around here that was
3 victimized either physically or sexual immediately told. I
4 wish it with all my heart. But it doesn't happen, folks.
5 They hold it inside. They don't tell. They're scared.
6 Who's going to be believe them over an adult. Somebody's
7 going to think I'm lying. I'm going to get in trouble. I
8 mean, they think all kinds of things, but they don't tell so
9 many times. Thankfully she did eventually tell. And like
10 many, many other young ladies, between the time she told and
11 the time it had happened she experienced problems. She had
12 problems. She's not the only one. That's not unusual. In
13 fact, it's very consistent. But tell she did.

14 And you listen to the defense get up here and they're
15 going to say everybody in the case is a liar. Minor 's lied
16 because it didn't happen. Brandon Strickland's lying
17 because he told him he was going to jack up his bond and
18 told him what to put in his statement, and Brandon says that
19 never happened. Daryl Owens lied because he told him what
20 he needed to say, and Daryl said I didn't tell him any of
21 the details of what supposedly had happened. Heck, William
22 Donald Bolt's lying because he sat there in the police
23 department and told the police that he did it. And then
24 they want to get up here and question that.

25 Did William Donald Bolt get on that stand and tell you

1 he didn't say that to Brandon? How many times did I ask
2 him. I told him whatever he wanted to hear. I just told
3 him whatever he wanted to hear. He didn't say he didn't say
4 it, folks. As his lawyer gets up here and starts talking
5 about things as if they're fact that simply aren't. It's a
6 bed that never existed. Never existed by whose testimony.
7 The testimony of him, who said that these kids are over
8 there all the time. Remember that? They used to come all
9 the time. Come all the time. Or his wife's testimony who
10 said they came and stayed the night once. Now, what
11 happened between his testimony and her testimony. His that
12 they were over there all the time. Well, how about maybe I
13 questioned him, now, wait a second. If they were there all
14 the time and you're being questioned two and a half years
15 later, how could you remember that particular night with
16 such clarity. Well then, when the next witness comes in
17 suddenly they're only there one time. Well, of course,
18 because they've got to explain that.

19 Let's think about it. If you ask me what I did on
20 September the 5th of 2012, one year ago, I can't tell you
21 what I did or who was there. There's no reason for that
22 date to stand out in my mind. There was a day almost 12
23 years ago this month that I could tell exactly what I was
24 doing. Across the street at my office preparing for a
25 custody case. Represented the father. Came right over here

1 to this courtroom across the hallway and tried it in front
2 of Billy Tunstall. He's passed away now, but he was the
3 family court judge. The reason I remember that day with
4 such clarity, it was September 11th, 2001. While I was
5 getting ready for court a deputy come in, who still works
6 here in town, and told me a plane just hit the Trade Center.
7 And I flipped on the TV in the conference room and saw the
8 second one hit. I remember taking the breaks with Billy
9 Tunstall sitting up here, the judge, and going back to his
10 chambers and flipping on CNN and seeing what was happening
11 in New York. I remember that day because something
12 important and traumatic happened. But now, what happened on
13 September the 10th and what happened on September the 12th
14 of that year I couldn't tell you. William Donald Bolt
15 remembered that night because something happened he knew
16 about. He knew about it.

17 Now, did he say to Brandon Strickland there was no bed
18 in there? Did he tell you he tried to tell Brandon
19 Strickland there was no bed in there. That couldn't have
20 happened. There was no bed. Did he ever say it? Huh-uh,
21 no. He never said that. Why would you go in that first day
22 on December the 4th when he says I told them nothing
23 happened and not say, well, there was no bed in there.
24 There was no TV in there. It couldn't have happened that
25 way. Why would you not say that? And they stand up here

1 arguing there was no bed and no TV as if it is somehow fact
2 and there is no evidence to support that whatsoever. Good
3 lawyering, but I want you to see past it.

4 It's like this court. As a kid I don't know if you all
5 played in mud puddles. Little boys do. I did. And you can
6 put that quarter in a bottom of a mud puddle and you can see
7 it there. The quarter's there. There's no doubt it's
8 laying there. I could come with a stick and stir that water
9 and turn it just as brown as Lake Greenwood turns in a heavy
10 rain, and you can't see that quarter. And it didn't move.
11 It's still there. That fact hasn't changed. And my
12 stirring of the mud didn't change it. A good defense lawyer
13 stirs the mud as much as they can, because let's face it,
14 there's one thing you've got to think about here and that is
15 did William Donald Bolt sexually molest this child and
16 commit a lewd act when he put her in his lap and rubbed her
17 breast. Did he commit a sexual battery when he went in this
18 room and stuck a finger in her vagina, as he said happened.
19 Because if he did, that quarter's still there and he's
20 guilty. So let's look about what he said. Because
21 everybody's lying. Everybody.

22 Brandon Strickland. Now, let's look at that. If
23 Brandon Strickland was going to lie why would he say on
24 December 4th he told me nothing happened. You're just going
25 to lie about it. You're just a dirty cop. You're going to

1 lie about it wouldn't you just say, look, on December 4th he
2 sat there and he told me he did it. Isn't that what you'd
3 do? You wouldn't come in here with a written advice of
4 rights and say on that day he told me nothing happened. If
5 Brandon Strickland was going to lie when he wrote that
6 second statement as Don dictated to him -- because he said I
7 paraphrased that first part and then I wrote specifically
8 what he told me, because he uses words like Minor for
9 Minor , and he uses the word britches which is not something
10 Brandon says he uses. This is exactly his words. If he's
11 going to lie, would he have said pulled down her pants and
12 stuck my finger in her vagina and it was real quick.

13 See, these kind of guys -- there's a number of reason
14 why they tell what they do. Usually it simply comes down to
15 they want to minimize it as much as possible. Okay. I
16 flunked the polygraph. I touched her, but it was real
17 quick. It was no big deal. Because in a predator's mind,
18 it's not a big deal. It's not. That's the way predators
19 think. So he's minimizing it. But if Brandon was going to
20 lie, why would he have wrote that? And why would he have
21 him draw a line and write NFR, no further report. Because
22 did William Bolt ever sit on that stand and deny he wrote
23 that line just as Brandon had testified? Brandon had
24 testified and the statement was in evidence before William
25 Bolt sat there and talked to you all. Did he ever say, no,

1 that line wasn't there? No, not at all. When he signed it
2 it was there. He drew the line. Why would that officer
3 who's going to lie and make it up simply to get a confession
4 or to get a conviction, why does he do that? I'd just leave
5 it blank, and then I could write in and I did it five more
6 times. I had intercourse with her. I did it when she
7 wasn't awake and it lasted for 30 minutes. And there's
8 other girls I did it to. That's what a lying officer could
9 have wrote. Why would Brandon do that. He did it because
10 that's exactly what that man told him he did.

11 Now, let's talk about Daryl Owen. Daryl Owen comes up.
12 The sheriff's department does not go and get a law
13 enforcement officer to get a polygraph. They don't go to
14 SLED who is available to them. They don't go to any of
15 these. They get an independent person come down and give
16 this polygraph. The defense wants to say, well, you know,
17 he doesn't know -- William Bolt doesn't know that they're
18 unreliable. Really? Because what did your own expert come
19 and tell this jury. Oh, I was part of this control. Twelve
20 people across the nation did it. You remember him saying
21 that? And of the people that we had known answers what was
22 the accuracy that he testified about? Was it 99 percent?
23 That's what he testified to. That's their expert. William
24 Bolt takes this polygraph. He flunks it. Flunks the snot
25 out of it. Because at negative five it's indicative of

1 deception. He pegged it at over three times that. Now,
2 they want to say, well, the guidelines say you should wait
3 15 and some say 20 seconds. And then I asked the expert,
4 former head polygrapher at SLED, okay, what regulation says
5 that. Now, I'm opening myself up there, because as lawyers
6 you're taught don't ask the question you don't know the
7 answer to. Because he could say, well, it's right there,
8 Mr. Solicitor. This is the regulation and this is what he
9 violated. Could he tell you that? He couldn't show you.
10 He couldn't even tell you where to find it, could he? He's
11 the expert, 18 years, head of polygraphy at SLED and he
12 couldn't tell you all that? Why could he not? Because it's
13 not there. He wants you to think that Darrel Owen violated
14 some rule and therefore it's all invalid. But it's simply
15 not there.

16 What is there is a man who got paid \$450 to come up
17 here and tell you that, who apparently, according to his
18 testimony if we're going to accept it, never discussed fee,
19 never looked at the chart prior to being told to come up
20 here. Now, why do you think that is? Well, he said on the
21 stand that most of his work now is done with private lawyers
22 and public defenders. He's the hired gun for defense now.
23 He's the go to guy if you want to discredit people like
24 Daryl Owens. And they knew it. That's why they called him.
25 They didn't need to talk about this fee. Didn't need him to

1 look at the charts or give an opinion. Just come on up
2 here, we're going to need you. Knew it before he ever came
3 and saw a thing. And, of course, he's going to sit on the
4 stand and he's going to find something wrong with what Daryl
5 Owens did.

6 But beyond that, look at what the Defendant told Daryl
7 Owen he did, because Defendants, much like victims who
8 internalize this and don't tell, Defendants typically
9 gradually, gradually tell what they've done. First thing he
10 gives us is Daryl Owens. Now what's he say? I was drinking
11 a lot that night. Well, that's interesting, because nowhere
12 in Minor 's statement, nowhere in anything Brandon Strickland
13 has do we have anything about drinking, do we? But the
14 Defendant says he was, and his wife then gets on the stand
15 and says what? About every weekend he was falling down
16 passed out drunk. We'd have to go get him out of the yard.
17 That's from his own witnesses. I was drinking a lot that
18 night, got her in my lap and became sexually aroused because
19 an 11-year-old child was sitting in his lap. Now, he wants
20 to say, oh, that couldn't happen because that don't work.
21 And I said, well, are you under a doctor's care for that?
22 Yeah, yeah. But we don't have a doctor's record. We don't
23 have anything to show that that don't work. We have the
24 statement of a man who's admitted he lied. That's what
25 we've got. We've got the statement of a man -- of a sexual

1. predator saying it.

2. And these kind of crimes aren't even about that anyway.
3. It's about the preying on a young child. That's what it's
4. about for these guys. So whether or not he could obtain an
5. erection -- but he said he did. He got sexually aroused
6. with that 11-year-old child sitting in his lap, and he began
7. to massage her breasts. Now, that's interesting, because
8. that's what she said happened historically. Up until this
9. night that's what it had been. This night it went further.
10. So he massages her breast. She gets up. Now, it's
11. interesting that he'd say that she didn't move away from
12. him. Because in these guys' minds somehow the child has
13. consented to it. The child is going along. They really
14. wanted it. That's what goes on in these guys' minds. And
15. it's interested that he put in there, but she didn't move
16. away from me. Daryl Owens wouldn't have put that. He said
17. it. It's okay because she didn't move away.

18. She goes to bed a little later, and then he goes in
19. there. Now, here's where it comes -- the defense has got to
20. try to convince you. They say, of course, Brandon
21. Strickland told him the story. Of course Brandon Strickland
22. gave him the details, because if he didn't, folks, how in
23. the world did he know to give the same story the child gave?
24. Now, Brandon told you he didn't. Daryl says he didn't. Yet
25. he knew the child was alleging that he -- she was molested.

1 He knew this child was even saying that his fingers were
2 stuck in her vagina, because that was one of the questions
3 on the polygraph. But what he didn't know is where it
4 supposedly happened. That she had gone in the bedroom. He
5 said she was asleep. That's what his statement says. She
6 said I pretended to be asleep. Isn't that interesting. He
7 didn't say she was awake or she was pretending. He thought
8 she was asleep just like she pretended to be.

9 Now, they say think about the logistics. They couldn't
10 get the pants down. Folks, they sat up here in closing
11 argument, he took her pants off. That's not what she said.
12 That wasn't in her statement. It wasn't in there anywhere.
13 She said pulled them down. Well, down to a child doesn't
14 mean down to the ankles. It could have been, but it doesn't
15 necessarily mean it. Pajamas and underwear on an 11-year-
16 old girl, down could simply mean down far enough to get his
17 hand in there, because that's all she said. He pulled them
18 down. So think about the logistics. How would he get them
19 off and back on. Well, folks, he doesn't have to to do
20 exactly what he said he did and what she said he did.

21 Again, through that mud let's hope the quarter is not
22 there. But it is there, folks.

23 Bottom line, 2008 she told what happened. When he was
24 interviewed he told what happened. They'll say, now, why
25 would anybody admit to that. Why would anybody admit to

1 that. And he says I only said it because I was scared.
2 Wow. I never thought of getting out of trouble by saying I
3 did it. But minimize it. I'll minimize it enough, enough
4 to get by, and we'll get this taken care of and I'll go on.
5 That's what he's thinking.

6 Now, Brandon Strickland. Was there any testimony that
7 Brandon showed up at that man's bond hearing on the 5th?
8 Because they say, oh, he was threatening to jack up his
9 bond. Well, that's interesting, because after he told
10 Brandon nothing happened then he goes to a bond hearing.
11 Does Brandon go and try to say I want a high bond, Judge. I
12 want his bond denied because he's telling me nothing
13 happened. Did he do that? No. He went over here to a
14 magistrate court judge, and he couldn't sit up here and say
15 it did because then it simply didn't match up. No, that
16 didn't happen. So he couldn't say that happened. And he
17 just glosses over that. This man who supposedly is
18 threatening to jack up his bond doesn't even go when he's
19 saying nothing happened. But then after he gets a
20 disclosure then he's threatening to jack up his bond from a
21 man that's already made bond. Getting ready to go home.

22 I wish I could tell you why people do what they do, but
23 I'm glad I don't think like this man does. Victimizing an
24 11-year-old child. Minor had a rough time. It wasn't the
25 idyllic childhood. But when you're told this reminds me of

1 Alice in Wonderland, folks, this isn't a fairy tale. This
2 is life. And it's the unfortunate circumstances of life
3 that there are predators in this world. There are predators
4 in this community who will do these kinds of things to
5 children, and William Donald Bolt is one of them. And in
6 June of 2006 he put that child in his lap. He massaged her
7 breasts. He went into the room when he thought she was
8 asleep. He put his hands down her pants and inserted his
9 fingers in her vagina. He committed a lewd act, then he
10 committed a criminal sexual conduct.

11 William at that time was working at a construction
12 company. Sole bread winner for his family. I won't argue
13 he didn't understand the impact of what he was doing.
14 Folks, he's a 50-year-old man. Had a job, raised a family,
15 took care of his family, but didn't understand that
16 admitting to molesting a child was wrong. And in that
17 respect you can use your common sense.

18 Look at the evidence. The evidence is clear. The
19 evidence is convincing. It will leave you firmly convinced.
20 Now that we're here, that cloak of presumption of innocence
21 that was on this man when he walked in the courtroom is
22 yours to take off. And when I talked about the rights, the
23 rights of this community to seek justice, I want you to do
24 that. I want you to serve justice and notice to people like
25 William Donald Bolt, not in Greenwood, not to our children.

1 Thank you.

2 THE COURT: Thank you, Mr. Sheek. Madame Forelady and
3 ladies and gentlemen of the jury, it is now time for me to
4 charge you on the law that applies to this particular case.
5 Now, we have two indictments. These indictments charge the
6 Defendant with lewd act upon a child and criminal sexual
7 conduct with a minor.

8 I remind you, as I told you at the beginning of this
9 case, the fact that the Defendant was arrested, charged and
10 indicted in this case is not evidence in this case and
11 cannot be considered by you as evidence of guilt in this
12 case, nor does it create any presumption or inference of
13 guilt. These two documents are simply the formal written
14 instruments which contains the charges made against this
15 Defendant. They are the formal documents by which this case
16 is brought in the court.

17 Now, the indictments in this case allege two different
18 offenses against the Defendant. The charges are lewd act
19 upon a child, which I just stated a moment ago, and criminal
20 sexual conduct with a minor. Each indictment charges a
21 separate and distinct offense. You must decide each
22 indictment separately on the evidence and the law applicable
23 to it uninfluenced by your decision as to any other
24 indictment. The Defendant may be convicted or acquitted on
25 any or all of the offenses alleged and charged. You'll be

1 asked to write a separate verdict or guilty or not guilty
2 for each indictment.

3 Now, Madame Forelady and ladies and gentlemen of the
4 jury, the Defendant has pled not guilty to these
5 indictments, and that plea puts the burden on the State to
6 prove the Defendant guilty. A person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself or herself innocent. I charge you
9 that it is an important rule of law that the Defendant in a
10 criminal trial, no matter what the seriousness of the charge
11 may be, will always be presumed to be innocent of the crime
12 for which the indictment was issued unless guilt has been
13 proven by evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations but it accompanies the Defendant
17 throughout the trial until you reach a verdict of guilt
18 based on the evidence satisfying you of that guilt beyond a
19 reasonable doubt. The presumption of innocence is like a
20 robe of righteousness placed about the shoulders of the
21 Defendant which remains with the Defendant until it has been
22 stripped from the Defendant by evidence satisfying you of
23 the Defendant's guilt beyond a reasonable doubt. The
24 presumption of innocence is not a mere legal theory. It is
25 not just a legal phrase. It is a substantial right to which

1 every Defendant is entitled unless you, the jury, are
2 satisfied from the evidence of the Defendant's guilt beyond
3 a reasonable doubt. The State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt.

5 Some of you may have served as jurors in civil cases
6 where you were told that it is only necessary to prove that
7 a fact is more likely true than not true, such as by the
8 greater weight or the preponderance of the evidence. In
9 criminal cases the State's proof must be more powerful than
10 that. It must be beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the Defendant's guilt. There are very few things in this
13 world that we know with absolute certainty and in criminal
14 cases the law does not require proof that overcomes every
15 possible doubt. If, based on your consideration of the
16 evidence, you are firmly convinced that the Defendant is
17 guilty of one or two of the crimes charged you must find the
18 Defendant guilty. If, on the other hand, you think there's
19 a real possibility that the Defendant is not guilty on
20 either or both of the crimes charged, you must give the
21 Defendant the benefit of that doubt and find him not guilty.

22 I remind you that during this trial you and I have
23 certain duties to perform which I explained to you at the
24 beginning of this trial. As the trial judge it is my
25 responsibility to preside over the trial of this case, and I

1 also have had the duty to rule on the admissibility of
2 evidence offered during this trial. You are to consider
3 only the competent evidence before you. If there was any
4 evidence ordered stricken from the record in this case
5 during this trial you must disregard that evidence. You are
6 to consider only the testimony which has been presented from
7 the witness stand any exhibits which have been made a part
8 of the record in this case and any stipulations from the
9 attorneys.

10 I have the additional duty to charge you the law
11 applicable in this case. As the presiding judge I am the
12 sole judge of the law of this case and it is your duty as
13 jurors to accept and apply the law as I now state it to you.
14 If you already have any idea as to what the law is or what
15 the law ought to be and it does not agree with what I now
16 tell you what the law is, you must abandon this idea because
17 you are sworn to accept the law and apply the law exactly as
18 I stated to you.

19 In every case tried in this court before a jury the
20 jury becomes the sole and exclusive judge of the facts in
21 the case. A trial judge cannot intimate, state, comment on
22 or make any statement to a trial jury about the facts in a
23 case. Since you, the jury, are the sole judge of the facts
24 in this case you are not to infer from what I have said
25 during the progress of this trial in ruling upon the

1 admissibility of evidence or otherwise, or anything that I
2 say now during the course of this instruction to you that I
3 have any opinion about the facts in this case. The law does
4 not allow me to have an opinion about the facts in this
5 case. This is a matter solely for you, the jury, to
6 determine. As jurors it is your duty to determine the
7 effect, the value, the weight and the truth of the evidence
8 presented during this trial.

9 Now, there are two types of evidence which are
10 generally presented during a trial. Direct evidence and
11 circumstantial evidence. Direct evidence directly proves
12 the existence of a fact and does not require deduction.
13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. Crimes
15 may be proven by circumstantial evidence. The law makes no
16 distinction between the weight or value to be given to
17 either direct or circumstantial evidence. However, to the
18 extent the State relies on circumstantial evidence, all the
19 circumstances must be consistent with each other, and when
20 taken together point conclusively to the guilt of the
21 accused beyond a reasonable doubt. If these circumstances
22 merely portray the Defendant's behavior is suspicious the
23 proof has failed. The State has the burden of proving the
24 Defendant guilty beyond a reasonable doubt. This burden
25 rests with the State regardless of whether the State relies

1 on direct evidence, circumstantial evidence, or a
2 combination of the two.

3 Madame Forelady and ladies and gentlemen of the jury,
4 necessarily you must determine the credibility of witnesses
5 who have testified in this case. Credibility simply means
6 believability. It becomes your duty as jurors to analyze
7 and to evaluate the evidence and determine which evidence
8 convinces you of it's truth. In determining the
9 believability of witnesses who have testified in this case
10 you may believe one witness over several witnesses, or
11 several witnesses over one witness. You may believe a part
12 of the testimony over a witness and reject the remaining
13 part of the testimony of that same witness. You may believe
14 the testimony of a witness in its entirety or reject the
15 testimony of a witness in it's entirety. You may consider
16 whether any witness has exhibited to you any interest, bias,
17 prejudice or other motive in the case. You may also
18 consider the appearance and manner of a witness while on the
19 witness stand.

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions. An
22 exception to this rule exists for witnesses we call expert
23 witnesses. A witness who by education, experience has
24 become expert in some art, science, profession or calling
25 may state an opinion as to relevant and material matter in

1 which the witness claims to be an expert, and may also state
2 the reasons for the opinion.

3 Madame Forelady and ladies and gentlemen of the jury,
4 the Defendant is charged with committing a lewd act on a
5 minor. A minor is a person under the age of 18. The State
6 must first prove beyond a reasonable doubt that the
7 Defendant was over the age of 14. Next, the State must
8 prove that the Defendant willfully and lewdly committed or
9 attempted a lewd or lascivious act on or with the body or
10 its parts of a child under the age of 16 years with the
11 intent to arouse, appeal to or gratify the lust, passions or
12 sexual desires of the Defendant or the child. Willfully
13 means voluntarily and intentionally with the specific intent
14 to do something the law forbids. Lewd means obscene,
15 lustful, indecent or lecherous. Lascivious means tending to
16 insight lust, lewd, indecent, obscene, or tending to deprave
17 the morals in respect to sexual relations.

18 The Defendant is also charged with second degree
19 criminal sexual conduct with a minor. The State must prove
20 beyond a reasonable doubt that the Defendant engaged in a
21 sexual battery with the victim. A sexual battery is sexual
22 intercourse, cunnilingus, fellatio, anal intercourse, or any
23 intrusion however slight of any part of a person's body or
24 of any object into the genital or anal openings of another
25 person's body, except when the intrusion is accomplished for

1 medically recognized treatment or diagnostic purposes.

2 The State must then prove beyond a reasonable doubt
3 that the victim was at least 11 years old but not more than
4 14 years old at the time of the sexual battery. Consent,
5 willingness, indifference or ignorance on the part of the
6 minor, if any, as to what was taking place does not in any
7 way affect the charge of criminal sexual conduct with a
8 minor because an unmarried woman under the age of 14 cannot
9 legally consent to sexual intercourse.

10 Now, there has been evidence, Madame Forelady, and
11 ladies and gentlemen of the jury, presented that the
12 Defendant has made prior statements. You must determine
13 whether these statements were freely and voluntarily given
14 beyond a reasonable doubt.

15 Now, Madame Forelady and ladies and gentlemen of the
16 jury, I want to mention to you that at the conclusion of
17 this case after a verdict has been rendered by you, the
18 jury, you have the right to talk with anybody about the this
19 case, about your verdict, or you have the right not to talk
20 about this case with anyone, or talk with anyone about your
21 verdict. The lawyers sometimes in cases like to talk with
22 juries to find out their reasoning for reaching their
23 verdict, but you don't have to. And certainly if anyone
24 tries to force you to talk with you about this case and your
25 verdict, and after you've told them to stop and they

1 continue, then you need to report that immediately to the
2 court.

3 Now, Madame Forelady, there are four possible verdicts
4 that you may find in this case, and I have got -- and I'm
5 going to stand so you can see it a little bit better. This
6 is what we call a verdict form, and on the verdict form are
7 both charges. We could have used a separated verdict form
8 for each charge but we elected to put both charges on this
9 verdict form. And it states, "As to the charge of lewd act
10 upon a child," and then it gives the statute number where
11 you find it in the Code of Law for South Carolina, "We the
12 jury find the Defendant not guilty or guilty." Don't place
13 any significance to the order of not guilty or guilty on
14 this form. It has no significance. And then number two
15 says, "As to the charge of second degree criminal sexual
16 conduct with a minor." Again, giving the statute number.
17 "We the jury find the Defendant not guilty or guilty."
18 Again, no significance to be placed with the order of those
19 two verdicts. And then states, "I certify this decision was
20 the unanimous decision of the jury," and then, Madame
21 Forelady, you would sign this verdict form once a verdict is
22 reached.

23 Again, your verdict must be unanimous. And what I will
24 ask you to do at this time is go to your jury room. Do not
25 start your deliberations until the exhibits, and I think we

1 have three exhibits into evidence, the verdict form and then
2 two indictments are brought into the jury room by the
3 Bailiff. When that is done you can start your
4 deliberations. And the alternate will then leave the jury
5 room, and you are free to remain with us in the courtroom or
6 you're even free to leave the courthouse if you desire.

7 So I'm going to ask at this time for the jury to go to
8 your jury room. Again, do not start your deliberations
9 until the documents are brought to you.

10 (Whereupon, the jury exists the courtroom at 11:54
11 a.m.)

12 THE COURT: Any objections or exceptions to the court's
13 charge from the State?

14 MR. SHEEK: None from the State, Your Honor.

15 THE COURT: From the Defense?

16 MS. NELSON: None, Your Honor. I do have a -- I would
17 like to make a record about -- about the order of closing,
18 if I could -- if I could do that, Your Honor.

19 THE COURT: Certainly.

20 MS. NELSON: It's not really an argument or anything.
21 It's just since -- since our motion on order of closing was
22 denied I'd just like to make a record on some of the things
23 that the Solicitor mentioned in his closing that we didn't
24 get an opportunity to respond to.

25 THE COURT: Okay.

1 MS. NELSON: One of the things was referring to Mr.
2 Bolt as a sexual predator and to Min as a victim
3 before the verdict was rendered and making a lot of
4 generalizations about characteristics of those two
5 categories of people and there wasn't any evidence in the
6 record about that. Compared Mr. Bolt to an animal by
7 talking about the predator. Talked about how Minor had no
8 one to stand up for her when there were two other children
9 in the exact same position she was in. Talked about every
10 other child who doesn't tell, bringing in -- sort of
11 imposing this sense on the jury that they're not just
12 responsible for this case but for every situation where a
13 child might have been abused. Said there was no evidence of
14 a TV or a bed not being in the room when there was direct
15 testimony from witnesses which is evidence about those
16 things not being there. We didn't get to respond to the
17 difference between kids being over there all the time versus
18 children spending the night. Didn't get a chance to
19 respond to if Brandon was going to lie he would have said
20 Mr. Bolt would have admitted it the first day when there
21 could have been implications to him spending the night in
22 jail. Talking about Brandon being able to write in other
23 things that were not alleged on the form when there would
24 have been no statement from the victim to corroborate any of
25 that. We didn't get to respond to the fact that our expert

1 witness did review the charts before coming here. He
2 testified that he reviewed a copy of them the night before.
3 It was mentioned that we didn't bring a doctor in to talk
4 about Mr. Bolt's erectile dysfunction. We didn't get to
5 tell the jury that's burden shifting and that we don't have
6 the responsibility to prove anything. He misrepresented
7 that Mr. Bolt's bond hearing was on the 5th of December when
8 it wasn't. There's really been -- there was no evidence
9 about what date it occurred, but that's just inaccurate.
10 And he made the comment about putting hands down her pants
11 which is not consistent with the testimony. The testimony
12 was that they were pulled down, not that hands were put in
13 them. He said at the end of his closing that the evidence
14 was clear and the evidence was convincing and that's not the
15 legal standard. I know the jury's been instructed on that,
16 but we didn't get to respond to that.

17 Yeah, I think I -- I think I covered that under the --
18 Mr. Goranson mentioned that he talked about Mr. Bolt said --
19 in these guys' minds, if children don't move away. And I
20 think that wraps into the whole characterization of
21 predators as a whole, and didn't get the point out, but
22 there are all kinds of children and grandchildren where
23 there's been no accusation made.

24 Things like that. I just wanted to make a record of
25 that, Your Honor.

1 THE COURT: Thank you, Ms. Nelson. And certainly all
2 your points are noted on the record. And even though
3 certainly there's always reluctance on the part of counsel
4 or make objections during closing arguments, I know that as
5 capable as you are, if you felt like something was very
6 prejudicial to your case you would have noted an objection
7 during the closing argument. But thank you very much.

8 All right. With that said, I've got the verdict form,
9 both indictments and the three exhibits are right there.
10 I'm going to ask the Bailiff to deliver those into the jury
11 room.

12 MS. NELSON: I'm sure they're right. Just have a look.

13 THE COURT: Let counsel take a look. Mr. Sheek, you
14 want to take a look?

15 MR. SHEEK: Yes, sir.

16 THE COURT: All right. Everybody be at ease.

17 (Whereupon, jury began deliberations at 12:00 p.m.)

18 THE COURT: Okay. We're back on the record and the
19 jury has actually two questions. The first one, where was
20 Minor living when the incident happened. And secondly,
21 where was Minor living when she reported the incident. All
22 right. The only thing I can do there is just tell them
23 that, you know, they've heard all the testimony and the
24 evidence and they'll just have to rely on their -- on their
25 memory as to what was put into evidence. That's basically

1 what I want to tell them. Any objection from the State?

2 MR. SHEEK: Not from the State, Your Honor.

3 THE COURT: Okay. From the Defense?

4 MS. NELSON: No, sir.

5 THE COURT: Okay. If you will -- gentlemen, if you'll
6 bring the jury out.

7 (Whereupon, the jury enters the courtroom at 12:30
8 p.m.)

9 THE COURT: Okay. Let the -- you can sit down. Let
10 the record reflect the entire jury is in.

11 Madame Forelady and ladies and gentlemen of the jury, I
12 have in my hand is the two questions that you have asked and
13 my charge to you is to remind you that you are the sole
14 judges of the facts in this case, and in being the sole
15 judges of the facts in this case you will have to, to some
16 extent, rely on your memory as to the testimony and the
17 evidence presented in this trial. So that is my response
18 and my explanation to you.

19 So I will ask that you retire back to the jury room,
20 and hopefully lunch will be coming shortly. Thank you.

21 (Whereupon, the jury exits the courtroom at 12:34 p.m.)

22 THE COURT: Any objection from the State as to that
23 additional charge?

24 MR. SHEEK: No, sir.

25 THE COURT: From the Defense?

1 MS. NELSON: Not to what you charged. I'm actually
2 sitting here -- and maybe I need to say this for the record.
3 I'm sitting here thinking that I don't think it was disputed
4 -- I don't think the facts about where she was living at
5 either of those times were disputed, but --

6 THE COURT: Right.

7 MS. NELSON: -- but I -- I don't disagree that they've
8 got to rely on what they remember.

9 THE COURT: Right. Madame Court Reporter, if you'll
10 mark this as a court's exhibit, whatever number that will
11 be.

12 (Whereupon, Court's Exhibit No. 2 was admitted into
13 evidence.)

14 (Whereupon, the jury resumed deliberations until 1:48
15 p.m.)

16 THE COURT: Okay. We're back on the record. I
17 understand that the jury has a verdict. Anything from the
18 State before we bring the jury in?

19 MR. SHEEK: Nothing from the State, Your Honor.

20 THE COURT: From the Defense?

21 MS. NELSON: No, sir, Your Honor.

22 THE COURT: Okay. Thank you very much. If you'll
23 bring the jury in.

24 (Whereupon, the jury entered the courtroom at 1:49
25 p.m.)

1 THE COURT: Let the record reflect the entire jury is
2 back in the courtroom. Madame Forelady, I understand that
3 the jury has reached a verdict.

4 MADAME FORELADY: That's right.

5 THE COURT: And is the verdict unanimous?

6 MADAME FORELADY: Yes, sir.

7 THE COURT: Okay. If you would hand the verdict form
8 to the Bailiff, at which time he will hand it to me. That
9 would be fine, thank you.

10 And I'll ask Madame Clerk if you will publish the
11 verdict, please.

12 THE CLERK: Yes, sir. The State of South Carolina, the
13 County of Greenwood, in the matter of the *State of South*
14 *Carolina versus William Donald Bolt*, in the Court of General
15 Sessions, Eighth Judicial Circuit, case number 2009-GS-24-
16 543, 2009-GS-24-633.

17 As to the charge of lewd act upon a child we the jury
18 find the Defendant guilty. As to the charge of second
19 degree criminal sexual conduct with a minor we the jury find
20 the Defendant guilty.

21 THE COURT: Does anyone wish for the jury to be polled?

22 MS. NELSON: Yes, Your Honor.

23 THE COURT: Okay. Madame Clerk, if you would poll the
24 jury.

25 THE CLERK: Yes. When I call your name, if you will

1 please just stand up.

2 Juror Number 23, Sara Cannon. Was this your verdict?

3 MS. CANNON: Yes.

4 THE CLERK: Is it still your verdict?

5 MS. CANNON: Yes.

6 THE CLERK: Thank you. Juror 50, Marty Green. Mr.
7 Green, is this your verdict?

8 MR. GREEN: Yes, ma'am.

9 THE CLERK: Is it still your verdict?

10 MR. GREEN: Yes, ma'am.

11 THE CLERK: Thank you, sir. Juror 60, Mr. Rodney
12 Howzell. Is that your verdict, sir?

13 MR. HOWZELL: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 MR. HOWZELL: Yes, ma'am.

16 THE CLERK: Thank you. Juror 63, Carolyn Jackson. Ms.
17 Jackson, was that your verdict?

18 MS. JACKSON: Yes.

19 THE CLERK: Is it still your verdict?

20 MS. JACKSON: Yes.

21 THE CLERK: Thank you.

22 THE CLERK: Juror number 76, Keshia Lyons. Ms. Lyons,
23 was that your verdict?

24 MS. LYONS: Yes.

25 THE CLERK: Is it still your verdict?

1 MS. LYONS: Yes.

2 THE CLERK: Thank you. Juror 89, Mr. Timothy Morton.

3 Mr. Morton, was that your verdict?

4 MR. MORTON: Yes, ma'am.

5 THE CLERK: Is it still your verdict?

6 MR. MORTON: Yes.

7 THE CLERK: Thank you, sir. Juror 90, Wilton -- excuse

8 me. Wilbert Morton. Mr. Morton, was that verdict?

9 MR. MORTON: Yes, ma'am.

10 THE CLERK: Is it still your verdict?

11 MR. MORTON: Yes, ma'am.

12 THE CLERK: Thank you, sir. Juror 93, Ms. Tonya

13 Murray. Is that your verdict?

14 MS. MURRAY: Yes, ma'am.

15 THE CLERK: Is it still your verdict?

16 MS. MURRAY: Yes, ma'am.

17 THE CLERK: Thank you. Juror number 115, Mr. Dennis

18 Reynolds. Is that your verdict, sir?

19 MR. REYNOLDS: Yes, ma'am.

20 THE CLERK: Is it still your verdict?

21 MR. REYNOLDS: Yes, ma'am.

22 THE CLERK: Thank you, sir. Juror number 134, Mr.

23 Steven Storer. Was that your verdict, sir?

24 MR. STORER: Yes, ma'am.

25 THE CLERK: Is it still your verdict?

1 MR. STORER: Yes, ma'am.

2 THE CLERK: Thank you, sir. Juror number 138, Mr.

3 Joshua Todd. Was that your verdict, sir?

4 MR. TODD: Yes, ma'am.

5 THE CLERK: Is it still your verdict?

6 MR. TODD: Yes, ma'am.

7 THE CLERK: Thank you. Juror number 142, Kourtney

8 Wells. Ms. Wells, was that your verdict?

9 MS. WELLS: Yes, ma'am.

10 THE CLERK: Is it still your verdict?

11 MS. WELLS: Yes, ma'am.

12 THE CLERK: Thank you. Is there anyone that I have not
13 called?

14 (Whereupon, there was no response from the jury.)

15 THE COURT: Thank you, Madame Clerk.

16 Madame Forelady and ladies and gentlemen of the jury,
17 this finally concludes your jury service. As I mentioned to
18 you I think in the beginning of these proceedings, serving
19 on jury duty is an extremely important civic responsibility.
20 The second most important civic responsibility, second only
21 to serving in the military. So on behalf of the Greenwood
22 County court system and all those participants involved,
23 along with myself, I just want to thank you so very much for
24 serving on this jury. I noticed throughout these proceedings
25 you paid very close attention to everything that was going

1 on, to the testimony presented. When the attorneys were
2 making their arguments to you everyone was very attentive,
3 and that's certainly essential in performing effective jury
4 service. So I wish you the very best. You will be mailed,
5 I think, Madame Clerk -

6 THE CLERK: Yes, sir.

7 THE COURT: -- your paycheck. Now, don't plan on
8 taking any vacations or considering early retirement with
9 this paycheck. But in any event we just wish you the very
10 best. And now you're -- you're good for a while now. You
11 cannot be called for jury service for a while, so you're
12 good there.

13 But again, thank you very much and I hope you have a
14 great day. You are now excused.

15 And, Ms. Murray, you'll need to sign the back of the
16 indictments as the Foreperson of the jury.

17 (Whereupon, the jury was excused at 2:00 p.m.)

18 THE COURT: We're going to take about a 10 minute
19 recess before we start the sentencing phase of this
20 proceeding. I'd ask Officer Reynolds and your staff to
21 remain in the courtroom during the recess break.

22 (Whereupon, a recess was taken at 2:00 p.m.)

23 THE COURT: Okay. We're back on the record in the
24 sentencing phase of this proceeding. I'm going to give the
25 Defense counsel opportunity to tell me anything they'd like

1 to tell me concerning sentencing, and then I'll give the
2 State an equal opportunity. And then at the last give the
3 Defendant, if he wishes to tell me anything.

4 So, Ms. Nelson, I'll be glad to -- glad to hear from
5 you.

6 MS. NELSON: Thank you very much, Your Honor. Of
7 course, you already know several things about Don just from
8 listening through the course of this trial. He's 57 years
9 old, been married to Cheryl, his wife here, for many years.
10 They have two children of their own together. I wish those
11 boys had been able to be here during the week but they are -
12 - unfortunately don't have the luxury of having jobs where
13 they can take any time off without the threat of losing
14 those jobs and so they were not able to be here. But they
15 do very much support and love their father.

16 He has a step-daughter, Heather, who he helped raised
17 who's Cheryl's daughter. Her children were mentioned during
18 the child. E. and Devon have been frequent guests in the
19 Bolt's home along with -- along with other children. And
20 Cheryl currently keeps two very young children that Heather
21 has taken in to take care of.

22 And so, as many -- as many kids as Don has been around
23 in the course of his life I don't think it's a proper
24 characterization to call him a predator when there's been
25 absolutely no other allegation or any intimation of this

1 sort among all of those young people that he has been around
2 in his lifetime.

3 Your Honor, this is alleged to have occurred like seven
4 years ago now and the case has been pending for five. It
5 certainly has not been any inaction on our part that has
6 caused the case to sit. It was just one of those that did
7 not get called to trial until this year. Don has been -- I
8 inherited this case from Mr. Grose when I took over as
9 Circuit Defender last year, so I haven't had a very -- I
10 haven't had a relationship with Don through those whole five
11 years. But during the time that I have been talking to him
12 he has always been a very good client, been where I told him
13 to be, when I told I told him to be. Made himself available
14 to me any time I needed him. Has always been respectful and
15 appreciative of the work that we were doing for him. And it
16 has -- it has been a privilege to help him through this
17 case. Of course, obviously it did not -- the outcome is not
18 what we wanted and -- and Don has maintained his innocence,
19 but we absolutely respect what the jury has decided and I'm
20 not here in any way to criticize their verdict.

21 What I would ask you to consider, Your Honor, Don's
22 age. He's 57 now, and he's not a healthy 57. Many of us,
23 you know, as we get on up there are luckier health-wise than
24 Don has been. I do have a -- his treating physician is Dr.
25 Jason Dahlberg. There are records -- I was able to get

1 records going back to December of 2006 which do support that
2 Mr. Bolt had erectile dysfunction. I just wasn't able to
3 get them for the summer period in question. They didn't go
4 back quite that far. But back to December of 2006 those
5 mentions are there. I'm not going to hand you up his entire
6 medical record. What I'm giving you to look at and that I'd
7 like to have made an exhibit to the record is his most
8 recent -- it's not his most recent record but it's a record
9 from May that outlines all of his active health problems and
10 the medications that he is on. And I know the expense to
11 the state is not the only consideration in this case, but I
12 just want Your Honor to know that if he were incarcerated
13 what would be required to take care of his health needs.

14 THE COURT: Certainly.

15 MS. NELSON: His -- I think his primary problem is the
16 chronic obstructive pulmonary disease. And I know you
17 probably heard him coughing a lot during the trial and
18 that's just a continuous problem that he has, and I imagine
19 is his major health complaint. But I'd like to hand this up
20 to you for your review and --

21 THE COURT: Madame Court Reporter, if you would mark
22 that as Defendant's Exhibit 1 and then indicate in some
23 fashion it's at the sentencing phase so it doesn't -- we
24 don't get it confused with the trial stage, if you could do
25 that in some fashion.

1 (Whereupon, Sentencing phase Defendant's Exhibit No. 1
2 was admitted into evidence.)

3 THE COURT: Just hold that thought, Ms. Nelson, and let
4 -- let's get that marked -

5 MS. NELSON: Yes, sir.

6 THE COURT: -- and she can hand it to me, and I'll be
7 listening to you and looking at that as well, if that's
8 okay.

9 MS. NELSON: Yes, sir.

10 COURT REPORTER: Defendant's 1, but don't continue it
11 as a Defendant's Exhibit?

12 THE COURT: Just note it in some fashion that it's in
13 the sentencing phase exhibit and not a trial phase.)

14 Just give me a chance to look at this --

15 MS. NELSON: Yes, sir.

16 THE COURT: -- before you continue, please. Solicitor,
17 do you wish to see this?

18 MR. SHEEK: No.

19 THE COURT: You may proceed, Ms. Nelson. Thank you.

20 MS. NELSON: Thank you, Your Honor. So I'm asking you
21 to consider Don's age. I'm asking you to consider that this
22 case has been pending for quite a long time and he has been
23 out on bond almost that entire five years and has -- has not
24 been any problem in the community, has not been in any
25 further trouble, has not had any accusation made of any kind

1 of wrong doing or problem with the law.

2 He also, prior to this incident, the only thing on his
3 record is a charge from 1987 that -- that involved the
4 possession of a small amount of marijuana. So a very long
5 time ago one charge that is completely unrelated to -- to
6 what he's charged with now. So he -- he certainly is not a
7 repeat criminal and has spent a significant portion of his
8 life without causing anybody any trouble, Your Honor. So
9 I'd ask that you strongly consider that. His health as
10 well. The fact that even though he is not able to work any
11 longer. He still remains the sole source of support for his
12 wife, Cheryl, based on the disability check he receives.
13 And I'm not sure what position she would be in if he were
14 incarcerated certainly for any lengthy time. I don't know
15 if she's going to be able to maintain their home or will
16 have to go live with one of the children. But it obviously
17 will -- I think she's a person to be considered in this --
18 this whole mix, Your Honor, because she's certainly not at
19 fault for anything.

20 The -- Heather is another -- I mentioned his step-
21 daughter, Heather, who -- she also could not be here today
22 because of work. But Mr. Bolt's step-son, Brandon, is in
23 audience and was sitting with Cheryl today. He's in a
24 pretty tough spot because Don helped raise him. Don's his
25 step-daddy, but he's also married to Shannon, Minor 's oldest

1 sister. And Don actually was extremely reluctant for me to
2 involve Brandon in any way or subpoena him and I respected
3 his wishes. And I just want the court to know that he put
4 Brandon's situation above his own with this risk of going to
5 prison as a result of these charges. And I appreciate that
6 Brandon is sitting there today with his mom, and I just want
7 the court to know that Don did not impose on him in any way
8 that would have caused Brandon a problem at home with his
9 wife and her side of the family.

10 Finally, Your Honor, I do have a few letters from
11 family members and friends that I'd also ask to be made an
12 exhibit and ask the court to review and consider in imposing
13 sentence. We're asking that you be as lenient as possible
14 under the circumstances --

15 THE COURT: Right.

16 MS. NELSON: -- with all of these considerations.
17 There is -- obviously these charges are -- they start at
18 zero and go up to where they go. As Your Honor knows, the
19 criminal sexual conduct charge is an 85 percent time charge.
20 And certainly there are other onerous collateral
21 consequences as a result of these charges that Don knows
22 he'll have to live with for the rest of his life. And I
23 think sometimes those consequences are even harsher than
24 potentially being incarcerated can be.

25 If you feel you have to send him to prison, Your Honor,

1 I'm just asking that you consider -- I cannot imagine that
2 his health will not deteriorate even more, and I think for
3 someone in the physical shape he's in that a sentence of a
4 certain amount of time could be much more significant for
5 them than it might be for a healthy younger person.

6 There's also a possibility of home incarceration that
7 Your Honor can consider, and I would just ask you to keep
8 that in mind as well. And would ask if I can hand these up
9 to you to read.

10 THE COURT: Certainly. If you'll mark those, Madame
11 Court Reporter.

12 (Whereupon, Sentencing phase Defendant's Exhibit No. 2
13 was admitted into evidence.)

14 THE COURT: All right. Everybody be at ease for just a
15 moment, please.

16 (Off the Record)

17 THE COURT: Solicitor, do you wish to see these
18 letters?

19 MR. SHEEK: No, sir.

20 THE COURT: Ms. Nelson, anything further, ma'am?

21 MS. NELSON: That's all we have, Your Honor. Thank
22 you.

23 THE COURT: Solicitor.

24 MR. SHEEK: May it please the court, Judge. Mr. Bolt's
25 looking at up to 35 years in prison; 20 on the CSC with a

1 minor, 15 on the lewd act. I'm going to encourage the court
2 to impose that sentence on him and I'm going to tell you
3 why, because that's not something I say lightly. It's never
4 been my practice to ask for the maximum sentence every time
5 somebody's convicted because I know that's always justice,
6 and I know that's ultimately what you're looking for here,
7 too.

8 But, Judge, in this case we've got a man standing
9 before you that has absolutely refused to acknowledge
10 responsibility for what he's done. He has come into this
11 courtroom, he has cast dispersions upon the victim, he's
12 cast dispersions upon law enforcement, anybody else in his
13 desire to avoid paying for the crimes that he's committed,
14 and that causes me great concern because I do believe the
15 man's a predator and I'll tell you why. A 50-year-old man
16 has an 11-year-old child in his house. A child that he
17 knows has a troubled background. Doesn't have a home at
18 that time really to live in. Is in Connie Maxwell visiting
19 her family from time to time, and he knows this child's
20 condition, 11-years-old. And just like I said to that jury,
21 he went after the weakest and most helpless among us. An
22 11-year-old child with no one else to stand up for her.
23 Didn't have a daddy there. Didn't have anybody to really
24 stand up and defend her. And that's who he went after. And
25 in doing so did not care the psychological damage that he

1 may rake upon this 11-year-old child for his own sexual
2 gratification. I believe the day he's taken off the streets
3 the threat level somewhat drops in Greenwood County, and I
4 believe the day he comes back on the streets it's going to
5 come back up, because a man that does this -- this is not a
6 kid that made a bad decision with a girlfriend that was
7 under age. This isn't somebody that was with the wrong
8 group. This isn't somebody that just did something that
9 normally he wouldn't have thought to do. This is a grown
10 50-year-old man molesting an 11-year-old child. And I don't
11 believe they get better. I don't believe he gets over it. I
12 believe the best we can do for society is remove him so that
13 he can't do it.

14 When you look at his unwillingness to take
15 responsibility, the way he went after this young girl, and
16 the severity of what he did, I believe that justice for the
17 community, which is ultimately what we're here for, is going
18 to be to take him off the streets for as long as we can.
19 And I truly believe in my heart that would be appropriate.

20 I thought about -- as I prepared for this case I
21 thought when Jesus was talking to his disciples and he --
22 referring to the children -- and they can laugh. But in
23 referring to the children said it's better that a millstone
24 be tied around a man's neck and he be thrown into the sea
25 than to cause one of these to stumble. This man went after

1 a child, and he did what he did. No, she's going to be
2 okay. Minor n's a strong girl. She's going to be okay.
3 She's had to deal with it and it's caused problems. But
4 she's not going to be defined by what somebody did to her
5 but defined by who she is.

6 Minor didn't want to stand up here. You saw how hard
7 it was for her. But she did ask for me to speak on her
8 behalf. She believes that Donald Bolt needs to pay for what
9 he did to her as a child, and he needs to pay for what he's
10 done to society, and he needs to be put in prison for as
11 long as the judge can do it, and that's what we're asking
12 for.

13 THE COURT: Thank you, Solicitor. Mr. Bolt, would you
14 like to tell the court anything? And I'll be glad to hear
15 from any -- from your wife or from any of your family
16 members. I've read the letters on your behalf, have reviewed
17 the doctor's report, but will be glad to hear from you or
18 any of your family members.

19 MR. BOLT: I'm just going to tell you I'm innocent,
20 Your Honor. You got to do what you got to do. I appreciate
21 my lawyers trying and their hard effort. I think my wife is
22 going to be fine, you know, my children. And I hope may God
23 have mercy on me.

24 THE COURT: Anything further, Mr. Bolt?

25 MS. NELSON: Anything else, Don?

1 THE COURT: Take all the time you need. Be glad to
2 hear from you.

3 MS. NELSON: He said that was all he had to say, Your
4 Honor.

5 THE COURT: All right. Anything further from the
6 Defense?

7 MS. NELSON: The only thing I would -- I would add,
8 Your Honor, is that Don never took the stand and said one
9 disparaging word about Minor. I'm the one who delved into
10 her background and found records and did my best to defend
11 him. He had never come in here and criticized her or thrown
12 stones at her in any way. So please don't hold what I did
13 as his defense lawyer --

14 THE COURT: No. I --

15 MS. NELSON: -- against him.

16 MR. SHEEK: And, Your Honor, I was referring to him
17 sitting on that stand and saying she was lying. He did do
18 that.

19 THE COURT: I understand.

20 MS. NELSON: And the only other thing I would tell you,
21 Your Honor, is that we did not have a lot of alternative
22 about what to do in this case with the position that the
23 Solicitor's Office has taken on these types of cases. And I
24 understand what their position is, but we frequently don't
25 have a lot of great choices --

1 THE COURT: Right.

2 MS. NELSON: -- in these matters, and that's why we
3 were here for the trial.

4 THE COURT: Right. I completely understand.

5 MS. NELSON: Thank you, Your Honor.

6 THE COURT: Anything further from the State?

7 MR. SHEEK: No, sir.

8 THE COURT: All right. Everybody be at least for just
9 a few moments.

10 (Off the Record)

11 THE COURT: Okay. Let's go back on the record, Mr.
12 Bolt. Let me first state for the record that -- and I've
13 commended the lawyers for their hard work and the fine
14 representation of their respective clients. Personally I'm
15 going to do it on the record, I think both sides did an
16 excellent job in the case and I commend you for that.

17 Mr. Bolt, these are series charges. Very serious
18 charges, and you've got to be punished. I do take into
19 consideration several things. I take into consideration
20 your age and your health. That certainly has factored in my
21 decision. I've also factored in the fact that you have not
22 admitted any wrongdoing. I just -- I find it so -- and I
23 don't want -- I hate to use the word interesting, but I
24 don't have another word to use so I'm going to use the word
25 interesting, that you would admit -- or that you would want

1 this court to believe that you made the two confessions just
2 in order to get to go home. That -- I've had a hard time
3 throughout this whole case meshing those two things
4 together. Admitting to something very, very serious and
5 meshing that with your desire to go home and support your
6 family. I don't find that there would be too many people
7 who would do that. But nonetheless, I have taken into
8 account your age, your health. I have taken into account
9 that you've been out five years and have not been involved
10 in any criminal activity. I've factored all that in. But
11 you've got to be punished, because these are extremely,
12 extremely serious offenses, and unfortunately we're seeing
13 more and more every day. I know the -- certainly the
14 Solicitor's office and law enforcement just sees it more and
15 more every day.

16 All right. On indictment 2009-633 which is the
17 criminal sexual conduct with the minor in the second degree
18 the sentence of the court is you'll be committed to the
19 State Department of Corrections for a definite period of 13
20 years. On indictment 09-543, sentence of the court is
21 you'll be committed to the State Department of Corrections
22 for a definite term of eight years. Both of those to run
23 concurrent with each other. I have ordered that the sexual
24 registry offender will be applicable, Section 23-3-430. And
25 if I'm required to put it on sentencing sheet, also

1 electronic monitoring when you are released. That the
2 sentence of the court. Good luck to you, sir. Best of
3 luck.

4 MS. NELSON: Thank you, Your Honor.

5 MR. SHEEK: Thank you.

6 THE COURT: We'll be adjourned.

7 (Hearing ended at 5:12 pm)

8 (End of requested transcript of record)

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1 Certificate of Reporter

2
3 I, the undersigned, Tara T. Scott, CVR, Official Court
4 Reporter for the Eighth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Greenwood County, South Carolina, on the 3rd-5th
10 day of September, 2013.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

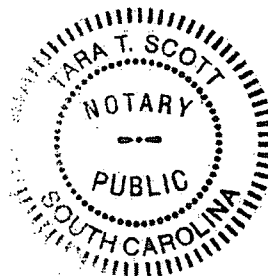
13  ORIGINAL

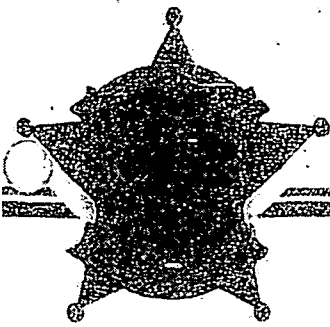
14
15
16 

17 Tara T. Scott, CVR

18 Circuit Court Reporter

19 February 9, 2014





GREENWOOD COUNTY SHERIFF'S OFFICE

Dan Wideman, Sheriff

528 Edgefield Street
Greenwood, SC 29646

Office (864) 942-8600
Fax (864) 942-8589

PLACE: Greenwood County

DATE: 12-4-08

TIME: 0920

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN BE USED FOR OR AGAINST YOU IN COURT.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM/HER WITH YOU DURING ANY QUESTIONING.
4. IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING, IF YOU WISH.
5. IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

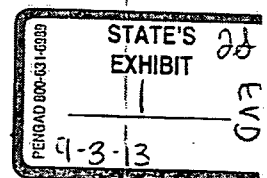
WAIVER OF RIGHTS

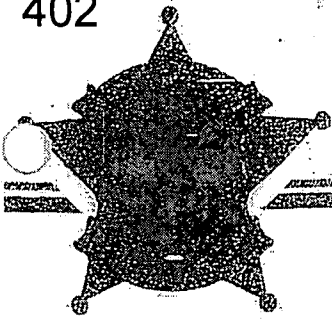
I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

William D Bolt 12-4-08
SIGNED DATE

WITNESS [Signature] DATE 12-4-08

WITNESS _____ DATE _____





GREENWOOD COUNTY SHERIFF'S OFFICE

Dan Wideman, Sheriff

528 Edgefield Street
Greenwood, SC 29646

Office (864) 942-8600
Fax (864) 942-8589

PLACE: Gwd LEC

DATE: 12-5-08

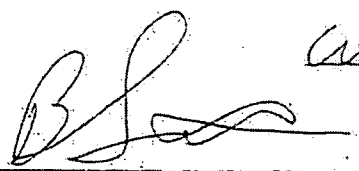
TIME: 1500 hr

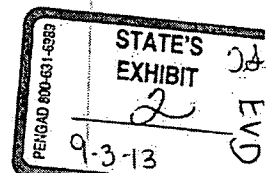
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William D. Balt 12 5 8
 SIGNED DATE
 WITNESS B. L. DATE 12-5-08
 WITNESS _____ DATE _____



VOLUNTARY STATEMENT

DATE 12-5-04 TIME 1500 PLACE Gud LFCI Donald Bolt AM 52 YEARS OF AGE, MYDOB IS _____ MY PRESENT ADDRESS IS _____ RII Can not READ AND WRITE AND I COMPLETED THE 9 GRADE IN SCHOOL. I AMGIVING THIS STATEMENT TO Strickland WHO HAS IDENTIFIEDHIM/HER AS A Investigation AND HAS DULY WARNED AND ADVISED ME:

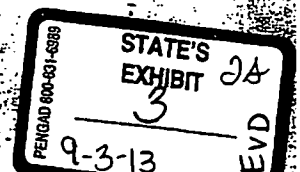
- (1) THAT I HAVE THE RIGHT TO REMAIN SILENT AND I DO NOT HAVE TO MAKE ANY STATEMENTS
 - (2) THAT ANY STATEMENT I MAKE CAN BE USED FOR OR AGAINST ME IN COURT.
 - (3) THAT I HAVE THE RIGHT TO HAVE A LAWYER PRESENT AT ANY TIME DURING QUESTIONING.
 - (4) THAT IF I CANNOT AFFORD A LAWYER, I CAN APPLY TO THE COURT TO HAVE ONE APPOINTED AT NO COST TO ME.
 - (5) THAT IF I DECIDE TO TALK TO AN OFFICER WITHOUT A LAWYER PRESENT, I MAY STOP AT ANY TIME AND REQUEST A LAWYER TO BE PRESENT FOR FURTHER QUESTIONING.
- UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT

Inv. Strickland is writing this statement for
Donald Bolt due to Bolt not being able to
write.

I, Donald Bolt did in the night in question
go into the bedroom where LeLe was in bed
with her sister Christy and brother Michael. I
sat down beside where she was laying and
she appeared to be asleep. I pulled her
Pajama britches down and touched her
private area. I put one finger inside her
vagina. This was very quick and I then
pulled her pants back up and went
back to bed.

WITNESS: Bolt

PERSON GIVING STATEMENT

Donald Bolt

H.B. William
+ 1 e. 5c
+ 1 D. Gussard
+ 64

QUESTIONS

PERIODIC - SHORTAGE EXAMINATION

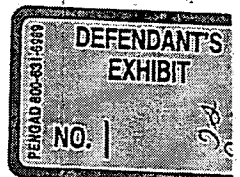
1. + WERE YOU BORN IN THE UNITED STATES? 12⁺ IS YOUR LAST NAME Belt ?
2. + DO YOU INTEND TO ANSWER EACH QUESTION TRUTHFULLY?
3. + ARE YOU COMPLETELY CONVINCED THAT I WILL ASK YOU ONLY THE QUESTIONS WE HAVE REVIEWED?
4. BETWEEN THE AGES OF 30005 AND () DO YOU REMEMBER engage in
any physical sexual act
5. Regarding ^{Minor} did you put your finger in her vagina ?
6. DURING THE FIRST 30005 YEARS OF YOUR LIFE DO YOU REMEMBER masturbate in presence of someone else ?
7. in June 2006 did you put your finger in ^{Minor} vagina ?
8. IS THERE SOMETHING ELSE YOU ARE AFRAID I WILL ASK YOU A QUESTION ABOUT, EVEN THOUGH I TOLD YOU I WOULD NOT?
9. 30005 commit a crime ?
10. In June 2006 did you fondle or penetrate ^{Minor} vagina ?

ADDITION QUESTIONS:

He has known the family for several years. On June 1, 06 the whole family spent night at his home, along with his grand children who was age 1, 4, 6. He slept in the back bedroom or living room. He usually goes to bed around 10 pm but not sure that night they had a car out around the ponds. Brandon & Shannon were in another room.

He didn't do anything to ^{Minor} she. She has been getting into a lot of trouble lately. She still comes to his house and the last time was 3 weeks ago. She hasn't spent the night there this year at all.

over



TIME IN: 11:45 a.m.TIME OUT: _____ a.m.PLACE: _____ DATE: 12/5/88

I, William D. Balth, do hereby voluntarily without duress, coercion, promise of reward or immunity, submit to a Polygraph examination (Truth Verification), for the mutual benefit of my self and Owen Investigative Agency.

I have been advised that I cannot be forced to take this examination by anyone. I further understand that if I consent to be examined, that I can terminate the interview and/or examination at any time.

I do hereby authorize Owen Investigative Agency, its officers, employees and/or agents, to disclose both orally and in writing the interview/examination results and opinions to agents of Owen Investigative Agency.

I, for myself and my successors, assigns, heirs, executors and administrators, knowingly hereby totally release, absolve, remise, covenant, promise, agree to save harmless, waive, forever discharge, and hold free from harm, any liability or damage whatsoever to Owen Investigative Agency, and the above named agency, individual, company or corporation and their respective directors, officers, employees and agents individually, collectively, and personally from any and all suits, actions or causes of actions at law or in equity, including but not limited to false arrest, false imprisonment, libel, slander, or invasion of all my rights which I, my successors, assigns, heirs, executors or administrators have now or may ever have resulting directly or indirectly from being interviewed or examined, or the rendered oral or written opinions and statements resulting from, or arising out of this interview and/or examination.

As further consideration or inducement to have Owen Investigative Agency, conduct the interview/examination, I claim that I am in good mental and physical condition and that I know of no mental or physical ailment which might be impaired or aggravated by this interview and/or examination.

WITNESSED BY:

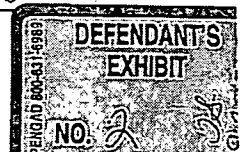
William D. Balth
PERSON BEING EXAMINED

Dan [Signature]
EXAMINER ADMINISTERING EXAMINATION

The examination now being over, I certify that I took same voluntarily, was well treated, and remained of my own will, having been advised that I could leave at any time. I was not asked any questions which I consider personal or private in nature.

WITNESSED BY:

William D. Balth
PERSON BEING EXAMINED



WITNESSES

Brandon Strickland
Greenwood County Sheriff

WARRANT NUMBER

J793957

Dean Powell

Foreman of the Grand Jury

Date: May, 8, 2009**VERDICT**True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

May Term, 2009

Indictment # 09GS24-

543**THE STATE**

vs.

William Donald Bolt

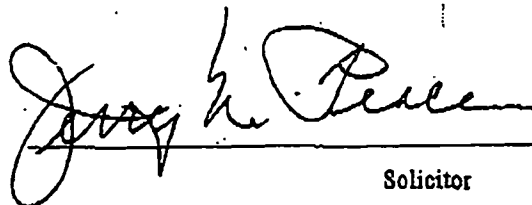
INDICTMENT FOR**LEWD ACT**
16-15-0140

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF GREENWOOD****LEWD ACT
16-15-0140**

At a Court of General Sessions, convened on the 8th day of May, 2009 the Grand Jurors of Greenwood County present upon their oath:

That William Donald Bolt, did in Greenwood County, state aforesaid, between the 1st day of June, 2006, and the 17th day of October, 2008, being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Minor, date of birth: , with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, Minor, in violation of Section 16-15-140 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 cases made and provided.


Solicitor

Tony Murray 9/15/13

WITNESSES

Brandon Strickland
Greenwood County Sheriff

WARRANT NUMBER

09-INFO-24-0068

Foreman of the Grand Jury

Date: 10/12/09

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

Junc Term, 2009

Indictment # 09GS24-633

THE STATE

Vs.

William Donald Bolt

INDICTMENT FOR

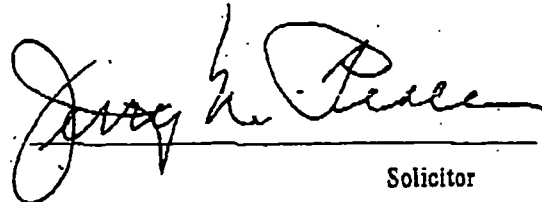
CRIMINAL SEXUAL CONDUCT
16-03-0655

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF GREENWOOD****CRIMINAL SEXUAL CONDUCT
16-03-0655**

At a Court of General Sessions, convened on the 12th day of June, 2009 the Grand Jurors of Greenwood County present upon their oath:

That William Donald Bolt, did in Greenwood County, state aforesaid, on or about the 1st day of June, 2006 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the age of eleven (11) years but no older than the age of fourteen (14) years, to wit: one Minor, [redacted], date of birth: [redacted], in violation of Section 16-3-655(B) 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 cases made and provided.

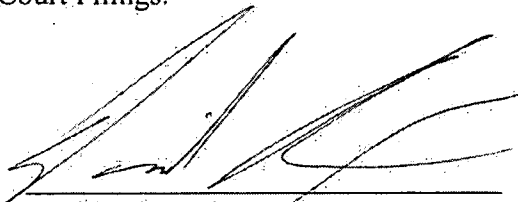

Solicitor

Tanya Murray 9/5/13

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."

January 5th, 2015

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

Appellant.

FINAL BRIEF OF RESPONDENT

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Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

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Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

PO Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. There is ample evidence in the record to support the circuit court's determination Appellant freely and voluntarily gave oral and written statements regarding his molestation of the victim.

II. The circuit court properly denied Appellant's directed verdict motion on the lewd act charge because time is not an element of the offense.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF THE FACTS

On May 8, 2009, the Greenwood County Grand Jury indicted Appellant William Donald Bolt on one count of lewd act on a minor. On June 12, 2009, the Grand Jury also indicted Appellant on one count of first degree criminal sexual conduct with a minor. The charges arose from the 2006 molestation of an eleven year old female ("Minor"). The case was called for a jury trial on September 3, 2013, before the Honorable Donald B. Hocker, Circuit Court Judge.

Prior to trial, Appellant moved to exclude oral and written statements he gave to law enforcement the day after he was arrested. (Trial Transcript [TT], pp. 50-57; Record on Appeal [R], pp. 9-16). The circuit court conducted a Jackson v. Denno¹ hearing to determine the voluntariness of Appellant's statements.

Lieutenant Brandon Strickland with the Greenwood County Sheriff's Office testified he arrested Appellant on December 4, 2008, in connection with the alleged sexual molestation of Minor in 2006. Before asking Appellant any questions, he advised Appellant of his Miranda² rights, which were on a written form he read to Appellant, and Appellant checked each right individually as Lt. Strickland went over them. Lt. Strickland also read the waiver of rights at the bottom of the form to Appellant, and Appellant signed it. Lt. Strickland testified he did not make any threats or promises to induce Appellant's waiver. At that time, Appellant denied ever molesting Minor, and requested a polygraph. (TT, pp. 58-62, 74-75, 107, State's Exhibit 1 [Miranda Warning]; R., pp. 17-21, 33-34, 401).

¹Jackson v. Denno, 378 U.S. 368 (1964)

²Miranda v. Arizona, 384 U.S. 436 (1966).

The next morning, Lt. Strickland contacted a private investigator to conduct the polygraph examination Appellant requested, and escorted Appellant from the jail to an interview room for the examination. After the polygraph examiner advised Lt. Strickland the test indicated deception on key questions related to the alleged molestation, Lt. Strickland interviewed Appellant again. Prior to asking any questions, he again read Appellant his Miranda rights, and Appellant again waived them. Lt. Strickland testified he did not promise Appellant anything to induce the waiver, and denied threatening him in any way. (TT, pp. 63-64, 73-76, 80-81, State's Exhibit 2 [Miranda Warning]; R., pp. 22-23, 32-35, 39-40, 402).

Appellant agreed to give a written statement, which Lt. Strickland wrote for him because Appellant said he did not write very well. Lt. Strickland testified he wrote the introductory part of the statement through the words "the night in question," and all subsequent words describing what occurred with Minor were verbatim from Appellant. In the statement, Appellant admitted going into the room where Minor appeared to be asleep, pulling her pajama pants down, touching her "private area," and putting his finger inside her vagina. (TT, pp. 64-68, 75-78, 80-81, State's Exhibit 3 [Written Statement]; R., pp. 23-27, 34-37, 39-40, 403).

Private investigator Daryl Owen testified he administered a polygraph examination of Appellant at the Greenwood County Law Enforcement Center. He never witnessed anyone making threats or promises to induce Appellant to take the polygraph, and he did not make any threats or promises. Prior to administering the polygraph, Owen went over a consent form with Appellant, informing him it authorized Owen to conduct the polygraph and give the results to the Sheriff's Office. He further informed Appellant

he could not be forced to take the polygraph, and he could leave at any time during the polygraph. Appellant signed the form prior to the polygraph, and again when the polygraph was completed. (TT, pp. 81-85, 93-95, Defense Exhibit 2 [Polygraph Consent Form]; R., pp. 40-44, 52-54, 404).

Based on information supplied by Lt. Strickland and Appellant, Owen formulated the polygraph questions, and went over them with Appellant prior to conducting the polygraph. Owen testified he informed Appellant his responses indicated deception and asked him if he could explain it. Appellant then told Owen he was drunk the night the molestation occurred, he had an erection when Minor was sitting on his lap, he put his arm around her and squeezed her breast. After Minor went to bed that night, he went in the bedroom to cover the children with a blanket, and might have touched Minor on her vagina, but denied inserting his finger inside her. (TT, pp. 85-92, 96-100; R., pp. 44-51, 55-59).

Appellant testified he went to the Sheriff's Office on December 4, 2008, after his wife called him at work and told him the police came by their house looking for their son. When he arrived, Lt. Strickland served an arrest warrant on him, and read him the Miranda rights form, which he signed. He denied the allegations and requested a polygraph "to prove [himself]." (TT, pp. 102-107; R., pp. 61-66).

Appellant further testified he was told he had the right to remain silent prior to taking the polygraph, but he "had nothing to hide." He stated that after Owen told him he failed the polygraph, he told Owen he would say whatever they wanted to hear so he could go home, but he did not understand things said during the polygraph could be used against him in court. (TT, p. 107-110; R., pp. 66-69).

After the polygraph, Appellant's wife and son posted his bond, and as he was getting ready to leave the jail, an officer told him he had to wait on Lt. Strickland. He testified Lt. Strickland took him back into the interview room, and "started getting real hateful and stuff," saying he knew Appellant did something, and threatening to get Appellant's bail increased if he did not tell Lt. Strickland what he wanted to hear. Appellant stated he then told Lt. Strickland "what he wanted to hear," and signed the written statement Lt. Strickland wrote out. (TT, pp. 110-114; R., pp. 69-73).

On cross-examination, Appellant admitted he knew he had the right to remain silent when he talked to Owen and Lt. Strickland. He further admitted Owen did not threaten him or make any promises to induce the statements he made to Owen during the polygraph. (TT, pp. 119-122; R., pp. 78-81).

Appellant presented Johnny Hartley to testify about the polygraph Owen conducted. Hartley testified the machine Owen used was an older instrument (pen and ink), and most examiners now use a computerized polygraph machine, but Owen could still get good recordings with his type of machine. He further stated the questions Owen asked Appellant during the polygraph were appropriate and asked in the right manner. His only criticism of the examination was the length of time between the questions, which he stated should be a minimum of twenty seconds in order to separate the reactions to different questions.³ Based on his opinion Owen did not allow sufficient time between the questions, Hartley testified he could not interpret the results, and would classify the polygraph as inconclusive. (TT, pp. 142-149; R., pp. 101-108).

³Hartley stated there were rules and regulations requiring at least fifteen seconds between questions, but could not produce any rules, regulations or guidelines reflecting such a requirement. (TT, pp. 149-150; R., pp. 108-109).

Based on the evidence presented and the totality of the circumstances, the circuit court found Appellant's statements to Owen and Lt. Strickland were "knowingly, intelligently and voluntarily made by [Appellant]." The court ruled Appellant knowingly waived his Miranda rights on December 4th, which remained effective until he revoked it, and as a result, Miranda warnings were not required prior to the polygraph on December 5th, but were given again prior to Appellant's subsequent statements to Lt. Strickland. The court also noted Appellant admitted during his testimony he understood his rights prior to both statements. (TT, pp. 151-153; R., pp. 110-112).

Appellant then moved to admit all evidence regarding the polygraph, arguing it was necessary to explain why he gave the two statements. The State did not object, and based on the agreement by both parties, the court ruled everything about the polygraph examination was admissible. (TT, pp. 154-156; R., pp. 113-115).

Minor testified she was eleven years old in June 2006, and stayed with her sister and brother-in-law (Appellant's son) sometimes. In the summer of 2006, she went over to Appellant's house with her family, and stayed overnight at times. She stated Appellant began touching her in ways that made her uncomfortable, specifically sitting her on his lap and rubbing her breasts. (TT, pp. 180-183; R., pp. 128-131).

One night in June, Minor and her family spent the night at Appellant's house, and Minor was in bed with her little brother and Appellant's granddaughter. Appellant came into the bedroom and Minor pretended to be asleep. He stood by the bed for a couple of minutes, and then took the blanket off Minor, pulled down her pajama shorts and started rubbing on her, and stuck his finger inside her vagina. Minor testified she did not move or say anything to Appellant because she was scared. (TT, 183-185; R., pp. 131-133).

After Appellant left the bedroom, Minor went into the room where her sister and brother-in-law were sleeping, woke them up and told them she did not feel well. She did not tell anyone about what Appellant did to her because she was scared. (TT, pp. 185-186; R., pp. 133-134).

As Minor got older and thought about Appellant's actions, she got angry and started cutting herself. When her mother confronted her about the cutting, Minor finally told her what happened, and they reported it to the police. (TT, pp. 186-187; R., pp. 134-135).

On cross-examination, Appellant's counsel asked Minor about the specific dates the incidents occurred. Regarding the incident in the bedroom, counsel asked if "that was **somewhere around June 1st of 2006,**" and Minor replied "yes, ma'am." Then the following colloquy occurred:

Q. And you mention these other incidents where he would have you on his lap and be touching you?

A. Yes, ma'am.

Q. All of the incidents happened **before that date,** right?

A. Yes, ma'am.

Q. All of them prior to June 1st, 2006.

A. Yes, ma'am.

Q. Nothing after?

A. No, ma'am.

(TT, p. 211; R., p. 159) (emphasis added).

Owen testified about administering Appellant's polygraph, including the consent form Appellant signed, and stated "[t]he results showed a clear deception on the three

relevant questions regarding the incident that he is being tried for.” He also testified about Appellant’s statements admitting he molested Minor. (TT, pp. 220-235; R., pp. 168-183).

Lt. Strickland testified about his two interviews with Appellant, and Appellant’s waivers of his Miranda rights prior to each interview. He also testified about writing Appellant’s statement for him, going over the written statement with Appellant, and having Appellant sign the statement. He denied ever threatening to “jack up” Appellant’s bond if he did not admit to molesting Minor. (TT, pp. 237-265; R., pp. 185-213).

Appellant moved for a directed verdict on the lewd act charge on the ground the indictment did not cover any acts occurring prior to June 1, 2006, and Minor testified nothing occurred after that date. The State argued Appellant’s own statement indicated an incident occurred on the same date as the criminal sexual conduct incident, and time or date was not an element of the lewd act offense, so the indictment was not controlling. The court denied the motion, noting Minor testified the incidents occurred during the summer of 2006, and even though there was some conflict between her direct and cross-examination testimony as to the dates, when viewed in the light most favorable to the State, there was evidence to warrant submitting the case to the jury. (TT, pp. 276-280; R., pp. 224-228).

Appellant testified he went to the Sheriff’s Office on December 4, 2008, because his wife told him the police were looking for his son, but after he arrived, he learned they were looking for him rather than his son. He admitted Lt. Strickland read the Miranda warnings to him, but he “totally did not understand the consequences of that.” After hearing his rights, Appellant told Lt. Strickland he did not do anything to Minor, and he

requested a polygraph examination “[t]o prove he was innocent.” (TT, pp. 307-311, 320; R., pp. 255-259, 268).

He further testified that after Owen told him he failed the polygraph, he confessed to molesting Minor “so [he] could get out of there and get back to his family.” He stated he signed the written statement because Lt. Strickland threatened to raise his bond and “[he] was ready to go home.” Appellant denied ever molesting Minor, and testified he “just come (sic) up with” the story about putting Minor on his lap and having an erection. (TT, pp. 310-316, 321-325, 328-332; R., pp. 258-264, 269-273, 276-280).

Hartley testified regarding his opinion of the polygraph administered by Owen, and stated he would classify the results as “inconclusive” because the questions were not spaced out properly. On cross-examination, he admitted he did not administer a polygraph examination of Appellant, and he was unable to provide specific citation to any “rule” or “regulation” requiring a particular amount of time between questions during polygraphs. (TT, pp. 336-359; R., pp. 284-307).

The jury convicted Appellant on both charges, and the circuit court sentenced him to thirteen years incarceration on the criminal sexual conduct conviction, and eight years (concurrent) on the lewd act conviction. (TT, pp. 433, 450; R., pp. 381, 398). This appeal followed.

ARGUMENT

I. There is ample evidence in the record to support the circuit court's determination Appellant freely and voluntarily gave oral and written statements regarding his molestation of Minor.

Relying on Missouri v. Siebert, 542 U.S. 600 (2004), and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), Appellant asserts the circuit court erred in admitting his oral and written statements, arguing they were obtained in violation of Miranda because Owen did not advise him of his rights prior to conducting the polygraph. He does not dispute the fact Lt. Strickland advised him of his Miranda rights on December 4th, or that he voluntarily waived his rights at that time and requested a polygraph, but contends his inability to read and limited intelligence mandated he be re-advised of his Miranda rights before the polygraph. Contrary to Appellant's contention, the evidence amply supports the circuit court's ruling.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion, which occurs when the trial court's conclusions either lack evidentiary support, or are controlled by an error of law. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262, 265 (2006). The trial court's factual conclusions regarding the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion, and the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240, 252 (2001); *see also* State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (same); State v. Miller, 375 S.C. 370, 652 S.E.2d 444, 448 (Ct. App. 2007) (same).

In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession. Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep. This list of factors is not an exclusive list. Moreover, no single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances.

State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 401 (Ct. App. 2010) (internal citations omitted). A statement may not be extracted by threats, violence, direct or implied promises, however slight, or the exertion of improper influence. Miller, 652 S.E.2d at 452.

Miranda does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights, and as a general proposition, the law presumes an individual "who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford." Berghuis v. Thompkins, 560 U.S. 370, 385 (2010). A reasonable interval between a Miranda warning and a defendant's statements does not nullify the warning. U.S. v. Andaverde, 64 F.3d 1305, 1313 (9th Cir.1995) (one day interval between warnings and confession was reasonable); *see also* Biddy v. Diamond, 516 F.2d 118 (5th Cir.1975) (two week interval between waiver and confession did not require new warning), *cert. denied*, 425 U.S. 950 (1976); Martin v. Wainwright, 770 F.2d 918, 930 (11th Cir.1985) (one week interval between defendant's waiver and subsequent

confession did not make new warnings necessary, when defendant indicated he still understood his rights at the time of the confession), *modified*, 781 F.2d 185, *cert. denied*, 479 U.S. 909 (1986); United States ex rel. Henne v. Fike, 563 F.2d 809 (7th Cir.1977) (no readministration of warnings required despite nine hour gap between warnings and subsequent waiver), *cert. denied*, 434 U.S. 1072 (1978); Ballard v. Johnson, 821 F.2d 568, 571-72 (11th Cir.1987) (three to four hour gap between waiver of rights and third confession did not render statement inadmissible).

“Police are not required to rewarn suspects from time to time.” Berghuis, 560 U.S. at 386; *see also* State v. Smith, 259 S.C. 496, 192 S.E.2d 870, 871-872 (1972) (when the defendant is properly advised of his Miranda rights, it is “not necessary, as a matter of law, to repeat the warnings at each subsequent phase of the interrogation;” rather, the court must look to the circumstances of each case). Once a defendant voluntarily waives the Miranda rights, the waiver continues until the defendant indicates he wants to revoke the waiver and remain silent, or circumstances establish his “will has been overborne and his capacity for self-determination critically impaired.” State v. Rochester, 301 S.C. 196, 391 S.E.2d 244, 246 (1990) (*quoting* State v. Moultrie, 273 S.C. 60, 254 S.E.2d 294, 295 [1979]).

In this case, it is undisputed Lt. Strickland went over the Miranda warnings with Appellant when he was arrested on December 4th, and Appellant signed the form waiving his rights. Appellant then denied any inappropriate conduct with Minor, and asked for a polygraph to “prove” his innocence. During the suppression hearing, Appellant testified he **understood** his rights **prior** to giving any statements to Lt. Strickland and Owen,

including the fact his statements could and would be used against him. (TT, pp. 120-122; R., pp. 79-81).

Based on the testimony from Lt. Strickland and Appellant, the circuit court found Appellant was properly apprised of his Miranda rights on December 4th, he understood those rights and freely waived them. The court further found additional warnings were not required prior to the polygraph conducted at Appellant's request, or prior to Appellant's subsequent statements to Lt. Strickland, but the fact Lt. Strickland went over them again before speaking to Appellant after the polygraph indicated deception further supported the finding Appellant knew his rights and voluntarily waived them.⁴ (TT, pp. 151-153; R., pp. 110-112).

Appellant's reliance on Seibert and Navy is misplaced because of one major distinguishing fact. In both cases, the police officers questioned the defendants **before** advising them of their Miranda rights, and only advised them of those rights **after** they gave incriminating statements. Missouri, 542 U.S. at 604-606; Navy, 688 S.E.2d at 839-841. In this case, however, it is undisputed Lt. Strickland advised Appellant of his Miranda rights **before** asking him any questions on December 4th, and advised him of those rights **again** on December 5th **before** asking him any questions arising from the

⁴Even though the circuit court did not make a specific finding regarding Lt. Strickland's purported threat to "jack up" Appellant's bond if he did not confess, it is clear from the record the court doubted there was any threat. Specifically, the court found "there's only one possible threat, and I'll put threat in quotation marks, that was brought out in the testimony, that being from [Appellant], that officer Strickland had threatened to jack the bond up if he did not make some sort of confession." The court further noted Appellant also testified he had already made bond prior to the alleged threat, and therefore, even if the threat was made, it had no significance concerning the voluntariness of Appellant's confession. (TT, p. 52; R., p. 11) (emphasis added).

polygraph results. Appellant testified he **understood** those rights when he talked with Lt. Strickland and Owen.

There is ample evidence in the record, including Appellant's own testimony, supporting the circuit court's finding Appellant was aware of, and understood, his Miranda rights, and voluntarily waived those rights before making any statements to Lt. Strickland and Owen. Therefore, the circuit court did not abuse its discretion, and its ruling on this issue should be confirmed.

II. The circuit court properly denied Appellant's directed verdict motion on the lewd act charge because time is not an element of the offense.

Appellant contends the circuit court also erred in denying his motion for directed verdict on the lewd act indictment under the *corpus delicti* rule, based on the purported lack of evidence regarding the date such acts occurred. He argues his own statements were the only evidence a lewd act occurred on or after June 1, 2006, as alleged in the indictment, and the State failed to present sufficient independent evidence the acts occurred on or after that date. In essence, Appellant asserts he was entitled to a directed verdict even though the State presented evidence establishing each material element of the lewd act charge.

The trial court must deny a directed verdict motion when the State presents any direct evidence or substantial circumstantial evidence to prove the defendant's guilt. State v. Phillips, 2014 WL 5839922, 4 (S.C. Ct. App., filed November 12, 2014). In reviewing the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State, and affirm the trial court's ruling if there is such evidence in the record. *Id.*; State v. Lane, 2014 WL 5836814, 1 (S.C. Sup. Ct., filed November 12, 2014).

Under S.C. Code § 16-15-140 (1976), it was "unlawful for a person over the age of fourteen years to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or

of the child.”⁵ Time was **not** a material element of the lewd act on a minor offense. State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 606-607 (Ct. App. 2014) (citing State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 [Ct. App. 2007]).

“It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*.” State v. Osborne, 335 S.C. 172, 516 S.E.2d 201, 202 (1999); State v. Abraham, 408 S.C. 589, 759 S.E.2d 440, 441-442 (Ct. App. 2014) (same). “[G]enerally speaking, the term ‘*corpus delicti*’ means, when applied to any particular offense, that **the specific crime has actually been committed.**” Osborne, 516 S.E.2d at 202, n. 4 (quoting State v. Teal, 225 S.C. 472, 82 S.E.2d 787, 788 [1954]) (emphasis added).

This rule of law is known in South Carolina as the corroboration rule, which requires the State to introduce substantial independent evidence tending to establish the trustworthiness of the defendant’s statement. *Id.* at 202, n. 5, 204. The rule “is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant’s extrajudicial statements and, **together with such statements**, permits a reasonable belief that **the crime occurred.**” *Id.* at 205 (emphasis added); Abraham, 759 S.E.2d at 442 (same).

The material elements of a lewd act charge under §16-15-140 were: 1) a person over the age of fourteen years; 2) willfully and lewdly committed or attempted a lewd or lascivious act; 3) upon or with the body, or its parts, of a child under the age of sixteen

⁵ The “lewd act” statute was repealed by the Omnibus Crime Act, 2012 Act. No. 255, §14, which incorporated the lewd act statutory elements into a new offense of criminal sexual conduct with a minor in the third degree. *See* S.C. Code §16-3-655(C) (Supp. 2013). The offense at issue in this case occurred prior to enactment of §16-3-655(C).

years; and 4) with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or the child. Appellant does **not** contend the indictment failed to notify him of the material elements required to prove the lewd act charge.⁶

The gist of Appellant's argument is the purported lack of evidence any lewd acts occurred between June 1, 2006 and October 2008. As discussed above, however, time was not a material element of a lewd act charge. Therefore, the dates set forth in the indictment were not controlling. "It is not necessary to prove the precise day or even year laid in the indictment, except where time enters into the nature of the offense, or is made part of the description of it." State v. Peak, 133 S.E. 31, 34 (S.C. 1926) (*quoting State v. Branham*, 13 S.C. 389 (S.C. 1880); *see also State v. Wade*, 306 S.C. 79, 409 S.E.2d 780, 783-784 (1991) (same).

In this case, the actual dates did not go to the nature of the alleged offense, and were not used to describe it. Further, Appellant's defense was denial the offense ever occurred, not alibi, which renders the specific dates even less significant. *See Wade*, 409 S.E.2d at 783 (defendant's defense of denial severely weakened any argument regarding prejudice from the dates alleged in the indictment).

Minor's testimony clearly corroborated Appellant's statements regarding the material elements of the lewd act charge: 1) Appellant was over the age of fourteen; 2) Minor was eleven years old; 3) Appellant sat Minor on his lap and rubbed her breasts for

⁶The indictment is a notice document. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005). If a defendant timely objects to the sufficiency of the indictment, the circuit court should judge the indictment's sufficiency by determining whether: (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) **whether it apprises the defendant of the elements of the offense charged.** *Id.*

an extended time on more than one occasion; 4) with the intent to gratify Appellant's lust, passion or sexual desires. Combined with Appellant's statements, the evidence could lead to a reasonable belief the lewd act crime occurred.

On direct examination, Minor testified the lewd acts occurred "in the summer of 2006," and the criminal sexual conduct incident occurred in June 2006. Significantly, she did not indicate a specific date during her direct testimony.

Toward the end of Minor's cross-examination, Appellant's counsel asked Minor if the criminal sexual conduct occurred "somewhere around June 1 of 2006," and Minor said "yes, ma'am." Counsel then referenced the lewd acts, and asked if "[a]ll those incidents happened before that date." When Minor responded affirmatively, counsel asked if all of them happened before June 1, 2006, and Minor again responded affirmatively. Thus, counsel started with "somewhere around June 1," went to "that date," and then ended with June 1 as the date for everything.⁷

Further, the circuit court acknowledged the conflicts in Minor's testimony, but properly found the issue was one for the jury. "Any concerns about contradictory statements by the accuser, whether on the stand or outside the courtroom setting, were ultimately about his credibility and therefore in the domain of the jury." State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100, 103 (Ct. App. 2005); *see also* State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402, 406 n. 6 (2001) (whether a witness was credible

⁷After enduring the humiliation of recounting molestation at the age of eleven by someone she considered part of her family, and having her personal life since that time explored on cross-examination, it is not difficult to see how Minor would respond as she did, particularly regarding the dates of incidents occurring more than seven years prior to trial. *See Wade*, 409 S.E.2d at 783 (minor victim could legitimately have difficulty remember the specific date the defendant molested her, and only be capable of remembering it happened "sometime in 1984 or 1985.")

goes to the weight of the evidence and is therefore not considered by the trial court when it considers a directed verdict motion).

Significantly, Appellant himself told Owen one lewd act occurred the same day the criminal sexual conduct occurred. Thus, to the extent Appellant's counsel made the specific date an issue as to the lewd act charge, there was evidence from which the jury could find beyond a reasonable doubt Appellant performed a lewd act on Minor "somewhere around June 1, 2006." Thus, the circuit court's denial of Appellant's directed verdict motion on the lewd act charge should be affirmed.

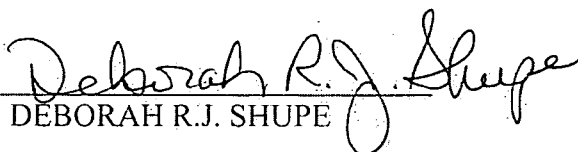
CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

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ATTORNEYS FOR RESPONDENT

January 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

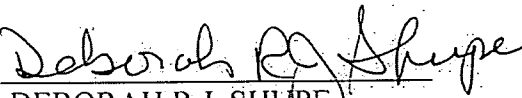
Appellant.

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

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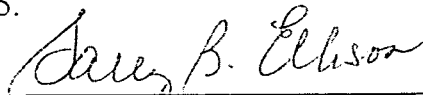
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

David Alexander
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
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I further certify all parties required by Rule to be served have been served.

This 20th day of January 2015.



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DONALD BOLT,

APPELLANT

APPELLATE CASE NO. 2013-002164

FINAL BRIEF OF APPELLANT

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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether statements signed by appellant, who could not write, and made orally to a private contractor who administered a polygraph examination were admitted in violation of appellant's Fifth and Sixth Amendment rights when the police conducted a three-phase interrogation violating *Missouri v. Siebert*¹ and failed to administer *Miranda*² warnings before the polygraph?

2.

Whether the trial court should have directed a verdict in favor of appellant on the lewd act charge under the *corpus delicti* rule because, other than appellant's extra-judicial statements, no independent evidence existed?

¹ Missouri v. Seibert, 542 U.S. 600 (2004).

² Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

On May 8, 2009, a Greenwood County grand jury indicted appellant William Donald Bolt for lewd act. R. 407. On June 12, 2009, the grand jury indicted appellant for second degree criminal sexual conduct with a minor. R. 409. On September 3-5, 2013, appellant was tried before the Honorable Donald B. Hocker and a jury. R. 1. Lance Sheek and Cam Morrow represented the State. R. 1. Janna Nelson and Shane Goranson represented appellant. R. 1. The jury convicted appellant on both charges. R. 381, ll. 12 – 20. This appeal follows.

STATEMENT OF FACTS

Over seven years from the date of the alleged incident, Appellant Donald Bolt ("Bolt") was tried for molesting Minor. R. 406. R. 1. Bolt's stepson was married to Minor's older sister. R. 129, l. 11 – 130, l. 14. Bolt lived in a small home on a lake. R. 136, l. 22 – 137, l. 5. Bolt's home was the site of numerous family gatherings and cookouts. R. 255, ll. 21 – 24. R. 276, l. 22 – 277, l. 9.

Minor was eleven years old at the time of the alleged abuse. R. 128, ll. 22 – 24. She was living in an orphanage. R. 155, l. 21 – 156, l. 9. Minor's mother was an alcoholic, had a prescription drug problem, and had been "in and out of rehab and treatment programs" throughout Minor's life. R. 154, l. 15 – 155, l. 1. Minor's sister had temporary custody of her, but sent Minor to the orphanage because she could not afford to take care of her. R. 156, ll. 11 – 15.

During the summer of 2006, Minor went with her sister and brother-in-law to spend the night at Bolt's house. R. 130, ll. 15 – 25. On this night, Minor claimed that Bolt came into a room where she was pretending to be asleep, pulled down her pajama bottoms, and digitally penetrated her vagina. R. 132, l. 2 – 133, l. 7. Bolt supposedly pulled Minor's pants back up and left the room. R. 142, ll. 4 – 8.

Two other people were in the room with Minor at the time, her brother and her niece. R. 144, l. 21 – 145, l. 2. Bolt's wife was in the house. R. 203, ll. 13 – 14. Minor's sister and brother-in-law were in the house. R. 145, ll. 24 – 25. Minor could not remember whether Bolt's sons, Adam and Cody, were there. R. 145, ll. 20 – 23. Minor agreed that "a lot of other people" were in the house that night. R. 145, ll. 12 – 15. None of these people except Bolt's wife testified. The police never interviewed any of the other people in the house that night. R. 205, l. 25 – 206, l. 9. Minor claimed she and the two kids were

asleep in a bed in the back bedroom watching television. R. 132, ll. 9 – 18. R. 146, ll. 10 – 16. Bolt's wife testified the back bedroom only had a bed in it for a brief period in 2007 (a year after the alleged abuse) and had never had a television. R. 310, l. 9 – 311, l. 4. The room did not have a working wall outlet, and for lights, the Bolts had to use an extension cord. R. 311, ll. 5 – 7. When children would sleep in the back room, they slept on pallets, not a bed. R. 310, ll. 9 – 16. Bolt confirmed his wife's description of what he described as a storage room and that it lacked a bed, a television, or power. R. 265, l. 18 – 368, l. 10.

Minor did not report the abuse allegations until over two years later, in September 2008. R. 147, l. 24 – 148, l. 22. A school counselor noticed marks on Minor's arms. R. 147, l. 24 – 149, l. 3. Minor was cutting her arms with tacks. R. 147, l. 24 – 149, l. 3. The school counselor told Minor's mother. R. 147, l. 24 – 149, l. 3. Minor then told her mother that Bolt abused her, and they reported it to the police. R. 134, ll. 7 – 23. At the time of the report, Minor was living with her mother and her mother's boyfriend. R. 134, ll. 7 – 13. Minor's mother's relationship with her boyfriend was physically abusive and the police were sometimes called. R. 160, l. 15 – 161, l. 2. Minor told her counselor that she wanted to get out of that house because it was difficult to live there. R. 162, l. 18 – 215, l. 2. Even though Minor had counseling at the orphanage for most of the time between the alleged abuse and her report of the abuse two years later, Minor never mentioned these allegations to her counselor. R. 157, l. 21 – 159, l. 1. Minor talked to her counselor at least once a month during this period. R. 158, ll. 6 – 23.

Bolt testified and denied abusing Minor. R. 257, ll. 18 – 25. R. 268, l. 22 – 269, l. 3. No physical evidence of the abuse existed. R. 217, ll. 1 – 7.

ARGUMENT

1.

Statements signed by appellant, who could not write, and made orally to a private contractor who administered a polygraph examination were admitted in violation of appellant's Fifth and Sixth Amendment rights when the police conducted a three-phase interrogation violating *Missouri v. Siebert* and failed to administer *Miranda* warnings before the polygraph.

Relevant Facts

Bolt admitted he was "not very smart." R. 253, ll. 19 – 21. He could not remember how far he made it in school but guessed he made it through junior high. R. 253, l. 25 – 254, l. 5. He worked construction. R. 253, ll. 14 – 16. Bolt stated, "I can read very little. I can't write that much at all." R. 281, ll. 21 – 22.

Bolt signed the following statement that was written for him by Investigator Brandon Strickland ("Strickland") of the Greenwood County Sheriff's Office:

Inv. Strickland is writing this statement for Donald Bolt due to Bolt not being able to write.

I, Donald Bolt did in the night in question go into the bedroom where [Minor] was in bed with her sister [name omitted] and her brother [name omitted]. I sat down beside where she was laying and she appeared to be asleep. I pulled her pajama britches down and touched her private area. I put one finger inside her vagina. This was very quick and I then pulled her pants back up and went to bed.

R. 194, l. 8 – 195, l. 12. The admissibility of this statement and oral statements made to a private polygraph contractor, Darryl Owen ("Owen"), were the subject of a lengthy *Jackson v. Denno*, 378 U.S. 368 (1964) hearing and argument which the trial judge took under advisement overnight. R. 97, ll. 2 – 10.

The sequence of events leading up to Bolt signing the paper written by Investigator Strickland was as follows. Bolt heard that the police were looking for him so he went to the sheriff's department. R. 131, ll. 2 – 12. Investigator Strickland originally testified at the Denno hearing that even though he wasn't "positive," he was "pretty sure that we went and got" Bolt, and that he thought they placed Bolt under arrest. R. 18, ll. 19 – 25. On cross-examination at the Denno hearing and during the trial, Investigator Strickland admitted that Bolt came voluntarily to the sheriff's office. R. 32, ll. 10 – 16. R. 210, ll. 1 – 3. Investigator Strickland read Bolt his Miranda rights and Bolt signed a waiver of his rights. R. 19, l. 3 – 20, l. 25. The waiver of rights was signed on December 4, 2008, at 9:40 PM. R. 38, ll. 5 – 10. State's Ex. 1. Bolt denied any wrongdoing and the police put him in jail, where he spent the night. R. 34, ll. 5 – 15. Bolt asked to take a polygraph examination "to prove myself." R. 66, ll. 16 – 19.

Instead of calling SLED and using one of their examiners, the next morning Investigator Strickland summoned private contractor Owen to administer a polygraph test to Bolt. R. 41, l. 24 – 42, l. 9. Owen told Bolt that he failed the polygraph test. R. 44, ll. 7 – 17. Owen described what happened: "I just very casually tell him that he's failed the test. That he needs to explain why the response is there to give a reasonable explanation of why he's failing the test. There's no real heavy interrogation." R. 44, l. 21 – 45, l. 1. Owen claimed Bolt told him that "on the night in question" Minor "sat on his lap and that he experienced an erection." R. 45, ll. 9 – 14. Bolt "also admitted that he put his arm around her upper body and squeezed her breast." R. 45, ll. 9 – 16. Bolt stated "he could've possibly touched [Minor] on the vagina, but denied putting his finger in her vagina." R. 45, ll. 9 – 24. Finally, Owen put in his report that, "all attempts to resolve the reaction resulted in no additional admissions." R. 45, ll. 24 – 25.

Owen admitted that at no point did he ever give Bolt Miranda warnings. R. 59, ll. 12 – 14. Owen had Bolt sign a release before giving him the exam which stated the exam was “for the mutual benefit of myself and Greenwood Sheriff’s Office.” R. 53, ll. 2 – 5. Defendant’s Exhibit 2. It also stated, “I do hereby authorize Owen Investigative Agency, its officers, employees and/or agents, to disclose both orally and in writing the interview/examination results and opinions to agents of Greenwood Sheriff’s Office.” Defendant’s Ex. 2. R. 53, ll. 12 – 19. Owen did not read the release out loud to Bolt, but claimed he told Bolt that the form authorized him to give the results of the examination to the sheriff’s office. R. 53, ll. 12 – 19. Owen stated, “I was not aware that [Bolt] was not a reader.” R. 54, ll. 2 – 3.

At the Denno hearing, Bolt testified that by the time he took the polygraph exam, he was “terrified.” R. 67, ll. 7 – 10. No one else at his home earned any money. R. 67, ll. 16 – 17. He was supporting his wife, two sons, and his mother-in-law. R. 67, l. 18 – 68, l. 1. Bolt was “worried about getting home and taking care of my family, making money, paying my bills to stay afloat.” R. 67, ll. 11 – 15. When the contractor told Bolt he failed the polygraph exam, the thoughts that went through his mind were: “oh, what the heck. I know and God knows I didn’t do nothing. Why is this man trying to tell me that I did.” R. 68, ll. 5 – 10. Bolt said he finally told Owen, “Whatever y’all want to hear. I just need to go home.” R. 68, ll. 20 – 24. Owen was giving Bolt “information about what was happening. I just went on from that.” R. 69, ll. 2 – 6. Bolt did not understand that what he discussed with Owen could be used against him in court. R. 69, ll. 17 – 20.

After the polygraph exam, Bolt went back to the jail cell where he stayed until his wife and son paid his bond. R. 70, ll. 9 – 14. Bolt was about to leave the jail when an

officer told him he could not leave until Investigator Strickland returned. R 70, ll. 17 – 23.

After Bolt “had to wait and wait and wait,” Investigator Strickland returned and took him into a small conference room. R. 71, ll. 8 – 15. He read Bolt his Miranda rights and had him sign another waiver. R. 22, l. 12 – 23, l. 6. State’s Ex. 2. Investigator Strickland “started getting real hateful and stuff.” R. 71, ll. 8 – 15. Investigator Strickland told Bolt, “I know you did something. You did something. You’re going to tell me what I want to hear or I’m going to put your bond so high you’ll never get out.” R. 71, ll. 8 – 16. After this threat, Bolt “told him what he wanted to hear,” and signed the written statement Investigator Strickland provided him. R. 72, ll. 8 – 22. Bolt believed that Investigator Strickland could get his bond increased. R. 72, ll. 2 – 4. Investigator Strickland claimed that he never threatened Bolt or promised anything to Bolt in exchange for his statement. R. 26, ll. 3 – 8.

After Bolt’s testimony, the court heard argument on the admissibility of the statements. R. 85, l. 12 – 97, l. 10. Based on Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), the defense argued the statements were inadmissible because Miranda warnings were not given to Bolt by Owen. R. 86, l. 10 – 97, l. 10. The defense also argued that because of the time lapse between the first warnings the previous night and the polygraph the next morning, the fact that a new person became involved, and no one told Bolt the implications of speaking with the polygrapher, pursuant to Seibert, all the statements were inadmissible. The court took the matter under advisement overnight. R. 97, ll. 2 – 10.

The next morning, the defense called SLED’s former chief polygraph examiner, Johnny Hartley (“Hartley”) as an expert witness to discuss the polygraph exam given to

Bolt. R. 100, ll. 12 – 16. Hartley testified that the polygraph exam given to Bolt was a “pen and ink” polygraph that most agencies quit using in the early 1990s. R. 102, ll. 10 – 21. He described it as an antiquated instrument. R. 104, ll. 15 – 16. Hartley testified that the polygraph examination given to Bolt should have been scored as inconclusive because it was improperly conducted. R. 107, ll. 2 – 11. The police’s private contractor failed to allow for adequate time between questions to gauge reactions. R. 107, ll. 6 – 108, l. 14.

Following Hartley’s testimony, the trial judge ruled that both the oral statements to Owen and the written statement would be admitted. R. 110, l. 10 – 112, l. 7. The trial judge found that Miranda warnings were not necessary at the time Owen gave the polygraph examination and that the statements made to Owen did not taint the written statement given to Investigator Strickland. R. 110, l. 10 – 112, l. 7. The trial judge did not find that Officer Strickland did not threaten “to jack the bond up,” but concluded that because the defendant “had already bonded out prior to the time that threat was allegedly made,” it would have “no significance concerning the voluntariness of the confession.” R. 111, ll. 3 – 13.

After the trial judge ruled, the defense stated they needed to present evidence concerning the polygraph exam during the trial to explain why Bolt gave the statement. R. 113, l. 4 – 114, l. 1. Judge Hocker expressed skepticism about admitting any evidence concerning a polygraph examination. R. 114, ll. 2 – 14. The solicitor stated he had no objection to admitting evidence concerning the polygraph examinations. R. 114, ll. 15 – 21. Judge Hocker then ruled that since there was an agreement among the parties concerning polygraph evidence that it would be admissible. R. 114, l. 22 – 115, l. 20. Both the solicitor and the defense mentioned the polygraph examination during their

opening statements. R. 123, ll. 7 – 17. R. 126, l. 19 – 127, l. 8. Owen and Hartley both testified about the examination given Bolt during the trial.

Discussion

In Missouri v. Siebert, 542 U.S. 600 (2004), the United States Supreme Court condemned a deliberate practice used in police departments throughout the country meant to circumvent Miranda. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not to give Miranda warnings until after arrestees have confessed. Id. at 610. The Court listed multiple sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court called this practice "question-first" and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." Id.

South Carolina recognized the impact of Siebert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). Kenneth Navy was convicted of suffocating his two year old son. Id. at

296, 688 S.E.2d at 838. EMS responded to Navy's house and found him giving the child CPR. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them that the child died from suffocation. Id.

With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-40. The Court found that "[a]t this juncture, the nature of the interrogation and respondent's status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." Id. Without giving Miranda warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Siebert and were inadmissible. Id. at 301-04, 688 S.E.2d at 841-43.

While the police strategy in this case is the same as in Siebert and Navy, the mechanics were slightly changed in an effort to avoid their application. Investigator Strickland gave Bolt Miranda warnings when he first arrived at the station, but then after Bolt denied the allegations, let Bolt spend the night in jail. Bolt was then confronted with a different questioner—the private contractor, Owen—who did not give Bolt Miranda warnings. The police not only switched questioners, they switched the **kind** of interrogation used: from straightforward police questioning to a lie detector test. Switching investigators is relevant to the Miranda inquiry. State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). In Evans, the original interrogators left the room and sent in a female SLED agent, who used a sympathy tactic. Id. The Evans Court found that the police's purpose was

important and used the fact that they challenged the defendant's story and switched officers to divine the officers' intent. Id.

The failure to give Miranda warnings before the polygraph examination also departs from established police practice. As early as 1972, courts recognized that "prudent police practice requires that when polygraph examinations are to be given persons in custody under investigation for suspected criminal conduct, they should be given Miranda warnings before the commencement of such examinations." People v. Algien, 501 P.2d 468, 472 (Colo. 1972). Multiple South Carolina decisions state that the polygrapher gave Miranda warnings before the exam. State v. Saltz, 346 S.C. 114, 135, 551 S.E.2d 240, 252 (2001) (noting that defendant was given Miranda warnings before polygraph exam); State v. Harvin, 345 S.C. 190, 192, 547 S.E.2d 497, 498-99 (2001) (recounting that suspect was administered Miranda warnings immediately before polygraph even though warnings had previously been given); State v. McCray, 332 S.C. 536, 543, 506 S.E.2d 301, 304 (1998) (noting that defendant was given Miranda warnings by a SLED polygrapher—Hartley, Bolt's expert in this case); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 694 (1996) (noting that defendant was given Miranda warnings at SLED before the test was administered); State v. Rochester, 301 S.C. 196, 198, 391 S.E.2d 244, 246 (1990) (noting that in a SLED-administered exam, "Prior to being tested, the polygraph examiner administered the Miranda warnings"); State v. Grizzle, 293 S.C. 19, 20, 358 S.E.2d 388, 389 (1987) (noting that SLED polygrapher gave Miranda warnings); State v. Smith, 268 S.C. 349, 353, 234 S.E.2d 19, 20 (1977) (noting that in a SLED-administered exam, the defendant was advised of his rights before the examination and given a written waiver which contained Miranda warnings); State v. Samuel, 400 S.C. 593, 596, 735 S.E.2d 541, 543 (Ct. App. 2012) (stating that polygraph

examiner issued Miranda warnings before the exam); State v. Cope, 385 S.C. 274, 291, 684 S.E.2d 177, 186 (Ct. App. 2009) (stating that polygrapher issued Miranda warnings before the exam).

The giving of Miranda warnings during Bolt's first, brief encounter with Investigator Strickland was insufficient under the totality of the circumstances. Rochester at 200, 391 S.E.2d at 246-47 (stating totality of the circumstances test). See also State v. DeWeese, 582 S.E.2d 786, 797-99 (W.Va. 2003) (holding that failure to give Miranda warnings prior to a polygraph examination rendered statements inadmissible despite prior Miranda warning given by police officers). Taking into account the fact that Bolt was functionally illiterate and of limited intelligence, Miranda warnings were required before the polygraph examination. Since these statements were taken in violation of Bolt's Fifth Amendment rights, the later statement was tainted and inadmissible pursuant to Siebert and Navy. This Court should reverse.

The trial court should have directed a verdict in favor of appellant on the lewd act charge under the *corpus delicti* rule because, other than appellant's extra-judicial statements, no independent evidence existed.

Relevant Facts

The indictment for criminal sexual conduct alleged that the crime occurred "on or about the 1st day of June, 2006." R. 408. The indictment for lewd act alleged the crime occurred between the dates of June 1, 2006 (the date of the criminal sexual conduct) and October 17, 2008. R. 406. During her direct-examination, Minor testified that during the "summer of 2006" Bolt began to touch her in a way that made her feel uncomfortable. R. 131, ll. 1 – 5. She stated that Bolt, "would sit me on his lap and he would rub" her breasts. R. 131, ll. 7 – 14. She then testified about the alleged digital penetration that occurred on one night in June 2006. R. 131, l. 23 – 133, l. 7.

On cross-examination, Minor was much more specific concerning the dates of the abuse. R. 159, ll. 2 – 15. She testified as follows:

Q. And going back to your testimony again about when this was. You say that the night he came in the room you were sleeping and that was somewhere around June 1 of 2006?

A. Yes, ma'am.

Q. And you mentioned these other incidents where he would have you on his lap and be touching you?

A. Yes, ma'am.

Q. All of those incidents happened before that date, right?

A. Yes, ma'am.

Q. All of them prior to June 1st of 2006?

A. Yes, ma'am.

Q. Nothing after?

A. No, ma'am.

Q. And you said you went – you might have gone there occasionally after that June 1st incident but there – there was never another time that you say he inappropriately touched you; is that correct?

A. Yes, ma'am.

R. 159, ll. 2 – 20. Owen testified that Bolt told him that “on the night in question” Bolt was drunk and squeezed Minor’s breast and possibly touched her vagina. R. 175, l. 21 – 173, l. 13.

Following the close of the State’s evidence, Bolt moved for a directed verdict on the lewd act charge citing the *corpus delicti* rule. R. 224, l. 22 – 228, l. 24. The defense noted that the indictment for lewd act only covered a time period following the alleged digital penetration and that Minor specifically testified that no lewd acts occurred after June 1, 2006. R. 276, l. 22 – 277, l. 23. The defense argued this meant the only evidence in the record about a lewd act were Bolt’s statements to Owen, and the statements did not satisfy the *corpus delicti* rule. R. 226, l. 24 – 227, l. 22. The trial judge denied the motion, stating that Minor’s testimony was in conflict, but viewing the evidence in the light most favorable to the State he “would have to deny your motion.” R228, l. 25 – 229, l. 8.

Discussion

Bolt was entitled to a directed verdict on the lewd act claim because the only evidence against him were his statements to Owen. “It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*.” State v. Abraham, 408 S.C. 589,

759 S.E.2d 440 (Ct. App. 2014). The corroboration rule applies to statements and confessions. State v. Osborne, 335 S.C. 172, 178, 516 S.E.2d 201, 204 (1999). To satisfy the corroboration rule, the State must provide “sufficient independent evidence which serves to corroborate the defendant’s extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred.” Id. at 180, 516 S.E.2d at 205.

In Abraham, this Court conducted an in-depth analysis of the corroboration rule as described by our Supreme Court in Osborne and held that the State must introduce “substantial independent evidence which would tend to establish the trustworthiness of the statement.” Abraham at n.2, citing Opper v. United States, 348 U.S. 84 (1954) (stating that the government must introduce “substantial independent evidence”). No substantial independent evidence exists in this case.

The trial judge based his ruling on what he perceived to be a “conflict” in Minor’s testimony: that the lewd act incidents occurred during the “summer of 2006.” R. 131, ll. 1 – 5. However, this vague statement does not qualify as “substantial independent evidence” of crimes on or after June 1, 2006, because Minor unequivocally testified that Bolt did not commit any acts that would be a lewd act either on or after that date. R. 159, ll. 2 – 20. Unlike Abraham and Osborne in which the independent evidence consisted of officers’ observations of a drunken driver and blood alcohol tests, Minor’s fleeting statement about the “summer of 2006”—which was clarified without any doubt or uncertainty during her cross-examination as being before June 1, 2006—does not satisfy the *corpus delicti* rule. Because the only evidence of a lewd act committed during the time frame in

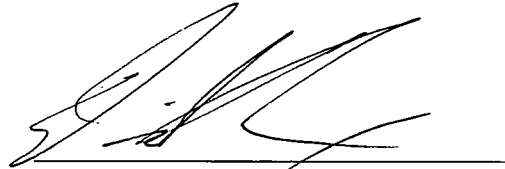
the indictment was Bolt's extrajudicial statement, the trial judge erred in refusing to direct a verdict and Bolt's conviction should be reversed.³

³ In the event that the Court rules that Bolt's statements should be suppressed as argued in Issue 1, then this case could be decided without reference to the *corpus delicti* rule because no evidence would exist of a lewd act during the time frame of the indictment.

CONCLUSION

For the foregoing reasons, appellant's conviction for lewd act should be reversed. Appellant's conviction for criminal sexual conduct should be reversed and remanded for a new trial.

Respectfully submitted,

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David Alexander
Appellate Defender

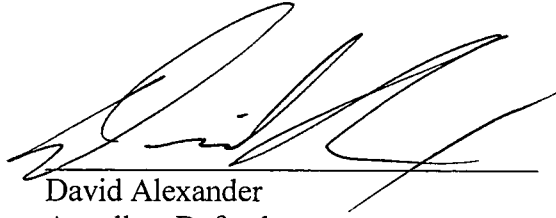
ATTORNEY FOR APPELLANT

This 21st day of January, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and 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."

January 21st, 2015, 2014

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

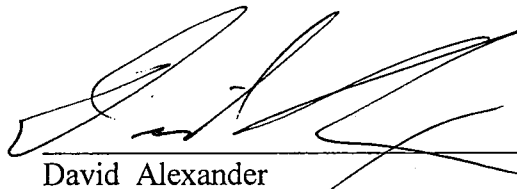
V.

WILLIAM DONALD BOLT,

APPELLANT

CERTIFICATE OF SERVICE

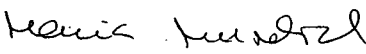
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborha R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of January, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of January, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.