

ORIGINAL

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LAURENS COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

JAN 11 2016

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICKY DALE PACE,

APPELLANT

APPELLATE CASE NO. 2014-001106

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 3 (DVD OF FORENSIC INTERVIEW)

I N D E X O F W I T N E S S E S

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 (DW) - Denotes Defense Witness
 (SW) - Denotes State's Witness

(SW) Shannon Childress (Pretrial)

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1 case coming in and out of the court house, tell Mr. Bolt.
2 And the lawyers, y'all may know some of the lawyers and
3 some of the police officers or some of the witnesses
4 coming in and out of the court house. Remember this, knew
5 know and they have been told to not communicate with
6 y'all, that would not be fair if one of the witnesses,
7 come here and tell you what really happened. They can't
8 do that. So I am telling you that now in case y'all run
9 into somebody and they say good morning and they kind of
10 walk away. That is the way to avoid the conversation.
11 So, be aware that anybody involved in this case is going
12 to stand a distance from you. The bailiffs will not be
13 short with you, they will get you in and get you something
14 to drink. That is their job. We will see you in the
15 morning and don't discuss the case.

16 (Whereupon, the jury was excused from open court to
17 start the trial the next morning at 9:00 a.m.)

18 THE COURT: We will take a break.

19 (Whereupon, a short break was taken.)

20 THE COURT: Mr. Howe and Ms. McNeill, y'all have
21 filed several pretrial motions. Now one of these deals
22 with the video. I trust I will have to watch the video
23 first.

24 MR. SHEEK: Yes, sir.

25 MS. MCNEILL: Yes, sir.

1 THE COURT: Okay.

2 MR. SHEEK: Which I can provide to you if you want to
3 look at it this afternoon. There is two videos but only
4 one that the State will seek to introduce. The other one
5 is the child was over the age of 12. So it is not
6 applicable under the code. So that will cut your time in
7 half.

8 THE COURT: Mr. Howe, y'all filed several motions.
9 Let's start with, let me ask you, where do you want to
10 start?

11 MR. HOWE: Sure, Judge. Let's take care of the
12 simple ones first. The motion to sequester witnesses.

13 THE COURT: Done. Just the normal people, the
14 investigator.

15 MR. HOWE: Judge, we will also be arguing that the
16 two children in the case not be referred to in front of
17 the jury as victims.

18 THE COURT: What noun would you like for the State to
19 use?

20 MS. MCNEILL: Your Honor, I would prefer them to be
21 called by their names. It is not established that they
22 are victims of a crime, that is what we are here to
23 determine. If you use the term victim, that is kind of
24 preestablishing for the jury that they are in fact victims
25 of the crime.

1 something, it would have to be pretty egregious that is
2 said by the defendant if he chooses to testify. I would
3 advise the Court of that outside of the presence of the
4 jury and we will handle it that way.

5 THE COURT: If something comes in the door that gets
6 slightly cracked we will have a sidebar and deal with it
7 then.

8 MS. MCNEILL: Thank you, that motion is satisfied.
9 Next, I have a defendant's motion to exclude forensic
10 videos from the trial of this case. I handed up to Your
11 Honor a short brief that I have written in support of this
12 motion. I have not clocked any of these motions yet but I
13 am going to clock every single one that I have handed to
14 the Court and provided a copy to Mr. Sheek.

15 THE COURT: For the record, Ms. Holston, we dealt
16 with the motion to sequester witnesses, granted. We have
17 dealt with the Jackson v. Denno statements recorded by the
18 police which, I have ruled on that one. That is two. We
19 dealt with State v. Lyle evidence and unless the door is
20 open those issues will not be of, other bad acts will not
21 be testified to. That is number three. And the forensic
22 videos motion, also concurrent with the video and the
23 cross-examination of the victim concurrent with the video
24 but after the video is played, I think is what you are
25 asking for.

1 MS. MCNEILL: That's correct, Judge. And that's
2 only, that motion is only relevant if Your Honor overrules
3 my motion to exclude forensic videos from the trial of
4 this case in its entirety.

5 THE COURT: Now, tell me why you think the video
6 should be excluded and this is, obviously I am not going
7 to rule on it until I see the videos.

8 MR. SHEEK: And, Your Honor, we are just dealing with
9 one video. The second child was over the age of 12 when
10 she gave it. By statute that is not applicable. It has
11 been provided to the defense and certainly could be used
12 for impeachment if they so choose. I don't choose to
13 introduce the second, the older child's video, Your Honor.

14 THE COURT: So the younger child's video is what we
15 are talking about?

16 MS. MCNEILL: Yes, Your Honor. Your Honor, my
17 argument is pretty much laid out in the short brief that I
18 have provided a copy to Your Honor and a copy to Solicitor
19 Sheek. To outline the argument, basically my argument is
20 that it is unconstitutional and that it violates
21 confrontation clause in the Sixth Amendment to the United
22 States Constitution as interpreted by Crawford v.
23 Washington cited 541, US 36, 124 SC 1354, 2004. Judge,
24 also Mr. Sheek is right. The video was recorded at the
25 time when the child was under the age of 12. I believe

1 she was 11 at the time that it was recorded or 10 years
2 old back in 2011. It is my understanding from doing the
3 math that she is now at least either 13 or 14 years old
4 today. So, if a child is under the age of 12 at the time
5 of the statement, at the time of the statement but has
6 turned 12 since the interview our position is that the
7 statute has not been applied for him to be allowed to play
8 the out-of-court hearsay statement. And so that is also,
9 I am going to add that to my adjoining argument that I
10 have laid out for Your Honor in my brief. She is 13 or 14
11 now. I don't think that the video will accomplish
12 anything, clearly the way the statute is designed is to
13 protect those witnesses that would be deemed fragile or
14 vulnerable including the elderly or a child witness. In
15 this case, Judge, she is now 13 or 14, she is a teenager.
16 Clearly she is not deemed to be a fragile or vulnerable
17 individual as the statute was designed to protect at the
18 time of her testimony in court today or this week, for the
19 trial of this case. So our stance is that the statute
20 would no longer apply to that to protect her.

21 THE COURT: All right, Mr. Sheek, what do you say
22 about that?

23 MR. SHEEK: Your Honor, the statute doesn't have any
24 reference to the age of the child at the time of
25 testimony, it refers specifically to at the time the

1 interview was given. And that has been a pretty
2 consistent ruling. And often, because of the age of these
3 cases tried matters where the child is under the age of 12
4 but was much younger when she gave the interviews. So I
5 don't believe the defendant's interpretation of the
6 statute is correct. The statute criteria in this matter,
7 we believe can be met regarding the safety concerns that
8 you will have to make in-camera, the determination on.
9 The child was under the age of 12 at the time she gave the
10 interview. In regards to, I don't think it has a problem
11 with the confrontation clause because the statute
12 specifically requires that the child testify in the matter
13 if the tape is going to be played. So I think that
14 handles the confrontation issue. I could go ahead and
15 advise the Court I will play the tape first and then call
16 the child to the stand. That way they can have their
17 cross-examination after both have been done.

18 MS. MCNEILL: And in just brief response, Judge. If
19 Your Honor looked to my brief, section two. I am
20 challenging the constitutionality of this. South Carolina
21 Code Section 17-23-175 violates Marilyn v. Craig, 497 US
22 836. In two ways, first to be constitutional testimony of
23 a child witness occurring outside the presence of the
24 defendant must be under oath with an opportunity for
25 contemporaneous cross-examination. Second, even if

1 constitutional, the application of SC code section
2 17-23-175 to admit out-of-court video tape statements
3 should be limited to situations where the Court makes
4 specific findings regarding the necessity of admitting the
5 evidence. And, Judge, this goes back to Mr. Sheek's
6 stance is that my interpretation of the statute is
7 incorrect. I think that that is an incorrect statement,
8 Judge. I don't think that this, you know, clearly his
9 interpretation of the statute and my interpretation of the
10 statute are two different things. If this witness was 25
11 years of age now at the time of her testimony should then
12 her out-of-court hearsay statement be played at the time
13 when she was 10 years old. I don't think that the Court
14 would then find because she would be 25 in this
15 hypothetical situation that her testimony would be need to
16 be preserved from the time she was 10. Clearly this young
17 lady is 13 or 14 years old. I do not think that the
18 statute is designed to protect people who are of age, not
19 considered to be a vulnerable, fragile persons in real
20 life time during the trial. She can testify to what she
21 remembers stating. She can testify to her memory of what
22 happened. Clearly she is, you know, matured and aged and
23 she, I don't doubt a bright young woman who is not deemed
24 the fragile, vulnerable classic person that this statute
25 is designed to protect. And that is for Your Honor to

1 deem whether or not the necessity of that tape is even
2 necessary for admissibility purposes.

3 MR. SHEEK: Your Honor, what I was referring to was
4 17-23-175(c). It says for the purposes of this section a
5 child is: 1. A person who is under the age of 12 years at
6 the time of the making of the statement. It is specific.
7 It doesn't say under 12 years, period, and left open for
8 interpretation.

9 THE COURT: Let me read the statute and I will
10 consider this and I will see the video also. And I will
11 let y'all know in the morning. Give me a copy of the
12 video so I can watch it this afternoon. Now, reserving
13 cross-examination the way you have envisioned whether I,
14 if I allow the video, play the video, child is called to
15 testify and then allow for cross-examination I believe
16 would be consistent with Ms. McNeill's request for
17 cross-examination of the child witness subsequent to the
18 video. That has been granted.

19 MS. MCNEILL: I am sorry, Judge, I am a little bit
20 confused as to what Mr. Sheek is proposing the procedure
21 be for the playing this video. And I have outlined my
22 suggestion of the procedure in my motion to reserve
23 cross-examination of the alleged victims until after the
24 State presents code section 17-23-175 evidence. So if Mr.
25 Sheek could re-go over his proposed procedures suggestion.

1 MR. SHEEK: To answer their concerns I am proposing
2 that we will call the interviewer solely for the purpose
3 of, actually it is not the interviewer, it is the
4 supervisor of Beyond Abuse to authenticate the copy of the
5 interview. We will play that prior to the children
6 testifying. The second child's tape will not be played
7 because she was over the age of 12 and I don't think it is
8 applicable. The children will then, after that tape has
9 been played, be called to testify. That is what I propose
10 to be my order.

11 MS. MCNEILL: And I would object to that as it would
12 be hearsay statements prior to the child testifying. If
13 they play the video before the child testifies. What I am
14 proposing as outlined in the motion that I have presented
15 to Your Honor and also a copy to Mr. Sheek is that first
16 in order to ensure the child's, the child must testify
17 about the elements of the crime before any evidence of the
18 out-of-court statement is admissible. Once the State
19 completes the direct examination the defendant will
20 cross-examine the child about the elements of the crime.
21 At the end of the cross-examination about the elements of
22 the crime, cross-examination about the making of the
23 out-of-court statements would be reserved until the State
24 actually presents evidence of such a statement. And then
25 if the State decides not to present the evidence of the

1 out-of-court statement then the alleged victim would
2 return to the witness stand for the balance of the
3 cross-examination. Again, Your Honor, our position would
4 be is that the tape is hearsay. And especially, you know,
5 I just think that in order to ensure the child is going to
6 testify, she testifies first, cross-examined, then play
7 the tape. That is where my motion to reserve
8 cross-examination based on that video comes into play.

9 THE COURT: I don't believe it is hearsay, I just
10 think it is an out-of-court statement. I think that is a
11 mischaracterization. She gave an interview, it was
12 recorded by an interviewer formerly known as something
13 else. Just because it was said at some other time doesn't
14 make it hearsay. I mean, if she weren't here then we
15 would have hearsay issues. But she gave an interview, she
16 was interviewed by someone consistent with the
17 investigation and that person, the record keeper of the
18 trauma center would be present to verify it as a business
19 record. A copy of the interview consistent with their
20 treatment interview process, whatever. I don't want to
21 put any terms that aren't there. Whatever, she would have
22 laid the foundation for the video to be introduced. I am
23 not going to call this a hearsay statement because it was
24 said sometime during the investigation.

25 MS. MCNEILL: Well, then to add to that argument in

1 support of my stance, Judge, I would also raise concerns
2 about the alleged victim in this case able to corroborate
3 her own testimony because she is clearly going to be
4 sitting here listening to it and then she is going to get
5 up on the stand and testify to what she just listened to
6 herself said. And I think that that unfairly prejudices
7 the process of this trial.

8 MR. SHEEK: Your Honor, I can play it for her 15
9 times after we break down court today.

10 MS. MCNEILL: Which again is why I would like for the
11 child to testify before the statements are played.

12 THE COURT: I am going to review the tape first and I
13 will decide what I am going to do. Be ready to go at 9:00
14 in the morning. Are there any motions that I haven't
15 either taken under advisement or ruled on?

16 MS. MCNEILL: No, Your Honor.

17 THE COURT: We will stand at ease on this one until
18 in the morning at 9:00.

19 (Whereupon, the trial will resume in the morning at
20 9:00 a.m.)

21 May 14, 2014

22 THE COURT: Are we ready to go?

23 MR. SHEEK: The State is ready, Your Honor.

24 THE COURT: You ready, Mr. Howe?

25 MR. HOWE: Yes, sir.

1 THE COURT: All right, I have reviewed the video. It
2 appears to be done consistent with the requirements of the
3 other videos I have seen in the past. Your intent, Mr.
4 Sheek, is to call the director of the--

5 MR. SHEEK: Actually I will just have the interviewer
6 come and then that way we won't have that issue.

7 THE COURT: Okay. And it is my understanding your
8 intent is to play the video and call the child as a
9 witness.

10 MR. SHEEK: That is correct, I believe the statute
11 requires that the child be called.

12 THE COURT: That is my understanding also. Ms.
13 McNeill, obviously you are going to cross-examine the
14 child?

15 MS. MCNEILL: Yes, Your Honor.

16 THE COURT: You can argue the motion, I want to make
17 certain of that.

18 MS. MCNEILL: In regards to the timing issue, I do
19 have a case for Your Honor to review before you make the
20 ruling on the issue. And it is State versus Thomas
21 Edwards Jennings. It is Supreme Court of South Carolina
22 case, September 19th, 2011. May I pass this up.

23 THE COURT: Sure.

24 MS. MCNEILL: Your Honor, if you flip to page four of
25 this case, Roman Numeral II, timing of video introduction.

1 In this case and I am reading after the four factors
2 listed out under 2a. It says while appellant did not
3 challenge the admissibility of the videos, he did argue
4 that under the statute the videos could not be introduced
5 before the victims testified. Specifically appellant
6 argued the statute contemplates the victims to be subject
7 to cross-examination before the videos come in. Appellant
8 did not however make any constitutional arguments in
9 support of his objection. After reviewing the statute the
10 trial Court allowed the State to introduce the video prior
11 to the victims testimony with the understanding that the
12 victims would, in fact, be called upon to testify. And
13 then the next paragraph, it goes down for an issue to be
14 properly preserved, it has to be raised to and ruled on by
15 the trial Court. This rule also applies to the
16 constitutional arguments, see State versus Owens,
17 confrontation clause and due process arguments not
18 preserved for review. And so it says, accordingly the
19 argument now made on appeal that appellant's
20 constitutional rights were violated is not preserved for
21 this Court's review. So the Supreme Court didn't get a
22 chance to rule on this issue but I definitely think this
23 is worth really scrutinizing, you know, I really feel that
24 it is bolstering the victim's testimony. Not only that
25 but it is preparing for her testimony. And if Your Honor

1 does overrule my motion I am also making a subsequent
2 motion for Minor2 to be sequestered during the
3 playing of her video's testimony. I don't think there is
4 any reason for her to be in the presence of the courtroom
5 during her testimony. And that is she is taking the stand
6 twice in that regard. She is 13, 14 years old. Thank
7 you.

8 THE COURT: Is there any reason, I think it has been
9 done in trial, maybe in Greenwood that I presided over.
10 The prosecutor called the child, the child testified,
11 cross-examined and then the interviewer is called and then
12 the video was played and the child was recalled. Were you
13 involved in that trial?

14 MR. SHEEK: No, sir.

15 THE COURT: It was done in that fashion and it seemed
16 to work.

17 MR. SHEEK: I would point out, Judge, in the case
18 that you actually have been handed, the very first
19 paragraph under timing kind of sums it up. Where it says
20 specifically the appellate argues allowing videos to be
21 introduced at the time, meaning prior to the children
22 testified, violated his constitutional rights, due process
23 and confrontation. Last sentence. We disagree. So I am
24 not saying it could not be done that way but I think for
25 the purpose of simplicity, expediency, Judge, the way I

1 had proposed it is just easier for the State. Plus I
2 prefer obviously to be able to try my own case without the
3 defense dictating the order of my cases or my witnesses or
4 how I am going to question them or what I am going to
5 question them.

6 THE COURT: What is your proposal right now?

7 MR. SHEEK: My proposal right now is I anticipate
8 would be actually to call mom first. Set up some
9 testimony through her. Then I will actually call Minor 1
10 who is the child that is over the age of 12 at the time of
11 the video. She will testify. Then I will call Minor 2 ,
12 I am sorry, then I will call Amy Boyer from the Child's
13 Place. She will talk about the forensic interview, play
14 it. I will let Minor 2 come in and testify and be
15 cross-examined. Then I have got Lyle Pritchard coming at
16 2:00 o'clock. And I anticipate her being my last witness.

17 THE COURT: I want to read this case. When we get
18 started I can read it before we get that far for me to
19 think about this.

20 MS. MCNEILL: Your Honor, just to add one more point
21 and I will be done with this issue. If Solicitor Sheek is
22 allowed to put up the video first and then put up the
23 witness second our concern is also, and I understand he is
24 saying, it is more expeditious or whatever. But he did
25 just state that his last witness is Lyle Pritchard at 2:00

1 p.m. And we are asking for a fair trial. I think that
2 this limits a little bit of prejudice to the defendant.
3 If Solicitor Sheek is allowed to put up his video first,
4 that testimony was never subject to cross-examination.
5 Now we have the victim, the alleged victim in this case,
6 Minor2 , getting up to testify after previous
7 testimony that is being put into evidence that was not
8 subject to cross-examination. Her second subsequent
9 testimony after the video could be very limited in nature
10 and that also limits her ability--

11 THE COURT: Why is her cross-examination limited?

12 MS. MCNEILL: No, her direct testimony could be
13 limited, very limited in nature. She is not having to
14 tell the whole story perhaps.

15 THE COURT: I think you get full cross-examination,
16 you are not limited by the direct.

17 MS. MCNEILL: I am saying on direct examination she
18 is not having to get up there and recall every memory that
19 she has about this because it was just played for her. So
20 what I am saying is her direct testimony might be limited
21 in nature yet it would still be deemed testimony. I still
22 have full abilities for cross-examination. However,
23 previous testimony that has now been entered into evidence
24 that was not subject to cross-examination is now, you
25 know, before the jury. And then her subsequent testimony

1 could be limited in nature so that I have not as great of
2 an ability to point out any possible inconsistencies in
3 those testimonies. If her testimony is limited in nature
4 on direct this second time around I don't have as much to
5 work with.

6 THE COURT: You have got the video to work with.

7 MS. MCNEILL: Right, Your Honor, but she doesn't
8 necessarily have to say anything more than just, yes, I
9 said all of that.

10 MR. SHEEK: But she doesn't have to anyway, Judge. I
11 could call her first before the video and say, did you go
12 to the Child's Place.

13 THE COURT: You can ask whatever you deem
14 appropriate. I don't understand why you say you are
15 limited no matter how she testifies.

16 MS. MCNEILL: Because it is the same as if a
17 defendant in a case gave a written statement. Right. And
18 that written statement is not played for the jury. The
19 defendant comes in, testified, and I have the written
20 statement. They don't have another opportunity to hear
21 that written statement necessarily right in front of the
22 jury. So then I can pick up on inconsistencies during
23 their direct examination because it is full.

24 THE COURT: And because she is a child she gets that
25 benefit. That is why it is here.

1 MS. MCNEILL: I am just asking for the order, Judge.

2 THE COURT: I appreciate your argument and let me
3 read the case. Don't argue with me. I understand your
4 argument.

5 MR. SHEEK: And I will propose this. I can have Ms.
6 Boyer come in and authenticate for purposes of that
7 necessity. I can withhold actually publishing to the
8 jury. I can call the child to the stand. Did you go to
9 the Child's Place. Did you give an interview. Did you
10 have a chance to review it. I can play it while she sits
11 up there. Finish my testimony and then let them have at
12 it. I am offering it three different ways but what I am
13 not willing to do is basically let the defense give me an
14 outline of this is how I want you to question her and
15 these are the things we want to ask so that we can then,
16 as I hear the argument saying, have more to work with. I
17 am not going to be dictated that way.

18 THE COURT: Well, the fact is she was under 12 when
19 the video was taken for that reason.

20 MR. SHEEK: Exactly, Judge, that is all we are
21 seeking to do.

22 THE COURT: You don't get to trap somebody and then
23 say, got you. This is for protecting her, not to
24 embarrass her.

25 MR. SHEEK: I agree, Judge.

1 THE COURT: And that is what I don't want to go on,
2 is to embarrass this young lady. That is my concerns is
3 to protect her. This is difficult for her. Both of them.
4 We are going to do the best we can do to protect
5 everybody. I want to read this case and make certain I
6 understand what it is saying. I am certain I have read it
7 before but I want to read it again. Bring the jury,
8 please.

9 (Whereupon, the jury came into open court at
10 approximately 9:20 a.m.)

11 THE COURT: All right, ladies and gentlemen, we are
12 about ready to begin the trial and I will tell you how it
13 works. The State brings the case because they are the
14 ones that has got the four indictments from the Laurens
15 County Grand Jury. As I told you before, the indictments
16 are mere notice in writing to the State and to the defense
17 of what to be prepared to defend yourself, for the lawyers
18 to be prepared to defend for. They are not proof of
19 anything. They are just offered as a legal or a written
20 document to him to be on notice to what he can defend.
21 And so that is what the indictment is. Now, since the
22 State brought the case the State calls its witnesses
23 first. In a criminal trial such as this Mr. Pace sits
24 over there and he is presented innocent throughout the
25 trial. He doesn't have to testify at all. And they may

1 We won't adjourn and pick it up next week, we are going to
2 get it done but if I need to consider a legal issue or the
3 lawyers wants to put on the record with Ms. Holston,
4 Judge, I want you to consider the case of the State versus
5 Smith. And it says this and this and this. It just came
6 out in the Supreme Court last week and maybe you haven't
7 read it. When the lawyers do that I let them put that on
8 the record. So they can fully and effectively represent
9 their respective positions. And y'all don't need to be in
10 here to hear all of that legal argument because that is my
11 job. Just the same fact, once y'all begin your
12 deliberations I won't be in the jury room with you. That
13 will be y'all's job. I do mine and I don't need your
14 help. Y'all do yours you won't need my help. So, that is
15 how it will go. Please keep an open mind and if you need
16 a break let me know. If y'all need anything let the
17 bailiffs know. If y'all will stand Ms. Lancaster will
18 place you under oath.

19 (WHEREUPON, the jury was sworn at 9:27 a.m.)

20 THE COURT: All right. Mr. Sheek.

21 MR. SHEEK: Ladies and gentlemen, good morning. My
22 name is Lance Sheek, I practice law for the Eighth
23 Judicial Circuit which is apprized of four counties,
24 Greenwood, Abbeville, Laurens and Newberry. Our State is
25 divided into sixteen judicial circuits. In this circuit

1 you have an elected Solicitor named David Stumbo. I along
2 with the folks sitting here work for Mr. Stumbo. I told
3 you about Mr. Neely, he is an attorney in our office.
4 Also sitting at the table is Shannon Childress, an
5 investigator with the Laurens County Sheriffs Department.
6 What does the Solicitors do. Well, your Solicitors office
7 is charged and has the responsibility of prosecuting any
8 criminal case that falls within the jurisdiction of the
9 court of general sessions. That is where we are sitting
10 here today. So, what does it mean for you, what does it
11 mean to be chosen as a criminal jury. I will take a few
12 minutes and talk to you about that. You have been chosen
13 as the Judge just told you to sit over a trial of the
14 State of South Carolina versus Ricky Dale Pace. He is
15 sitting over here at the table with two fine attorneys
16 here in Laurens County. Over the next day or so you are
17 going to listen to testimony. What has Mr. Pace been
18 accused of. Well, the Judge told you the indictments have
19 what we call lewd act on a minor. And I hold them in my
20 hands. There are five indictments for lewd act on a minor
21 involving two step-children of Mr. Pace. You will hear
22 allegations that say that this happened back in, around
23 the years of 2010, 2011. Mr. Pace living with these two
24 step-children touched them in an inappropriate manner.
25 And I can stand up here and give you all the definitions

1 that the law says about lewd and lascivious acts. I can
2 stand up here and talk to you about the facts that the
3 State is going to prove to you. But right now all you
4 need to understand is that one, the testimony that comes
5 from here. I don't give you the evidence in this case,
6 the defense attorney won't give you evidence. Evidence is
7 going to come from the people that sit right here on this
8 witness stand. They will testify to you, if there is a
9 document or something for you to take in the jury room and
10 see it or look at it and read it, it is going to be
11 introduced through that person. So that is where you are
12 going to pay most of your attention. And at the end of
13 the case we are going to ask you to go back to that jury
14 room that you have gone to a couple of times and we are
15 going to ask you to deliberate and reach a verdict. What
16 does that mean. Verdict literally means to speak the
17 truth. And that is all any of us really ask you to do.
18 Because when all of the legal words and all the fancy
19 words are taken out of it, what we are doing here is the
20 way our communities have set up to administer justice.
21 That is what this is. It is a criminal justice system. I
22 moved here 22 years ago and took a job as a assistant
23 solicitor fresh out of law school. And I have stayed here
24 all of that time in the eighth circuit. And as a
25 community we police ourselves. We do it in civil court,

1 we do it in criminal court. Our system of justice is
2 focused around people from the community who come in and
3 sit as an unbiased panel, what we call this circuit, that
4 is what we all want. The Judge just told you about some
5 important rights. And there are important rights to be
6 protected in this courtroom. First of all, the rights of
7 Mr. Pace. You may have heard on TV shows the Miranda
8 Rights, you have the right to remain silent, you have the
9 right to an attorney. Those are important rights that a
10 defendant does have. As the Judge just told you, Mr. Pace
11 doesn't have to prove anything, to come into this
12 courtroom and prove he didn't do something. He doesn't
13 have to call a witness or put up a single shred of
14 evidence. The burden of proof lies with the State and
15 that is a burden we welcome. And we wouldn't be here if
16 the State wasn't confident that we can meet that burden
17 with the testimony and evidence that you are going to
18 hear. So there are important rights of a defendant. And
19 we often hear about those, we hear about them on the news,
20 we see the TV shows. Every case that is brought to court
21 there are two parties. A lot of times the lawyers we talk
22 about, the caption of the case, the legal document where
23 it actually starts off and tells you the parties that are
24 involved. And in this case the caption actually says on
25 these indictments, the State versus Ricky Dale Pace.

1 There is not just one party in this action. It is not
2 just Ricky Dale Pace but there is also the State. Because
3 when it comes down to it Ms. McNeill and Mr. Howe
4 represents Ricky Dale Pace. And there are important
5 rights to the people in our community. That is our rights
6 to expect to have a safe and law abiding community. And
7 one of the reasons I think I will probably go out and at
8 the end of the day and find my car sitting where I left it
9 and I will go home and probably find my stuff sitting in
10 my house is because I have people in law enforcement that
11 will go out to enforce the laws. And I have a jury system
12 that punishes wrongdoers when they are brought to court
13 and the evidence is presented. A lot of times it is that
14 fear that causes people to follow the law. I would like
15 to think that everybody does because it is the right thing
16 to do. And so we come into court not only thinking about
17 the rights of the community that we are here to protect in
18 our criminal justice system and the rights of two young
19 girls. Because if the community has an interest, not only
20 in seeing that his rights are protected and they should be
21 but we also have an interest in knowing that our children
22 don't grow up being molested by somebody in their house.
23 They don't have to suffer through something like that. So
24 there is all kinds of rights and y'all keep that in mind.
25 You have taken an oath and the rights that this defendant

1 has are important. He walked in that door presumed
2 innocent. That is true and that is vital. And there is
3 only one group of people that can ever pull that clothe of
4 innocence up, look at the defendant after viewing the
5 évidence and decide whether he deserves it or not. That
6 is you, the jury. That is why you have been chosen. The
7 State is going to call a few witnesses. I am not going to
8 stand up here and say she is going to say this, she is
9 going to say that. I am going to call a few people to
10 talk to you because I think you probably got enough
11 knowledge and common sense to listen to the testimony and
12 decide for yourself. You are going to have to judge, when
13 doing that, the credibility of all of the evidence that is
14 brought to you. It simply means the believability. It is
15 often in a case in a criminal trial that one person said
16 something happened and another says it didn't, hence the
17 trial. That is the disagreement. In this case I am going
18 to bring to you witnesses who say this happened to me,
19 this is who did it, this is when it happened, this is how
20 it happened. In some cases in South Carolina when a child
21 is at a certain age, below a certain age, then they
22 actually conduct what is called a forensic interview which
23 is videotaped and the jury can see that. All I am going
24 to present to you is the people that actually experienced
25 it. I will call to you people that will say I was told

1 this, I was told that. That doesn't matter. Now one
2 thing that our legislature did recognize in the law, this
3 is a unique kind of crime. You know, if you go and rob a
4 grocery store, the chances are there are witnesses.
5 Somebody saw you coming and going. Break into a house,
6 the same thing. But in this kind of situation, this is a
7 crime that is naturally done in secret, behind closed
8 doors and nobody knows. And because of that and our
9 Courts have recognized that, you don't have to have
10 corroboration of a victim in a rape case. Something our
11 Legislature wrote into the law. In this case you are
12 going to have corroboration because you actually have two
13 different victims experiencing something not realizing the
14 other one was going through the same thing. And that is
15 the testimony that is going to be brought to you. So I
16 want you to think about the oath you have taken because it
17 is important what we do here today. Without you, the
18 jury, we don't go forward. Shannon can investigate cases,
19 she can go seek warrants, and have somebody arrested.
20 That doesn't do anything, that starts the process.
21 Solicitors office can seek indictments to prosecute cases.
22 The Judge presides, the defense lawyers protect their
23 client to the best of their ability but only you, the
24 jury, can actually determine what happened back in 2011
25 with these two children. That is what we mean you are the

1 jurors of the fact, the triers of the facts. When you
2 decide what the facts are nobody second guesses that.
3 Now, when we come to you the Judge is going to give you
4 some definitions about reasonable doubt at the end of the
5 case. I am not going to go into detail about that but
6 what I want you to do at this point is simply keep an open
7 mind. I want you to think about credibility, judge the
8 credibility. If you raise children like I have you
9 probably learned to judge credibility all of the time when
10 one is saying he hit me and the other one is saying, no, I
11 didn't. And you don't have this iron clad tool to use but
12 the best tool you walk into this courtroom armed with
13 today is your common sense, common sense. Listen to the
14 stories these people tell because you are going to be
15 asked to make a decision on what happened. It is never
16 easy to sit in judgment of something this important at
17 stake. But at the end of this case I think you are going
18 to have all the tools you need to reach that verdict. So
19 keep an open mind and at the end of the case the Judge
20 will actually give you the law that you need to apply to
21 this case. He will define those terms, lewd and
22 lascivious and things like that that I talked to you
23 about. He will define reasonable doubt and things of that
24 nature and then you will go back to deliberate. But I do
25 want to thank you for being here. I watched the jury

1 pulled yesterday, I didn't see a whole lot of people that
2 seemed excited that they got the summons to come to jury
3 duty. I didn't see a lot of you thinking you had won the
4 lottery when you got chose to come back here today. But
5 like I said, we don't go forward without you. You are so
6 much appreciated for the service you do because really
7 short of serving our Country and armed forces and voting,
8 what more important thing can you do for our community.
9 So thank you so much for being here today.

10 THE COURT: Mr. Howe.

11 MR. HOWE: Thank you, Judge. If it please the Court,
12 Mr. Sheek, Mr. Neely. Folks, good morning. This is Ricky
13 Pace, he is a person, he lives in this county. The State
14 is prosecuting him. He is a person, he lives here. He
15 has been refereed to as a defendant, his name is Ricky
16 Pace, he lives here, he has grown up here. I didn't have
17 anything prepared until I heard the opening statement.
18 Sometimes I do that because just got to hear what the
19 other side has got to say and do that. That is what I
20 have done in this case. I kind of jotted down some
21 things. I am Chip Howe, Chelsea McNeill and I represent
22 Ricky Pace, a citizen of this county who is charged with
23 these, very, very serious crimes. And you have already
24 heard things about that. Yes, y'all are part of the
25 community because you listen to the testimony. In a

1 community you have jury's and every day in courtrooms all
2 over the State, all over the country jury's hear cases.
3 And they don't always find what the State, the government
4 wants them to find. They listen to everything, that is
5 what they do. And so, you know, when you hear referenced
6 to the State and to the community don't think that means,
7 well, we have got to find that way if we are going to
8 protect children. We just got to find that way, we don't
9 have a choice. There are criminals out there committing
10 crimes of all sorts. So that is what we have got to do.
11 No, that is not what we have to do. The Judge is going to
12 tell you that. And, you know, the Solicitors office,
13 their lawyers and they prosecute cases but you know what,
14 somebody told me this a while back. The only lawyer that
15 even referred to in the United States constitution that we
16 all follow is in the Sixth Amendment when it talks about
17 the right to counsel, the right to have a lawyer represent
18 you when the government or the State tries to come down on
19 you with and contend that I didn't do this. That is why
20 we are here. Now, you heard about punishment, you heard
21 about kids in the community, you heard about the fact that
22 Mr. Sheek has children. Y'all probably got children or
23 some of you do, some of you don't, you have got
24 grandchildren, you got nieces and nephews. Mr. Pace even
25 has a child. So let's get that out in the open, the

1 reference there was fear. Y'all don't go back there and
2 decide this case based on fear, fear that if you decide
3 that the State has not proven to each and every one of
4 your satisfaction beyond a reasonable doubt that Mr. Pace
5 has not committed these crimes that you should be fearful
6 and worried that the community is not safe or anything
7 like that. That is kind of what I was hearing in some
8 way. But let's get that out of the way. You know, when
9 you get charged with a crime like this, and the Judge has
10 told you and Mr. Sheek, thank goodness he told you that
11 too, we don't have to prove anything. But the problem
12 with a case like this is you hear the children. You say,
13 well, it has got to be something, it has got to be
14 something. And it puts, it kind of almost really does
15 even though the law doesn't say so, it kind of shifts it
16 to him. I hope you will be given an opportunity in the
17 trial to hear that, hear explanations and hear the defense
18 in the case. That is what we want you to do. Now, you
19 are right, y'all didn't volunteer, y'all got chosen at
20 random, y'all got chosen at random to come up here, to be
21 a part of that larger group. Then you got picked out of
22 the hat, that is the way they used to do it, pick them out
23 of a hat. But however Ms. Lynn does it over there to be
24 the potential jurors in this case. I know y'all are going
25 to take it serious and that is all I can ask you to do at

1 this point and time, take it seriously. Don't be fearful,
2 don't think you have got to do a certain way or this
3 community is not safe. That is not why you are here. You
4 are here to sit and listen to the facts and apply the law
5 that the Judge gives you. Again, Ricky Pace is a person,
6 he is not just a defendant. He says he is not guilty of
7 this charge and he says he wants you, his jury, to decide
8 whether or not the State has proved him guilt of this
9 charge beyond a reasonable doubt where all of you go back
10 there and y'all decide. Thank y'all so much.

11 THE COURT: Mr. Sheek.

12 MR. SHEEK: We call Christina Pace to the stand.

13 CHRISTINA PACE, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Sheek:

17 Q If you would please state your full name for the
18 jury.

19 A Christina Bishop Pace.

20 Q Why did you hesitate before you said, Pace. Well,
21 let me ask you this, are you currently still married?

22 A Yes.

23 Q And who is your husband?

24 A Ricky Pace.

25 Q Is Ricky Pace your husband sitting in the courtroom

1 today?

2 A Yes.

3 Q Can you point him out for the jury.

4 (Whereupon, the witness points to the defendant.)

5 Q What is he wearing?.

6 A He is wearing a tie, looks like a gray shirt.

7 Q He is sitting beside Ms. McNeill?

8 A Yes.

9 Q And when did you and Mr. Pace separate?

10 A February the 28th of 2011.

11 Q Prior to your separation where did you and Mr. Pace
12 reside?

13 A Laurens, South Carolina.

14 Q You resided with him in the county of Laurens?

15 A Yes, sir.

16 Q And who resided with you at your house there?

17 A J.M. which is my son, C.B.

18 which is my son, Minor2 which is called

19 Minor2 , and then Minor1 and then me and Ricky.

20 Q Minor1 and Minor2 , they are your daughters?

21 A Well, Minor2 is my daughter and Minor1 is my niece.

22 Q And how long had Minor1 been living with you?

23 A Not quite the whole time we were there. I was in the
24 process of getting legal custody of her.

25 Q You say the whole time you were there. About how

1 long had you and Mr. Pace resided at that residence?

2 A Approximately about three years.

3 Q And how long had you been together at that time?

4 A Well, I didn't move in with him at first, it was a
5 little bit before I moved in with him. So, can't tell you
6 exactly, you know.

7 Q Now, in February, you said in 2011, y'all separated?

8 A Yes, sir.

9 Q And was your separation as a result of the
10 allegations that were brought up to court here today?

11 A Yes, sir.

12 Q I am going to ask you some questions and it is not my
13 intent to embarrass you whatsoever. But during the term
14 of your marriage with Mr. Pace did you ever have any
15 devices for things that you use in your physical
16 relationship with him, sometimes people call them sex
17 toys?

18 A Yes, sir.

19 Q And where did you keep those?

20 A Well, we had our own room and we got a closet. When
21 you walk in the door he had a dresser right here and then
22 the closet is back up, you know, near the window that we
23 had. And I kept them in the top of the closet which is
24 hard for me to reach because we had guitars, because he
25 played the guitar, we had guitars and stuff all right

1 there.

2 Q And at this time, could your children reach where
3 they were?

4 A No, sir.

5 Q And were they laying in open or were they in some
6 kind of enclosed space?

7 A They were in a shoebox.

8 Q Do you remember what kind of shoebox?

9 A I think it was a Nike orange shoebox.

10 Q Now, Ms. Pace, did you ever witness any type of
11 activity where Mr. Pace were improperly touching these
12 children?

13 A No, sir.

14 Q So these allegations was something that you were told
15 about but not something that you witnessed?

16 A Yes, sir.

17 Q You said you had some of these devices up in the
18 closet. What were they?

19 A They were little bullets.

20 Q Can you describe how that was set up, how the
21 mechanical device itself was designed and I apologize. I
22 am not trying to embarrass you.

23 A Well, it is like a little silver bullet which was, I
24 had two of them. You know, I don't know why they are
25 called silver bullets.

1 Q Were they, in fact, silver?

2 A No, I think that is what they are called. Which I
3 had one in the past before then, you know, but the dog ate
4 it up. But, I had a pink one and a white one and it looks
5 like a bullet. And then it has got a cord on it and then
6 it has got a little switch on it and you turn it on and
7 off.

8 Q Thank you. Please answer anything that the defense
9 counsel may ask you.

10 CROSS-EXAMINATION

11 By Mr. Howe:

12 Q It is called a vibrator, isn't it?

13 A Yes, sir.

14 Q Ms. Pace, now, Minor1 is your niece, she is how old
15 now?

16 A 16.

17 Q She is sitting right over there, right?

18 A Yes, sir.

19 Q And Minor2 is how old now?

20 A 13.

21 Q She is the smaller girl sitting over there beside
22 Minor1 ?

23 A Yes, sir.

24 Q Now, Minor2 's father is who?

25 A John Paul Burnette.

1 Q Is he involved in her life?

2 A He is in the military.

3 Q And Minor1 's folks are who?

4 A The father is Michael Thomason, and the mother is
5 Jennifer Thomason.

6 Q But you have had Minor1 living with you for some
7 period of time, correct?

8 A Yes, sir.

9 Q And Minor2 is actually your child?

10 A Yes, sir.

11 Q Now, before you and Mr. Pace, before you and Ricky
12 were, became a couple, by the way, how did y'all meet?

13 A Through a friend.

14 Q And the friend was whom?

15 A Susan Morgan.

16 Q Before y'all met were you married or did you have
17 another boyfriend?

18 A It has been so long ago. I have had boyfriends in
19 the past but I wasn't with a man when I met Ricky.

20 Q Let me ask you another way just so we can get a
21 little background. Have you been married before?

22 A Yes, sir.

23 Q And who were you married to?

24 A John Burnette.

25 Q Is that your only marriage other than Mr. Pace?

1 A Yes, sir.

2 Q And then who was your most recent boyfriend then when
3 you were--

4 MR. SHEEK: Your Honor, at this point I am going to
5 object to the relevance of her past relationships, is it
6 tied in with some how to these allegations.

7 MR. HOWE: I will get to it in a minute.

8 THE COURT: I will give you some latitude.

9 Q Who was your most recent boyfriend leading up to you
10 meeting Mr. Pace?

11 A I don't know.

12 Q You don't know. Well let me ask you this. Isn't it
13 true that you had sexual partners and that you engaged in
14 sex in front of the children?

15 A No, sir.

16 Q You deny that?

17 A I have never had sex in front of my children.

18 Q And you know a Solano man?

19 A Yes, sir.

20 Q And did you have the relationship for a period of
21 time with him?

22 A Yes, sir.

23 MR. SHEEK: Objection. I have a matter, Judge.

24 THE COURT: Okay. Y'all step out and we have an
25 issue I need to discuss with the lawyers. We will be

1 right back shortly.

2 (Whereupon, the jury was excused from open court.)

3 THE COURT: Mr. Sheek.

4 MR. SHEEK: Your Honor, I am going to object to this.
5 I think at this point we are going into just a shear
6 campaign against this lady unless they can tie in. And I
7 don't want to go through a character assassination to see
8 if they can do it, to tie in somehow these allegations,
9 being tied in to some allegations of her prior sexual
10 partners. The only way I know any prior sexual activity
11 on her part could possibly be relevant is if there was an
12 allegation that the only way they know of the oddly
13 functions or something like that is because of something
14 they seen of someone else.

15 THE COURT: I understand your objection. Where are
16 you going, let's go.

17 Q You had a sexual relationship with Mr. Solano,
18 correct?

19 A Yes.

20 Q And isn't it a fact that that relationship took place
21 in front of the children?

22 A No sir, it did not.

23 Q You deny that.

24 A I have never had sex in front of my children.

25 Q Okay.

1 MR. HOWE: That is where I am going, Judge.

2 Q And I am going to put you on notice that we are going
3 to call Ms. Solano who is going to come to court.

4 A That will be fine.

5 MR. SHEEK: My understanding is that they are going
6 to call this guy's wife to testify. If that is all they
7 are wanting to go through, Judge, I don't see how that is
8 relevant. I mean, they have got a question that she
9 denies, the mere question is objectionable to me unless
10 they have some type of evidence to back it up.

11 THE COURT: I think Mr. Howe is aware of that rule.
12 He understands that.

13 MR. SHEEK: I would certainly object. He has asked
14 and she said, no, it didn't happen. That is done. I
15 don't think we need to go any further to ask it again, did
16 it happen. And her say, no again. And I would certainly
17 object to any statement that he may want to make in front
18 of the jury. I am putting you on notice, I am calling
19 someone to say you are a liar.

20 THE COURT: He did that because he can call a witness
21 later on.

22 MR. SHEEK: I would think it would be improper for
23 him to state in front of the jury what he thinks a witness
24 is going to say.

25 THE COURT: You have asked the question already.

1 MR. HOWE: Yes.

2 THE COURT: Have you had sex in front of the
3 children. She said, no.

4 MR. HOWE: She said, no. And I asked her if she knew
5 Mr. Solano and she said, yes. And that is when the matter
6 was objected to if I understand.

7 THE COURT: So is it your intent to go any further
8 with her on that issue right now?

9 MR. HOWE: I would like to go in to her relationship
10 with Mr. Solano. My question, if she had a sexual
11 relationship with him.

12 MR. SHEEK: I have no idea how that could be
13 relevant. How many different people she may have had sex
14 with. It didn't affect these children, these allegations.

15 MR. HOWE: My argument would be it is relevant to the
16 children's knowledge of matters of a sexual nature.

17 MR. SHEEK: She has already testified it wasn't in
18 front of the children.

19 MR. HOWE: That is a factual issue.

20 THE COURT: Now, I think he would be allowed to ask
21 the question, you had a relationship with Mr. Solano and
22 it was a physical relationship. And then stop there. I
23 think he can ask that. That is what he just said he was
24 going to do.

25 MR. SHEEK: And he has done that and she has answered

1 that. I don't care if he wants to say--

2 THE COURT: I am not sure if she answered, I am not
3 sure he has done that. But maybe by inference he has.

4 MR. SHEEK: And I agree with you, if he wants to ask,
5 was it a physical relationship and go no further than
6 that.

7 THE COURT: Is that fair, Mr. Howe. You want to ask
8 if she had a physical relationship with Mr. Solano?

9 MR. HOWE: If you are limiting me to that, Judge, I
10 am taking the best I can get, yes sir.

11 THE COURT: That is where I think you need to stop.
12 I think that is about as far as the relevance goes.

13 MR. HOWE: And we have got it on the record that I
14 attempted to go further and I think you have ruled,
15 accordingly on that issue.

16 THE COURT: If you haven't asked the question of her,
17 was that a boyfriend of hers or did she have a relation
18 with him, I am not certain you have asked that question.

19 MR. HOWE: I have not yet.

20 THE COURT: You asked her if she had sex in front of
21 the children and she said, no.

22 MR. HOWE: The next question was whether she knew Mr.
23 Solano and then the question would be whether or not she
24 had a sexual relationship with Mr. Solano.

25 THE COURT: Bring them back in.

1 (Whereupon, the jury came into open court at
2 approximately 9:59 a.m.)

3 THE COURT: Mr. Howe, you may continue.

4 CONTINUE CROSS-EXAMINATION

5 By Mr. Howe:

6 Q The question I believe I had asked you, do you know
7 Mr. Solano.

8 A Yes, I do.

9 Q And the first name is what?

10 A Caesar.

11 Q Okay. And isn't it true that you had a sexual
12 relationship with Caesar Solano?

13 A Yes, I did.

14 Q Now, at the time of your separation from Ricky Pace,
15 let's go here, it was actually his home you were living
16 in, correct?

17 A Yes.

18 Q And I believe his father is there with him now,
19 correct?

20 A I am not sure.

21 Q You don't know but you are not sure, okay. And at
22 the time that you were living there and then separated you
23 not long after that took both of the children to Dr.
24 Hagenbuch, correct?

25 A Yes, I did.

1 Q Dr. Hagenbuch is a medical doctor, correct?

2 A Yes.

3 Q Here in the county, correct?

4 A Yes.

5 Q And the nurse practitioner actually did a physical
6 examination of both children, correct?

7 A Yes.

8 Q And were you made aware in the course of dealing with
9 this that there was a claim that Minor2 was actually
10 physically abused. That there was a physical abuse to
11 her?

12 MR. SHEEK: If I could ask him to clarify the claim
13 against this defendant.

14 MR. HOWE: I will rephrase it, Judge.

15 THE COURT: Yes, rephrase it.

16 Q Did you learn that Minor2 had been struck in the
17 head with a tape measure?

18 A I heard about it but I am not sure when.

19 Q Okay. You don't know. Did you ever see any evidence
20 of that. You didn't, did you?

21 A No, I didn't.

22 Q Whatsoever. And that the tape measure was thrown by
23 Ricky Pace, correct?

24 A That is what I was told.

25 Q And isn't it true that shortly after that these

1 allegations came about, correct?

2 A No.

3 Q Your answer is no? Do you know?

4 A I was told but they told about the sexual abuse and
5 then they said she got hit in the head.

6 Q Okay. And that didn't happen, did it?

7 A I don't know, I wasn't there.

8 Q Okay. You never saw any evidence that somebody hit
9 with a tape measure, did you?

10 A No, because I never looked at her head. I wasn't
11 told.

12 Q You never looked at your daughter's head to determine
13 whether or not she had been struck with a 30 foot tape?

14 A No, because I wasn't told until later on.

15 Q Okay. All right. Well, isn't it true if your
16 daughter had been struck in the head with a tape measure
17 she would have told you about it?

18 A No, she didn't tell me about this that happened to
19 her.

20 Q Isn't that true she would have told you about being
21 physically injured?

22 A Not necessarily.

23 Q Now, the sex toys that you referred to, isn't it true
24 that the children knew about them?

25 A No, my children did not know anything about them.

1 Just me and Mr. Pace.

2 Q And isn't it true that actually one of your children
3 found one of them under a bed at one point and time, isn't
4 that true?

5 A Not that I know of.

6 Q Not that you know of. So it is your testimony that
7 they were completely hidden and the children knew nothing
8 about them?

9 A My children don't know anything about, you know, my
10 sex life.

11 Q I got you. No further questions.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 By Mr. Sheek:

15 Q In response to Mr. Howe's question about the tape
16 measure, when you started to say the children told you
17 about that after they told you about the sexual abuse?

18 A Yes, and it was later on after.

19 Q So, which children told you about the sexual abuse?

20 A Minor2 came to me one day after work and said Ricky
21 had messed with her, with her.

22 MR. HOWE: Objection, it is hearsay.

23 THE COURT: I will sustain that.

24 MR. SHEEK: I was just following on his question.

25 That is fine, Judge, we will call the children to the

1 stand. I have no further questions.

2 MR. HOWE: No recross.

3 THE COURT: You may step down.

4 MR. SHEEK: We call Minor 1 to the stand.

5 Minor 1, being

6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Sheek:

9 Q Please state your name for the record and then spell
10 it for the Court Reporter.

11 A Minor 1

12 Q Spell it for us.

13 A Minor 1

14 Q Minor 1, how old are you?

15 A 16.

16 Q And are you school?

17 A Yes, sir.

18 Q Where do you go to school?

19 A High School.

20 Q What grade are you in?

21 A Ninth.

22 Q Are you working anywhere?

23 A I work at Wendy's.

24 Q Where do you live?

25 A Laurens County.

1 Q Who do you live with?

2 A My Aunt Christina Pace.

3 Q And how long have you been living with Christina?

4 A I have been living with Christina for about six years
5 now.

6 Q And were you living with Christina when she was
7 together with Ricky Pace?

8 A Yes, sir.

9 Q Let ask you this. Was there ever a time while you
10 were living with Christina and Ricky Pace and Ricky
11 touched you in any way that made you feel uncomfortable?

12 A Yes, sir.

13 Q Tell us about that?

14 A He would tell me to sit on his lap and I would and we
15 would be watching TV. No one would be around. It would
16 just be me and him and my cousin, C.B. was over. He was
17 always in his room playing his video game. And he would
18 stick his hands in my pants and under my underwear and
19 under my bra and touch my breast and my private parts.
20 And when he got done he didn't say anything, I was just
21 scared. And I tried not to be around him for a while but
22 he always found some reason to make me stay at home. I
23 wasn't making straight A's, I was talking back when I
24 wasn't. I was just, that, I was too childish, that my
25 mouth, me running off at the mouth was bad when I wasn't

1 ever doing it.

2 Q Now Minor 1 , you said he would stick his hands down
3 your pants and did you say underneath your underwear on
4 your skin?

5 A Yes, sir.

6 Q Minor 1 , like I told your Aunt, I do not want to
7 embarrass you. But I need you to tell the jury where he
8 would stick his hands down your pants in your underwear,
9 what would he do with his hands?

10 A He would play with my private parts and rub on and
11 make me feel uncomfortable and scared.

12 Q Minor 1 , when he would put his hands under your bar,
13 what would he do when he was touching your breasts?

14 A He would squeeze and play with my nipples.

15 Q Minor 1 , the man that did this to you, do you see him
16 sitting in the courtroom today?

17 A Yes, sir.

18 Q Point him out.

19 (Whereupon, the witness pointed to the defendant.)

20 Q Are you referring to this man sitting here in the
21 gray shirt and tie?

22 A Yes, sir.

23 MR. SHEEK: Let the record reflect, Your Honor, that
24 the defendant has been identified by this victim.

25 THE COURT: It will so reflect.

1 Q Minor 1 , how many times do you recall this happening?

2 A Two or three.

3 Q Are you sure it was more than once?

4 A Yes, sir.

5 Q When I say more than one, more than once in one day--

6 MS. MCNEILL: Objection, leading.

7 MR. SHEEK: Your Honor, I would submit that a leading

8 question suggest an answer. And I was asking a question

9 that would be answered in multiple ways.

10 THE COURT: You can rephrase it.

11 Q Are you saying it happened multiple times, one

12 incident a day or was it on different days?

13 A Different days.

14 Q And on these different days, on these occasions,

15 would he touch your private areas underneath your

16 clothing?

17 A Yes.

18 Q Minor 1 , you did not immediately, let me ask you, did

19 you immediately, of him touching you, go tell an adult?

20 A No, sir.

21 Q Why?

22 A Because I didn't want to break my Aunt's heart

23 because she was so happy. She thought he treated her like

24 a queen but behind closed doors he was hurting her kids

25 and I didn't want her to lose what she thought was

1 happiness because she has been through ups and downs a
2 lot. I seen her how she was happy and I didn't want to
3 mess that up for her.

4 Q Now when this was going on do you remember roughly
5 what year it was?

6 A It happened a little bit after I got there. It
7 started in, we started living there--

8 Q Do you remember what grade you were in when it
9 started?

10 A Sixth grade.

11 Q And what grade are you in now?

12 A Ninth.

13 Q So it was four years ago?

14 A Yes, sir.

15 Q And how old were you then?

16 A 13.

17 Q Did you eventually tell somebody what was going on?

18 A Yes, sir.

19 Q What made you change your mind to tell?

20 A Because my sister, basically, I have been living with
21 her for so long, Minor2 , come to me and told me that it
22 had happened to her after Ricky had thrown the tape
23 measure at her. And I didn't want to tell her that it
24 happened to me too because I wanted her to look up to me
25 and know that I am there for her and not think, well, she

1 has been through the same thing, she can't help me. So
2 when Christina got home Minor2 told her and then she
3 come and asked me if it ever happened to me. And I told
4 her, yes, it did.

5 Q And y'all moved out right after that?

6 A Yes, sir.

7 Q This happened at the home you were living with Ricky
8 and Christina?

9 A Yes, sir.

10 Q Is that here in Laurens County?

11 A Yes, sir.

12 Q That is all I have. Answer any questions that
13 defense counsel may have.

14 MR. HOWE: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 CROSS-EXAMINATION

20 By Ms. McNeill:

21 Q Minor1 , my name is Chelsea McNeill and I represent
22 Mr. Ricky Pace. Okay. I am going to ask you some
23 questions and I know that you are uncomfortable right now
24 so if you need to take a break just let me know. This is
25 uncomfortable for me too. Okay. Now, Minor1 , you are now

1 16 years old, correct?

2 A Yes, ma'am.

3 Q And you said you were in ninth grade?

4 A Yes, ma'am.

5 Q And you said that when this happened no one was home,
6 is that right?

7 A My cousin was at home but he was always in his room.

8 Q He was always in his room. And what was he always
9 doing in his room?

10 A Playing his Play Station.

11 Q How would you know that?

12 A Because I would go in there and sit with him at
13 times.

14 Q But you stated that he was playing his Play Station
15 in his room while this molestation allegedly occurred, is
16 that right?

17 A But that is what my cousin does, he is a gamer so he
18 plays.

19 Q But you don't actually know if that is exactly what
20 he was doing, do you?

21 A No, ma'am.

22 Q And you stated that Mr. Pace, Ricky, he wouldn't say
23 anything at all to you during this whole ordeal, is that
24 right?

25 A He did the first time, he was like, don't tell--

1 Q -- you just stated that he didn't say anything at
2 all.

3 MR. SHEEK: Your Honor, I would like to let her
4 finish her answer.

5 THE COURT: Ask the question and let her answer it.

6 A He told me the first time not to tell but after that
7 I just get up and walk away and go hide in my room like it
8 never happened.

9 Q So other than the first time he never said anything
10 else during this whole alleged ordeal, is that right?

11 A No, ma'am. And if he did I really wasn't paying
12 attention because I was scared.

13 Q And you are stating that he put his hands down your
14 pants, is that correct?

15 A Yes, ma'am.

16 Q What kind of pants were you wearing?

17 A Capris, bluejeans.

18 Q And these had a button on them?

19 A Yes.

20 Q And how would he do that if they were buttoned?

21 A Because I used to be a whole lot skinnier and my
22 pants are sort of big on me. Because I can't find the
23 right pants to fit me and my thighs and the waist, so the
24 waist would always be bigger.

25 Q So he didn't unbutton your pants?

1 A No.

2 Q So they were fully buttoned and he would put his
3 hands down your fully buttoned pants, is that your
4 testimony?

5 A Yes.

6 Q How long would these alleged incidents occur?

7 A How long did it take?

8 Q Yes.

9 A He would do it for about ten or fifteen minutes.

10 Q And would he be doing anything other than touching
11 you?

12 A No, ma'am.

13 Q So he wouldn't be touching himself, just you?

14 A Just me.

15 Q Just you. And when he got done he didn't say
16 anything?

17 A I got up and walked off like it never happened. So
18 if he did I really wasn't listening because I was
19 terrified.

20 Q And then why didn't you call out to your cousin who
21 was in the room during these incidents?

22 A Because I didn't want him to think that I was lying,
23 that I was just mad at Ricky, I knew he wouldn't
24 understand because his whole life is video games and
25 school.

1 Q Let's get into you being mad at Ricky, okay. You
2 don't like Mr. Pace, do you?

3 A Not anymore.

4 Q Did you ever like him?

5 A I liked him when we first moved in.

6 Q And you stated that these alleged incidents happened
7 a little while after you moved in the house with him, is
8 that right?

9 A Yes.

10 Q How long after?

11 A Maybe three months to six months.

12 Q Okay. Isn't it true that you stated in previous
13 testimony that it happened a year after?

14 A Close to a year, yes, six months.

15 Q Three months is not close to a year, is it?

16 A I said six to three months, three to six months,
17 close to a year is six months.

18 Q Okay. And you stated on direct examination with Mr.
19 Sheek that he would get mad at you all the time, right?

20 A Yes.

21 Q And he would yell at you a lot, right?

22 A Yes.

23 Q For running your mouth?

24 A Yes.

25 Q And for talking back?

1 A Yes, but I had never done any of those things. I
2 behaved.

3 Q And not getting straight A's, right?

4 A Yes.

5 Q And he would make you write a lot of sentences,
6 right?

7 A Yes.

8 Q What kind of sentences would you have to write?

9 A It was for ridiculous things.

10 Q Ridiculous things.

11 A I will not run through the house, I will not yell in
12 the house, stuff like that.

13 Q How many times did you have to write those sentences?

14 A It would depend on if he was really mad or not. Like
15 sometimes I would, we would write 100, sometimes we would
16 write 200, up to 300.

17 Q The same sentence over and over and over again?

18 A Yes.

19 Q That had to have been annoying, was it?

20 A I mean I liked to write so it really didn't bother
21 me. But it kind of got annoying after a while.

22 Q Did it bother you that you had to write out the same
23 sentence over and over again a couple of hundred times?

24 A No, because I know I shouldn't have been running in
25 the house.

1 Q So you do admit that you were doing things wrong?

2 A I mean, I was still making straight A's.

3 Q But before you said you were never running your
4 mouth, never back talked, right?

5 A I never back talked or ran my mouth.

6 Q But you did run through the house?

7 A Yes.

8 Q Do things to cause you to have to write a couple of
9 hundred sentences?

10 A Yes.

11 Q Pretty frequently?

12 A No, not frequently because I was always good.

13 Q So you were always good or you did do bad things?

14 A I messed up a few times.

15 Q Okay. Let's get into this tape measure thing. What
16 did this tape measure look like?

17 A Just like a normal tape measure, a yellow thing that
18 had numbers on it that come out of this brown, gray thing
19 that held the tape measure thing.

20 Q Did it look like this with the yellow on the side, is
21 this the tape measure?

22 A I don't remember, I just know it was a tape measure
23 because we were building a room onto our house and she
24 stepped on it and he got mad and he threw it.

25 Q He threw it. Where did this tape measure hit

1 Minor 2 ?

2 A I don't know, I just know he threw it.

3 Q Did you see it happen?

4 A Yes.

5 Q Where did you say it hit her to other people?

6 A Her head.

7 Q Her head, where on her head?

8 A Right in this area.

9 Q Right in this area here?

10 A Right here.

11 Q Did it leave a mark?

12 A I didn't look, I was just worried if she was okay.

13 Q So you did look?

14 A I asked her if she was okay.

15 Q You didn't see any blood or anything like that?

16 A No.

17 Q From that big tape measure. Okay. And then after

18 Ricky threw the tape measure you got pretty angry, right?

19 A Yes. I wasn't angry, I was worried about her.

20 Q Did Ricky ever, did you ever accuse Ricky of hitting

21 C.B. ?

22 A Yes. He hit C.B. several times.

23 Q Several times with what?

24 A When we were building onto our room he would hit him,

25 he hit him with one of the two by fours because he wasn't

1 helping or he wasn't doing something right. He would hit
2 him with one of those. And then he just hit him in the
3 house because C.B. would play his video games or he
4 would come in the living room and eat or he would be
5 stomping through the house not meaning to.

6 Q And Ricky would hit him because of that?

7 A Yes.

8 Q Did you see this happen often?

9 A I seen Ricky hit him with a two by four.

10 Q What about in the bathroom when he was washing his
11 hands that one day, did you see Ricky slap him across the
12 face?

13 A Not that I am aware of, no.

14 Q You didn't ever testify to that before?

15 A You said he was in the bathroom washing his hands.

16 Q And he was getting water all over the floor. Do you
17 not remember testifying to that?

18 A Yes, I do.

19 Q You do remember it?

20 A Yes.

21 Q And do you remember saying that--

22 MR. SHEEK: I object to the question. I am not sure
23 what testimony she is referring to, if she can clarify it.

24 MS. MCNEILL: Previous testimony that she stated to
25 Jessica Bell.

1 MR. SHEEK: Oh, of an interview. I thought when she
2 said testify, I thought court.

3 THE COURT: I will allow it.

4 Q You remember what I am talking about?

5 A Yes.

6 Q And didn't you say to Ms. Bell that you saw Ricky
7 slap C.B. across the face?

8 A Yes, ma'am.

9 Q Can you demonstrate for us how he did it?

10 A I mean it was so long ago. All I know is I remember
11 Ricky slapping C.B. .

12 Q It was pretty hard, right?

13 A Yes.

14 Q And it angered you, didn't it?

15 A It hurt my feelings.

16 Q Sure it did.

17 A Because he was hitting my family when they wasn't
18 doing anything wrong. He could have picked that water up
19 after he got done washing his hands.

20 Q So you have seen Ricky, your testimony is you have
21 seen Ricky slap C.B. across the face, correct?

22 A Yes.

23 Q Hit C.B. in the head with a two by four, correct?

24 A Yes.

25 Q You have seen him throw a tape measure at Minor 2

1 and hit her in the head with it, correct?

2 A Yes.

3 Q And then you seen him yell at you, Minor2 , C.B. ,
4 J.M. , several times, correct?

5 A He never yelled at J.M. .

6 Q I am sorry?

7 A He never yelled at J.M. .

8 Q Okay. So he didn't yell at J.M. , just the three of
9 y'all?

10 A Yes.

11 Q Okay. And you had to write sentence after sentence
12 after sentence after sentence after sentence, correct?

13 A Yes, ma'am.

14 Q Did Minor2 and C.B. also have to write sentences?

15 A Yes, ma'am.

16 Q So you really didn't like Ricky, did you? And who
17 could blame you, right?

18 A I liked him to a certain extent but just because he
19 started messing with me doesn't mean that, that, no, let
20 me rephrase that. Just because he gave me sentences does
21 not mean I am going to come up here in this box, waste my
22 time at school where I could be making good grades just
23 because I didn't like this man. Because I am trying to be
24 a nurse, I need to make as good as grades in school that I
25 need to make. And I need to be in school as much as I

1 can.

2 Q How many times have you reviewed your testimony with
3 the prosecution before today?

4 A Before today?

5 Q Yes, before right now?

6 A I don't remember.

7 Q You don't remember. Was it more than three times?

8 A Like review--

9 Q -- what you are going to say today.

10 A They never told me what to say.

11 Q I understand that. My question to you is, how many
12 times have you reviewed what you are going to say today in
13 court before you are sitting in that chair right now?

14 A Well, I have come up here at least three times I
15 think but I am not sure.

16 Q Have you ever sat in that chair before?

17 A No, ma'am.

18 Q They never brought you in this courtroom to look at
19 it?

20 A They brought me here to look at it but I never sat in
21 it.

22 Q But on notice were you told to face the jury like
23 this, to turn to them and talk to them like this. Were
24 you told that?

25 A Yes, ma'am.

1 Q You were, okay. How many, are you in counseling?

2 A No, ma'am.

3 Q No, okay. How many times have you told this story to
4 somebody else before you have been telling it to this
5 jury?

6 A Several times.

7 Q Several times. Including law enforcement, right?

8 A Yes.

9 Q Including the prosecutor?

10 A Yes.

11 Q Including Ms. Childress, law enforcement here?

12 A Yes, ma'am.

13 Q Including Jessica Bell, correct, your, at the Child's
14 Place?

15 A Yes, ma'am.

16 Q And then you have gone it over a few times with the
17 prosecution, right?

18 A Yes, ma'am.

19 Q You stated that you liked him from time to time, is
20 that right?

21 A Yes.

22 Q Okay. Isn't it true that when you were previously--

23 MR. SHEEK: Your Honor, can I ask defense counsel
24 just to back up a little bit from the child to let her
25 have a little bit of space when she is testifying.

1 THE COURT: She is moving around.

2 Q Isn't it true that in previous interview with Jessica
3 Bell, you remember her, right?

4 A Yes, ma'am. Not by name but I know who you are
5 talking about.

6 Q The lady that interviewed after these allegations?

7 A Yes, ma'am.

8 Q That you said that Christy would ask y'all, why do
9 you hate him, he hasn't done nothing to you?

10 A As far as I know, I never told her that I didn't like
11 him. I mean, like I wouldn't like going places with him
12 when I used to, like when they first got together. But I
13 just kind of quit going places with him and every chance I
14 got I would leave with my grandparents.

15 Q Did you tell your grandparents that this had
16 happened?

17 A No, ma'am.

18 Q And they weren't in a relationship with Ricky, were
19 they?

20 A No.

21 Q Do you feel safe with your grandparents?

22 A Yes, ma'am.

23 Q So you could have told them?

24 A Yes, ma'am.

25 Q And you also stated the day that Minor 2 told you

1 about her being abused by Ricky, that was the day that the
2 tape measure was thrown at her, correct?

3 A Yes, ma'am.

4 Q And y'all talked in the woods, is that right?

5 A Yes, ma'am.

6 Q And what did she tell you?

7 A She told, she didn't want to tell me at first. She,
8 I knew something else was wrong with her. I went up there
9 and I was like, Minor2 , are you okay. And she was like,
10 yeah, my head just hurts. And she just kept crying and
11 then she finally just broke down and she told me. And I
12 told her that she needs to tell her mom but it is really
13 her decision, that it wasn't my place. But I would rather
14 her tell her mom than keep hiding it..

15 Q And you didn't tell Minor2 that this had happened
16 to you too at that time?

17 A No, ma'am.

18 Q And but what did Minor2 say to you right before
19 telling her mom? Isn't it true that you stated that she
20 said to you, I am sick of this, I am going to go tell mom,
21 right after Ricky threw the tape measure at her head?
22 Isn't that what you stated?

23 A Not that I recall.

24 Q All right, Minor1 , just a few more questions and then
25 we are done, okay. Just to sum up everything. You didn't

1 like Ricky, did you?

2 A No.

3 Q You didn't. And in fact you probably hated Ricky,
4 isn't that right?

5 A I wouldn't go to hate, you can't hate somebody.

6 Q Strongly dislike?

7 A Yes.

8 Q And you didn't want to live with him anymore, did
9 you?

10 A No.

11 Q And you were sick and tired of watching him be mean
12 to you and Minor2 and C.B. , right?

13 A Yes, ma'am.

14 Q And you wanted to do something about that, didn't
15 you?

16 A Yes, ma'am.

17 Q And you told, you and Minor2 told Christy, your
18 aunt, that this happened right after the last straw,
19 right, right after the tape measure was thrown at
20 Minor2 , is that correct?

21 A Yes.

22 Q Thank you. No further questions.

23 REDIRECT EXAMINATION

24 By Mr. Sheek:

25 Q Minor1 , as you have gone through this process, the

1 investigation and come to court, talking to these people
2 over here, has it ever been fun for you?

3 A No, sir.

4 Q Did you make up these allegations and go through what
5 you have gone through, this process--

6 MS. MCNEILL: Objection, leading.

7 THE COURT: Rephrase.

8 Q Would you do this to try to get even with the
9 defendant--

10 JUROR: Objection, leading.

11 MR. SHEEK: It is not leading if it doesn't suggest
12 an answer, Your Honor.

13 THE COURT: Rephrase it.

14 Q Would you make up these allegations against this
15 defendant because you were mad at him for yelling at you
16 or making--

17 MS. MCNEILL: Objection, leading.

18 THE COURT: I will let him ask that question.

19 Q Would you?

20 A No, sir.

21 Q What you testified to in this courtroom, is it true?

22 A Yes, sir.

23 Q Do you remember me telling you what I wanted you to
24 say.

25 MS. MCNEILL: Objection, leading.

1 THE COURT: That is not a leading question.

2 Q Do you remember me telling you what I want you to
3 say?

4 A No, sir.

5 Q What did I tell you was the only thing in the world
6 to tell this jury?

7 A The truth, the whole truth and nothing but the truth.

8 Q No further questions.

9 MS. MCNEILL: Nothing further.

10 THE COURT: You may step down. We will take a break.
11 Don't discuss the case.

12 (Whereupon, the jury was excused from open court for
13 a break.)

14 MR. SHEEK: May we approach, Your Honor.

15 (Whereupon, a bench conference was held.)

16 THE COURT: The last trial we had in here was a
17 similar trial for me, similar circumstances. And one
18 thing that I noticed that was problematic. Like, Mr.
19 Sheek, where you are standing right now, we had clutter
20 here and the lawyers kept walking behind, I can't remember
21 why they kept walking behind the rail and I find that to
22 be distracting to the jury, activity outside the court
23 rail. And so we can come in and out of the courtroom and
24 out of the courtroom proper during breaks. The movement
25 in the courtroom, any area, I want to limit that. It is

1 very distracting. In all candor, a couple of the jurors
2 told me that some activity out there was distracting them
3 in that trial and I have always been aware of that. So if
4 y'all could, both sides because I just, that movement
5 creates distractions. And if you remember, Mr. Howe, you
6 weren't involved in that trial. I want the lawyers to
7 approach and I will tell y'all.

8 (Whereupon, a bench conference was held.)

9 THE COURT: We will stand down for about ten minutes.

10 (Whereupon, a short break was taken.)

11 THE COURT: The video issue, I have read this case,
12 the State versus Jennings. The case was primarily focused
13 on bolstering and the testimony and the credibility
14 contained within the written reports and that was the
15 focus of it and that was the focus of the descending and
16 the concurring and all of that, the two to one decision or
17 something another. I am not certain that I understand
18 exactly what Justice Pleicones was saying in full
19 paragraph two at the time of a video's introduction,
20 whether it is allowed and the child has to testify and
21 subject to cross-examine or they actually ruled when it
22 had to come in. I am not sure. Do y'all have any
23 suggestions as to what he was talking about, y'all have
24 read the paragraphs, one, two, three, four. Ms. McNeill,
25 it is your motion so tell me again what you are suggesting

1 what his intent or that language is.

2 MS. MCNEILL: Yes, sir. You are referring to page
3 four?

4 THE COURT: I am. There is a paragraph starting,
5 Roman numeral II, timing of the videos, plural,
6 introduction and it is all the way down to conclusion,
7 that section of the order.

8 MS. MCNEILL: Yes, sir. I think that in that
9 specific area he is referring to the fact that appellant
10 didn't make a contemporaneous objection based on the
11 confrontation clause due process, Sixth Amendment.
12 Constitutional arguments so therefore it was not properly
13 preserved. But I think what he is suggesting is that the,
14 that the Court, the high Court would have had the
15 appellate raised that contemporaneous objection at the
16 time that the video was presented, that they would have
17 gone through the analysis for the constitutional challenge
18 of that argument. That is what I think that he is
19 stating.

20 THE COURT: Just the first two sentences seem to say
21 the timing is irrelevant as long as they testify and the
22 videos are played, the due process and confrontation
23 clause protections are met. That is what I am reading to
24 in those two sentences. Then the next part of the body is
25 basically quoted the statute. But then it is that, I am

1 going to call it the third paragraph, prior to trial, that
2 paragraph.

3 MS. MCNEILL: Yes, sir.

4 THE COURT: It is an argument made, what you are
5 suggesting to me is that the Supreme Court may have said,
6 we will rule on a specific order, it must be done if it
7 were raised?

8 MS. MCNEILL: Yes, sir. That is what I am
9 suggesting. I am suggesting that had the appellate
10 properly preserved his conditional challenge argument,
11 constitutionality challenge argument then the Court would
12 have had something to, to analyze and therefore rule on.
13 If Your Honor is inclined to go with the procedure
14 regarding the videotape and the testimony of Minor2 that
15 Mr. Sheek is suggesting, what I need to do to properly
16 preserve the constitutional argument for appealable
17 purposes should we get that far.

18 THE COURT: This is what I am going to do. I
19 understand Mr. Sheek's intent is, he is going to call the
20 interviewee, interviewer to lay a foundation for the
21 introduction of the DVD which is a copy of the interview
22 itself which is thirty five minutes or so. Then he plans
23 on calling the child, putting her on the stand and then at
24 some time during her testimony playing the video.

25 MR. SHEEK: That is correct, Your Honor.

1 THE COURT: I am going to allow that procedure. Now,
2 if that is, what you are saying is, what you are
3 requesting that I direct him to do is that he fully
4 question her and the last question is, I am going to now
5 play the video which is really not a question. And then
6 you are allowed to cross-examination.

7 MS. MCNEILL: Yes, sir. I think otherwise my
8 arguments stands and it violates the confrontation clause.
9 That would be my constitutionality argument against the
10 procedure that Mr. Sheek is suggesting.

11 MR. SHEEK: In that respect, Your Honor, I don't
12 think the confrontation clause allows you to confront
13 during the testimony of a witness, it allows the
14 confrontation of any witness called to testify. In this
15 case they will be allowed to fully cross-examine this
16 child by the conclusion of my direct. Whatever order I do
17 it in.

18 THE COURT: All right. I believe once the child is
19 called to testify the video can be played during her
20 direct testimony when the Solicitor deems it appropriate
21 and then you are allowed full latitude or
22 cross-examination of anything she states, video or on the
23 witness stand.

24 MS. MCNEILL: I understand, Your Honor. There is one
25 other issue before the jury comes back in. The matter of

1 redacting certain parts of the video. I don't think it is
2 appropriate for the jury to have to watch this little girl
3 in a blank space and time where the interviewer steps out,
4 when the interview is not actually going on, when she
5 steps out to go and consult with whomever, to see if she
6 gets to ask any further questions. And the little girl is
7 drawing on the board. I also don't think it is
8 appropriate for the whole first part of the interview to
9 be played where they are trying to personalize and get to
10 know the little girl about, tell me where you live, tell
11 me about your family and try to turn her into this, you
12 know, I think that is a little too much information for
13 the jury. So I would ask that the first part be redacted
14 along with the last part. And also the final part I would
15 like to be redacted is at the very end, and I have all of
16 these numbers where the video stops, at the very end the
17 interviewer, Ms. Amy, goes into, if this ever happens to
18 you again, you know, if you were abused, if it ever
19 happens to you again this is who you tell, do you know who
20 to tell, who can you go to. I think that is irrelevant
21 for the purposes of getting substance out of the video.
22 So I would ask that that be redacted as well.

23 THE COURT: All right. I have seen a number of these
24 videos. The interview process falls in a similar pattern
25 and the acronym that the interviewers follow. I can't

1 remember the acronym.

2 MR. SHEEK: RATAAC.

3 THE COURT: RATAAC. Now, I don't find it prejudicial
4 for the interviewer to warm up to the child and for the
5 child, I agree, it takes several minutes for the
6 interviewer to leave and watch the little girl draw. I
7 don't find that prejudicial to Mr. Pace. I may agree with
8 you at the very end, if this ever happens again, that
9 question at the very end, this is who you should report to
10 and all of that sort of stuff. I don't know that that is
11 necessary, that may not be relevant.

12 MR. SHEEK: We will be happy to stop it before that.

13 THE COURT: We can stop there. The preliminary
14 stuff, I don't find harmful or probative. It used to be
15 easier to follow because the explanation was given by the
16 interviewer which is not done as much because of the
17 evolution of these types of cases and disclosure and the
18 report and the interview process. So let's stop the tape
19 where we get at the very end, we stop there.

20 MS. MCNEILL: What about the part where she is
21 drawing, your Honor.

22 THE COURT: I don't find that prejudicial. I mean, I
23 don't disagree with you that it takes a lot of time. How
24 does that--

25 MS. MCNEILL: I just think that it amplifies, I mean

1 she is drawing flowers and stuff on a drawing board. I
2 think it amplifies her innocence as a child which I don't
3 think is relevant to the trial of this case.

4 THE COURT: I am going to overrule that objection. I
5 understand it but I overrule it. Are we ready?

6 MR. SHEEK: Yes, sir.

7 THE COURT: Bring them in.

8 (Whereupon, the jury came into open court at
9 approximately 11:06 a.m.)

10 THE COURT: Mr. Sheek, call your next witness.

11 MR. SHEEK: The State calls Amy Boyer to the stand.

12 AMY BOYER, being
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Sheek:

16 Q If you would, please state your name and spell your
17 last name.

18 A Amy Boyer, B-O-Y-E-R.

19 Q Ms. Boyer, where do you live?

20 A I live in Easley, South Carolina.

21 Q You currently work outside the home?

22 A I do. I am sorry, I work inside of the home.

23 Q What do you do inside of the home?

24 A I take care of two young children.

25 Q Are these your children?

1 A Yes.

2 Q You have got twins?

3 A That's correct.

4 Q So you work hard?

5 A I do.

6 Q Prior to be a stay-at-home mom did you have a job?

7 A I did.

8 Q And where did you work then?

9 A I worked at Beyond Abuse as an interviewer.

10 Q Tell the jury, what is Beyond Abuse?

11 A Beyond Abuse is a sexual trauma center for children
12 who have been abused either sexually or physically. It is
13 a child friendly agency that makes it comfortable and safe
14 for children to talk about any type of abuse they have
15 experienced.

16 Q And where is it located?

17 A It is located in Greenwood, South Carolina.

18 Q And were you employed there in the early part of
19 2011?

20 A I was.

21 Q And did you have an opportunity as part of your
22 employment there to have an interview with Minor2

23 Minor2 ?

24 A I did.

25 Q And when you do these type of interviews are they

1 preserved and recorded on a videotape?

2 A Yes, they are.

3 Q And part of your standard procedure at that time?

4 A Yes, sir.

5 Q I am going to hand you this and ask if you have had
6 an opportunity to review it and examine this DVD?

7 A I have.

8 Q Is that your initials there on it?

9 A Yes, sir.

10 Q Is that a true and accurate copy of the forensic
11 interview you conducted with Minor2 back in 2011?

12 A It is.

13 Q And has it, to your knowledge, been edited or altered
14 in any way?

15 A No, it hasn't.

16 MR. SHEEK: Your Honor, then we would move to have
17 this offered into evidence as State's exhibit 1.

18 MS. MCNEILL: Subject to previous objections.

19 THE COURT: It will be marked.

20 MR. SHEEK: I apologize, State's exhibit 3.

21 THE COURT: It will be marked as State's exhibit
22 number 3.

23 (Whereupon, State's Exhibit 3 was admitted into
24 evidence.)

25 MR. SHEEK: That is all the questions I have of this

1 witness.

2 MS. MCNEILL: No questions, Judge.

3 MR. SHEEK: I would ask that Ms. Boyer be excused.

4 THE COURT: You are excused. Mr. Sheek, call your
5 next witness, please.

6 MR. SHEEK: The State calls Minor 2

7 Minor 2 .

8 Minor 2 , being

9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Sheek:

12 Q Tell us your full name and I also want you to also
13 spell your name for the Court Reporter.

14 A Minor 2 .

15 Q Spell Minor 2 .

16 A Minor 2 .

17 Q Spell Minor 2 .

18 A Minor 2 .

19 Q Minor 2 , how old are you?

20 A 13.

21 Q And are you at school?

22 A Yes.

23 Q Where do you go to school?

24 A Middle.

25 Q And what grade are you in?

1 A Sixth.

2 Q Where do you live now?

3 A Laurens.

4 Q And who do you live with?

5 A My mom.

6 Q And tell us your mom's name?

7 A Christina Pace.

8 Q That is the lady sitting over here that testified
9 earlier?

10 A Yes.

11 Q And have you always lived with her since you were
12 born?

13 A Yes.

14 Q Was there a period of time when you and your mom also
15 lived with Mr. Ricky Pace?

16 A Yes.

17 Q Was your mother married to Mr. Pace?

18 A Yes.

19 Q So, Mr. Pace was your step-father?

20 A Yes.

21 Q And do you recall roughly when they stopped living
22 together, when y'all moved out?

23 A No.

24 Q Has it been a while?

25 A Yeah.

1 Q While you were living together, you still lived in
2 the house with Mr. Pace, did there ever come a time when
3 Mr. Pace touched you in a way that you thought was
4 improper or wrong?

5 A Yeah.

6 Q And do you recall how old you were then?

7 A Eight.

8 Q And where were you living when this happened?

9 A Hickory Tavern.

10 Q And was that in the house with Mr. Pace?

11 A Yeah.

12 Q Is that located here in Laurens County?

13 A Yeah.

14 Q Now, you say he touched you the way that you thought
15 was improper, did it happen one time or more than one time
16 or something else?

17 A More than once.

18 Q When you say, touched in a way I felt was improper or
19 made you uncomfortable, I want you to tell me, what does
20 that mean, what did he do that you thought was wrong?

21 A He touched me inside of my pants.

22 Q Now, when you say touched you inside of your pants,
23 what did he touch you with?

24 A His hands and the toys.

25 Q You say inside of your pants, are you saying, I want

1 you to tell me, I don't want to tell you. What do you
2 mean inside of your pants. To the best of your
3 recollection what would he do?

4 A He would rub me and put the toys inside of me.

5 Q You say inside of you, what are you referring to, put
6 it inside of what?

7 A When I was eight we used to call it a fish.

8 Q When you say fish, what are you referring to?

9 A My private area.

10 Q Your private area between your legs or somewhere
11 else?

12 A Between my legs.

13 Q Now, you said he touched you inside of your pants,
14 were your pants on at this time or off or something else?

15 A Off.

16 Q And how would they get off, would you take them off
17 or something else?

18 A He took them off.

19 Q Where would this happen, in the house or outside?

20 A In the house.

21 Q Do you recall where at the house?

22 A In the living room.

23 Q Now, you said he touched you with his hands.

24 A Yeah.

25 Q Do you ever recall him touching you anywhere else

1 besides your fish to make you uncomfortable?

2 A No.

3 Q When he touched you with his hand, would he do
4 anything with his hand or just put in there, what would he
5 do?

6 A Rub me.

7 Q You said he also, you said the word, you called it a
8 toy?

9 A Yeah.

10 Q You know where he got this toy from?

11 A In his room.

12 Q How do you know he got it in his room?

13 A Because that is where he always went.

14 Q Did you see where it was kept in his room?

15 A Yeah. I mean he would go back towards the window and
16 stuff.

17 Q Did you ever see him get it out of anything or did he
18 just come out with it in his hand?

19 A He had to get it out of a orange Nike box.

20 Q Do you recall having an opportunity to go speak to
21 Amy Boyer, the lady who just testified?

22 A Yeah.

23 Q And did she give you a chance to talk to her about
24 what had happened and what had happened between you and
25 Mr. Pace?

1 A Yes.

2 Q So while we are talking about it, when you refer to
3 Mr. Pace, the person you said who touched you, do you see
4 him sitting in the courtroom?

5 A Yeah.

6 Q Can you point him out to me.

7 (Whereupon, the witness points to the defendant.)

8 Q Are you referring to the man in the gray shirt
9 sitting beside Ms. McNeill?

10 A Yeah.

11 MR. SHEEK: Your Honor, if the record will reflect
12 that this young lady has identified the defendant.

13 Q When he would get what you call a toy from this
14 orange shoe box, what are you referring to as a toy.
15 Describe it to the jury.

16 A It had like a ball on the end of it and a cord where
17 it went, you could turn it on and off too, like a
18 rectangular box.

19 Q And would he do something with this toy or would he
20 give it to you to do something with?

21 A He would do something with it.

22 Q What would he do with that toy?

23 A Touch me with it.

24 Q When he would touch you with that toy was it doing
25 anything?

1 A Vibrating.

2 Q When you went and talked to Ms. Boyer was it shortly
3 after, well, let me ask you this. After he first touched
4 you in the way you thought was improper, he touched you on
5 your fish, either with his hand or a toy or anything else,
6 did you go that day and talk to your mom?

7 A No.

8 Q Did you go and tell anybody?

9 A No.

10 Q What about Minor 1 , was she living there at the house
11 at the time?

12 A Yeah.

13 Q And did you tell Minor 1 ?

14 A I told her after a period of time.

15 Q Why didn't you tell Minor 1 r, the first time it
16 happened?

17 A Because I didn't want to mess up my mama's happiness.

18 Q Did you have any idea that anything like this was
19 going on with someone else in that house or any reason to
20 believe it?

21 A No.

22 Q Now, you say you eventually told Minor 1 ?

23 A Yeah.

24 Q What happened to make you tell Minor 1 what was going
25 on?

1 A Because we were working on his house one day, and
2 like he was measuring something and I accidentally stepped
3 on the tape measure so he just picked it up and threw it
4 at me.

5 Q And did it hit you?

6 A Yes.

7 Q Where did it hit you?

8 A Right here.

9 Q Did it cut you or make it bleed or anything like
10 that?

11 A No because it wasn't, like it wasn't reeled in yet.
12 It was still the measuring part.

13 Q So it was the little square part of the--

14 A No, like--

15 Q You are talking about the metal part that comes out?

16 A Yeah.

17 Q That is the part that hit you?

18 A Yes.

19 Q Did it cause any bruising or a knot on your head or
20 anything like that?

21 A No.

22 Q Did it upset you?

23 A Yeah.

24 Q What did you do after that?

25 A I just ran up to the woods where my brother and, I

1 don't know, my cousin were playing.

2 Q So at some point you said you talked to Minor 1 , was
3 it that day?

4 A Yeah.

5 Q Tell me about what you told Minor 1 ?

6 A Like I was crying and I was upset and eventually I
7 just come out and told her because I couldn't hold it in
8 any longer.

9 Q What do you mean you couldn't hold it in any longer?

10 A I couldn't keep it a secret.

11 Q Do you remember in addition in talking to Amy Boyer
12 have a chance to talk to Ms. Childress of the sheriffs
13 department?

14 A Yeah.

15 Q Let me hand you and ask if you recall that?

16 A Yeah.

17 Q Did you draw that or did someone else?

18 A I did.

19 Q You did. And what is that a drawing of?

20 A The vibrator.

21 Q You did that for Ms. Childress?

22 A Yeah.

23 MR. SHEEK: Your Honor, we would move to have this
24 moved in as State's exhibit 4.

25 MS. MCNEILL: No objection.

1 THE COURT: It is marked as 4 and moved into
2 evidence.

3 (Whereupon, State's Exhibit 4 was admitted into
4 evidence.)

5 MR. SHEEK: Your Honor, with the Court's permission
6 we would like to play a copy of what has been previously
7 entered as State's exhibit 3, the video of the forensic
8 interview.

9 MS. MCNEILL: Subject to previous objections, Your
10 Honor.

11 THE COURT: Your objection is noted. The video is in
12 evidence.

13 MR. HOWE: Your Honor, may we approach.

14 THE COURT: Yes.

15 (Whereupon, a bench conference was held in the
16 presence of the jury but out of the hearing of the
17 jury.)

18 THE COURT: I have got something else to put on the
19 record. We will take a brief break, go to your jury room
20 and don't discuss the case.

21 (Whereupon, the jury was excused from open court.)

22 THE COURT: All right, Mr. Howe, you had an issue of
23 law.

24 MR. HOWE: Yes, sir. Judge, not knowing what Ms.
25 Boyer was going to testify to, you know, not knowing for

1 sure what questions she was going to be asked, of course
2 we wanted to wait and see what she had to say or did not
3 say at that time. Judge, we would, when the Court made
4 the determination and I think your ruling was that the
5 video, after examining the scene like the others that the
6 Court had seen, it seemed like everything was done
7 appropriately.

8 THE COURT: Consistent with the video that I had
9 seen.

10 MR. HOWE: Consistent, yes sir. And then, of course,
11 we were wondering whether or not the State was going to
12 call Ms. Boyer and then too when they called her what they
13 would get from her. Now that it is being moved into
14 evidence, you know, we would ask the Court to again
15 reconsider 17-23-175 in particularly, particularly Judge,
16 focusing on subsection (b) which talks about the Court's
17 role in determining whether the State possesses
18 particularized guarantees of trustworthiness, the Court
19 may consider but is not limited to. And we acknowledge
20 the following factors. And the factors we focus on, you
21 know, would be the training of the interviewer in
22 conducting the investigation. And there is no testimony
23 of that. The State could very well have called her and
24 discuss with her her training, et cetera at that time and
25 they didn't elicit that from her. And that would be one

1 of the things that I think that the Court should have
2 considered. And the only thing you can consider that,
3 because it is not on the video, Judge, the only way you
4 can consider that I guess is in open court her testimony
5 about what her training, experience and everything was.
6 While I realize that under subsection (b), that the
7 factors are not limited to that, there could be other
8 factors is what I take that to mean and the Court may
9 consider that. We consider that, we would argue that is a
10 fairly important factor for the Court to consider. Again,
11 you couldn't get that by looking at the video. And the
12 only way you can get that, Judge, was from the testimony
13 out here in court. It would have been improper for us to
14 move to exclude the video at that time. And we are doing
15 it now, it is coming in. I mean, it is in evidence to
16 play that. That is our position, Judge, they could have
17 very easily called her to do that.

18 MR. SHEEK: I understand correctly, Your Honor, what
19 the defense is saying is, we put it into evidence under
20 our previous objection, stated no timely or
21 contemporaneous objection based on these grounds. Wait
22 until the witness was released and now want to raise new
23 grounds after the evidence has been admitted. Which
24 clearly violates Rule 103. An objection has to be
25 contemporaneous, it has to be timely made and it has to

1 state with specificity the grounds upon which the
2 objection is predicated. And if they had of at the time
3 it was offered then I certainly could have gone back and
4 laid any other grounds that they were asking for. But we
5 can obviously go forward on various theories on getting
6 that evidence in. I asked that they stipulate not have to
7 bring the girl at all. They didn't want to. Brought her
8 up here, did a very limited examination, offered it into
9 evidence, they offered no objections. Waited until she
10 was gone to raise this one. And that is completely
11 improper under the Rules of Evidence, Your Honor, to
12 basically ask the Court and I will take it back out of
13 evidence now that she is gone to make it very simple.

14 THE COURT: Did I say it is admitted subject to the
15 objection? I am not sure if I said that. We will let the
16 Court Reporter look for that. Mr. Howe, you want to be
17 heard further on it or do you want to kind of hear what I
18 am thinking because, I will allow you to respond. My
19 thinking is this. We have discussed in great detail when
20 the video would be played. And had a, what I consider a
21 relatively lengthy hearing on that, fifteen minutes maybe,
22 it wasn't all day. How are we going to anticipate it, we
23 adjourned, I watched the video and we came back this
24 morning and kind of went through parts of that again.
25 I believe there is enough evidence for me as the Court to

1 determine that it has particularized guarantee of
2 trustworthiness based upon my observation of the video,
3 that the statement was elicited by questions consistent
4 with the process which I observed. It had a detailed
5 account which I observed when I viewed the video
6 in-camera. It didn't appear the video had been tampered
7 with. I agree with you, there was no testimony elicited
8 by the State that the interviewer had been trained in any
9 fashion. The testimony was she was employed at what I
10 call the Child's Place and is now been renamed Beyond
11 Abuse, that was the limits of her testimony. And I agree
12 with you there. I believe I can make a finding based upon
13 the totality of the circumstances that these parameters
14 were adhered to and that, because of the gest of it is, it
15 appears trustworthy in an in-camera hearing to the Court.
16 And that determination is first before the jury is allowed
17 to hear it published. So that would be my, that would be
18 where I am headed. Would you like to suggest anything
19 else I can consider?

20 MR. HOWE: No, Your Honor, I don't. I can't think
21 and we thought about this, what, besides those five
22 factors, any of the factors. There are only five factors
23 and one of them clearly was not; I mean you don't have any
24 testimony, et cetera about that. The Court would be
25 required to assume that Ms. Boyer had the proper training,

1 et cetera. I understand the Court's ruling. And, Judge,
2 I also want to make a part of the record. I thought, I
3 hope we objected not only to the, just the timing of the
4 video but actually playing of the video itself, still
5 under the confrontation clause arguments, et cetera. And,
6 you know, you, all the factors that you now have indicated
7 that you considered at that point and time. We weren't
8 just objecting to the timing of it, we were objecting to
9 the introducing, introduction of it totally, not just the
10 timing. So as long as we are clear on the record on that.

11 THE COURT: Let's do that. If you have not raised
12 that objection, you have now and I am going to overrule
13 your objection and admit it consistent with my prior
14 summary of what I considered regarding the trustworthiness
15 of the video. If that has not been raised it has now and
16 now it has been ruled on.

17 MR. HOWE: Thank you. Okay.

18 THE COURT: All right. Bring the jury back.

19 (Whereupon, the jury came into open court at
20 approximately 11:35 a.m.)

21 THE COURT: Mr. Sheek.

22 MR. SHEEK: Thank you, Your Honor.

23 (Whereupon, a video was played starting at 11:37
24 a.m.)

25 THE COURT: We will take a short break. Don't

1 discuss the case. We will have you back in in a few
2 minutes.

3 (Whereupon, the jury was excused from open court for
4 a break.)

5 (Whereupon, a short break was taken.)

6 THE COURT: Let's bring the jury in.

7 (Whereupon, the jury came into open court at
8 approximately 12:11 p.m.)

9 (Whereupon, the jury continued to watch the video.)

10 MR. HOWE: Judge, can we take a break.

11 (Whereupon, the jury was excused from open court for
12 a break.)

13 THE COURT: We will stand at ease for a few minutes.

14 (Whereupon, a short break was taken.)

15 THE COURT: Let's bring the jury in.

16 (Whereupon, the jury came into open court at
17 approximately 12:17 p.m.)

18 (Whereupon, the jury continued to watch the video at
19 12:19 p.m. The video ended at 12:25 p.m.)

20 Q Minor2 , how old are you now?

21 A 13.

22 Q What is your birthdate?

23 A

24 Q What year?

25 A

1 Q You understand when you come here today to talk to
2 this jury, do you understand the oath you have taken to
3 tell the truth?

4 A Yes.

5 Q Has anybody at any point told you something you
6 needed to say?

7 A No.

8 Q Have you come and talked to me prior to today?

9 A I don't understand.

10 Q Have you come up here and met with me at this office
11 prior to today, have you and I talked?

12 A Yeah.

13 Q And anything that you have testified to in this
14 courtroom not true?

15 A No.

16 Q What you told Ms. Boyer back in March of 2011--

17 MS. MCNEILL: Objection.

18 Q Is the video we just watched accurate, what you told
19 Amy Boyer?

20 A Yeah.

21 Q Now, did Ms. Boyer have you actually take a drawing
22 and label the body parts?

23 A I told her what the body parts were and she labeled
24 it.

25 Q And is that the drawing that she used to label it as

1 you told her what you called them?

2 A Yeah.

3 MR. SHEEK: Your Honor, I would move to have this
4 marked and entered in as State's 5.

5 MS. MCNEILL: Subject to the previous objections.

6 THE COURT: Is that a copy?

7 MR. SHEEK: Yes, Your Honor.

8 THE COURT: Subject to the prior objection it will be
9 admitted as State's exhibit 5.

10 (Whereupon, State's Exhibit 5 was admitted into
11 evidence.)

12 Q So when you say he touched your fish, you are
13 referring to the private parts circled here and labeled
14 fish?

15 A Yeah.

16 Q Thank you. Please answer anything that defense
17 counsel may have.

18 CROSS-EXAMINATION

19 By Ms. McNeill:

20 Q Minor2 , my name is Chelsea McNeill and along with
21 Mr. Chip Howe I represent Mr. Ricky Pace. Do you
22 understand that?

23 A Yeah.

24 Q And I know that you are uncomfortable. I am
25 uncomfortable too so we are going to try, if you don't

1 understand a question that I am asking just let me know
2 and I will rephrase it. Okay.

3 A Okay.

4 Q Now, you testified that your birthdate is
5 . Is that correct?

6 A Yeah.

7 Q And you testified on direct examination when Mr.
8 Sheek was asking you questions that these events occurred
9 when you were eight years old, is that correct?

10 A I don't remember.

11 Q You don't remember. Do you remember when these
12 events happened on the dates that you gave?

13 A No.

14 Q Does it, would January 8th, 2011 and February 19th,
15 2011 sound about right?

16 A About right, yeah.

17 Q So then you would be ten years old at that time, not
18 eight, correct?

19 A Yeah.

20 Q You and Minor 1 are how many years apart?

21 A Three.

22 Q Three years apart. Okay. Your testimony was that
23 this happened right after you were watching the Discovery
24 Channel, is that right?

25 A Yeah.

1 Q And you were sitting on a couch or a chair?

2 A Couch.

3 Q Were you sitting on the couch the whole time while
4 Ricky went back and got the pink vibrator?

5 A Yeah.

6 Q You were sitting on the couch the whole time while he
7 went and did that?

8 A Yeah.

9 Q How do you know where the vibrator is located?

10 A Because like, he would go back towards his window,
11 that is the only place they are. And when I would go take
12 a shower in there you could see the box up there.

13 Q But you testified that he took the thing out and then
14 brought the vibrator into the room, correct?

15 A Yeah.

16 Q And in the video that we watched just now you told
17 Ms. Amy, the interviewer where the vibrator was located,
18 didn't you?

19 A Yeah.

20 Q And you said it was located on the top shelf in an
21 orange Nike box, is that right?

22 A Yeah.

23 Q How would you know that if you were on the couch?

24 A Because he would go back to where the window to get
25 it and when I went to take a shower you could look inside

1 of the closet and see it.

2 Q So you didn't actually see him go there and take it
3 out of that box on the top shelf, did you?

4 A But he would put the box on the bed.

5 Q But you were on the couch in the living room, right?

6 A You can see to the bedroom from the couch.

7 Q So you could see what was going on in the bedroom
8 from the couch?

9 A To his bed where he was opening the box up.

10 Q And why didn't you try to run for help at that time?

11 A Because the first time I didn't know what he was
12 doing.

13 Q But the second time you did, did you not?

14 A Yeah.

15 Q So why didn't you run for help at that time?

16 A Because I was hoping he wasn't going to do it.

17 Q You were just hoping?

18 A Yeah.

19 Q If you saw that activity going on today what would
20 you do? Do you want to take a break.

21 (Whereupon, the witness is crying.)

22 MS. MCNEILL: Judge, may we take a break.

23 THE COURT: Sure. I would like to talk to her minute
24 and make sure she can get her composure. And I would like
25 for her to get done before lunch. So y'all bear with me

1 and take a short break.

2 (Whereupon, the jury was excused from open court for
3 a break.)

4 THE COURT: All right, young lady, I have got a
5 daughter too, okay. She is 18. I have got a son about
6 your age. I have been in trials like this, I do this a
7 lot. You get your composure, if you need time or another
8 drink of water I will get it for you. I want to get this
9 done for you so that Ms. McNeill can ask the questions she
10 has got to ask and then Mr. Sheek can ask questions he has
11 got to ask and get you through this before lunch. Is that
12 okay?

13 Minor 2 : Yes.

14 THE COURT: You tell me when you are ready. If you
15 want to walk around you can. When you are ready you tell
16 me. Okay.

17 (Whereupon, the witness remained at the witness stand
18 for five minutes.)

19 THE COURT: All right, are you ready? I know this is
20 difficult, I understand.

21 Minor 2 : Yes.

22 THE COURT: All right. Let's bring the jury back in.

23 (Whereupon, the jury came into open court at
24 approximately 12:36 p.m.)

25 THE COURT: All right, we are going to continue. I

1 talked to this lady and she is going to get through this
2 and we are going to do it all together. If we need
3 another break we will take one. Okay.

4 CONTINUE CROSS-EXAMINATION

5 By Ms. McNeill:

6 Q Minor 2 , if you need another break just let me know
7 and I will stop the questioning just like I did last time.
8 Okay. Minor 2 , I am going to ask you about this pink
9 vibrator. State's exhibit number 4. And you drew this,
10 right?

11 A Yeah.

12 Q Okay. Now, on the video you told Ms. Amy that you
13 couldn't draw it, right, but you ended up drawing it I
14 believe for this lady right here, Ms. Childress, right?

15 A Yeah.

16 Q This is a pretty specific drawing, don't you think?

17 A Yeah.

18 Q So how many times did you say that you saw this
19 vibrator?

20 A Twice.

21 Q Twice. And so seeing it twice, how many minutes did
22 each act last for, would you say in an estimate?

23 A Five minutes.

24 Q Five minutes?

25 A Maybe.

1 Q Maybe. Okay. And you only saw this twice but you
2 can tell us exactly where the batteries are, the turnon
3 button, the thing that vibrates and the box after seeing
4 it twice for five minutes. Is that right?

5 A Yeah.

6 Q And then you testified that Ms. Pace inserted this
7 vibrator in you, right?

8 A Yeah.

9 Q And that it hurt?

10 A Yes.

11 Q And you stated on the video that we all just watched
12 that he held you down by force, is that correct?

13 A Yeah.

14 Q And he sat on top of you, is that right. Is that
15 right?

16 A Yeah.

17 Q Okay. And from what you described you were laying
18 down, correct?

19 A Yeah.

20 Q And his back was towards you, is that right?

21 A Yeah.

22 Q Sitting on your chest area?

23 A Yeah.

24 Q And then you said you were kicking, you are not sure
25 how he held your feet down?

1 A I don't remember.

2 Q And I understand that, Sweetie, I am just trying to
3 get out what you said. Okay. So there is a lot going on
4 there, right?

5 A Yeah.

6 Q So he is holding you down with force, you are
7 kicking, were you screaming?

8 A No, because my cousin, well, my brother was back in
9 the room.

10 Q Your brother was in the room?

11 A No, he was in his room.

12 Q Your brother was in his own room?

13 A Yeah.

14 Q So he is holding you down with force, you are
15 kicking, you are not screaming because your brother is in
16 the next room, right?

17 A Yeah.

18 Q And he somehow managed to insert this thing inside
19 you and you said it hurt, correct?

20 A Yeah.

21 Q Okay. And, Minor 1, I am sorry, Minor 2, final few
22 questions. This tape measure, does this look like the
23 tape measure that Ricky threw at you?

24 A No, it was like a silverish and yellow.

25 Q Not like that?

1 A Yeah, it looked like that. But he didn't throw the
2 big part like that. He just threw that part.

3 Q This part?

4 A Yeah, that is what hit me.

5 Q That is what hit you. And then you told your sister
6 you were angry that he hit you with this thing, right?

7 A I was angry but I told her because I couldn't hold it
8 in anymore.

9 Q Sure. And did you ever witness Ricky hitting C.B. ?

10 A Yeah.

11 Q And being mean to Minor 1 ?

12 A He rarely ever, but yeah.

13 Q He wasn't really mean to her?

14 A When he didn't want her to go nowhere he was.

15 Q And was he mean to you?

16 A Yeah.

17 Q And are you happier now that he is out of your home?

18 A Yeah.

19 Q Okay. That is all the questions that I have.

20 THE COURT: Mr. Sheek.

21 MR. SHEEK: Nothing further.

22 THE COURT: We will take a lunch break and be back in
23 the jury room at 2:00 and we will start back again. Don't
24 discuss the case.

25 (Whereupon, the jury is excused from open court to

1 MR. SHEEK: One of the jurors in the jury pool who
2 has not been chosen on our panel wasn't called as a
3 potential juror on our panel sent me a message today by
4 Facebook. It was, hey, I saw you in court Monday. I have
5 not responded in any way, shape or form. She is not on
6 our jury but I certainly want to make the Court aware that
7 a, a juror on the jury pool had contacted me. And will
8 not respond to her until after this week is over and the
9 jury panel is released.

10 THE COURT: I would caution you about responding.
11 That is just free advice.

12 MR. SHEEK: I don't know of anything good that would
13 come from it.

14 THE COURT: We will take a break to wait on the next
15 witness.

16 (Whereupon, a short break was taken.)

17 THE COURT: All right, let's bring the jury in.

18 (Whereupon, the jury came into open court at
19 approximately 2:19 a.m.)

20 THE COURT: All right, the Foreperson will be Ms.
21 Hamby. We will continue with the case. Mr. Sheek.

22 MR. SHEEK: The State calls Dr. Lyle Pritchard to the
23 stand.

24 LYLE PRITCHARD, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

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By Mr. Sheek:

Q If you would state your name and spell your last for the Court Reporter.

A Lyle Pritchard. It is P-R-I-T-C-H-A-R-D.

Q And, Dr. Pritchard, what is your area of medical practice?

A I am a pediatrician in Greenwood.

Q And who do you work for?

A I work for South Regional Hospital.

Q How long have you been a Board Certified Physician?

A I have been Board certified since 1991, so 23 years.

Q And what is your area of practice, do you have an emphasis in a particular area or is it general practice?

A I do general pediatrics and then I spend part of my time specializing in child abuse.

Q Tell me about the time you spent specializing in child abuse, what do you do with your time specializing in that area?

A So, as part of the State network of physicians I support the Children's Advocacy Center which is the center in Greenwood that sees children who are victims of child abuse. And I provide the medical exams there. I also see children who have been victims of child abuse at the hospital. And to be qualified as an expert in child abuse

1 in the State I am part of the team that is called the
2 South Carolina Children's Advocacy Medical Response
3 System. And it is a group of physicians who get extra
4 training, continuing education in child abuse.

5 Q Obviously, to become a doctor you graduated from med
6 school?

7 A That's correct.

8 Q Where did you go to do that?

9 A I went to the Medical University of South Carolina.

10 Q And where did you do your residency?

11 A I did part of residency in Charleston, South Carolina
12 at the Medical University of South Carolina and I did part
13 of my residency at the University of Alabama in
14 Birmingham.

15 Q And have you practiced in the area of pediatrics
16 since the time you started practicing?

17 A I have.

18 Q And how long have you been serving on this response
19 team that you just told us about?

20 A Part of the child abuse team, since the year 2000.

21 Q And so you do, for a lack of a better term, forensic
22 medical examinations on children?

23 A That's correct.

24 Q Do you have a rough estimate of how many you have
25 performed regarding children that have made allegations of

1 sexual abuse?

2 A I can say over 600.

3 MR. SHEEK: Your Honor, I would offer the Doctor as
4 an expert in the field of pediatric child abuse.

5 THE COURT: Any voir dire, Mr. Howe?

6 MR. HOWE: Pediatric child abuse. I would like to
7 ask her a few questions.

8 CROSS-EXAMINATION

9 By Mr. Howe:

10 Q Doctor, is there such a field of pediatric child
11 abuse?

12 A Yes, there is.

13 Q Specifically you have been qualified in pediatric
14 child abuse?

15 A Yes. As part of this State team of child abuse
16 medical providers I have had to have a certain number of
17 cases reviewed through the group of physicians that do
18 this and go to special training for it.

19 Q I have just never have heard it phrased that way
20 before. You are telling me, this Court that you have been
21 qualified as an expert pediatric child abuse?

22 A Right.

23 Q Okay. That is fine. That is all the questions that
24 I have.

25 MR. HOWE: No objection.

1 THE COURT: Is there any other term of art other than
2 pediatric child abuse?

3 A No. Medical child abuse.

4 THE COURT: She will be so qualified and she will be
5 able to testify in the field of general pediatrics where
6 she practices as well as child abuse which she is part of
7 the South Carolina Child Abuse Medical Response Speciality
8 Team.

9 MR. SHEEK: Thank you, Your Honor.

10 CONTINUE DIRECT EXAMINATION

11 By Mr. Sheek:

12 Q Did you have an opportunity to perform a medical
13 examination on a Minor2 ?

14 A I did.

15 Q And do you know when you did that medical
16 examination?

17 A The date of the evaluation was 4/19/2011.

18 Q Let me take a step back and say generally. When you
19 go through an examination on a child who has alleged some
20 type of physical abuse, what is it that you do. Tell the
21 jury what it is you are doing.

22 A So I take a complete history and what that entails is
23 speaking with a parent, finding out what the concerns are.
24 I review any police reports or forensic interviews that
25 have been done. And interview the parent/child about any

1 complaints they are having like physical symptoms or
2 behavioral changes. And then I do a complete physical
3 exam, head to toe, ears, eyes and nose and throat, heart,
4 lung, abdomen. I look at the genitalia and when I look at
5 the genitalia I use something called a colposcope which
6 enlarges the genitalia so everything is brighter and
7 enlarged so I can look for any evidence of any kind of
8 injuries or scarring or infection.

9 Q And this young lady, does your report indicate how
10 old she was at the time you did the examination?

11 A She was 10.

12 Q And you say you reviewed background information such
13 as police reports, forensic interviews, statement of the
14 child. Did you do that in this case?

15 A I did.

16 Q And then you subsequently performed a medical
17 examination?

18 A That's correct.

19 Q As a result of your medial examination did you find
20 any physical indications of trauma to this child's body?

21 A I did not.

22 Q I want to talk about that. Was your findings
23 consistent in your medical opinion, your expert opinion,
24 consistent with the history that you were given regarding
25 the fact of abuse?

1 A The examine was consistent.

2 Q So, what I am asking is this. Is a ten-year-old
3 child alleged that she has been vaginally penetrated with
4 a sex toy would you necessarily expect to find physical
5 findings or physical evidence of that?

6 A No. The majority of children do not have long
7 lasting physical evidence.

8 Q When there is allegations of touching with a hand or
9 a finger or a rubbing or those type things, absent any
10 allegations of force or trauma, would you expect to find
11 physical findings in that case?

12 A No, I would not.

13 Q Are the findings that you had in the examination of
14 Minor2 consistent with the history that you
15 had been given?

16 A It was.

17 Q In a case where a ten-year-old has alleged penal
18 penetration would you necessarily expect to find physical
19 evidence in that case?

20 A It sort of depends on the time that is lapsed between
21 when the child is penetrated and when the exam was done.
22 Most children have what we call a delay disclosure meaning
23 that, you know, they are scared, they are embarrassed and
24 for many reasons they don't tell anybody right away. And
25 so if there was some initial evidence we usually lose the

1 time if there is a delayed disclosure when we might have
2 seen something. In addition those tissues are made to
3 expand and contract and heal. And so frequently there is
4 no injury and if there was an injury it is healed by the
5 time we can see it. So we, and in the majority of cases
6 we actually have a normal exam even when there was
7 penetration.

8 Q I know when you watch some of these TV shows and
9 things of the like there is this commonly held belief
10 among some people that if there is any penetration a
11 doctor will be able to tell, take them to the doctor and
12 they will know. Is that accurate?

13 A That is not accurate.

14 Q Thank you. Answer anything the defense may have.

15 CROSS-EXAMINATION

16 By Mr. Howe:

17 Q Dr. Pritchard, do you know dates that Minor 2
18 reported that the alleged crime took place?

19 A I can check, I don't know off the top of my head but
20 I can check in her incident report if you want me to. I
21 only know as relative to when I saw her and it was more
22 than ten days before I had seen her.

23 Q But you don't know the dates.

24 A No, not off the top of my head. I can check my
25 records.

1 Q Please do so.

2 A The incident date was approximated 12/10/2010 and I
3 was seeing her April of 2011.

4 Q 12/10/2010, on Minor2 ?

5 A I am sorry, last known date of perpetrator contact
6 was February of 2011.

7 Q February of 2011?

8 A Yes, sir.

9 Q Okay. And specifically in February the allegation
10 that my client is on trial for, is that the last incident
11 was February 19th, 2011, correct?

12 A I don't have that specifically. It is just February
13 of 2011.

14 Q Would it not be important for you to know that so you
15 can come into court and tell this jury about the timing of
16 this and when it happened and whether or not there would
17 still be a healing process?

18 A In general if it has been more than ten days the
19 healing has already occurred. And if it was greater than
20 ten days in the past.

21 Q But you didn't know the dates so you didn't even know
22 whether it was ten days, did you?

23 A No. I knew then, I couldn't recall it for you right
24 off the top of my head but it is actually documented in my
25 notes.

1 Q And you are aware that this was reported February the
2 28th, 2011, in the incident date alleged to be February
3 the 19th, 2011, correct?

4 A That is an incident report. That is not part of the
5 medical history, that is an incident report.

6 Q And you don't know actually whether or not the report
7 was after some dispute with our client and that took place
8 February 28th, 2011.

9 MR. SHEEK: Your Honor, at this point I am going to
10 object to the hearsay, these are not statements in aid of
11 a medical diagnosis. She is saying this is an incident
12 report so she is testifying to what somebody else wrote
13 down and was handed to her.

14 THE COURT: I agree with that. But rephrase your
15 question. I think he can ask the question and rephrase
16 it.

17 Q Are you aware that the report was made on this on
18 February the 28th, 2011?

19 A Yes.

20 Q February 28th, and you don't know exactly when the
21 alleged incident was to have taken place. All you know is
22 that the report says February 19th?

23 A Right.

24 Q Could have been later?

25 A Yes, I don't know the date that it occurred.

1 Q And you are aware that the interview at the child's
2 place took, happened on March the 22nd, correct?

3 A Right.

4 Q And your examination for whatever reasons did not
5 take place until April 19th, 2011, correct?

6 A That's correct.

7 Q So if there was any physical evidence even by your
8 testimony there was no effort to look at that until well
9 after ten days, correct?

10 A Yes. She was seen March 22nd for a forensic
11 interview and I saw her on April 11th, that is when the
12 appointment was made with me.

13 Q Thank you. And you have also testified that, and I
14 am reading your report, that this was actual insertion of
15 a vibrator into a ten-year-old child, correct?

16 A Are you asking me the history she gave to me or the
17 history from the forensic interview?

18 Q Either one.

19 A The history that she gave me that her step-dad had
20 touched her and put a pink vibrator in the front twice.

21 Q Twice. Okay. A vibrator. And let me ask you, have
22 you seen what's been marked as State's exhibit number 4,
23 have you ever seen that in doing your report?

24 A For this case?

25 Q Yes.

1 A No.

2 Q Okay. I am going to show it to you and suggest to
3 you that that is a drawing of a vibrator, a pink vibrator.
4 Would you agree or disagree?

5 A Would I agree this is a pink vibrator?

6 Q Yes. A drawing of it.

7 A I think it could be a drawing of a pink vibrator.

8 Q Thank you. Now, and were you made aware in this that
9 the ten-year-old child who had a pink vibrator inserted
10 into her vaginal area stated that at the time it happened
11 it hurt and caused pain?

12 A Yes.

13 Q And that would be important, it caused pain and you
14 would have to agree had there been an earlier physical
15 examination of this child that you would have had an
16 opportunity to see whether or not that was actually true,
17 correct?

18 A Just because it caused pain it wouldn't necessarily
19 result in physical findings.

20 Q I understand. And just because somebody has sex with
21 a ten-year-old child, penial penetration, you said doesn't
22 necessarily mean it, correct.

23 A Doesn't necessarily result in an abnormal exam?

24 Q Exactly.

25 A That's correct. Yes.

1 Q And so basically either way your report doesn't rule
2 it in, doesn't rule it out is what you are saying?

3 A That's correct. That's correct.

4 Q But had you been given an opportunity to maybe get
5 the examination done earlier you might be telling this
6 jury something different. Isn't that true?

7 A Which I can tell you what the evidence shows.

8 Q I am asking you to answer the question first, please,
9 ma'am.

10 A I can't tell you whether there would have been
11 physical findings if I had seen her earlier.

12 Q Had you been given the opportunity to do it earlier
13 you would have had a better opportunity to determine
14 whether or not there were physical findings from a
15 vibrator inserted into a ten-year-old causing pain. Isn't
16 that true?

17 A The majority of children don't have any physical
18 findings. Now, if she had been seen within 72 hours, yes,
19 she might have been more likely to have physical findings.
20 There are plenty of children who have been penetrated and
21 been seen within 72 hours and had normal exams.

22 Q And there are also plenty of children who have not
23 been penetrated at all and it didn't happen who had normal
24 exams, is that true?

25 A I am sure that is true, yes sir.

1 Q Okay. And, Dr. Pritchard, you testified initially
2 that you specialized in child abuse and you see victims of
3 child abuse, that is what you said, correct?

4 A That's correct.

5 Q So when they come into your examination room you
6 already consider them victims of child abuse, isn't that
7 true?

8 A If that is what they are alleging, yes, I do.

9 Q Your whole report and the way you go about it and the
10 way you are testifying today is you have already made an
11 assumption that this child is a victim, isn't that true?

12 A Any time a child comes in with a physical or an
13 emotion or a personal complaint I assume that they are
14 telling me the truth. And I evaluate the problem from
15 what they tell me.

16 Q And you assume they are telling the truth and go at
17 it from that standpoint?

18 A That's right.

19 Q But you can't tell this jury whether or not you know
20 this is true based on anything that you have had an
21 opportunity to exam, can you?

22 A That's right.

23 Q That is all I have.

24 THE COURT: Any redirect?

25 MR. SHEEK: No, sir. I will ask that the Doctor be

1 excused.

2 THE COURT: You are excused.

3 MR. SHEEK: The State rest, Your Honor.

4 THE COURT: I have got to put something on the
5 record. The State has presented its witnesses. And so we
6 will take up something and put it on the record. Y'all
7 step in the jury room and we will be right back out here.
8 Don't discuss the case.

9 (Whereupon, the jury was excused from open court.)

10 THE COURT: All right, Mr. Howe.

11 MR. HOWE: Judge, at this time we will be moving for
12 a directed verdict. We will cover both alleged victims in
13 the case. First, we will address the older child. Judge,
14 we would move for a directed verdict on the charges of
15 lewd act on that child from the failure of the State to
16 introduce any competent evidence whatsoever that a lewd
17 act occurred. Also I want the Court to note, Your Honor,
18 that with regard to the older child, although I realize
19 the State contends that they don't have to specify the
20 date involved, at least have to allege how many different
21 times specifically and at least give some time of idea
22 about the dates. So with regard to that we respectfully
23 ask for a directed verdict with regard to the older child,
24 Minor 1 . Your Honor, if you want to rule on that and move
25 on.

1 THE COURT: Mr. Sheek, you want to speak on these as
2 we go?

3 MR. SHEEK: That will be fine, Your Honor. I think
4 taking the evidence in light most favorable to the State,
5 of course the case law is clear. We don't have to, in
6 these particular crimes, allege or stick to a particular
7 date, or set of dates because of the very nature of the
8 crime. Our legislature and the Courts all recognize that
9 the very nature of what is going on, the timeframes are
10 not exact. The child did testify that she was touched,
11 touched on her privates, under clothes, with his hand
12 moving around, grabbing her breast, playing with her
13 nipples, squeezing her breast, clearly can substantiate a
14 lewd act. She said it definitely happened more than one.
15 Now, she did say two or three times. And I think that is
16 certainly something they could argue to the jury and say,
17 look, she said more than once but she didn't say it was
18 definitely three times. But I think that goes to the
19 weight and not to whether or not there was any evidence.

20 THE COURT: I think there is enough evidence
21 presented from her alone about the events, more than one,
22 two, maybe three to, in the light most favorable to the
23 State to get by the directed verdict motion on the older
24 child, Minor1 . I agree with you, she didn't say it
25 happened Thursday and that was, I agree with that summary.

1 But all of the testimony taken as a whole, no date
2 required specifically, she did testify sufficiently and
3 you can get past a directed verdict on that issue.

4 MR. HOWE: Your Honor, thank you. Your Honor, with
5 regard to the younger child, Minor2 . Judge, we would
6 contend that the evidence in this case that has been
7 offered by the prosecution is not lewd act. The Court is
8 aware, lewd act, the elements of lewd act and the elements
9 of CSC minor are different, they are different. And lewd
10 act is not a lesser included of CSC minor. From the
11 testimony I have heard in this case, from the tape and
12 from the testimony of Minor2 here today, from her
13 testimony, was that there was an insertion of a vibrator,
14 any penetration however slight of a vibrator. That is the
15 criminal acts, actually since there are two cases, the
16 criminal acts that the State is alleging that occurred in
17 this case rather than lewd act. That is the testimony and
18 those two charges, lewd act and CSC minor, as the Court is
19 well aware, are mutually exclusive. They have different
20 elements. Just because you have a CSC doesn't mean you
21 have a lewd act. And just because you have a lewd act
22 doesn't mean you have a CSC. And this is what the
23 evidence has been that has been presented to the Court,
24 all the competent evidence. Everything that you have
25 heard says that and with regard to the younger child, for

1 those reasons we would move that you direct a verdict
2 because they failed to produce competent evidence that a
3 lewd act occurred. They may have produced evidence that
4 some other offense occurred but not lewd act. And that is
5 what we are on trial for. And for that reason I would ask
6 the Court to direct a verdict on the charges of lewd act
7 in this case.

8 THE COURT: Mr. Sheek.

9 MR. SHEEK: Your Honor, if you go back and look at
10 the testimony of Minor2 , she indicated that not only did
11 he use the vibrator but she also said, he put his hands
12 down her pants, under her underwear. And I said, what did
13 he do with it when he put it down there and she said, he
14 rubbed me. And I said on your private parts or something
15 of that nature and she said, yes. That would certainly
16 substantiate the offense of lewd act. They are not
17 mutually exclusive. And mutually exclusive would mean the
18 proof of one would naturally exclude the other. That is
19 not what these are. You can clearly commit a lewd act and
20 a criminal sexual conduct and can be convicted of both.
21 That's the reason they are not mutually exclusive, one is
22 not a lessor included. You can be convicted on both. On
23 this case, obviously, we haven't indicted for the CSC.
24 Interestingly if you take the defense's argument, should
25 be acquitted here we then could indict him for CSC and it

1 would not be double jeopardy. She clearly testified to
2 sufficient touching of the private part with a lewd and
3 lascivious intent to substantiate what we felt like we had
4 good evidence of and that was lewd act.

5 THE COURT: My notes indicate she testified he was
6 touching me, my private areas, she called it fish, with
7 his hands. And then went on with the toys, the pants were
8 off, he took them off, in the living room, he was rubbing.
9 And then other statements is he was using toys. That is
10 what I got notes on the testimony from her.

11 MR. HOWE: I respect the Court's recollection of
12 those facts. I respectfully thought that's, I heard all
13 the testimony having to do with something--

14 THE COURT: That was in her testimony, not in the
15 video. The video, I didn't take specific notes on as much
16 as I did her testimony. That was her testimony. That is
17 where I get that from. I think with what she testified to
18 she gets by the, those two lewd acts on her. There are
19 five indictments, I thought it was four, I was mistaken,
20 there are five.

21 MR. SHEEK: It is five. There are three counts on
22 Minor1 , two counts on Minor2 . Minor2 was definite on
23 the two and Minor1 says, she is the one that says more
24 than one, two or three. That is the reason why I said the
25 defense certainly can argue, it's not three, we only have

1 had testimony of two because she was less than definite on
2 how many times it was. But she did say more than one.

3 THE COURT: I should have counted them. I thought it
4 was two and two. I know her testimony was two, maybe
5 three. I am certain of that. I didn't take those notes
6 with the indictments in my hand. I kept them in a book or
7 a packet together which I had to leaf through them.

8 Respectfully with the testimony provided by Minor 2 I am
9 going to deny that directed verdict motion on the, from
10 you, Mr. Howe.

11 MR. HOWE: Yes, sir. And obviously we need to renew
12 all our objections that were made pretrial, during trial.

13 THE COURT: Noted for the record all the ones
14 regarding the accommodation clause and the video, it's
15 admissibility, that issue is preserved for you and renewed
16 at this time as done verbatim as we did earlier. All
17 right, let's bring the jury in.

18 (Whereupon, the jury came into open court at
19 approximately 2:51 p.m.)

20 THE COURT: All right, Mr. Howe.

21 MR. HOWE: We would call Wendy Abercrombie Nix.

22 WENDY NIX, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Howe:

1 Q Give us your name again for the record, please,
2 ma'am?

3 A It is Wendy Abercrombie Nix.

4 Q Ms. Nix, where do you live?

5 A I live in Waterloo.

6 Q And where do you work now?

7 A I now work at Laurens County Memorial Hospital in the
8 emergency department.

9 Q What kind of job do you do?

10 A I am a nurse practitioner, I work up under a doctor.
11 I see people from birth to, up to life situations.

12 Q What kind of training did you have to have to become
13 a nurse practitioner?

14 A I was a nurse, I have a four-year nursing degree and
15 then I went back to school and received two more
16 additional years of training to be a nurse practitioner.

17 Q And that is something that is kind of new to me, a
18 nurse practitioner. But y'all do examinations on your own
19 but you are still under direction, under supervision of a
20 doctor, is that correct?

21 A Yes sir, that is correct.

22 Q But y'all have more, is it a fair statement you have
23 more training than a normal nurse then?

24 A Yes, we do.

25 Q And do conduct examinations and discuss things with

1 patients, et cetera under the supervision, of course, of a
2 doctor.

3 A Yes sir, that is correct.

4 Q Where did you work back in March of 2011?

5 A I worked at Carolina Family Medicine with Dr.
6 Michelle Hagenbuch.

7 Q Dr. Michelle Hagenbuch. Do you know how to spell her
8 name?

9 A Yes. It is H-A-G-E-N-B-U-C-H.

10 Q Okay. Let me ask you. In that capacity did you have
11 a chance to, let me ask you this. Do you recognize this
12 document that was provided to us by the State?

13 A Yes, sir. This is a routine document that we use at
14 Dr. Hagenbuch's office for all physical exams.

15 Q And who is the patient in particular?

16 A Christine Burnette.

17 Q Christina or Christine. Does it list an age of the
18 patient?

19 A It says ten years of age.

20 Q And what was the date of that report and examination
21 based on what you have there?

22 A March 8th, 2011.

23 Q And is that a copy of that particular document?

24 A Yes sir, it is.

25 Q You don't work with Dr. Hagenbuch any more so you

1 didn't keep any records?

2 A No, sir.

3 Q Those are Dr. Hagenbuch's records?

4 A That's correct.

5 MR. HOWE: Your Honor, we would ask that that be
6 introduced as defense exhibit 1.

7 THE COURT: Any objection?

8 MR. SHEEK: No objection, Your Honor.

9 THE COURT: Defense 1 is admitted without objection.
10 (Whereupon, Defendant's Exhibit 1 was admitted into
11 evidence.)

12 Q Now, if you could, referring to defense exhibit 1,
13 again, the date that you saw this patient was what?

14 A March 8th, 2011.

15 Q Okay. And that would be within ten days of February
16 28th, 2011, I guess would it not, if my calendar is right?

17 A March 28th?

18 Q February the 28th?

19 A Yes, sir.

20 Q That is less leap year, one more day, you would agree
21 with that, right?

22 A Yes, sir.

23 Q Now, what kind of exam did you do and why were you
24 doing that exam?

25 A I was told, before I examine a patient I always ask

1 the reason for the exam. It was stated by the child that
2 she was molested by a step-dad, stated that, per my
3 records, he put his fingers inside of her vagina and used
4 a vibrator on her while she was being held down. So at
5 that time I did a physical exam on her.

6 Q And did you notice any bruising of the chest or
7 shoulders or anything of that nature?

8 A There were no visible bruises or tears.

9 Q Did you notice any abnormal findings with regard to
10 the genitalia of this patient?

11 A No, sir. There were no bruises or tears.

12 Q And, again, no bruises on shoulders or chest or
13 anything of that nature that you saw?

14 A No sir, she had a normal ten year well child check at
15 this time.

16 Q Thank you. That is all I have. Answer any questions
17 Mr. Sheek has for you.

18 CROSS-EXAMINATION

19 By Mr. Sheek:

20 Q I know you are a nurse practitioner, you have no
21 medical degree as far as a doctor, correct?

22 A No, sir.

23 Q Never been Board Certified as a physician?

24 A I am Board Certified Nurse Practitioner.

25 Q As a physician?

1 A Not as a physician, no sir.

2 Q Okay. And are you a member of any speciality
3 organization regarding child abuse, sexual abuse or
4 anything of that nature?

5 A No, sir.

6 Q Do you normally perform sexual abuse forensic
7 examinations?

8 A No, sir.

9 Q Have you ever been qualified as an expert to testify
10 in any court?

11 A No, sir.

12 Q So really all you are testifying to today are notes
13 that you, you are testifying that you wrote these notes,
14 right?

15 A Yes, sir.

16 Q And you are testifying to notes that you wrote down
17 back on March the 8th of 2011?

18 A Yes, sir.

19 Q And on March the 8th of 2011 Minor2 said that she
20 was sexually molested by her step-father, Ricky Dale Pace,
21 didn't she?

22 A Yes, sir.

23 Q That he used a vibrator on her?

24 A That is what my notes say, yes sir.

25 Q And that he touched her with his hands?

1 A Yes, sir.

2 Q That is all I have.

3 THE COURT: Anything else, Mr. Howe?

4 MR. HOWE: No redirect.

5 THE COURT: Folks, we are going to break for the day.
6 We will start back at 9:00 a.m. in the morning. Don't
7 discuss the case and we will see you at 9:00 tomorrow. We
8 will finish tomorrow with testimony and closing argument
9 and my instructions to you.

10 (Whereupon, the jury was excused from open court for
11 the day.)

12 MR. HOWE: Judge, if you want to go ahead while we
13 are still on the record just to save some time tomorrow
14 and go over his right to testify. We talked about it and
15 I just went over it with him again. Go ahead and take
16 care of that. He understands he doesn't make a decision
17 yet, cover that with him. Thank you.

18 THE COURT: I will be glad to. Mr. Pace, a few
19 rights. You stay standing up while we are talking and I
20 will stand up with you. You have got the right to testify
21 in this trial. I want you to know if you don't, that is
22 just fine, it is your decision, you have got two competent
23 lawyers you can talk it over with tonight as long as you
24 like. But understand this, if you don't testify that will
25 be fine and I am going to instruct the jury should you

1 where your advice is coming from, they are going to help
2 you and assist you to the best of their capabilities.

3 Okay.

4 MR. PACE: Yes, sir.

5 THE COURT: Anything else?

6 MR. HOWE: No, sir. Thank you, Judge.

7 THE COURT: See y'all in the morning.

8 (Whereupon, the trial will resume the next morning at
9 9:00 a.m.)

10 May 15, 2014.

11 THE COURT: All right, are y'all ready?

12 MR. SHEEK: Yes, sir.

13 MR. HOWE: Yes, sir.

14 THE COURT: Bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 9:21 a.m.)

17 THE COURT: All right, Mr. Howe.

18 MR. HOWE: We would call Tracy Babb to the stand.

19 TRACY BABB, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Howe:

23 Q Good morning.

24 A Good morning.

25 Q You are Tracy Morgan Babb, is that right?

1 A Tracy Elaine Babb.

2 Q Okay, I got it wrong, I apologize. Tracy Elaine
3 Babb. Tracy, you are related to Ricky, correct?

4 A Correct.

5 Q And in fact you are his-

6 A Daughter.

7 Q And your age, please?

8 A 32.

9 Q And where do you live?

10 A I live in Road in Ware Shoals.

11 Q In Ware Shoals?

12 A Yes.

13 Q Are you married?

14 A Yes.

15 Q What is your husband's name?

16 A Brian Babb.

17 Q Do you have children?

18 A Yes.

19 Q How many children do you have?

20 A I have one.

21 Q And who is that?

22 A B.S.M. he is ten.

23 Q And do you of course know the three ladies sitting
24 right here I am pointing to?

25 A I do.

1 Q Could you give their names?

2 A Christina Pace, Minor2 , Minor 1 .

3 Q So you know all three of them well?

4 A Correct.

5 Q Now, how do you know them?

6 A Christina is married to my dad, Ricky.

7 Q And did you visit in their home a good bit?

8 A Yes, almost every day.

9 Q And who else lived in the home besides your dad and
10 the three ladies we mentioned here?

11 A Christina has two sons, one named C.B. and one
12 named J.M. .

13 Q And did anybody else live in the home with Ricky at
14 that point and time?

15 A No.

16 Q But now, I believe his father is living with him, is
17 that right?

18 A Correct.

19 Q Now, did you have a chance, different opportunities
20 to see Ricky around the girls?

21 A Yes.

22 Q Although he was just a step-father was he involved in
23 their discipline?

24 A Yes, very much.

25 Q And you saw that yourself?

1 A I did.

2 Q Would you have, watching that would you consider him
3 strick?

4 A Yes. He was very strict.

5 Q For instance what type things would he require that
6 they do?

7 A Homework was number one priority after school every
8 day. Misbehavior in any type from getting in trouble at
9 school to anything minor like blaring music too loud was
10 unacceptable.

11 Q So he was pretty tough on them, is that a fair
12 statement?

13 A He expected chores to be done.

14 Q Did you ever see the girls reaction to that?

15 A I did.

16 Q Were they pleased with it?

17 A No.

18 Q Did you ever see him actually punish the girls?

19 A I did. Most of the time it was things like writing
20 sentences or sent to their room or take maybe a video game
21 away, something like that.

22 Q Between Christina Pace and Ricky who was the main
23 person who handed out the discipline?

24 A Christina worked a lot so he was, most of the time
25 the one who was there to get them after school hours so

1 therefore he was in charge of discipline mostly.

2 Q Okay. I want you to answer any question that Mr.
3 Sheek may have.

4 CROSS-EXAMINATION

5 By Mr. Sheek:

6 Q At the time that these two children lived with your
7 father, whose house was it?

8 A It was his.

9 Q Is he still living at that house?

10 A Yes.

11 Q They packed up and moved out on the day the children
12 made these allegations, right?

13 A Yes.

14 Q She didn't take any furniture or anything with her,
15 took the clothes on her back and the children's things and
16 left, correct?

17 A As far as I know.

18 Q And she hasn't gone to family court to try to profit
19 from this, ask for alimony, get the house or anything else
20 from him?

21 A No, not as of yet.

22 Q Not as yet, how long has it been?

23 A It has been three years.

24 Q I have no further questions.

25 MR. HOWE: No redirect, Judge.

1 THE COURT: You may step down. Call your next
2 witness.

3 MR. HOWE: Call Brian Babb to the stand.

4 BRIAN BABB, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Howe:

8 Q Give us your name?

9 A Brian Babb.

10 Q Brian, are you married to Tracy?

11 A Yes, sir.

12 Q And so Ricky Pace is your father-in-law?

13 A Yes, sir.

14 Q And y'all live over at the Ware Shoals area, is that
15 right?

16 A Yes, sir.

17 Q Brian, do you know the three ladies sitting back here
18 on the first row?

19 A I do.

20 Q And who are they?

21 A This is Ricky's wife. And her two daughters.

22 Q And do you know their names?

23 A Minor 1 and Minor 2 .

24 Q And what is his wife's name?

25 A Christy.

1 Q Were you over at the house they were living at
2 together a good bit?

3 A A lot, yes sir.

4 Q Where do you work, by the way?

5 A CB9, (phonetic).

6 Q What is that?

7 A It is a nuclear, we make nuclear pipe for nuclear
8 waste stations.

9 Q Now, did you observe, have chances to see Ricky
10 around the girls?

11 A I did.

12 Q Is he a pretty strict disciplinarian?

13 A Yes, sir.

14 Q Kind of raise your eyebrows, why is that?

15 A Well, a lot of things that he done, I would say is a
16 little bit strict.

17 Q He was pretty tough on them?

18 A Yes.

19 Q Okay. And did you ever see the girls reaction to
20 that?

21 A They would get mad, all of them would get mad.

22 Q All being who?

23 A Her two sons also.

24 Q And who was the main disciplinarian and ran that in
25 the home, was it Ricky or was it Christy?

1 A Both of them had a good part of it. I have seen both
2 of them discipline.

3 Q Who was the main one?

4 A Ricky was.

5 Q Answer any questions that Mr. Sheek might have.

6 MR. SHEEK: No questions, Your Honor.

7 THE COURT: You may step down, Mr. Babb.

8 MR. HOWE: Can we have a short break.

9 THE COURT: Okay. Y'all go to the jury room, don't
10 discuss the case.

11 (Whereupon, the jury was excused from open court for
12 a break.)

13 THE COURT: Bring the jury in.

14 (Whereupon, the jury came into open court at
15 approximately 9:37 a.m.)

16 THE COURT: Mr. Howe.

17 MR. HOWE: We would call Ricky Pace to the stand.

18 RICKY PACE, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Howe:

22 Q Ricky, give us your full name.

23 A Ricky Dale Pace.

24 Q Ricky, how old are you?

25 A I am 50.

1 Q What is your height and weight?

2 A 5'10", 200.

3 Q Back in 2010, 2011, what was your weight?

4 A 210.

5 Q About 210, you lost a little bit?

6 A Yes sir, I have.

7 Q Now, how far did you go in school?

8 A 11th grade.

9 Q Can you read and write okay?

10 A I can read good but can't nobody read my writing but
11 me.

12 Q So, what kind of work have you done?

13 A I work for myself. I have a rollback, I haul cars.
14 Plus I am still volunteer firefighter. I have been
15 firefighting for ten years.

16 Q What company are you with?

17 A Eagle Station 15.

18 Q Where is that located?

19 A right above my house. And in 2010 I
20 won Firefighter of the year.

21 Q Proud of it, aren't you?

22 A Yes sir, I am.

23 Q Now, Ricky, where do you live?

24 A

25 Q Is that your home?

- 1 A That's correct.
- 2 Q Who lives there with you?
- 3 A My father and a friend.
- 4 Q How old is your father?
- 5 A 86.
- 6 Q And you help take care of him?
- 7 A Yes sir, I am his primary.
- 8 Q And you have been, have you ever been married before?
- 9 A A few times.
- 10 Q How many times?
- 11 A Christy was my third.
- 12 Q And you have a child in the courtroom here?
- 13 A That's correct.
- 14 Q Who is that?
- 15 A That is Tracy, that is my baby.
- 16 Q Now, Ricky, you are still married to Christy Pace,
- 17 right?
- 18 A Yes, sir.
- 19 Q And tell the jury about how y'all met?
- 20 A Bar.
- 21 Q And after y'all met did y'all ever live together
- 22 before you got married?
- 23 A A good while. I can't say exactly how long but we
- 24 lived together.
- 25 Q Where did you live?

1 A Excuse me?

2 Q Where did you live?

3 A We dated, talked on the phone and she moved in with
4 me at

5 Q At your home?

6 A Correct.

7 Q And that's, when she moved in who else moved in with
8 her?

9 A There was Minor2 , Minor1 , C.B. and J.M. .
10 J.M. , he was sort of in and out, he had a mentor in
11 Laurens. Actually it is the Reverend that married us.

12 Q Let me show you this and, do you recognize that?

13 A Yes sir, I do.

14 Q What is that?

15 A Just a little family photo, nothing special.

16 Q Family photo. Who took the photo?

17 A Christy did.

18 MR. HOWE: Your Honor, I would ask for this to be
19 marked. I think it is defense 2.

20 MR. SHEEK: Without objection, Your Honor.

21 THE COURT: Defense 2 is admitted without objection.
22 (Whereupon, Defendant's Exhibit 2 was admitted into
23 evidence.)

24 Q So, Ricky, who all is in the photo, take a look at
25 it?

1 A Minor1 is sort of leaning over. Minor2 is sitting
2 on my right side, C.B. is laid back on me and J.M. is
3 sort of behind me. And it is in my recliner chair.

4 Q Now, Ricky, let's go ahead and cover this subject.
5 Did Christy have what you would call a sex toy?

6 A Yes sir, she did.

7 Q Was one of them a vibrator?

8 A Yes, sir.

9 Q And was there another kind of toy or something like
10 that?

11 A It was a whip, some kind of a little whip.

12 Q And those were hers, right?

13 A Correct.

14 Q And were they kept away from the children or was
15 there ever any time when the children might have been
16 exposed to them?

17 A To the best we could, we did, but we lived in a
18 mobile home, it is self explanatory. It doesn't have any
19 hidden doors or nothing. So I thought we had them hid
20 pretty well.

21 Q What about the whip, was there ever a time it was
22 around one of the children that you know of?

23 A They was all in the same box.

24 Q Tell me what kind of relationship that you thought
25 you had with Minor1 and Minor2 ?

1 A When this, when the family broke up I was 47 years
2 old. And in my heart I thought I had the best family, I
3 was the happiest I had ever been.

4 Q Now, but you heard what your daughter and in-law
5 said. Who did the discipline in the house?

6 A I was the primary. Now, I had the approval of
7 Christy.

8 Q Did you ever spank the children?

9 A I did early on, this is even before we got married
10 and I just decided there has got to be a better way. I
11 didn't like it to be honest with you. So I stopped
12 spanking the kids and started giving them sentences and
13 you go to your room, this type of thing. Instead of the
14 sentences, they would rather have a spanking. But I
15 didn't give it to them.

16 Q And how would each of the children react to other
17 discipline that you put on them?

18 A J.M. hated it, J.M. is a real intelligent young
19 man and he could have 100 sentences wrote in 20 mintues.
20 There wasn't but a couple of occasions that he would get
21 sentences.

22 Q But the others didn't like it?

23 A Not at all.

24 Q And I am talking about the girls now, were the girls
25 provided for, did they get things that they needed and

1 wanted?

2 A They got everything they needed and probably
3 ninety-five percent of what they wanted at least, you
4 know. They were well taken care of.

5 Q But you had rules?

6 A Yes, sir.

7 Q Now, let's go to what happened on February 28th of
8 2011, do you remember that?

9 A Yes, sir.

10 Q What were you doing that particular day?

11 A We were building an addition to our house and in fact
12 it was going to be a game room for the children. I was
13 going to put in a big screen TV with games and pool
14 tables, bla, bla, bla. Something we could get out and
15 have some entertainment in the home rather than sit and
16 watch TV. You know.

17 Q And what size was the room. I forgot to ask you, has
18 the room been finished?

19 A Not completely. It has got a roof on it and all but
20 it is not completely finished. And it is a 16 by 20, it
21 is a pretty big sized room.

22 Q And on February 28th you were working on that?

23 A Correct. Was building the stud walls and stand them
24 up and set them where they need to go, that type of thing.

25 Q Who was there while you were doing this?

1 A There was C.B. , Minor1 and Minor2 .

2 Q C.B. , would he had been the youngest of the three
3 children we talked about?

4 A Minor2 was the youngest.

5 Q C.B. would have been the middle?

6 A I don't know who is older, him or Minor1 .

7 Q Were you getting any help out of the children. Well,
8 let me ask you this first of all. In doing what you are
9 doing and standing the walls could you do that by
10 yourself?

11 A No sir, you could not. I mean, it would have been
12 three times harder.

13 Q So you needed some help?

14 A Yes, sir. Getting them accurate by yourself.

15 Q So who were you getting help from?

16 A Minor1 and Minor2 and C.B. . They, mostly the
17 girls. Minor2 was fascinated with a nail gun and
18 building the stud walls.

19 Q And did anything happen while you were trying to
20 finish this part of the job?

21 A Yes, sir. It was getting on in the afternoon and I
22 done got tired. You know, Minor1 was holding one end of
23 the tape measure and I sat the wall by the other end. And
24 Minor2 come across and hooked her foot on the tape
25 measure and jerked it out of my hand and Minor1 's hand.

1 Q Let me stop you right there. Is this the tape
2 measure?

3 A That is the exact tape measure.

4 Q What is the length of that?

5 A Thirty foot.

6 Q How much length were you trying to use to do what you
7 were doing?

8 A Sixteen foot.

9 Q And so after this happened, did it do anything to the
10 tape measure other than knock it out of your hand?

11 A It bent it, I couldn't get it to go back in.

12 Q How did you react?

13 A I told Minor² she was going to show out where we
14 was working, the trampoline, I bought them a trampoline,
15 it was approximately 20 foot from the porch. I said, go
16 get on the trampoline.

17 Q Were you pretty firm about it?

18 A I was.

19 Q And how did she react?

20 A She started crying a little bit and went and got on
21 the trampoline.

22 Q And later on did you notice whether the girls had
23 gone any where?

24 A I knew they had gone somewhere because I didn't see
25 them so I didn't know where. I was building a little tent

1 club house sort of thing up in the woods. That is where
2 they ended up being, I later found out.

3 Q Now, where was Christy during this time?

4 A It was on a Sunday so she was at work.

5 Q She worked weekend shifts?

6 A Correct.

7 Q Walmart Distribution?

8 A Correct.

9 Q Now, at some point and time did Christy come home?

10 A Yes.

11 Q About what time?

12 A I would guess, 6:00 o'clock, 5:00, you know, she gets
13 off at 5:00 or 5:30. Usually home 6:00, there in abouts.

14 Q What happened when she got home?

15 A I was in the shower when I heard her pull up and just
16 actually getting out of the shower. And I was drying off.
17 I got dressed and like I said, I had worked hard, I was
18 tired and I went straight to my chair. And I hadn't been
19 sitting there a minute until Christy walked up and she
20 said, you know I have got to leave you.

21 And I said, no, I didn't know that. What have you
22 got to leave me for.

23 The girls said that I had been messing with them.

24 I said, well, the girls are lying.

25 And I stood up at that moment, I said, well, let's

1 carry them to the doctor there at the ER, the doctor is
2 closed. Let's carry them to the emergency room and get
3 them checked out. You know, and if anything has come back
4 that I have done to them or something, they think I have
5 done, I will wait on the police myself. You won't even
6 have to chase me down so to speak.

7 Q So you said take them to the hospital?

8 A Right.

9 Q Now, did they go to the hospital?

10 A No, sir.

11 Q Did you stay there?

12 A No, sir. I just, my mind was blown and I have been
13 through an anger management class years ago. And they
14 said, they taught me, if you can't handle a situation
15 remove yourself. So that is what I done.

16 Q So, where did you go?

17 A Riding just to try to collect my thoughts. But when
18 I got back they were gone.

19 Q After they got gone did you continue to see and speak
20 with Christy?

21 A We had no contact for two weeks until she carried the
22 girls to the doctor. All right. Then she called me and
23 came over the next day and brought the doctor's report
24 with her.

25 Q And did you continue to talk with her on and off up

1 until the time you were arrested?

2 A Pretty close. We stopped seeing one another May
3 17th.

4 Q May 17th?

5 A May 17th. Because school let out the 18th and she
6 would come visit while the girls were in school.

7 Q Do you know what you are on trial for here?

8 A Yes sir, I do.

9 Q Do you know what you have been accused of doing?

10 A Yes, sir.

11 Q You heard the testimony?

12 A Yes, sir.

13 Q Read the reports?

14 A Yes, sir.

15 Q Did you sexually molest these girls?

16 A No sir, absolutely not. Personally I think a child
17 is the most beautiful thing in the world. There is
18 nothing sexy about them.

19 Q You didn't do this?

20 A No, sir.

21 Q Answer any question Mr. Sheek has for you.

22 MR. SHEEK: Your Honor, I have a matter of law before
23 we start cross-examination.

24 THE COURT: Y'all approach.

25

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

4 THE COURT: I have to put something on the record.
5 Y'all step in the jury room, we will have you right back
6 in.

7 (Whereupon, the jury was excused from open court.)

8 THE COURT: All right, Mr. Sheek. Start with your
9 comment about where you started the conversation on
10 sidebar.

11 MR. SHEEK: I will, Your Honor. I will ask to be
12 allowed to proffer what I would propose to go into. It is
13 my understanding, information from testimony would be from
14 this witness that during one of his previous marriages he
15 had a step-daughter. And then subsequent to the breakup
16 of that marriage he actually dated that child
17 romantically, went out to dinner or movies, whatever it is
18 they had done with his step-daughter or former
19 step-daughter. I think based on the remark he just made
20 to the jury, well, I think children are the most beautiful
21 thing but there is nothing sexual about them. I think
22 that is something that I should be allowed to go into.
23 Obviously he saw something attractive with this
24 step-daughter. And if you would like I would be happy to
25 proffer exactly what I will ask him.

1 THE COURT: Go ahead. Mr. Howe can make his
2 objection.

3 CROSS-EXAMINATION

4 By Mr. Sheek:

5 Q Mr. Pace, you have a step-daughter from a previous
6 marriage, is that correct?

7 A That's correct.

8 Q What was that child's name?

9 A Donna Godfrey.

10 Q And how old was Ms. Godfrey, Donna Godfrey when you
11 married her mother?

12 A 13 or 14.

13 Q About the same age that Minor2 is now?

14 A That's correct.

15 Q And how long had y'all dated before you got married?

16 A I don't know, roughly a year.

17 Q Okay. So, you knew Minor2 from the time she was
18 about 12 years old?

19 A Minor2 ?

20 Q I am sorry, Ms. Godfrey, since she was about 12 years
21 old?

22 A I probably would say, yes.

23 Q And how old was Ms. Godfrey when you split up from
24 her mother?

25 A She is 12 years older than I am, and I am 50. So, we

1 lived together five years. A little over five years.

2 Q So she was about 18 when you split up?

3 A Correct.

4 Q That is when you started dating her daughter?

5 A No, sir.

6 Q How long was it before you started dating her
7 daughter?

8 A It was right about another year.

9 Q So when she was 19?

10 A Yes, sir.

11 Q And you found this former step-daughter of yours
12 attractive, correct, romantically attractive?

13 A That's not correct. She come to my house and was
14 wanting to spend a little time together. The divorce was
15 already final so she was no longer my step-daughter.
16 Okay. But, yes, we just hung out as buddies.

17 Q When you talked to Ms. Childress back in 2011 you
18 told her that y'all dated, didn't you?

19 A Well, a lot of people call it dating, you can call it
20 that, it doesn't mean nothing has to happen, you know.

21 MR. SHEEK: That is the testimony that I would seek
22 to proffer, Your Honor.

23 MR. HOWE: Your Honor, can I ask a couple of
24 questions.

25 THE COURT: Yes.

CROSS-EXAMINATION

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By Mr. Howe:

Q What year would that have been?

A The divorce was final in December 19th of '95. So that would have been, mid, later part of '96. That has been a long time ago, I'm old.

Q 1996?

A Yes, sir.

Q That's, and this former step-daughter was not a child, she was over 18?

A She was 19.

Q 19. Okay.

A If she had of graduated, for her graduation I bought her a '65 Mustang.

Q Okay. All right. That is all I have.

MR. HOWE: And, Judge, I would say it is not relevant and it is extremely prejudicial because he is wanting to go into when the child was 13. The implication would be that there was some kind of improper conduct and there is obviously no evidence of that whatsoever. We are talking 1996. That is just, that doesn't do nothing but inflame.

THE COURT: Mr. Sheek, anything else.

MR. SHEEK: I don't have anything to add.

THE COURT: I am having trouble seeing the relevance. So on the relevance basis as well as a 403 analysis I

1 don't find that it's probative value would outweigh it's
2 prejudicial value. So I would disallow it under Rule 403.

3 MR. SHEEK: Yes, sir. And so we are all clear, we
4 will go into the anger management but I will ask him what
5 is prior criminal history was, just the anger problems.

6 THE COURT: That's right. Bring the jury.

7 (Whereupon, the jury came into open court at
8 approximately 10:05 a.m.)

9 THE COURT: Mr. Sheek.

10 CROSS EXAMINATION

11 By Mr. Sheek:

12 Q Mr. Pace, you say you are 50 years old?

13 A Yes.

14 Q And you told Christy, your wife on February the 28th
15 that Minor1 and Minor2 were lying, correct?

16 A Correct.

17 Q And that is what you are telling this jury here
18 today, correct?

19 A That is correct.

20 Q And you had a chance to go in and speak with Ms.
21 Childress and did talk to her, didn't you?

22 A Yes, sir. She called me.

23 Q And you said to her and I think you will maintain
24 today that your relationship with Minor1 and Minor2 was
25 fine, wasn't it?

1 A I thought it was.

2 Q You couldn't tell Ms. Childress and can't tell this
3 jury of any reason that Minor1 and Minor2 would want to
4 get revenge or get even with you or anything like that,
5 could you?

6 A Well, I heard through the grapevine--

7 Q No sir, I am not asking what you heard through the
8 grapevine.

9 MR. HOWE: If he can finish answering the question,
10 Judge.

11 THE COURT: Okay. Ask the question and let him
12 answer.

13 Q Do you know of any reason these children wanted to
14 get even with you?

15 A They hated discipline.

16 Q Okay. Because they hated discipline. When Ms.
17 Childress asked you, do you know of any reason why. What
18 did you tell her?

19 A It has been too long ago.

20 Q Well, I understand but the truth remains consistent,
21 doesn't it?

22 THE COURT: He has given a statement. You can show
23 it to him. He said he doesn't remember.

24 A It has been too long ago.

25 Q Okay.

1 A I have been through a lot.

2 Q The child said that you threw a tape measure to her,
3 is that what you have been told. You threw a tape measure
4 at her head?

5 A I have been told that, yeah. I threw it but it
6 didn't, it got jerked out of my hand.

7 Q Okay. And you heard her testify that she didn't get
8 hit with the body of the tape measure but the metal part?

9 A Minor 1 was holding that end, not me.

10 Q I understand that. But you heard that is what she
11 said?

12 A Yes, that is correct.

13 Q Now, those tape measures are spring loaded so it
14 automatically withdraws the tape measure, right?

15 A Correct.

16 Q So if you threw it then the metal part should be
17 sticking out, correct?

18 A It bent where it wouldn't--

19 Q That's right. And it had actually bent and was
20 sticking out, correct?

21 A For about four foot.

22 Q And wouldn't go back in?

23 A Correct.

24 Q That is what your testimony was, it wouldn't retract?

25 A Correct.

1 Q So in her testimony that when you threw it it was
2 still sticking out, that is consistent with the tape
3 measure being bent, isn't it?

4 A I was sixteen feet away, four foot don't add up to
5 sixteen foot.

6 Q Unless of course you threw it?

7 A I didn't throw it, it got jerked out of my hand.

8 Q How did you get it fixed. I noticed you said that
9 was the exact one and it is retracted fine. How did you
10 get that fixed?

11 A I just bent it back the best I could. You are
12 welcome to try it, it won't go in on its own, you have got
13 to push it.

14 Q Okay. Can I try it?

15 A Try it, by all means.

16 (Whereupon, Mr. Sheek retrieves the tape measure from
17 defense table.)

18 Q In fact it will stay out so if you did throw it that
19 part is--

20 A I didn't throw it, I didn't have that end of it, I
21 had the other end of it.

22 Q What were you doing with it?

23 A I was setting walls.

24 Q And using that to set what, you were measuring out
25 where to set the walls?

1 A Correct.

2 Q And you said you needed help?

3 A Yes, sir.

4 Q And the help you needed was from a 10-year-old and a
5 13-year-old little girls?

6 A They had been a part of it thus far.

7 Q You were getting frustrated because you didn't feel
8 like you were getting enough help?

9 A No, I was getting tired because I had worked hard
10 because it was later in the evening.

11 Q So you were just testifying to Mr. Howe, you were
12 talking about how they weren't helping you and you thought
13 they should. They were not doing, you got frustrated and
14 sent Minor2 away?

15 A I got frustrated because, I don't know, I take for
16 granted that what I know everybody ought to know. And I
17 can do a lot of things.

18 Q What was the source of your frustration then, what
19 was it that you were wanting the children to know?

20 A I was having to travel sixteen feet back and forth to
21 show her where to old the tape measure and hold it right
22 here and don't let it move. And by my reading on the
23 other end it was moved.

24 Q You said Minor2 was fascinated with the nail gun?

25 A Yes, sir. I would hold the two by fours in place and

1 Minor2 would get the nail gun and pop them.

2 Q You let a 10-year-old little girl use a nail gun?

3 A Yes, I probably showed her how. It will not fire
4 unless the trigger is held down and then you have got a
5 safety mechanism on the end of it, it has got to be
6 compressed before it will fire.

7 Q You hold the trigger and take it and you push that
8 guard down and it fires?

9 A Correct. I didn't teach her like that, I teach her
10 to nail one at a time.

11 Q The nail gun wouldn't nail two at a time, would it?

12 A That one never has.

13 Q All right. You testified that there was this sex toy
14 like Minor2 described, wasn't it?

15 A Yes, sir.

16 Q And it was in a shoebox, wasn't it?

17 A Yes, sir.

18 Q You testified that it wasn't something that you were
19 aware of her having seen before, correct? Are you aware
20 of Minor2 having seen that sex toy?

21 A I really hadn't thought about it one way or the other
22 until this come about. I had it hid, between Christy and
23 I we had it hid best we could.

24 Q Was it in an orange Nike shoebox?

25 A They said it was orange, I thought it was yellow. But

1 it was a shoebox regardless.

2 Q That testimony about her was orange, wasn't it?

3 A I thought it was yellow, they think it is orange. It
4 was a shoebox, correct.

5 Q Did the drawing that has been entered as State's
6 exhibit number 4, is that an approximate shape and design
7 of that device?

8 A I would say, yes, it is decently accurate.

9 Q When Mr. Howe was asking you questions. You said the
10 children were always provided for?

11 A Yes, sir.

12 Q You are not trying to tell this jury that you were
13 the one that was doing all of the providing by any means,
14 are you?

15 A Oh, no, no, no, absolutely not. I looked at it as a
16 family, you know, I knew they had issues about my part of
17 the discipline. Back in my day we got our tail tore up
18 and that is something I didn't want to, for them to
19 remember. So I try to find other ways to discipline them.

20 Q Christy worked all the time, right?

21 A She worked Friday, Saturday and Sunday.

22 Q And your daughter testified and your son-n-law, they
23 said Christy was usually gone and it was you there doing
24 stuff with the kids. Do you recall that?

25 A Yes, sir.

1 Q Is that accurate?

2 A I couldn't never figure out and I can't to this day,
3 why the school would not call Christy to come get a child
4 if they were sick. They would call me. And a lot of
5 times I would be at work and I would have to get off and
6 quit work and go get the child. A lot of it I still don't
7 understand. This is during the week, because she was at
8 work on Friday's.

9 Q So during the week she was home?

10 A Correct. Well, she should have been at home a lot of
11 times. She said she was going to go visit her mother a
12 lot and this kind of thing.

13 Q What were your work hours?

14 A Excuse me?

15 Q What were your work hours?

16 A I am a workaholic. So it is according on my job. I
17 don't do one particular thing for a company. I have a
18 rollback, I run, I haul cars. So, whatever, I made sure
19 the kids weren't left alone. When I worked I worked out
20 in my yard. The kids were in the house or out in the yard
21 playing. Most of the time if I was out in the yard
22 working they were really on the trampoline.

23 Q What was your major source of income?

24 A Consistently probably Christy, Christy's income.

25 Q So when she left on February 28th, she got her things

1 and left that night, didn't she?

2 A Yes sir, when I went riding and come back she was
3 gone.

4 Q She didn't try to take anything out of your house,
5 did she?

6 A She took \$7,200.00 dollars cash.

7 Q She took the cash which was mainly made by her,
8 correct?

9 A Yes.

10 Q And other than that she didn't try to take anything
11 from you, has she?

12 A No, sir.

13 Q In any way--

14 MR. HOWE: He hasn't finished answering the question,
15 Judge.

16 A We hadn't had any contact in approximately three
17 years.

18 Q You previously went to anger management because you
19 admit you have problems with anger, correct?

20 A Yes, sir. I don't even know what year it was it has
21 been so long ago.

22 Q That is all I have.

23 MR. HOWE: No redirect, Judge.

24 THE COURT: You can step down.

25 MR. HOWE: Your Honor, the defense rest.

1 MR. HOWE: That is fine with us.

2 THE COURT: Ms. McNeill.

3 MS. MCNEILL: Good morning. Y'all, this is the last
4 time that I am going to have the opportunity to say
5 anything. Now we are at the part, this is called closing
6 arguments. It is basically every witnesses who has
7 testified is called a little piece of the story. And here
8 is where the lawyers have the opportunity, Mr. Sheek will
9 get up here and have the opportunity as well after I do to
10 tie all of this together. So that is what we are going to
11 do now. And Mr. Sheek gets to go last. There is times
12 when I am sitting over at the table and I am going to be
13 writing things that I want to respond to what he says and
14 I am not going to be able to get up again and to say, this
15 is my final opportunity to talk to you. That is because
16 Mr. Sheek has the burden of proof. Remember that word,
17 the proof has to be beyond a reasonable doubt. And so he
18 has that burden and that is why he gets to go last. All
19 right. I don't get to go last. What does beyond a
20 reasonable doubt mean. Well, the Judge is actually going
21 to instruct you on the law and he is going to give you
22 that definition of beyond a reasonable doubt means. It is
23 that doubt that would cause, cause a reasonable person to
24 hesitate to act. If anything that you heard in the trial
25 causes you to hesitate to act to find Mr. Ricky Pace

1 guilty then you must find him not guilty. That is what
2 that means. Another way I like to describe it is this.
3 Let's say there is a box, okay. And the box has a cat and
4 a mouse in the box. And if you open up the lid of that
5 box and you no longer see the mouse you would probably be
6 firmly convinced that that cat ate that mouse. You
7 wouldn't have a reasonable doubt. So, you would make a
8 decision that cat ate that mouse. But scenario two, let's
9 say that same box is there. And now there is a hole in
10 the box the size of that and there is a cat and a mouse in
11 the box. And you open up the lid of that box and now you
12 no longer see the mouse inside of that box. Did the cat
13 eat the mouse or did the mouse escape in the hole. That
14 would be reasonable doubt. It might cause you to hesitate
15 to act. Because it is possible that the mouse escaped
16 from the hole and was not eaten by the cat, that is
17 reasonable doubt. Okay. I hope that makes sense for
18 y'all. I do want to thank you all for your attentiveness
19 throughout this trial. I know every single one of you is
20 probably uncomfortable at a time. These cases where you
21 have a child witness accusing somebody of doing something
22 really horrible, these are uncomfortable for me to try. I
23 am sure it is uncomfortable for the State to try. It is
24 uncomfortable for the defendant to sit there. This case
25 is extremely uncomfortable for Mr. Ricky Pace and for the

1 alleged parties that are making the accusation. This is
2 an uncomfortable situation and I know that y'all have
3 stayed through this attentive as can be. And we really
4 appreciate that. Because you are Mr. Pace's jury also.
5 All right. You are not only the jury for the State but
6 you are Mr. Ricky Pace's jury. All right. And you have
7 sworn to be fair and impartial. So when you are sworn to
8 fair and impartial what that means is you are unbiased,
9 neutral people who are just judging the facts of the case.
10 As each person took that stand you are to decide, no one
11 can decide for you how credible or uncredible their
12 witnesses testimony is. Now, what I am saying is that if
13 those girls' testimony was credible in your minds, well, I
14 submit to you that Mr. Ricky Pace's testimony was just as
15 credible. There was nothing that impeached his testimony
16 that you heard. Okay. He sat up there, told his side of
17 the story. Sometimes looked you in the eye and he said, I
18 did not molest these girls. Remember he plead not guilty
19 to these offenses. If it was as simple as he was guilty
20 we wouldn't be here. That is why we have trials. So keep
21 in mind his credibility on the stand as well. His is a
22 classic he said, she said case. It is classic. There is
23 no physical evidence whatsoever in this case. Didn't see
24 a vibrator in this case. Now, you heard testimony from
25 Mr. Pace, from the girls, from Christina Pace, that this

1 vibrator existed. And Mr. Ricky Pace admits that there is
2 a vibrator too. Where is it, we don't know. But there is
3 also no injuries to these girls. Now Mr. Sheek got up
4 here and said in his opening statement, to use common
5 sense, right, use your common sense throughout this trial.
6 I am asking you to use your common sense now, right before
7 you go back into that room and you deliberate. I am
8 asking you to use your common sense. Let's think about
9 this. Minor2 , the younger girl. Okay. She was 10
10 years old at the time these allegations came about and now
11 she is 13 years old. She has testified that and you saw
12 it through testimony on the stand and then the forensic
13 video that was played for you guys, so we have two sources
14 of information now. And what she testified was that she
15 was laying on the couch, she had been in the living room
16 watching TV right before she accused Mr. Pace of coming
17 and molesting her with a vibrator. Let's think about
18 this. Common sense, right. She is laying on the couch,
19 she says Ricky went into the back room and went to the
20 closet and this orange Nike box that held the vibrator was
21 on the top shelf of this closet in the back bedroom. How
22 would she know where this vibrator is kept or she is in
23 the living room the entire time which she testified she
24 was. How would she know where that vibrator is kept
25 unless she has been in the back bedroom previously and her

1 and her sister or cousin, Minor2 and Minor1 , unless they
2 had been in that back bedroom before and fooled around and
3 went through things like kids do. How would she know
4 where that vibrator is kept unless she personally saw it
5 in an orange box on the top shelf in the closet in the
6 back bedroom. She never saw Mr. Pace go back in that back
7 bedroom. If what her testimony is true, that she was in
8 the living room the entire time. I hope that you can see
9 that, it is common sense. Okay. She also testified that
10 she was laying on the couch and that Mr. Ricky Pace who is
11 5' 10", 200 pounds now and he testified on direct with Mr.
12 Howe that he was 210 pounds at the time of these
13 allegations came about. 5'10", 210 pounds. Minor2
14 testified he was sitting on her chest area during these
15 allegations, during the molestation. He was sitting on
16 her chest area. Y'all saw what she looked like in that
17 forensic video, she was a bean pole, she was a tiny little
18 thing. Do you honestly think that a 5'10", 210 pound man
19 could sit on a child's chest that weighed about, I don't
20 know, 70 pounds and not crush her. And she testified that
21 she was kicking her legs, moving her arms and some how he
22 is able to spread her legs, pull down her pants and insert
23 this vibrator inside of her. That is a lot going on,
24 folks. And her brother is in the next room playing video
25 games and she doesn't yell, get off of me. If someone was

1 sitting on you that would be a significant larger size
2 than you don't think that you would say, get off of me,
3 get off of me for fear of being crushed to death. And the
4 pants are coming off, kicking the legs all the while he is
5 inserting this thing. And yet he doesn't, there is no
6 testimony whatsoever that he touches himself once, that he
7 says anything to these girls one time. So he is doing all
8 of this in pure silence and he is not here to pleasuring
9 himself. There is no testimony of that. Does that make
10 common sense to you, that that 210 pound man can get on
11 this girl, so much is going on and she doesn't even yell,
12 get off of me. We are talking about living in a mobile
13 home, folks. All the walls are thin, the home is not big.
14 If she had made a peep I am certain that the little boy
15 would have come in and said, what the heck is going on.
16 And she testified that it is in the living room. That is
17 a common area. If that little boy had been in the bedroom
18 playing video games, could have walked out at any second
19 to go in the kitchen and get a drink of water. Is it
20 common sense that a molestation would have occurred in
21 open common area like that where there is a possible
22 threat where somebody else walking in at any given moment.
23 Common sense, y'all. That is so much going on. The other
24 thing is that and I am showing you State's exhibit 4, this
25 picture of the vibrator that Minor 2 drew. She first

1 testified that she could not draw this thing out for the
2 interviewer. But she did draw this thing out for Ms.
3 Childress sitting right here who was the lead investigator
4 on this case. Now let's look at this picture closely.
5 Okay. Common sense, if all of that is going on, if he is
6 sitting on top of her with his back facing her, she is
7 back here laying down, he is sitting on top of her, not
8 facing her, her legs are kicking, she is not saying
9 anything but yet she looks at this thing well enough to
10 know exactly where the batteries go, the batteries go. If
11 all of that is going on and it is happening and she
12 testified that it happened to her about five minutes at a
13 time. All of that is going on. Do you think she is going
14 to figure out where the batteries go. Or do you think
15 that she has snooped around with Minor1 in the back
16 bedroom to know where this closet is, to know where the
17 orange box on the top shelf of this closet is and in that
18 bedroom and probably got it out and played with it, that
19 is how she knows where the batteries go. They have seen
20 this thing before, they have seen this thing before.
21 Because all of that is going on you are not going to know
22 where the batteries go. Common sense will tell you that
23 and turn the on and off button, but the batteries? How
24 are you going to know that unless you have seen it before.
25 Common sense. And finally in regards to Minor2 , Dr.

1 Pritchard got up here and she said, basically she told you
2 she can't rule it in and she can't rule it out. Right.
3 She can't say it happened and she can't say it didn't
4 happen. It is consistent with sexual molestation but it
5 is also consistent with no sexual molestation. So really,
6 I mean she really provides the triers of the fact, which
7 is y'all, no information to help you try to determine what
8 the facts are in this case. Right. But then we had Ms.
9 Wendy Abercrombie Nix, she was the nurse practitioner.
10 The defense called her who initially saw the girls closer
11 in time to when these allegations came about. Y'all
12 remember her. And she is a nurse practitioner, no, she is
13 not a doctor. But guess what y'all, she went to graduate
14 school to get that nurse practitioner degree. She is able
15 to prescribe medications, she works directly with the
16 physician who signs up on all of her work. She stated
17 that there is no, she found no physical evidence either,
18 no physical evidence. We are talking about the vibrator
19 which has been forced into some kicking girl who is, not
20 wanting to sound disgusting, but an un-lubricated
21 10-year-old girl. Certainly, common sense would say there
22 should be bruising involved. That is a traumatic event if
23 it went down the way Minor2 testified that it went down.
24 Certainly some sort of injury would have occurred. Common
25 sense. Minor1 is the older girl, the first girl that got

1 up on the stand. She is now 16 years old, 13 at the time
2 these allegations took place. And she said that when
3 Minor2 first came to her with these allegations that she
4 didn't say anything about Ricky molesting her because she
5 wanted to be a role model and didn't want Minor2 to
6 think that, oh, it happened to you and I don't really know
7 what her inference was there. But she wanted to be a role
8 model and a strong one and she didn't want to, say hey, I
9 have been there too, this happened to me too. Now, one
10 girl alleged that a vibrator happened and by the way, both
11 girls testified that on each incident it occurred the same
12 exact way. Boy was in the bedroom playing video games,
13 they were in the living room on the couch in the common
14 area where anybody can walk through at any given moment's
15 notice and that nothing changed. He never said anything
16 to them except for maybe one time he said, don't tell your
17 mom. They both said and almost verbatim, we didn't want
18 to ruin our mommy's happiness but yet they both had ample
19 opportunity to go and tell other people. They couldn't
20 have told each other, they could have told their brothers.
21 Minor1 testified or Minor2 testified that, you know, go
22 to grandma's house or whatever and that they felt safe
23 there. And grandma had no relationship with Mr. Pace.
24 They could have told her that this is really going on.
25 They kept saying they couldn't hold it in any longer. And

1 it is not uncommon for children to delay in reporting
2 this. But these are also considerations, there are
3 factors you have to consider as the triers of the facts of
4 this case to determine the credibility. Minor1 got up
5 here on the stand and said that, you know, Ricky had done
6 this, that her pants were still buttoned because she said
7 her waist was smaller and the pants were bigger at the
8 time. So he is able to slip his hands in her buttoned up
9 pants. Okay. But, y'all, here is the thing. We are a
10 defense team. We don't need to provide a reason why. We
11 don't need to provide a reason why these girls would make
12 this up. And why would they make it up, why would any
13 child make this up. It does happen. But the reason came
14 out of their own mouths in this particular case. What was
15 that reason. Well, Minor1 said it a little more stronger
16 than Minor2 did. They did not like Ricky, they wanted
17 Ricky out of the home. And I think that on
18 cross-examination I asked her, asked Minor1, this was the
19 last straw with the tape measure, right, the last straw.
20 And she said, yes, it was. Okay. She stated, Minor2
21 was saying that she was tired of Ricky yelling at them for
22 no reason, hitting C.B., always getting mad at Minor1
23 because she doesn't want to go somewhere with him. The
24 tape measure was the last straw. Minor1 testified that he
25 had slapped C.B. across the face for getting water on

1 the floor, he had hit C.B. with a two by four, thrown a
2 tape measure at Minor2 , constantly making them write
3 sentences. These are girls that, they had not had
4 structure and discipline before meeting Mr. Pace, before
5 being introduced into their life. And they both testified
6 that, yes, they liked him okay for a while and then about
7 a year later or six months later they started not liking
8 him. Why is that because he then felt more comfortable
9 and confident in his role as their father figure. He
10 started to discipline them heavily. He wasn't going to
11 take any crap from those girls. He gave them a couple of
12 hundred of sentences to write every time they were acting
13 up, I will not run through the house, I will not run
14 through the house, I will not run through the house, I
15 will not run through the house. Not letting them go
16 places they wanted to go, making them sit down and do
17 their homework. Y'all heard from Mr. Pace's biological
18 daughter who is sitting there in support of dad right now.
19 She turned out very good with a nice husband. They were
20 sick of it. And in fact Minor2 , I mean Minor1 testified
21 that Minor2 came up to her after the tape measure and
22 said, that's it, I am sick of this, I'm telling mom. As
23 soon as the tape measure happens, that's it, I am sick of
24 it, I'm going to tell mom. What can you infer from that.
25 I am getting this jerk out of my house. That tape measure

1 was the last straw, last straw. And Minor 1 testified, I
2 didn't tell Minor 2 that when she came to me crying
3 saying he had touched me. Common sense would tell you
4 that would be the perfect time to confide. Hey, you know
5 what, it happened to me too. But she said she didn't say
6 it. Not only until after they started talking in those
7 woods and came back with this story, that is when Minor 1
8 said, yeah, I am going to say this too. Minor 1 wasn't
9 really sure about how many times this happened. When
10 asked, it happened two or three times. Now let's be
11 clear, Ricky Pace is charged with five counts of lewd act
12 on a minor, five counts. Now where do those five counts
13 come from. They come from the alleged date that this
14 occurred. The alleged date. So two of those dates
15 Minor 2 said, and she got up here and said she couldn't
16 remember when they were. But two of those dates come from
17 Minor 2. She said it happened twice, the exact same way,
18 he sat on me on the couch, ripped my pants down, I'm
19 kicking, he is holding me down, 210 pound man on my chest,
20 I don't scream, get off me. Two times there. And then
21 Minor 1 says up here, I am not sure if it happened two or
22 three times. I am not sure. Could have happened twice,
23 could have happened three times. But three of those days
24 are where the other three counts of lewd act on a minor
25 come from bringing it to a total of five. That is where

1 that comes from. Okay. And she is not even sure. I know
2 y'all are sick of me harping on this issue. There are
3 definitely things I have forgotten. I am going to sit
4 down and I am going to say, oh, I should have said that or
5 I should have gone there. But this is the nature of the
6 beast. I am asking you to think about that box with the
7 cat and the mouse in it. If there was no hole in the box
8 you would have no reasonable doubt to believe that cat ate
9 that mouse. But, y'all, when you use your common sense
10 and you open that box with a cat and a mouse in there, now
11 you are going to see a hole inside of that box. Did the
12 cat eat the mouse or did that mouse escape. That is
13 reasonable doubt, that is a hesitate to act. And we ask
14 you to find Mr. Pace not guilty. Thank you.

15 THE COURT: Mr. Sheek.

16 MR. SHEEK: Thank you, Your Honor. May it please the
17 Court, Madam Forelady, ladies and gentlemen of the jury.
18 There is not a cat or a mouse in the box. There is a man
19 holding the box and is a child molester. We can talk all
20 we want, we can use legal terms, we can play our games.
21 But when the rubber meets the road one question you have
22 got to answer, who is telling me the truth. Somebody sits
23 in that chair and swore to tell the truth and then balled
24 face lied to you. This isn't a situation where somebody
25 robbed a convenient store and we are arguing over the

1 identity. I think it was him, well I don't think it was
2 him. It looked like him to me. I did a photo lineup.
3 Well, he was over here with me. That is my alibi. That
4 is not what we are dealing with here. We are dealing with
5 these two children who got on the stand and told you, my
6 step-daddy, Ricky Dale Pace, the man sitting right there
7 sexually molested me. And Ricky Dale Pace then got on
8 that stand and looked at them and said, they are liars.
9 All you have got to do is decide who is telling you the
10 truth. So let's talk about that. To sum it up, one
11 question I heard in this trial and then it hit me like
12 somebody slapped me on the face. Why didn't you run.
13 That is the question that is asked to a child who is 10
14 years old and sexually molested by her step-dad. I would
15 imagine there is a number of reasons why she didn't run.
16 How about because she was 10 years old. And a grown man
17 was molesting her. Why is this happening to me, what is
18 going on, he is an adult, is this something that happens,
19 is it not something that happens. What do I do. If I ran
20 where am I going to go. And how far am I going to get and
21 who is going to believe me. But let me tell you
22 something, guys like this do these kind of things to these
23 little girls, they cling to reasonable doubt like a life
24 preserver because they know it goes to court it is my word
25 against hers. You just heard it. And as I was talking

1 about this last night, I thought I can't get upset with
2 these two, these lawyers, they are good lawyers because
3 they have an oath and a duty and their duty in this case
4 is to one person and one person only and it is Ricky Dale
5 Pace. Their only duty is to protect him. The only people
6 who have walked in this courtroom who have raised their
7 hand and took an oath, was very impartial, that is you
8 people. That is what y'all are here for, they are here
9 for Ricky. And she can get up here all she wants and try
10 to tear apart a 10 year old girl or a 13 year old girl.
11 Well, is it reasonable and for a second don't think you
12 can't come back and listen to the testimony. You can
13 listen to the testimony. You remember she said he was on
14 top of her and he was holding her arms with his legs and
15 She even showed it with a doll. You can look at the tape.
16 She never said he was sitting with his full leg down on
17 her chest. Folks, I raised two boys, they are 19 and 15
18 now. And the whole time they were growing up, from the
19 time they got big enough they wanted to challenge, they
20 wanted to wrestle. And I would pen them down and they
21 couldn't get up until they said daddy is the best. That
22 is the way we would do it. I would have one leg in one
23 arm and one leg in the other and they couldn't move but
24 you have got to say it before I let you up. And don't
25 think for a second that for a grown a man and hold this

1 little girl down and take a sex toy and touch her on her
2 private parts that he has got to rip her or tear her. You
3 heard from an expert. The reason Dr. Pritchard came in
4 here and talked to you is to let you know, she is an
5 expert that does this kind of pediatric child abuse and
6 has been doing it for a long time. Does these
7 examinations all the time and she told you that in the
8 majority of cases, even if there is penal penetration we
9 are not going to see tearing. They are going to say, she
10 is kicking and screaming. It had to tear. That is not
11 what Minor2 said as a matter of fact. You have to look
12 at it, Minor2 said she was also being held with her legs
13 down but she couldn't see how. I don't know how he was
14 holding my legs down. He had his back to me, she couldn't
15 see how he was holding her. Minor1 said when he stuck his
16 hands down her pants C.B. was in there and she said I am
17 assuming, and this was on cross-examination, how do you
18 know what C.B. was doing. That is what he did in his
19 room. She really doesn't know, she just knows he was in
20 his room. But they would have you believe a child
21 molester, these girls made it up. So let's explore that
22 for a second. They have made it all up, they made it up
23 three years ago, they told the police, they told the
24 doctors, they have stayed consistent, they have come to
25 court, they had the joy of sitting on the stand and

1 telling 13 people they don't know about being touched in
2 their private parts. All of the enjoyment I am sure they
3 got out of that. They got up there just to make it up.
4 Well, I have learned, people don't do things without a
5 reason. They sat here and said, we don't have to prove
6 motive, we don't have to prove anything. They don't, they
7 don't have to prove anything. But, ladies and gentlemen,
8 you go back and you do use that common sense I talked to
9 you about, you think about this. Those kids, there is a
10 reason. I have done this long enough to know that. If I
11 have a case where a little girl comes in and she is
12 reported I have been molested and I find out six months
13 prior to these reports mom and dad go into some nasty hard
14 custody litigation. They are fighting over who gets the
15 child. And mama says daddy is a pervert and he is
16 touching her and daddy says mama is a drunk. And I am
17 going, I don't know. And there is red flags there. I
18 have got a situation where a 15-year-old girl has had her
19 car taken away by daddy because he don't want her seeing
20 her boyfriend. And she says, you know what, he touched
21 me. You probably will think about that. Let's think
22 about this. We don't have one child, we have got two.
23 They didn't make this up. Don't you think they would have
24 said the exact same story. She pointed, they don't even
25 tell the same story, no they don't. Minor! didn't try to

1 say it happened to me the way it happened to Minor2 .
2 And Minor2 didn't try to say it happened to me the way
3 it happened to Minor1 . They are very similar with the
4 exception of the use of a sex toy. And something else
5 that I thought was interesting. Minor1 says he reached up
6 under my bra, squeezed my breast and my nipples. Minor2
7 never said he did that. Of course, you look at that video
8 of Minor2 at 10 years old. She doesn't have breast,
9 Minor1 was older. But they have gotten together and made
10 up a story, folks? They got up here and decided to lie.
11 They must be really smart. And even though they are mad
12 enough at this guy to lie about it, lie to the police, lie
13 to the doctors, lie to the forensic interviewers, lie to
14 the Court, lie to you people, even though they are that
15 mean they don't never try to say, he stuck his penis in
16 me. They don't ever say it happened every other night for
17 a long period time, from the time we moved in there, it
18 was horrible or that he was horrible to mom. That was one
19 thing that really struck me. As the doctor told you,
20 delay is the normal. Where are you going to go, who is
21 going to believe me, who do I tell. What did that child
22 say. He was good to mom, she seemed happy, didn't want to
23 mess that up. She thought that was important. She could
24 come here and say, he was mean to mama, he was mean to
25 mama, he was beating up mama. I wonder why. Well, it

1 must be because of the financial or monetary or rewards
2 they got upon themselves for making up this story, right.
3 They packed up that night and left with the clothes on
4 their back. Didn't have their home, didn't have anywhere
5 to stay. They didn't come after him for money, furniture
6 or cars or anything else. Walked out the door. For a man
7 that was being good to mama, she didn't know what was
8 going on. You don't know. No guy is going to come in and
9 say, hey, I am going to molest children today. And then
10 when you find out you have been living with a man that you
11 had your children around that has done that, she did the
12 only thing a mama does. She left. And the child has made
13 it up. Minor2 , 10 years old making it up but she never
14 wavered the story, never fell over herself. They bring in
15 this lady who is a nurse practitioner, she is not an
16 expert. The reason that is important, the Judge is going
17 to tell you, experts can testify about opinions and other
18 witnesses can't. The nurse practitioner had never had any
19 training in child abuse. So all you can do is testify
20 about what basically was told to you. That is correct.
21 Well, let's see, what was told to you. On March the 8th
22 of 2011 this 10-year-old child, molestation by step-dad,
23 per the child. He put his fingers inside of her vagina
24 and used a vibrator on her while she was being held down.
25 You get to look at this, it is in evidence. That is what

1 she said when she went to talk to Dr. Pritchard, that is
2 what she told the police and that is what she told you.
3 Now for the best efforts of a skilled innocence, they
4 couldn't change that. That is why they asked Ricky Dale
5 Pace while he was on the stand. He said, I can't
6 remember, it has been three years. Well you know, the
7 truth and what happened really doesn't change, does it. I
8 think if my children or my step-children were to walk into
9 a room in front of the chair I am sitting in, both of them
10 came to their mother and accused me of having touched
11 them. I will probably remember what happened that night
12 and thereafter. He comes in and denies it, well of course
13 he does. He sits on that stand and tells you, I didn't do
14 it. Well, of course he did. Let's face it, I was
15 watching one of the shows on, I don't know if it was
16 National Geographic or what. There is a leopard that
17 killed a water buffalo. My gosh, that water buffalo is a
18 great big two ton beast. Because they don't go after the
19 healthy and strong. They find the weak, they find the
20 children, they cut them away where they are unprotected
21 and they get them. The child molester goes after the
22 weak, they go after the children when they are not
23 protected, that is when they do it because they know, the
24 worse is going to happen if she tells. I am going that
25 she is lying, it is her word against mine. The child that

1 comes in here and hears that over and over again, it is
2 your word against theirs. And then the defense wants you
3 to believe, well, folks if you hesitate to act you have
4 got to find him not guilty. But that is not what our laws
5 say. What our laws say is that Ricky Dale Pace walked
6 into this courtroom clothed in innocence. The presumption
7 of innocence that I can't touch or remove, I can't do a
8 thing. He was presumed innocent when he walked in here
9 and he is presumed innocent as he sat through with this
10 child. The Judge cannot remove that cloak from him
11 whether he wants to or not. Y'all go back to that room,
12 that cloak is within y'all's hands. Pick it up and look
13 at it for what he is. And you look at the people that
14 talked to you. The Judge is going to tell you, you are
15 going to judge the credibility of the people who talked to
16 you and that is their believability. Who is telling me
17 the truth. I told you that is what you are going to have
18 to decide. And he is going to give you a number of ways
19 you might want to do that and it is certainly not an
20 exclusive list. Consistency of the story they tell.
21 Motivation from what they tell of a certain story. But
22 don't think for a second simply because it is her word
23 against mine that it can't be proven. Because another
24 thing he is going to tell you is something I told you at
25 the beginning of this trial. Our legislature, knowing the

1 unique nature of sexual abuse and knowing that it is
2 typically young children, knowing that it is a crime done
3 in secret and knowing that there is rarely physical
4 evidence of it. I am going to tell you it need not be
5 corroborated for you to rest your burden on the testimony
6 of that child. Now, in this case it is, they are
7 corroborating each other, it is corroborated by that sex
8 toy. And think about something else. Ms. McNeill made a
9 big deal about how did she know about, how would she know
10 about it. What did the child actually say on
11 cross-examination. I could see into his bedroom from the
12 living room. That was never contradicted. I saw him go
13 back towards the closet and come out with the box and put
14 it on the bed. So, did the child actually see him reach
15 up and take it off of the shelf. I don't think her
16 testimony supported that. She saw him go back to where
17 the closet was, come back with the shoebox and pull the
18 toy out. That is what that child said. You can listen at
19 the testimony. The Judge is going to tell you to judge
20 their credibility. Ladies and gentlemen, in most all of
21 these cases it is her word against his and you have got to
22 decide who is telling you the truth. And in doing so,
23 what are they getting out of it. Their motivations,
24 because he made them write sentences. These kinds of
25 stuff he told the police he couldn't figure why they would

1 want to do it. Maybe because he made them write
2 sentences. You know the interesting thing with Minor 2 's
3 story because you can look at, the Judge will tell you to
4 look at other facts and see if it was corroborated. She
5 says when he got angry, he has a temper, he threw that
6 tape measure, that the metal part of the tape measure is
7 what hit her. That is the part that automatically
8 retracts. I grew up doing construction work, used one of
9 those every day. You measure and you let go and swoosh,
10 it goes in. But that one didn't. Why would the metal
11 part be sticking out. When I asked, what did he tell you.
12 What is the damage now. It was damaged when, that night.
13 That time, when they had that confrontation. Before that
14 it worked fine. After that it didn't. But she left right
15 after that, she out of the room. He says, because he sent
16 her to the trampoline. That is why it was the last straw
17 as Ms. McNeill said because she got sent to the
18 trampoline. How does she know that tape measure was like
19 that now. How does she know that. She left right then,
20 they confronted him that night, how would she know. Look
21 and see if it corroborates or if it contradicts. Ladies
22 and gentlemen, these children don't want to come in and
23 talk to y'all and tell people what happened anymore than
24 they wanted to talk to me. Ricky Dale Pace can't come up
25 with a reason why they made it up. At the beginning of

1 this trial Mr. Howe had Ricky Dale Pace to stand up. He
2 is a person, he lives here, he is a person, he lives here
3 and he said he lives here. I want to tell you, there are
4 three things I think we know from the evidence in this
5 trial. Ricky Dale Pace is a person, he lives here, he is
6 a child molester. You are not going to be able to go to
7 that room and change the fact that he is a person or that
8 he molested these children. The other one, we can take
9 care of. Go back there and you look at this evidence, you
10 look at the credibility of these children, the consistency
11 of their story and the lack of motivation for making it
12 up. The way they knew about that sex toy. You come back
13 with a verdict of guilty because that speaks the truth in
14 this case. And that is all we want is, for you to speak
15 the truth. You don't have somebody to reward, you don't
16 have somebody to punish. This isn't me versus them, this
17 is not the State versus the defense, this is about doing
18 right. And I told you at the beginning there is much more
19 here than just Mr. Pace. He is the one on trial, his
20 rights are important. This is about justice, this is
21 about our community, this is about these little girls that
22 shouldn't have to grow up experiencing what they did. You
23 can't change what they have experienced. But we can
24 protect our community now. Thank you.

25 THE COURT: It will take me about fifteen minutes to

1 give you my instructions. Can y'all sit another fifteen
2 minutes.

3 (Whereupon, the jury answered in the affirmative.)

4 THE COURT: Once I give them to you at the very end I
5 will excuse y'all, speak to the lawyers to make certain my
6 instructions were complete. We will gather the evidence
7 and the verdict form and then y'all can begin your
8 deliberations.

9 Ms. Hamby and members of the jury, the State of South
10 Carolina charges the defendant, Ricky Pace with five
11 counts of committing a lewd act on a minor. You will bear
12 in mind that the defendant has pled not guilty to all of
13 these charges. And by those pleas he has denied all the
14 charges that are alleged in the indictments which I showed
15 to you earlier in the trial.

16 You will not have the indictments in the jury room
17 but you will a verdict form which has the indictments by
18 number listed and consistent with the numbers on the
19 indictment. I think that is a little simple. Now the
20 evidence which you are to consider is the testimony from
21 the witnesses along with any exhibits which have been
22 introduced in the trial and the record which was the
23 testimony that y'all can rehear if you need to.

24 Now, as I instructed earlier in my preliminary
25 instructions, the defendant, Ricky Dale Pace, comes into

1 this court clothed with a presumption of innocence. And
2 this presumption goes with him and stays with him
3 throughout the case and entitles him to a verdict of not
4 guilty unless and until it is dispelled by the evidence
5 satisfying you, the jury, beyond a reasonable doubt that
6 the State has proved each and every element of the alleged
7 crimes beyond a reasonable doubt and that the defendant is
8 guilty of all of the offenses charges, charged.

9 Now, I tell you all the offenses stand independent,
10 each one on their own. The elements are the same in each.
11 The alleged victims are different. There is two victims
12 in these charges and so you can consider them all
13 separately, not as a whole, independently. So you could
14 find any combination of guilty or not guilty. But I
15 remind you that the elements on each are the same and the
16 burden of proof on the State for these elements is the
17 same. They must prove all of the elements beyond a
18 reasonable doubt and your verdict will have to be
19 unanimous at the end.

20 Now, I remind you that during the trial you and I
21 have certain duties to perform. As the trial Judge it has
22 been my responsibility to preside over the trial. I have
23 also had the duty to rule on the admissibility of the
24 evidence offered during the trial. And you as a group are
25 to only consider the evidence which has been introduced.

1 I do not believe there was any testimony stricken by me.
2 But if there was you are to disregard that testimony. You
3 are only to consider the testimony which is presented from
4 this witness stand and the exhibits which have been
5 introduced and received into evidence and any agreements
6 or stipulations of counsel.

7 I have the additional duty to charge you as a group
8 with the law applicable to these cases. As the presiding
9 Judge, I think I also told you preliminarily, I am the
10 sole Judge of the law of the case and that is my job. It
11 is your duty as jurors to accept and apply the law as I
12 now am instructing it to you. So you can have a belief or
13 an understanding or an awareness of what you think the law
14 is or what you heard the law was. You must disregard your
15 understanding and accept the law as I am instructing it to
16 you. It is my job to instruct you of the law of South
17 Carolina and you must abandon any idea you may have of
18 that. That was part of your oath to accept and apply the
19 law as I am now stating it to you. If I should make an
20 error in the instructions of the law to you there is
21 another time and another place for that error to be
22 considered and if necessary correct it. But the purpose
23 of our cases today, you must accept the law as I am now
24 instructing it to you.

25 Now, in every case in this court, when a case is

1 called and tried before a jury the jury becomes the sole
2 and exclusive judges of the facts in a case. A trial
3 Judge, such as myself cannot suggest, comment on or make
4 any type of statement to the jury about the facts because
5 it is your job to determine the facts in this case. So,
6 you are not to infer or take any suggestions or anything
7 that I have said or done or any of my rulings that I have
8 an opinion on the facts because I do not, I am not allowed
9 to. It is your decision, exclusive as the jury to make
10 determinations and answer the questions of fact. So, do
11 not accept anything that I have done as my trying to
12 influence you in doing of your job. Your job is to find
13 facts in this case and do it just as I have instructed you
14 consistent with the law.

15 Now, as sole fact finders, you should have and I
16 instructed you earlier and I observed you as a group, all
17 thirteen listened very closely to the evidence and the
18 testimony being presented. When you go back to the jury
19 room you are going to get to weigh the evidence. Now,
20 weighing evidence is basically using your good judgment
21 and your common sense. It is basically entirely a mental
22 process. Evidence weighs with you that which convinces
23 you of its truth. Since you are the judges of the, or
24 weighing the facts you must likewise judge the credibility
25 of the witnesses who have been called in this case. Now

1 credibility is believability. So you are judging the
2 believability of the witnesses who have testified from the
3 witness stand over the last day and a half. When you are
4 evaluating or judging a person's believability or
5 credibility you can consider anything in your common life
6 experience which would suggest, your common sense is a
7 great thing, as to evaluate a person's credibility. You
8 can also use other things such as: What was the manner
9 and appearance of the witness who testified. Was the
10 witness straightforward or hesitant, were they, how did
11 they come to know the facts that were testified to. What
12 were their ability to know these facts. Would there be
13 some witness, a witness would want to testify, provide
14 testimony which would help or hurt one side or the other.
15 In other words, was the witness biased or prejudiced in
16 any manner towards one side or the other. Was a witnesses
17 testimony strengthened or weakened by other testimony or
18 other evidence. You, the jury, may believe as much or as
19 little of each witnesses testimony as you deem
20 appropriate. You may believe the testimony of a single
21 witness against that of many or just the opposite. You
22 may believe part of a witnesses testimony and disbelieve
23 the rest. The fact that testimony is not disputed does
24 not mean you must accept it as true and undisputed. You
25 must still gauge the credibility of the witness to

1 determine the believability or the truth of the facts
2 offered through that testimony.

3 Now, generally during a trial there are two types of
4 evidence presented in the case. There is direct and
5 circumstantial evidence. Direct evidence is testimony of
6 a person who asserts or claims to have actual firsthand
7 knowledge of a fact such as an eyewitness. I saw this, I
8 heard that, that kind of thing. Circumstantial evidence
9 is a proof of a chain of facts and circumstances
10 indicating the existence of a fact. Our law makes no
11 distinction between the weight or value given to either
12 direct or circumstantial evidence. Nor is a greater
13 degree of certainty required of circumstantial evidence
14 than that of direct evidence. You should weigh all the
15 evidence presented to you in this trial. After weighing
16 all the evidence if you are not convinced of the guilt of
17 Mr. Pace beyond a reasonable doubt you must find him not
18 guilty.

19 The rules of evidence normally do not permit a
20 witness to testify as to their opinion or their
21 conclusions based upon facts presented to them. There is
22 an exception to this and that is the rule for which we
23 call expert witnesses. If y'all remember yesterday, a
24 witness yesterday, Dr. Lyle Pritchard, was qualified as an
25 expert witness in the field of pediatric general practice

1 and pediatric child abuse and she testified based upon her
2 training, her years of experience, her focus of her
3 practice and the number of cases she had done. Now, you
4 should consider an expert opinion, received as evidence in
5 this case, just like the other evidence received in this
6 case and give it the weight you think it deserves. And if
7 you decide that the opinion of the expert witness was not
8 based upon sufficient education and experience or if you
9 conclude that the reasons given in support of the opinion
10 were not sound or that the opinion was outweighed by other
11 evidence you may disregard the opinion entirely. An
12 expert witnesses testimony is given no greater weight than
13 that of the other witnesses testimony simply because they
14 are an expert. You are not required to accept an expert's
15 opinion even though it was not contradicted.

16 Now, in any criminal prosecution the State has the
17 burden of proving the case and proving the defendant
18 guilty beyond a reasonable doubt. As I told you earlier,
19 all defendants come into court presumed innocent.
20 According to our law the prosecution must prove their case
21 beyond a reasonable doubt which is the standard before
22 they can find that guilt may occur. If the State fails to
23 meet this high burden then the defendant is entitled to a
24 not guilty or otherwise known as an acquittal to the
25 charges made by the State.

1 Now, beyond a reasonable doubt, that burden and that
2 responsibility, you need to understand what a reasonable
3 doubt is. A reasonable doubt is simply this. It is the
4 kind of doubt that would cause a reasonable person to
5 hesitate to act. A reasonable doubt is a doubt which
6 would make an honest, sincere, conscientious person in the
7 search of truth hesitate to act. Proof beyond a
8 reasonable doubt is proof which leaves you firmly
9 convinced of the defendant's guilt. Reasonable doubt may
10 arise from evidence which is in this case or from the lack
11 of or absence of evidence in this case. You, the jury,
12 must make the determination of whether or not a reasonable
13 doubt exists as to the guilt of the defendant. Now, I
14 tell you, the very fact that a jury discusses fully, a
15 full and free discussion on the issue of guilt and
16 non-guilt does not in and of itself automatically mean
17 that a reasonable doubt exists.

18 Now, I allowed you early on and told you to count up
19 and allow some people to take notes and I allow note
20 taking. But I caution you, remember this, if some people
21 didn't take notes that is perfectly allowed. One person's
22 notes should not overrule or trump another person's
23 memory. Notes are generally just for the note taker.
24 Well I heard the testimony like this. The person who did
25 not take notes, I remember the testimony was that. Y'all

1 can discuss that but do not use the notes for anything
2 other than the person who took them because y'all can
3 discuss what was testified to, examine the exhibits and
4 discuss the issues presented to you to make the
5 determinations of fact freely. And as I told you, if you
6 need to hear testimony again, repeated, that will be
7 allowed. I just need to know during deliberations, we
8 would like to hear the testimony of, name the witness.
9 And Ms. Holston can then retrieve it from her recording
10 and play it again for you and then you can hear it a
11 second time.

12 Now, the specifics of law in this case is that Ricky
13 Pace is charged with five counts, all the same, committing
14 a lewd act on a minor.

15 A lewd act on a minor is, I am sorry, in order to
16 sustain a conviction the State must prove several things.
17 They must prove that, beyond a reasonable doubt that the
18 defendant was over the age of eighteen. The State must
19 prove that the defendant willfully and lewdly committed or
20 attempted to commit a lewd or lascivious act upon or with
21 the body or the parts of a child under the age of sixteen
22 with the intent to arouse, appeal to or gratify the lust,
23 passions or sexual desires of either the defendant or the
24 child. Willfully means voluntarily, intentionally means
25 with the specific intent to do something the law forbids.

1 Lewd means obscene, lustful, indecent or lecherous.
2 Lascivious means tending to excite lust, lewd, indecent,
3 or tending to deprave the morals and respect such
4 relations. I also tell you that our South Carolina
5 General Assembly has defined in our code section, 16-3-657
6 that the testimony of any alleged victim does not need to
7 be corroborated in the prosecution of committing a lewd
8 act upon a minor.

9 Now, criminal intent is a necessary element of each
10 crime that must be proved by the State also beyond a
11 reasonable doubt. Criminal intent is always a matter that
12 must be determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove to a
14 mathematical certainty, there is no way medical science
15 can dissect a person's brain to determine what he or she
16 had in mind. So our law states criminal intent may be
17 inferred from the circumstances shown to have existed both
18 before and after the fact. This is how you, the jury,
19 make a determination of whether or not the element
20 requiring an intent was present. Criminal intent is a
21 state of mind, operates jointly with an act or omission in
22 the commission of a crime. Criminal intent is a mental
23 state of conscious wrongdoing. It is up to you, the jury,
24 to determine what the defendant intended based upon the
25 circumstances shown to have existed. I tell you also that

1 the State must prove criminal intent beyond a reasonable
2 doubt just as they must prove each and every other element
3 beyond a reasonable doubt as I previously explained to
4 you.

5 Ms. Hamby, and other members of the jury, I wish to
6 express the hope that each of you will be mindful of the
7 importance of your responsibility. Y'all have observed
8 that the parties always refer to me as Your Honor. Y'all
9 too are part of that being the judges of the fact, they
10 could describe for y'all as being Your Honor. It is my
11 job to make certain or attempt to make certain that every
12 person here receives fair and impartial justice. And I am
13 passing that responsibility along to you and remind you
14 that is your responsibility. So take care of the
15 preservation in the honor of this community, honor of this
16 State and of this Country. I won't tell you how to decide
17 or what verdict to reach. It will be highly improperly
18 suggested which verdict for you to reach. You need to go
19 in the jury room, consider the evidence presented, discuss
20 it freely and reach a unanimous verdict, weigh the
21 evidence fairly and impartially. And I will tell you
22 this, everyone is entitled to justice. But the State and
23 the defendant, nothing more, nothing less. You owe no
24 support to anyone nor any sympathy to anyone. I am with
25 the confirmed opinion that you will do just that, you will

1 reach a verdict and represent the truth and justice for
2 all the parties involved.

3 Now, I showed you very briefly the verdict form. I
4 am going to hand it to you and hand it back to me. But
5 what it does, it list on two pieces of paper the
6 indictment numbers and the charge and simply guilty, not
7 guilty. And as I have told you, all of those indictments
8 are separate, they stand on their own. The State must
9 prove beyond a reasonable doubt all of the elements for
10 each charge independently. So you need not find not
11 guilty on five or guilty on five. You can do any
12 combination that you reach a unanimous verdict on. Now,
13 if y'all begin deliberations, moments from now and a
14 question arises, the Judge gave us an instruction on
15 something and I just am not exactly sure what his words
16 were. We would like to hear further instructions on that
17 area of the law. You are certainly welcome to ask that
18 and I will either reinstruct you on that area of the law
19 or I can perhaps, my point is this. Write down your
20 question, hand it to the bailiff, the bailiff will bring
21 it to me, I can talk with the lawyers and we can perhaps
22 can say, oh, that is an easy answer. The answer is, the
23 law states this or the law is not, it may be an easy thing
24 I can write back to you and say, that is not an issue or
25 is an issue or here is the answer to your question. Some

1 questions I can't answer. And then if you need further
2 instructions I can bring you in here and give you further
3 instructions. If you need to hear any testimony replayed
4 write that down and the witnesses name, give it to Mr.
5 Bolt and give me a few minutes and Ms. Holston will find
6 it on her recording device and we will have that retrieved
7 for you. If you want to see the video again, that is in
8 evidence. My only problem with that is you will have to
9 come back in here to watch it because the playing device
10 is over here. I am not sure whose computer it was but the
11 computer is hooked back up and it is set up and we can
12 certainly do that. Not a problem doing it, just I need to
13 know, give me a little heads up. And my assistant and
14 whatnot can set that up for you. Once you begin your
15 deliberations you are on your time. If y'all deliberate
16 for thirty minutes and somebody needs to step outside for
17 whatever reason, they can but then you have to stop the
18 deliberations, deliberate, if you need a break everybody
19 gets a break. Once y'all start it is your time and you do
20 whatever you like. And if you say, Judge, we would like
21 to go eat lunch and come back. Now, it is 12:00 o'clock.
22 I can generally talk to Ms. Lancaster in buying you lunch.
23 It is generally easier, some people don't like the same
24 thing. It is easier to let y'all go to lunch and then
25 come back. If y'all want Ms. Lancaster to order you some

1 pizza or something or a sandwich from the Twin Palmetto I
2 can sometimes get her to do that. I tell you what, those
3 are my instructions. I am going to talk to the lawyers
4 briefly and find out if my instructions were complete as
5 we discussed during the original break. If they were then
6 I am going to gather the evidence, have Ms. Holston
7 certify to me that those are all the exhibits introduced
8 and I will send it to you with the verdict form. That is
9 when you can start. While you are waiting on me y'all
10 decide what you want to do for lunch. If you want to go
11 and come back that may be better, they say you don't
12 deliberate and break. If you want us to order let Mr.
13 Bolt know. Here is the problem thing, y'all can
14 deliberate and wait on it or you can say, let's just
15 deliberate and we will get our lunch when we get done.
16 That is your choice. It takes a little time to go get it
17 and bring it back. Step in the jury room, you can't begin
18 discussing the case until I give you this. You can
19 discuss lunch.

20 (Whereupon, the jury was excused from open court.)

21 THE COURT: Any exceptions to the instructions given
22 by the Court?

23 MR. SHEEK: None from the State, Your Honor.

24 MR. HOWE: No, sir.

25 THE COURT: All right, did y'all see the verdict

1 form?

2 MR. HOWE: Yes, sir.

3 THE COURT: Okay. I have been informed the jury
4 wants to go to lunch. They will start deliberations when
5 they get back from lunch.

6 (Whereupon, the jury is excused for a lunch break
7 from 12:00 p.m. to 1:00 p.m.)

8 THE COURT: The jury is back and they can start
9 deliberations.

10 (Whereupon, the jury started deliberations at
11 approximately 1:15 p.m.)

12 THE COURT: We have a note from the jury. Do y'all
13 have a suggestion or do you want to let them work a little
14 longer.

15 (Whereupon, Court's Exhibit 1 was marked for
16 identification only.)

17 MR. HOWE: Judge, can we approach?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was held.)

20 THE COURT: Let's bring them in.

21 (Whereupon, the jury came into open court at
22 approximately 2:42 p.m.)

23 THE COURT: Ladies and gentlemen, I got your note and
24 I understand y'all seem to have reached an impasse. So I
25 want to give you an additional instruction and hope that

1 it helps you. Now, it is not uncommon for jury's to have
2 difficulty, the twelve of y'all going through an exercise
3 that has been numerous times in courts across the country.
4 And it is not uncommon to have difficulty reaching these
5 types of decisions. Sometimes it is difficult for two
6 people to agree. Twelve is a much larger group. Now, I
7 want you as a group to use your best efforts in reaching a
8 unanimous verdict. Now, I want to tell you this. Y'all
9 twelve were selected after a lengthy question and answer,
10 legal terms is voir dire, asking y'all questions and who
11 you are and what you do, do you know anybody, you know any
12 witnesses, this kind of thing. This is a more lengthy
13 process to select y'all and the twelve of y'all got put in
14 there to hear this case. And I am very confident that
15 y'all as a group are as good a jury, y'all have listened.
16 I made a comment to the attorneys, y'all listened so
17 attentively, as good as any jury that I have ever had to
18 the testimony and the evidence and presentation made by
19 both sides. So here it is. I want you to use your best
20 efforts to reach a unanimous verdict. Do your very best
21 to do that. And so that is my directions to you, work
22 hard, examine the evidence, reexamine the evidence,
23 rediscuss the issues y'all have reached the impasse on and
24 do your very best. Now, if you can't reach a verdict,
25 what will happen is I will be required to declare a

1 mistrial and we will come back another week at another
2 time and go through the same exercises. We will select
3 another jury, the parties will go through the same
4 exercise the second time. Basically a second run of the
5 trial. It would go pretty much like this one went. What
6 I am telling you is there will be no other group of twelve
7 people any more capable than y'all from Laurens County to
8 hear a Laurens County case. And so I am confident you can
9 reach a verdict. I am not going to give you an analogy, I
10 don't think I will. What I am going to tell you is this.
11 Is that I don't want to tell you you have got to reach a
12 verdict because I have an option. I am going to encourage
13 you to do your very best to reach a unanimous verdict.
14 Now, those are my instructions to you regarding how to
15 resolve the impasse. So I will send you back to the jury
16 room and encourage and support you. If you have any
17 questions please let me know, if you need any testimony
18 replayed we still have that. Now, while y'all are working
19 I am doing some other work in here so y'all are not
20 inconveniencing me whatsoever. So think about that. We
21 are in here doing some other cases that is no relation to
22 y'all. So we have work to do. I am waiting on y'all but
23 I am not sitting here doing nothing waiting on y'all. All
24 right. Continue your deliberations.

25 (Whereupon, the jury continued deliberations at

1 approximately 2:42 p.m.)

2 THE COURT: Any exception to that curative
3 instruction or Allen charge?

4 MR. SHEEK: Not from the State, Your Honor.

5 MR. HOWE: Your Honor, I thought I understood in
6 listening to that Allen charge and I apologize, I don't
7 have it in front of me. It is some language that the
8 Courts instruct the jury in going back and discussing the
9 individual jurors would not be required to give up their
10 individual views. Something of that nature that I thought
11 was actually in that charge. I may be wrong but that,
12 from my memory and not having that charge right in front
13 of me right now, I recall language of that nature in the
14 Allen charge. I would ask the Court to require into that
15 and instruct the jury accordingly if that is in fact in
16 there.

17 THE COURT: All right. I use the Allen charge that
18 was handed to me by another Judge that helped train me.
19 And I read his language but amended the analogy he had in
20 there about ordering lunch. So I used his language and he
21 has about five years seniority on me. So if he is wrong I
22 am wrong. You may be right. There may be another Allen
23 charge out there that has that language but I didn't use
24 that one.

25 MR. HOWE: Am I protected on the record?

1 THE COURT: Yes, sir. If I gave an improper charge
2 you are protected. I think it is proper.

3 MR. HOWE: Thank you, Judge.

4 (Whereupon, a break was taken waiting on the
5 verdict.)

6 THE COURT: I understand we have a verdict from the
7 jury. Are you ready, Mr. Howe?

8 MR. HOWE: Yes, sir.

9 THE COURT: Let's get them, Mr. Bolt.

10 (Whereupon, the jury came into open court at
11 approximately 3:18 p.m. with the verdict.)

12 THE COURT: All right, Ms. Hamby, I understand the
13 jury has reached a verdict?

14 MADAM FORELADY: Yes, we have.

15 THE COURT: If you will give the verdict to Mr. Bolt.

16 (Whereupon, the bailiff gives the verdict form to the
17 Court.)

18 THE COURT: Appears to be in order, you may publish
19 the verdict, Madam Clerk.

20 CLERK OF COURT: In the case of the State of South
21 Carolina versus Ricky Pace. We, the jury, find as
22 follows: Count I, 2011-GS-30-1284, committing a lewd act
23 on a minor. We find the defendant, Ricky Pace, not
24 guilty.

25 Count II, 2011-GS-30-1285, committing a lewd act on a

1 minor. We find the defendant, Ricky Pace, not guilty.

2 Count III, 2011-GS-30-1286, committing a lewd act on
3 a minor. We find the defendant not guilty.

4 Count IV, 2011-GS-30-1287, committing a lewd act on a
5 minor. We find the defendant, Ricky Pace, guilty.

6 Count V, 2011-GS-30-1288, committing a lewd act on a
7 minor. We find the defendant, Ricky Pace, guilty.

8 Ladies and gentlemen of the jury, if that be your
9 verdict please indicate by your upraised right hand.

10 (Whereupon, all jurors raised their hands.)

11 CLERK OF COURT: Thank you.

12 THE COURT: All right, any further issues from the
13 State or the defense for this jury?

14 MR. HOWE: None from the defense, Your Honor.

15 MR. SHEEK: Not from the State, Your Honor.

16 THE COURT: All right. We will stand at ease and we
17 will speak to the jury and thank you for your service.
18 Step back in the jury room.

19 (Whereupon, a short break was taken.)

20 THE COURT: All right, Mr. Howe.

21 MR. HOWE: Judge, at this time we would move that you
22 change the verdict in this case to grant a new trial based
23 on the following. Judge, and I am trying to cover
24 everything. I think all the issues that were raised in
25 the, excuse me, I will stop, Judge.

1 (Whereupon, there is some movement in the courtroom.)

2 THE COURT: All right. Go ahead.

3 MR. HOWE: All the issues that were raised at
4 pretrial motions, one of them had to do with actual, we
5 contended that the video itself should not come in. The
6 video of the minor, Minor2 , I think it was actually
7 played and as I understand the verdict form, my client was
8 convicted on the two counts had to do with that particular
9 minor, Minor2 , from what I read. If they were done in
10 the order.

11 THE COURT: You are correct.

12 MR. HOWE: Thank you. We also, of course, had raised
13 an issue about the timing of the video. Ms. McNeill had
14 raised the issue about the, utilizing, the State
15 continuing to utilize the term, victim, as well as all
16 other objections. Judge, finally with regard to the Allen
17 charge that the Court gave the jury after the jury came
18 back with a note that I said, I believe that I read that
19 said hung up. I requested additional charges, information
20 regarding the Allen charge that I recall something to the
21 effect that each juror, in going back to deliberating
22 further should not give up his or her actual own opinions.
23 Something, it is a language to that effect. Again, I
24 can't cite it to the Court but we respectfully requested
25 that at the time. And I do note not too, too long after

1 the Allen charge the jury came back with a verdict, of
2 course, guilty on the two particular charges that we
3 talked about. So that, respectfully, Judge, would by our
4 motions. I think I have covered everything on the record
5 that was addressed both pretrial and during the course of
6 the trial.

7 THE COURT: All right. And these two convictions for
8 these two indictments were, as I understand it, to the
9 younger victim, Minor2 .

10 MR. HOWE: That is my understanding.

11 THE COURT: And so the video issue would come into
12 play for her only.

13 MR. HOWE: Correct.

14 THE COURT: So, regarding your motion for a new
15 trial, I believe that the proper foundation was laid for
16 the video and I believe the video was played consistent
17 with the statute requiring it to be played
18 contemporaneously during the testimony of the interviewee,
19 the young lady. It was done, she provided the better part
20 of her testimony before the video was played is my notes.

21 SPECTATOR: I can't hear you back here, Your Honor.

22 THE COURT: I had a train of thought going and y'all
23 interrupted it.

24 MR. SHEEK: Your Honor, you were saying that she--

25 THE COURT: Let me get my thoughts back together.

1 Some Judges make it look easy and I try to but it is not
2 as easy as you think. All right, regarding the issues
3 presented posttrial motions, I believe the video was
4 introduced with the proper foundation laid, parameters of
5 the statute which require that it be trustworthy,
6 inherently consistent with the video taping and all of the
7 parameters laid out in the statute that we discussed on
8 the record. That being 17-23-175, part (a) and (b). The
9 Court analyzed that and admitted it consistent with the
10 totality of the circumstances provided and the Court had
11 an opportunity to view the video in-camera. I also
12 believe that the Court ruled that the video would be
13 played during the testimony of the young lady and it was.
14 And I also said at the time that she had testified about
15 the incident, the facts and events during the instances
16 prior to the video being played and she was offered, the
17 defense was offered ample opportunity to cross-examine the
18 young lady as to those facts and whatnot. And I believe
19 it was introduced properly and played properly as the
20 timing issue subject to the objections made.

21 I also rule and deny the motion for a new trial. I
22 believe the instructions given during the Allen charge
23 were consistent with my understanding of the law regarding
24 the reaching of an impasse. The jury continued
25 deliberations. And I note that it was pointed out to me

1 that it was thirty five plus minutes before the jury
2 reached a verdict after the Allen charge was given. And
3 so for that reason I believe the charge was proper and I
4 respectfully deny that motion for a new trial on the
5 incorrect or improper Allen charge being given. So, I
6 think I ruled on your motions?

7 MR. HOWE: I believe you have, Judge.

8 THE COURT: And your objections are properly reserved
9 on the record for, during the trial and post trial.

10 MR. HOWE: Thank you, Your Honor.

11 THE COURT: All right. I am going to take a couple
12 of minutes.

13 (Whereupon, a short break was taken.)

14 THE COURT: Now, is there anything else before y'all
15 come up?

16 MR. HOWE: No, sir. We will come up here.

17 THE COURT: Mr. Howe or Ms. McNeill, whichever.

18 MR. HOWE: Thank you, Judge, I will speak. You want
19 to hear from us first?

20 THE COURT: Sure.

21 MR. HOWE: Thank you, Judge. You have heard a little
22 bit about him in his direct testimony. Ricky is 50, he
23 served and still serves as a volunteer fireman for the
24 Fire Department. Supports himself, lives with his elderly
25 father. He lives at his home on the

1 area. He has been very cooperative with us. This case
2 has sat for a long time and then we thought and we will
3 get into that later on when we have another matter before
4 the Court. Up until a few weeks ago we were preparing to
5 try another case this week and then this one got moved up
6 so Ricky rapidly got together with us and did everything
7 he could to assist us in trying to prepare the case for
8 him. Very cooperative, has been a complete gentleman with
9 us. And these things, of course, are very emotional even
10 just preparing for them. And I appreciate that, doing
11 what we do for a living and serving as a public defender
12 where we can't say, well, I am going to charge you a
13 certain fee if you will just go away. They can't afford
14 it. You get what you get. But we proudly represented him
15 because he was that kind of a gentleman with us. And as
16 you have heard, you heard his daughter testify. He has
17 got a 32-year-old daughter. He has got good qualities as
18 you have heard. He has got some health problems that have
19 come up since we started representing him. He is
20 diagnosed with a form of leukemia and he goes to the
21 Greenwood cancer center for treatments. And we have got
22 some documentation. Now, I had somebody at the medical
23 field look at it, it is a treatable form, he is being
24 treated for it but it is, in fact, leukemia and he has
25 actually treatments scheduled May 27 and June 6th as they

1 continue to monitor this treatable form of leukemia. So I
2 am not trying to represent to the Court and we didn't even
3 bring it out at trial that he, you know, that this is
4 potentially fatal in the near future or anything like
5 that. But it is a concern, you know, for us. And we
6 looked at it long and hard trying to determine whether or
7 not this was a case we needed to go before the Court and
8 say, can we hold off on trying this case until then. But
9 we didn't see that but I do want you to know that because
10 treatments would be important. I always wonder what you
11 are going to get, you know, in the Department of
12 Corrections because we make no bones about it, we know
13 that the Court is going to sentence him to active time.
14 He knows that, he is prepared for that. But I just want
15 to let you know all of those things. It is a hard trial.
16 Again, we appreciate him and his family and there were
17 others too that came and we interviewed that might have
18 talked, spoken about his character, things of those
19 nature. I think the only significant charge he has, I
20 think he has a CDV, high and aggravated over ten years
21 ago. And you heard some reference in the trial, anger
22 management. He received anger management for that as well
23 as he has had some mental health treatments in the past
24 too and anger was addressed, I think, in both of those
25 situations. All and all, Judge, you know, it is not the

1 kind of case, we are not about to try to tell you how to
2 sentence. We are asking you to take everything into
3 consideration, health, the fact that he is 50 years old
4 and all of that and we will trust your judgment in
5 sentencing him appropriately. Thank you.

6 THE COURT: Anything you want to say?

7 MR. PACE: No, sir.

8 MR. HOWE: We talked about that and it just,
9 probably, it is not going to change anything, Judge.

10 THE COURT: Mr. Sheek.

11 MR. SHEEK: Thank you, Your Honor, if it please the
12 Court. When I get finished Mr. Wiltshire here has two
13 short statements that these children have written and they
14 want you to consider, very short. Your Honor, as I
15 listened to the defense recitation to you, the man stands
16 convicted of sexually abusing a 10-year-old child. I
17 don't know a whole lot, a member of society can do short
18 of murder that is more serious. It is a problem we have
19 and I don't know what is driving it or if it is just being
20 reported more now. But Your Honor is well aware of the
21 problems we have. I realize he may have been cooperative
22 with his lawyers in an attempt to get out of it but he
23 stands convicted beyond a reasonable doubt by a jury of
24 his peers. And what has never happened even to this
25 minute is for him to take responsibility for that. But

1 rather he would come to court and call this child a liar.
2 And right now, all she really wants to know, none of this
3 was her fault. And I think she understands that now. She
4 was 10 years old when this man did this to her. As you
5 know, from other sidebar issues, there was an issue with
6 him dating a step-daughter before who had gotten over the
7 age of 18 when he began dating her. But it was a
8 step-daughter that had lived with him in the house at a
9 young age. We have got other pending charges,
10 exploitation of a vulnerable adult. So exploitation seems
11 to be a pattern for this man, of people who can't protect
12 themselves. So when you have got to consider what you
13 have got to consider, one of the issues I know the Court
14 is always very keen on, this Court, has been the
15 protection of the community. Ten year old child at this
16 age, in his home, under his care, I don't know if you ever
17 get better if you have got that mindset. I don't think
18 this community is safe when he is back in it. And I ask
19 you to consider that when you are setting a time. Of
20 course I am asking for incarceration. I think it is well
21 deserved in this situation and a substantial time. As I
22 have said, the age difference, the living in the home,
23 exploitation of this child and just absolutely no
24 willingness to take any responsibility.

25 THE COURT: Mr. Wiltshire?

1 MR. WILTSHIRE: Yes sir, thank you, Your Honor. On
2 behalf of the three ladies. Minor2 , I am just
3 going, I have them a pad and told them to write whatever
4 they wanted to say and then they ask me to say it.
5 Minor2 says, I want him to go to prison, underlined
6 three times, for what he did so that, "no other child will
7 be hurt by him."

8 Minor1 , I want him to go prison for what he did
9 to me. And so no other young child will be messed with
10 him, by him.

11 Ms. Christine would like to thank the jury members
12 for their hard work. And I would like to thank the three
13 ladies. I think they have shown great maturity.

14 THE COURT: All right. Anything else?

15 MR. SHEEK: No, sir.

16 MR. HOWE: No, sir.

17 THE COURT: All right, having heard the trial and
18 considering what was presented and the verdict of the jury
19 and the facts that Mr. Howe presented as well as the
20 comments of the Solicitor and the victims through the
21 victim's advocate. The sentence of the Court is that Mr.
22 Pace be committed for ten years to the Department of
23 Corrections. The sentence will run concurrent with one
24 another. Good luck.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS)	
)	Indictment: 11 GS-30-1284, 1285, 1286, 1287,
)	1288
)	Charges: Lewd Act Upon a Minor (x5)
)	
)	
STATE OF SOUTH CAROLINA)	
vs.)	DEFENDANT'S MOTION TO EXCLUDE
)	FORENSIC VIDEOS FROM THE TRIAL OF
)	THIS CASE
Ricky Dale Pace,)	
)	
Defendant.)	

The Defendant opposes the State's attempt for admission of out-of-court statements of child pursuant to S.C. Code Sec. 17-23-175.

Argument

I. S.C. Code Sec. 17-23-175 is unconstitutional in that it violates the Confrontation Clause of the Sixth Amendment to the United States Constitution as interpreted by *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004).

S.C. Code Sec. 17-23-175 was enacted in 2006 and its constitutionality has never been tested in South Carolina courts. The requirements of the statute for admission of the videotaped forensic interviews in this case are in direct conflict with the provisions of *Crawford v. Washington*, 541 U.S. 124 S.Ct. 1354 (2004), and the statute therefore violates the Confrontation Clause of the Sixth Amendment to the United States Constitution. In *Crawford*, the Court discussed the admissibility of out-of-court hearsay statements of a witness and concluded that the right of confrontation is violated by admission of such statements except in very limited circumstances. Those limited circumstances for admission of such statements exist only when the witness is unavailable, when the out-of-court statements are considered testimonial, and the defendant had a prior opportunity for cross-examination of the witness. *Id.*

at 68, 124 S.Ct. 1374. In contrast, S.C. Code Sec. 17-23-175 allows admission of out-of-court hearsay statements if they were made in response to questioning conducted during an investigative forensic interview of the child (making the statements testimonial) **and** when the child is available for testimony and cross-examination at trial. S.C. Code Sec. 17-23-175(A)(1), (A)(3). The requirement that the child be available for testimony directly contravenes the *Crawford* requirement that the witness be unavailable before out-of-court hearsay statements can be admitted.

The *Crawford* case interprets the Confrontation Clause to be violated when out-of-court testimonial hearsay statements of an **available witness** are admitted. In this case, the State admits in its motion that it expects the child to testify at trial and be subject to cross-examination. If the child is available to testify, *Crawford* simply does not allow admission of her out-of-court testimonial statements made on the videotaped forensic interviews, the contrary provisions of S.C. Code Sec. 17-23-175 notwithstanding. Because the statute violates the mandate of *Crawford*, Defendant requests that the Court find the statute unconstitutional and apply *Crawford* to exclude the videotaped forensic interviews of the child.

II. S.C. Code Sec. 17-23-175 violates *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990).

S.C. Code Sec. 17-23-175 violates *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990) in two important ways. First, to be constitutional testimony of a child witness occurring outside the presence of the defendant must be under oath with an opportunity for contemporaneous cross-examination. Second, even if constitutional, the application of S.C. Code Sec. 17-23-175 to admit out-of-court videotaped statements should be limited to situations where the court makes specific findings regarding the necessity of admitting the evidence.

A. S.C. Code Sec. 17-23-175 is not constitutional because it does not provide for an under oath, contemporaneous cross-examination as required by *Craig*.

The videotaped interviews in this case are just like videotaped testimony, except that the interviews are not under oath and there was not an opportunity for contemporaneous cross-examination. In *Craig*, the United States Supreme Court, while noting that face-to-face confrontation is best, held the testimony of a child witness via closed circuit TV did not violate the right of confrontation. The Court reasoned:

We find it significant, however, that Maryland's procedure preserves all of the other elements of the confrontation right: **The child witness must be competent to testify and must testify under oath; the defendant retains full opportunity for contemporaneous cross-examination;** and the judge, jury, and defendant are able to view (albeit by video monitor) the demeanor (and body) of the witness as he or she testifies. Although we are mindful of the many subtle effects face-to-face confrontation may have on an adversary criminal proceeding, the presence of these other elements of confrontation-oath, cross-examination, and observation of the witness' demeanor-adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony. These safeguards of reliability and adversariness render the use of such a procedure a far cry from the undisputed prohibition of the Confrontation Clause: trial by *ex parte* affidavit or inquisition.

Id. at 851, 110 S.Ct at 3166. (emphasis added).

The *Craig* Court noted that the majority of the states had adopted procedures for child witnesses to testify via closed circuit TV or videotaped testimony. The Court concluded, "The Confrontation Clause does not prohibit use of a procedure that, despite the absence of face-to-face confrontation, ensures the reliability of the evidence by subjecting it to rigorous adversarial testing and thereby preserves the essence of effective confrontation." Without an oath and without contemporaneous cross-examination, there cannot be effective confrontation.

Section 17-23-175, therefore, violates the right of confrontation.

- I. **Even if constitutional, the application of S.C. Code Sec. 17-23-175 to admit out-of-court videotaped statements should be limited to situations where the court makes specific findings regarding the necessity of admitting the evidence.**

Even if the Court determines that S.C. Code Sec. 17-23-175 does not violate the Confrontation Clause and chooses to apply the statute in determining admissibility of the videotaped forensic interviews, the Court should consider the necessity of admitting the evidence in addition to the criteria enumerated in the statute, as is required when a court determines whether to allow testimony of children via closed circuit television in child abuse cases. In *Craig*, the Court held that the Confrontation Clause does not prohibit a child witness from testifying by closed circuit television, but that a case-specific finding of necessity for the use of that procedure was required. *Id.* at 855-56, 110 S.Ct. 3169. If a finding of necessity is required in those circumstances, where a child is actually testifying during a trial and is subject to cross-examination, surely the same finding should be made for admission of an out-of-court testimonial statement in which the child witness was **not** subject to cross-examination. As noted in *Craig, supra*, the denial of a physical, face-to-face confrontation at trial violates the Confrontation Clause “only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.” *Id.* at 851, 110 S.Ct. at 3166.

In *Craig*, the Court noted that the public policy of protecting child witnesses from the trauma of giving testimony in child abuse cases could be sufficiently important in some cases to outweigh the defendant’s right of confrontation.⁹ *Id.* at 853, 110 S.Ct. at 3167. However, the Court also held that the importance of protecting child witnesses outweighs the defendant’s right

⁹ In a footnote, the Court cites the South Carolina statute allowing videotaped testimony of an allegedly sexually abused child, S.C. Code Sec. 16-3-1550(E) (formerly 16-3-1530(G)), which was enacted in support of this public policy. *Craig, supra*, at 854, 110 S.Ct. at 3168, fn. 2.

of confrontation only “if the State makes an adequate showing of necessity.” *Id.* at 855, 110 S.Ct. at 3169. To make that showing of necessity: (1) the State must present case-specific evidence from which the trial court can determine whether admission of videotape evidence is necessary to protect the welfare of the particular child witness; (2) the trial court must find that the child witness would be traumatized by the presence of the defendant; and (3) the trial court must find that the trauma suffered by the child witness in the presence of the defendant is more than “mere nervousness or excitement or some reluctance to testify.” *Id.* at 856, 110 S.Ct. at 3169. No such showing of necessity can be made here to justify admission of the out-of-court videotaped statements of the child. In fact, in the State’s motion for special procedures to prevent child from being face-to-face with defendant, the State has not requested that the child be allowed to testify outside the courtroom, but merely that a book or Kleenex box be placed in front of her on the witness stand so that she cannot see her father while she testifies. Under these circumstances, there is absolutely no necessity for admission of the videotaped forensic interviews of the child.

The South Carolina courts agree that a particularized showing of necessity is needed before videotaped or closed circuit testimony can be used to avoid face-to-face confrontation with a defendant. Although S.C. Code Sec. 16-3-1550(E) does not preclude the use of videotaped testimony for certain witnesses,¹⁰ the judge must make appropriate findings before such procedures can be used. In *State v. Murrell*, 302 S.C. 77, 393 S.E.2d 919 (1990), the South Carolina Supreme Court affirmed the trial judge’s order allowing videotaped testimony of a child witness where the judge heard expert testimony that the child would be significantly harmed by

¹⁰S.C. Code Sec. 16-3-1550(E) states: “The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.”

an in-court confrontation. In that case, the child witness was placed in a courtroom setting and the defendant was in an adjacent room viewing the child on video. Defendant's attorney was present in the courtroom for direct and cross-examination, and the attorney's law partner was in the room with the defendant, with three-way communication available at all times between the attorneys and the defendant. *Id.* at 71, 393 S.E.2d 920-921. In *State v. Bray*, 342 S.C. 23, 535 S.E.2d 636 (2000), the South Carolina Supreme Court determined that although the record contained sufficient evidence to support a finding that testimony of a child witness should be given by closed circuit television, reversal was mandated because the trial court failed to make specific findings for its ruling allowing testimony outside the presence of the defendant, specifically failing to cite to testimony that the child would be traumatized if required to testify in the presence of defendant. *Id.* at 31-32, 535 S.E.2d 641. These requirements for case-specific findings of necessity for admission of videotaped or closed circuit television testimony should limit S.C. Code Sec. 17-23-175 in a similar manner. Because the statute does not require a finding of necessity for admission of videotaped forensic interviews, it contravenes the provisions of *Craig* and its progeny and therefore violates defendant's right of confrontation. Furthermore, as noted previously, no showing of necessity can be made in this case since the State has conceded that a book or Kleenex box in front of the child is sufficient to protect her while she testifies.

III. The "particularized guarantees of trustworthiness" enumerated in S.C. Code Sec. 17-23-175(B) are not adequate to protect the defendant's right of confrontation and furthermore, are not met in this case.

Prior to *Crawford, supra*, the United States Supreme Court, in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, conditioned the admissibility of all hearsay evidence on whether it falls under a "firmly rooted hearsay exception" or bears "particularized guarantees of

trustworthiness.” *Id.* at 66, 100 S.Ct. 2539. Under the *Roberts* test, the “particularized guarantees of trustworthiness” enumerated in S.C. Code Sec. 17-23-175(b) perhaps could have been held to pass constitutional muster. However, the Court abrogated *Roberts* in the *Crawford* decision, finding that the *Roberts* test was too broad in that “[i]t applies the same mode of analysis whether or not the hearsay consists of *ex parte* testimony,” yet at the same time too narrow in that “[i]t admits statements that *do* consist of *ex parte* testimony upon a mere finding of reliability.” *Crawford, supra*, at 60, 124 S.Ct. 1369. The Court stated: “This malleable standard often fails to protect against paradigmatic confrontation violations.” *Id.*

The particularized guarantees of trustworthiness that render firmly rooted hearsay exceptions reliable **do not** exist with regard to the videotaped forensic interviews in this case. Almost all the firmly rooted hearsay exceptions recognized in our jurisprudence apply to non-testimonial statements, with the exception of certain dying declarations that might be made in a testimonial context. *Id.* at 56, 124 S.Ct. 1367, fn. 6. The *Crawford* Court had the following to say about the fallacy of using the “reliability” determination when dealing with testimonial statements such as the videotaped interviews at issue here:

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of “reliability.” Certainly none of the authorities discussed above acknowledges any general reliability exception to the common-law rule. Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined. Cf. 3 Blackstone,

Commentaries, at 373 (“This open examination of witnesses ... is much more conducive to the clearing up of truth”); M. Hale, *History and Analysis of the Common Law of England* 258 (1713) (adversarial testing “beats and bolts out the Truth much better”).

Id. at 61, 124 S.Ct. at 1370.

Under the reasoning of *Crawford*, the “particularized guarantees of trustworthiness” factors enumerated in S.C. Code Sec. 17-23-175(B) simply cannot suffice to allow admission of the out-of-court testimonial hearsay statements contained in the videotaped forensic interviews. Without a prior opportunity for cross-examination on those statements, admission of the videotapes clearly violates defendant’s right of confrontation. Furthermore, even if the factors listed in the statute were adequate to evaluate admissibility, several of the factors are not met in this case, not least of which is whether the child’s statements were elicited by leading questions. For these reasons, the videotaped forensic interviews should be excluded from evidence.

IV. If the videotapes are admitted, South Carolina’s rule of completeness requires that portions adverse to the State’s case must also be shown to the jury.

South Carolina Rule of Evidence 106 provides as follows: “When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” *See also State v. Jackson*, 265 S.C. 278, 284, 217 S.E.2d 794, 797 (1975) (holding that when part of a conversation is put into evidence, an adverse party is entitled to prove the remainder of the conversation, so long as it is relevant, particularly when it explains or gives new meaning to the part initially recited. “All statements made in a conversation, in relation to the same subject or matter, are to be supposed to have been intended to explain or qualify each other, and therefore the plainest principles of justice requires that if

one of the statements is to be used against the party, all of the other statements tending to explain it or to qualify this use should be shown and considered in connection with it.”)

Conclusion

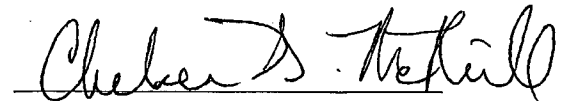
For the foregoing reasons, Defendant requests that the videotaped forensic interviews be excluded from evidence.

IT IS SO MOVED.

Respectfully submitted,



Claude Howe, III
Chief Public Defender
Laurens County, South Carolina



Chelsea B. McNeill
Assistant Public Defender
Laurens County, South Carolina

May 13, 2014
Laurens, South Carolina

THE STATE OF SOUTH CAROLINA

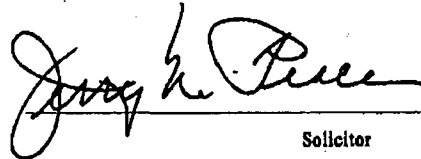
COUNTY OF LAURENS

**INDICTMENT FOR
LEWD ACT UPON A CHILD
16-15-0140**

At a Court of General Sessions, convened on the 19th day of August, 2011 the Grand Jurors of Laurens County present upon their oath:

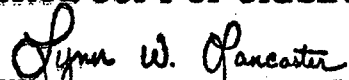
That Ricky Dale Pace, did in Laurens County, state aforesaid, on or about the 19th day of February, 2011 being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: a juvenile, DOB _____, 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, a juvenile, DOB _____, 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

ATRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Shannon Childress
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2011

Indictment # 11GS30-1287

WARRANT NUMBER

J619700

THE STATE

I

vs.

Ricky Dale Pace

True Bill

Monty P. Knight
Foreman of the Grand Jury

Date: 8-19-11

INDICTMENT FOR

LEWD ACT UPON A CHILD
16-15-0140

VERDICT

Guilty

Harold Wamey

Foreman 5/15/14

2011 AUG 19 10 53 AM
CLERK OF COURT
LAURENS COUNTY

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

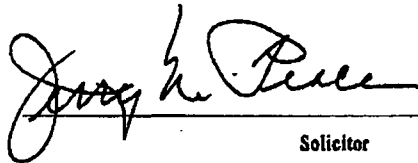
INDICTMENT FOR**LEWD ACT UPON A CHILD
16-15-0140**

At a Court of General Sessions, convened on the 19th day of August, 2011 the Grand Jurors of Laurens County present upon their oath:

That Ricky Dale Pace, did in Laurens County, state aforesaid, on or about the 8th day of January, 2011 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: a juvenile, DOB 12/8/02, 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, a juvenile, DOB [redacted] in violation of Section 16-15-140 of the South Carolina Code of Laws, 1976, as amended.

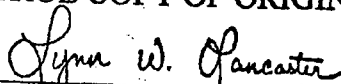
*

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

A TRUE COPY OF ORIGINAL

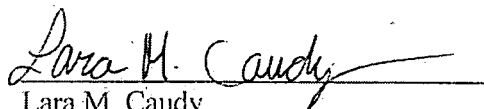


Lynn W. Lancaster
Laurens County CCCP & GS

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 11, 2016



Lara M. Caudy
Appellate Defender

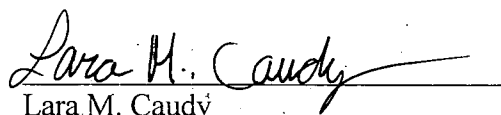
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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