

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Alison Renee Lee, Circuit Court Judge

RECEIVED

JAN 20 2016

SC SUPREME COURT

EDWARD MARTIN CLARKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001354

APPENDIX

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State of South Carolina)

In the General Sessions
Court of York

County of York)

Case No.: 2011-GS-46-02127

State of South Carolina.,)

Plaintiff.,)

-vs-)

Edward Clarkson.,)

Defendant.)

Transcript of Record

January 11-12, 2012
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge, and a jury.

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

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ORIGINAL

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION WEDNESDAY, JANUARY 11, 2012 AT 02:06
2 PM.)

3 (DEFENDANT ENTERS COURTROOM.)

4 MS. INZERILLO: May I approach, Your Honor.

5 THE COURT: Yes.

6 MS. JOYNER: May I approach, Your Honor?

7 THE COURT: Yes.

8 Call the case.

9 MS. JOYNER: Thank you, Your Honor.

10 Your Honor, the State calls the case of the State of
11 South Carolina versus Edward Martin Clarkson on Indictment
12 2011-GS-46-2127 charging lewd act upon a child. The
13 Defendant has indicated through his attorney he wished to
14 have a trial and the State is ready to proceed.

15 THE COURT: Anything before we get the panel up? I've
16 looked at the requested voir dire. I think the only one
17 that I'm not going to ask is deposed by the Defense is
18 Number 9. I don't know...

19 MS. INZERILLO: Your Honor, that request is sort of in
20 tandem with one of the motions in limine. One of the
21 Defense motions is to ask that Mr. Clarkson's status as a
22 sex offender not, you know, to be discussed in front of the
23 jury. And depending on the Court's ruling on that,
24 certainly would determine whether that needed to be --

25 THE COURT: Well let's look at those motions first

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1 then. What -- Does the State plan to go into his prior --

2 MS. JOYNER: We don't plan to go into it, Your Honor,
3 in our case in chief, unless for some reason, in some way
4 the door is opened by the Defendant in this case. I've
5 deem that offering it in the case in chief would be the
6 equivalent of offering his prior record in front of the
7 jury before he's testified and I don't think that would be
8 proper. I do have concerns that the door may be opened in
9 front of the jury, which would lead the State to offer that
10 evidence in its case in chief, but not -- we've not ---

11 THE COURT: I don't plan to ask the question then
12 because that would interject it when it may never be
13 brought up again.

14 MS. INZERILLO: Yes, Your Honor. Thank you.

15 THE COURT: All right. Well let's look at the voir
16 dire -- I mean the in limine motions then and see if there
17 are any other ones we need before the jury comes up.

18 Motion regarding discovery. Has the State complied
19 with discovery?

20 MS. JOYNER: I believe we have fully complied, Your
21 Honor. We provided to Ms. Inzerillo an incident report, an
22 NCIC, a forensic interview, the transcript from that
23 forensic interview. Numerous e-mails have gone back and
24 forth regarding medical records and different things
25 related to the date and information of the encounter, so I

1 believe we've fully complied with all, Your Honor.

2 THE COURT: Next, impeachment testimony? Impeachment?
3 Do you have any impeachment matters?

4 MS. JOYNER: Any impeachment matters meaning as to his
5 prior record, Your Honor?

6 THE COURT: Yes.

7 MS. JOYNER: He does have a prior record, Your Honor.
8 We've already referred he's a convicted sex offender. He
9 was convicted in May 18, '97 of criminal sexual conduct in
10 the second degree. It was with a minor. He received a 20-
11 year sentence, a concurrent sentence. The two counts under
12 a CSC second with a minor. One count of assault and
13 battery of a high and aggravated, five years concurrent.
14 And 11 counts of contributing, two years each concurrent.

15 My information is that he became -- that he was
16 released from custody in 2007. Ask Ms. Inzerillo to
17 correct me if I'm wrong about that. So I believe, based
18 off the sentences that he received that the sentences for
19 criminal sexual conduct with a minor in the second degree,
20 those two 20-year sentences, based on his release date
21 within the 10 years.

22 THE COURT: They would, but how do you intend to ask
23 those if he testifies, because of the nature of them being
24 so parallel to what the charge is?

25 MS. JOYNER: I would defer to the Court on that

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1 matter, Your Honor. I understand that there's an argument
2 that it may be overly prejudicial. And again, unless
3 there's something that he says opened the door to those
4 offenses that it may be appropriate to ask him if he was
5 convicted of two felonies in 1997, which carried sentences
6 of up to 20 years.

7 THE COURT: Well I wouldn't ask about the sentencing.

8 MS. JOYNER: Okay.

9 THE COURT: But just ask whether he was convicted of
10 two felonies.

11 MS. JOYNER: Yes, sir.

12 THE COURT: That's all on Number 2. Number 3,
13 criminal histories of the non-law enforcement witnesses.

14 MS. JOYNER: I had for Ms. Inzerillo a copy of a NCIC
15 for one of our civilian witnesses showed no prior record.
16 We just served a subpoena today on Mr. Finnigan. I will
17 have that prior to offering his testimony. I don't have
18 that currently.

19 THE COURT: Okay. Sequestration will be granted,
20 reciprocally on behalf of the Defense.

21 And Lyle testimony from the State?

22 MS. JOYNER: We do not intend to offer Lyle in our
23 case in chief.

24 THE COURT: All right. We've done Number 6.

25 Number 7, is there any necessity for a Jackson versus

1 Denno?

2 MS. JOYNER: We do have a statement, Your Honor.

3 THE COURT: All right. We'll do that after we get the
4 jury in and swear them.

5 Motion to redact any statement about not wanting to go
6 back to jail. I guess we'll have to take care of that when
7 we give -----

8 All right, then let's get the panel up, and strikes
9 five and five?

10 MS. INZERILLO: Yes, Your Honor.

11 THE COURT: Let me know when you get the panel up.

12 (COURT IN RECESS AT 02:12 PM.)

13 (JURY ENTERS COURTROOM.)

14 (COURT BACK IN SESSION AT 02:20 PM.)

15 THE COURT: Thank you. Take your seats.

16 Members of the jury panel, let me introduce myself.

17 It's been two days since I've seen you. Of course, I'm
18 John Hayes. I'm the judge handling this term of Court. We
19 are now going to try our second case. We've already
20 finished one.

21 This is the case of the State versus Edward Martin
22 Clarkson.

23 Mr. Clarkson, will you please stand?

24 (DEFENDANT EDWARD CLARKSON STOOD.)

25 THE COURT: This is Mr. Clarkson. He is represented

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1 by Melissa Inzerillo. You may be seated.

2 (ATTORNEY INZERILLO AND DEFENDANT EDWARD CLARKSON NOW
3 SEATED.)

4 THE COURT: The State is represented by Mr. Erin
5 Joyner -- Ms. Erin Joyner -- Mrs. Erin Joyner. I'll get it
6 right.

7 Mr. Martin -- Mr. Martin Clarkson -- Edward Martin
8 Clarkson was charged with what's called lewd acts upon a
9 child. It's alleged that on or about April 18th, 2011, he
10 did commit a lewd or lascivious act on the body or a body
11 part of a child under the age of 16. The victim is stated
12 to be Mr. Minor And that this was done with the
13 intent of arousing either the young man or himself lusts,
14 passion, or sexual desires. He has entered a plea of not
15 guilty to this charge.

16 First, are any of you related by blood or marriage or
17 are you a close personal friend or acquaintance of Mr.
18 Clarkson? If so, please stand. No one stands.

19 Have any of you heard anything about this case from
20 any source whatsoever or have any of you formed or
21 expressed any opinion about any matter or issue that would
22 be involved in this case; if so, please stand? No one
23 stands.

24 Are any of you members of the Grand Jury, which passed
25 on this indictment at an earlier time; if so, please stand?

1 No one stands.

2 Are any of you members of or contributors to
3 organizations such as Students Against Drunk Drivers,
4 Mothers Against Drunk Drivers, Citizens Against Violence,
5 Trooper's Association, Sheriff's Association or Fraternal
6 Order of Police; if so, please stand. No one stands.

7 Are any of you or a member of your family involved in
8 law enforcement at any level or prosecution of criminal
9 cases at any level? Anything from the judge advocate
10 general to D.A. or solicitor, sheriff, policeman, trooper,
11 MP, anything like that, please stand.

12 All right, yes, sir? We'll work this way and -- your
13 name and number?

14 A. James Ronald Jones. I got a cousin that's a
15 magistrate in Hickory Grove.

16 THE COURT: All right, just remain standing, please.
17 Yes, ma'am?

18 A. Martha Warner, Number 170. My son is a JAG officer.

19 THE COURT: All right. Do either of you -- if either
20 of you would be unable to be fair and impartial based on
21 this, please raise your right hand. Neither does. You may
22 be seated. Thank you.

23 Have -- This is a delicate question, so I'm not going
24 to ask you to get into particulars. But have any of you or
25 a member of your immediate family either been accused of or

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1 felt that you or a member of your family have been a victim
2 of any sort of sexual offense, sexual abuse offense; if so,
3 please stand.

4 All right again, I'm not going to ask you for
5 particulars, I'm just going to ask you to give your name
6 and number, and then I'll follow up about fair and
7 impartiality.

8 Yes, ma'am.

9 A. Christy Raines, Number 123.

10 THE COURT: All right. Yes, sir.

11 A. Tom Wells, 173.

12 THE COURT: All right. Would this in your past
13 prevent you from being fair and impartial in the trial of
14 this case; if so, please raise your right hand.

15 Those two. So both of you will be excused. Please
16 have a seat. Don't leave, but have a seat.

17 Have any of you been represented by anyone from the
18 Solicitor's office, either Mr. Kevin Brackett, or
19 associated with that office in any way, the victim, the
20 witness, or in any fashion whatsoever? Or are you a
21 friend, or acquaintance, or a kin to anyone who works for
22 Kevin Brackett, the solicitor here in the 16th Circuit; if
23 so, please stand.

24 All right, yes, ma'am. Your name -- and I know who
25 you are. You stood up the other day, but tell me again

1 because we got to make a record.

2 A. My name is Kristy Speed, Juror 153, a former employee
3 of the 16th Circuit.

4 THE COURT: Would that affect your ability to be fair
5 and impartial in this case?

6 MS. SPEED: No, sir. It would not.

7 THE COURT: All right. Thank you. You may be seated.

8 Have any of you who have worked with or for Mr. Harry
9 Dest in his office, the Public Defender's Office here in
10 York County, in any fashion been a witness, or a client, or
11 had a family member as a witness or a client for that
12 office; if so, please stand. No one stands.

13 Anything further from the State?

14 MS. JOYNER: Nothing from the State, Your Honor.

15 THE COURT: Anything from the Defense?

16 MS. INZERILLO: No, Your Honor.

17 THE COURT: Finally, there are the following possible
18 witnesses in this case. If you are related by blood or
19 marriage or if you are a close, personal friend or
20 acquaintance of any of these individuals, one is a doctor
21 and if you are a patient or a family member is a patient of
22 this doctor, please stand.

23 From the York County Sheriff's Office: Deputy Fred
24 Moore and Deputy Ed Wallace.

25 Additionally, not associated with law enforcement:

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1 Minor Linda Gibson; Ryan Finnigan, F-i-n-n-i-g-a-n;
2 and Doctor Trunandue Dwidedi, I think, D-w-i-d-e-d-i,
3 that's the doctor. Are any of you a patient of that
4 doctor; or a close, personal friend, or acquaintance; or
5 related to any of the individuals, including the doctor
6 whose name I just introduced -- I just read to you; if so,
7 please stand. No one stands.

8 All right, if you hear your name called, please come
9 forward and stand next to the Bailiff. Turn and face the
10 table where the Solicitor is seated. She will say either
11 "Present the juror" or "Excuse the juror." If she says,
12 "Excuse the juror," return to your seat. If she says,
13 "Present the juror," turn and face the table where Mr.
14 Clarkson and his attorney are seated. And she will say --
15 Ms. Inzerillo will, either excuse the juror, which again
16 means you may return to your seat or swear the juror, which
17 means you can take a seat in the jury box. The strikes are
18 five and five, and we'll draw one alternate.

19 All right.

20 MADAME CLERK: Number 177, Johnathan Wilson.

21 (WHITE MALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MS. JOYNER: Please present this juror.

24 MADAME CLERK: Defense?

25 MS. INZERILLO: Please excuse the juror.

1 MADAME CLERK: You are excused from this case.
2 Number 142, Daniel Sippel.
3 (WHITE MALE COMING FORWARD.)
4 MADAME CLERK: What say you for the State?
5 MS. JOYNER: Please present this juror.
6 MADAME CLERK: Defense?
7 MS. INZERILLO: Please swear the juror.
8 MADAME CLERK: You may have a seat in the jury box.
9 Number 148, Sharon Smith.
10 (WHITE FEMALE COMING FORWARD.)
11 MADAME CLERK: What say you for the State?
12 MS. JOYNER: Please present this juror.
13 MADAME CLERK: Defense?
14 MS. INZERILLO: Please swear the juror.
15 MADAME CLERK: You may have a seat in the jury box.
16 Number 107, Michele Nestel.
17 (WHITE FEMALE COMING FORWARD.)
18 MADAME CLERK: What say you for the State?
19 MS. JOYNER: Please present this juror.
20 MADAME CLERK: Defense?
21 MS. INZERILLO: Please swear the juror.
22 MADAME CLERK: You may have a seat in the jury box.
23 Number 44, Beverly Franklin.
24 (BLACK FEMALE COMING FORWARD.)
25 MADAME CLERK: What say you for the State?

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1 MS. JOYNER: Please present this juror.
2 MADAME CLERK: Defense?
3 MS. INZERILLO: Please swear the juror.
4 MADAME CLERK: You may have a seat in the jury box.
5 Number 149, Thomas Smith.
6 (WHITE MALE COMING FORWARD.)
7 MADAME CLERK: What say you for the State?
8 MS. JOYNER: Please present this juror.
9 MADAME CLERK: Defense?
10 MS. INZERILLO: Please swear the juror.
11 MADAME CLERK: You may have a seat in the jury box.
12 Number 162, Lafe Thompson.
13 (WHITE MALE COMING FORWARD.)
14 MADAME CLERK: What say you for the State?
15 MS. JOYNER: Please present this juror.
16 MADAME CLERK: Defense?
17 MS. INZERILLO: Please swear the juror.
18 MADAME CLERK: You may have a seat in the jury box.
19 Number 117, Michael Patton.
20 (BLACK MALE COMING FORWARD.)
21 MADAME CLERK: What say you for the State?
22 MS. JOYNER: Please present this juror.
23 MADAME CLERK: Defense?
24 MS. INZERILLO: Please swear the juror.
25 MADAME CLERK: You may have a seat in the jury box.

1 Number 128 --

2 THE COURT: Just go up one. That's fine. You can sit
3 there. From now on have them go up on the second row.

4 MADAME CLERK: Number 128, Marchelle Reed.

5 (WHITE FEMALE COMING FORWARD.)

6 MS. JOYNER: Please present ---

7 MADAME CLERK: What say you for the State?

8 MS. JOYNER: Sorry. Please present this juror.

9 MADAME CLERK: Defense?

10 MS. INZERILLO: Please swear the juror.

11 MADAME CLERK: You may have a seat in the jury box.

12 Number 160, Deborah Taylor.

13 (WHITE FEMALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MS. JOYNER: Please present this juror.

16 MADAME CLERK: Defense?

17 MS. INZERILLO: Please swear the juror.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number 153, Kristine Speed.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MS. JOYNER: Please excuse this juror from service in
23 this case.

24 MADAME CLERK: You are excused from this case.

25 Number 1, Paul Aiken.

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1 (BLACK MALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MS. JOYNER: Please present this juror.

4 MADAME CLERK: Defense?

5 MS. INZERILLO: Please excuse this juror.

6 MADAME CLERK: You are excused from this case.

7 Number 23, Jeffrey Chmielinski.

8 (WHITE MALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 MS. JOYNER: Please present this juror.

11 MADAME CLERK: Defense?

12 MS. INZERILLO: Please swear the juror.

13 MADAME CLERK: You may have a seat in the jury box.

14 Number 8, Derek Aniba.

15 (WHITE MALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 MS. JOYNER: Please excuse this juror from service in
18 this case.

19 MADAME CLERK: You are excused from this case.

20 Number 24, Heather Cicala.

21 (WHITE FEMALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MS. JOYNER: Please present this juror.

24 MADAME CLERK: Defense?

25 MS. INZERILLO: Please swear the juror.

1 MADAME CLERK: You may have a seat in the jury box.

2 Number 100, Tracy Miller.

3 (BLACK FEMALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 MS. JOYNER: Please present this juror.

6 MADAME CLERK: Defense?

7 MS. INZERILLO: Please swear the juror.

8 MADAME CLERK: You may have a seat in the jury box.

9 THE COURT: Draw one alternate. Strikes will be one
10 and two.

11 MADAME CLERK: Number 110, William Noonan.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MS. JOYNER: Please present this juror.

15 MADAME CLERK: Defense?

16 MS. INZERILLO: Please swear the juror.

17 MADAME CLERK: You may have a seat in the jury box.

18 THE COURT: Anything from the State involving the
19 striking of the panel?

20 MS. JOYNER: Not from the State, Your Honor.

21 THE COURT: Anything from the Defense?

22 MS. INZERILLO: No, Your Honor.

23 THE COURT: Those of you who were not chosen, I will
24 allow you to leave. Please call back tonight after 7:00.

25 Thank you.

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1 (JURY DISMISSED AT 02:37 PM.)

2 THE COURT: Those of you who were chosen --

3 Those of you who were chosen, we're not going to start
4 the trial -- the rest of the trial this afternoon. We're
5 going to start it at 10:00 in the morning so I'm going to
6 let you go in just a minute. When you return tomorrow, you
7 will return to the jury room, not the jury assembly room,
8 but the jury room -- well, I take it back. I think you do
9 go to the jury assembly room now. They've changed the
10 procedure. Anyway, the bailiffs will tell you how to get
11 in and out while you're serving as a juror.

12 You won't be administered the oath until in the
13 morning, but you are on this jury panel. So you cannot
14 discuss the case among yourselves, nor can you try to make
15 up your own mind until I instruct you to jointly
16 deliberate, and return a unanimous verdict. Prior to that
17 time, you're not equipped with all the tools you need to
18 make a fair and reasonable decision.

19 Do not let yourself be exposed to any news coverage if
20 there is any. Do not do any independent research. Don't
21 go online. That would be inappropriate. Don't do anything
22 as far as looking up -- not only online, but in the
23 library, or calling friends, or tweeting, or anything.
24 Don't -- you cannot receive information regarding this case
25 outside of the courtroom in any fashion whatsoever. To do

1 so would be improper and also a violation of your oath. Do
2 not let anyone discuss the case with you, you are on the
3 panel even though you haven't been sworn in, so do not let
4 anyone discuss the case with you. If anyone does try to
5 discuss the case with you, tell them you cannot as you're
6 serving as a juror. If anyone tries to discuss this case
7 with you, report that back to me. I would have to take
8 action against someone who has tried to talk to a seated
9 juror.

10 Mr. Sippel, I'm going to ask you to be the foreman of
11 the jury. You will take this end seat when you come in
12 tomorrow, not right now.

13 And Mr. Noonan, you will always sit in that seat as
14 the alternate. There are no other assigned seats, just the
15 foreman and the alternate.

16 So I'm going to let you go in just one second, and the
17 Bailiff will tell you how to get in and out while you're
18 serving on the panel.

19 Anything else before this jury is dismissed for the
20 evening?

21 MS. JOYNER: Not from the State, Your Honor.

22 MS. INZERILLO: No, Your Honor.

23 THE COURT: All right. Have a pleasant evening, and
24 we will see you back at 10:00 in the morning.

25 (JURY PANEL EXITS COURTROOM AT 02:37 PM.)

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 THE COURT: Do you want to proceed with the Jackson
2 versus Denno matter?

3 MS. JOYNER: Yes, sir, Your Honor. But if I could
4 have just one moment, Your Honor.

5 THE COURT: All right, you can.

6 (PAUSE.)

7 MS. JOYNER: Thank you, Your Honor. The State's
8 ready.

9 THE COURT: All right.

10 MS. JOYNER: We call our first witness Detective
11 Moore.

12 THE COURT: Please come up and be sworn.

13 MADAME CLERK: Raise your right hand, place your left
14 hand on the Bible.

15 (WHEREUPON: DETECTIVE FRED MOORE,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION - IN CAMERA

18 DETECTIVE FRED MOORE BY MS. JOYNER:

19 Q. Detective Moore, could you please state your full name
20 for the record?

21 A. Fred Wesley Moore, Jr.

22 Q. And how are you employed, sir?

23 A. Detective with the Violent Crimes Unit, York County
24 Sheriff's Office.

25 Q. And at some point in April of 2011, were you assigned

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

-22-

1 to follow up on a report made by Ms. Elizabeth Boggs in
2 relation to her son Minor

3 A. Yes, I did.

4 Q. And at the time that you were assigned to follow up on
5 those allegations, did you have the name of a suspect?

6 A. The name that was given was Eddie Carter.

7 Q. Ed Carter. And do you know how or -- did you have an
8 address or a general area where Ed Carter was believed to
9 have lived?

10 A. Ms. Boggs had said it was on -- near [REDACTED] So
11 I researched -- did some research and couldn't find an
12 Eddie Carter there. Myself and Detective Wallace went out
13 looking in the area and located a house that fit the
14 description at the corner of [REDACTED] and . I was
15 familiar with a sex offender who had lived there prior.

16 Q. And I understand that in front of the jury you would
17 not reference that, but is that you were able to help
18 locate the person in question?

19 A. Yes. And I recognized that Edward Clarkson lived at
20 that address.

21 Q. And do you recall what day it was that you went out to
22 the house to see Mr. Clarkson?

23 A. I think it was April the 28th.

24 Q. Was there anybody else with you?

25 A. Detective Alex Wallace.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

-23-

1 Q. And at the time that you went to that house, did you
2 leave the office that day knowing that you were going to
3 see Mr. Clarkson?

4 A. No.

5 Q. Did you just then stumble upon his house and make the
6 connection?

7 A. Yes, ma'am.

8 Q. And did you have an opportunity to meet with Mr.
9 Clarkson ---

10 A. I did.

11 Q. --- at his house?

12 A. Yes, he was in the front yard.

13 Q. Was that house located near the [REDACTED] area?

14 A. Yes.

15 Q. And when you met Mr. Clarkson, at that point in time,
16 did you have a warrant for him?

17 A. No.

18 Q. Was he under arrest?

19 A. No.

20 Q. Was he taken into custody that day?

21 A. No, ma'am.

22 Q. When you approached Mr. Clarkson, did you go with him,
23 with Detective Wallace?

24 A. Yes.

25 Q. And did you ask to speak with him?

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

-24-

1 A. Yes.

2 Q. Did you read him his *Miranda* warnings?

3 A. I did read him his rights.

4 Q. And what *Miranda* warnings did you read him?

5 A. Off of a *Miranda* sheet of paper that we have.

6 Q. And if you could just recite for the Court to the best
7 of your memory, what those warnings were that you gave to
8 Mr. Clarkson.

9 A. The right to remain silent. Anything he could say
10 would be used against him in court of law. If he wanted an
11 attorney one would be --

12 THE COURT: Whoa, don't do it quite so fast and speak
13 up. I can't keep up with you.

14 Q. If you could speak up a little bit.

15 A. Hopefully I can -- obviously -- if you cannot afford
16 to hire an attorney, one will be appointed for him. He can
17 seek to speak to us at anytime, and exercise his right and
18 stop speaking with us.

19 Q. Did Mr. Clarkson appear to understand the warnings
20 that you gave him?

21 A. Yes.

22 Q. And you said you read them off of a warnings form?

23 A. Yes.

24 Q. Is that the form you normally use in your office say
25 during an interrogation?

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 A. Yes.

2 Q. Did you have him sign anything in this case?

3 A. I did not. He -- we -- he wasn't under arrest or in
4 custody, and technically we didn't have to advise him of
5 his rights. But I went ahead and read him and advised him
6 of his rights.

7 Q. And did he appear to understand those rights?

8 A. Yes.

9 Q. Did he appear to be under the influence of anything at
10 all?

11 A. No, ma'am.

12 Q. Did he agree to speak with you?

13 A. Yes.

14 Q. Did at any point, did he ask to speak with a lawyer?

15 A. No.

16 Q. Did he ask to cease talking with you?

17 A. No.

18 Q. And was Detective Wallace present the whole time that
19 you were talking with the defendant?

20 A. Yes.

21 Q. When you were obtaining -- talking with him, did you
22 have your service revolver drawn, or in any way threaten
23 him?

24 A. No.

25 Q. Did you promise him anything in order to have him talk

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 with you?

2 A. No.

3 Q. And in any other way, attempt to coerce him into
4 speaking with you?

5 A. No, ma'am.

6 Q. And what was the format of your questioning of the
7 defendant? Was it just a conversation? Or was it a
8 question and answer session?

9 A. It was -- I mean, asking him questions. I started out
10 asking him did he know Minor

11 Q. Did he say that he knew Minor

12 A. Yes.

13 Q. And how did he indicate to you that he knew Minor
14 Minor

15 A. He said he was a friend of the family. I think Minor
16 had been over at his house before. They would -- he had
17 done some yard work or worked in his yard. They'd been out
18 jet skiing, he had mentioned to me before.

19 Q. Did -- when he was mentioning jet skiing, did you
20 understand whether that was a recent time, or it -- long
21 time before?

22 A. I think it was from my understanding months before.

23 Q. Now did he -- did you ask him specifically whether
24 Minor had spent the night at his house on April 17th of
25 2011?

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 A. I did.

2 Q. And what was his response?

3 A. He said, "Yes, he did."

4 Q. Did he indicate to you where Minor had spent the
5 night inside the house?

6 A. In his bed.

7 Q. And did he indicate -- Did the defendant indicate
8 where the defendant had spent the night that night?

9 A. He slept in bed also, with Minor

10 Q. Did you question the defendant as to what he wore to
11 bed -- the defendant wore to bed that night?

12 A. I did. He -- he said that he wore what he normally
13 wears to bed, which is just his underwear, no shirt.

14 Q. Did he specify what kind of underwear those were?
15 Were they boxer shorts or...

16 A. I don't recall. I'm thinking it was boxers is what he
17 told me.

18 Q. Did you ask him what Minor was wearing to bed?

19 A. I did. He said pajama bottoms and a t-shirt.

20 Q. Did he indicate whether those were long pajamas or
21 shirt pajamas, the pants?

22 A. I don't know if he indicated.

23 Q. Would it help -- would it refresh your recollection to
24 look at your summary?

25 A.. Yes.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 Q. I just want you to read through that really quickly.

2 A. Okay. Long pajama bottoms and a t-shirt.

3 Q. When you -- At any point in your conversation or your
4 interview with the defendant, did you explain to him the
5 reason why that you were there?

6 A. Yes, I told him that Minor said he had placed his
7 hand on his penis.

8 Q. Did the -- What was the defendant's response to that
9 claim?

10 A. He said he did not touch Minor penis.

11 Q. Did the defendant talk to you at all about whether he
12 had touched Minor in any way while they were in bed
13 together?

14 A. He told me that he reached over and touched Minor
15 waist area or side area to make sure he hadn't gotten up
16 during the -- during the night.

17 Q. Did he -- Did he elaborate on why he was concerned
18 that Minor would get up during the night or what he was
19 concerned would happen if Minor did get up during the
20 night?

21 A. He told me that one concern was about the medication
22 and him possibly sleepwalking. And the other one was about
23 he didn't want Minor to get up and look -- there was some
24 gay pornography on his computer, and he didn't want him
25 looking at those sites.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 Q. Did Mr. Clarkson volunteer any additional information
2 about individuals -- other individuals that come to his
3 home?

4 A. He -- we got in a discussion. He had brought up the
5 fact that he was gay. He told me he has guys 18, 19, 20
6 years old coming to the house. So we talked about -- he
7 said that he cards people. He doesn't buy them cigarettes
8 and alcohol of that nature, and they come over. And I
9 asked him did he know how old Minor was. And he said 12.
10 And I asked him did he card Minor And he said his mother
11 knows that -- knows who he is, that he, you know -- allowed
12 him to come over to his house.

13 Q. Did the defendant indicate whether Minor had stayed
14 at the residence in the past?

15 A. He had mentioned that Minor had stayed at his
16 residence in the past.

17 Q. Did you inquire -- Do you recall whether you inquired
18 where Minor slept on those occasions?

19 A. I don't recall.

20 Q. Did you ask any questions about the following day that
21 he dropped Minor off after being at his mother's house?

22 A. I did. Minor had mentioned that there was someone in
23 the car with him. And I asked him who else was with him
24 when they dropped Minor off. And at first Mr. Clarkson
25 was hesitant to talk to me. He said he believes it was a

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA

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1 friend of his named Ryan Finnigan.

2 Q. Was he -- Did Mr. Clarkson express certainty about
3 whether -- or did you ask whether Mr. Finnigan had spent
4 the night the night before?

5 A. I didn't ask.

6 Q. Did Mr. Clarkson volunteer any information or attempt
7 your call for you whether Mr. Finnigan had spent the night
8 the night before?

9 A. He said he was not sure.

10 Q. He was not sure. Okay.

11 And so -- Is there anything else you can recall
12 discussing or any questioning that occurred with Mr.
13 Clarkson that day?

14 A. No. I remember -- no, ma'am.

15 Q. And then again going to the issue, you don't recall
16 whether you asked him whether Minor -- where Minor slept
17 on previous occasions?

18 A. I don't recall asking.

19 Q. But do you -- and to answer in response to where
20 Minor slept, on the night of April 17th again was?

21 A. In his bed.

22 Q. And did he admit to being in bed with Minor

23 A. Yes.

24 Q. Now, do you recall how long you and Detective Wallace
25 were on the scene talking to him?

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER - IN CAMERA
CROSS BY MS. INZERILLO - IN CAMERA

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1 A. Somewhere in the -- 15 or 20 minutes, I believe we
2 were talking to him.

3 Q. At any point, did you attempt to place the defendant
4 under custody, in your custody, or attempt to take him to
5 the police station?

6 A. No.

7 Q. At any point, did you threaten him or promise him
8 anything or agree to anything in an attempt to coerce him,
9 and did you continue to speak with him?

10 A. No.

11 Q. Was he arrested on the scene that day?

12 A. No.

13 Q. Thank you very much, Detective. Please answer any
14 questions Ms. Inzerillo has.

15 MS. INZERILLO: May it please the Court, Your Honor.

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION - IN CAMERA

18 DETECTIVE FRED MOORE BY MS. INZERILLO:

19 Q. Good afternoon, Detective.

20 A. Hi.

21 Q. On this day, you interviewed Mr. Clarkson on the 28th.
22 Right?

23 A. Yes.

24 Q. And that was about 10 days after the report came in?

25 A. Correct.

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 Q. And when you went to his house, you initiated the
2 conversation with Mr. Clarkson?

3 A. Yes.

4 Q. And you explained to him why you were there?

5 A. Yes, I told him we had an investigation.

6 Q. And had he -- Well at that point, you knew what the
7 allegations were against him; is that right?

8 A. Yes, ma'am.

9 Q. So the purpose of your visit and talking with him is
10 to talk with him about the specific facts of that case; is
11 that right?

12 A. Yes.

13 Q. And had he not answered your questions or indicated he
14 didn't want to speak, would you have put him under an
15 arrest at that time?

16 A. No.

17 Q. Now you indicated that you were there about 15 or 20
18 minutes; is that right?

19 A. Somewhere in that nature.

20 Q. And during that time that you initiated the
21 questioning about the events of this night?

22 A. Excuse me?

23 Q. During the time that you were there, you initiated
24 questioning about the events of this night?

25 A. Yes, yes.

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 Q. So this wasn't a situation where Mr. Clarkson just
2 said, "Let me tell you what's happened," and then started
3 talking; is that right?

4 A. Yes, I would ask him questions.

5 Q. And I believe you indicated that you did read him his
6 Miranda rights from a form or a card that you have on your
7 person?

8 A. I did.

9 Q. Do you have that form or card with you today?

10 A. I have a form in the file. I mean, I don't have the
11 -- a form. I have the card, I think, in my wallet.

12 Q. Were those the rights on the form that you had? Did
13 he sign that form? Was that just a form you keep on you?

14 A. That was a form that I have in a binder that I keep
15 with me. It's usually -- I have those forms and voluntary
16 statement forms with me at all times when I'm out and
17 about.

18 Q. And do you recall the rights that you read to Mr.
19 Clarkson on this day? I had a little trouble hearing you
20 when you said it initially.

21 A. I mean, I read them off the form.

22 Q. Do you recall what they were?

23 A. I mean I can't verbatim, but I can pull it off my card
24 and read them off.

25 MS. INZERILLO: May I approach the witness, Your

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 Honor.

2 Q. I'm just going to hand you the file.

3 (WITNESS REVIEWED FILE/FOLDER.)

4 A. I don't have that form in here. It's the form that I
5 keep, but we didn't -- we didn't have him sign it. I read
6 them to him.

7 Q. The -- But you don't recall today exactly the rights
8 were that you read him? Is that right?

9 A. Well, I mean, I read him the standard rights that were
10 on the form that he had the right to remain silent and
11 anything he say can and would be used against him in a
12 court of law. He had the right to an attorney. If he
13 could not afford an attorney one would be appointed for
14 him. He can cease to exercise his rights at anytime and
15 not speak with us.

16 Q. And then when you did that, you continued to ask him
17 questions about the events of 10 days before; is that
18 right?

19 A. Yes.

20 Q. Okay. Now in this conversation, I know you have gone
21 over some of the conversation with Ms. Joyner. You
22 transcribed the conversation in this incident interview
23 report; is that right?

24 A. Yes.

25 Q. Is this the entirety of the conversation that you had

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO
REDIRECT BY MS. JOYNER

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1 with Mr. Clarkson?

2 A. Yes.

3 Q. Is there anything in this report that -- not in this
4 report that you recall speaking with him about or having
5 him convey to you?

6 A. Not that I recall.

7 Q. Did you talk to Mr. Clarkson anytime other than this
8 day?

9 A. With this case, involving this case?

10 Q. Yes.

11 A. I mean, I had contact with him before because I'm used
12 to supervise the sex offender registry. But I had known
13 him before, but as far as this case, no.

14 Q. No, okay. So he had no other conversations with you
15 about this case at any other time?

16 A. No.

17 Q. Before or, I guess, after this date.

18 MS. INZERILLO: I have no further questions, Your
19 Honor.

20 THE COURT: Redirect?

21 MS. JOYNER: Yes, sir.

22 REDIRECT EXAMINATION

23 DETECTIVE FRED MOORE BY MS. JOYNER:

24 Q. Detective, if you -- just to clear up to where we're
25 very clear on what rights were read to Mr. Clarkson. Are

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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1 the rights that are listed on the card that you have in
2 your pocket the same rights that are listed on the
3 Sheriff's Office, the one you are referring to?

4 A. The Miranda rights on the card.

5 Q. Could you take that -- is that the same rights? If
6 you could take a look at that card and tell me whether
7 those are the same rights that are listed on the form.

8 A. I'm having a hard time locating the card.

9 MS. JOYNER: Okay. Your Honor, can we just take about
10 a five minute break. I'm asking him to go downstairs and
11 get a form. If that's okay?

12 THE COURT: Yeah, we'll take five minutes.

13 (COURT IN RECESS AT 02:56 PM.)

14 (COURT BACK IN SESSION AT 03:00 PM.)

15 THE COURT: Get Ms. Inzerillo back.

16 (ATTORNEY INZERILLO ENTERS COURTROOM.)

17 MS. INZERILLO: I apologize, Your Honor.

18 You may proceed.

19 MS. JOYNER: Thank you, Your Honor. I apologize for
20 that.

21 DETECTIVE FRED MOORE BY MS. JOYNER:

22 Q. Detective, I believe you accurately, you read the
23 rights verbatim already. But if you could please just read
24 for the record the rights listed on the form that you used.

25 A. Okay. "So before I ask you any questions, I want to

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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1 advise you of your rights.

2 You have the right to remain silent. Anything you say
3 can and will be used against you in a court of law.

4 You have the right to talk to an attorney and have him
5 present with you while being questioned. If you cannot
6 afford to hire an attorney, one would be appointed to
7 represent you before any questioning, if you wish.

8 You can decide at anytime to exercise these rights and
9 not answer any questions or make any statements."

10 Q. Thank you.

11 And Ms. Inzerillo asked you if there's anything else,
12 any other questions if you recall, or any other important
13 conversations. I'd ask you to take a look at the notes
14 from the file and take a moment to review those notes. And
15 then tell the Court if there's any portion of those notes
16 that is not included in the summary of your statement.

17 A. These were my notes?

18 Q. What's that?

19 A. These were my notes that --

20 Q. From your notes, yeah. Did you take a look those
21 through? Is there anything not included in your
22 recitation?

23 A. There was a dealing with a Ryan Finnigan, and I --
24 trying to locate him. I asked him -- I think I asked Mr.
25 Clarkson where he resided at. And he said somewhere

DETECTIVE FRÉD MOORE: REDIRECT BY MS. JOYNER

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1 nearby, but he couldn't give me the exact address.

2 Q. I need to look at them too.

3 Oh, and I mean your actual notes, the actual notes
4 that you took. Did you bring your notes with you?

5 A. The notes --

6 Q. Your handwritten notes from your interview?

7 A. No, ma'am.

8 Q. Okay, okay, well. Your notes, so are there any other
9 points --

10 A. I typed up my notes.

11 Q. Huh?

12 A. I typed up the summary of notes.

13 Q. You typed up the summary. But you don't have your
14 handwritten notes with you?

15 A. No.

16 Q. Okay. So you don't recall any other point of
17 conversation between you and the defendant other than
18 what's listed in this summary?

19 A. No, ma'am.

20 Q. All right. Thank you very much.

21 THE COURT: Recross?

22 MS. INZERILLO: No, Your Honor.

23 THE COURT: You can step down. Thank you.

24 (WITNESS LEAVING WITNESS STAND.)

25 THE COURT: Anything further on this issue?

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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1 MS. JOYNER: Your Honor, I don't know if Ms. Inzerillo
2 has a motion or not. The State's position would be that he
3 was not in -- the statement was freely and voluntary; ere
4 is no indication. For purposes of the Jackson v. Denno,
5 the statement was taken voluntary. He was not in custody
6 technically. Miranda did not have to be read to him, but
7 clearly it was. Clearly he understood those rights. We
8 think there's nothing about the testimony that's been
9 presented that would be to a inclusion that his statement
10 was inadmissible.

11 MS. INZERILLO: Your Honor, I would ask the Court to
12 make findings. My only concern is Assistant Detective
13 Wallace does not have his notes and was unable to answer
14 the question as to whether there was anything else out
15 there. I will just ask the Court perhaps to hold its
16 findings in abeyance until Detective Wallace can bring his
17 notes to Court, perhaps in the morning, to give him a
18 chance for him to review it, and any other parties to
19 review it in the Court's discretion, and then based on the
20 determination of that would make it's findings.

21 THE COURT: That's fine.

22 MS. JOYNER: Sir?

23 THE COURT: That would be fine.

24 MS. JOYNER: Your Honor, I think he could go
25 downstairs. I'm sorry to make two trips.

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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1 THE COURT: I thought he already went downstairs.

2 MS. JOYNER: I know, Your Honor. I'm sorry. I
3 thought the notes would have been in there, but can you...

4 DETECTIVE MOORE: Yeah.

5 MS. JOYNER: I apologize, Your Honor. I'm sorry.

6 THE COURT: After we finish this, if we finish
7 this --

8 MS. JOYNER: I'm sorry.

9 THE COURT: I said, after we finish this, if we finish
10 this, what -- do we have anything else on this case this
11 afternoon?

12 MS. JOYNER: We -- I have a note that we have a pro se
13 plea and an attorney --

14 THE COURT: No, I mean, anything in this case?

15 MS. JOYNER: Oh anything in this case. I don't
16 believe there are any other motions, Your Honor.

17 THE COURT: Okay, all right.

18 MS. INZERILLO: I just have two supplemental motions
19 based on what was testified.

20 MS. JOYNER: And if the Court, if the Court wishes we
21 can present also the testimony of Detective Wallace. That
22 was Detective Moore who was present --

23 THE COURT: Well, you know. I'm always intrigued when
24 the Solicitor asked me what testimony I want. I don't
25 care.

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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1 MS. JOYNER: Okay.

2 THE COURT: It's up to the State, and it's up to the
3 lawyers to present who they want me to hear. Now
4 occasionally I will ask a question if it's left hanging.
5 That's very, very rare. But I appreciate your courtesy in
6 asking.

7 MS. JOYNER: All right, in that case, Your Honor, I
8 will -- I will present Detective Wallace just very briefly.

9 THE COURT: Okay.

10 MS. JOYNER: In just a moment.

11 (COURT AT EASE AT 02:56 PM.)

12 (COURT BACK ON THE RECORD AT 03:00 PM.)

13 (DETECTIVE MOORE REENTERS COURTROOM.)

14 THE COURT: Come on back up, and take the stand.

15 REDIRECT EXAMINATION - CONTINUED, IN CAMERA

16 DETECTIVE FRED MOORE BY MS. JOYNER:

17 Q. Have you had a chance to review the notes?

18 A. Yes.

19 Q. Is there anything not contained in the written
20 statement?

21 A. It mentions that he makes -- Minor usually -- usually
22 sleeps in the other bedroom. But we had discussed that
23 earlier when -- when we said that he slept in the room with
24 him. And I asked him the question about how many bedrooms
25 does he have.

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER
RE CROSS BY MS. INZERILLO

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1 Q. Okay. So he usually sleeps -- he usually sleeps in
2 the other bedroom. Okay. But that's not as specific to
3 this night?

4 A. No.

5 Q. Is there anything else contained in those handwritten
6 notes that is not included in the summary that you prepared
7 for the General Sessions file?

8 A. No, ma'am. I checkmarked everything that I've typed
9 in here.

10 Q. Okay, thank you. I have no more questions.

11 MS. INZERILLO: I just have one question on that.

12 RE CROSS EXAMINATION - IN CAMERA

13 DETECTIVE FRED MOORE BY MS. INZERILLO:

14 Q. So when you said you checkmarked things that were in
15 your notes that you put in your statement, does that mean
16 there were other things in your notes that aren't in your
17 statement?

18 A. There -- I go -- when -- usually I type -- I do type
19 it shortly after I do the interview, and I'm trying to do
20 the interview I make notes and mark down. That's how I go
21 back and type my -- my statement -- my interview followup
22 statement.

23 MS. INZERILLO: Your Honor, to sort of short circuit
24 this a little bit, I'm just going to go ahead and ask to
25 see a copy of the officer's notes since he also short

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 circuited...

2 THE COURT: All right.

3 (ATTORNEY INZERILLO REVIEWING FILE OF OFFICER MOORE.)

4 MS. INZERILLO: Your Honor, after reviewing, I don't
5 have any other questions in terms of this motion on that.

6 But just for ease as well, I've reviewed by the clerk -- I
7 have a couple of things with the detective, but I would
8 just ask that to just have a copy made to refer back to IN
9 the trial of the case.

10 THE COURT: All right, we'll do that.

11 You can step down. Thank you.

12 (WITNESS LEAVING WITNESS STAND.)

13 MS. JOYNER: Your Honor, just briefly, the testimony
14 of Detective Wallace.

15 THE COURT: All right.

16 MADAME CLERK: Raise your right hand, place your left
17 hand on the Bible.

18 (WHEREUPON: DETECTIVE ALEX
19 WALLACE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
20 FOLLOWS:)

21 DIRECT EXAMINATION

22 DETECTIVE ALEX WALLACE BY MS. JOYNER:

23 Q. Would you please state your name briefly for the
24 record?

25 A. Alex Wallace.

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 Q. On April 28th of this -- of last year, did you
2 accompany Detective Moore to the home of Edward Clarkson?

3 A. Yes, I did.

4 Q. And were you present when Detective Moore had a
5 conversation or asked questions of Mr. Clarkson regarding
6 allegations by Minor

7 A. I was.

8 Q. Do you recall, were you present when Miranda warnings
9 were read to Mr. Clarkson?

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

11 Q. And do you recall how -- or who read those warning?

12 A. Detective Moore did.

13 Q. And then from -- Did he read those from a card, from a
14 form, or from ---

15 A. From the form.

16 Q. Did you -- Did he have the defendant sign the form?

17 A. No, ma'am.

18 Q. Did you -- Were you able to observe Mr. Clarkson's
19 demeanor when Detective Moore was reading those rights to
20 him?

21 A. I was.

22 Q. Did he appear to understand the rights that were being
23 read to him?

24 A. Yes, ma'am.

25 Q. In your opinion, was he under the influence of

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 anything, perhaps seem to suffer from any kind of ailment
2 that would affect him from understanding those rights?

3 A. No, ma'am.

4 Q. And during the time that Detective Moore asked
5 questions of Mr. Clarkson, did you witness Detective Moore
6 in any way threaten the defendant?

7 A. No, ma'am.

8 Q. Did he -- Did you witness him draw a service revolver?

9 A. No, ma'am.

10 Q. Otherwise, promise him anything or doing anything to
11 coerce the defendant in --

12 A. No, ma'am.

13 Q. Okay. Did the defendant agree to speak with Detective
14 Moore?

15 A. Yes, he did.

16 Q. Did he at any point ask to cease talking to Detective
17 Moore or ask to speak with an attorney?

18 A. No, ma'am.

19 Q. And do you recall, did you personally ask any
20 questions of the defendant?

21 A. I did not.

22 Q. Do you recall just from memory, what questions were
23 asked of the defendant by Detective Moore?

24 A. I recall him asking him several questions, if he knew
25 the victim.

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 Q. And did he indicate that he knew the victim?

2 A. Yes, he did.

3 Q. Was the question -- Detective Moore questioned him
4 regarding whether the victim had spent the night at his
5 resident on April 17th of 2011?

6 A. Yes.

7 Q. And do you recall what the defendant's response was?

8 A. He stated that the victim was -- that he had spent the
9 night that night.

10 Q. Did -- Do you recall whether Detective Moore inquired
11 as to where the victim had slept on that particular night?

12 A. Yes.

13 Q. What was the defendant's answer?

14 A. Slept in the master bedroom, same bed as the
15 defendant.

16 Q. Did you recall whether Detective Moore inquired as to
17 what was worn to bed by either the defendant or --

18 A. Yes.

19 Q. And what was the answer given?

20 A. The defendant stated that he wore underwear and
21 that's -- because that's all he wears when he goes to bed.
22 And the victim had on long pajama bottoms and a t-shirt.

23 Q. Was -- In your presence, was the defendant informed of
24 the reason why you and Detective Moore were there?

25 A. Yes.

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 Q. And how was it explained to the defendant?

2 A. That the victim was alleging that he was, while they
3 were in the same bed, was touched by the defendant,
4 grabbing his penis.

5 Q. Did the defendant admit or deny those allegations?

6 A. He denied that, yes.

7 Q. Did he at the beginning of your statement as to
8 touching the victim?

9 A. He admitted to touching the victim on his side just to
10 make sure he was still asleep and not sleepwalking.

11 Q. Did he express to Detective Moore why he would be
12 concerned about sleepwalking?

13 A. He stated the victim had ADHD, I believe, and took
14 medications for it, and also didn't want him to get on the
15 computer.

16 Q. Were you present -- Or were your present the entire
17 time that Detective Moore asked questions of the defendant?

18 A. Yes, I was.

19 Q. And do you recall any statements made by the defendant
20 as to other house guests on this particular night?

21 A. I cannot recall.

22 Q. Do you recall in general whether there was a
23 conversation about other people that come over to the
24 house?

25 A. Yes.

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 Q. And what was the nature of that conversation?

2 A. Basically stated that he had 18 and 19-year-old
3 friends come over sometimes, but he also cards everybody
4 that comes to his house.

5 Q. Did Detective Moore inquire as to whether the
6 defendant knew how old the victim was?

7 A. Yes.

8 Q. And did the defendant indicate that he did know how
9 old the --

10 A. Yes, he did.

11 Q. Again, and how -- Do you recall what his age -- What
12 he stated the age to be?

13 A. I believe 12-years-old.

14 Q. Do you recall any other statements made by the
15 defendant as to other activities that he and the victim had
16 engaged in, in the past?

17 A. That the victim comes over there in the past and helps
18 him with yard work and that they've also been on jet ski's
19 together before at the lake.

20 Q. Do you recall any statement regarding a gentleman
21 being Ryan Finnigan?

22 A. I cannot recall that.

23 Q. And again, do you recall how long you were at the
24 scene that day?

25 A. Probably 15 minutes, 20 minutes at tops.

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER
CROSS BY MS. INZERILLO

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1 Q. At any point, was the defendant taken into custody?

2 A. No.

3 Q. Did you -- Was he arrested that day?

4 A. No, ma'am.

5 Q. Did he ever -- Did he ever try to leave? Was he ever
6 denied the opportunity to leave?

7 A. No, ma'am.

8 Q. All right, thank you very much. Please answer any
9 questions the defense has.

10 CROSS EXAMINATION

11 DETECTIVE ALEX WALLACE BY MS. INZERILLO:

12 Q. Good afternoon, Detective Wallace.

13 A. Good afternoon.

14 Q. Did you make any reports of the conversation that you
15 heard between -- I mean, statements by Detective
16 -- I mean, Mr. Clarkson?

17 A. No, no, ma'am.

18 Q. Did you make any notes or anything at the time?

19 A. No, ma'am.

20 Q. So you were just there observing conversation?

21 A. Yes, ma'am.

22 Q. Was this the only time that you spoke to Mr. Clarkson
23 about this case?

24 A. Yes, it was.

25 Q. Okay so, you had no other conversations with him?

DETECTIVE ALEX WALLACE: CROSS BY MS. INZERILLO

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1 A. No, ma'am.

2 Q. Other than what has been reviewed with you by Ms.
3 Joyner, do you recall any other statements that Mr.
4 Clarkson made in your presence about this case?

5 A. No, ma'am.

6 MS. INZERILLO: No further questions, Your Honor.

7 MS. JOYNER: Nothing further, Your Honor.

8 THE COURT: You can step down. Thank you.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Anything further from the State?

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

12 THE COURT: Anything on this issue from the Defense?

13 MS. INZERILLO: No, Your Honor.

14 THE COURT: What's the defense's position?

15 MS. INZERILLO: Your Honor, at this time, we just ask
16 the Court to make a finding.

17 THE COURT: Well I do find that Mr. Clarkson was not
18 in custody, but in any event, he was advised of his rights,
19 under *Miranda*, *Fifth and Sixth Amendments* of the
20 *Constitution*, and that he freely and voluntarily knowing
21 them intelligently waived them by talking to the officers.
22 He was read -- that is, Mr. Clarkson was read the *Miranda*
23 rights required by *Miranda*. The officer advised him, Mr.
24 Clarkson, that he could remain and had the right to remain
25 silent, that if he did not exercise that right and spoke,

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1 that anything he said could be used against him in court.
2 That he had the right to an attorney and if he could not
3 afford one, that an attorney would be appointed to
4 represent him. That he could ask questions -- answer
5 questions if he wished, but he could stop and exercise any
6 of his Constitutional rights at anytime.

7 I find that it's all about preponderance of the
8 evidence, and this includes that there was no threat, no
9 coercion, no promise, no intimidation of any type, no
10 weapon drawn. That Mr. Clarkson was not under the
11 influence or suffering from any ailment that would affect
12 his ability to freely voluntarily and knowingly waive his
13 rights and speak to the officer, which I find he did. The
14 officers testified -- the officer, not the second one, but
15 the first one, Mr. Moore testified that Mr. Clarkson
16 appeared to understand the rights, and freely voluntarily
17 and knowingly responded to questions. So I'll allow the
18 statements into evidence.

19 All right. What else this afternoon?

20 MS. INZERILLO: Your Honor, just briefly. I have
21 noted in the defenses motions in limine Number 8, some
22 concerns about the defendant's comments about not wanting
23 to go back to jail. During one of the breaks, I had
24 discussed this with Ms. Joyner. She informed me that she
25 does not intend to illicit his testimony and would be in

1 agreement with any redactions should any of the report come
2 in. We don't foresee that happening, but just to cover all
3 our bases. So I don't think we need to address that. We
4 can work that out.

5 The only thing I would address at this time is the
6 testimony that did come out through Detective Moore
7 regarding my client having guys 18 to 20 coming over to the
8 house and buying cigarettes and alcohol. I would ask that
9 any testimony to that by him or any other witness be
10 excluded. It is irrelevant, and there's no indication in
11 anything that we've been provided that those same
12 allegations extend to the 12-year-old in this case, and
13 that the 12-year-old never indicated that Mr. Clarkson
14 acted in that manner. And certainly, I think it does raise
15 a spectrum of some other bad acts considering the age of
16 these individuals and the, sort of, underlying allegation
17 of criminal activity of buying alcohol for minors and that
18 type of thing. And so we would ask that --

19 THE COURT: I must have misunderstood. I got the
20 impression he testified he carded them and would not
21 provide those. But anyway, I don't --

22 MS. JOYNER: That's correct, Your Honor.

23 THE COURT: I don't -- I hope we can stay away from
24 other visitors to the house.

25 MS. JOYNER: Your Honor, there will be testimony that

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1 there was a visitor in the house. That might ---

2 THE COURT: Well other than Mr. Finnigan, but I'm
3 talking about if he's 18 or 19 -- I don't know how old Mr.
4 Finnigan is.

5 MS. JOYNER: Nineteen.

6 THE COURT: But the ---

7 MS. JOYNER: Yes, sir.

8 THE COURT: --- with the regularity. I don't know
9 what kind of cards we're talking about, but that he has
10 other male visitors. That's not relevant.

11 MS. JOYNER: Thank you, Your Honor. We will stay away
12 from that. And I would want to clarify. We do not intend
13 to illicit testimony that he does not want to go back to
14 jail. But again, like the sex offender registry status, we
15 do feel there is potential that the door could be opened in
16 some way. So we're not suggesting that the door -- that
17 there's not -- we're not suggesting that if the door is
18 opened that we won't walk through it. We would, with the
19 Court's permission, walk through it.

20 THE COURT: Anything else?

21 MS. INZERILLO: No, Your Honor.

22 THE COURT: I'm not going to require Mr. Clarkson to
23 remain -- he's out on bond?

24 MS. INZERILLO: Yes, Your Honor.

25 THE COURT: He'll remain out on bond.

1 We'll start back -- let's try to convene at about
2 9:30. The jury won't be back till 10:00. We'll see if
3 there are any other matters that we need to take care of.

4 MS. JOYNER: Yes, sir. And I believe that Ms. Collins
5 actually did try to schedule a bond hearing. And she was
6 trying to not inconvenience the trial, so she asked the
7 attorney to be here at 9:00, if that works for Your Honor.

8 THE COURT: You can be here at 7:00. That works for
9 me. Yeah, we'll be here. I'll be here at around 9:00, and
10 the court reporter will be here shortly thereafter, so...

11 MS. JOYNER: Thank you, Your Honor.

12 And I believe we have a few other matters.

13 THE COURT: All right. I see a congregation. Well a
14 small congregation.

15 MS. JOYNER: What's that?

16 THE COURT: I said I -- I started to say I -- I said I
17 saw a congregation, and then I said, a small congregation,
18 a duo. All right.

19 (COURT IN RECESS AT 03:30 PM.)

20 (COURT IN SESSION ON THE MATTER OF STATE VERSUS EDWARD
21 CLARKSON, THURSDAY, JANUARY 12, 2011 AT 09:48 AM.)

22 THE COURT: It's not quite Ten, are we ready to go?
23 We don't have any issues?

24 MS. INZERILLO: No, Your Honor, no other issues.

25 THE COURT: Okay.

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1 MS. JOYNER: And, Your Honor, I would like -

2 THE COURT: Wait. Wait just a second.

3 No, I'm trying to get information from the lawyers
4 right now. Wait just a second.

5 MS. JOYNER: I was just going to inquire about, I
6 don't believe Ms. Inzerillo is going to call the doctor.
7 But if she did I just wanted it to state on the record that
8 I wanted to proffer testimony before he testified.

9 THE COURT: So we're ready to start when we get the
10 jury in at Ten.

11 THE BAILIFF: The jury's still downstairs. You want
12 to get them up now?

13 THE COURT: Just as long as their here by Ten. We're
14 gonna take a break.

15 (COURT IN RECESS AT 09:55 AM.)

16 (COURT BACK IN SESSION AT 10:12 AM.)

17 THE COURT: Take your seats.

18 Is the State ready?

19 MS. JOYNER: The State's ready, Your Honor.

20 THE COURT: Is the Defense ready?

21 MS. INZERILLO: Yes, Your Honor.

22 THE COURT: All right. Bring in the jury.

23 (JURY REENTERS COURTROOM AT 10:13 AM.)

24 THE COURT: Now that you all are comfortably seated, I
25 am going to ask you to stand, the Clerk is going to

1 administer the oath.

2 MADAME CLERK: If you all would raise your right hand,
3 please.

4 (WHEREUPON: THE JURY IS DULY
5 SWORN AND ALL AFFIRMED.)

6 THE COURT: You may be seated.

7 First, I apologize for running a little bit late. We
8 try to start on time, but I'm the only judge here this
9 week, and so I have to handle certain administrative
10 matters, and one popped up right at 10:00 o'clock that
11 needed quick action, so I took care of that, and I
12 apologize. It wasn't the lawyers fault or Mr. Clarkson's
13 fault. It's one of those things that just happened. I
14 apologize.

15 Now I'm not going to keep reminding you about not
16 going online and not doing any research, not making up your
17 own mind, not discussing the case, not being exposed to any
18 news coverage, and not letting anyone talk to you about the
19 case. But that does continue until I instruct you to
20 jointly deliberate and returning a unanimous verdict.

21 To this charge, Mr. Clarkson's entered a plea of not
22 guilty. This plea of not guilty places on the State the
23 burden of proving Mr. Clarkson's guilt to the charge beyond
24 a reasonable doubt. Mr. Clarkson is presumed innocent.
25 Anyone charged with any offense in our system is presumed

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1 innocent. The charge against them is up to the State to
2 prove his guilt. It's not up to him to prove his
3 innocence.

4 I have three primary jobs in this case. One is that I
5 am the logistics person. I make sure we take breaks, that
6 we start on time, that you can see and hear, the mechanical
7 parts of the trial. My second job is that I rule on
8 evidentiary matters. If one side believes certain evidence
9 should be allowed into the record for your consideration
10 and based on some law or rule of evidence the other side
11 believes that evidence is not to be allowed into the
12 record, it is up to me to make a legal determination on
13 that. My third job is that I am the sole judge of the law
14 in this case. You must take, accept, and apply the law as
15 I charge it. This is true even if you think I charge the
16 law in error or even if you think the law should be
17 different. Your oath requires you to take, accept, and
18 apply the law as I charge it.

19 I am giving you some legal principals now. Throughout
20 the trial I may give you some. And at the end of the
21 trial, I'll give you a concise and comprehensive charge on
22 the law that you are to apply to the facts as you determine
23 them to be.

24 You are not to infer from anything that I say or do at
25 any time during this trial as indicating an opinion of mine

1 on the facts. It is solely your job to examine the
2 evidence; to give to the evidence the effect, the value,
3 the truth you believe it should have. In doing this, you
4 may believe one witness as opposed to several, several
5 witnesses as opposed to one. You may believe all, part, or
6 none of a witnesses testimony. In analyzing the evidence,
7 use your common sense, your sense of logic, your sense of
8 reason. Use your experiences in life.

9 As judges of the facts you must determine the
10 credibility, the believability of the witnesses who
11 testify. In assessing believability, use the things I just
12 mentioned. Use the things that you find in your day-to-day
13 life as indicating to you truthfulness in a person. And
14 you can use certain evaluators: a witness's demeanor, how
15 the witness acts on the stand, are they hesitant or
16 straightforward, is their testimony consistent or
17 inconsistent, do they have any bias or prejudice, that is,
18 is there any reason to help or hurt one side or the other?
19 You can consider the opportunity a witness had to know
20 those things about which they testify. All these things
21 you consider, determine the true facts, and apply the law,
22 and your verdict will speak the truth.

23 If you cannot see or you cannot hear, let me know.
24 You don't need to take notes, but either cup your ear, a
25 voice-raising gesture, a nudging gesture, and I'll try to

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1 correct whatever the problem is. We take breaks about
2 every hour and a half. I find that's a pretty good
3 comfort-level time for everybody. But it's not necessarily
4 for everybody. If any of you need a break at anytime,
5 please raise your right hand and with no questions asked,
6 we'll take a break.

7 And I extend that to counsel and Mr. Clarkson. We
8 want to move the case along at a good pace, but we're not
9 in such a hurry that we won't take a break if someone needs
10 to take a break.

11 So the attorneys now have the opportunity to come
12 before you and make what are called opening statements.
13 They are not at this time arguing their case. That is,
14 they are not telling you what the evidence has been. Of
15 course, it hasn't been presented. And they're not trying
16 to convince you of what your verdict should be. They are
17 simply giving you an outline or a blueprint of the trial.
18 At a later time, they will have the opportunity to come
19 before you and summarize, argue what your verdict should be
20 based on the evidence that you have heard and based on the
21 law they know I will be charging you. At this point,
22 they're simply outlining the trial for you. They are not
23 witnesses, so what they say is not evidence. Again, they
24 are simply summarizing their position as to what this case
25 is about.

OPENING STATEMENT: BY MS. JOYNER

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1 Counsel.

2 MS. JOYNER: May it please the Court, Your Honor?

3 THE COURT: Yes.

4 MS. JOYNER: During this trial, you're going to meet a
5 young man named Minor He's 13 years old. He lives
6 here in York with his grandma, and his mom, and his sister,
7 and his dog Jack. Minor is going to testify for you and
8 tell you about something that occurred when he was 12 back
9 in April 17th and April 18th of 2011.

10 It was on April the 17th of 2011 that the defendant
11 Edward Clarkson stayed at Minor home. The defendant was
12 a family friend of Minor They had spent time together
13 before in the past. They'd done other things together
14 before. And on this particular day, the defendant, which
15 Minor sometimes referred to as Big E or Uncle E, he came
16 to the house and he said, "How about you do some work for
17 me tomorrow around the house?" And Minor liked Uncle E.
18 He was excited at the opportunity to do that, and make a
19 little money, and spend some time with him. And so he said
20 yes.

21 And somehow the plan evolved where Minor wouldn't
22 just come over the next day to do some work, but that he
23 would go ahead and pack a bag and spend the night, that
24 night at the defendant's house. And so he did. And the
25 defendant drove him back over to his house. Later picked

OPENING STATEMENT: BY MS. JOYNER

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1 up another friend that came over to the house. And
2 otherwise the evening was uneventful until it came time to
3 go to bed. And at that point, this family friend who's no
4 blood relation, no relation by marriage, a person, a 53-
5 year-old man said to Minor "Come on Minor let's get in
6 bed." And Minor did what a 12-year-old did. He got in
7 the defendant's bed. Put his pajamas on, and went to
8 sleep. And the defendant put his boxer shorts on, and
9 climbed in the bed with Minor and went to sleep.

10 And at some point in the morning when Minor had
11 shifted his position from laying on his side and facing one
12 of the walls, lying on his back, and that's when he felt
13 the hand of his friend slip underneath the waistband of his
14 pajamas and into his pants. And he felt that hand grab his
15 penis and masturbate him. And Minor will get on this
16 stand to tell you about that night. And he'll tell you
17 even that the next day, he stayed over there, and continued
18 to do the work, and had to wait until that night when he
19 got home when he was finally able to tell his mom what had
20 happened.

21 The defendant stands trial today, and he is charged
22 with a lewd act upon a child. And the judge -- this judge
23 will explain to you in the close of the trial, he's going
24 to give you a very lengthy instruction on the law that's
25 going to apply to this case.

1 And just so that you have some context when you're
2 listening to the evidence, I'm going to read the statute to
3 you. And it provides that it is "unlawful for a person
4 over the age of 14 years to willfully and lewdly commit or
5 attempt to commit a lewd and lascivious act upon or with
6 the body or its part of a child under the age of 16 years
7 with the intent of arousing, appealing to, or gratifying
8 the lust or passions or sexual desires of the person or of
9 the child."

10 It's kind of convoluted language. They use the term
11 "lewd" and "lascivious," which I don't think is the term
12 that they use in your everyday life. And generally, those
13 are understood in the law to be something that's obscene,
14 lustful, or indecent. Basically something that's sort of
15 indecent and sexual in nature. And so when you're
16 listening to the evidence, ladies and gentlemen, I want you
17 to remember that what the State is going to require to
18 prove to you during the course of this trial beyond a
19 reasonable doubt is basically four things: number one, the
20 defendant is older than 14; that number two, Minor
21 is under the age of 16; and number three, there was a
22 deliberate, inappropriate act or touch; and that number
23 four, the purpose was sexual. It was to arouse, appeal to,
24 gratify lust or sexual desires of the defendant or Minor

25 As I said, you're going to hear from Minor You're

OPENING STATEMENT: BY MS. JOYNER
BY MS. INZERILLO

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1 going to hear from other witnesses in this case. And after
2 you've heard from all of the State's witnesses, I am going
3 to stand back before you in my closing argument. And I'm
4 going to ask you to reach the verdict that speaks the truth
5 and find the defendant guilty.

6 Thank you.

7 MS. INZERILLO: May it please the Court, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. INZERILLO: Good morning.

10 As such a lot of things in life, this case comes down
11 to essentially he said versus he said. It comes down to a
12 set of events that happened where two people are giving
13 very different views of those events. As you heard the
14 State indicate, Minor is going to come in and tell
15 you that Edward Clarkson inappropriately touched him that
16 night. You will also hear testimony that when the officers
17 were investigating this case, they went over and talked
18 with Mr. Clarkson. Mr. Clarkson didn't run, but he spoke
19 to the officers, and he explained the events of that
20 evening. You are going to hear that Mr. Clarkson explained
21 to the officers that Minor mom wanted Minor to come
22 over to his house. He kept calling him because Minor --

23 MS. JOYNER: I object, Your Honor. That's not
24 contained in the statement.

25 THE COURT: I --

OPENING STATEMENT: BY MS. INZERILLO

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1 MS. INZERILLO: I believe it was testified to, Your
2 Honor.

3 THE COURT: Well we haven't had testimony yet.
4 I overrule your objection.
5 Just let's make sure we stick to what we anticipate it
6 will be in the trial.

7 MS. INZERILLO: Yes, Your Honor.

8 But he came over to the house that evening. And Mr.
9 Clarkson did explain that he did have Minor sleep in his
10 bed that evening. And I bring that out to you now, one,
11 because that will be the testimony that you'll hear.
12 You'll hear Mr. Clarkson explain that to the officer. But
13 you'll also hear that Mr. Clarkson explained to the officer
14 why that was. It wasn't sexual in nature. That he
15 explained to the officer about the nature of some
16 medication that Minor was taking, that he had concerns
17 about Minor running around his house.

18 But I also bring this out to you for another reason.
19 As unseemly as that fact is, and I think we can all agree
20 on that, as unseemly as that fact is, it's not lewd act.
21 The State explained what lewd act is. It's sexual
22 touching. It's not merely sleeping in a bed with a minor
23 child.

24 Now Mr. Clarkson is here today because he's pled not
25 guilty to this charge. And on this day, he explained to

OPENING STATEMENT: BY MS. INZERILLO

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1 the detective. He did not touch Minor That's the
2 issue in this case, ladies and gentlemen, that allegation
3 of inappropriate touching.

4 In this courtroom, ladies and gentlemen, the burden is
5 on the State to prove Mr. Clarkson guilty. The evidence
6 that will be presented, presented through the State,
7 testimony, any exhibits, because the burden solely falls on
8 her shoulders to prove Mr. Clarkson guilty. So I ask you,
9 as you would in your everyday life, when faced with a
10 situation of a he said, he said, a war of words for
11 example, to look for anything else in the case that may
12 tend to prove or disprove the allegation. Look for example
13 for any forensic evidence. Any other independent evidence
14 may be brought in that help support Mr. Minor testimony
15 because the burden is on the State, ladies and gentlemen.

16 And as the judge indicated, at the end of the case, he
17 will explain to you again what the law is. He will define
18 all these terms as lewd, lascivious. He will tell you that
19 in order to be a lewd act, the act has to be willful. It
20 has to be intentional. It can't be accidental.

21 Keep in mind, ladies and gentlemen, as unseemly as it
22 may be to you that Mr. Clarkson may elect to sleep in a bed
23 with a 12-year-old child, that is not lewd act. And I ask
24 you to listen to the evidence that is presented and find
25 Mr. Clarkson not guilty.

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2 MS. JOYNER: Thank you, Your Honor.

4 Could you please go to the outer door and Ms. Gibson
5 to come in the courtroom?

6 MADAME CLERK: Please raise your right hand, place
7 your left hand on the Bible.

8 (WHEREUPON: LINDA GIBSON, BEING
9 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 MADAME CLERK: Thank you. Have a seat right over
11 there.

12 DIRECT EXAMINATION

13 LINDA GIBSON BY MS. JOYNER:

14 Q. Can you please state your full name for the record?

15 A. Linda Gibson.

16 Q. Ms. Gibson, where do you live?

17 A. I live at [REDACTED] York, South Carolina.

18 Q. And who do you live with?

19 | A. I live with my daughter and my two grand kids.

20 Q. And what are the names of your grandchildren?

21	A. Minor and S.
----	-----------------

22 Q. How long have you lived at [REDACTED]

23	A. Nine years.
----	----------------

24 Q. And have you always lived there with Elizabeth and
25 Minor and S. ?

LINDA GIBSON: DIRECT BY MS. JOYNER

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1 A. No.

2 Q. How long have they lived there with you?

3 A. I moved in with them when S. was two months old,
4 and she's nine.

5 Q. And how old is your grandson Minor

6 A. Thirteen.

7 Q. Now do you know the defendant in this case Edward
8 Clarkson?

9 A. Yes.

10 Q. How is it that you became acquainted with him?

11 A. My daughter and his nephew Lance were friends.

12 Q. What is Lance's last name?

13 A. Carter.

14 Q. How long have you known the defendant?

15 A. Three or four years, I guess.

16 Q. And how would you term what your relationship -- your
17 family's relationship was to the defendant?

18 A. Friends.

19 Q. And what types of things -- what type of interaction
20 would you personally have with the defendant?

21 A. He would come to the house and talk to us. And he'd
22 done some odd jobs for me. He was cutting our grass for
23 me. And, you know, I told -- he lost his job, and I was
24 paying him, helping him a little bit with some money when
25 he would do things for us.

LINDA GIBSON: DIRECT BY MS. JOYNER

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1 Q. Okay. Now, so other than Minor did you have a man
2 around the house to do those odd jobs?

3 A. No.

4 Q. How frequently would you see the defendant? Would it
5 be on a consistent basis or would it vary?

6 A. It would vary because I work, and he would come
7 sometimes when I wouldn't be at home.

8 Q. What was his -- To the best of your knowledge, what
9 was his relationship like with Minor

10 A. Friends.

11 Q. Did they sometimes do activities together?

12 A. Yes.

13 Q. What types of things might Minor and the defendant
14 do?

15 A. I'm pretty sure he took Minor fishing one time. And
16 he took Minor out on his jet skis. And as far as I know,
17 that's the only two things I know.

18 Q. Do you recall a day back in April of last year when
19 the Defendant came to your home?

20 A. Yes.

21 Q. What was the reason that he came to your home?

22 A. He wanted -- he wanted -- mostly I think he come to
23 visit for a few minutes. And the -- He said he was putting
24 up a building, and he asked Minor if Minor might want to
25 help him, maybe pull some limbs, you know, and take off

LINDA GIBSON: DIRECT BY MS. JOYNER

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1 some trash. And you know, stuff like that for him.

2 Q. Did -- To the best of your knowledge, did anybody call
3 and ask the defendant to come over?

4 A. Not that I know of.

5 Q. Do you recall -- Did you personally witness the
6 conversation about doing work -- Minor doing work for him?

7 A. Yes.

8 Q. And did Minor agree to go and help him out?

9 A. Yes.

10 Q. And did Minor mom say that was okay?

11 A. Yes.

12 Q. At some point, did the plan evolve to include Minor
13 spending the night with the defendant. Did someone decide
14 that Minor was going to spend the night there?

15 A. I don't remember.

16 Q. Do you recall Minor leaving to go to --

17 A. Oh yes, I remember Minor leaving -- he -- he got his
18 clothes ready, and yes he did go spend the night.

19 Q. So do you -- do you -- do you recall then whose idea
20 it was?

21 A. No, I don't.

22 Q. And do you remember what time that was approximately
23 that Minor left to go to his house?

24 A. Getting kind of late in the afternoon.

25 Q. Were you present when Minor was brought home by the

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1 defendant the next day?

2 A. Yes.

3 Q. Do you recall what time of day or night that was?

4 A. It was getting late.

5 Q. How are you able to remember that it was late?

6 A. Because we -- We kept waiting, you know, wanting to --
7 trying to figure out, you know, how long it was going to
8 be. And Beth called him and asked him, you know, how much
9 longer. And I don't know what he told Beth on the phone,
10 but it wasn't but just a little bit later till he brought
11 Minor home.

12 Q. Was there anybody -- do you remember -- Were you able
13 to tell if there was anybody with him?

14 A. I do not know.

15 Q. When he dropped Minor off, what did Minor do?

16 A. Minor come through the house, went straight to the
17 shower, took a shower.

18 Q. Did you hear Minor say goodbye to the defendant?

19 A. No.

20 Q. Did you interact at all with the defendant?

21 A. Yes, I -- He walked up to the door, kind of half --
22 put half of his body in the door, and I asked him a couple
23 of questions. I think it was something like, "Did you all
24 do a good, you know, did Minor help you do a good job?"
25 You know, or "Did you get finished?" Something on that

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1 line. And he answered me kind of, you know, just one-word
2 answers. And he kind of kept his head down to the ground
3 and didn't want to look at me.

4 Q. Was that unusual demeanor for the defendant?

5 A. Yes, because usually he would come, and he would come
6 in, and he would pick, you know, and with my granddaughter.
7 And he would talk, you know, a few minutes, and just, you
8 know. And then he'd say, "Well I got to go." And he'd
9 always tell them bye, and he'd always tell S. bye.

10 Q. On this particular day, did he tell Minor goodbye?

11 A. Yes, he hollered through the house, "Bye, Minor

12 Q. Now this night in April, were the police called to
13 your house?

14 A. Yes.

15 Q. At the time that they were called, did you know why?

16 A. No.

17 Q. What sort of led up -- for your observation, what led
18 up to the police being called?

19 A. Okay. When Minor got out of the shower, he called
20 his momma in there, and he shut the door. And -- give me
21 just a minute. And he -- they stayed in there pretty --
22 just a few minutes.

23 (WITNESS CRYING - TISSUE HANDED TO WITNESS.)

24 A. Thank you.

25 Q. Just take your time. Just take as much time as you

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1 need.

2 A. And they stayed in there a few minutes. And Minor
3 come -- he opened the door, and he come back through the
4 living room. And he said, "Maw Maw, where's the
5 phonebook?" And I showed him where it was at. So he got
6 the phonebook. He went back into the bedroom and shut the
7 door back. No, excuse me. Let me back up just a minute.
8 He got the phonebook. And I asked him, I said, "Minor I
9 said, "Are you all right?" He said, "Yes, Maw Maw, I'm all
10 right, but somebody's in trouble." So he goes back in the
11 bedroom, and I -- they stayed in there, I don't know, maybe
12 10 or 15 more minutes. And Minor opened the door back up,
13 and I went in there, and Minor was crying.

14 Q. Was it unusual to see Minor cry?

15 A. Yes, yes.

16 And I hugged him. And I told him, I said, "Whatever,
17 it will be okay." And I went back in the living room. And
18 I don't know, it was maybe 30, 45 minutes later. I seen a
19 police car pull up. So I told my granddaughter, I said,
20 "S. ,," I said, "You come with me, and we're going to go
21 in my room and sit for a little while." So we stayed in
22 there for I don't know how long. And my bedroom is right
23 at the den. So I told S. , I said, "You stay right here
24 just a few minutes. I'm going to go in this way and see,"
25 you know. So I come through the dining -- through the den,

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CROSS BY MS. INZERILLO

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1 and at the dining room table, there sat Minor and an
2 officer, and Minor was crying. And over here on the couch
3 in the living room, Beth and the other officer was sitting.
4 So I just went back in the bedroom, and me and S.
5 stayed in there until the officers left.

6 Q. Thank you very much, Ms. Gibson. Please answer any
7 questions that Ms. Inzerillo has for you.

8 MS. INZERILLO: May it please the Court, Your Honor?

9 THE COURT: Yes, ma'am.

10 CROSS EXAMINATION

11 LINDA GIBSON BY MS. INZERILLO:

12 Q. Good morning.

13 A. Good morning.

14 Q. At any time prior to when your daughter called Mr.
15 Clarkson, did you guys -- you guys never received a call
16 from Minor asking to be picked up or brought back home?

17 A. No, ma'am, not to my knowledge we didn't.

18 Q. And at no point during that time did -- to your
19 knowledge -- did Minor call the police before his mom?

20 A. I don't think so, no.

21 Q. And I believe your recollection was that Mr. Clarkson
22 had come by the house because he wanted Minor to do some
23 -- help him with the shed? Or build a building or
24 something like that; is that correct?

25 A. I'm not -- I'm not exactly sure because he's friends

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1 with the people next door to us too. I don't know if he
2 was over there with them and just happened to drop by or
3 not. I don't know.

4 Q. But I believe your testimony was that your
5 recollection was he had wanted Minor to come over because
6 he was building a building?

7 A. Well when he come in the door, he was telling us about
8 he was going to build -- he was putting him up a building.
9 And he asked Minor if, you know, Minor might want to help
10 him. And Minor told him yes.

11 Q. And do you recall that night that, I believe, I guess,
12 S. was going to have a sleep over or a party with some
13 friends that evening?

14 A. Yeah, but that didn't go through so...

15 Q. Do you recall if that was the reason why Minor mom
16 arranged for Minor to spend the night with Mr. Clarkson?

17 A. I don't know. I don't know.

18 Q. Now as his -- I believe you testified as his
19 grandmother, you live in the same house as Minor is that
20 right?

21 A. Yes, I do.

22 Q. And so you're aware of the fact that Minor has to
23 take medication at certain times of the day?

24 A. Yes, yes.

25 Q. And that he has to take that medication about every 12

LINDA GIBSON: CROSS BY MS. INZERILLO

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1 hours, for example, like at 6:00 p.m., 6:00 a.m., like
2 that?

3 A. He takes of the morning and of the evening.

4 Q. And there are several pills that he has to take that
5 essentially an adult has to give him?

6 A. His mother gives them to him.

7 Q. Now the next day, you were describing Mr. Clarkson's
8 demeanor at the door.

9 A. Uh-huh.

10 Q. And you indicated he was acting a little bit strange,
11 had his head down. And that, that seemed a little bit odd
12 to you; is that right?

13 A. Yes, ma'am. It did.

14 Q. And you don't know essentially if he was acting that
15 way because he had been building a shed all day, and he was
16 tired?

17 A. I don't know. I don't know.

18 Q. It just -- that sort of stuck out with you?

19 A. It just kind of stuck in my mind.

20 Q. Okay.

21 MS. INZERILLO: No further questions, Your Honor.

22 THE COURT: Any redirect?

23 MS. JOYNER: No redirect, Your Honor.

24 THE COURT: You can step down and be excused. We
25 appreciate your time. Thank you.

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1 THE WITNESS: Thank you.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Call your next witness.

4 MS. JOYNER: The State calls Minor

5 Will you please ask Minor to come from the
6 witness room?

7 Daniel, please step up, and be sworn by the Clerk.

8 MADAME CLERK: If you'll raise your right hand, place
9 your left hand on the Bible.

10 (WHEREUPON: Minor BEING

11 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAME CLERK: Thank you. If you'll take a seat right
13 there.

14 DIRECT EXAMINATION

15 Minor BY MS. JOYNER:

16 Q. Minor can you please state your full name for the
17 record?

18 A. Minor

19 Q. And Minor how old are you today?

20 A. Thirteen.

21 Q. What's your date of birth, Minor

22 A. [REDACTED]

23 Q. Where do you live?

24 A. [REDACTED]

25 Q. Who do you live with?

Minor

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1 A. My mom, my grandma, my little sister, and my dog Jack.

2 Q. How long have you lived at [REDACTED] that
3 [REDACTED] address?

4 A. I don't know.

5 Q. A long time or a short time?

6 A. Long.

7 Q. Where do you go to school, Minor

8 A. [REDACTED]

9 Q. What grade are you in?

10 A. Eighth.

11 Q. And, Minor I'm going to ask you to think back to
12 April of last year when you were -- Were you still 12 years
13 old in April of last year?

14 A. Yes.

15 Q. What grade were you back in April of last year?

16 A. Seventh.

17 Q. Before -- Well actually, before I ask you about that
18 day, I'm going to ask you, do you know the defendant in
19 this case, Edward Clarkson?

20 A. Yes.

21 Q. Have you been in a room with him or seen him?

22 A. Yes.

23 Q. Before today, since that time back in April?

24 A. No.

25 Q. How do you know -- just tell the jury really briefly

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1 -- how do know the defendant?

2 A. Mom -- Mom used to -- Lance ---

3 Q. I'm going to have ask you to speak up a little bit.
4 I'm having a little trouble.

5 A. My mom used to date Lance Carter, and that is his
6 uncle.

7 Q. The defendant is his uncle?

8 A. Yes.

9 Q. Do you know how long it is that you've known the
10 defendant?

11 A. Three years.

12 Q. Is it -- did you say, "three years"?

13 A. Yes.

14 Q. Make sure you keep you voice up nice and loud. I know
15 it's hard. Okay?

16 Now what do you call -- What did you call the
17 defendant? What was your name for him?

18 A. Uncle E.

19 Q. Did you have any other nicknames for him, or did your
20 sister S. have any other nicknames for him?

21 A. E'man.

22 Q. E'man. Okay.

23 And how did you all come up with those nicknames?

24 A. I really don't know.

25 Q. How often would you see the defendant?

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1 A. Every once in a while.

2 Q. And when you would see the defendant, would you have
3 nice, pleasant conversations with him?

4 A. Yes.

5 Q. And did you ever do anything, like have any activities
6 with the defendant?

7 A. What types of activities might you -- would you have
8 done with the defendant?

9 A. Jet skiing, and we'd go places.

10 Q. I'm sorry. I'm going to ask you to speak up. Jet
11 skiing and what?

12 A. Jet skiing, and we would go other places.

13 Q. Go other places. Would you -- When you went jet
14 skiing, did you jet skiing with him by yourself?

15 A. Yes.

16 Q. When you went other places, did you sometimes go by
17 yourself as well?

18 A. Yes.

19 Q. Yes. Okay.

20 In the time that you had known -- I'm sorry. Were you
21 saying something?

22 A. Huh-uh.

23 Q. I apologize.

24 In the time that you've known the defendant, have you
25 ever gone to his house?

Minor

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1 A. Yes.

2 Q. I want you to explain to the jury if you can, kind of
3 how his house is laid out. I'm going to ask you a few
4 questions about it. Do you know how many bedrooms are in
5 the house?

6 A. Three.

7 Q. Are they all set up as bedrooms?

8 A. No.

9 Q. How many of them are set up as an actual bedroom?

10 A. One.

11 Q. The other two rooms that you would think of as
12 bedrooms, what are they used for?

13 A. I think one, he has put stuff in, and the other one, I
14 know has a computer in it.

15 Q. Okay. And is there a living room?

16 A. Yes.

17 Q. Is there a formal dining area?

18 A. Yes.

19 Q. Is it connected to the -- Is it a separate room or is
20 it connected to the kitchen?

21 A. It is actually in the kitchen.

22 Q. It's actually -- It's like it's a table in the
23 kitchen?

24 A. Yes.

25 Q. Okay. The one bedroom that is set up as a bedroom, is

Minor

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1 that the master bedroom in the house?

2 A. Yes.

3 Q. And is there -- How many bathrooms are in the house?

4 A. Two.

5 Q. Is one of those bathrooms connected to the master
6 bathroom?

7 A. Yes.

8 Q. Where is the other bathroom?

9 A. In the hallway.

10 Q. Are all the bedrooms -- where's the -- If you walk in
11 the front door, which room do you walk into?

12 A. The living room.

13 Q. Now if you walk into the living room, which side of
14 the house is the master bedroom on?

15 A. Left.

16 Q. Are the other bedrooms on the same side as the master
17 bedroom?

18 A. No.

19 Q. So they're on the opposite side?

20 A. Yes.

21 Q. Is that other bathroom closest to those other two
22 bedrooms or closest to the master bedroom?

23 A. I'm sorry.

24 Q. There's one bathroom attached to the master bath -- to
25 the master bedroom. Where's the other bathroom?

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1 A. Nearest to the other what should be bedrooms.

2 Q. Near to -- okay, near to the other bedrooms. Okay.

3 Now have you had an occasion before April, or
4 actually, have you ever spent the night at the defendant's
5 house by yourself with just -- without a parent or other
6 family member?

7 A. Yes.

8 Q. How many times?

9 A. Two.

10 Q. Now the time in April that we're going to talk about
11 in a minute, was that the first time you spent the night at
12 the defendant's house or the second time?

13 A. Second.

14 Q. The first thing I want to ask you about is, the first
15 time that you spent the night there. What was the reason
16 why you spent the night with the defendant the first time?

17 A. I had work for a project.

18 Q. And what was it about working on a project that you
19 needed to be at the defendant's house?

20 A. I needed to use his computer.

21 Q. Do you have a computer at home?

22 A. Yes.

23 Q. Did -- Do you have Internet at home?

24 A. No.

25 Q. So were you using the Internet at his house?

Minor

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1 A. Yes.

2 Q. Do you remember when that was that you went to his
3 house to use the computer for your project?

4 A. No.

5 Q. And was it planned for you to spend the night there
6 that first time, or did it just happen that you ended up
7 spending the night there?

8 A. It just happened.

9 Q. That night, that first night, was there any other
10 adult in the house?

11 A. No.

12 Q. Did the defendant have any roommates or anything like
13 that?

14 A. No.

15 Q. That night -- And I forgot to ask you something. Are
16 there couches in the living room?

17 A. Yes.

18 Q. How many couches?

19 A. Two.

20 Q. Two. Are they both long, or is one short? Are they
21 both one size?

22 A. One -- one's long and the other one's short.

23 Q. That first night, where did you sleep at the
24 defendant's house?

25 A. With him.

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1 Q. With him. Where with him?

2 A. In his bed.

3 Q. Do you remember that first time, what the defendant
4 wore to sleep?

5 A. His boxers.

6 Q. Did he wear anything else?

7 A. No.

8 Q. Minor did you think that was a strange thing to do?

9 A. Yes.

10 Q. Did you tell anybody about it?

11 A. No.

12 Q. Other than sleeping with him in the bed that night,
13 did anything inappropriate happen?

14 A. No.

15 Q. And the times -- That time when you were using his
16 computer or any other time that you may use his computer,
17 did you ever become aware -- did you ever find out about
18 any pornographic web sites that were marked on his
19 computer?

20 A. No.

21 Q. The second time that you spent the night at the
22 defendant's house, do you remember when that was?

23 A. No.

24 Q. Was that the night before you called the police?

25 A. Yes.

Minor

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1 Q. I want to talk to you about why it was that night that
2 you went over to the defendant's house. So I want to kind
3 of start asking you questions starting with when the
4 defendant came over to your mom's house. Do you remember
5 him coming to your mom's house?

6 A. Yes.

7 Q. And did you and he discuss -- or did he talk with your
8 mom in your presence about you coming over and helping out?

9 A. Yes.

10 Q. And what was your understanding of what he needed help
11 with?

12 A. He needed help moving stuff and painting stuff.

13 Q. What -- do you remember what stuff it was going to be?

14 A. Box and two-by-fours.

15 Q. Two-by-fours, okay. And did your mom agree to let you
16 go over there and help him out with that?

17 A. Yes.

18 Q. To the best of your knowledge, had anybody called to
19 invite the defendant to come over?

20 A. No.

21 Q. When he showed up, was he welcomed to come into your
22 house? Were you glad to see him?

23 A. Yes.

24 Q. And did you want to go help him out?

25 A. Yes.

Minor

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1 Q. Now do you remember how the idea came up for you to
2 spend the night at his house?

3 A. No.

4 Q. But did you want -- Did you agree to go spend the
5 night at his house?

6 A. Yes.

7 Q. Who drove you to his house?

8 A. He did.

9 Q. Do you recall was it -- what time it was?

10 A. No.

11 Q. Was it early in the day or late in the day?

12 A. Late.

13 Q. Now when you got to his house, was there anybody else
14 there?

15 A. No.

16 Q. At that time, did he have any roommates or anybody
17 else that lived with him?

18 A. No.

19 Q. Did -- At some point did it come up that somebody else
20 came over to the house?

21 A. Yes.

22 Q. How is it that, that happened? Do you remember?

23 A. No.

24 Q. Okay. Did -- That other person that came over the
25 house, do you know that person's name?

Minor

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1 A. No.

2 Q. Was it a male or a female?

3 A. Male.

4 Q. Was it -- Was he younger or older?

5 A. Younger.

6 Q. So younger than the defendant?

7 A. Yes.

8 Q. Do you know about how old? Can you guess about how
9 old he was?

10 A. Twenties, maybe.

11 Q. And did that person drive over to the house? Or how
12 did he get to the house?

13 A. We went and picked him up.

14 Q. Now once y'all got back to the house, did that person
15 leave at some point, or did that person stay?

16 A. Stayed.

17 Q. Did he stay the whole night?

18 A. Yes.

19 Q. When you got back to Mr. Clarkson's house, what did
20 you do?

21 A. I watched a movie

22 Q. What movie? Do you remember the movie's name?

23 A. "The Chaperone"

24 Q. Did the defendant and his friend watch the movie with
25 you?

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1 A. No.

2 Q. What did they do?

3 A. They went and got on the computer.

4 Q. And do you know how long they were on the computer?

5 A. No.

6 Q. Was is as long as you were watching the movie?

7 A. I think.

8 Q. Now at some point did -- Do you remember what time you
9 went to bed that night?

10 A. No.

11 Q. Did you decide it was time to go to bed, or did the
12 defendant decide it was time to go to bed?

13 A. The defendant.

14 Q. And how did he communicate to you that it was time to
15 go to bed?

16 A. "Come on, it's time to go to bed."

17 Q. And did he communicate to you where you were supposed
18 to go to bed? Or, did you understand where you were
19 supposed to sleep?

20 A. Yes.

21 Q. And what was your understanding of where you should
22 sleep?

23 A. With him.

24 Q. Where did the other -- the friend, the 20-year-old
25 friend sleep?

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- 1 A. The couch.
- 2 Q. Did you bring pajamas with you?
- 3 A. Yes.
- 4 Q. And did you change into those pajamas?
- 5 A. Yes.
- 6 Q. Where did you change into your pajamas?
- 7 A. Guest bathroom.
- 8 Q. And did the defendant wear pajamas to bed that night?
- 9 A. Yes.
- 10 Q. What did he wear to sleep?
- 11 A. His boxers.
- 12 Q. Did he wear a t-shirt with his boxers?
- 13 A. No.
- 14 Q. Did he wear any bottoms ---
- 15 A. No.
- 16 Q. --- like a long-sleeve or long pants or short pant
- 17 bottoms?
- 18 A. No.
- 19 Q. How big is the defendant's bed?
- 20 A. Full.
- 21 Q. A full-size bed. When you got into the bed, did you
- 22 guys talk or anything? Or did you just go to sleep?
- 23 A. We just went to sleep.
- 24 Q. Where did you -- When you laid down on the bed, do you
- 25 remember what position you were sleep -- what position you

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1 slept in?

2 A. Facing the wall.

3 Q. Was that on your side?

4 A. Yes.

5 Q. Was the bed pushed up to a wall on the long side?

6 A. No.

7 Q. So is it then that you were facing away from the
8 defendant?

9 A. Yes.

10 Q. And did you fall asleep that night? Did you have a
11 good nights sleep?

12 A. Yes.

13 Q. At some point during the night or in the early
14 morning, did something happen?

15 A. Yes.

16 Q. And what was it that happened?

17 A. He touched my penis.

18 Q. Do you remember what time of the night it was, or what
19 time of the morning it was that happened?

20 A. No.

21 Q. Was it getting close to time to get up, or was it
22 still nighttime?

23 A. Getting close to time to get up.

24 Q. And what position were you laying in when you became
25 aware of the defendant touching your penis?

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1 A. On my back.

2 Q. Were your eyes opened or closed when you felt the
3 touch?

4 A. Closed.

5 Q. And were you asleep when he first touched you or were
6 you awake?

7 A. Awake.

8 Q. Okay. And when he touched you, did he touch you --
9 was it on the outside or the inside of your underwear and
10 pajama pants?

11 A. Inside.

12 Q. Do you remember which hand he used to touch you?

13 A. No.

14 Q. These are kind of embarrassing questions. You're
15 doing really good.

16 When he first touched your penis, was your penis soft,
17 was it regular, or was it different than that? Was it the
18 way it normally is? Should I ask that question again?

19 A. It was soft.

20 Q. Okay. When he touched it, how did he touch it?

21 A. He grabbed it.

22 Q. He grabbed it. Did he grab it and hold it, or did he
23 grab it and do something else with it?

24 A. He grabbed it and moved it around.

25 Q. Moved it around. How did he move it around? Like did

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1 he move it in one particular direction or one particular
2 movement?

3 A. No.

4 Q. Did he touch it with one hand or two hands?

5 A. Both.

6 Q. Did he touch it with both hands at the same time?

7 A. No.

8 Q. How long -- While he was touching your penis, did it -
9 - did your penis change or did it ---

10 A. Yes.

11 Q. What?

12 A. Yes.

13 Q. How did it change?

14 A. It got hard.

15 Q. When he was touching it, how long was he touching it
16 and moving it around?

17 A. I don't know.

18 Q. Was it more than a minute or less than a minute?

19 A. More.

20 Q. At any point when he was doing this, did you open your
21 eyes, or look at him, or let him know that you were awake?

22 A. No.

23 Q. Why not?

24 A. I was scared.

25 Q. Did something happen that made him stop touching your

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1 penis?

2 A. Yes.

3 Q. What was that, that happened?

4 A. I spermed.

5 Q. And by "spermed," what does that mean? Explain to the
6 jury what you mean by that.

7 A. Something came out of my penis.

8 Q. After that happened, did -- what happened then?

9 A. He stopped and went to the bathroom.

10 Q. And did he go to the bathroom that's attached to the
11 master bath?

12 A. Yes.

13 Q. To the master bedroom?

14 A. Yes.

15 Q. Did he leave the door opened or did he close the door?

16 A. Closed, I think.

17 Q. And do you know how long he was in the bathroom?

18 A. No.

19 Q. When he came out of the bathroom, what did he do?

20 A. He came back to bed.

21 Q. And at any point up until this point, had you turned
22 and looked at him?

23 A. No.

24 Q. When did you -- At some point, did you look at him?

25 A. No.

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1 Q. How do you know that it was the defendant that was
2 touching you?

3 A. I really don't know, but I just knew.

4 Q. You just do.

5 Did you ever hear anybody else come into the room that
6 night?

7 A. No.

8 Q. Did you feel anybody else get into the bed that night?

9 A. No.

10 Q. At any point, did you turn and look to see who was
11 laying next to you?

12 A. No.

13 Q. When you woke -- Did you at some point open your eyes,

14 Minor

15 A. Whenever I got up.

16 Q. And who was laying next to you when you got up?

17 A. He was.

18 Q. And, Minor I haven't asked you this yet, but and
19 I've asked you all about whether you know him, but do you
20 see the person in this room that touched your penis?

21 A. Yes.

22 Q. And I'm going to have to ask you to point him out.
23 Can you point him out for me?

24 Let the record that he's pointed to the defendant.

25 (WHEREUPON: THE WITNESS IDENTIFIES THE DEFENDANT.)

Minor

DIRECT BY MS. JOYNER

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1 Q. Minor after this happened during that morning, did
2 the defendant say anything to you?

3 A. No.

4 Q. Did you say anything to him?

5 A. No.

6 Q. Did you stay over at his house and do the work for
7 him?

8 A. Yes.

9 Q. What was that like, Minor

10 A. I didn't like it.

11 Q. Did you tell somebody what happened?

12 A. Not until I got home.

13 Q. Why did you wait until you got home?

14 A. I just felt like it was the right thing to do to wait
15 till I got home.

16 Q. Who did you tell when you got home?

17 A. My mom.

18 Q. And did your mom call the police?

19 A. Yes.

20 MS. JOYNER: I beg the Court's indulgence.

21 (PAUSE.)

22 Q. Minor I'm just going to run back through a few
23 things with you just to be clear. The first time that you
24 spent the night at his house, nothing bad happened; is that
25 right?

Minor

DIRECT BY MS. JOYNER
CROSS BY MS. INZERILLO

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1 A. Yes.

2 Q. The second time you spent the night is when the bad
3 thing happened; ---

4 A. Yes.

5 Q. --- is that right? When after the defendant touched
6 you and made you sperm, at any point you needed to take a
7 shower, did you change your underpants?

8 A. No.

9 Q. Are those the ones you wore home that night?

10 A. Yes.

11 Q. And you didn't -- Do you remember whether the
12 defendant's friend was there during the day? That friend
13 from the night before.

14 A. Yes.

15 Q. Do you -- Was he there?

16 A. Yes.

17 Q. Thank you very much, Minor Please answer any
18 questions Ms. Inzerillo has.

19 MS. INZERILLO: May it please the Court, Your Honor?

20 THE COURT: Yes, ma'am.

21 CROSS EXAMINATION

22 Minor BY MS. INZERILLO:

23 Q. Minor you remember Eddie coming by your house asking
24 you to come over and help him with the shed?

25 A. Yes.

Minor

CROSS BY MS. INZERILLO

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1 Q. And he talked to your mom?

2 A. Yes.

3 Q. And do you remember that your sister was going to have
4 a slumber party that night, and that's why you were going
5 to spend the night with Eddie?

6 A. No.

7 Q. You don't remember that? Okay. But you ended up
8 spending the night with Eddie. Right?

9 A. Yes.

10 Q. And you said that when you spent the night with Eddie
11 the first time, you thought it was weird that he slept in
12 his underwear in his bed. Right?

13 A. Yes.

14 Q. And on the day that he came over on this day in April,
15 you didn't tell your mom, "I don't want to go over there.
16 He sleeps in his underwear."

17 A. No.

18 Q. No. You agreed to go over there and spend the night
19 with him; is that right?

20 A. Yes.

21 Q. And when you go over to Eddie's house, you like to
22 play on his computer?

23 A. Yes.

24 Q. And I know you said one time you had gone over there
25 for school, but you also like to go on his computer and

Minor

CROSS BY MS. INZERILLO

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1 play. Right?

2 A. Yes.

3 Q. And on this night, Eddie wouldn't let you play on the
4 computer. He had you watch a movie. Right?

5 A. Yes.

6 Q. And it was Eddie and his friend Ryan that were on the
7 computer. Right?

8 A. Yes.

9 Q. And that kind of made you mad because you wanted to
10 play on the computer. Right?

11 A. Not really.

12 Q. Not really? Okay.

13 Now you had to take some medications. Right?

14 A. Yes.

15 Q. And you mom sent your medicine over to Eddie's house
16 with you; is that right?

17 A. Yes.

18 Q. And Eddie gave you those medicines that night. Right?

19 A. Yes.

20 Q. And you have to take a lot of medicines. Right?

21 A. Just three.

22 Q. Just three. And they sometimes make you really
23 groggy? Really sleepy?

24 A. Yes.

25 Q. And so when you got ready to go to bed this night, you

Minor

CROSS BY MS. INZERILLO

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1 didn't tell Eddie, "I don't want to sleep in the bed. I'd
2 rather sleep on the couch." Is that right?

3 A. No.

4 Q. Okay. And when you woke up -- and I won't make you
5 explain everything again, okay. But the next morning when
6 you say that you felt Eddie touching you, you didn't push
7 his hand away. Did you?

8 A. No.

9 Q. You didn't get up out of the bed. Did you?

10 A. No.

11 Q. You didn't go into the other room and tell the guy,
12 "Take me home."

13 A. No.

14 Q. And when you talked to the police -- Do you remember
15 talking to the police in the case?

16 A. Yes.

17 Q. And you remember writing out a statement for them
18 about what happened?

19 A. Yes.

20 Q. And you never told the police that Eddie got up and
21 used the bathroom afterwards. Did you?

22 A. No.

23 Q. And the next day, you stayed at his house. Right?

24 A. Yes.

25 Q. And you never called your mom to come pick you up?

Minor

CROSS BY MS. INZERILLO

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1 A. No.

2 Q. You never called the police?

3 A. No.

4 Q. You worked with Eddie and his friend to try to pick up
5 the limbs and the two-by-fours and build the shed. Right?

6 A. Yes.

7 Q. Now sometimes -- Minor sometimes you don't tell the
8 truth; is that right?

9 A. Every once in a while.

10 Q. Do you remember getting in trouble with your mom about
11 when you -- or at school when you broke a lightbulb and
12 lied about it?

13 A. No.

14 Q. You don't remember doing that? Do you remember lying
15 to your mom about that?

16 A. No.

17 Q. Do you remember stealing money from your mom and lying
18 to her about that?

19 A. No.

20 Q. You don't remember that either? That's a no?

21 A. Yes.

22 Q. So you sometimes lie; is that right? You just don't
23 remember doing it at that time?

24 A. Yes.

25 Q. Sometimes when -- Well let me ask you. You're on some

Minor CROSS BY MS. INZERILLO

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1 medications sometimes because you get really angry at
2 things; is that right?

3 A. Yes.

4 MS. JOYNER: Your Honor, I'm going to object. I don't
5 think his anger is relevant to his --

6 THE COURT: Well it's cross. I'm going to let it.

7 MS. INZERILLO: Thank you, Your Honor.

8 THE COURT: I overrule the objection.

9 Q. And do you remember on this day when you were helping
10 Eddie and his friend Ryan build a shed, do you remember
11 asking Ryan to go get your monster drink?

12 A. Yes.

13 Q. And you remember that Ryan told you no. He wasn't
14 going to do that.

15 A. No.

16 Q. You don't remember him telling you no, and you getting
17 really, really mad about that?

18 A. I think he actually did go get one.

19 Q. You think he did, even though he didn't have a car,
20 you think he went and got you one?

21 A. I think he went on Eddie's moped.

22 Q. Okay. And so you didn't get mad on that day?

23 A. No.

24 Q. Okay. And you didn't use bad language with him?

25 A. No.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 MS. INZERILLO: No further questions, Your Honor.

2 THE COURT: Redirect?

3 MS. JOYNER: I beg the Court's indulgence.

4 (PAUSE.)

5 MS. JOYNER: We have no further questions for Mr.

6 Minor

7 THE COURT: You can step down. Thank you. We

8 appreciate your time, Mr. Minor

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Call your next witness.

11 MS. JOYNER: Your Honor, the State calls Detective
12 Fred Moore.

13 MADAME CLERK: Raise your right hand, place your left
14 hand on the Bible.

15 (WHEREUPON: DETECTIVE FRED MOORE,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 MADAME CLERK: Thank you. Please have a seat.

18 DIRECT EXAMINATION

19 DETECTIVE FRED MOORE BY MS. JOYNER:

20 Q. Will you please state your full name for the record?

21 A. Fred Wesley Moore, Jr.

22 Q. What's your occupation?

23 A. Detective with York County Sheriff's Office, assigned
24 to the Violent Crimes Unit.

25 Q. How long have you been a detective?

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 A. Four years.

2 Q. And prior to that, do you have any law enforcement
3 experience?

4 A. Eight years here at the Sheriff's Office. I have a
5 total of seventeen years in law enforcement.

6 Q. And back in 2011, April 2011, did you become involved
7 in the investigation of Edward Clarkson?

8 A. Yes, I was assigned the case.

9 Q. At that time, did you have the name, the actual name
10 Edward Clarkson?

11 A. The name that was given was Eddie Carter. That's who
12 we were looking for at the time.

13 Q. And were those -- Was the name Eddie Carter given in
14 relation to allegations by Minor

15 A. Yes.

16 Q. And who provided the name Eddie Carter?

17 A. Ms. Boggs' mother.

18 Q. And were you -- When you were first assigned the case,
19 did you have any luck locating the person that Ms. Boggs
20 called Eddie Carter?

21 A. She said that he was in the area of [REDACTED] [REDACTED] So
22 we tried to locate some Carters or Eddie Carter in that
23 nature. It was unsuccessful to find anything in the
24 computer. So that's when myself and Detective Wallace were
25 given the description of the residence -- vehicles and the

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 way the driveway was. And we went out looking and located
2 a residence that matched that description. It was at the
3 corner of [REDACTED] and [REDACTED], but I think it has
4 a [REDACTED] address.

5 Q. And was that the home of Edward Clarkson?

6 A. Yes.

7 Q. And in just a moment, I'll get to questions about your
8 interactions with Mr. Clarkson. But first, prior to
9 locating Mr. Clarkson, did you at any point ever interview
10 the victim, Minor

11 A. No.

12 Q. And why not?

13 A. We prefer to have a forensic interview done.

14 Q. And was a forensic interview done for Minor

15 A. Forensic interviews are a nationally accepted thing.

16 Q. I know, I'm sorry. Was a forensic interview done for
17 Minor

18 A. Yes, it was.

19 Q. Now if you could tell the jury just briefly what a
20 forensic interview is.

21 A. It's a nationally accepted type of interviewing style
22 that is used on children. It's -- a person's trained to
23 interview children. They go through classes and train how
24 to do it. They try to build a rapport with the child, get
25 on their level, and speak to them. They interact and try

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 to develop their communication skills and comfort level.
2 The most beneficial part of forensic is it's videotaped and
3 I did view the video from another room. It's used -- DSS
4 can also view it. And another important purpose, it only
5 allows the child to tell their story one time. It can be
6 used and viewed by therapists, DSS, also the State and the
7 Defense, and that nature.

8 Q. And did you -- Did you say you personally viewed Mr.
9 Minor interview as it was being conducted?

10 A. I did, that was on April the 26th.

11 Q. And following that interview, then did you then
12 attempt to locate Eddie Carter?

13 A. I did on April the 28th was the day that we went
14 looking for the resident.

15 Q. And did you -- you say, "we." Who was with you?

16 A. Detective Alex Wallace.

17 Q. Is he also a detective of the Sheriff's Office?

18 A. He is.

19 Q. And as you were -- While you were out and located the
20 house matching the description, were -- did you encounter
21 the defendant in this case?

22 A. Yes, he was in the front yard.

23 Q. And did you approach him?

24 A. Yes.

25 Q. And do you recall what his address is? Or actually

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 should I say is the address on --

2 A. It's on -- it's on [REDACTED] It's the corner
3 of [REDACTED] and [REDACTED] but I think the actual [REDACTED]
4 Court is the address -- the road name.

5 Q. Is that home located within York County, South
6 Carolina?

7 A. Yes, it is.

8 Q. Within the Sheriff's Office jurisdiction?

9 A. Yes, ma'am.

10 Q. And you said that you located him on April the 28th;
11 is that correct?

12 A. Yes.

13 Q. And where was he located again when you --

14 A. He was in the -- either the porch front yard area of
15 the house.

16 Q. And did you and Detective Wallace approach him?

17 A. We did.

18 Q. And did you -- And did you identify yourselves as law
19 enforcement officers?

20 A. Yes.

21 Q. And did you ask to speak with him?

22 A. Yes.

23 Q. Did you Mirandize him prior to speaking with him?

24 A. I read him his rights.

25 Q. Could you please tell the jury what those rights were,

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 if you could recite those rights that you read to him that
2 day?

3 A. "You have the right to remain silent. Anything you
4 can will be used against you in the court of law.

5 You do not -- you have the right to talk to an
6 attorney and have him present with you while you are being
7 questioned. If you cannot afford to hire an attorney, one
8 will be appointed to represent you before any question.
9 You can decide at anytime to exercise these rights and not
10 answer any questions or make any statements."

11 MS. INZERILLO: Your Honor, at this time I will just
12 renew the previous motion regarding this line of
13 questioning.

14 THE COURT: My ruling's the same.

15 MS. INZERILLO: Yes, Your Honor.

16 Q. Now the -- You were reading from a form, this now.
17 What form were you reading from?

18 A. The *Miranda* form that we use at the Sheriff's Office.

19 Q. And did you have him sign or initial a form indicating
20 that he'd received those rights?

21 A. I did not. He was not under arrest, and he was not in
22 custody, but I went ahead and read him his rights to make
23 sure he was advised of those.

24 Q. Was Detective Wallace present when you read him those
25 rights?

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1 A. He was.

2 Q. Did Mr. Clarkson appear to understand those rights?

3 A. He did.

4 Q. Did he appear to be under the influence of anything
5 that would interfere with his ability to understand what
6 you were saying to him?

7 A. No, ma'am.

8 Q. Did he appear to be of average intelligence, capable
9 of understanding rights?

10 A. Yes.

11 Q. And did he agree to waive those rights and speak with
12 you?

13 A. Yes.

14 Q. At any point -- How long total did you speak with the
15 defendant?

16 A. Probably 15 or 20 minutes.

17 Q. At any point during that 15 or 20 minutes, did he tell
18 you, "I don't want to talk to you anymore"?

19 A. No.

20 Q. Did he ever ask for a lawyer?

21 A. No.

22 Q. Did you ever place him in custody or tell him he
23 wasn't free to leave?

24 A. No.

25 Q. Did he ever try to walk away from you when you stopped

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 him?

2 A. No.

3 Q. And when you began speaking with him, was it in a
4 format of question and answer or was it a kind of
5 conversation format?

6 A. I asked him questions. I started off with asking him
7 does he know Minor

8 Q. Did he indicate that he knew Minor

9 A. He said yes, he had been a friend and the next -- they
10 had done things together. He stayed at his house. And
11 that's when I asked him did he stay at his house the night
12 of April the 17th, and he responded yes.

13 Q. And is that date of April the 17th, is that based off
14 of the report date of April 18th, when the mother called
15 the police?

16 A. Yes.

17 Q. Now did you ask him why Minor had stayed at his
18 house? Was that part of the questioning of him?

19 A. I did. He mentioned that Minor wanted -- that they
20 were going to come over and work in the yard, and do yard
21 work, and that nature, and work on a building or something
22 is the reason he came over.

23 Q. And did you ever inquire of him where Minor had slept
24 that evening the house?

25 A. I did. I asked him where Minor slept, and he told me

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 in his bed in the master bedroom.

2 Q. Did the defendant indicate to you where the defendant
3 himself had slept?

4 A. He said he slept in bed also.

5 Q. Did you inquire of him what he had -- what he the
6 defendant had worn to bed?

7 A. I did.

8 Q. And what was his answer?

9 A. He said that he only -- usually only wears boxer
10 shorts, and that was what he was wearing that night.

11 Q. Did you ask him what Minor had worn to sleep?

12 A. I did.

13 Q. And what was his response?

14 A. Long pajama bottoms and a t-shirt.

15 Q. At some point did you advise him of the reason why you
16 were there to interview him?

17 A. I did. I told him that Minor had informed us that he
18 had touched his penis.

19 Q. And what was his response?

20 A. He denied and said he did not touch Minor penis.

21 Q. Did he admit to touching Minor at all?

22 A. He did. He admitted to myself and Detective Wallace
23 that he reached over and felt Minor waist and side to
24 make sure when he felt movement in the bed he put his hand
25 over there to make sure Minor was still in the bed.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 Q. Did he elaborate on why he felt the need to touch
2 Minor to make sure that Minor was still in bed?

3 A. He did. He gave us two reasons: one, he said he was
4 afraid he might get up and sleepwalk; and the second
5 reason, he didn't want him getting up and viewing
6 pornographic materials that may be on his computer.

7 Q. Did Mr. Clarkson indicate whether Minor had
8 previously stayed at his residence?

9 A. Yes.

10 Q. And did he say that he had previously stayed at his
11 residence?

12 A. Yes.

13 Q. Did you ask Mr. Clarkson anything regarding whether he
14 had a friend with him?

15 A. I asked him who was with him when he dropped Minor
16 off. And Mr. Clarkson was hesitant at first to speak with
17 him. And he said, "Well I believe it was a friend of mine
18 named 'Ryan Finnigan.'" But I'm not -- He told me he
19 wasn't sure if he stayed the night is what he told me.

20 Q. Now did at some point -- or actually at any point
21 during this conversation, did you threaten Mr. Clarkson in
22 any way?

23 A. No.

24 Q. Or promise him anything?

25 A. No.

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER

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1 Q. And try to coerce him in any way into speaking with
2 you?

3 A. No, ma'am.

4 Q. Was Detective Wallace present the whole time?

5 A. He was.

6 Q. Now I asked you, and I just wanted to make sure I
7 understand the specifics then and everything that was
8 discussed. Did you ask him about any prior activities that
9 he had had with Minor

10 A. He had mentioned they've done things in the past.
11 They had went jet skiing I remember, maybe the summer
12 before.

13 Q. Now you said previously that he had mentioned spending
14 the night at the house before. And just to elaborate a
15 little bit, his explanation for touching Minor was what
16 again?

17 A. He said that he'd feel movement. He would put his arm
18 over and check his waist or side and make 'sure he hasn't
19 gotten out of bed because of -- he was afraid he may
20 sleepwalk or get on his computer to review pornographic
21 materials that may have been on there.

22 Q. Did he elaborate in any way about why he was concerned
23 about sleepwalking?

24 A. His medication. He had mentioned medication that he
25 administered to Minor

DETECTIVE FRED MOORE: DIRECT BY MS. JOYNER
CROSS BY MS. INZERILLO

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1 Q. Did he elaborate for you how many times he touched
2 Minor waist during the night according to him?

3 A. Not nothing specific. He said he reached over when
4 he'd feel movement in the bed.

5 Q. At any point did you attempt to locate the friend that
6 had been identified as Ryan Finnigan?

7 A. I did. I looked up in our computer system at the
8 Sheriff's Office and located an address that -- for Ryan
9 Finnigan. He had a sister named, "Michelle." It listed
10 the same address as [REDACTED] in York. I went by
11 the residence, located some individuals in there, and they
12 said they didn't have any knowledge of who Ryan Finnigan
13 was at that time.

14 Q. So you were not able then to locate him ---

15 A. I was not.

16 Q. --- prior to trial? Do you know how far away the
17 defendant's house is from the victim's house?

18 A. I'd say a few miles.

19 Q. Thank you very much. Please answer any questions Ms.
20 Inzerillo has.

21 MS. INZERILLO: May it please the Court, Your Honor.

22 THE COURT: Yes, ma'am.

23 CROSS EXAMINATION

24 DETECTIVE FRED MOORE BY MS. INZERILLO:

25 Q. Detective Moore, you are one of the investigators on

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 this case; is that right?

2 A. Yes, ma'am.

3 Q. And is it fair to say you are sort of the equivalent
4 of a lead investigator in the case?

5 A. Yes.

6 Q. So as lead investigator, your job is to try to get as
7 much information about the allegation as possible; is that
8 fair?

9 A. Yeah, yes,

10 Q. So essentially as part of your investigation, you look
11 for any sort of physical evidence that may factor into your
12 case; is that right?

13 A. Yes.

14 Q. Because as the detective on this case, you know the
15 information that you have is, you have one person making an
16 allegation. And then pursuant to your investigation, you
17 know that, that person denied it. Mr. Clarkson denied the
18 allegation; is that right?

19 A. Yes.

20 Q. Okay. So from an investigative point of view, your
21 next step is to sort of try to find any other evidence that
22 might let you know which direction to go in. Is that fair?

23 A. Yes.

24 Q. Okay. So in your investigation of this case, you
25 learned that the allegation was that there was ejaculation

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 as a result of touching; is that right?

2 A. Yes.

3 Q. Okay. And not to dumb things done too much, but
4 certainly ejaculation is physical response. Right?

5 A. Yes.

6 Q. And as an officer, that tells you that there could be
7 physical things left behind like DNA, anything like that;
8 is that right?

9 A. Yes.

10 Q. And in your investigation, you were aware that Minor
11 was clothed at the time that this ejaculation allegedly
12 occurred; is that right?

13 A. Yes.

14 Q. So that would have given you clothing to test or
15 anything like that; is that right?

16 A. Yes.

17 Q. And as the lead investigator, you're aware that his
18 underwear was in fact taken into evidence.

19 A. It was.

20 Q. Okay. And as an investigator, again, that's the kind
21 of things you're looking for; is that right?

22 A. Yes, we -- we -- we had it -- it was in evidence. We
23 consulted with the Solicitor's Office, and we didn't test
24 the underwear. We ---

25 Q. Okay. And that was going to be my next question.

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 A. It was -- It was Minor DNA. He's one -- we never
2 alleged that the defendant Mr. Clarkson's DNA would be in
3 those underwear.

4 Q. Okay.

5 A. We knew if any DNA was in the underwear, it belonged
6 to Minor. Those were his underwear that he wore.

7 Q. Well let me back up, because you say you know that DNA
8 is going to be in the underwear, but it was never tested;
9 is that right?

10 A. It was not tested.

11 Q. And the only way to know if DNA is in underwear is to
12 test it; is that right?

13 A. That's correct. It would be --

14 Q. In fact the Sheriff's Office --

15 A. It would also be no knowledge of that would be the
16 date -- at that point, that was the date that the DNA was
17 deposited in the underwear also.

18 Q. There would be -- I'm sorry. Say that again.

19 A. There's no way to -- when we look at it, no way to
20 pinpoint that was the date that the DNA was deposited in
21 Minor because it belonged to Minor

22 Q. Okay. So what you're saying is, you took the stuff
23 into evidence, but because you couldn't pinpoint that, that
24 evidence would have connected to this date, you elected not
25 to test it. Is that what I'm hearing?

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 A. Yes.

2 Q. Okay. But -- and I just want to make sure we're
3 clear, on the same page on this. Even with that
4 understanding that you just explained, the underwear was
5 never tested. Right?

6 A. Correct.

7 Q. So -- because I want to make sure because I'm not a
8 forensic expert. I know you're not a forensic expert. So
9 just to make sure we're talking the same language, when we
10 say -- when you say you know DNA would be there, you don't
11 know DNA would be there; is that right?

12 A. Correct.

13 Q. Okay. Because --

14 A. His -- he -- it was his -- he -- it was off of him
15 that DNA would be in Minor underwear, his own.

16 Q. Well that's what you're assuming. Right? You're
17 assuming that if he's wearing his underwear, and he
18 ejaculates, his DNA would be in that ejaculation. That's
19 what you're assuming.

20 A. You're talking about -- you're talking about sperm or
21 ejaculation? Yes.

22 Q. But in actuality, you can't know that for certain
23 because it would have to be tested; is that right?

24 A. That's correct.

25 Q. Okay. And as an investigator, forensic testing also

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 can give you other types of DNA, for example, skin cells or
2 anything like that, that might tell you if in fact someone
3 touched a part of a body that was in that underwear; is
4 that right?

5 A. There's -- there are tests. I'm not -- I'm not a
6 forensic person, so I don't know the specific test.

7 Q. But you're aware, being a detective with the Sheriff's
8 Office that, that is the type of testing that can be done?

9 A. Yes.

10 Q. Okay. So, I guess, long story, short, underwear was
11 still in evidence had not been tested; is that right?

12 A. Correct.

13 Q. Okay. So now we want to sort of fast-forward to the
14 28th, which is the day that you went out to Mr. Clarkson's
15 house; is that right?

16 A. Yes.

17 Q. And you approached Mr. Clarkson at his house just to
18 sort of converse with him about the allegation that you're
19 investigating; is that right?

20 A. Yes.

21 Q. And I know you went through with Ms. Joyner the rights
22 that you read and all that. But essentially, he didn't run
23 from you; he agreed to talk to you; is that right?

24 A. That's correct.

25 Q. And he answered all of your questions. Right?

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. And in fact, he was forthright with you to the point
3 that he even admitted sleeping in the same bed with Minor
4 is that right?

5 A. He did.

6 Q. And he explained to you that Minor was on some
7 medication. He had concerns about Minor going around the
8 house?

9 A. Yes, that was his explanation, yes.

10 Q. Okay. And he explained to you that he had actually
11 given Minor his medicine I think at 6:00 p.m. and 6:00
12 a.m. while Minor was at the house?

13 A. Correct.

14 Q. Now when you sort of addressed the substance of the
15 allegation with him, Mr. Clarkson did deny that allegation;
16 is that right? Denied touching Minor

17 A. He did.

18 Q. And you learned as well that there may have been
19 someone else in the house, this Ryan Finnigan; is that
20 right?

21 A. Yes.

22 Q. Okay.

23 A. But I don't know if -- when I asked him, he -- Mr.

24 Clarkson told me he doesn't remember if he stayed the

25 night. When I asked the question, it was who was with you

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 when you dropped off Minor

2 Q. Right, okay. And of course this was about 10 or 11
3 days after this allegedly happened; is that right?

4 A. Yes.

5 Q. Okay. And certainly, at least registered enough for
6 you to try to find Ryan Finnigan; is that right?

7 A. Yes.

8 Q. To continue your investigation. Right?

9 A. Yes.

10 Q. Because in pursuing this other witness, you could have
11 learned if there was any conversation about what happened,
12 anything Ryan might know about the case; is that right?

13 A. Yes.

14 Q. Okay. And --

15 A. And Mr. Clarkson was hesitant to provide information
16 of his whereabouts, where he lived. He gave me a generic
17 -- I think his family lives down on 61 is what I was given
18 from Mr. Clarkson. That's why I went back to the office,
19 looked in the computer system, checked DMV, checked that
20 nature, and looked at the last address I found was on
21 McAfee, and that's where I went.

22 Q. So you did follow up on and at least trying to find
23 Mr. Finnigan; is that right?

24 A. Yes.

25 Q. All right. Now while you were at the house, you

DETECTIVE FRED MOORE: CROSS BY MS. INZERILLO

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1 didn't take any items from the house?

2 A. No.

3 Q. No sheets, no bedspread, anything like that?

4 A. No.

5 Q. You never went back and got a search warrant for the
6 house?

7 A. No.

8 Q. Okay. At no point in your investigation did Minor
9 ever relay to you that after the alleged incident, Mr.
10 Clarkson got up and used the restroom; is that right?

11 A. I think at the forensic interview...

12 Q. Did he relate to you?

13 A. To me? No.

14 Q. At any point in your investigation, did you come
15 across any 911 calls that Minor made from Mr. Clarkson's
16 house?

17 A. No.

18 Q. And from your investigation, are you aware of any
19 phone calls that Minor made to his mom asking him to be
20 picked up that day?

21 A. No.

22 MS. INZERILLO: No further questions, Your Honor.

23 THE COURT: All right.

24 Redirect?

25 MS. JOYNER: Just briefly.

DETECTIVE FRED MOORE: REDIRECT BY MS. JOYNER

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REDIRECT EXAMINATION

DETECTIVE FRED MOORE BY MS. JOYNER:

Q. Again, how many days was it following the night Minor spent the night that you were actually able to locate Mr. Clarkson?

A. The -- from the -- it occurred on the 18th, and we located him on the 28th.

Q. About 10 days later?

A. Yes. And the name Carter is what delayed looking for him. But we -- once the forensic was performed on the 26th, that's when we went out looking -- searching for the residence.

Q. And again, you said Mr. Clarkson provided you some information that this Ryan Finnigan lived down 161; is that correct?

A. Yes.

Q. Did he provide anything more specific than that on how to locate Mr. Finnigan?

A. No.

Q. Thank you very much.

THE COURT: Recross?

MS. INZERILLO: No, Your Honor.

THE COURT: You can step down, and be excused.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Members of the jury panel, we'll take our

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1 morning break. We'll take about 10 to 12 minutes, so a
2 refresher break. Follow the Bailiff to the jury room.

3 We'll be at ease just a few minutes.

4 (JURY EXITS COURTROOM AT 11:32 AM.)

5 (COURT IN RECESS AT 11:33 AM.)

6 (COURT BACK IN SESSION AT 11:45 AM.)

7 THE COURT: Thank you. Take your seats.

8 Is the State ready?

9 MS. JOYNER: The State's ready, Your Honor.

10 THE COURT: Is the Defense ready?

11 MS. INZERILLO: Yes, Your Honor.

12 THE COURT: Bring in the jury.

13 (JURY REENTERS COURTROOM AT 11:47 AM.)

14 THE COURT: Is the court reporter ready?

15 MADAME COURT REPORTER: Yes, sir.

16 THE COURT: Is the clerk ready?

17 MADAME CLERK: As we gonna be.

18 THE COURT: All right.

19 (JURY REENTERS COURTROOM AT 11:47 AM.)

20 THE COURT: Call your next witness.

21 MS. JOYNER: Thank you, Your Honor.

22 The State calls Detective Alex Wallace.

23 (WHEREUPON: DETECTIVE ALEX

24 WALLACE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

25 FOLLOWS:)

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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MADAME CLERK: Thank you. You may have a seat.

DIRECT EXAMINATION

DETECTIVE ALEX WALLACE BY MS. JOYNER:

Q. Detective, can you please state your full name for the record?

A. It's Alexander Wallace.

Q. Where are you employed?

A. York County Sheriff's Office.

Q. In what capacity?

A. I work in the Criminal Investigations Division.

Q. Are you a detective?

A. Yes.

Q. And how long have you been with the Sheriff's Office?

A. A little over 12 years now.

Q. How long have you been a detective?

A. Four years.

Q. But do you recall back in April of this year, it was April 28th of this year -- of last year, you accompanied Detective Moore to locate a suspect?

A. Yes, ma'am.

Q. And do recall locating the defendant Edward Clarkson at his residence on [REDACTED] [REDACTED]

A. Yes, ma'am.

Q. Do you -- Can you tell the jury a little bit. Were you present when Detective Moore read to Mr. Clarkson his

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 *Miranda* warnings?

2 A. I was.

3 Q. And where did he read those warnings from?

4 A. From the *Miranda* form.

5 Q. And did Mr. Clarkson appear to understand those
6 warnings as they had been given?

7 A. Yes, he did.

8 Q. And did he appear to be under the influence of
9 anything that would prevent him from understanding what was
10 going on?

11 A. No, ma'am.

12 Q. And did he agree to speak with Detective Moore?

13 A. Excuse me?

14 Q. Did he agree to speak with Detective Moore?

15 A. Yes, he did.

16 Q. At any point, did you interject any questions or were
17 you simply there observing what was going on?

18 A. I just observed.

19 Q. And at any point, did you observe Detective Moore or
20 did you personally threaten him, promise him anything, do
21 anything to try to coerce him to speak with you?

22 A. No, ma'am.

23 Q. And do you recall how long you were out there total?

24 A. Fifteen, twenty minutes.

25 Q. At any point, did the defendant say, "I don't want to

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 talk to you," or "I want a lawyer," or "You need to leave,"
2 or anything like that?

3 A. No, ma'am.

4 Q. Do you recall Detective Moore asking him whether he
5 knew the victim Minor

6 A. Yes, I did.

7 Q. And what was the response?

8 A. He admitted that he knew the victim.

9 Q. Did -- Were you present or did you hear Detective
10 Moore ask the defendant whether Minor had spent the
11 night on April 17th of 2011?

12 A. Yes, he stated that he did spend the night.

13 Q. And did the defendant indicate in any way where Minor
14 Minor had slept that night?

15 A. Yes, he did. In the --

16 Q. Where was that location?

17 A. In the master bedroom with the defendant.

18 Q. Did the defendant indicate what he wore to bed that
19 night?

20 A. He stated that he wore underwear and no other clothing
21 on.

22 Q. Did he indicate what Minor wore to bed that night?

23 A. Long pajama bottoms and a t-shirt.

24 Q. At some point during Detective Moore's conversation
25 with him, did either you or Detective Moore advise the

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 defendant of why you were there speaking with him?

2 A. Yes, Detective Moore did.

3 Q. And what did Detective Moore state as the reason for
4 being there?

5 A. He told him that the allegations were that he touched
6 the victim's penis, and grabbed his penis.

7 Q. What was the defendant's response to that allegation?

8 A. He denied touching the penis, but did admit that he
9 touched the victim on his side to make sure he was still
10 there sleeping.

11 Q. Did he indicate why he felt the need to touch the
12 defendant on the side?

13 A. Because the victim was on medication. He takes ADHD
14 and is afraid he might get up and sleepwalk.

15 Q. Did he expand any further on any other reasons that he
16 would be concerned about the child walking around his
17 house?

18 A. He was worried that the victim might get up, and get
19 on his computer, and look at pornography.

20 Q. Did he indicate that whether cites were marked or if
21 he was just in general concerned about --

22 A. Marked.

23 Q. Marked. Did he indicate whether -- Was there ever at
24 any point a question asked about who was possibly there
25 that night, or whether there was somebody that accompanied

DETECTIVE ALEX WALLACE: DIRECT BY MS. JOYNER

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1 the defendant when he brought Minor home?

2 A. I believe he said that he had another gentleman that
3 might have rode with him to take the victim home.

4 Q. Did he identify that person by name?

5 A. I believe, Ryan -- yes, he did.

6 Q. Now other than being a witness to the statement, did
7 you have any other role in this investigation?

8 A. No, ma'am.

9 Q. And the residence that you and Detective Moore went
10 to, was that a residence that's located in York County,
11 South Carolina?

12 A. Yes, it is.

13 Q. Thank you very much. Please answer any questions Ms.
14 Inzerillo has.

15 MS. INZERILLO: No questions, Your Honor.

16 THE COURT: All right, you can step down. Appreciate
17 your time. Thank you.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Call your next witness.

20 MS. JOYNER: Your Honor, the State rests.

21 THE COURT: Members of the jury panel, the State is
22 resting. That tells us they have presented their evidence.
23 So we've reached a point in the trial where we have to take
24 up some legal matters outside of your presence. It's a
25 little early for us to go to lunch, but we're going to do

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1 it anyway. I'm going to -- it's 10 to 12:00. I'm going to
2 ask you to be back at 1:30, and we'll proceed at that time.

3 You're not yet, even though the State says it's
4 through with its case, you're not in a position yet to
5 discuss the case or try to make up your own mind or do any
6 of those things that I told you not to do because you still
7 hadn't reached that point. So have a pleasant lunch, and
8 we'll see you back at 1:30.

9 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 11:53 AM.)

10 THE COURT: Anything from the State?

11 MS. JOYNER: Nothing from the State.

12 THE COURT: Anything from the Defense?

13 MS. INZERILLO: Your Honor, at this time for the
14 record, we move for a directed verdict as well as renew all
15 previous motions.

16 THE COURT: Motions are denied. I find that there is
17 ample evidence from which the jury could reach the
18 conclusion that the State's case has been proven. It's up
19 to the jury, of course, to determine whether or not it has
20 been proven beyond a reasonable doubt, but there is
21 sufficient evidence from which a jury could reach that
22 conclusion.

23 Mr. Clarkson, can you hear me?

24 MR. CLARKSON: Yes, sir.

25 THE COURT: We've reached a point in the trial where

1 you have a right to present a defense if you wish, but
2 you're not required to present a defense because you are
3 presumed innocent, and the State must prove your guilt
4 beyond a reasonable doubt. You do not have to prove your
5 innocence.

6 But you have a right to call witnesses if you wish to
7 testify on your behalf.

8 You have a right to testify. If you testify, you will
9 be under oath and will be asked questions, and be cross
10 examined by the State and the State can ask you about a
11 prior offense. They cannot ask you about the nature of it,
12 whether or not you in fact were either found or pled -- and
13 I can't remember which, but that you have a record for a
14 felony in your past. If they ask you -- If you testify and
15 they ask you that, I'll tell the jury that they cannot
16 consider that as evidence concerning whether or not you
17 committed this offense. I will tell them that, that type
18 of evidence is allowed only into the record for the jury to
19 consider whether to believe you or not, that is as to your
20 credibility since you have a prior record.

21 You have an absolute right to remain silent. If you
22 exercise that right, I will tell the jury that is what
23 you've done.

24 I will remind them that you are presumed innocent, and
25 need not prove your innocence. I will remind them that the

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1 State must prove your guilt beyond a reasonable doubt. And
2 I will tell them they cannot use it against you in any
3 fashion whatsoever your exercise of your Constitutional
4 right to remain silent. I will tell them they cannot
5 discuss it. They cannot use it in determining in their own
6 mind whether the State has carried the burden of proof.

7 Do you understand all of that?

8 MR. CLARKSON: Yes, sir.

9 THE COURT: Do you have any questions about that?

10 MR. CLARKSON: No, sir.

11 THE COURT: This decision to testify or not is yours.
12 It's not your attorney's of course, or a friend's, or
13 family's. But you can get whatever advice you deem
14 appropriate as to whether to testify or not. Have you
15 reached a decision at this point?

16 MR. CLARKSON: Yes, sir. I don't want to testify.

17 THE COURT: You're going to exercise your right to
18 remain silent?

19 MR. CLARKSON: Yes, sir.

20 THE COURT: Then Ms. Inzerillo, do you have any
21 witnesses? I know the Doctor you said was not going to
22 testify.

23 MS. INZERILLO: We have no witnesses, Your Honor.

24 THE COURT: So then when we come back from lunch,
25 we'll be doing arguments and charge.

1 If you're not too busy, could I meet with the
2 attorneys real quick?

3 You can have a seat, Mr. Clarkson.

4 What I have to do with the attorneys is go over the
5 charge I'm going to charge, and see if they have any
6 request to charge. We call it the charge conference.
7 We'll have that in my chambers, and I'll just take a few
8 minutes, and of course whatever occurs there if there's
9 anything that needs to be, we'll put it on the record when
10 we come back in.

11 Do you understand that?

12 MR. CLARKSON: Yes, sir.

13 THE COURT: Come around. He can stay out. If you
14 understand, we're not making you stay in jail.

15 MR. CLARKSON: Yes, sir.

16 THE COURT: But, if you fail to come back after lunch,
17 this case will go forward. The case can continue to be
18 tried. The case will go to the jury, and the jury will
19 return a verdict. Of course, if the verdict is not guilty,
20 the case will be over. If the jury returns a verdict of
21 guilt, and you're not here, I will sentence you, and we'll
22 start a sealed sentence. That is, the only person in the
23 world who will know what the sentence is me, and a bench
24 warrant will be issued for your arrest. At such time you
25 are found and arrested, you will be brought before a judge.

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1 It could be me; it could be another judge. That judge will
2 unseal the sentence, and impose it at that time.

3 Do you understand all of that?

4 MR. CLARKSON: Yes, sir.

5 THE COURT: Thank you.

6 MR. CLARKSON: Thank you.

7 (COURT IN LUNCH RECESS AT 11:58 AM.)

8 (COURT BACK IN SESSION AT 01:37 PM.)

9 THE COURT: Thank you. Have a seat.

10 Is the State ready?

11 MS. JOYNER: The State's ready, Your Honor.

12 THE COURT: Defense ready?

13 MS. INZERILLO: Yes, Your Honor.

14 Can we take up a matter before the jury comes back in?

15 THE COURT: All right.

16 MS. INZERILLO: On the Denno motion prior, I neglected
17 to make the motion under -- or request for a directed
18 verdict for the lack of testimony as to the element of the
19 defendant's age, being over the age of 14. So with the
20 Court's permission, I would incorporate that into the
21 directed verdict.

22 THE COURT: All right.

23 MS. JOYNER: The State would take the motion to reopen
24 its case just based on that fact alone.

25 THE COURT: Well I'll allow the State to reopen,

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1 limited to the age question.

2 Now to keep the jury from coming back in and out, why
3 don't we bring the jury in and allow you to do that, and
4 you can rest, and we can just go straight into arguments
5 and charge because your motion is protected.

6 All right, bring in the jury.

7 (JURY REENTERS COURTROOM AT 01:40 PM.)

8 THE COURT: Members of the jury panel, I told you when
9 you left that the State had presented its case. They are
10 going to recall a witness with my permission on one,
11 isolated matter.

12 So call your witness.

13 MS. JOYNER: Thank you, Your Honor.

14 The State would call Detective Fred Moore.

15 THE COURT: You're still under oath, Mr. Moore.

16 DIRECT EXAMINATION

17 DETECTIVE FRED MOORE BY MS. JOYNER:

18 Q. Detective Moore, just briefly. If you could tell the
19 jury whether your investigation yielded information
20 regarding the defendant's date of birth and age at the time
21 this incident occurred?

22 A. Yes, the defendant Clarkson's date of birth is

23 . He's 54 years old.

24 Q. And would he have been 54 at the time or 53?

25 A. Fifty-three at the time.

CLOSING ARGUMENT: BY MS. JOYNER

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1 Q. Thank you very much.

2 THE COURT: Cross?

3 MS. INZERILLO: No, Your Honor.

4 THE COURT: You can step down. Thank you.

5 (WITNESS LEAVES WITNESS STAND.)

6 THE COURT: Ms. Inzerillo, any defendants -- witnesses
7 on behalf of the defendant?

8 MS. INZERILLO: No, Your Honor. The Defense rests.

9 THE COURT: Members of the jury panel, the Defense has
10 rested also. So now we're at the point in the trial where
11 you'll hear the closing arguments of the attorneys, then my
12 charge on the law, then we'll have the case in your hands
13 for your consideration.

14 Now the State is required to close.

15 MS. JOYNER: Yes, sir, Your Honor. Thank you. May it
16 please the Court.

17 MS. JOYNER: On April 17th, the defendant came to the
18 victim's home and asked him to come over to his house the
19 next day, and do some work around the house. And Minor

20 was happy to do that. He liked the defendant. You
21 heard grandma testify. There's no guy around the house
22 doing chores. There's no man of the house. But the
23 defendant, who Minor sometimes calls "Uncle E" or "Big E,"
24 he comes over and helps out sometimes. He's nice to
25 Minor He takes him jet ski riding, does things with him.

CLOSING ARGUMENT: BY MS. JOYNER

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1 He was glad to go. He was glad to go. And somehow the
2 idea came up that he was going to spend the night. He
3 packs his bags still glad to go, glad to go over to the
4 defendant's house.

5 And they have an uneventful evening. I mean maybe a
6 little bit of a strange evening. They go pick up somebody
7 else who comes over to the house, and the defendant and
8 that friend go up into a computer room, play on the
9 computer, while Minor watches a movie. But, you know,
10 uneventful, until bedtime when the defendant comes and says
11 -- this 53-year-old man comes to this 12-year-old boy and
12 he says, "Come on Minor it's time to go to bed. Let's go
13 to my room." And this 53-year-old man puts only his boxer
14 shorts on to sleep in bed with this 12-year-old child who's
15 not a son, not a blood relation, not even a relation by
16 marriage. And he's going to get in bed with him, and he's
17 going to go to sleep. Except he doesn't go to sleep -- or
18 he doesn't stay asleep. Sometime in those early morning
19 hours, sometime before, it was time for Minor to get up,
20 he felt the hand, the hand of his friend. The hand of a
21 man that he trusted, that he trusted enough to get in bed
22 with. And he felt that hand slip into his -- through his
23 waistband, and under his clothes, and grab on to his penis,
24 and start messing with him. He was masturbating him. And
25 Minor lays there with his eyes closed. He's pretending to

CLOSING ARGUMENT: BY MS. JOYNER

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1 be asleep. He's afraid. He's 12-years-old. And a 12-
2 year-old boy alone in a house with the defendant and the
3 defendant's friend, a man he trusted. This is happening to
4 him. And he keeps his eyes closed, and he pretends to be
5 asleep.

6 And then he has to go through that next horrible day
7 at the house. He's, he -- he's 12. He doesn't know what
8 to do. There's no rule book on what to do when something
9 like this happens when you're 12 years old, and you don't
10 know what to do. And he stays, but he waits until he gets
11 home. He waits till he gets home, and he finally is able
12 to tell. And he tells the person that he can trust. And
13 the person that he can really trust. He tells his mom.

14 Now in cross examination, Ms. Inzerillo asked some
15 questions of Minor like, "Minor you never said to your
16 mom, 'I don't want to go to his house because last time he
17 slept in his underwear.' And Minor you never said to the
18 defendant, 'I don't want to sleep in bed with you.' And
19 Minor you didn't push his hand away; did you?" But
20 ladies and gentlemen, in that bed that night, and we're
21 talking about two people. One of them is a child, and one
22 of them, an adult. And the 12-year-old boy, and Ms.
23 Inzerillo asked him, "Well you didn't call the police?"
24 Ask the detective that. You didn't call 911? You didn't
25 call the police from the defendant's house? And then even

CLOSING ARGUMENT: BY MS. JOYNER

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1 asks -- asks Minor "You didn't tell the defendant's
2 friend? You didn't tell the friend?" The defendant's
3 friend. And I want you to think about that because Ms.
4 Inzerillo used that term, "the defendant's friend." Would
5 that be the same friend that saw a 12-year-old boy marched
6 into a bedroom with a 53-year-old man? That would be the
7 same friend. So no, he didn't. He didn't tell while he
8 was at the house where he had been sexually abused. He
9 waited until he got home. And he waited until he was safe.
10 And you remember how grandma described it. He marched
11 straight in, and he went and got a shower and cleaned it
12 off.

13 He waited for the defendant to be gone, and then told,
14 and he cried. And remember grandma said, "He never cries."
15 But he cried. He wept. And then he began this odyssey of
16 being interviewed by the police. A 12-year-old boy being
17 interviewed by the police about something embarrassing,
18 horrific. And being interviewed by a forensic interviewer
19 while a police officer watched him in the next room. And
20 then, ultimately culminating in him walking into this
21 courtroom in front of a bunch of strangers, and sitting on
22 that witness stand, and being in the same room with that
23 man, and telling his story again.

24 Now at the start of the trial, Ms. Inzerillo in her
25 opening, she made a concession. It is unseemly for a grown

CLOSING ARGUMENT: BY MS. JOYNER

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1 man to be in bed with a small child, to be in bed with a
2 12-year-old boy. But she said it's not illegal. And I
3 agree. Being in bed with a child is not illegal. But
4 touching a child in a sexual way is illegal. The defendant
5 is charged with a lewd act. And I read the statute to you
6 at the beginning of the trial, and it's a very convoluted
7 statute. And the judge is going to give you an
8 instruction. But basically, we have to show, the
9 defendant's over the age of 14, the victim's under the age
10 of 16. And you know those things. The defendant was 53 at
11 the time. The victim was 12. And that basically, however
12 you would use different words to describe it, but
13 basically, there is a deliberate, inappropriate touch that
14 is sexual in nature. It's designed to arouse, appeal, or
15 gratify the lusts or sexual desires of either the defendant
16 or the victim. So really all you're left with trying to
17 figure out in this trial, ladies and gentlemen, is -- the
18 question that remains is, did the defendant touch Minor
19 penis in a sexual way? That's the only question that you
20 have to really answer in this trial.

21 And I agree with Ms. Inzerillo that it comes -- it's
22 going to come down to who you believe. It comes down to
23 credibility. You're the judge of the facts. As a judge of
24 the facts, and the judges of credibility, the judge is
25 going to give you an instruction. He alluded to it in his

CLOSING ARGUMENT: BY MS. JOYNER

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1 preliminary instruction that you judge the credibility, and
2 you use things like common sense, your everyday
3 experiences. The tools you use in everyday life, you bring
4 into this courtroom to help you decide the truth and help
5 you decide who to believe. In certain things backward you
6 can look at, a person's ability to know what they testify
7 about, whether their testimony is corroborated, is
8 consistent. Do they have a motive to fabricate or some
9 sort of bias? And those are all things that you can
10 consider.

11 Now from cross examination, Ms. Inzerillo suggested a
12 few things. And she said - you know she asked Detective
13 Moore, "Well you could have gotten the underwear tested.
14 That would have shown DNA. Right?" Yeah, it would have --
15 you would expect to find the victim's DNA in some shape or
16 form inside his underpants. You would expect to find that.
17 But what did he tell you? How it was left or when it was
18 left? You would still come back, ladies and gentlemen, to
19 the question: Do you believe the defendant touched
20 Minor penis in a sexual way? Do you believe Minor

21
22 11And she suggested something about skin particles,
23 which I think was a little CSI. And I don't really know
24 what else to say about it. She suggested that there could
25 have been a search warrant done 10 days later. 10 days

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1 later. We know why it took 10 days. It took 10 days to
2 learn the suspect's true name and address. 10 days later,
3 is there going to be anything there? I don't think so.
4 But she suggested those things because she wants to
5 distract you. She wants you to be distracted, and she
6 doesn't want you to think, and she doesn't want you to do
7 that comparison between Minor story and the defendant's
8 story to the police.

9 When you go back in the jury room, I want you to lay
10 those stories side by side. What do you know? You know
11 that Minor was there. And Minor tells you that. The
12 defendant tells that to the police. Minor slept in the
13 same bed with the defendant, and Minor told them that.
14 The defendant says that to the police, even down to what
15 the defendant wore and Minor wore. But Minor
16 testimony, the defendant wore nothing but boxer shorts, and
17 he wore pajamas and a t-shirt. Well that's what the
18 defendant told the police. And that Minor was in fact
19 touched while he was in bed with the defendant that night.
20 The only thing that -- Everything is the same until it
21 comes down to what kind of touch. Until it comes down to
22 what kind of touch the defendant gave to Minor

23 Now when you think about the defendant's version to
24 the police, I don't want you to just think about what he
25 says to the police, but I want you to think about what

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1 those things really mean. Think about what they really
2 mean. Minor slept at the defendant's house that night.
3 Minor had slept at the defendant's house before. The
4 defendant said that. Minor said that.

5 Now when the defendant is allowed back to sleep --
6 when Minor is allowed back to sleep at the house again on
7 April 17th. Now apparently if you want to believe the
8 defendant's statement, there are these big concerns about
9 Minor sleepwalking. There are his concerns about Minor
10 looking at Internet pornography. Yet despite these
11 concerns, he's back in the house. Does that really make a
12 lot of sense to you that those are real and true reasons?
13 Huh-huh.

14 And now we'll talk about the defendant is a 53-year-
15 old man, and he chooses to get in bed with a 12-year-old
16 boy. And Minor is not his son, Minor is not his nephew,
17 Minor is not a blood-relation to him. And he chooses to
18 get in bed with him. Now the defendant could have slept on
19 the second couch. He could have put Minor on the second
20 couch. He could have made himself a palette anywhere else
21 in the house. Couldn't he? Slept on the floor. He could
22 have even said to the other adult in the house, "Hey, this
23 is inappropriate for me to be in bed with this small child.
24 Do you mind bunking in my full-size bed with me so he can
25 sleep on the couch." There were all kinds of options,

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1 ladies and gentlemen. Even if for one minute, you want to
2 entertain the ridiculous idea that he was somehow concerned
3 about his sleepwalking, or the Internet, or anything of the
4 kind, there were all kinds of options for how the sleeping
5 arrangement could have come down and could have taken
6 place. And the defendant chose to wear, in bed, with a 12-
7 year-old boy nothing but his boxer shorts. Now what has he
8 tell the detective? I always wear nothing but boxer shorts
9 to sleep. But ladies and gentlemen, he's in his own home.
10 Presumably he had other clothes that he could open a drawer
11 and pull out. Maybe he doesn't own pajamas per se, but
12 what about a pair of sweat pants? What about a pair of
13 athletic shorts and a t-shirt. But no, he sleeps only in
14 his boxer shorts.

15 And then, he admits he touched Minor He touches
16 this 12-year-old boy several times during the night to make
17 sure he's not wandering around the house. Again, he didn't
18 want him to sleepwalk. Why is he there? He's been there
19 before. Is this a big problem? If it is, why is he there?
20 Or because he didn't want him to look at pornography sites
21 on the computer. Well Minor testified, ladies and
22 gentlemen, he doesn't know anything about the pornography
23 sites that are marked on his computer. If this is such a
24 big problem, if Minor is predisposed to do this because
25 it's such a big concern, why isn't the computer locked, or

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1 why isn't -- why is Minor there if you caught him looking
2 at pornography on your computer. The stories just don't
3 make sense.

4 And if you really felt like you needed to make sure
5 that a child wasn't up and moving around your house, well
6 you've got other senses besides your sense of touch. Don't
7 you? Don't you have your eyes? Isn't it easier to turn
8 and look at the child? Doesn't it make just as much sense
9 to speak out in the night? "Minor are you there?" Can
10 he not get up and look and see that he's there? Of course
11 you can. The story just doesn't ring true. It doesn't
12 make sense. He told the police what he thought they
13 already knew, which is that Minor was there, and Minor
14 spent the night, and Minor spent the night in his room
15 because Minor had already said it, there were other
16 witnesses to it. There was grandma, there was mom, there
17 was Ryan Finnigan. The police already knew that. And then
18 he tried to give them a plausible, innocent explanation for
19 what was not an innocent touch.

20 Now in cross, the defense counsel asked some questions
21 of Minor and the other witnesses, asked about medication.
22 I guess maybe suggesting that medication would interfere
23 with Minor ability and knowing what was going on. Well
24 when she asked Minor if the medication made him loopy I
25 think he said no.

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1 Ladies and gentlemen, medication or not, we're talking
2 about whether a person knows they're being touched and
3 masturbating. Minor had the ability to know what he was
4 testifying about and had the ability to perceive what was
5 going on. And she asked him some questions about being
6 angry. Being angry -- "Weren't you angry because you
7 couldn't play on the computer? Weren't you angry because
8 Ryan Finnigan wouldn't go buy you a big, giant drink at the
9 store? Well if the second reason is the motive to make up
10 a story, well then he should be mad at Ryan Finnigan and
11 not at the defendant. But if that's the reason to make up
12 the story, then Ryan Finnigan would be in that chair and
13 not the defendant.

14 And then she asked him something about, "Don't you lie
15 sometimes about breaking a lightbulb at school, about
16 stealing money?" Ladies and gentlemen, a far cry for
17 making up a lie for no apparent reason about your friend of
18 three years. It's a far cry from putting yourself through
19 something where you have to talk about intimate and
20 embarrassing, sad things to total strangers, to the police,
21 an interviewer, the prosecutor, to the jury in front of a
22 judge you never met before. There's absolutely no reason
23 for Minor to make this story up. Minor had
24 something horrible, horrible happen to him, and he's brave
25 enough to tell his mom and to tell the police.

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1 Now at the end of the day of this trial, the burden
2 rests with the State to prove this case to you beyond a
3 reasonable doubt. And the judge is going to define for you
4 what reasonable doubt is. And I want you to remember --
5 listen to the instruction. But I want you to remember
6 something about reasonable doubt. Don't lose sight of the
7 fact that reasonable doubt is the standard. It's the
8 burden of proof. This criminal trial is not about a search
9 for doubt. It's about the search for truth. Your job is
10 to find the truth.

11 And the reasonable doubt instruction, like a lot of
12 things you've probably heard in this courtroom, when we
13 come to legalese, can be somewhat confusing sounding. And
14 maybe you might find it difficult to apply. But when
15 you're thinking about how to find and determine whether the
16 State has met its burden, think about it this way. Go back
17 in the jury room, and you're supposed to deliberate.
18 You're supposed to sit down, and you're supposed to talk.
19 And the fact that you have to talk to each other to come to
20 an agreement, that's called deliberation. That does not
21 mean the State has not met its burden. You're supposed to
22 go back there. You're supposed to sit down, that's why you
23 have chairs back there. And I want you to sit down, and I
24 want you to think about every what if, every maybe, every
25 could be. And if at the end of it, you in your heart and

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1 in your mind believe Minor you still believe him
2 after all those what if's, and those maybe's, and those
3 could be's, then the State has met its burden.

4 I ask you to fulfill your oath as jurors to reach the
5 verdict that speaks the truth. And I ask you to find the
6 defendant guilty.

7 MS. INZERILLO: May it please the Court, Your Honor.

8 Like I told you at the beginning of this case, this
9 case is essentially a "He said, he said" situation. And
10 now you've heard the evidence. And you have heard one of
11 the "he's," Minor come in and take the stand. And
12 you heard him accuse Mr. Clarkson, the other he in this
13 case with inappropriately touching him. That's one version
14 of events. You heard from testimony in this case, that
15 when he was questioned by the officers, he explained his
16 version of events, his "he" side. And he admitted to
17 things that we brought out initially because we wanted you
18 to know. We wanted you to know that a 53-year-old man
19 admitted to the police that he got in bed with a 12-year-
20 old boy. We don't want to hide that from you. You should
21 know that. You're the jury. You should know as much
22 information as presented. We didn't hide that. And
23 neither did Mr. Clarkson. When the police came to his
24 house, the State wants you to believe that he made these
25 statements because he thought he knew what the police

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1 already knew. But you heard Detective Moore, and probably
2 to a lesser extent; Detective Wallace explain to you the
3 questions that were asked. Detective Moore asked questions
4 about it, but he didn't go into a long exposition about
5 this is everything that we know. He asked questions like,
6 "Did Minor spend the night." That question doesn't
7 illicit any special knowledge by Mr. Clarkson that
8 Detective Moore knows all these facts about the case.

9 Well what does Mr. Clarkson do? He is honest. He's
10 honest to a fault. He says, "Yes, the boy spent the night.
11 Yes, he slept in the bed with me. And, yes, I only wore
12 boxer shorts to bed."

13 Now I'm starting with Mr. Clarkson's recitation of
14 events because throughout the evidence in this case, you
15 heard other witnesses come in and corroborate the facts
16 that he told Detective Moore. He says he always sleeps in
17 his boxer shorts. Is that unseemly? Yes. Is there
18 anybody in this room who doesn't squiggle their eyebrows at
19 that decision? Probably not. I think we can all agree on
20 that. That is unseemly. He was honest about it. And what
21 was the testimony that we heard from the victim? "Well the
22 last time I slept at his house, the same thing happened, in
23 the bed, in his underwear." Does that excuse it? No. But
24 what does that tell us?

25 When Mr. Clarkson told the detective that every time

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1 he sleeps in his underwear, we have proof that the victim
2 came in and said, "Yes, this happened before." This is not
3 a case where prior to this he was snuggled up like a bug
4 with long long pants and sweatshirts. He's maintained the
5 same behavior each time. Mr. Clarkson explained to the
6 officer, "I had concerns about Minor getting up and
7 walking around my house because the child is on
8 medication." We heard other testimony. He is in fact on
9 medication. It has to be given to him twice a day, usually
10 around 6:00 p.m. and 6:00 a.m., that fact as well is
11 corroborated. And as much as the State wants to imply some
12 doubt in all of that, he is explaining to the officers, "I
13 have this concern because he is in fact on medication. He
14 may get up and run around my house. And I don't want that.
15 I have things in my house this 12-year-old child should not
16 see."

17 Now step back and look at the situation. He's the
18 oldest person in this house. He's the adult. You know
19 there are kids in the house are 19 and 20, something like
20 that, and 12. Wouldn't we all expect in this room that the
21 53-year-old man in that house would protect the minors from
22 things on his computer? Is that so unreasonable as to make
23 it implausible? No. And this is what he explains to the
24 officers.

25 As I told you initially when you're assessing this

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1 case, you don't leave your senses at the door. You treat
2 this case as you would any situation in your everyday life
3 when you're given two versions of events, and you need to
4 determine which one rings true. So what do you do? You
5 listen to one side, in this case, Minor And you listen
6 to the other side, in this case, Mr. Clarkson's. And as
7 the State told you in her closing, there's a lot of overlap
8 between those stories. In fact, they're almost lock-in-
9 step to the point of the touching. So in our everyday
10 lives, what do we do to figure out when all things are
11 equal, how to distinguish them? We look at other facts,
12 other things about the case that might give us a clue as to
13 who we need to look at more closely.

14 What do we know in this case? One, as I've indicated
15 to some of the facts, the facts that Mr. Clarkson told the
16 detective, other witnesses have come in, they've told you.
17 Two, when Minor takes the stand today, he testifies after
18 this touching happened, Mr. Clarkson got up and used the
19 men's room. It's a pretty big fact to come out. Detective
20 Moore also testified that Minor never told him that
21 before. Now why is that a very big fact to come out?
22 Because in the charge in this case, you have to find that
23 the State has proved beyond a reasonable doubt, a willful
24 touching. And what do we know prior to the inclusion of
25 this additional fact? That they are laying in bed, Minor

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1 says he was inappropriately touched. Knowing that it's a
2 willfulness, do we know for a fact that Minor would take
3 the stand and say, "I know for a fact he was awake. He
4 knew what he was doing." He made any comments, that there
5 was any reaction, physical reaction on behalf of Mr.
6 Clarkson. No. Until today when he comes in, and he adds
7 this fact to bolster that a little bit.

8 What else do we know about the events of this day?
9 What other facts can we extrapolate from this case? After
10 this alleged, awful event, the child stays in the same area
11 as Mr. Clarkson. And I don't mean just stays in the house.
12 We've heard ample testimony he didn't call his mom, he
13 didn't call the police. But what else did we hear? He
14 continued with the chores. So presumably, he's around the
15 area where Mr. Clarkson is. He's not hiding in the house,
16 he's not changing his behavior in any way to indicate
17 anything unseemly to happen.

18 I would also point your attention to this other person
19 that's in the house. Where is he in the course of this
20 case? Wouldn't you want to know if he heard Mr. Clarkson
21 get up and use the men's room at the time Minor today says
22 that happened? Wouldn't you want to know if he saw any
23 change in behavior in Minor or if there were any comments
24 made or if Minor acted oddly around Mr. Clarkson? This
25 presumably, by all the evidence that we have, this other

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1 person in the house where -- while the State calls the
2 defendant's friend, we don't know that he would be neutral,
3 that he wouldn't take the stand and say, "Yes, this is what
4 I saw or heard." Wouldn't you want to know that?

5 Now the State is right. I did cross examine the
6 detective about the underwear. And there were a lot of
7 assumptions made in regards to that underwear. The biggest
8 assumption was that Minor DNA would have been found in
9 the underwear. That's the biggest assumption that was made
10 because, ladies and gentlemen, we don't have the underwear.
11 What if the underwear was brought in, and there was nothing
12 in it? It was as clean as the day that it came out of the
13 bag. Would that tend to prove or disprove Minor
14 statement that he did in fact ejaculate into his underwear?
15 Wouldn't you want to see the underwear to see if that very
16 physical response is present? That's a fact that could
17 corroborate or not corroborate Minor side of the story.
18 But the evidence is not brought in. In fact, the evidence
19 wasn't even brought up by the State. And the detective was
20 quick to say, "Well we would find his DNA." We don't know
21 that. We don't know that. It was never, ever tested.

22 And let's look at a second fact. An allegation in
23 this case is that Mr. Clarkson reached his hands down this
24 child's underwear and touched him. And the detective
25 explained, "Yes, through forensic testing, we could see if

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1 that happened, if there's other DNA in there." So maybe it
2 is CSI. But it's also an additional fact that would help
3 you determine which one of these events is -- recitation of
4 events is right. Detective Moore admitted it was taken
5 into evidence. And I believe he indicated that as of his
6 understanding, it's still in evidence. Wouldn't you want
7 to know? That underwear would tell you. What the forensic
8 of that would tell you. Because certainly if it doesn't
9 play out the ejaculation part of Minor story, wouldn't
10 that affect the way you see his story?

11 This case comes down to credibility, ladies and
12 gentlemen. And you did hear me ask Minor has he ever lied
13 before. And he said yes. It comes down to credibility.
14 He came in today with the additional fact about Mr.
15 Clarkson getting up and going into the men's room.
16 Something he never told the detective before. A change in
17 his story. That is something you should take into
18 consideration when judging his credibility.

19 Now the burden is on the State to prove Mr. Clarkson
20 guilty beyond a reasonable doubt. And I agree with the way
21 she explained it to you. Go back there and discuss the
22 case. One of my colleagues always says there's chairs in
23 the jury room for a reason and I agree with that. But I
24 ask you, don't stop at the fact that this man got into a
25 bed with a 12-year-old child. That's not a lewd act.

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1 Don't stop at the fact that when he got in the bed with
2 this 12-year-old child he was only wearing underwear. That
3 is not lewd act. Look further into the case.

4 The crux of this case is, did Mr. Clarkson touch the
5 child in an inappropriate, sexual manner? Other than the
6 child's word, the story that has changed, or been added
7 onto, there's no other evidence that proves that. Even in
8 light of them having evidence was not brought in to prove
9 or disprove it. These are the discussions, the facts that
10 I ask you to look at because the burden is on the State to
11 prove him guilty. Every single element of every single
12 part of this charge.

13 And you may go back there, and you may think, "I don't
14 really like Edward Clarkson. I wouldn't want my kid around
15 him." And that's fine. That's absolutely fine because
16 this is not a popularity contest. We're not judging him on
17 his personality. You are judging the evidence that has
18 been presented against him in this case. Did he in fact
19 touch Minor inappropriately, sexually, willfully do
20 that, with the intent to arouse himself or Minor And I
21 submit to you, ladies and gentlemen, the evidence is not
22 there. And I ask that you find Mr. Clarkson not guilty.

23 THE COURT: Members of the jury panel, I appreciate
24 the attention you've given to the attorneys, and to myself,
25 and to the witnesses. I am now going to ask you to give me

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1 your attention for a few more minutes while I charge you
2 the law, which you are to apply to the facts as you
3 determine them to be in this case.

4 The fact that Mr. Clarkson is charged, the fact that
5 he is on trial, the fact that there is an indictment
6 alleging that he committed this offense is not any
7 indication that he did. That's just the way our system
8 works. When someone is thought to have committed an
9 offense, they are arrested, the case is processed through
10 our court system, and they come to trial. But that is not
11 any indication that they committed the offense. The burden
12 is on the State to prove to this jury beyond a reasonable
13 doubt that he, Mr. Clarkson, did in fact commit this
14 offense before you can convict him.

15 The indictment which you will have in the jury room
16 with you is the paperwork, the formal paperwork, by way of
17 which this case is processed through our court system.

18 And it will be where you, Mr. Foreman, and I'll show
19 you this later, ultimately enroll the jury's unanimous
20 verdict. Mr. Clarkson, like anyone charged with anyone in
21 our system, is presumed innocent of this charge. He does
22 not need to prove his innocence. This presumption of
23 innocence is a substantial right. It's a right that inures
24 to someone's benefit at the time they are arrested. It
25 remains with them as their case is process through our

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1 court system. The presumption of innocence in Mr.
2 Clarkson's favor exists at this moment. It exists as you
3 deliberate. The presumption of innocence in his favor is
4 removed if and when, and only if and when you determine
5 that the State has proven his guilt beyond a reasonable
6 doubt. This presumption of innocence is a substantial
7 right. It's not a mere legal theory or a mere legal
8 phrase.

9 Now the State must prove his guilt beyond a reasonable
10 doubt. The State does not need to prove Mr. Clarkson's
11 guilt beyond all or every doubt. We know that, that is not
12 possible, and that is not required by our law. Our courts
13 have defined a reasonable doubt as the kind of doubt that
14 would cause a reasonable person to hesitate to act. Proof
15 beyond a reasonable doubt is proof that leaves you firmly
16 convinced of an individual's guilt. As I said, there are
17 very few things in our world that we know with absolute
18 certainty, and that is not required. If, based on your
19 consideration of the evidence, you are firmly convinced
20 that Mr. Clarkson is guilty of the offense with which he is
21 charged, you would find him guilty.

22 On the other hand, if you think there is a real
23 possibility that he is not guilty, you will give him the
24 benefit of that reasonable doubt and find him not guilty.
25 He is entitled to all reasonable doubt you have as to any

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1 element as charged.

2 I'll remind you that I am the sole judge of the law in
3 this case, and you must take, accept, and apply the law as
4 I charge it. I'll remind you that this is true even if you
5 think I charge the law in error, or even if you think the
6 law should be different. Your oath requires you to take,
7 accept, and apply the law as I charge it.

8 I'll remind you that you are not to infer from
9 anything I have said or done or now say or do as being an
10 opinion of mine on the facts. Our law does not allow a
11 trial judge to formulate or express to a jury any opinion
12 on the facts. It is solely your job as the trial jury in
13 this case to examine the evidence. Give to the evidence
14 the effect, the value, the weight, and the truth you
15 believe it should have.

16 In doing this, you may believe one witness as opposed
17 to several, several witnesses as opposed to one. You may
18 believe all, part, or none of the witnesses' testimony. In
19 assessing the true facts and determining the true facts,
20 you necessity must judge the credibility, that is the
21 believability of the witnesses who have testified. In
22 assessing believability, use those things I've already
23 talked about, and use those things that you find in your
24 day-to-day life as indicating to you truthfulness in an
25 individual.

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1 You can also use certain evaluators. How a witness
2 acts on the stand, are they hesitant, straightforward. Is
3 their testimony consistent or inconsistent? Do they have
4 any bias or prejudice, that is whether they would wish to
5 help or hurt one side or the other. You can consider the
6 opportunity a witness had to actually know those things
7 about which the witness testified. All of these things you
8 consider, determine the true facts, apply the law, and your
9 verdict will speak the truth.

10 There are usually two types of evidence presented in
11 cases such as this: direct and circumstantial evidence.
12 Direct evidence is the testimony of someone who claims to
13 have actual knowledge of a fact. It is evidence which
14 immediately establishes the main facts sought to be proven,
15 such as an eyewitness.

16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a fact.
18 Circumstantial evidence is evidence which establishes
19 collateral facts from which the facts sought to be -- the
20 main facts sought to be proven may be inferred.
21 Circumstantial evidence is based on inference and not on
22 personal knowledge or personal observation. Our law makes
23 absolutely no distinction between the weight or value to be
24 given direct as opposed to circumstantial evidence. What
25 you should do is weigh all of the evidence in this case.

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1 If after weighing all of the evidence, you are not
2 convinced of Mr. Clarkson's guilt, you would find him not
3 guilty.

4 Now Mr. Clarkson has exercised his Constitutional
5 right to remain silent. The fact that he chose to exercise
6 that right cannot be discussed by you and cannot be
7 factored into your own deliberations. Anyone charged with
8 an offense in our system has the right to remain silent.
9 And the exercise by that person, here Mr. Clarkson, is not
10 to be used against him in any fashion whatsoever. You are
11 to draw no conclusion whatsoever, from the fact that he
12 exercised that Constitutional right.

13 I remind you, the burden is on the State to prove Mr.
14 Clarkson guilty beyond a reasonable doubt. He need not
15 prove his innocence. He is presumed innocent, and as I
16 told you, that is a substantial right and can be overcome
17 only when the State has convinced you of his guilt beyond a
18 reasonable doubt.

19 Mr. Clarkson is charged with a statutory offense.
20 That is, our legislature made this -- enacted this into
21 law. He is charged with committing a lewd act on a minor.
22 A minor is a person under the age of 18. The State must
23 prove beyond a reasonable doubt that the defendant, Mr.
24 Clarkson, was at the time in question, over the age of 14.

25 Next the State must prove that Mr. Clarkson willfully

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1 and lewdly committed or attempted a lewd or lascivious act
2 on or with the body or its parts of a child under the age
3 of 16 years of age, with the intent to arouse, appeal, or
4 gratify the lust, passions, or sexual desires of himself or
5 of the child. "Willfully" means voluntarily and
6 intentionally, with specific intent to do something the law
7 forbids. "Lewd" means obscene, lustful, indecent, or
8 lecherous. "Lascivious" means tending to incite lust,
9 lewd, indecent, obscene or tending to deprave the morals in
10 respect to sexual relationships. The term imports -- Lewd
11 imports a lascivious intent. It signifies that form of
12 immorality, which has relation to moral impurity.
13 Lascivious means tending to excite lust, lewd, obscene,
14 sexual impurity. As I said, tending to deprave the morals
15 in respect to sexual relations. The term "indecent" means
16 offensive to common propriety. Offending against modesty
17 and delicacy, grossly vulgar, obscene, lewd, or unseemly.

18 Now the State must prove that charge, that is,
19 committing a lewd act on a minor, beyond a reasonable
20 doubt.

21 Your verdict must be unanimous. All 12 jurors must
22 agree on a verdict. You are not to be swayed by sympathy,
23 passion, prejudice, or matters outside the record.

24 While you're deliberating, if you have any questions,
25 Mr. Foreman, write them down, and knock on the door, and

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1 give them to the Bailiff. The Bailiff will bring that note
2 to me. After conferring with the attorneys, I will
3 respond. It may be that I can write an answer on the note.
4 If I do send a note back, keep it, and return it at the end
5 of your deliberations. It may be that I will have to bring
6 you back here in open court and answer your question.

7 In South Carolina, we do not send in with the jury a
8 written charge on the law. If you wish me to go over any
9 part or all of my charge on the law, let me know, and I
10 will bring you back in here in open court I will recharge
11 you any part or all of the law. We do not have any way to
12 transcribe testimony, but if you wish to have testimony
13 replayed, we can certainly do that. So if you wish to
14 rehear any of the testimony, let us know, and we'll bring
15 you back here in open court, and allow you to listen to
16 that testimony.

17 When you've reached a verdict, knock on the door, tell
18 the Bailiff. The Bailiff will come and get us. I may be
19 doing some other work, but I will send for you as promptly
20 as I can. When you first go into the jury room, do not
21 start deliberating yet. I must go over my charge with the
22 attorneys. If I have made an error, I'll have to bring you
23 back in and correct it. If not, I will send in the verdict
24 form -- I'm sorry -- I'll send in the indictment, and I'll
25 go over that in just a moment, and the Bailiff will tell

CHARGE TO THE JURY

-162-

1 you to start deliberating. Like I say, when you've reached
2 a verdict, knock on the door and tell the Bailiff.

3 Mr. Noonan, as the alternate, you will remain here in
4 the courtroom when the jury exits this time since your
5 participation will not be necessary since we have the jury
6 in tact. Now the indictment, I remind you, is not
7 evidence. It is the charge by way of which this case is
8 processed through our court system. So don't consider it
9 as anything other than the allegations against Mr.
10 Clarkson.

11 Mr. Foreman, on the backside, in the bottom lefthand
12 corner, you will see the word "verdict" and four lines
13 beneath it. On the bottom line, you will write your name
14 -- or you will sign your name, and below that is a place
15 for the date. Today is the 12th. On one of the three
16 lines above where you sign, you will write the jury's
17 unanimous verdict. If the State has failed to prove Mr.
18 Clarkson's guilty beyond a reasonable doubt the charge
19 contained in the indictment, you would write on one of
20 those lines the two words, "Not guilty." If on the other
21 hand, you are convinced unanimously as the jury, beyond a
22 reasonable doubt of Mr. Clarkson's guilt of this charge,
23 you would on one of those lines just simply write the one
24 word, "Guilty."

25 Now I'm going to let you go to the jury room, but do

-163-

1 not start deliberating yet.

2 (JURY EXITS COURTROOM TO DELIBERATE AT 02:28 PM.)

3 THE COURT: Mr. Noonan, I'll be with you in just a
4 moment. You can have a seat.

5 MR. NOONAN: Yes, sir.

6 THE COURT: Anything from the State?

7 MS. JOYNER: Nothing from the State, Your Honor.

8 THE COURT: Defense?

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: All right, well here is the indictment.
11 Look at it before it goes back. See if you have any
12 questions. There are no exhibits. So you can take the
13 indictment back and tell the jury to start deliberating.

14 And Mr. Noonan, we're through for the week with the
15 jury. We're not going to start another trial, of course
16 it's Thursday afternoon. We've got other work to do that
17 does not require a jury, so you can feel free to leave.
18 You can stay around if you wish to see what the verdict is.
19 But you can feel free to leave, and you'll be mailed a
20 check. If you need something to take to work or somewhere
21 to show that you in fact have been here, you can stop by
22 the Clerk's Office, and they'll give you a statement to
23 confirm this is where you have been. Thank you for your
24 help.

25 (ALTERNATE JUROR DISMISSED AT 02:29 PM.)

VERDICT

-164-

1 THE COURT: We'll be at ease until the Solicitor tells
2 me what we can be working on.

3 (COURT IN RECESS AT 02:30 PM.)

4 (COURT BACK IN SESSION AT 03:17 PM.)

5 THE COURT: Okay, we've got a verdict in Mr.
6 Clarkson's case.

7 Back on the record in the Clarkson matter. The
8 State's present, Mr. Clarkson's and his counsel are
9 present. I received a note from the jury that they reached
10 a verdict.

11 Anything before the jury comes in from the State?

12 MS. JOYNER: Not from the State, Your Honor.

13 THE COURT: Defense?

14 MS. INZERILLO: No, Your Honor.

15 THE COURT: All right. Bring in the jury.

16 (JURY REENTERS COURTROOM AT 03:20 PM.)

17 THE COURT: Mr. Foreman, and members of the jury
18 panel, I understand the jury's reached a verdict.

19 MR. FOREMAN: Yes, Your Honor.

20 THE COURT: If you'll had it to the Bailiff, he'll
21 hand it up to me.

22 (VERDICT RECEIVED UP BY THE COURT.)

23 MADAME CLERK: *The State of South Carolina versus*

24 *Edward Martin Clarkson*, under Indictment 2011-GS-46-02127,

25 indicted for lewd act upon a child. The verdict is guilty,

SENTENCING

-165-

1 signed by the foreperson this day.

2 If this be your verdict, so say you all by raising
3 your right hand.

4 Let the record show, all the jurors confirm this
5 verdict.

6 (WHEREUPON: ALL TWELVE JURORS UNANIMOUSLY RAISED
7 THEIR HANDS AFFIRMING THEIR VERDICT.)

8 THE COURT: Anything from the State before the jury's
9 dismissed?

10 MS. JOYNER: Nothing from the State.

11 THE COURT: Anything from the Defense?

12 MS. INZERILLO: No, Your Honor.

13 THE COURT: Members of the jury panel, thank you so
14 much for your assistance this week. We of course -- it's
15 Thursday afternoon, we are not going to start another
16 trial, so you're free from jury duty for the week. You'll
17 be mailed a check. Thank you an awful lot. If you need a
18 statement to take to anybody to show that this is in fact
19 where you've been this week, you can go by the Clerk's
20 Office, and they'll give it to you. Thank you.

21 (JURY DISMISSED AT 03:22 PM.)

22 THE COURT: All right. Anything from the State?

23 MS. JOYNER: Nothing from the State.

24 THE COURT: Defense?

25 MS. INZERILLO: Your Honor, at this time, we would

SENTENCING

-166-

1 move for a new trial and renew all previous motions.

2 THE COURT: Those motions are denied. I think the
3 jury's verdict is well supported by the evidence.

4 Now if you will bring Mr. Clarkson around for
5 sentencing.

6 The State -- Does the victim's family wish to say
7 anything regarding the sentencing?

8 MS. JOYNER: I beg the Court's indulgence one moment.

9 (PAUSE.)

10 (PERSON COMING FORWARD.)

11 THE COURT: You can stand right there. Your name?

12 A. Elizabeth Boggs.

13 THE COURT: Are you Minor mother?

14 MS. BOGGS: Yes, sir, I am.

15 THE COURT: All right. What would you like to say?

16 MS. BOGGS: I know Mr. Clarkson real well. I trusted
17 him very much with my son. I know that what happened was
18 wrong. And this might sound really stupid, but I wish the
19 Court would go lenient on him because I have respect for
20 him, and I feel like he made the wrong judgment from what
21 he did. And that's -- that's all I have to say. Thank
22 you.

23 THE COURT: Thank you.

24 Tell me his prior record. I think I know he's got one
25 for criminal domestic violence and he's on the sex offender

SENTENCING

-167-

1 registry so tell me --

2 MS. JOYNER: Yes, Your Honor. All of his criminal
3 offenses were sentenced the same day of January 9th of '97.
4 The two CSC with a minor second degree, as Your Honor is
5 aware of; also an assault and battery of a high and
6 aggravated; and 11 counts of contributing to delinquency of
7 a minor.

8 THE COURT: Ms. Inzerillo.

9 MS. INZERILLO: Thank you, Your Honor. May it please
10 the Court.

11 Your Honor, as you heard through testimony, Mr.
12 Clarkson is 53-years-old. He does reside around York.
13 Prior to bonding out, he was only incarcerated for a day.
14 I will tell you, Your Honor, as I've explained to Mr.
15 Clarkson, as well as the Court is aware of the conviction
16 of a lewd act. This conviction carries with it a review
17 for SVP as well as a monitoring. And I just point that out
18 to the Court to ask the Court to take into consideration
19 that just by the nature of this conviction, that he will be
20 monitored by the State far more closely than he has --
21 being under -- just registered as a sex offender, we would
22 ask the Court to take Ms. Bogg's comments into
23 consideration and sentence Mr. Clarkson accordingly.

24 THE COURT: Mr. Clarkson, anything you want to say?

25 THE DEFENDANT: No, sir.

SENTENCING

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1 THE COURT: I will take Ms. Bogg's comments into
2 consideration, but I cannot do what she asked, not with
3 this man's record. Mr. Clarkson's sentence is 15 years.

4 Thank you.

5 MS. INZERILLO: Thank you, Your Honor.

6 MS. JOYNER: Thank you, Your Honor.

7 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
8 MARKED, RECEIVED INTO EVIDENCE.)

9 (COURT ADJOURNED IN THE MATTER OF THE STATE OF SOUTH
10 CAROLINA VERSUS EDWARD MARTIN CLARKSON AT 03:45 PM.)

11 -- END OF TRANSCRIPT OF HEARING --
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2014-CP-46-4169

FORM 5
FILED-RECEIVED

STATE OF SOUTH CAROLINA

2014 FEB 11 PM 1:00

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CLERK OF COURT
S.C.C.P. 8 G.S.
YORK COUNTY, SC

EDWARD MARTIN CLARKSON, 237856

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw CI, 4848 Goldmine Hwy., Kershaw SC 29067 (M-A-57)
2. Name and location of Court which imposed sentence York County Courthouse
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-46-2127
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 12, 2012 - Fifteen (15) years
 - (b) _____

CERTIFIED TRUE COPY
 2014 FEB 11 PM 1:00
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Appellate Court _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ~~Ineffective Assistance of Counsel (IAC)-failure to appeal motion for recusation.~~
- (b) ~~IAC failure to properly perfect motion for direct verdict and allowing the reopening of the case.~~
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ~~Counsel failed to show prejudice in trial by judge, not recusing himself.~~
- (b) ~~Trial counsel failed to challenge the reopening of case.~~
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
Appellate Court (State)
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Unlawful reopening of case.
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Appellate review on direct appeal
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ground (a) not for review on direct appeal.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes _____
- (c) your sentencing? Yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Melissa Inzerillo, PO Box 691, York, SC 29745 Trial Counsel
 - ii. Kathrine H. Hughins, Appellate Defender, PO Box 11589, Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction and sentence reversed and judgment for acquittal.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

County of YORK

VERIFICATION

I, EC, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Edward M. Clarkson
Edward M. Clarkson #237256

SWORN to and subscribed before me this 6
 day of February, 2018

Catharine A. Amazon (L.S.)
 Notary Public

My Commission Expires: December 22 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, EC, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Edward M. Clarkson
Edward M. Clarkson #237856
Applicant

SWORN or affirmed to and subscribed before me this

6 day of February, 2014.

Catharine A. Poreau

Notary Public

My Commission Expires: December 27, 2018

INEFFECTIVE ASSISTANCE OF COUNSEL
Failure to properly perfect motion
for direct verdict.

Counsel ask the court to amend motion for direct verdict. In doing so, counsel, without objection, allowed the State to re-open the case and present additional evidence. Evidence which was not cumulative to any evidence already presented.

The State is allowed to re-open a case and present additional evidence or testimony, was merely cumulative to other evidence already presented.

Trial judge abused his discretion in allowing the State to re-open the case and present evidence that defendant was over the age of fourteen. The additional testimony was not merely cumulative to other testimony or evidence presented at trial. The trial judge should have granted the motion for a direct verdict of acquittal when the State had failed to prove that defendant was over the age of fourteen. An element that must be proved as charged in the indictment. Lewd act upon a minor.

Formerly, S.C. Code §16-15-140 (repealed by 2012 Act No. 255, §14 effective June 18, 2012) Provided, "It is unlawful for a person over the age of 14 years to willfully and lewdly commit or attempt any lewd or lascivious act upon a minor under the age of sixteen. "In order to prove the crime of lewd act upon a minor. State must prove that the actor was over the age of fourteen."

Counsel erred in not having Judge Hayes recuse from the proceedings. Defendant was prejudiced ... Judge Hayes denied every motion and request put before him. Judge Hayes has demonstrated a predetermine bias position towards defendant.

M E M O R A D U M

- 1.) INEFFECTIVE ASSISTANCE OF COUNSEL
Failure to file motion for recusal..... 1.
- 2) INEFFECTIVE ASSISTANCE OF COUNSE
Failure to properly perfect motion
for direct verdict..... 2.

INEFFECTIVE ASSISTANCE OF COUNSEL
Failure to file motion for recusal.

Applicant requested for trial counsel to have Judge Hayes
I I recuse himself from the case. Reason being that he had pre-
viously presided over case involving Applicant, a case of the
similar nature.

Instead, counsel moved, verbally, for a continuance, which
should have been made by written motion, for the record. This
request was denied. And Applicant is not certain as to who it
was made to. Continuance are made by motion to the Circuit Chief
Administrative Judge. Applicant contends that his due process
rights were denied.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Edward Martin Clarkson, #237856,	)	2014-CP-46-0411
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on February 11, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the York County Grand Jury for Lewd Act Upon a Child (2011-GS-46-2127). Melissa Inzerillo, Esquire, represented him. On January 12, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty. The Honorable John C. Hayes, III sentenced the Applicant to confinement for fifteen (15) years.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Clarkson, 2013-UP-390 (filed October 16, 2013). The Remittitur was issued on November 5, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel (IAC) failure to appeal motion for recusation(sic)"
 - a. "Counsel failed to show prejudice in trial by judge, not recusing himself"
2. "IAC failure to properly perfect motion for direct(sic) verdict and allowing the reopening of the case"
 - a. "Trial counsel failed to challenge the reopening of the case"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

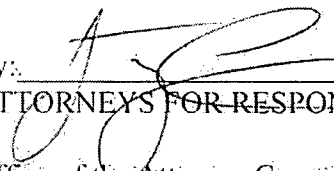
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN

Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 5, 2014.

1 STATE OF SOUTH CAROLINA

2 -----x

3 EDWARD MARTIN CLARKSON,

4 Applicant,

5 Case No.

6 -against-

2014-CP-46-0411

7 STATE OF SOUTH CAROLINA,

8 Respondent.

9 -----x

10 November 17, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ALLISON R. LEE

15

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

17 W. MICHAEL HEMLEPP Esquire

18 Attorney for the Petitioner

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for the Respondent

22

23

24 Aileen Butler

25 Official Court Reporter

1	<u>I N D E X.</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Edward Martin Clarkson				
4	Mr. Hemlepp	5			
5	Mr. Johnson		10		
6					
7	Melissa Inzerillo				
8	Mr. Hemlepp	11			
9	Mr. Johnson		18		
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E X H I B I T S

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NO.DESCRIPTIONI.D.EVD.

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NO EXHIBITS MARKED

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MR. JOHNSON: May it please the Court. This is the
case of Edward Clarkson versus State of South
Carolina. This is case number 2014-CP-46-0411.

1 MR. JOHNSON: May it please the Court. This is the
2 case of Edward Clarkson versus State of South
3 Carolina. This is case number 2014-CP-46-0411.

4 Mr. Clarkson was indicted by the July 2011 term
5 of the York County Grand Jury for lewd act upon a
6 minor. Miss Inzerillo represented him.

7 On January 12, 2012 he proceeded to jury trial
8 pursuant to which he was found guilty. The Honorable
9 John C. Hayes III sentenced him to 15 years. A notice
10 of appeal was filed on his behalf. An appeal was
11 perfected. Pursuant to the Honors v California South
12 Carolina Court of Appeals affirmed his conviction and
13 sentence. The Remitter was issued on November 5th of
14 2014. He filed a timely PCR application on February
15 11, 2014. Excuse me. The remitter was issued
16 November 5, 2013. He filed the application February
17 11, 2014.

18 The State filed its Return June the 5th, 2014 and
19 he is represented here today Mr. Mike Hemlepp.

20 MR. HEMLEPP: Thank you. Your Honor, may it
21 please the Court. We would like to call our first
22 witness at this time, applicant Mr. Edward Clarkson.

23 THE COURT: Yes, sir would you step forward sir
24 and be sworn.

25 EDWARD CLARKSON, called as a witness, having been

1 duly sworn by the clerk, was examined and testified as
2 follows:

3 THE COURT: Would you state your full name please.

4 THE WITNESS: Edward Martin Clarkson..

5 THE COURT: Thank you.

6 MR. HEMLEPP: May it please the Court.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. HEMLEPP:

10 Q Mr. Clarkson, where do you currently reside?

11 A Kershaw Correctional Institution.

12 Q And are you serving a sentence at the correctional
13 facility?

14 A Yes, sir, 15 years.

15 Q And what is the term of your sentence? Tell me how
16 long your sentence was?

17 A 15 years, non-violent.

18 Q Okay. This courtroom is a really big courtroom and
19 Judge Lee needs to be able to hear everything that you say, as
20 well as the attorney general's office.

21 I am going to ask you as we continue to try and talk as loud
22 as I am so the court reporter can also hear everything you have
23 to say because your testimony is very important today. Can you
24 do that for me sir?

25 A Yes, sir.

1 Q Thank you. That is so much better.

2 So you are serving a sentence, and when did you receive
3 that sentence?

4 A January 12, 2012.

5 Q And where was that?

6 A York County here, the Justice Center.

7 Q In York County?

8 A Yes, sir.

9 Q Was that a result of a plea or a trial?

10 A A trial.

11 Q The trial, did you have a lawyer at the time of that
12 trial?

13 A Yes, sir, Miss Inzerillo.

14 Q How did you get to have Miss Inzerillo represent you?

15 A I had recuse the first attorney, Phil Smith because he
16 was the solicitor, the prosecutor on my first trial in 1996.
17 It was a conflict of interest so I had to recuse him and then
18 they appointed me Miss Inzerillo.

19 Q What charge were you tried on?

20 A When?

21 Q I am sorry. The one that you are serving a sentence
22 for now?

23 A Lewd act.

24 Q Okay. And when you were arrested when did you get an
25 attorney? How long after you got arrested?

1 A I think it was probably two or three months before I
2 talked to the first one.

3 Q And that would be Mr. Smith?

4 A Yes.

5 Q And then how long after that before you were able to
6 get Miss Inzerillo?

7 A Probably another two or three months before she had
8 contacted me.

9 Q Okay. How much time did you have to prepare for the
10 trial with Miss Inzerillo?

11 A She kept calling me in probably about once a month.
12 Start checking in. Letting me know what is going on.

13 Q And did you and your lawyer have a good working
14 relationship?

15 A Yes, sir, as far as I know.

16 Q Whose decision was it for you to proceed to a trial?

17 A Mine.

18 Q When you talked to your lawyer did you make the
19 decision to go to trial?

20 A Well, it was my decision, yes, because like I say
21 whenever Phil Smith was the attorney first thing he come out was
22 eight years with a guilty plea. And I said I'm not going to go
23 eight years. If they can't go any lower then then that I will
24 take it to the jury trial.

25 MR. JOHNSON: Your Honor, just to clarify. We are

1 not here on ineffectiveness assistance of Mr. Smith.
2 We are hear strictly on Miss Inzerillo.

3 MR. HEMLEPP: And that's true Your Honor, however
4 its relevant background as far as representation.

5 Q In preparation for your trial did you and Miss
6 Inzerillo talk about possible witnesses?

7 A Yes, sir.

8 Q And you felt that you were ready to go to trial?

9 A Yes, sir.

10 Q Do you remember the circumstances of the trial? Do you
11 remember being in the trial?

12 A Yes.

13 Q And do you remember what the testimony was in the
14 trial?

15 A Most of the testimony was the victim and his family.

16 Q Right. And did you testify at all?

17 A No, sir.

18 Q Did any law enforcement testify?

19 A The sheriff's office did.

20 Q When the State rested, do you remember if your lawyer
21 made any motions?

22 A Yes. They made a motion to reopen the case to
23 establish my age.

24 Q Okay. Who made that motion?

25 A I think the solicitor did.

1 Q And that would be -- do you have a copy of your
2 transcript? Have you been given a copy not today, but have you
3 been been given a copy of your transcript?

4 A Yes, sir.

5 Q Have you read it?

6 A It's about a year since I read it. I brought it with
7 me to try and read it but they wouldn't let me have it down
8 there.

9 Q And I am not talking about today, but had you had the
10 opportunity to read your transcript prior?

11 A Yes, sir.

12 Q And it was from that transcript that you filed this
13 action for relief?

14 A Yes, sir.

15 Q Tell the Court what you believe was wrong in the trial?
16 What went wrong with your trial, and we understand you are not a
17 lawyer.

18 A As I said, hey started closing arguments and then the
19 solicitor come to reopen the case to establish the age of me to
20 fit the criteria of the crime.

21 Q We are going to have further testimony on that as well
22 as introduce the transcript into the record. Knowing that, is
23 there anything that you think the Judge Lee needs to know about
24 your case that would help her in making a decision on this
25 issue?

4 A Yes, sir.

7 A Yes, sir.

9 MR. JOHNSON: Just briefly, Your Honor.

11 BY MR. JOHNSON:

14 A Yes, sir.

17 A Yes, sir.

20 A No, sir.

22 THE COURT: Any redirect?

25 THE COURT: You may step down thank you.

1 (Witness excused)

2 THE COURT: You may call your next witness.

3 MR. HEMLEPP: Thank you, the applicant would call
4 Miss Inzerillo to the stand.

5 MELISSA INZERILLO, called as a witness, having
6 been duly sworn by the clerk, was examined and
7 testified as follows:

8 THE COURT: State your name for the record, please.

9 THE WITNESS: Melissa Ann Inzerillo.

10 MR. HEMLEPP: May it please the Court.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY HEMLEPP:

14 Q Miss Inzerillo, could you please tell us where you
15 currently are employed?

16 A At the York County Public Defender's Office.

17 Q And how long have you been with the public defender's
18 office?

19 A Oh my, about eight or nine years.

20 Q And you are in fact a lawyer?

21 A I am.

22 Q Are you you are licensed in South Carolina?

23 A I am.

24 Q And where did you go to law school?

25 A Washington Lee University Law School in Virginia.

1 Q Did you have any prior employment before being with the
2 Public Defender's Office?

3 A I did. I started my law clear at Haynesworth Law Firm
4 in Columbia and then I worked at two prior public defender's
5 offices, one in Orangeburg County and one in Charleston County.

6 Q Okay. Do you remember the applicant in this case Mr.
7 Clarkson?

8 A I do.

9 Q Tell me how you were caused to be become appointed to
10 him as his public defender?

11 A Mr. Smith was originally appointed in the case and
12 asked me to take over the case.

13 Q And do you remember when that was?

14 A I don't.

15 Q You do recall the trial in this case?

16 A I do.

17 Q And do you remember the date?

18 A I do. It was January 12th.

19 Q How long prior to January 12th were you appointed to
20 Mr. Clarkson?

21 Q I have my initial interview with him listed as
22 September 22, 2011?

23 THE COURT: I am sorry, what was the last part,
24 2000 --

25 THE WITNESS: 2011.

1 THE COURT: Thank you.

2 Q So, roughly four months prior to the trial?

3 A Yes, sir.

4 Q September of 2011 to the middle of January 2012 was
5 your representation?

6 A Yes, sir.

7 Q Okay. Thank you. In discussing the case with the
8 solicitor's office were there any offers made?

9 A There were. There was an eight-year offer made on the
10 charge of lewd act.

11 Q And you discussed that with your client?

12 A I did.

13 Q And he -- the two of you all discussed that and he
14 elected to go forward on a trial?

15 A That's correct.

16 Q Do you believe that was in his best interest?

17 A Well, I mean it's his decision.

18 Q Exactly.

19 A Obviously eight years is the better then 15 which is
20 the max for the charge. In all my discussions with my Clarkson
21 he adamantly denied the facts. So looking at it from purely
22 timestamp point it was much better situation for him to be in,
23 but in my discussions with Mr. Clarkson he denied the facts.

24 Q Did you prepare for trial?

25 A I did.

1 Q And in preparing for trial did you read the law that
2 pertained to this case?

3 A I did.

4 Q What are the elements of lewd act?

5 A The elements are; willful touching for -- and I'm
6 paraphrasing -- lewd and lascivious manner essentially for
7 sexual gratification.

8 Q Okay.

9 A Oh, and there is elements of a minor by someone above
10 age.

11 Q So would that qualify as three elements; the age of a
12 child, the age of the offender and the touching itself?

13 A Yes, it has to be in a lewd and lascivious manner.

14 Q So perhaps four elements?

15 A Yes.

16 Q And under the law of course all elements must be proved
17 by it State?

18 A That's correct.

19 Q You called no witnesses on behalf of your client. In
20 fact you had no case in chief, is that true?

21 A That is correct.

22 Q And that decision was that a joint decision that you
23 made with your client?

24 A That was. The only potential witness Mr. Clarkson and
25 I discussed was Mr. Finnigan who was the third person in the

1 house. With Mr. Clarkson's help we found Mr. Finnigan. I
2 believe there was extensive testimony that the State was unable
3 to find him but we found Mr. Finnigan. I interviewed Mr.
4 Finnigan before the trial, I also talked with Mr. Finnigan on a
5 break during the trial and elected not to put Mr. Finnigan on
6 the stand. I discussed that decision with Mr. Clarkson and he
7 was fine with that decision and we elected not to put up a case.

8 Q Would you agree with Mr. Clarkson's testimony that you
9 two had a good working relationship?

10 A I would.

11 Q You moved for a directed verdict in this case, did you
12 not?

13 A I did.

14 Q And when you moved for a directed verdict before the
15 Court did you have specific grounds?

16 A When I first moved for the directed verdict I did not.
17 I made a general directed verdict motion.

18 Q And preserved that for the record?

19 A I did.

20 Q Did you subsequently renew your motion for a directed
21 verdict?

22 A I did. I think we took a break and when I went back
23 and I reviewed my notes I realized that the State had missed an
24 element and I didn't catch that when I first made the initial
25 directed verdict motion.

1 My concern was because I had not made that motion at the
2 time that Judge Hayes had requested motions that Judge Hayes
3 would not find that it was a timely motion made, and so my
4 recollection is that we spoke. I wanted Judge Hayes to find
5 that to be a timely motion for purposes of appeal. And so I
6 spoke with Judge Hayes in chambers obviously with Mr. Weiner
7 present -- made him aware of that because I didn't want Mr.
8 Clarkson to potentially lose that argument on the appeal end.
9 And so, Judge Hayes -- it's my recollection because
10 unfortunately I didn't take notes on it, but my recollection is
11 he would determine it would be a timely motion but that he would
12 allow the State to re-open the case to allow her to address that
13 one element. And certainly my understanding of the court
14 procedure rules is it's in the judges discretion the order of
15 witnesses, reopening cases.

16 My concern was to protect Mr. Clarkson's appellant rights.
17 The bigger win was to have that preserved for appeal and any
18 timely motions made I didn't want to mess up his directed
19 verdict rights in case the Court of Appeals or Appellant Defense
20 saw anything else that I had missed. And so I wanted to sort of
21 let that lie and elected to go forward in that manner.

22 Q So I take it from your testimony that what is contained
23 in the transcript is actually a formalized discussion that was
24 in -- that was -- that you had in chambers with the solicitor
25 and the presiding judge?

1 A What is contained in the transcript is what we got on
2 the record and I just made the motion. I didn't put anything on
3 had the record referencing that. I just made the motion.

4 Q Right. Absolutely. But you had a understanding from
5 your discussions with the Court?

6 A Right.

7 Q In chambers?

8 A Right.

9 Q Of what was going to happen?

10 A Right.

11 Q Okay. Which is very helpful. Here is my question for
12 you, knowing that Judge Hayes was inclined to reopen the case,
13 to allow them to present testimony on a missing element of the
14 crime after they had already rested, wouldn't your client have
15 been in a better position if you had not made the motion at
16 all?

17 A I don't know. I don't know. I was more concerned
18 about preserving any issues for appeals at that point so I don't
19 know.

20 Q Okay. Had you not made the motion, the State's case
21 would have been flawed?

22 A Yes.

23 Q And in a motion for a new trial you would have been
24 able to argue that they presented no evidence of one of the four
25 elements?

1 A That's true. And that is my recollection of the
2 conversation, so ---

3 Q And I understand it was several years ago.

4 A I didn't make notes of that.

5 Q Almost three years ago.

6 MR. HEMLEPP: Miss Inzerillo, thank you for coming
7 and please answer any questions the Attorney
8 General's office or the Court may have for you.

9 MS. INZERILLO: Yes.

10 MR. JOHNSON: Briefly Your Honor.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. JOHNSON:

14 Q Good morning Miss Inzerillo.

15 A Good morning.

16 Q You obviously gone on direct about your preparation of
17 the case. In discussing this case with Mr. Clarkson what
18 defenses if any did you discuss with him?

19 A Our discussions were mainly factual. He denied the
20 allegations in the case and he indicated that he did sleep with
21 the child in the bed that evening but he did not do any sexual
22 acts on the child.

23 Q And there was and Jackson v Denno hearing in this case?

24 A There was, yes.

25 Q And his statement to police was that he did sleep in

1 the bed and he touched the child on the waist?

2 A That's correct.

3 Q But denied any sexual touching?

4 A That's correct.

5 Q And of course the victim says that he did sexual touch
6 the victim?

7 A That's correct.

8 Q And there was testimony that the victim was under 14 at
9 the time of the crime?

10 A Yes, that's correct.

11 Q And would it be fair to say that it is obvious that Mr.
12 Clarkson is above the age of 16?

13 A Yes.

14 Q And just to reiterate your testimony from just a moment
15 ago, what was the reason that you renewed your directed verdict
16 motion?

17 A I was concerned about preserving his appellant rights
18 and I had concerns about that issue, the fact that the State had
19 not met all of the elements of the case and I wanted that issue
20 to be preserved for appeal. My -- you know, I understood the
21 rules of procedure was that the judge could reopen the case, but
22 certainly my concern was I had done a general directed verdict
23 motion and that I wasn't sure if that would be enough to
24 preserve that particular element of that case and so, I didn't
25 want -- that's a pretty big element to have missed and I didn't

1 want Mr. Clarkson to loose that right on appeal and so I wanted
2 it to be specifically preserved. And so I did make the decision
3 to make that specific motion on the record to make sure it was
4 preserved on appeal.

5 MR. JOHNSON: No further questions, Your Honor.

6 THE COURT: Any redirect?

7 MR. HEMLEPP: There is none.

8 THE COURT: You may step down.

9 (Witness excused.)

10 THE COURT: Any additional witnesses.

11 MR. HEMLEPP: No, Your Honor. The appellant would
12 rest.

13 THE COURT: Anything from the State?

14 MR. JOHNSON: No, Your Honor, the State has no
15 witnesses.

16 THE COURT: Any argument?

17 MR. HEMLEPP: Your Honor, in making the Court's
18 decision I would call the presentation to page 133 of
19 the transcript where the second directed verdict
20 motion was made at that time. You will see that Miss
21 Inzerillo did in fact make that motion on the grounds
22 that the State had failed to present any evidence of
23 one of the necessary elements of the crime.

24 The argument that we would make is that had she
25 not made that motion, since she had made a general

1 directed verdict motion his rights were protected and
2 that they would have failed to be able to get either a
3 new trial or on appeal this case would have been
4 reversed where he would have been found not guilty --
5 well, not found not guilty, but it could have been
6 reversed because there was a missing element. By
7 bringing the elements -- the lack of that element, the
8 lack of evidence on that element to the attention of
9 the Court she actually made his position worse then it
10 would have been.

11 Had the State made a motion to reopen the case,
12 because after being in chambers they knew that that
13 was existing, had the State made the motion she would
14 have then been able to argue against that motion also
15 preserving his rights to appeal. Had the Court
16 allowed them to reopen he would have had an appeal
17 right based upon whether or not that reopening was
18 properly done.

19 We would argue that the two -- the two-prong test
20 of Stricklin is ineffective by actually making this
21 strategic decision. She should have made the
22 strategic decision not to make the motion since she
23 knew the result of the motion. And B, that it would
24 have changed the outcome of the case and we leave this
25 in the discretion of the Court.

1 Thank you, Your Honor.

2 THE COURT: Let me make sure I understand what you
3 are saying is that by -- in essence by making the
4 motion she hi-lighted to the prosecution the fact that
5 they had a missing element and had she chosen even
6 after the conference in chambers with the judge and
7 the prosecutor not to make the motion to reopen, had
8 the State made the motion on its own she would have
9 been able to argue against that. And you're saying
10 that that in fact caused him prejudice and that either
11 the issue would have been addressed on appeal and
12 possibly a new trial, either through a new trial
13 motion or through an appeal.

14 MR. HEMLEPP: Yes, Your Honor.

15 THE COURT: Okay. Any argument by the State?

16 MR. JOHNSON: Yes, ma'am. The State's position is
17 that counsel was effective in her representation,
18 first by raising a directed verdict motion and then as
19 this Court is aware the Court of Appeals loves
20 specificity in argument and by raising it a second
21 time she was actually effective in her representation
22 by preserving those appellant rights. So, I
23 understand applicant's position, but clearly you can
24 see that Mr. Clarkson is above the age of 16. Second,
25 the State's position is there's overwhelming evidence

1 in this case. If you look at the testimony, look at
2 his statement, look at his prior conviction for
3 criminal sexual conduct with a minor the same age, the
4 State's position is that even if assuming arguendo
5 counsel was ineffective the overwhelming evidence
6 excuses any prejudice in this case.

7 We would ask you to deny the application.

8 MR. HEMLEPP: May I reply?

9 THE COURT: Yes, sir.

10 MR. HEMLEPP: Thank you. With regards to the
11 mountain of evidence in this case I would ask the
12 Court to -- I would argue to the Court that the
13 purpose of a post conviction relief application since
14 1965 when it was created, was to look at the
15 procedural and constitutional correctness of the
16 proceeding. Not necessarily the guilt or innocence of
17 the defendant. His guilt or innocence is not before
18 the Court. What is before the Court is whether or not
19 his constitutional rights were protected in the
20 proceeding. That's why he doesn't go free if the
21 Court grants him relief. He goes back to continue
22 proceeding which would then be constitutionally
23 correct.

24 So I would ask the Court not to consider the other
25 evidence in the case, but just to simply keep the

1 matter at hand.

2 THE COURT: I will consider your arguments and I
3 will make a decision. I have read the transcript and
4 I am familiar with the portions about the opening of
5 the subsequent directed verdict motion and the
6 reopening to allow the State to put in evidence as to
7 the applicant's age at the time. But there are some
8 interesting arguments raised and I will consider
9 those.

10 MR. HEMLEPP: Thank you, Your Honor.

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12 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter
for the 16TH Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings in the
captioned case, in the Circuit Court for York County, South
Carolina, on the 17th day of November, 2014.

I do further certify that I am neither of kin, counsel, nor
interest to any party hereto.

August 9, 2015

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Edward Martin Clarkson, #237856,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46-0041

ORDER OF DISMISSAL

FILED-RECEIVED
2015 MAY 27 PM 2:19
CLERK OF COURT
C.C.C. # 1000
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed February 11, 2014. The State made its Return on June 5, 2014 requesting an evidentiary hearing. A hearing was convened November 17, 2014 at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted during the July 2011 term of the York County Grand Jury for Lew Act upon a Child (2011-GS-46-02127). Melissa Inzerillo, Esquire, represented Applicant on this charge. On January 12, 2012, Applicant proceeded to a jury trial before the Honorable John C. Hayes III. Applicant was found guilty and sentenced to confinement for fifteen years. A notice of appeal was filed on Applicant's behalf, and an appeal was perfected pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Appellant's conviction and sentence. See *State v. Clarkson*, 2013-UP-390 (filed October 16, 2013).

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for Inzerillo's failure to appeal denial of his motion to recuse the judge and for Inzerillo allowing the State to reopen its case.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from trial counsel, Melissa Inzerillo. This Court had before it Applicant's trial plea transcript, the records from the York County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Phil Smith, Esquire, was appointed to represent him on his charges two to three months after his arrest, but he was excused because of a conflict. Thereafter, Inzerillo was appointed as his public defender, and she contacted him two to three months later. Applicant and Inzerillo met about once a month, and he considered them to have a good working relationship. Smith had presented Applicant an offer of eight years, but Applicant rejected it, so Inzerillo prepared for trial.

Applicant testified that at his trial, he chose not to testify. When the State rested, Inzerillo moved for a directed verdict, which was denied. The Court then broke for lunch. After lunch, Inzerillo again moved for a directed verdict, stating specifically that the State had not proven the elements of the offense of lewd act upon a child because no evidence was presented regarding the Applicant's age. In response, the State moved to reopen the case. The Court allowed the State to reopen the case, and testimony was presented about Applicant's age. The jury found Applicant guilty. Applicant testified that the victim's mother asked for leniency in sentencing, but the Court stated it would not be lenient because of Applicant's prior record.

Inzerillo testified that she is currently employed as an assistant public defender in York County. She was asked to take over Applicant's case by Applicant's previous counsel, Smith. Inzerillo first met with Applicant on September 22, 2011. Applicant rejected the eight year offer that had been made and stated he wished to go to trial because he adamantly denied the allegations. Inzerillo stated that she discussed potential witnesses on behalf of Applicant, but elected to not call any. She testified she twice moved for a directed verdict: first, as a general motion; then, she renewed the motion because the State had not proven a required element of the charge. Before she renewed the motion on the record, she spoke with the Court in chambers to ensure the motion would be timely if she made it. The Court informed Inzerillo in chambers that the motion would be timely, but if she made it, he would allow the State to reopen the case to establish the element. Inzerillo then made the renewed motion on the record. Inzerillo testified that she made the renewed directed verdict motion to preserve Applicant's appellate rights.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant submits Inzerillo rendered ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. See *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* at 117, 386 S.E.2d at 625. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler, supra*. The Applicant must overcome this presumption to receive relief. *Cherry, supra*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

This Court finds that Inzerillo's decision to move for a directed verdict to preserve the issue for appeal was not unreasonable. While it was a judgement call whether or not to move for the directed verdict or to wait and possibly just move for a new trial, this Court does not find that Applicant has overcome the presumption that Inzerillo exercised reasonable professional judgment. Additionally, even if Inzerillo's conduct was unreasonable, as she knew that the Court would allow the State to reopen its case if she moved for a directed verdict, this Court does not find that her performance prejudiced Applicant such that the result of the proceeding would have been different. First, while the State failed to introduce into the record Applicant's exact age, evidence was presented that Applicant had a guest at his home who was in his twenties and

and
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was "younger than the [Applicant]." See Transcript of Record at 87 (Jan. 11-12, 2012). This information, along with the fact that Applicant drove the victim to his house, and the general appearance of Applicant in the courtroom, would support a finding that the State's error in failing to introduce Applicant's exact age was harmless, and given the overwhelming evidence of guilt in the record, would unlikely be a sufficient basis for the trial judge to grant a new trial. See generally *State v. Odom*, Appellate Case No. 2012-206186, 2015 WL 1814018 (S.C. Sup. Ct. Apr. 22, 2015) (discussing the issue of whether the State failing to prove the element of age in a sexually based offense is a harmless error); see also *State v. Prince*, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993) ("[W]here there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgement for that of the jury [in a motion for a new trial]."). Therefore, this Court denies this application on the basis that Counsel's performance did not fall below the standard required. Applicant did not raise the issue regarding recusal of the trial judge at the post-conviction relief hearing; therefore, this Court considers that issue abandoned and will not consider it.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

May 20, 2015
Columbia, South Carolina

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DOCKET NO. 2011-GS-46-02127

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 21, Term 2011

THE STATE

vs.

EDWARD MARTIN CLARKSON

Indictment for
LEWD ACT UPON A CHILD

SC Code: 16-15-140
CDR Code: 2468

WITNESSES

Y6SOMoore

jwg

ARREST WARRANT NUMBER

J156765

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/21/11

VERDICT

Guilty

Foreperson of Petit Jury
Date: 1/12/12

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within Indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

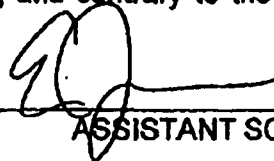
At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

LEWD ACT UPON A CHILD

That the defendant, Edward Martin Clarkson, a person over the age of fourteen (14) years, (Date of birth of defendant is) did in York County, South Carolina, on or about April 18, 2011, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, Minor (Date of birth of victim is), with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, Minor all in violation of Section 16-15-140, South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR