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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

ROBERT L. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001597

APPENDIX

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ATTORNEYS FOR RESPONDENT

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ORIGINAL

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
State of South Carolina,	)	
	)	JURY SELECTION
PLAINTIFF,	)	2010-GS-21-664
	)	
-VS-	)	PARTIAL TRANSCRIPT
	)	OF RECORD
Robert Lee Johnson,	)	
	)	
DEFENDANT.	)	

BEFORE THE HONORABLE MICHAEL G. NETTLES, JUDGE

AUGUST 2, 3, AND 4, 2010

FLORENCE, SOUTH CAROLINA

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

David Richardson, Esq.
For the Plaintiff

William V. Meetze, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: Good afternoon. Everybody
5 please be seated.

6 Ladies and gentlemen of the jury
7 panel, I'm Michael Nettles. I am the Resident Judge
8 for the Twelfth Judicial Circuit. Judge Russo has
9 qualified you, and I'm going to ask you a number of
10 questions that fall in the category of voir dire.

11 And the focus of these questions are
12 to determine whether or not you could be fair and
13 impartial with regard to the trial of this
14 particular case. Pay very close attention.

15 I'm going to remind you that you're
16 still under oath as we go through these questions.
17 And I'm going to recognize the State.

18 You may call your first case.

19 MR. RICHARDSON: Thank you, Your Honor,
20 may it please the Court, the State calls State
21 versus Robert Johnson on 2010-GS-21-664, counts one
22 through seven.

23 THE COURT: Ladies and gentlemen of the
24 jury panel, I have in my hand an indictment that
25 alleges a number of different offenses relating to

1 criminal sexual conduct that transpired over a
2 period of time, probably from 2001 until present.

3 The charges, as I will charge you at
4 a later date and time, are contributing to the
5 delinquency of a minor; criminal sexual conduct with
6 a minor, second degree; criminal sexual conduct with
7 a minor, second degree, a second and subsequent
8 offense; yet another criminal sexual conduct with a
9 minor; lewd act on a minor. And we will deal with
10 those in greater detail later.

11 That's the nature of the offense. Is
12 there anyone in the jury panel who is related by
13 blood or marriage to Robert Lee Johnson? If so,
14 please stand.

15 Mr. Meetze, I'm going to ask if you
16 could get Mr. Johnson to stand up in face the jury
17 panel.

18 (The defendant complied.)

19 Very good, thank you. You may have
20 a seat.

21 Potential witnesses in this case are
22 Freddy Johnson, Chavez Charles, Kitron Charles,
23 Debbie Elliott, Dr. Daniel Heiler, and Sylvia Miles.
24 Is anyone related by blood or marriage to any of
25 these witnesses, you have a close social, business,

1 or personal relationship with any of these
2 witnesses? If so, please stand.

3 There was no response.

4 MR. RICHARDSON: Your Honor, there's
5 another list of witnesses up there, too.

6 THE COURT: Other potential witnesses, I'm
7 going to ask the same thing with regard to these
8 potential witnesses -- Child Nadacia
9 Richardson, Michael Robinson, Debbie Elliott, Kathy
10 Saunders, Sylvia Robinson, Priscilla Charles, Ursula
11 Wardy, Reba Livingston, K.R. Lee
12 Hammond, and Leola Reeves.

13 Once again, is anyone related by
14 blood or marriage, do you have a close social or
15 business relationship with any of these witnesses?
16 If so, please stand. Let the record reflect there
17 is no response.

18 Ladies and gentlemen of the jury, I
19 have made reference to the indictment where Mr.
20 Johnson is being accused of these crimes. The
21 indictment is merely an accusation. It's the
22 document that brings this criminal charge before the
23 Court.

24 But it is just that -- it's an
25 accusation, it's a charge. It has absolutely no

1 evidentiary value whatsoever.

2 I'm going to ask Mr. Richardson if he
3 could stand and identify yourself and the members of
4 your office, if you could.

5 MR. RICHARDSON: Yes, sir, Your Honor. My
6 name is David Richardson. I'm the Assistant
7 Solicitor with the Twelfth Judicial Circuit
8 Solicitor's Office, which covers Florence and Marion
9 counties.

10 My boss, the Solicitor, is Ed
11 Clements. Prosecuting this case along with me is
12 Deputy Solicitor John Jepertinger. Also in our
13 office are Assistant Solicitors Bob Wells, Stephen
14 Hill, Patricia Parr, Fitchley McCann, Barbara
15 Haywood, Catherine Anderson, and Steven Deberry, and
16 Ryan Wallace.

17 THE COURT: Thank you. Has anyone been
18 represented by any of these lawyers, presently or in
19 the past, pertaining to criminal cases that are
20 being prosecuted. Some of these lawyers have been
21 engaged in private practice in the past.

22 Have any of you been represented by
23 any of these lawyers? Is so, please stand.

24 Are you related to any of these
25 lawyers by blood or marriage, do you have a close

1 social, business, or personal relationship with any
2 of these lawyers? If so, please stand. No
3 response.

4 Mr. Meetze, I'm going to ask if
5 you could stand, identify yourself, tell us who you
6 represent, and the members of your office.

7 MR. MEETZE: My name is Victor Meetze, and
8 I work here in the Florence County Public Defender's
9 Office. I represent Robert Johnson in this case.
10 Jacks Lawson is the head Circuit Defender for the
11 Twelfth Circuit, Florence and Marion counties.

12 We also have Karen Parrott,
13 Carrington Wingard, Scott Suggs, Hank Anderson,
14 Scott Floyd, and Grayson Smith that work in our
15 office.

16 THE COURT: Once again, have you been
17 represented by any of these lawyers presently or in
18 the past? If so, please stand.

19 Yes, sir, if you could come forward,
20 we will speak to you up at the bench. He is
21 qualified to serve. He will stay with us.

22 Counsel, feel free to come forward.

23 Mr. Meetze, you're
24 recognized.

25 CLERK OF COURT: Do you have a question?

1 MR. CORLEY: Yes.

2 CLERK OF COURT: Stand up, please.

3 THE COURT: Yes?

4 (Juror is excused until the next
5 week.)

6 THE COURT: Mr. Meetze, you're recognized.

7 MR. MEETZE: Thank you, Your Honor. I
8 inadvertently left out a member of our office.
9 Michael Bell is also a member of our office and
10 works here as a new Public Defender for Florence
11 County.

12 THE COURT: Okay, you left out the chief
13 deputy.

14 MR. MEETZE: Right.

15 THE COURT: Very good. Has anyone been
16 represented by Michael Bell, do you have a close
17 social, business, or personal relationship with any
18 of these lawyers? If so, please stand.

19 If you could come forward, please.
20 She is qualified to serve. She will stay with us.

21 Is there any member of the jury panel
22 who has formed or expressed an opinion about any
23 issue or matter involved in this case? If so,
24 please stand. No response.

25 Is any member of the jury panel aware

1 of any bias or prejudice towards either the State or
2 the defendant in this case? If so, please stand.

3 No response.

4 Is any member of the jury panel a
5 former law enforcement officer or have a family
6 member who is a law enforcement officer or a formal
7 law enforcement officer? If so, please stand.

8 All right, if you all could come
9 forward, we will deal with these one at a time. If
10 you all could just stand right there at the door,
11 we'll take you one at a time.

12
13 Ladies and gentlemen of the jury
14 panel, have you heard, read, or seen anything having
15 to do with this case? Does anyone know anything
16 about it. If so, please stand. No response.

17 Is there any member of the jury panel
18 who belongs to a group whose primary concern is the
19 promotion of law enforcement? There are a number of
20 such groups. I think every Sheriff's Office
21 throughout the state has Sheriff's Office
22 associations.

23 There are groups such as MADD,
24 Mothers Against Drunk Driving, whose mission is to
25 deter drinking and driving. There is Students

1 Against Drunk Driving, Citizens Against Violent
2 Crime, anything that is an organization that its
3 primary concern is promotion of law enforcement.

4 Is anyone a member or a contributor
5 of any of these organizations? If so, please stand.
6 No response.

7 Does any member of the jury panel
8 know of any reason whatsoever why you cannot be a
9 fair and impartial juror with particular emphasis
10 being placed on your ability to be fair and
11 impartial to both the State and the defendant? If
12 so, please stand.

13 If you all could come forward, I
14 would be happy to speak with you.

15 Any additional questions from
16 the State, Mr. Richardson?

17 MR. RICHARDSON: Your Honor, we presented
18 a list.

19 THE COURT: Okay. These particular
20 questions are noted, and we'll mark them a part of
21 the record.

22 MR. RICHARDSON: Thank you, Your Honor.

23 THE COURT: Is any member of the jury
24 panel a volunteer for any law enforcement agency or
25 prosecutor's office, either at the present time or

1 in the past? No response.

2 These additional requests, in my
3 opinion, were covered by the original voir dire.
4 And each of your lists will be made a part of the
5 record.

6 Anything further from the State?

7 MR. RICHARDSON: No, sir.

8 THE COURT: Anything further from the
9 defense?

10 MR. MEETZE: No, Your Honor.

11 THE COURT: All right. The strikes are
12 going to be five and ten. Is that your
13 understanding, Mr. Richardson?

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: Mr. Meetze?

16 MR. MEETZE: Yes, sir.

17 THE COURT: All right, ladies and
18 gentlemen of the jury, the Clerk is going to call
19 your name. We're going to ask that you come forward,
20 stand right in front of the microphone, turn around,
21 and face the back of the courtroom.

22 The lawyers will have an opportunity
23 to present you or to excuse you. I assume that you
24 all have been through this process earlier today, so
25 we're going to be going through that same process.

1 Madam Clerk, you're recognized.

3 THE COURT: Counsel, you may approach the
4 Clerk's bench, and she will give you a copy of the
5 list.

8 THE COURT: Okay, I've got it for you
9 right here.

12 CLERK OF COURT: Number one, Susan
13 Abdelmar [ph].

15 MR. RICHARDSON: Please present Ms.
16 Abdelmar [ph].

18 MR. MEETZE: Please excuse the juror.

21 One thirty-four, Alexander Rawl.

23 MR. RICHARDSON: Please excuse the juror
24 for purposes of this trial.

1 this trial, so you may return to your seat.

2 One fourteen, Quentin Nero.

3 What say the State?

4 MR. RICHARDSON: Please excuse the juror
5 for purposes of this trial.

6 CLERK OF COURT: You've been excused from
7 this trial, so you may return to your seat.

8 Ninety-two, Melinda Leftridge.

9 What say the State?

10 MR. RICHARDSON: Please present Ms.
11 Leftridge.

12 CLERK OF COURT: What say the defendant?

13 MR. MEETZE: Please swear Ms. Leftridge.

14 CLERK OF COURT: Please have a seat in the
15 jury box, ma'am.

16 One sixteen, Kimberly Nettles.

17 What say the State?

18 MR. RICHARDSON: Please present Ms.
19 Nettles.

20 CLERK OF COURT: What say the defendant?

21 MR. MEETZE: Please excuse this juror.

22 CLERK OF COURT: You've been excused from
23 this trial, ma'am. You may return to your seat.

24 Ninety-five, Ryan Lavelle.

25 What say the State?

1 MR. RICHARDSON: Please present Ms.
2 Lavelle.
3 CLERK OF COURT: What say the defendant?
4 MR. MEETZE: Please swear Ms. Lavelle.
5 CLERK OF COURT: Please have a seat in the
6 jury box, ma'am.
7 Forty-one, Bradley Cook.
8 What say the State?
9 MR. RICHARDSON: Please present Mr. Cook.
10 CLERK OF COURT: What say the defendant?
11 MR. MEETZE: Please swear Mr. Cook.
12 CLERK OF COURT: Please have a seat in the
13 jury box, sir.
14 One fifteen, Anthony Nettles.
15 What say the State?
16 MR. RICHARDSON: Please present Mr.
17 Nettles.
18 CLERK OF COURT: What say the defendant?
19 MR. MEETZE: Please swear Mr. Nettles.
20 CLERK OF COURT: Please have a seat in the
21 jury box, sir.
22 One sixty-three, Melissa Williams.
23 What say the State?
24 MR. RICHARDSON: Please present Mr.
25 Williams.

1 CLERK OF COURT: What say the defendant?

2 MR. MEETZE: Please swear Mr. Williams.

3 CLERK OF COURT: Please have a seat in the
4 jury box, sir.

5 One twenty-six, Rebecca Placheck

6 [ph].

7 What say the State?

8 MR. RICHARDSON: Please present Ms.

9 Placheck.

10 CLERK OF COURT: What say the defendant?

11 MR. MEETZE: Please swear Ms. Placheck.

12 CLERK OF COURT: Please have a seat in the
13 jury box, ma'am.

14 THE COURT: Ladies and gentlemen of the
15 jury panel, that happens from time to time. I'm
16 going to ask everyone to check their cell phone and
17 make sure it's in the silent mode.

18 CLERK OF COURT: Thirty-nine, Deborah
19 Commander.

20 What say the State?

21 MR. RICHARDSON: Please present Ms.

22 Commander.

23 CLERK OF COURT: What say the defendant?

24 MR. MEETZE: Please excuse Ms. Commander
25 from this case.

1 CLERK OF COURT: You've been excused from
2 this trial. You may return to your seat.

3 Twenty-two, James Brown.

4 What say the State?

5 MR. RICHARDSON: Please excuse Mr. Brown
6 from this trial.

7 CLERK OF COURT: You've been excused from
8 this trial, so you may return to your seat.

9 Eighty-one, Andrew Jamison.

10 What say the State?

11 MR. RICHARDSON: Please present Mr.
12 Jamison.

13 CLERK OF COURT: What say the defendant?

14 MR. MEETZE: Please excuse Mr. Jamison.

15 CLERK OF COURT: You've been excused from
16 this trial, so you may return to your seat.

17 Sixty-nine, Sherman Haynes.

18 What say the State?

19 MR. RICHARDSON: Please present Mr.
20 Haynes.

21 CLERK OF COURT: What say the defendant?

22 MR. MEETZE: Please excuse Mr. Haynes.

23 CLERK OF COURT: You've been excused from
24 this trial, so you may return to your seat.

25 One forty-three, Carroll Smith.

1 What say the State?

2 MR. RICHARDSON: Please present Mr. Smith.

3 CLERK OF COURT: What say the defendant?

4 MR. MEETZE: Please swear Mr. Smith.

5 CLERK OF COURT: Please have a seat in the
6 jury box.

7 Eighty-five, Matthew Jones.

8 What say the State?

9 MR. RICHARDSON: Please present Mr. Jones.

10 CLERK OF COURT: What say the defendant?

11 MR. MEETZE: Please swear Mr. Jones.

12 CLERK OF COURT: Please have a seat in the
13 jury box, sir.

14 Forty-seven, Wilbur Darby.

15 What say the State?

16 MR. RICHARDSON: Please present Mr. Darby.

17 CLERK OF COURT: What say the defendant?

18 MR. MEETZE: Please swear Mr. Darby.

19 CLERK OF COURT: Please have a seat in the
20 jury box, sir.

21 Seventy-nine, David Hanna.

22 What say the State?

23 MR. RICHARDSON: Please present Mr. Hanna.

24 CLERK OF COURT: What say the defendant?

25 MR. MEETZE: Please excuse Mr. Hanna.

1 CLERK OF COURT: You've been excused from
2 this trial, so you may return to your seat.

3 Sixty-two, David George.

4 What say the State?

5 MR. RICHARDSON: Please present Mr.
6 George.

7 CLERK OF COURT: What say the defendant?

8 MR. MEETZE: Please excuse Mr. George.

9 CLERK OF COURT: You've been excused from
10 this trial, so you may return to your seat.

11 One forty-nine, Alyssa Stoddard.

12 What say the State?

13 MR. RICHARDSON: Please present Ms.
14 Stoddard.

15 CLERK OF COURT: What say the defendant?

16 MR. MEETZE: Please swear Ms. Stoddard.

17 CLERK OF COURT: Please have a seat in the
18 jury box, ma'am.

19 One sixty-four, Stanley Williams.

20 What say the State?

21 MR. RICHARDS: Please present Mr.
22 Williams.

23 CLERK OF COURT: What say the defendant?

24 MR. MEETZE: Please swear Mr. Williams.

25 CLERK OF COURT: Please have a seat in the

1 jury box, sir.

2 Eighty-three, Leland Jolley.

3 What say the State?

4 MR. RICHARDS: Please present Mr. Jolley.

5 CLERK OF COURT: What say the defendant?

6 MR. MEETZE: Please swear Mr. Jolley.

7 CLERK OF COURT: Please have a seat in the
8 jury box, sir.

9 THE COURT: Strikes are one and two on the
10 alternates.

11 CLERK OF COURT: Number five, Randall
12 Arnold.

13 What say the State?

14 MR. RICHARDSON: Please present Mr.

15 Arnold.

16 CLERK OF COURT: What say the defendant?

17 MR. MEETZE: Please excuse Mr. Arnold.

18 CLERK OF COURT: You've been excused from
19 this trial, so you may return to your seat.

20 Ninety-three, Tiffany Lee.

21 What say the State?

22 MR. RICHARDSON: Please present Ms. Lee.

23 CLERK OF COURT: What say the defendant?

24 MR. MEETZE: Please swear Ms. Lee.

25 CLERK OF COURT: Please have a seat in the

1 jury box, ma'am.

2 Thirty-one, Anthony Chandler.

3 What say the State?

4 MR. RICHARDSON: Please present Mr.
5 Chandler.

6 CLERK OF COURT: What say the defendant?

7 MR. MEETZE: Please excuse Mr. Chandler.

8 CLERK OF COURT: You've been excused from
9 the trial, so you may return to your seat.

10 Forty-eight, Arthur Davis.

11 What say the State?

12 MR. RICHARDSON: Please excuse Mr. Davis
13 for this trial.

14 CLERK OF COURT: You've been excused from
15 this trial, so you may return to your seat.

16 Sixty-five, Jessica Graham.

17 Does the State wish to challenge
18 this juror for cause?

19 MR. RICHARDSON: No, ma'am.

20 CLERK OF COURT: What say the defendant?

21 MR. MEETZE: Please swear Ms. Graham.

22 CLERK OF COURT: Please have a seat in the
23 jury box, ma'am.

24 THE COURT: Is there any objection to the
25 jury selection process from the State?

1 MR. RICHARDSON: No, Your Honor.

2 THE COURT: Any from the defense?

3 MR. MEETZE: No, Your Honor.

4 THE COURT: All right. Ladies and
5 gentlemen of the jury who are remaining in the jury
6 panel, I'm going to ask the Clerk to give out the
7 numbers. And we're going to ask that you call every
8 afternoon at 6:30 to determine whether or not we'll
9 need your services the following morning. Pay very
10 close attention to the instructions and abide by
11 that.

12 And the Clerk will meet you at the
13 back door. And be sure to call every afternoon to
14 determine whether or not you need to be here the
15 following morning. You're free to leave. Thank you
16 so much for your service.

17 (Large jury panel excused.)

18 THE COURT: Mr. Smith, I'm going to ask if
19 you can serve as the foreman of this jury. And I'm
20 going to ask if you could come forward and have a
21 seat in this front.

22 And if you could switch chairs, thank
23 you, ma'am.

24 Mr. Smith, you're going to be
25 called upon to serve as the foreman of this jury.

1 And you, like every other juror, when it comes time
2 to deliberate are going to have one vote. But
3 you're going to have additional responsibilities,
4 the first of which is during the deliberation
5 process, you're to preside over the deliberation
6 process.

7 That essentially means that
8 you're to ensure that everybody's voice is heard.
9 Throughout the trial of this case, if there are
10 questions or concerns that come up, I'm going to ask
11 that the jurors communicate those questions or
12 concerns to you, you communicate it to the Bailiff,
13 and if it's something that we can help you with, we
14 will.

15 I'm going to ask that you remain
16 in that chair throughout -- well, we're going to try
17 this case on the tenth floor. But I'm going to ask
18 you to remain in that position the entire time. And
19 I'm going to ask the alternates to remain in that
20 position the entire time, in those two chairs.

21 All the rest of you are sort of
22 general admissions. But we're going to ask that you
23 all remain in those spots. At this time, I'm going
24 to ask if you could to stand and raise your right
25 hand as the Clerk administers the oath.

1 (The jury was sworn.)

2 THE COURT: Mr. Foreman, ladies and
3 gentlemen of the jury, I was taking pleas on the
4 tenth floor when the jury qualification was taking
5 place. But you all saw that there was another jury
6 that was selected. They're going to try that case
7 here on the eleventh floor.

8 We're going to go to the tenth floor,
9 and the Bailiff is going to escort you down to the
10 tenth floor jury room. And then we'll proceed
11 foreward. I'm going to speak with counsel for one
12 moment, and then we'll proceed forward with the
13 trial of this case.

14 Throughout the trial of this case,
15 I'm going to give you an instruction, order and
16 demand that you not discuss the case amongst
17 yourselves. You haven't heard anything about the
18 case. You haven't heard any evidence.

19 You can talk about anything in the
20 world that you want, but you can't talk about this
21 case. You have to hear all of the testimony in this
22 case and the law as I charge it to you before you
23 can even discuss it.

24 Mr. Foreman, I'm going to ask that
25 you enforce that rule, that there be no discussion

1 about this case whatsoever.

2 Madam Bailiff, I'm going to ask if
3 someone could escort them to the tenth floor
4 courtroom.

5 Everyone remain seated as the jury
6 exits the courtroom.

7 BAILIFF: I need everyone to stay
8 together, okay.

9 (Whereupon, the jury panel was
10 relocated to another courtroom.)

11 THE COURT: Anything from the State before
12 we retire to the tenth floor?

13 MR. RICHARDSON: Nothing, Your Honor.

14 THE COURT: Anything from the defense?

15 MR. MEETZE: No, Your Honor.

16 THE COURT: We'll see you all on the tenth
17 floor.

18 (Court in recess while the trial is
19 moved to the tenth floor.)

20 --End of Partial Transcript of Record.--

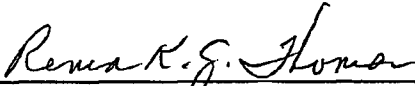
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, PARTIAL TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 2, 3, AND 4, 2010, IN FLORENCE, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE THIRTIETH DAY OF AUGUST, 2011.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2010-GS-21-0664
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Robert Lee Johnson	)	)
<u>DEFENDANT</u>	)	August 2-4, 2010
		Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE; and a jury.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
DAVID RICHARDSON, ASSISTANT SOLICITOR
Attorneys for the State

VICK MEETZE, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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21	Mr. Meetze		96	
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23	Kathy Saunders			
24	Mr. Richardson	100		
25	Mr. Meetze		112	

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1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, we are about to begin the case of the State of
3 South Carolina vs. Robert Lee Johnson, indictment number
4 2010-GS-21-00664. I made reference in the preliminary
5 remarks concerning an indictment. And, clearly,
6 Mr. Robert Lee Johnson has been indicted for various
7 criminal offenses, but I want you to understand something,
8 this is real important case. And just by virtue of the
9 fact that someone has been accused of something doesn't
10 mean they're guilty of anything. The indictment that I
11 held in my hand on the 11th floor is merely an accusation,
12 that is the document by which this criminal prosecution
13 begins. And I need to explain to you that Mr. Johnson has
14 pled not guilty to these criminal offenses and with that
15 comes certain Constitutional safeguards. Just as
16 Mr. Johnson is sitting there, he's presumed to be just an
17 innocent as me or you, the solicitor's office or law
18 enforcement, for that matter. That's the presumption that
19 we start with.

20 There are other Constitutional safeguards that
21 come into play, the first of which is that the State has
22 the burden of proof. You know, we live in a country where
23 we in a free and democratic society and if the government
24 tries to limit your liberty in any way, shape or form,
25 they have to prove that. There are some third world

1 countries where you can be accused of a crime, hauled
2 before a court and be required to prove your innocence.
3 We all know in our every day lives, sometimes you can be
4 accused of something that's absolutely impossible to prove
5 your innocence. United States of America, you are not
6 required to prove your innocence. The State bears the
7 burden of proving each and every element of the offenses
8 charges.

9 In addition to that, there's a Constitutional
10 safeguard that protects all of us as American citizens.
11 If you're accused of a crime, the State not only has to
12 prove each and every element of the offense, they have to
13 meet the highest burden of proof known to our judicial
14 system, that's proof beyond a reasonable doubt. Suppose
15 with me, if you will, we were here and we were proceeding
16 forward and the subject matter were different. If it were
17 a car wreck or a contract dispute, a medical malpractice
18 case, the burden of proof that the plaintiff would have to
19 meet would be by a preponderance of the evidence. And if
20 you imagine with me, if you will, the scales of justice
21 when the case begins in each proceeding, the scales are
22 even. And in a civil case, the plaintiff need only tilt
23 the scales ever so slightly in their favor and they
24 prevail. Because in that case, they're only talking about
25 money. But in criminal cases, you're talking about

1 people's livelihood, their lives and their liberties and
2 they have to meet the highest burden of proof known to our
3 judicial system. I envision that as the State being
4 required to lock up the scales. That's the burden of
5 proof that you're going to be required to hold the State
6 to.

7 I want to tell you a little bit about how we're
8 going to proceed here today. The very first part of a
9 trial is going to be opening statements. Mr. Richardson
10 is going to have an opportunity to stand up before you and
11 sort of give you a summary about what this case is about
12 and what he intends to prove. After that, Mr. Meetze, who
13 represents Mr. Johnson, is going to have an opportunity to
14 do the same. The Defendant need not present an opening
15 statement because they have no burden of proof. But he's
16 going to be given the opportunity to do that. After the
17 opening statements, we will begin taking evidence, the
18 meat of the trial. And, likewise, in that part of the
19 trial, the State goes first. And they will call witnesses
20 to the witness stand, evidence will be presented in the
21 form of oral testimony, sometimes documents, stipulations.
22 And you will be required to listen to the evidence as it
23 comes from the witness stand. I'm going to ask that you
24 pay very close attention.

25 Ladies and gentlemen of the jury, as you took

1 that oath, you are going to be called upon to be the sole
2 and exclusive judges of the facts. And every trial that's
3 ever been conducted in our judicial system and every one
4 in this courthouse, there's always been a question of
5 fact. And that's going to be your jobs to determine what
6 the true facts are in this case. Sometimes in a very rare
7 occasion, there -- the parties can agree on the facts, but
8 have a disagreement with regard to the inference to be
9 drawn from the facts. But you're going to be called upon
10 to do that. And, necessarily, you're going to be required
11 to evaluate the credibility of witnesses as they take the
12 witness stand.

13 I want to tell you a little bit about what the
14 law says in that regard. I will charge you in greater
15 detail about the law as it pertains to evaluate the
16 credibility of witnesses at the conclusion of the case,
17 but I want to talk to you a little bit about it now. When
18 a witness takes the witness stand, you need to ask
19 yourself what opportunity they had to observe the things
20 to which they testified to. I also am going to ask you to
21 apply your good common sense when you -- just the way you
22 evaluate truthfulness in your everyday affairs. The law
23 doesn't say that when you become a juror, you have to
24 throw away your common sense. We all know in our
25 everyday experience how we evaluate whether or not someone

1 is telling the truth. I'll tell you from the very
2 beginning, you can believe one witness against many, you
3 can believe many against one, you can believe all of what
4 one witness says or none of what one witness says or a
5 portion thereof. That's going to be completely within
6 your province as a jury in your collective wisdom to
7 determine what the true facts are. You also have the
8 opportunity to evaluate whether or not a particular
9 witness has an interest or bias in the outcome of this --
10 or an interest in the outcome of the case or some bias or
11 prejudice in the case.

12 In addition to that, any of you have teenage
13 children, like myself, sometimes it's important to listen
14 to what they have to say, but sometimes it's more
15 importantly to see how they say it or what is their
16 demeanor. And the law allows you to take that into
17 consideration. How does the witness act on the witness
18 stand? What is their demeanor? How does that affect
19 their credibility? Pay very close attention.

20 You are the sole and exclusive triers of the
21 fact. The law doesn't allow me to have any opinion about
22 the facts of the case. That's completely your province to
23 determine what the facts are. I, on the other hand, am
24 going to be the sole and exclusive trier of the law. That
25 means I regulate what evidence you get to hear. I charge

1 you the law. And just like I can't tell you what the
2 facts are, you can't tell me or apply some idea of the law
3 that isn't what the law is. You have to accept and apply
4 the law as I charge it to you.

5 I do want to admonish you that if I were to make
6 an error with regard to the law, if I let in some evidence
7 that shouldn't have gone in or vice versa, or if I charge
8 you the law in an inappropriate manner, those errors quite
9 often can be easily corrected. However, you, as jurors,
10 if there's a question with regard to the findings of fact,
11 quite often, they cannot be corrected. So that's why it's
12 important for y'all to pay very close attention to the
13 facts as they come forth in this trial. This is an
14 important case. This is an important case to the State of
15 South Carolina, it's an important case to the Defendant.
16 I'm going to ask that you pay very close attention.

17 At the conclusion of the taking of evidence in
18 this case -- the State goes first, the Defendant is going
19 to have an opportunity to present witnesses if they choose
20 to do so. Once again, our Constitution and our laws don't
21 require they do anything. But if they elect, they're
22 going to be given the opportunity to do so. If they
23 choose to do so, they will go after the State's witnesses.
24 Then the State will have an opportunity to give a brief
25 reply with regard to witnesses if they choose to do so.

1 Now, after the taking of all the testimony, then
2 there will be closing arguments. Closing arguments are
3 very similar in form to opening statements. The lawyers
4 will have an opportunity to stand up before you and give a
5 summary of the important things that have transpired in
6 this trial. It's very similar in form to the opening
7 statements, but they're truly argumentative in nature
8 because at that point in time in the trial all of the
9 evidence will have been in. They will be able to point to
10 the evidence that's been put before you that supports
11 their relative position.

12 I'm going to ask that you not take notes given
13 the nature of the case and the length of this trial.
14 Although it's a very important trial, it's not going to
15 take very long to try. But I emphasize how important this
16 case is. Do not take notes. You need to pay very close
17 attention to the evidence as it comes from the witness
18 stand.

19 Mr. Foreman, I'll reiterate, order and instruct
20 to you that you are to ensure that no one discusses this
21 case throughout the trial of this case. That's your job.
22 And if anyone were to try to discuss this case or comment
23 about the case, you need to inform me and we will address
24 that matter in an appropriate way. But there will be no
25 discussion about the case until all the evidence has been

1 heard, you've heard the law and I give you instructions
2 with regard to beginning deliberations.

3 We're going to have opening statements. We're
4 probably going to take some testimony today. And at the
5 conclusion of that, you're going to retire and home for
6 the evening. There's not anything in the entire world
7 that you can't look up on the internet nowadays. And I'm
8 going to order and instruct and demand that you not do any
9 investigation about anything pertaining to this case on
10 the internet. I'm going to ask that if there's any
11 newspaper coverage -- I see that there is a camera here in
12 the courtroom. And if there's any news cast with regard
13 to this case, I'm going to ask that you divert your
14 attention from that. Do not listen to it. Cut it off.
15 If you see anything in the paper, I'm going to order and
16 instruct and demand that you not read the article.
17 Because if you think about it, whoever's reporting on TV
18 or the newspaper, they are going to be reporting either
19 second or thirdhand what you've heard firsthand. So you
20 need to rely upon what you hear in this courtroom. Do not
21 do any independent investigation. You will hear testimony
22 probably early on in this trial about where these alleged
23 offenses might have taken place. I'm going to order and
24 instruct and demand that you not go and do any independent
25 investigation with regard to where this happened, do

1 anything with regard to riding by, looking and seeing
2 where something might or might not have happened. You
3 need to base your decision on the law as I charge it to
4 you and the evidence that comes before you in this trial.

5 I'm going to recognize Mr. Richardson for
6 opening statements.

7 Mr. Richardson, you're recognized.

8 MR. RICHARDSON: Thank you, Your Honor, may it
9 please the Court. Mr. Meetze.

10 Ladies and gentlemen, I appreciate your service
11 here today because today has been a long time coming.
12 Today is the day that we bring Robert Johnson to trial for
13 some horrible things that he has done to a child. That
14 child's name is Child You're going to hear
15 from her tomorrow. Child is now 16 years of age and
16 Child is Robert Johnson's niece.

17 Child has suffered greatly for a large part of
18 her life at the hands of Robert Johnson. The evidence is
19 going to show you that Robert Johnson volunteered to
20 babysit Child And Child mother, not knowing any
21 better, consented. Child is going to get up here and
22 tell you starting at about the ages of seven and eight,
23 Robert began to inappropriately touch her, feel parts of
24 her body. As she grew, the abuse escalated. It turned
25 into, first, oral sex. He giving to her and he forcing

1 her to give to him. Around the age of 12 or 13, it got
2 worse vaginal penetration, anal penetration. Numerous
3 events of abuse over this period of time, from the time
4 she was about seven until the time she was 13.

5 Now, why did the abuse stop? Well, Child is
6 like lot of teenagers. She goes to school. She loves her
7 family. But she's not like a lot of teenagers in some
8 respects. For one, at age 16, she has a two-year-old
9 child. And as many obstacles as something like that can
10 present to a young lady still in high school, this child
11 presented her a grand opportunity. You're going to hear
12 how a teacher noticed that she was pregnant. This gave
13 Child the avenue she needed for so long to tell what was
14 happening to her. She feared that she was carrying her
15 uncle's baby. Luckily, and as it turned out, she was not.
16 And you will hear from the witness stand exactly whose
17 baby that was and how that baby came to be conceived
18 because it's part of the evidence in this case.

19 She was able to take those steps that are so
20 difficult for a child to tell when that type of abuse is
21 happening to them. She went through interviews where all
22 the details of her life were poked and prodded and
23 invaded. She went through humiliating physical exams.
24 She had to tell her mom what had been happening to her for
25 years at the hands of her mother's own brother causing

1 unforetold tensions in that family.

2 Now, ladies and gentlemen, given that this case
3 is what it is, a long pattern of abuse, I wish I could
4 stand up here and tell you that we have all this
5 scientific evidence, D.N.A. and all that good stuff you
6 see on TV. That's not the type of case we've got. These
7 things happened over a long period of time. That kind of
8 stuff was not preserved. What this case comes down to is
9 credibility.

10 Now, Child is still a child, teenager, 16 years
11 old. It's very difficult for anyone of any age to get up
12 on this witness stand and tell a jury what's happened to
13 them when they're a victim of a crime. Imagine what it's
14 like for a child to get up there and have to tell that,
15 especially the intimate details of his or her life. But
16 she's going to put those nerves aside and she's going to
17 get on that witness stand and she's going to tell you some
18 of the most gruesome details that you will ever hear of
19 things that happened to her from the time she was no more
20 than seven or eight years old. And I want you to listen
21 carefully to everything she has to say, consider her age
22 and her circumstances, being before all these strangers.
23 Consider what she would have to gain from accusing a
24 family member of this activity. And listen to the details
25 she gives you.

1 She's taken all the steps she can take. And the
2 one she's going to take tomorrow is the last one. She
3 gets to tell you. After she tells you, there's nothing
4 else she can do. Then it's left to you all to take over
5 for her and make the right decision. Call this man what
6 he is, a predator. I'm going to ask you to listen
7 carefully and consider what she has to say and all the
8 other witnesses that testify in this case. And I'm sure
9 that after you hear it, you will no doubt find Robert
10 Johnson guilty of all seven counts, criminal sexual
11 conduct with a minor in the second degree, multiple
12 counts, lewd act on a minor and contributing to the
13 delinquency of a minor. Thank you very much.

14 THE COURT: Thank you, Mr. Richardson.

15 Mr. Meetze, you're recognized.

16 MR. MEETZE: Thank you, Your Honor, may it
17 please the Court.

18 THE COURT: Yes, sir.

19 MR. MEETZE: As I said to you earlier, my name
20 is Vick Meetze and I work with the Florence County Public
21 Defender's Office and I represent Robert Johnson in the
22 case.

23 Now, I've never served on a jury and didn't
24 spend a whole lot of time in courtrooms before I got a job
25 that required me to do that, so I don't know if people

1 have preconceived notions about how a trial is supposed to
2 go and what you're supposed to see and things like that.
3 Any sort of knowledge or any sort of expectation that I
4 would have had before I started doing this job and before
5 I went to school to prepare myself for being an attorney,
6 any preconceived notion I would have had would probably
7 have come from television or the movies or different
8 things that you see. But you find out quick that all that
9 stuff is not what it's cracked up to be. It's not the
10 real world. Opening statements are just that, they're
11 statements to where the State can give you an indication
12 of what they intend to show when they present evidence in
13 the case.

14 And from the defense standpoint, we come up and
15 tell you things, a lot of things that you've already
16 heard. Tell you things like Mr. Johnson is presumed
17 innocent and the State has the burden of proving their
18 case beyond any reasonable doubt. But there may be some
19 lawyers out there that get dramatic and overly dramatic
20 and things like that that you may see on TV, but, again,
21 that's not necessarily the case. Like I said, this is the
22 real world. This is an actual trial. It's very serious,
23 as you've also heard. And, certainly, you've heard the
24 allegations. And the allegations contained in the
25 indictment in this case, I don't have to tell you that

1 they're as serious as they get. And that's why in this
2 court it's all serious business.

3 As you were told a little bit earlier, in
4 criminal court, the State does have the burden of proving
5 to each of you beyond a reasonable doubt their case. They
6 have to prove each and every element beyond a reasonable
7 doubt before anyone, in this case, Mr. Johnson, could be
8 convicted of any of the charges. They've got to prove to
9 you every single element of every single charge that he's
10 facing here today, which is seven different counts
11 contained in the allegations within the indictment. And
12 they would have to prove each of those to you beyond any
13 reasonable doubt.

14 And I've already said those words a bunch of
15 times, reasonable doubt. And you've heard them before I
16 even got up here. But I've repeated them and you've heard
17 them that many times in this short period of the trial
18 because that's one of the fundamental principles of our
19 law, proof beyond a reasonable doubt. It's not proof that
20 overcomes any and all doubt, but it's certainly proof that
21 comes up just short of that. And, again, the reason
22 burden is so high in a criminal case is because you're
23 dealing with people's lives. You're dealing with people's
24 very liberties and there's nothing more valuable than
25 that.

1 In civil court where you have -- you know,
2 different examples, you have lawsuits over wreck cases or
3 somebody falling down in a supermarket or some store like
4 that. They have injuries. They have money damages a lot
5 of times. And that's usually what's at stake in a civil
6 case is money damages. And, certainly, people don't want
7 to have to part with their money. But losing some of your
8 money versus losing some of your liberties, there's no
9 comparison. That's why the burdens of proof in the
10 different types of court in circuit court are also
11 difference.

12 In civil court, the burden is by a preponderance
13 of the evidence or more likely than not, it's also said.
14 And that would indicate that if you think of those scales
15 of justice and both sides present their evidence, once all
16 the evidence is presented, if the scales tilt ever so
17 slightly in one direction, then that would be the side the
18 jury would find in favor of. But in criminal court with
19 the burden of proof being that of beyond a reasonable
20 doubt, the evidence has to be overwhelmingly in the
21 State's favor in order for someone to be found guilty.

22 As Mr. Johnson sits there now, he is cloaked in
23 innocence. That means he's as innocent as anybody else in
24 this room until he is proven guilty beyond a reasonable
25 doubt. And those are principles of our law that are

1 unwavering and they're unchanging. You hear allegations
2 and things like that and it's sort of human nature, it's
3 natural, can't fault somebody for human nature, when they
4 hear allegations, especially allegations as serious as the
5 ones in these cases, it can be human nature for your mind
6 to wander and start thinking my goodness, this must be the
7 most evil person in the world, you know. But at this
8 point in time, they're just allegations. You haven't
9 heard any evidence yet. All you've heard are allegations.
10 You've heard what the State intends to prove and the
11 intends to show through the evidence, but you haven't
12 heard any evidence yet. And I want to reiterate that.
13 What the State says and what I say, it's not proof of
14 anything. You've heard no evidence. The only evidence in
15 this case would come from this witness stand. People will
16 get here, they'll testify, they'll answer questions. And
17 until that time, you've heard no evidence in the case.

18 As you've also been told and I'll reiterate
19 again and ask that you pay close attention to the evidence
20 because in this case, like in many cases, a lot is going
21 to be determined by the credibility of the different
22 witnesses. As the judges of the facts, you all are
23 charged with determining the credibility of various
24 witnesses to determine what you think happened in this
25 case, if the evidence that's presented allows you to do

1 that at all. Sometimes evidence can leave more questions
2 than answers.

3 We would ask that you listen carefully, that you
4 judge the credibility of these witnesses. And we would
5 submit to you that once all the evidence is in and you've
6 got to hear all of the testimony that at the close of this
7 case when it's time to deliberate that you would bring
8 back a verdict in this case that does speak the truth.
9 And the only verdict in this case that speaks the truth
10 would be a verdict of not guilty. Thank you.

11 THE COURT: Thank you.

12 Mr. Richardson, you're recognized. You may call
13 your first witness.

14 MR. RICHARDSON: Thank you, Your Honor. The
15 State would call Ursula Wardy.

16 THE COURT: Yes, ma'am, if you could, I'm going
17 to ask you to come forward and place your left hand on the
18 Bible and raise your right hand as the clerk administers
19 the oath.

20 THE CLERK: Do you swear the testimony you give
21 in this case to be the truth, the whole truth and nothing
22 but the truth so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full
25 name for the record.

1 THE COURT: Yes, ma'am, I'm going to ask you to
2 pull up in that witness chair right there. And I'm going
3 to ask you to pull up real close to that microphone. I
4 want you to speak loudly, clearly and slowly in order that
5 we could hear everything that you got to say. I'm going
6 to ask if you could just start with your full name.
7 What's your full name?

8 THE WITNESS: Ursula Charlene Wardy.

9 THE COURT: Very good.
10 Mr. Richardson.

11 WHEREUPON,

12 Ursula Wardy,
13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Okay. Ms. Wardy, where are you employed?

17 A Williams Middle School?

18 Q And what are your job duties there?

19 A I'm an eighth grade special ed teacher.

20 Q Were you so employed at Williams back in 2007?

21 A Yes, sir.

22 Q All right. Did you know Child

23 A Yes, sir.

24 Q How did you know her?

25 A She was my student.

1 Q In 2007, the fall semester, what did you notice about
2 Child Richardson that was unusual?

3 A I noticed that she was appeared to be pregnant.

4 Q I want to show you an item.

5 (WHEREUPON, State's Exhibit No. 1 was marked for
6 identification.)

7 BY MR. RICHARDSON:

8 Q Ms. Wardy, I want to show you what's been marked as
9 State's Exhibit No. 1 for identification. Can you
10 identify what that?

11 A This is a picture of Child

12 Q Does that photograph accurately depict what she
13 looked like back in 2007?

14 A Yes, sir.

15 Q Is that actually a school photo?

16 A Yes, sir, it is.

17 MR. RICHARDSON: Your Honor, I like to move this
18 into evidence as State's Exhibit 1.

19 THE COURT: Show that to the defense.

20 MR. MEETZE: No objection.

21 THE COURT: All right. State's Exhibit Number 1
22 is into evidence without objection from defense.

23 (WHEREUPON, State's Exhibit No. 1 was admitted
24 into evidence.)

25

1 MR. RICHARDSON: May I publish this photo?

2 THE COURT: You may.

3 BY MR. RICHARDSON:

4 Q Ms. Wardy, you mentioned that you noticed that Child
5 appeared to be pregnant?

6 A Yes, sir.

7 Q How did you notice this?

8 A The shirts that she would wear would be T-shirts that
9 would be kind of tight around her stomach and she appeared
10 to be several months pregnant. And I knew it was a
11 difference because I knew her from the year before and she
12 didn't look the same.

13 Q Okay. What grade was she in at the time?

14 A At the time, eighth grade.

15 Q What did you do when you noticed that she appeared to
16 be pregnant?

17 A I took her in the hallway and I asked her if she was
18 pregnant. She denied it a few times. And I continued to
19 ask her if she was pregnant and she finally said that she
20 was pregnant.

21 Q Okay. At any time in that conversation in the
22 hallway, did she disclose to you sexual abuse?

23 A Yes, sir.

24 Q Okay. Did she say where that sexual abuse took
25 place?

1 A Yes, sir.

2 Q Where did she say?

3 A At her uncle's house.

4 Q And did she give you any time frame that that sexual
5 abuse may have taken place?

6 A No, sir, she just said that was being molested by her
7 uncle at her uncle's house.

8 Q Had you previously had her as a student or was that
9 your first time?

10 A That was the first time I had her as my student. I
11 knew her from the seventh grade.

12 Q Do you recall approximately what month into the
13 school year this conversation took place, some range?

14 A Around September, October.

15 Q Okay. Did she gave you any indication of one time or
16 a number of times?

17 A A number of times.

18 Q That it took place?

19 A Yes, sir.

20 Q Did you subsequently learn that another student was
21 the father of the baby or did you have no idea?

22 A At the time that she spoke with me, no, sir, I didn't
23 know that.

24 Q Did you learn later?

25 A Yes, sir. Later on, I learned that another student

1 was.

2 Q Ms. Wardy, you stated you were a special ed teacher?

3 A Yes, sir.

4 Q What type of students do you have in your class?

5 A Student that have learning disabilities, students
6 that have problems with paying attention.

7 Q Okay. Was Child a learning disabled student?

8 A Yes, sir, she had a learning disability.

9 Q Do you recall what that may have been?

10 A She was weak in the areas of math and reading.

11 Q But other than that, she was a normal student?

12 A Yes, sir.

13 MR. RICHARDSON: All right, very good. Please
14 answer any questions Mr. Meetze may have for you.

15 THE COURT: Mr. Meetze, you're recognized,
16 cross-examination.

17 MR. MEETZE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MEETZE:

20 Q Ms. Wardy, you say that you had this conversation
21 with Child in September or October of 2007?

22 A Yes, sir.

23 Q And was all of your testimony that you just testified
24 to, was that all sort of the result of one conversation or

25 --

- 1 A Yes, sir, one conversation in the hallway.
- 2 Q And you initiated that conversation?
- 3 A Yes, sir.
- 4 Q You had concerns?
- 5 A Yes, sir.
- 6 Q You thought she appeared to be pregnant --
- 7 A Yes, sir.
- 8 Q -- if we were looking -- if somebody asked you that
- 9 question, you would have said yes, I think Child is
- 10 pregnant?
- 11 A Yes, sir.
- 12 Q And you started a conversation with her due to that?
- 13 A Yes, sir.
- 14 Q Initially, she said she was not pregnant?
- 15 A That's correct.
- 16 Q And, eventually, she changed that?
- 17 A Yes, sir.
- 18 Q And at that point in time, do you know whether she
- 19 had had a pregnancy test or done anything of that nature?
- 20 A No, sir.
- 21 Q You don't know or no, she hadn't?
- 22 A I don't know.
- 23 Q But she did tell you that she was?
- 24 A Yes, sir.
- 25 Q And you asked her at that point in time who the

1 father was?

2 A Yes, sir.

3 Q And she told you it was Robert Johnson?

4 A She didn't gave me a name. She said that she was
5 afraid it was her uncle's baby.

6 Q That's the only thing she told you in that regard?

7 A Yes, sir, in the hallway.

8 Q And that answer that it was uncle's baby was in
9 response to a question of who the father of her baby was?

10 A Yes, sir.

11 MR. MEETZE: I don't have any further questions,
12 Your Honor.

13 THE COURT: Any redirect?

14 MR. RICHARDSON: Briefly, Your Honor.

15 THE COURT: All right, Mr. Meetze, various
16 judges handle it differently, but it's incumbent upon you
17 to object to any new material that he brings up. There
18 will be no recross.

19 Very good.

20 Mr. Richardson.

21 REDIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q Ms. Wardy, when you had this conversation with
24 Child did you report that?

25 A Yes, sir.

1 Q And was that to school officials?

2 A Yes, sir.

3 Q Is that how law enforcement became involved?

4 A Yes, sir.

5 MR. RICHARDSON: Thank you.

6 THE COURT: You may step down. Thank you.

7 Any further witnesses for today?

8 MR. RICHARDSON: No, sir.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Mr. Foreman, and ladies and
12 gentlemen of the jury, we're going to recess for the
13 evening. I'm going to ask that you be back at 9:30 in the
14 morning, 9:30.

15 Once again, do not discuss the case amongst
16 yourselves or with anyone else. I can promise you that
17 when you go home to your spouse, significant other or
18 maybe your friends or co-workers, they're going to say
19 what kind of case are you on. I'm going to order and
20 instruct and demand that you not discuss this case. It's
21 important that you base your decision on what transpires
22 here in this courtroom. It might be that your spouse or
23 significant other might have a particular idea about this
24 type litigation, but you need to base your decision on
25 what transpires here in this courtroom. You are the only

1 12 people that are going to get to hear all the evidence
2 and begin deliberations. So you need to base your
3 decision on what transpires here.

4 I'm going to ask that everyone be here on time.
5 We're going to be ready to go. We're going to start right
6 at 9:30 on the dot. Unless something unusual happens, we
7 will be here at 9:30 ready to go.

8 I'm going to ask that all of you save those very
9 attractive juror badges, those florescent orange badges,
10 and display them. And there's a reason for that, because
11 the way this courtroom is configured, we're on the 10th
12 and the 11th floor. Everybody from all the city and
13 county offices are down below us. Attorneys are in the
14 elevators, sometimes there are witnesses in the elevators.
15 And it's important for you to not inadvertently hear
16 conversations about this case because you need to base
17 your decision on what transpires here. So if you're in
18 the elevator, there might be witnesses that are going to
19 testify. They might be talking about the case. You need
20 to have that badge on so everybody will know that you're a
21 juror and they would know not to discuss the case.

22 Once again, I'm going to ask that when you leave
23 your car in the morning be here in time. I'm going to ask
24 that you report here to the 10th floor. This case is
25 going to transpire here on the 10th floor. The bailiffs

1 will escort you to the jury room.

2 Mr. Foreman, as the jurors come in, once again,
3 do not allow them to discuss the case.

4 Do not do any independent investigation on the
5 internet. Don't go look about any potential location
6 where anything might or might not have happened. I'm
7 going to ask that you do that. Please, be here at 9:30,
8 9:30 sharp. Once again, there very well could be some
9 media coverage with regard to this case. It might be a
10 short article in the Florence Morning News. It might be
11 some coverage on the various networks for evening news.
12 I'm going to ask that you not look at those. If it
13 happens to be on, I'm going to ask that you divert your
14 attention or cut it off.

15 I'm going to ask that everyone remain seated as
16 the bailiff escorts the jury out of the courtroom.

17 (WHEREUPON, the jury retire for the day.)

18 THE COURT: Is there anything from the State
19 before we recess for the evening?

20 MR. RICHARDSON: No, sir, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. MEETZE: No, Your Honor.

23 (WHEREUPON, the proceedings were concluded for
24 the day to be reconvened on August 3, 2010.)

25 THE COURT: Anything from the State before we

1 bring the jury out?

2 MR. JEPERTINGER: No, sir.

3 THE COURT: Anything from the defense?

4 MR. MEETZE: No, Your Honor.

5 THE COURT: Very good.

6 We ready for the jury.

7 (WHEREUPON, the jury came into open court.)

8 THE COURT: Mr. Foreman, and ladies and
9 gentlemen of the jury, thank you so much for being here
10 and being here on time. We are about to begin resume the
11 taking of testimony in this case. I heard the question
12 emanate from the jury room as to whether or not you could
13 bring your drinks in. I didn't realize -- I always
14 assumed that jurors were informed by the bailiffs that
15 they could bring their drinks back into the courtroom.
16 Certainly, you can. I think everybody in the courtroom is
17 drinking water or drinking some sort of soft drink and
18 y'all are certainly entitled to do that, so bear that in
19 mind.

20 Thank you so much for being here and being here
21 on time.

22 The State, you're recognized, you may call your
23 first witness.

24 MR. RICHARDSON: Thank you, Your Honor. The
25 State calls Reba Livingston.

1 THE COURT: Ms. Livingston, I'm going to ask you
2 if you could to come forward and place your left hand on
3 the Bible and raise your right hand as the clerk
4 administers the oath.

5 THE CLERK: Do you swear the testimony you give
6 in this case to be the truth, the whole truth, and nothing
7 but the truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated and state your full
10 name for the record.

11 THE COURT: Ms. Livingston, pull up a seat right
12 there. Yes, ma'am, I'm going to ask you to pull up real
13 close to that microphone. I'm going to ask you to speak
14 up loudly, clearly, and slowly in order that everyone can
15 hear what you got to say. I'm going to ask you to start
16 with your full name.

17 THE WITNESS: My name is Reba Fredrika
18 Livingston.

19 THE COURT: Mr. Richardson, you recognized.

20 MR. RICHARDSON: Thank you, Your Honor.

21 WHEREUPON,

22 Reba Livingston,
23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. RICHARDSON:

2 Q Ms. Livingston, where are you employed?

3 A I'm employed as a guidance counselor at Williams
4 Middle School here in Florence.

5 Q How long have you been in that position?

6 A I have been in that position for four years?

7 Q Four years. So were you in that position back in
8 August through October of 2007?

9 A Yes.

10 Q All right. And what is your role as guidance
11 counselor at Williams?

12 A Basically, I talk with students, handle any crisis
13 situations. I deal with special ed students, regular ed
14 students, the Ivy program. Basically, a role as
15 counseling students.

16 Q Back in the fall of 2007, did you have occasion to
17 come to know Child

18 A Yes.

19 Q Was she a student at the school?

20 A Yes.

21 Q What do you recall about her situation with regard to
22 being pregnant?

23 A I recall Child coming to my office upset, crying
24 because the people were saying that she looked pregnant,
25 that her stomach was growing, so that made her very upset

1 and she would come and talk to me about that?

2 Q Okay. Did any teacher or other administrative person
3 bring her to your office?

4 A No, basically, she came to me on her own.

5 Q Okay. Do you remember about when in the fall that
6 semester she came to you?

7 A It was in October, early October of 2007.

8 Q All right. And would she just talk to you about the
9 pressures at school, people saying things, that type of
10 things?

11 A Yes.

12 Q Okay. At any point, did you notify her parents or
13 her mother?

14 A Yes, one particular day, she was very upset, it was
15 hard for me to get her to calm down, so I offered to call
16 her mother for her to see if mom could come out and talk
17 to her so I can explain to mom why Child was upset.

18 Q Okay. Did -- who came when you made that call?

19 A Her mother and her Uncle Robert came.

20 Q So he came as well?

21 A Yes.

22 Q When they arrived, what happened?

23 A Before we really got into talking about why Child
24 was so upset, Child asked for her uncle to step out of
25 the room because it was girl stuff that we needed to talk

1 about.

2 Q Did he leave when she asked?

3 A No, the mother asked him, also, and then he left.

4 Q Did the mother ask after Child did?

5 A Yes.

6 Q What did he do when Child asked him to leave?

7 A He just seem reluctant about leaving, but when the
8 mother asked, he left.

9 Q Okay. When he left the room, did y'all discuss the
10 issue with her pregnancy?

11 A Yes.

12 Q At the time -- how long had you known that she was
13 pregnant when this took place?

14 A I did not that she was pregnant and at that point, I
15 still didn't know if she was pregnant. What was asked --
16 I asked the mother if she would take her to the doctor and
17 maybe that would ease some of Child concerns, you know,
18 if you take her and get her checked out and see what's
19 going on. And I think it was probably a week or two later
20 Child confirmed to me that she was pregnant.

21 Q At any point in time in your conversations with
22 Child was there any discussion of her being sexually
23 abused?

24 A No.

25 Q Okay. So it was strictly about the pregnancy

1 situation?

2 A That's correct.

3 Q Did you subsequently learn about her disclosure of
4 abuse?

5 A Yes, I did.

6 Q Okay. And what steps did you take when you learned
7 that?

8 A I immediately told the person that reported it to me
9 that D.S.S. needed to be called.

10 Q And you do that because you're a mandatory reporter?

11 A Yes.

12 Q Any time anybody has been abused, you must report
13 that; is that right?

14 A That's correct.

15 Q So that's how law enforcement became involved in the
16 situation?

17 A Yes.

18 Q All right. Thank you, ma'am.

19 MR. RICHARDSON: Please answer any questions
20 Mr. Meetze may have for you.

21 THE COURT: Mr. Meetze, cross-examination.

22 MR. MEETZE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MEETZE:

25 Q Hi, how are you?

1 A Hi.

2 Q Okay. You're a guidance counselor still at Williams?

3 A Yes.

4 Q Okay. And you indicated this conversation you had
5 with Ashley happened in the early part of October?

6 A Yes.

7 Q And you don't remember the exact date?

8 A One of the conversations when she was crying and
9 upset about?

10 Q Right, the one where you say that her mother and
11 Robert Johnson came out?

12 A I think that was

13 Q Okay. Would it be possible that it could have been
14 on the 10th of October?

15 A No.

16 Q So it would have been the 22nd?

17 A Yes.

18 Q But before the 22nd, you had also spoken with her?

19 A Yes.

20 Q Okay. And what was nature of that conversation?

21 A Before the 22nd, it was she was upset because her
22 teacher said that she looked pregnant.

23 Q And she never -- at that point, she didn't know
24 whether she was pregnant?

25 A At that time, she never admitted to me that she felt

1 that she was pregnant.

2 Q Did she indicate that she did not feel that she was
3 pregnant?

4 A Yes, she just said she had a big stomach, you know.

5 Q Eventually, on the 22nd when you spoke with her, do
6 you know at that time whether or not she had discovered
7 whether she was pregnant or not?

8 A No, I did not know.

9 Q Okay. You did not know. At no time during your
10 conversation did Child make any claims of any kind of
11 abuse to you?

12 A No.

13 Q And in the conversation with her mother present, her
14 mother never made any indication of that either?

15 A No.

16 Q Of that being a concern in any way?

17 A No.

18 Q And, certainly, you had spoken to Child other times
19 besides in October?

20 A Correct.

21 Q And she had never made any such allegations during
22 any conversation you had had with her?

23 A No, she hasn't.

24 Q And you indicated that when you called and had her
25 mother come out there that her uncle Robert arrived with

1 her mother?

2 A That's correct.

3 Q And that Child ask that Uncle Robert leave the room?

4 A Yes, right.

5 Q And the reason she gave for wanting him to leave was
6 because y'all had to talk about girl stuff?

7 A Yes.

8 Q And y'all did have to talk about girl stuff?

9 A Yes.

10 Q Okay. And she just indicated that with him being
11 there for that kind of a conversation made her
12 uncomfortable?

13 A Yes, that's what she said.

14 Q And the conversation was with regards to whether or
15 not she was pregnant?

16 A Yes.

17 Q Okay.

18 MR. MEETZE: I don't have any further questions,
19 Your Honor.

20 THE COURT: Any redirect?

21 MR. RICHARDSON: Nothing, Your Honor.

22 THE COURT: You may step down. Any objection to
23 this witness being excuse from the State?

24 MR. RICHARDSON: No.

25 THE COURT: Any from the defense?

1 MR. MEETZE: No.

2 THE COURT: You free to leave. Thank you so
3 much for being here.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 MR. MEETZE: Your Honor, before we call the next
7 witness, something came to my attention that I would like
8 to address.

9 THE COURT: Very good.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 we are going to have to take up a matter of law outside of
12 your presence. And I didn't really mention this in my
13 preliminary charge, but in every trial that's tried, you
14 will hear lawyers from time to time say I have an
15 objection or I have to take up a matter of law with the
16 Court. I want to tell you what that is because y'all are
17 here and y'all are participating maybe for the first time
18 in a trial.

19 I'll tell you the reason why we do that is
20 because you have a job to be the sole and exclusive judges
21 of the facts. It's my job to determine what evidence you
22 get to hear and the law that prevails over this situation.
23 And the lawyers, quite often, make an objection with
24 regard to some evidentiary matters. And in my ruling,
25 sometimes it requires that I comment on the facts. But

1 the law doesn't allow me to have an opinion about the
2 facts. It simply does not. So for that reason, these
3 conversations have to take place outside of your presence.
4 And at the conclusion of the trial, if you remember a
5 particular point that you were excused for, if I can
6 remember what we talked about, I'll tell you about it at
7 that time. But it would be inappropriate for you to hear
8 those discussions at this time because you're the sole and
9 exclusive judges of the facts.

10 With that explanation, I'm going to ask if you
11 could retire to the jury room momentarily. Once again, do
12 not discuss the case.

13 (WHEREUPON, the jury retires to the jury room.)

14 THE COURT: Mr. Meetze, you're recognized.

15 MR. MEETZE: Thank you, Your Honor. Your Honor,
16 while Ms. Livingston was testifying, Mr. Bell from our
17 office came and told me -- and I haven't seen any of the
18 coverage from the newspaper or whatever, but indicated
19 that he had been told that there was an article in the
20 paper today in regards to this case and that the article
21 indicated that there were 10 counts against Mr. Johnson
22 and that there were multiple victims.

23 Certainly, the Court admonished the jury not to
24 look at any news account or anything like that and I --
25 you know, and I hope that they would follow that. My

1 opinion is the jurors don't always follow those
2 admonitions to the letter. Certainly, if there is such an
3 article and any of the jurors looked at that and I think
4 that could be overly prejudicial to Mr. Johnson, I don't
5 know whether we should inquire as to anyone had looked at
6 the newspaper or read the newspaper in regard to this
7 case. And if anyone had, whether or not they had shared
8 that information with any of the other jurors. That would
9 just be a concern.

10 But again, I don't know how exactly to address
11 it. You know, you don't want to call something to their
12 attention that they may not be aware of to begin with,
13 but --

14 THE COURT: I tell you what I will do is I will
15 make an inquiry of the jury. I'll bring them out and do
16 that very thing. Then when we're concluded, if we don't
17 need any other discussion, we'll call the next witness.

18 If we can have the jury back out from the jury
19 room.

20 MR. MEETZE: Again, I don't know what the
21 article says, I haven't read it. It's sort of secondhand.

22 THE COURT: All right. It's really
23 inconsequential if nobody's read it. If somebody's read
24 it, we certainly will need to make the article part of the
25 record.

1 Before the jury comes out, is there anybody here
2 from the press here?

3 Yes, ma'am. How are you doing and your name?

4 TRACY BRIDGES: Tracy Bridges.

5 THE COURT: All right, Ms. Bridges, certainly,
6 you're welcome to be here. Obviously, this is a public
7 forum and you're welcome to be here participating and
8 report as you see fit, but this involves a trial
9 concerning criminal sexual conduct in the second degree
10 with a minor. And, certainly, the identification of the
11 victim needs to be eliminated from any articles. You
12 understand that prohibition, don't you?

13 TRACY BRIDGES: Yes, sir, and it was this
14 morning. In fact, we don't even say the relation between
15 the Defendant.

16 THE COURT: Very good. Thank you.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, it is -- as you recall yesterday, I indicated
20 there would probably be some news coverage with regard to
21 this particular case. I've been informed and believe
22 there was indeed an article that was in the Florence
23 morning news. And, of course, y'all recall my
24 instructions where I ordered that you not read those
25 things, that you divert your attention from that. My

1 question to you is did everyone indeed do that, did you
2 follow my order in that regard? If you did not, raise
3 your hand. There's an indication that no one has read the
4 newspaper article.

5 And there's a number of reasons for that.
6 obviously, you're going to get to hear all of the evidence
7 in this case. And I don't believe I've ever read an
8 article that is written about a case that there isn't some
9 errors. Sometimes they get it wrong. Quite often, they
10 get the details and the nuances of it wrong. Y'all are
11 here and y'all understand that the evidence in this case
12 is going to be presented from this witness stand. Once
13 again, do not read the newspaper or watch any news
14 coverage with regard to that. Thank you for abiding by my
15 order.

16 Mr. Richardson, you're recognized.

17 MR. RICHARDSON: Thank you, Your Honor, the next
18 witness will be Child She is coming from
19 upstairs.

20 THE COURT: While we're waiting on this witness,
21 I know when y'all showed up Monday morning, y'all didn't
22 want to participate in this process. I know y'all had
23 things you'd rather be doing. Y'all would rather be at
24 work, you'd rather be tending to some personal matters,
25 working in the garden, working in the yard, doing anything

1 but this. But if you think about it, this is an important
2 responsibility that you have to the State of South
3 Carolina and to the Defendant. We live in a great society
4 and a democracy. But if you think about it, most of the
5 democratic process that we participate in is an indirect
6 democracy. We appoint people to represent us on City
7 Council, County Council, House of Representatives, the
8 State Senate, the Governor's Office and the same with
9 regard to the Federal level, so it's an indirect
10 democracy. But your sitting here on this jury, you're
11 participating in direct democracy. You are the government
12 in this particular instance and sometimes we don't think
13 about it in that way. But it is a very, very important
14 civic duty that you're doing and for that we're
15 appreciative. Thank you for being here and your attention
16 and the State will be ready to proceed momentarily.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: Yes, ma'am, if you could come
19 forward. I'm going to ask if you could stand right here
20 and face me and I want you to put your left hand on the
21 Bible and raise your right hand as the Clerk administers
22 the oath.

23 THE CLERK: Do you swear the testimony you give
24 in this case to be the truth, the whole truth, and nothing
25 but the truth so help you God?

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Yes, ma'am. Please come around and
3 be seated and state your full name for the record.

4 THE COURT: Pull up real close to that
5 microphone.

6 THE WITNESS: My name is Child
7 Child

8 THE COURT: Okay. We're going to ask that you
9 speak up loudly and clearly so that we can hear everything
10 that you got to say. Is this your first time testifying
11 in Court?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. You a little bit
14 nervous?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. You just sit there and
17 relax. The State is going to ask some questions. We're
18 going to ask you to speak up real loudly.

19 THE WITNESS: Okay.

20 THE COURT: Thank you so much. Your full name
21 again?

22 THE WITNESS: Child Child

23 THE COURT: Thank you, Miss Richardson.

24 Mr. Richardson, you recognize.

25 MR. RICHARDSON: Thank you, Your Honor.

1 WHEREUPON,

2 Child

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RICHARDSON:

6 Q Okay. Good morning, Child how are you doing?

7 A Fine.

8 Q Good. Tell us how old you are right now?

9 A I'm 16.

10 Q What's your birthday?

11 A

12 Q So you'll be 17 here pretty soon?

13 A Yes, sir.

14 Q All right. What grade are you going into?

15 A Eleventh.

16 Q So you'll be at what school?

17 A Wilson High.

18 Q All right. You used to go to Williams, didn't you?

19 A Yes, sir.

20 Q All right. Tell me who you live with?

21 A My momma, Priscilla Charles.

22 Q Okay. Have you got any brothers and sisters that
23 live with you?

24 A Yes, sir, I have Katron and Shevetise

25

1 Q Anybody else that lives there?

2 A My sister, Ladasha, and my granddaddy, Freddie.

3 Q All right. And you have a little boy, too, don't
4 you?

5 A Yes, sir.

6 Q How old is he?

7 A He's two.

8 Q What his name?

9 A Keyante

10 Q Child I want to ask you about some things that
11 happened when you were younger, okay?

12 A Yes, sir.

13 Q All right. When you were a little girl, what family
14 members do you remember being around?

15 A My Uncle Robert, my granddaddy, and everybody. I
16 used to stay with my granddad, just around them.

17 Q Okay. All right. When you went to Williams Middle
18 School, there was some point that you were pregnant; is
19 that right?

20 A Yes, sir.

21 Q Okay. And some folks at the school talked to you
22 about that?

23 A Yes, sir.

24 Q Okay. Is that when you decided to tell them what had
25 happened to you?

1 A Yes, sir.

2 Q All right. What did you tell them had been happening
3 to you?

4 A I told Ms. Livingston that my uncle was feeling and
5 touching on me.

6 Q Okay. And why did you feel the need to tell them
7 when they were talking to you about your pregnancy?

8 A Because I felt comfortable, like she was all right
9 with me, so I felt like I could talk to her because I had
10 this on my chest for so long and I was sick of it.

11 Q Okay. At the time, when you were pregnant, did you
12 know for sure who the father was?

13 A No, not really, but in my heart, I knew, but then,
14 again, my head was messing with me and I really didn't. I
15 was pregnant and it wasn't my uncle. But it turn out it
16 wasn't, but it was shocking.

17 Q Okay. Who had you had sex with before you got
18 pregnant?

19 A Before -- that's such a good question. I had sex
20 with K.R. K.R. Then my uncle had -- then I had
21 sex with my uncle. I had sex with my uncle first, though.

22 Q And did K.R. turn out to be the baby's father?

23 A Yes, sir.

24 Q Okay. We'll get back to K.R. in a minute, your
25 situation with him. When -- how old were you, if you

1 recall, when Robert -- Uncle Robert first started touching
2 and feeling on you?

3 A I was like six or seven.

4 Q Okay. And do you remember where this happened, what
5 house?

6 A It was in the trailer park.

7 Q Okay. In a trailer park?

8 A Uh-huh.

9 Q Was that in Florence?

10 A Yes, sir.

11 Q Okay. When you were six or seven, why would you be
12 over at Uncle Robert's house?

13 A Because he used to tell mom that he was going to keep
14 us or when my mom had to go somewhere and he was like, Oh,
15 I'll keep the kids for you. At first, he seemed like a
16 nice uncle. He always volunteered to keep us. And he
17 used to always take us places like the games and take us
18 out to eat, so as I'm a little kid, I'm like, Cool, Uncle
19 Robert take us there, Uncle Robert take us there, so we
20 like to go over there because he always take us places and
21 stuff.

22 Q How did he go about feeling on you and touching you?

23 A Sometime he'd play stupid little trick games or like
24 if I'm laying down -- when we were staying in the trailer
25 park, he would tell me and my sister to take off our pants

1 so we could sleep and stuff like that or he would put his
2 hand on my thigh or something like that.

3 Q Okay. When you were six or seven, where would he
4 touch you?

5 A He might touch my breast or he might touch my thigh
6 or he might touch my below area or he'll rub on my neck or
7 my back. It ain't one spot he didn't touch.

8 Q By your below area, do you mean your private parts?

9 A Yes, sir?

10 Q How long did he do the touching?

11 A Till I turned to, at least, about 12 or -- 12 or 11,
12 about 11 or 12 because when I turned 11 that's when the
13 physical part started.

14 Q Okay. When you turned 11, where was Uncle Robert
15 living then?

16 A He was living on Pine Street?

17 Q Was that in Florence, too?

18 A Uh-huh.

19 Q You said that's when the physical stuff started?

20 A Yes, sir.

21 Q What did he start doing to you when you were 11?

22 A He'll start sucking on me or he start doing oral sex
23 on me.

24 Q You said he started to suck on you, what do you mean
25 by that?

1 A Like on my neck and like lick his tongue on my arm or
2 something like that. Then he started doing oral sex and
3 then when I turned at least about --

4 Q Child you said he started to do oral sex on you?

5 A Uh-huh.

6 Q I know it seems silly to ask, but what do you mean by
7 that?

8 A Like, eating me.

9 Q Okay. So he would do it to you?

10 A Yes, sir.

11 Q Where would his head be?

12 A Down there.

13 Q Between your legs?

14 A Yes, sir.

15 Q Okay. How often would he do this?

16 A Like any chance he get. Like if -- like he'll
17 take -- give my brother those tell him to go get him
18 something. If we're alone or my sister leave out, then
19 he'll do it. Any -- possibly any chance he will get.

20 Q Was there any occasion where he made you do it to
21 him?

22 A Yes, sir.

23 Q Do you remember how many times or about how many
24 times?

25 A Not much, just about, I guess -- I'd say about four

1 or five times.

2 Q How would he do that?

3 A Because he'll take out his -- he'll start kissing on
4 my neck and stuff like that and then he'll just take off
5 his pants and then do this.

6 Q What would he do? I can see you, but can you
7 describe what he would do?

8 A He'll pull my head down.

9 Q Pull your head down where?

10 A Into his penis.

11 Q Would he say anything to you during all this?

12 A Sometimes, but most of the times, no. Sometimes, he
13 I like, I love you or you're my niece or something like,
14 or my best niece or something like that.

15 Q Okay. So would you say that he did oral sex on you
16 more than you did it on him?

17 A Yes, sir.

18 Q Was it a lot more?

19 A Yes, sir.

20 Q Would he say anything to you while he was doing it to
21 you?

22 A No, sir, it would just grab my hips and pull it
23 closer.

24 Q Where would y'all be in the house?

25 A In his room.

1 Q Was it always in the bed?

2 A Yes, sir.

3 Q Okay. And the two of y'all -- were y'all always
4 alone?

5 A Yes, sir.

6 Q So he would send the others away?

7 A Uh-huh.

8 Q And during this time on Pine Street, he would be
9 babysitting y'all?

10 A Yes, sir.

11 Q Okay. After the oral sex at age 11 and 12, what
12 happened after that?

13 A Then he went to Church Street. That's right by Pine
14 Street, just like around the corner.

15 Q So he moved to Church Street?

16 A Yeah.

17 Q Is that across from Mt. Zion Apartments?

18 A Yes, sir, that's when the houses on Pine Street got
19 tore down.

20 Q Okay.

21 A And my mom was moving in Royal Garden -- I mean,
22 Magnolia Trace on Royal Street, but we just had to wait
23 until our lights get back on in our apartment because we
24 had a problem and we just had to wait until the lights get
25 transferred back on. So we had to stay with Uncle Robert

1 until that happened. So my mom was walking and she broke
2 her ankle in three places in a pot hole outside of his
3 house on Church Street. So she went to the hospital and,
4 as usual, Robert asked that he was going to keep me and my
5 sister and my two brothers and Kiara and Tata and Korias,
6 all them. So they kept -- he kept us and mom went to the
7 hospital and that's the same night I met K.R.

8 Q When he moved to the house on Church Street, how old
9 were you?

10 A I was 12.

11 Q You were 12 years old?

12 A Uh-huh.

13 Q All right. When he moved to the house on Church
14 Street, did he continue just doing oral sex on you?

15 A No, sir.

16 Q What did he do when he got to Church Street?

17 A He start to stick his penis in me and that when that
18 stuff started happening. And he'd take his little taser.
19 Because he always keep a taser, he already had a taser and
20 he would take it and just keep messing with me with it.
21 Sometimes, he'd just take it and just mash the button all
22 in my face.

23 Q Did you feel threatened by that?

24 A Yeah, I felt -- it was like he didn't never say he
25 was going to do it to me, but you could tell just by the

1 way he was like proceeding, the way he looked at me and
2 the way he was doing with the taser like he really wanted
3 to -- like he was trying to tell me if you don't do so and
4 so and so, I'll do it. You could just tell by the look in
5 his face or his reaction.

6 Q So when he brought the taser out, did you know what
7 he wanted to do?

8 A Yes, sir.

9 Q What was that?

10 A He wanted to have sex with me.

11 Q Okay. How would he go about starting the process of
12 having sex with you? Did he get you alone again?

13 A Yes, sir. Sometimes -- he always meant to get me
14 alone.

15 Q And when he got you alone, say for the first time --
16 do you remember the first time it happened?

17 A No, sir.

18 Q Okay. About how many times would you say overall
19 that it happened?

20 A I don't know.

21 Q More than five?

22 A Yes, sir, a lot. I put an end to it when I met my
23 baby daddy.

24 Q Okay. When he would get you in the room by yourself,
25 you said when you were younger that he would do things to

1 kind of trick you?

2 A Yeah.

3 Q Did he keep doing that?

4 A No, eventually, he stopped it because he was like
5 well, she's old enough, so I don't got into it so I guess
6 I don't have to do things like lay something on the bed to
7 take my pants off or do something like that just to get
8 her to get undressed or nothing like that. So he figured
9 was I already got her, I already passed that stage, so he
10 didn't really do no tricks no more because he figure, oh,
11 I already got her.

12 Q When he first started, how would he try to trick you
13 into doing that?

14 A Like he knew -- like one day he knew that spot was
15 wet. He did, he knew it was water on the bed. I said oh,
16 my pants is wet, he was like take them off. So I had to
17 take them off. He said take them off, just let them hang
18 on the wall, let them hang on the door right there. So I
19 took them off and I pulled them up. He was like, shut the
20 door, I don't want nobody to see my niece's goodies, like
21 that, because I had my panties on. And he was like, shut
22 the door and lock it because I don't want nobody to walk
23 in and see you with no pants on. So I shut the door and I
24 lock it. Then next thing you know, I was sitting on the
25 bed and then he just come up in there and started kissing

1 me and stuff like that. And then he went down and took my
2 panties off and then he had oral sex with me. Then he got
3 up and started having sex with me.

4 Q So you said he started having oral sex with you and
5 then he had regular sex with you?

6 A Yes, sir.

7 Q Okay. Were there any other ways he would have sex
8 with you?

9 A I don't remember.

10 Q Did he ever use his fingers?

11 A Yes, sir.

12 MR. MEETZE: Objection, Your Honor, leading.

13 THE COURT: I will sustain the objection.

14 MR. RICHARDSON: Thank you, Your Honor.

15 BY MR. RICHARDSON:

16 Q Child other than penetration with his penis, how
17 else did he penetrate you?

18 A He'll take one finger, then he'll look at me, lift up
19 and see that's not enough and he'll take two fingers.

20 He'll take three fingers and then he will go in and out.

21 First, it started just like that. Sometime he'll finger

22 me, then -- when I was like six or seven is the kissing

23 and then the finger and then it became to the oral sex and

24 then the oral sex became the sex.

25 Q When he would put his fingers in you, did that hurt

1 you?

2 A Yes, sir.

3 Q Okay.

4 A Because the nails, it scraped.

5 Q What kind of injuries did it cause you?

6 A Just irritation, scratching, burning because of the
7 scratching of the nails and it burned. When I put soap
8 when I washed, it will burn. One day, he did it real hard
9 and I started bleeding and he said that's not blood. I
10 wasn't stupid. I knew that was blood. And I didn't know
11 what it was because I'm little. I didn't know what it was
12 until now. I'm like oh, cherry bust.

13 Q When he became -- began having the traditional
14 vaginal sex with you, what kinds of positions would you be
15 in?

16 A I be in all kind of positions. I'd be riding him
17 sometimes or I'd be up or he'd be on top of me. I got all
18 my positions now that I do with my boyfriend from him.

19 Q So that's where you learned everything?

20 A That's how I feel.

21 Q Did you know at the time that that's what you were
22 learning?

23 A Not like -- I wasn't -- I say where I'm at now, I
24 ain't seen it like that when I was little. I ain't seen
25 it as like, oh, it's wrong, it's bad. I saw it like --

1 like a part of me knew it was wrong, but a part of me
2 well, he do this for me, he do that for me. I felt like
3 -- I ain't wise enough.

4 Q What about anal sex?

5 A What's that?

6 Q With your butt?

7 A Oh, yeah.

8 MR. MEETZE: Objection, Your Honor.

9 THE COURT: I will sustain the objection and ask
10 that you ask her a direct question.

11 MR. RICHARDSON: Yes, Your Honor.

12 BY MR. RICHARDSON:

13 Q Child what did Uncle Robert do to your butt, if
14 anything?

15 A He -- like one day, he turned me around. I didn't
16 know what it was, all I know is what he was doing in
17 front. I didn't know nothing about the back. I ain't no
18 that supposed to go in the back. I thought it only go in
19 one way access. So he turned me around and I was like
20 what. Then he put it in and it was hurting. I can't go
21 to the bathroom. I mean, it just hurt bad.

22 Q How many times did he do that?

23 A Just one.

24 Q You didn't let him do that any more?

25 A No, he ain't did it no more because it hurt.

1 Q How old were you when he did that?

2 A I don't know.

3 Q Was that when he was having vaginal sex with you?

4 A Uh-huh, it was around -- should be around that 12 age
5 because when I turned 13, I was already at Williams and I
6 was already in North Florence when my mom got her lights
7 on, so I turned 13. She got her lights on by that August
8 because I was with my mom for two months. We stayed there
9 for like two months then. Then October came, that when I
10 got taken away from my mom on my birthday.

11 Q When you got to the point where he was having vaginal
12 sex with you, how often would that happen? Was it daily,
13 weekly or do you know?

14 A Like once a day. Like it happen -- like if he do it
15 today and he will skip tomorrow because I might not go
16 over there or he come the next day or sometimes a whole
17 week in a row because we went to the room when my
18 cousin -- I mean, not to put nobody in it, but when Shawna
19 got -- all of us took a trip to the room, me, Shawna and
20 all of us had fun.

21 Q So it would depend on when you were there?

22 A Yeah.

23 Q Okay. When you moved into your house at Magnolia
24 Trace, you didn't live with him anymore on Church Street;
25 is that right?

1 A Yes, sir.

2 Q But you'd still go over to visit?

3 A No, sir.

4 Q He wouldn't babysit you after you moved to Magnolia
5 Trace?

6 A No, sir.

7 Q So most of this happened while you were staying at
8 Church Street?

9 A Yes, sir.

10 Q Okay. What would he say to you about the sex? Did
11 he ever make any comments to you?

12 A Yes. You know you can't tell nobody our little
13 secret because if you do, you know your mama ain't going
14 to believe you anyway and you know you ain't going to have
15 nobody and if you tell somebody, then you're going to get
16 taken away. And you ain't going to be able to see your
17 mama no more or your sisters and none of that. It ain't
18 going to be nothing. You're going to be by yourself.
19 Then he shoot shoot the little taser.

20 Q Did you ever say anything in front of your mother
21 about what he was doing to you?

22 A I wouldn't say nothing like that, but I will say it
23 out loud, Robert a pervert. I get mad and they think just
24 because I'm getting mad I'm saying it. When I get mad, I
25 get to the point like I'm going to tell. Come on, Child

1 come on. Then I just say Robert a pervert. Then she say,
2 I asked you to stop calling him that. But they see it as
3 she's mad, that's why she saying it, just the anger. But
4 I seeing it like I have to get mad to say it because if
5 I'm cool, calm and collected, I'm not going to say it.
6 But if I'm mad at him or something like that for trying to
7 beat me or trying to tell me what to do, he ain't no -- so
8 I say it, Robert a pervert. And my mom look at it like
9 oh, she's mad. Everybody else look at it like she's mad.
10 Then it start to --

11 Q Were you afraid to tell your mom over the whole time
12 it was happening what was going on?

13 A Yeah, I was. I wouldn't say afraid, I was -- I don't
14 know. I was just -- I wasn't afraid. I can't explain it.
15 I was just -- didn't feel comfortable. I was afraid that
16 she wouldn't believe me, but I wouldn't use the word
17 afraid. I was just a little frightened, I guess.

18 Q So you weren't afraid you'd get in trouble?

19 A No, it was not trouble. I wasn't afraid I was going
20 to get taken from mom, none of that blah he was telling
21 me. I was scared that my mom wouldn't believe me.

22 Q And that's what kept you from saying anything?

23 A Yeah.

24 Q Do you remember Uncle Robert saying anything to you
25 in front of your mom about your baby?

1 A Yeah, when we was at church, he was like, oh, I can't
2 guarantee you'll keep him. When we was at church, he was
3 like, oh, I'll keep Keyante You'll keep who, uh-uh. When
4 we at church, he'll grab Keyante will be by my
5 brother and he will pick him up in church and I be looking
6 like -- I try not to say nothing because we in church, but
7 uh-uh.

8 Q When you were pregnant, did he make any comments to
9 you about your baby?

10 A No, sir.

11 Q Okay.

12 A I wasn't around him when I was pregnant.

13 Q When all this was going on, you were living with him
14 on Church Street, were you at Williams then, Williams
15 Middle School?

16 A No, sir, I was -- yes, I was -- no. I was at -- when
17 I was living with him before I transferred to Williams, I
18 was in sixth grade -- what school I was going to.

19 Q North Vista maybe?

20 A No, I was going to Wallace Gregg or Briggs.

21 Q When you got pregnant, why did you think that it may
22 be Uncle Robert's baby or K.R. baby?

23 A It's because I had sex with Uncle Robert -- before
24 K.R. came that day, the day after, that morning time, I
25 had sex with Robert, Robert had sex with me. And then

1 when I met K.R. that evening time --

2 Q Now, K.R. you call K.R.

3 A Yeah.

4 Q That's his nickname?

5 A That's his nickname. And in that evening time, I met

6 K.R. I ain't met him, I been knowing, but I got with

7 K.R. in the evening and we start talking. Then at

8 nighttime, I had sex with him. So it was like morning

9 half with K.R. talk, talk, nighttime, sex, something

10 like that.

11 Q How old was K.R. was he your age?

12 A I'm like a few months older than K.R.

13 Q So you're older than him?

14 A Yes, sir. K.R. was like about to turn 12 when I was

15 about to turn 13.

16 Q So you had -- clear this up for me. You had sex with

17 Uncle Robert and K.R. or K.R. on the same day?

18 A On the same day, different time. Like night was

19 K.R. and day was Uncle Robert.

20 Q Okay. When you had sex with K.R. or K.R. who

21 all was in the room?

22 A It was me, Daysha, Uncle Robert, Quiez, Tata and

23 Kiara.

24 Q All in the same room?

25 A Uh-huh.

- 1 Q What time of night was it? Was it late?
- 2 A It was like 3:00 in the morning, 1:00, 2:00, 3:00.
- 3 Q Who all was where in the room?
- 4 A Tata, Quiez, Kiara and Daysha was on the bed with
- 5 Uncle Robert. Me and K.R. was on the floor.
- 6 Q Did Uncle Robert know you were on the floor?
- 7 A Yeah.
- 8 Q Was the TV on?
- 9 A Yeah.
- 10 Q Okay. Who was watching you and K.R. having sex?
- 11 A Uncle Robert. He say -- I say K.R. cut the TV off
- 12 because I felt like somebody was watching me. I look up
- 13 and he'd close his eyes like that. I know he ain't
- 14 sleeping. I cut the TV off. Why y'all cut the TV off, I
- 15 was watching that. Then he started playing with his
- 16 little phone, his little light thing, like twisting it
- 17 even though -- like trying to flick our way.
- 18 Q So did you feel like he was trying to watch you?
- 19 A Yeah, he did, too.
- 20 Q And you were 13 at the time?
- 21 A Uh-huh.
- 22 Q And K.R. was 12?
- 23 A Yeah -- no, I wasn't 13 yet. I was about to turn 13.
- 24 Q So you were 12?
- 25 A Yeah.

1 Q How close were you from the bed -- I mean, how far
2 away were you from the bed?

3 A This is the bed right here. This is the bed right
4 here, the mat. There was a little teeny space, walk space
5 like right there.

6 Q So you were maybe just a few feet away?

7 A It was like 2 inches away from the bed. But they --
8 I mean, he could just bend down and touch my head, that's
9 how far I was from the bed. Because I just put a mat
10 cause his TV right here, the bed was right here, the
11 little mat was right here because the closet was on the
12 side the bathroom door right here.

13 Q Okay. So when you found out you were pregnant, you
14 were worried about who the father was?

15 A Not really. I was -- it never crossed my mind
16 because in my heart -- it's like in my heart I knew -- I
17 was like yeah, let me go ahead and call K.R. and let him
18 know. So my cousin told him.

19 Q When Uncle Robert would have sex with you, would
20 anything come out of him?

21 A Yeah.

22 Q What?

23 A A nut, I'm going to say it like that.

24 Q How often would something come out of him?

25 A Not all the time.

1 Q So sometimes, it wouldn't?

2 A Yeah.

3 Q What would y'all be doing when it did?

4 A I will be -- sometimes I'd be on top of him or
5 sometimes, he'd have me up. When I say up, I mean like --
6 like a dog, you know, like a dog.

7 Q Did ever come out inside of you or did you see it
8 from the outside?

9 A When a dog, you look and you can see it dripping from
10 out of both. It was like you can see it.

11 Q Okay. So he would do it inside of you, too?

12 A Yes, sir.

13 Q You would see it dripping from the both of you to the
14 floor?

15 A To the bed.

16 Q To the bed. All right. It did turn out that your
17 son came from K.R. or K.R. is that right?

18 A Uh-huh.

19 Q All right. Very good. And was it at the school that
20 you finally told what Uncle Robert was doing to you?

21 A Yes, sir.

22 Q Okay. And was that how your mom found out as well?

23 A Uh-huh. I wanted Ms. Livingston to tell my mom
24 because, I don't know, me and my mom had a good
25 relationship, but I just didn't feel like I could talk to

1 my mom about that kind of -- because that was her brother.
2 So I wanted Ms. Livingston to tell my mom, but Ms.
3 Livingston took the other road and told D.S.S.

4 Q Okay. All right. Hang on one second for me, I'll be
5 right back.

6 (WHEREUPON, a pause in the proceedings.)

7 BY MR. RICHARDSON:

8 Q Child when everything was happening at Church
9 Street, do you recall any incident where Uncle Robert was
10 giving juice boxes?

11 A Juice boxes?

12 Q Or Juicy Juice or anything in front of your mom?

13 A I don't remember.

14 Q It's okay if you don't remember. It's all right.

15 A Talking about the juice? I don't remember.

16 MR. RICHARDSON: Child thank you very much.
17 Mr. Meetze is going to ask you some question. Please
18 answer any questions he's got for you, okay?

19 THE COURT: Mr. Meetze, cross-examination.

20 MR. MEETZE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MEETZE:

23 Q Okay. Hey, Child how are you?

24 A Fine.

25 Q You still pretty nervous?

1 A I'm all right.

2 Q That's good. I sure get nervous. That's pretty
3 natural. You say your birthday is ; is
4 that right?

5 A Yes, sir.

6 Q You were born in ?

7 A Yes, sir.

8 Q Okay. And this stuff, when you spoke with your
9 guidance counselors at school and all that, that happened
10 in October of 2007?

11 A Yes, sir.

12 Q Is that right? Okay. And so in October of 2007, on
13 the 22nd of October 2007, you would have been 14 that
14 year?

15 A Huh-uh, I was 13. You said 2007?

16 Q Yes, ma'am.

17 A I was 13.

18 Q But that October of that year, did you turn 14?

19 A Yeah, I turn 2008. When 2008 -- yeah,
20 I turned 14 because I had Keyante at 14.

21 Q You were born ?

22 A Yeah.

23 Q Okay. Now, after you spoke with your guidance
24 counselor and the folks at the school and they called --
25 you indicated they called D.S.S.?

1 A Uh-huh.

2 Q That was a yes?

3 A Yeah.

4 Q Okay. And you ended up having to speak to some other
5 people; is that right?

6 A Yes, sir.

7 Q And one of the people that you spoke with was a lady
8 named Ms. Elliott, Ms. Debbie Elliott, do you remember
9 talking to her at the Care House?

10 A Yes, sir.

11 Q Okay. And do you remember what day that was?

12 A No, sir.

13 Q Okay. But it was that October?

14 A Yeah, it was my birthday.

15 Q It was your birthday. So you do you remember,
16

17 A Yes, sir.

18 Q And you told her some things that day; is that
19 correct?

20 A Uh-huh.

21 Q All right. Do you remember telling her that you --
22 and this was in October of 2007, do you remember telling
23 her that you had not told anything to anybody about your
24 uncle?

25 A No, I told her I told Ms. Livingston. She asked me

1 did I tell any of my family or anybody and I told her I
2 told Ms. Livingston.

3 Q Right. And I didn't mean to trick you up there, I
4 understand that you told the people at school, but outside
5 the people at school, do you remember telling Ms. Elliott
6 that you didn't tell anybody else?

7 A Yes.

8 Q You told them that you hadn't told any of your family
9 members or anything like that?

10 A Yes.

11 Q And do you remember her asking when the last incident
12 of sex had occurred between you and Robert?

13 A Yes.

14 Q And do you remember the first response that you gave
15 to her was that you didn't know?

16 A Yes.

17 Q Okay. And she didn't ask -- you asked her what you
18 meant -- what she meant by that, do you recall that?

19 A Yeah.

20 Q And you told her that it happened this summer in his
21 bedroom; is that right?

22 A Yes, sir.

23 Q You didn't give her any other details about it?

24 A No.

25 Q Okay. Other than summer, you didn't give a time; is

1 that correct?

2 A No.

3 Q No indication of anybody else being at the house or
4 anything like that?

5 A Repeat that again.

6 Q Well, you didn't give her any details about the
7 alleged incident when you spoke to Ms. Elliott on that
8 occasion, on the 22nd, correct?

9 A No, I guess.

10 Q You just said it had been in the summertime; is that
11 right?

12 A Yeah.

13 Q But you didn't tell her whether there was anybody
14 else in the house or anybody in the room or anything like
15 that?

16 A No, I didn't.

17 Q Okay. And you also told Ms. Elliott that your
18 sister, Ladasha, had seen Robert touch you?

19 A Yeah.

20 Q You remember telling her that?

21 A Yeah.

22 Q You also told her that you had an Uncle Tiger?

23 A Yeah.

24 Q That had tried to touch you?

25 A Yeah.

1 Q You recall that?

2 A Uh-huh.

3 Q You also told Ms. Elliott that a boyfriend of your
4 mother felt your chest?

5 A Yeah.

6 Q Do you remember that?

7 A Yeah.

8 Q And this, again, was the interview on your birthday
9 on correct?

10 A Uh-huh.

11 Q And you told Ms. Elliott on that day,
12 that you knew Robert was not the father of your
13 baby?

14 A Yeah.

15 Q Okay. You said that the last person you had sex with
16 was K.R.

17 A Yeah.

18 Q And that's who you referred to as K.R.

19 A Uh-huh.

20 Q But when we say K.R. or K.R. we're
21 talking about the same person; correct?

22 A Yeah.

23 Q And you told her that as of of 2007, the
24 last person you had had sex with was K.R. or K.R.
25 correct?

1 A Yeah.

2 Q And you told her that he had spent the night last
3 month; correct?

4 A You talking about back then?

5 Q Back then, that's right.

6 A Yeah.

7 Q So the last month that we're talking -- if this
8 conversation happened in October of 2007, that it would
9 have been sometime in September of 2007 when he stayed
10 there?

11 A Yeah.

12 Q And you told her that was the only occasion that you
13 and K.R. at that point in time had had sex?

14 A Uh-huh.

15 Q That's a yes?

16 A Yes, sir.

17 Q Okay. And you said -- again, also, as far as time,
18 you said that one time you had sex with K.R.
19 was close to the time school started?

20 A Uh-huh.

21 Q Correct.

22 A Can I ask you a question? You're referring --

23 THE COURT: Yes, ma'am. One of the things that
24 you need to understand is the way this procedure works is
25 he asked the questions and you provide the answers.

1 Unfortunately, it doesn't allow for there to be a
2 conversation between you and the lawyer. That's the
3 way -- the rules of procedure require that he ask
4 questions and you provide the answers. If you don't
5 understand a question, you can ask him to clarify.

6 THE WITNESS: He messed up on something.

7 THE COURT: Very good. Well, I will ask that he
8 rephrase the question and you can answer and explain your
9 answer.

10 BY MR. MEETZE:

11 Q Which question?

12 A About October, you said that K.R. had spent the
13 night that October, that would have in that September, but
14 you including October from my birthday. It wasn't around
15 October sometime, around my birthday, because school
16 starts back in August. So it wasn't around that October
17 time, it was around that school time, like June, July.
18 You referred to my birthday because we was in a
19 conversation about my birthday and you kind of mixed it in
20 with K.R. It wasn't September, it was around June, July
21 time.

22 Q Let's go over that and be clear about that.
23 Basically, the questions I'm asking you right now are
24 things that you had said to -- or I'm asking you if these
25 are things that you had said to Ms. Elliott.

1 A Uh-huh.

2 Q And with regards to the incident with K.R.
3 Robinson?

4 A Uh-huh.

5 Q And do you recall telling -- now, again, the
6 interview took place with Ms. Elliott the
7 correct?

8 A Uh-huh.

9 Q On your birthday?

10 A Yeah.

11 Q And nobody -- you never told Ms. Elliott that
12 anything happened between you and K.R. in October;
13 correct?

14 A No.

15 Q You did tell Ms. Elliott that K.R. had spent the
16 night with you?

17 A Yes.

18 Q At Robert's house?

19 A Uh-huh.

20 Q Last month, ?

21 A See, that's what I'm saying, it wasn't around that
22 October. It was around like summer, June or July.

23 Q Well, I'm asking you did you tell Ms. Elliott that it
24 was last month in October of 2007?

25 A No, sir.

1 Q Okay, so you say you did not say that? And you told
2 her that you had sex with Robert one time this summer?

3 A No.

4 Q So you did not say that?

5 A One time this summer?

6 Q Right.

7 A Can you -- like you saying this summer. Can you --

8 Q Well, I'm not talking about -- everything that I'm
9 asking you with regard to this little conversations that
10 we're having has to do with as things were in October of
11 2007 when you had this conversation with Ms. Elliott?

12 A It was one time when K.R. came like that one time
13 that day I met K.R. but it wasn't one time for the
14 whole summer.

15 Q Let me rephrase. You told her K.R. lived in Mt.
16 Zion?

17 A Yeah.

18 Q And you told her that you had sex with K.R. one
19 time this summer?

20 A Yeah.

21 Q Meaning in the summer of 2007?

22 A Yeah.

23 Q Okay. And you also told her that you had sex with
24 K.R. that was close to the time school started?

25 A Yeah.

1 Q So that's in the summer, sometime close to the time
2 school started?

3 A Yeah.

4 Q And you agree that you did say that?

5 A Yeah.

6 Q Okay. And at that point in time, that's the only
7 point in time -- you had indicated earlier that's when you
8 first met K.R.

9 A Yeah.

10 Q And that one time that you and K.R. had had sex
11 with one another is the time that you testified to earlier
12 at your uncle's house; correct?

13 A Repeat that, please.

14 Q The time that you told Ms. Elliott about where you
15 and K.R. had sex with one another, you were referring to
16 the occasion at your uncle's house?

17 A Yes, sir.

18 Q And at that point in time during this conversation,
19 that's the only time you two had slept with one another?

20 A Yes, sir.

21 Q Okay. You also told her that after -- you testified
22 a little bit ago that that one day that you and K.R.
23 slept with one another that night, earlier that day that
24 your uncle had had sex with you, that Robert had had sex
25 with you; is that correct?

1 A Yes, sir.

2 Q Now, you also told Ms. Elliott that after K.R.
3 had sex with you that night, Robert did not have sex with
4 you, correct?

5 A That's right, yes, sir.

6 Q Well, I'm just asking what you told Ms. Elliott. You
7 told Ms. Elliott -- said that you denied -- during your
8 conversation with Ms. Elliott, you told Ms. Elliott that
9 Robert did not have sex with you after K.R. correct?

10 A Yes, sir.

11 Q Okay. All right. And after that conversation that
12 you had with Ms. Elliott in October of 2007, you spoke
13 with her again in September of 2009; is that correct?

14 A Yes, sir.

15 Q And she indicated to you she wanted to, basically, go
16 back over the conversation that y'all had had in 2007;
17 correct?

18 A Yes, sir.

19 Q And she wanted you to tell her those things again;
20 correct?

21 A Yes, sir.

22 Q And the first thing you told her was you don't
23 remember; is that correct?

24 A Yes, sir.

25 Q And you also told her that K.R. or K.R. was the

1 first person you ever told that Robert was doing
2 inappropriate things to you; is that correct?

3 A Uh-huh.

4 Q So you did tell her that?

5 A Yeah.

6 Q But you didn't tell her that in 2007?

7 A No.

8 Q And you testified today that the only person you
9 told -- in fact, in 2007, you said you hadn't told
10 anybody, correct?

11 A Yeah.

12 Q And today, you said you hadn't told anybody except
13 for Ms. Livingston; is that correct?

14 A Yeah.

15 Q But then in 2009, you told Ms. Elliott that you had
16 said something about it to K.R.

17 A I ain't tell K.R. like what Robert was doing to me.
18 I just told K.R. that I didn't feel comfortable around
19 Robert and sometimes put his hands on me, that's what I
20 told Mibay. I wouldn't see it as telling K.R. that I did
21 something or Robert was doing something with me. I told
22 Ms. Livingston what Robert was actually doing to me. I
23 didn't tell K.R. that, I told it to Ms. Livingston. I
24 sit down and talk to Ms. Livingston personally and told
25 Ms. Livingston how I felt and what was happening to me. I

1 just K.R. in a couple of words, so he did come back. I
2 wouldn't say I talked to him.

3 Q So when you talked to Ms. Elliott in 2009, are you
4 saying that you did or did not tell her that the first
5 person you told what was happening was K.R.

6 A I did.

7 Q Okay. Did you also tell her that the morning that
8 K.R. left the house after the occasion where you and
9 K.R. slept together for the first time, did you tell
10 her that the morning after he left, Robert had sex with
11 you?

12 A No.

13 Q You didn't tell her that?

14 A No, cause he didn't, he tried.

15 Q The first conversation you had with Ms. Elliott in
16 2007, you never told her anything about you performing
17 oral sex on Robert; correct?

18 A I did.

19 Q You did tell her that?

20 A Yes, sir.

21 Q And in the 2009 interview, you only told her that
22 after being specifically asked that question; is that
23 correct?

24 A Yeah, I guess.

25 Q When you spoke to the folks at school, you told them

1 that -- well, when you found out you were pregnant, you
2 told them that your Uncle Robert was the father; correct?

3 A Yeah.

4 Q You didn't mention to them anything about K.R.

5 A Yeah -- no, not really.

6 Q And that was in October when you were talking to the
7 folks at school?

8 A Uh-huh.

9 Q And you also talked to Ms. Elliott in on your
10 birthday, of 2007, and you told her that you
11 knew -- and you told her that you knew Robert was not the
12 father; correct?

13 A Yeah.

14 Q Okay. And your baby was born February the 5th, 2008?

15 A Yeah.

16 Q Is that correct?

17 A Yeah.

18 Q Okay. And, of course, after that, blood test were
19 done to determine the father?

20 A Yeah.

21 Q It was determined that your Uncle Robert is not the
22 father of your baby?

23 A Yes.

24 Q But back in October, you already knew that, correct?

25 A Something like that.

1 Q And you told people that you knew that?

2 A Yeah.

3 Q And your baby was born, again, February the 5th,
4 2008?

5 A Yeah.

6 Q So if you go back nine months from February the 5th
7 of 2008, that would be May the 5th, 2007; correct?

8 A I guess, yeah.

9 Q Well, May the 5th to June the 5th will be one month,
10 right?

11 A Yeah.

12 Q July, two, correct?

13 A Uh-huh.

14 Q August, three, correct? September, four; October,
15 five; November, six; December 5th, seven; January 5th,
16 eight; February 5th, nine?

17 A Yeah.

18 Q Is that correct?

19 A Yeah.

20 Q All right. But the only time you had sex with
21 K.R. is sometime around the beginning of school around
22 2007?

23 A Yeah, I guess.

24 MR. MEETZE: I don't have any further questions,
25 Your Honor.

1 THE COURT: Any redirect, Mr. Richardson?

2 MR. RICHARDSON: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q Okay. Child you remember going to the Care House
6 and talking with Ms. Debbie?

7 A Yes, sir.

8 Q When you went and talked with them at the Care House,
9 was that the first time you had ever seen Ms. Debbie or
10 anybody at the Care House?

11 A Yes, sir.

12 Q First time you had met them?

13 A Yes, sir.

14 Q And you had to tell them what was going on; is that
15 right?

16 A Yes, sir.

17 Q And they also probably did some physical exams on
18 you; is that right?

19 A Yes, sir.

20 Q All right. And you talked to her one time almost
21 three years ago; is that right, back in 2007?

22 A That's right.

23 Q And then another time last year, back in 2009; is
24 that right?

25 A Yes, sir.

1 Q Okay. And did you tell them best you could remember
2 the truth about what was going on?

3 A Yes, sir.

4 Q Is that what you're doing here today?

5 A Yes, sir.

6 Q Very good. One last question, Child Do you see
7 Uncle Robert in the courtroom here today?

8 A Uh-huh.

9 Q Where is he?

10 A Right there.

11 Q Okay. Can point to which one he is? Is he the one
12 with the glasses?

13 A Yes, sir.

14 Q All right. He's who you know as Uncle Robert?

15 A Yes, sir.

16 Q That's your mom's brother?

17 A Yes, sir.

18 Q All right.

19 MR. RICHARDSON: Thank you, Child that's all
20 I've got.

21 THE COURT: Child you may step down. Thank
22 you, ma'am.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 MR. RICHARDSON: You mind if we take a brief

1 recess?

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury, we are going to take a mid-morning break.
4 Hopefully, they will have some refreshments for you. We
5 will proceed here in about 10 minutes. Do not discuss the
6 case.

7 (WHEREUPON, the jury retire to the jury room.)

8 THE COURT: Anything from the State before we
9 proceed?

10 MR. RICHARDSON: No, sir, Your Honor.

11 THE COURT: Before we take a break, anything
12 from the defense?

13 MR. MEETZE: No, sir, Your Honor.

14 THE COURT: Very good. We will stand at ease
15 for about 10 minutes.

16 (WHEREUPON, a break was taken.)

17 THE COURT: Anything from the State before we
18 proceed?

19 MR. RICHARDSON: No, sir.

20 THE COURT: Anything from the defense?

21 MR. MEETZE: No, sir.

22 THE COURT: How many more witnesses do y'all
23 have?

24 MR. RICHARDSON: We have four more witnesses.

25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Mr. Richardson, you're recognized.

3 You may call your next witness.

4 MR. RICHARDSON: Thank you, Your Honor. The
5 State calls Priscilla Charles.

6 THE COURT: Ms. Charles, could you come forward?
7 I'm going to ask you if you could to place your left hand
8 on that Bible and raise your right hand as the Clerk
9 administers the oath.

10 THE CLERK: Do you swear the testimony you give
11 in this case will be the truth, the whole truth, and
12 nothing but the truth so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your name
15 for the record.

16 THE WITNESS: My name is Priscilla Ann Charles.

17 WHEREUPON,

18 Priscilla Charles,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q Ms. Charles, what is your date of birth?

23 A

24 Q How old does that make you?

25 A Thirty-eight.

1 Q All right. What is your relation to the Defendant,
2 Robert Johnson?

3 A He is my half brother.

4 Q Is he older than you or younger than you?

5 A Older than me.

6 Q How many years older?

7 A He's three years older than me.

8 Q How old were you when you met him?

9 A I was ten.

10 Q That would make him 13?

11 A Uh-huh.

12 Q And how did you come to know him?

13 A Met at church, in our church.

14 Q Okay. So y'all have one parent in common?

15 A Yes, sir.

16 Q Who is that?

17 A Our father, Freddie Johnson.

18 Q So y'all have different mothers?

19 A Yes.

20 Q Does that have something to do with why you didn't
21 meet him until you were 10?

22 A Yes.

23 Q Okay. So if you were born in '72, would that put him
24 somewhere in the 1969 area?

25 A Yes.

1 Q Okay. How well did you know Robert coming up after
2 you met him?

3 A Well, you know, he had liked the kids, be around a
4 lot of kids, you know, love kids all the time. So I start
5 get to know him when he was with my father. That's when I
6 start really knowing him, being around there a lot.

7 Q So he moved with your father?

8 A Yes.

9 Q All right. Did they live several different places
10 throughout the time you knew him?

11 A Yes.

12 Q Was there a particular trailer park that Robert lived
13 in at some point?

14 A Yes, he used in the Oaks Trailer Park.

15 Q Oaks?

16 A Yes, sir.

17 Q Where is that located?

18 A Over there towards Frances Marion.

19 Q Okay. Is that off of Palmetto or 76?

20 A Yes.

21 Q Okay. Do you remember when he lived there?

22 A I think it was 2001.

23 Q Okay. So nine or ten years ago?

24 A Yeah.

25 Q Do you recall whether you dropped Child off with him

1 at that residence?

2 A No, he used to come and take them out there to his
3 house.

4 Q So he'd come get them?

5 A Uh-huh.

6 Q Why, why would he -- did you ask him to baby sit?

7 A Sometime he'd come and get the kids, like you want to
8 go somewhere, I'll babysit for you. I was like okay.

9 Q Okay. So he would volunteer?

10 A Yeah, sometimes.

11 Q Did you ever ask him to watch them?

12 A I ask him a couple times.

13 Q Okay. Would you say he volunteered more than you ask
14 him?

15 A Yes.

16 Q When he lived in the trailer park, who lived with him
17 there, do you remember?

18 A I think his younger brother, Tawan?

19 Q So he wasn't living with his dad then?

20 A No.

21 Q At some point, did he leave that trailer park?

22 A Yes.

23 Q Okay. Where did he go from there?

24 A That's when I think he moved with my dad.

25 Q Okay. Would that be on Pine Street?

1 A Yes.

2 Q Okay. And do you remember approximately when he
3 might have moved in there?

4 A I think it was 2003, 3 or 4.

5 Q Okay. Sometime middle part of the decade?

6 A Yes, sir.

7 Q At some point, did they leave the Pine Street house?

8 A Yes.

9 Q Where did they go from there?

10 A They moved to Church Street.

11 Q And is that where they currently reside?

12 A Yes.

13 MR. RICHARDSON: Beg the Court's indulgence one
14 moment, Your Honor.

15 THE COURT: Certainly.

16 BY MR. RICHARDSON:

17 Q Ms. Charles, I'm going to show you an item I've had
18 marked as State's Exhibit No. 2 for identification. You
19 recognize what's in this photo?

20 A Yes.

21 Q What is that?

22 A This is the house my dad and Robert stay.

23 Q Does this photograph accurately depict the way the
24 house looks as you remember it?

25 A Yes.

1 Q Okay.

2 MR. RICHARDSON: Your Honor, I'd like to place
3 this item into evidence.

4 THE COURT: Show it to the defense. Any
5 objection from the defense?

6 MR. MEETZE: No, Your Honor.

7 THE COURT: State's Exhibit No. 2 is into
8 evidence without objection.

9 (WHEREUPON, State's Exhibit No. 2 was admitted
10 into evidence.)

11 BY MR. RICHARDSON:

12 Q Okay. Ms. Charles, that's the house that your father
13 and brother own on Church Street?

14 A Yes.

15 Q Okay. And you say they -- when did you say they
16 might have moved there?

17 A I think it was in 2005 or 6, something like that.

18 Q Okay. At any point in time, did Child ever say
19 anything to you about what was going on?

20 A No.

21 Q Okay. When did you find out?

22 A When I had -- they called me at the schoolhouse and
23 D.S.S. was right there, that's when I found out what was
24 going on.

25 Q How often would you say that Robert would babysit the

1 kids?

2 A A lot of times.

3 Q Okay. Once or twice month?

4 A Sometime they would spend the night for the weekend
5 or sometime they would stay for about a week.

6 Q Okay. And was there one particular point where you
7 got injured and was in the hospital?

8 A Yes, I had broke my ankle in three places. That was
9 on September the 1st.

10 Q All right. Was that also around the same time you
11 were waiting on your power to be cut on?

12 A No, I was already living in my apartment then.

13 Q Was there any point in time where you lived in that
14 house?

15 A Yes.

16 Q Okay. How long did you live there?

17 A It was about a month, I think.

18 Q Okay. And was that -- do you remember what year that
19 may have been in 2006 or 7?

20 A I can't remember.

21 Q How long have you been living in your house now?

22 A I've been in my house three years going on four.

23 Q So almost four years?

24 A Uh-huh.

25 Q Did you live with your dad and brother before you

1 moved in there?

2 A Yes.

3 Q Okay.

4 A Because I was waiting to get my lights cut on. I
5 already had the place, I was waiting to get the lights cut
6 on.

7 Q Okay. Your daughter, Child is she your oldest
8 daughter?

9 A Yes.

10 Q What's her date of birth?

11 A

12 Q Okay. ?

13 A Yes.

14 Q She's almost 17 now?

15 A Yes.

16 MR. RICHARDSON: Beg the Court's indulgence one
17 moment.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. RICHARDSON: Ms. Charles, please answer any
20 questions that Mr. Meetze may have for you.

21 THE COURT: Cross-examination, Mr. Meetze.

22 MR. MEETZE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MEETZE:

25 Q Ms. Charles, Child is your daughter?

1 A Yes.

2 Q Okay. And you indicated through your testimony just
3 now that -- and I want to make sure I understand what you
4 said, okay, so I don't mean to be repetitive, just want to
5 make sure I understood what you said. You indicated that
6 Mr. Johnson would babysit Child a lot?

7 A Yes, all the kids.

8 Q All the kids. When you say a lot, you said -- how
9 often would you say?

10 A I'd say about two or three weekends a month.

11 Q Two or three weekends a month?

12 A Uh-huh.

13 Q Okay. And you indicated also that there would be
14 times when it would be longer?

15 A Yes.

16 Q Up to a week?

17 A Yes.

18 Q Okay. And how long would you say that would be the
19 case, like two or three weekends a month for how many
20 months?

21 A That was during the summertime or sometimes when
22 school start back, every other weekend they'd spend the
23 night over there.

24 Q So during the summertime, it might be two or three
25 weekends a month and then during the school year, it might

1 be one or two weekends a month?

2 A Yeah.

3 Q For how many summers would that be the case?

4 A I guess about four summers, I guess.

5 Q Okay. And then, again, it didn't stop after the
6 summertime, but just maybe not quite as often?

7 A Yes.

8 Q Okay. During the school year, would Robert babysit
9 during the week any or was it just on the weekends during
10 the school year?

11 A Weekends.

12 Q But the summertime, it was mainly weekends, but
13 sometimes during the week as well?

14 A Yes.

15 Q And sometimes for as long as an entire week straight?

16 A Yes.

17 Q And that was for a number of years?

18 A Yes.

19 Q Okay. As you just said, Child told you anything
20 about -- made any allegations concerning Robert?

21 A No.

22 Q Doing anything inappropriate to her? Nobody had?

23 A Not to me.

24 Q First thing you heard about this was when you were
25 called by the school and D.S.S.?

1 A Yes.

2 Q Since this happened, since these allegation surfaced
3 in 2007, did you ever see Robert any more after that?

4 A I'm trying to think. When I go see my daddy because
5 I got to go see my daddy. I'd see him, but I wouldn't
6 talk to him.

7 Q Sure.

8 A And my kids do not come with me.

9 Q Did you ever see him at church or anything like that?

10 A Yes.

11 Q Were your kids with you at church?

12 A Yes.

13 MR. MEETZE: I don't have any further questions,
14 Your Honor.

15 THE COURT: Any redirect?

16 MR. RICHARDSON: Nothing further, Your Honor.

17 THE COURT: You may step down. Thank you,
18 ma'am.

19 You may call your next witness.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 MR. RICHARDSON: Your Honor, may this witness be
23 excused?

24 THE COURT: Any objection from the defense?

25 MR. MEETZE: No, Your Honor.

1 MR. RICHARDSON: Your Honor, the State would
2 call Kathy Saunders.

3 THE COURT: Ms. Saunders, if you could come
4 forward. I'm going to ask you to place your left hand on
5 the Bible and raise your right hand as the Clerk
6 administers the oath.

7 THE CLERK: Do you swear the testimony you give
8 in this case to be the truth, the whole truth, and nothing
9 but the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated and state your full
12 name for the record.

13 THE WITNESS: My name is Katherine M. Saunders.
14 WHEREUPON,

15 Katherine Saunders,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. RICHARDSON:

19 Q Okay. Ms. Saunders, what are your -- where are you
20 employed, first?

21 A I'm employed at the Care House of the Pee Dee here in
22 Florence, South Carolina.

23 Q And what do you do there?

24 A I am a pediatric nurse practitioner. I perform
25 medical evaluations on children who may have reported or

1 suspect sexual physical abuse or other forms of abuse.

2 Q Okay. What kind of education background and training
3 do you have to have to do what you do?

4 A I currently hold a Doctorate Degree in nursing. I
5 graduated from the University of South Carolina in 2008.
6 Prior to beginning my practice of child abuse in 1996, I
7 trained in San Diego, California with medical doctors who
8 are recognized as experts in the field of child abuse to
9 learn how to perform a history, do an evaluation or an
10 examination of the child, render a diagnosis and a
11 treatment plan for children who may have been abused.

12 In the State of South Carolina as a pediatric nurse
13 practitioner, I have to have at least 40 hours of
14 continuing education in my field of practice. I also have
15 to be nationally Board certified in my area of specialty,
16 which is pediatrics. My certified Board requires 150
17 hours every three years of continuing education. And in
18 addition to that, to be recognized as a medical examiner
19 in the field of child abuse in our state. We have a state
20 medical response team that requires 20 hours of continuing
21 education and peer review every three months of our
22 records.

23 Q How long have you been conducting child sexual
24 assault exams?

25 A Since 1996.

1 Q Okay. So could you estimate about how many you've
2 done?

3 A In excess of 8,000 cases.

4 Q Have you ever been qualified in court as an expert
5 before?

6 A I have in both family court and criminal court.

7 Q Okay. And is that in the field of child sexual
8 assault examinations?

9 A Yes, sir, it is.

10 MR. RICHARDSON: Your Honor, I move to have Ms.
11 Saunders qualified as an expert in the area of child
12 sexual assault examinations?

13 THE COURT: Mr. Foreman, ladies and gentlemen of
14 the jury, normally a person cannot give opinion testimony.
15 Normally, when a person testifies, they must testify as to
16 what they saw, heard or sensed by smell. However, there's
17 an exception when someone is qualified because of
18 education or experience. They're permitted to give their
19 opinion in certain areas if the Court qualifies them that
20 way. This witness will be qualified in the area of child
21 psychology with regard to sexual misconduct to give
22 opinions in that area. That does not mean that you must
23 accept the opinion. It's evidence for you to use in any
24 way you see fit.

25 Any query with regard to her qualifications, Mr.

1 Meetze?

2 MR. MEETZE: No, Your Honor.

3 THE COURT: Very good.

4 BY MR. RICHARDSON:

5 Q Okay. Dr. Saunders, I'm going to ask you some
6 questions regarding the specifics of what you do. Would
7 this diagram assist you in explaining what goes on in a
8 sexual assault exam?

9 A Yes, sir, it could.

10 Q Dr. Saunders, when you conduct your examination, what
11 types of things are you looking for?

12 A Well, the very first I do before I actually examine
13 the child is I gather a history from the caretaker, law
14 enforcement, D.S.S. whoever may be there with the child,
15 so that I will know exactly what the complaint or the
16 concern is of the child before I see the child. Then I do
17 a complete physical evaluation, kind of moving head to toe
18 looking at all parts of the body to, first of all, ensure
19 their health and well-being, but, second of all, looking
20 for any evidence or information that may be there related
21 to the concern as to why the child presented that day.

22 Q Okay. What types of injuries are common with victims
23 of sexual abuse?

24 A It kind of depends because if you have a child that
25 presents acutely, meaning that the assault occurred within

1 several hours of the examination, especially with a
2 female, and this is a female genitalia here on this
3 diagram, we may see injuries at any point around the
4 vulva, which this kind of depicts the whole vaginal area.
5 It's really called the vulva, specifically to the hymenal
6 tissue, which is on the lower rim or the lower half of
7 this opening. The hymen people recognizes the cherry or
8 the virginal ring and that's most often where we see the
9 injury. However, if it is a single event that occurred in
10 months -- weeks, months or years has passed since the
11 assault occurred and then I examine the child, there may
12 be no injury present at all on the physical exam.

13 Q You may have answered this by that last statement,
14 but how does that area heal in terms of weeks, months, how
15 long does it take an injury to heal in the vaginal area?

16 A Well, it kind of depends on a couple of factors.
17 First of all, if the female has entered into puberty,
18 meaning that she has started her periods, the hormones of
19 puberty, progesterone and estrogen, helps protect the body
20 and allows for healing. So if it's a very superficial or
21 just on the very top part of the skin injury, and if you
22 kind of think about the injury being more in this area
23 right here, this little reddened area. If it's very
24 superficial, very, very slight, it may heal within 24, 48
25 hours. If it's a deeper injury, meaning that it's cut.

1 through the layer of skin down into the opening, more
2 internal to external of the body, it may takes weeks or
3 months for healing to occur.

4 Q So you don't always expect to see injury when you
5 look at a sexual assault victim?

6 A That is true.

7 Q In terms of penetration, what types of layers or
8 parts of the body are used or penetrated when a penis goes
9 into a vagina? How many layers are there? And you
10 mentioned the hymen, what does it take to get to the
11 hymen?

12 A When we look at a child that has entered into puberty
13 or has started their periods, there's a couple of layers
14 that you go through. This being the most outer layer. If
15 I could use my pointer. This is the labia majora. When
16 you look external of the body, if you just look down, this
17 is the folds of skin that you will see external to the
18 body. Then there is another layer that wraps around that
19 that's probably several centimeters deep. A centimeter is
20 equal to about a fourth of an inch deep, so it would be
21 several centimeters deep. There's another layer called
22 the labia minora. And just beyond that point is this
23 fossa navicularis or the vestibule, which provides a
24 little cuff-like structure that's usually a couple of
25 inches inside the body, so it's recessed inside the body.

1 Then the hymenal tissue appears. If you kind of think
2 about it like the lips on your face, you have to go
3 through your gum line, past your tongue to get to the
4 little thing that hangs down in the back of your throat
5 called the uvula, that's kind of like the hymenal tissue
6 or the cherry or the virginal ring. It sits back several
7 inches inside the female genitalia. So it is a very
8 protected structure of the body.

9 Q In your physical exams, do you also look for signs of
10 anal penetration or injury?

11 A Yes, sir, I do.

12 Q Okay. What are some of the signs of that and the
13 prevalence of those injuries?

14 A There again, unless you see an acute case, meaning
15 within several hours of when the anal penetration
16 occurred, usually there are no findings. That is a muscle
17 of the body. It will stretch for things to come out of
18 the body or leave the body, like our bowel movements, and
19 it will also stretch when gentle pressure is applied
20 against this external muscle for things to enter into the
21 body. If there is injury at all, and the only time we see
22 injury of the anal tissue is when the object going inside
23 the rectum is larger than the body is able to accommodate
24 the stretch for. But when that stretch is beyond
25 accommodation and there is a tear, usually, it's very

1 small, very superficial and heals within just a couple of
2 hours because of the kind of tissue that makes up the
3 surrounding area of the rectus muscle.

4 Q How often do you see children who have been victims
5 of sexual assault who present little to no injury?

6 A Usually in about 90 to 95 percent of the cases, there
7 are no sexual abuse findings on the evaluations that I
8 perform. And if you read through some of the research
9 nationally published, those kind of fall in line with
10 where nationally other examiners who examine abused
11 children also have minimal findings on their exams.

12 Q So it's pretty rare to have sexual abuse findings in
13 the children that you examine?

14 A That is true.

15 Q Okay. Did you have occasion back in -- around
16 October of 2007, to interview or examine Child

17

18 A I did.

19 Q Okay. Do you have what particular date that was?

20 A I saw her on , 2007.

21 Q Okay. And did you conduct a full physical exam on
22 her?

23 A Yes, sir, I did.

24 Q What types of things did you do and what were your
25 findings?

1 A Just as part of my general fashion, I did obtain a
2 history, review of past medical history, current review of
3 systems on Child and then conducted a general physical
4 evaluation looking at things like her height, weight,
5 general development, skin, inspection of her skin, eyes,
6 ears, nose, throat, heart, lungs, abdomen and all of those
7 were found to be within normal and age appropriate for her
8 age. On the genital evaluation, looking specifically at
9 the vaginal area, she was found to be of Tanner stage
10 five, which is the most adult-like development of both the
11 breast and the genital area. The labia majora and the
12 labia minora were found to be normal. The urethra, the
13 clitoris were found to be normal. The hymenal tissue was
14 thick estrogenized with a cleft, which simply just
15 represents a tear at the five o'clock position and the
16 cervix was normal with a scan amount of thin white
17 discharge present. And the inspection of the perianal
18 area, there were found to be no tags, tears or laxity
19 given a normal anal exam as well.

20 Q You said something about a tear at five o'clock.
21 What does that mean?

22 A That's representation of past injury to this hymenal
23 tissue. We use the hymen as a face of a clock, kind of
24 looking 12 o'clock, 6 o'clock most posteriorly to the left
25 would be 3 o'clock and 9 o'clock represented on the right

1 side of the opening. The tear would have been right in
2 this position about the 5 o'clock area.

3 Q Could you tell by looking at it how old the injury
4 was?

5 A The only thing that I can say about the tear is that
6 it was not acute. There was no bruising, no redness, no
7 bleeding from the site. So it was not a recent injury to
8 the hymenal tissue.

9 Q Okay. Was the injury consistent with possible sexual
10 abuse?

11 A Yes, sir, it is.

12 Q What about consensual sex, would it also be
13 consistent with that?

14 A Yes, sir, it is.

15 Q So is it possible for you to determine whether this
16 injury was actually the result of sexual abuse?

17 A No, sir, not in and of itself.

18 Q So for the purposes of your evaluation or
19 examination, you just documented that she did have this
20 injury?

21 A That is correct.

22 Q And you have no way of knowing how she got it?

23 A Other than a penetrating injury, because of the
24 injury that was present, something had to penetrate
25 through the external to the internal of the body.

1 Q How is it possible for someone who claims a pattern
2 of abuse over a period of years to not have a whole lot of
3 injury?

4 A Part of it could be from the time of when the abuse
5 actually occurred. Meaning, when the penetration occurred
6 to the time of the exam. There can be healing almost to
7 completely, sometimes even normal findings on the exam.
8 The other part is people are abused in other ways other
9 than penetration. There can be oral sex. There can be
10 fondling. Another element can be her pubertal
11 development. As the body continues to develop and more
12 hormones come on board, it causes the anatomy or the way
13 the genitalia appears to change.

14 Before you have hormones, the tissue surrounding the
15 vaginal area or the hymenal tissue is very thin, very
16 translucent, almost like saran wrap. You can see through
17 it, see a lot of vascularity, blood vessels. As you get
18 more and more of the hormones of puberty on board, that
19 tissue becomes very thick, very elastic, very pale in
20 nature and you can no longer see through it because it
21 becomes more like a rubber band and stretches. So abuse
22 that occurs in the past, one reason that we don't see a
23 lot of injury on girls, especially, as their bodies
24 mature, it kind of mask or hides or heals the injury that
25 may have occurred in the past.

1 Q So it's normal not to see some sort of permanent
2 scarring?

3 A Yes, sir, that can be normal.

4 Q Okay. The injury that Child presented, is it
5 consistent with a scenario of child abuse and constant
6 penetration that would have occurred by an adult on a
7 child of her age?

8 A Yes, sir, it can be.

9 Q Okay.

10 MR. RICHARDSON: Beg the Court's indulgence one
11 moment.

12 (WHEREUPON, a pause in the proceedings.)

13 BY MR. RICHARDSON:

14 Q Dr. Saunders, were you aware at the time you examined
15 Child that she was pregnant?

16 A Yes, sir, I was given that information.

17 Q That wouldn't have any affect on the findings?

18 A It could, possibly, because the hormones of
19 pregnancy, there again, are protective of the body and it
20 could have masked some of the injury that would have been
21 present yielding only the one injury that I saw on the
22 exam. Had I seen her prior to the pregnancy, I may have
23 had more evidence available.

24 Q So pregnancy can accelerate healing?

25 A Accelerate, not necessarily, but kind of mask because

1 the tissue becomes very redundant, kind of like a
2 cauliflower look during pregnancy because of the hormones
3 that are on board. So you can lose some of the
4 appearance of injury that may be present.

5 Q Okay. Was it normal -- given her current state at
6 the time of being pregnant and having these extra
7 hormones, does that affect the way you look at the injury
8 that she did present?

9 A No, sir, that injury still is present and it still
10 represents a penetrating injury.

11 Q Okay.

12 MR. RICHARDSON: Dr. Saunders, thank you.
13 Please answer any questions Mr. Meetze may have for you.

14 THE COURT: Cross-examination, Mr. Meetze.

15 MR. MEETZE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MEETZE:

18 Q Okay. Ms. Saunders, as you've indicated, the injury
19 that you were discussing just now consistent with abuse,
20 also consistent with consensual sex?

21 A Yes, sir, you can see this type of injury in most
22 situations.

23 Q Okay. And you just answered a question with regards
24 to how the pregnancy may or may not have affected the
25 examination and all that. Any results, obviously, that

1 could have been found had you had an opportunity to
2 examine her prior to the pregnancy, that's all
3 speculation?

4 A That would be correct.

5 Q There wasn't any examination done prior to that?

6 A Not by me --

7 Q Right --

8 A -- I'm not sure if by anyone else.

9 Q I apologize, I didn't mean to interrupt you. That's
10 what I meant, sometimes I have to remember to be more
11 specifically. The examination -- essentially, what you're
12 saying here is the examination that you did do basically
13 showed results were normal pretty much across the board
14 with the exception of the one injury?

15 A The injury at five o'clock, yes, sir, that is
16 correct.

17 Q And that's just as consistent with consensual sex as
18 it would be with some kind of abuse?

19 A That could be correct, yes, sir.

20 Q You indicated that you been made aware that she was
21 pregnant. You weren't given details in that regard?

22 A I, actually, on examination measured her fundal
23 height to be between 16 and 18 weeks and did receive
24 confirmation from her family practice doctor that she was
25 pregnant and what was reported to me was two and a half

1 months pregnant.

2 Q All right. Had anyone ever reported -- had anyone
3 ever reported to you that there was a conception date of
4 May the 8th?

5 A No, sir, I'm not aware of that.

6 Q You're not?

7 A No, I was not.

8 MR. MEETZE: I don't have any further questions,
9 Your Honor.

10 THE COURT: Redirect?

11 MR. RICHARDSON: Nothing further, Your Honor.

12 THE COURT: Any objection to this witness being
13 excused from the State?

14 MR. RICHARDSON: None, Your Honor.

15 THE COURT: Any from defense?

16 MR. MEETZE: None, Your Honor.

17 THE COURT: You're free to leave. Thank you so
18 much.

19 (WHEREUPON, the witness leaves the witness
20 stand.)

21 THE COURT: You may call your next witness, Mr.
22 Richardson.

23 MR. RICHARDSON: Thank you, Your Honor. Next
24 witness will be Debbie Elliott.

25 THE COURT: Yes, ma'am, if you could come

1 forward and place your left hand on the Bible and raise
2 your right hand as the clerk administers the oath.

3 THE CLERK: Do you swear the testimony you give
4 in this case to be the truth, the whole truth, and nothing
5 but the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your name
8 for the record?

9 THE WITNESS: Debbie Elliott.
10 WHEREUPON,

11 Debbie Elliott,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Okay. Ms. Elliott, where are you employed?

16 A Care House of the Pee Dee.

17 Q And what do you for Care House?

18 A I'm a forensic interviewer.

19 Q How long have you worked there?

20 A This fall will be five years.

21 Q What kind of educational background and training do
22 you have to have to be a forensic interviewer?

23 A Degree from college and experience, training and
24 finding words. Specifically -- do you want to know what
25 my experience is?

1 Q Yes, ma'am. What personal experience and education
2 do you have?

3 A I have a degree from Clemson. I graduated in 1978 in
4 sociology with a Bachelor of Arts. Since that time,
5 worked at the Florence County Department of Social
6 Services for 10 years in the treatment unit, specifically,
7 cases with sexual abuse and several physical abuse.
8 During that time, also, co-facilitated sex offenders
9 treatment for a year and a half. Also worked at the
10 Durant Children's Center, which is another child advocacy
11 center in two for two and a half years as a forensic
12 interviewer. I have about seven years of experience in
13 forensic interviewing of children.

14 Q Okay. About how many forensic interviews have you
15 conducted, do you know?

16 A Between 2500 and 3000.

17 Q Okay. Have you ever been qualified as an expert in
18 court before?

19 A I have.

20 Q In the area of child abuse assessment?

21 A Yes, sir.

22 MR. RICHARDSON: Your Honor, I move to have this
23 witness qualified as an expert in child abuse assessment?

24 THE COURT: Any query with regard to her
25 qualifications?

1 MR. MEETZE: I don't have any query with regard
2 to it, but I would have an objection.

3 THE COURT: All right. Very good.

4 Mr. Foreman, ladies and gentleman of the jury,
5 I'm going to ask if you could retire to the jury for one
6 moment. Do not discuss the case.

7 (WHEREUPON, the jury retire to the jury room.)

8 THE COURT: Mr. Meetze, you're recognized.

9 MR. MEETZE: Thank you, Your Honor. May it
10 please the Court. Your Honor, I make an objection to her
11 being qualified as an expert not that I doubt any kind of
12 qualifications or anything like that, simply that the
13 testimony being presented here is not testimony that would
14 require her to be classified as an expert. It sort of
15 would bolster the testimony. She's just here as far as --

16 THE COURT: As a fact witness.

17 MR. MEETZE: As a fact witness to discuss the
18 interview.

19 THE COURT: Well, let me ask this question, do
20 you intend on eliciting any opinion from her with regard
21 to her testimony?

22 MR. RICHARDSON: Sir, the line of questioning
23 was going to delve in the subject of delayed disclosures
24 and how common those are with children that she
25 interviews. I believe that that would most likely be the

1 only area of where she would need to give an expert
2 opinion on how often that is and what that means.

3 THE COURT: All right. What case law do you
4 have with regard to having someone qualified in the area
5 of child abuse assessment?

6 MR. RICHARDSON: State vs. Schumpert is a case.
7 I don't have a copy of that case with me. I think it
8 stands -- basically, it stands for the fact that education
9 and experience where that may be lacking that goes to the
10 weight of the credibility of the witness and not its
11 admissibility. But, Your Honor, I could further question
12 Ms. Elliott about the amount of time she's been qualified
13 as an expert and what fields and in what courts if that
14 would help the Court.

15 THE COURT: Very good.

16 EXAMINATION IN-CAMERA

17 BY MR. RICHARDSON:

18 Q Ms. Elliott, how many times have you been qualified
19 as an expert witness?

20 A In excess of 20 or more.

21 Q What courts have you been in?

22 A Florence, Darlington, Chesterfield, Clarendon, Lee.

23 Q General sessions court?

24 A General sessions and family.

25 Q What areas have you been qualified?

1 A In forensic interviewing of children and child
2 assessment.

3 Q Okay. Child abuse assessment?

4 A Yes, sir.

5 Q Has that been a constant area in which you've been
6 qualified?

7 A Child abuse assessment, I believe, was only one time,
8 just this last hearing with Suzanne Mays. Forensic
9 interviewing would have been --

10 Q So you were qualified as an expert in child abuse
11 assessment recently?

12 A Yes, sir.

13 Q How recent?

14 A With Suzanne Mayes in the Jimmy (inaudible) hearing.

15 Q When was that?

16 A A couple weeks ago.

17 Q Okay. Was there any expert testimony elicited from
18 you at that hearing?

19 A I spoke about delayed disclosure and the dynamics of
20 sexual abuse in children.

21 Q Okay.

22 MR. RICHARDSON: Your Honor, I'd argue that
23 she's been qualified over 20 times and was qualified as
24 recently as a week or two ago in this same area given the
25 fields that we plan to enter into.

1 THE COURT: Mr. Meetze.

2 MR. MEETZE: Again, Your Honor, I would just
3 rely State vs. Douglas where it indicates that testimony
4 given by hearing, in this case, forensic interviewer, in
5 this case simply was not required to be presented by an
6 expert witness. Here, she testified only as to her
7 personal observations and experiences and her interview
8 with the victim in the case. Accordingly, we find it was
9 unnecessary for the trial court to qualify her as an
10 expert in the case and that included experiences. And I
11 think the testimony with regards to any kind of late
12 disclosure or anything like that would fall under the
13 heading of based on her experience, what does she know or
14 what she found based on her experiences with regard to
15 late disclosure, is it common, is it not common. Again, I
16 would say that based on the Douglas case, it's not
17 necessary to qualify somebody -- a forensic interviewer as
18 an expert. It would tend to, I think, prejudice the jury,
19 make them feel that basically they're giving an opinion as
20 to the truthfulness of the victim which is the primary
21 issue in the case. I'm not saying, I guess, that they
22 can't ask her the questions about the experience and that
23 kind of thing in late disclosure, but I think that based
24 on that case, it's --

25 THE COURT: You're saying that late disclosure

1 is really not a subject for expert testimony at all?

2 MR. MEETZE: Right.

3 THE COURT: But they -- based on their
4 experience, they can say what their experience is, but
5 it's not expert testimony is what you're saying?

6 MR. MEETZE: That's exactly what I was saying.

7 THE COURT: Let me see the case.

8 (WHEREUPON, a pause in the proceedings.)

9 THE COURT: All right. This is my ruling, Mr.
10 Richardson. I'm going to allow her to testify as to her
11 personal observations and allow her as a lay witness to
12 offer testimony in the form of opinions or inferences that
13 she draws from her experience and her knowledge, but I am
14 not going to qualify her as an expert because to do so
15 would unnecessarily bolster her testimony. But to make my
16 ruling very clear, she can offer opinion testimony in that
17 regard, but I am not going to qualify her. And the
18 testimony that's elicited from her cannot be in the form
19 of reliability of it, just her observations, what she did
20 and the inferences that she draws from them. Very good.
21 All right.

22 Anything further from the defense?

23 MR. MEETZE: No, sir, Your Honor.

24 THE COURT: All right. And that ruling is based
25 on William R. Douglas, The State of South Carolina vs.

1 William R. Douglas.

2 We're ready for the jury.

3 (WHEREUPON, the jury came into open court.)

4 THE COURT: Mr. Richardson, you may proceed.

5 MR. RICHARDSON: Thank you, Your Honor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. RICHARDSON:

8 Q Ms. Elliott, what is a forensic interview?

9 A A forensic interview is a fact-finding,
10 semi-structured interview geared at gathering information
11 from a child when there have been allegations of sexual
12 abuse or physical abuse against a child.

13 Q How are those interviews conducted?

14 A They're conducted one on one with just an interviewer
15 and the child in a child-friendly setting in a room at the
16 Care House Center. We have two interview rooms. One, we
17 take the child into a room with just the interviewer.
18 There's no mirror or glass in there. We have a camera and
19 I tell the child about the recording where law enforcement
20 or D.S.S. officials can sit in another room and observe
21 the interview.

22 Q Okay. What kind of rules or guidelines do you set
23 for the interview?

24 A I set rules with the child. First of all, is that
25 the child tell me the truth and I ask the child, if

1 they're old enough, to define truth, give me their
2 definition of what that means and what it means not to
3 tell the truth and consequences of lying. Also,
4 guidelines are if you don't understand a question -- I'm
5 going to be asking you a lot of questions. If you don't
6 understand a question, just tell me you don't understand,
7 you don't know what the answer is, don't make up
8 something. If you don't understand a question, let me
9 know that and I'll get another way to ask you.

10 Q What methods do you use to determine whether a child
11 is competent or understands what's going on?

12 A I gather information prior to the interview with a
13 caretaker, usually, it would be the non-offending parent
14 or guardian, depending on the circumstance. It could be a
15 caseworker if the child is in foster care. But I gather
16 information prior to the interview about the child and
17 that has to do with social history, whether the child is
18 delayed or not, whether there are medications, whether
19 there are any diagnoses of the child, medications, if they
20 took the medications that day. Lots of information that I
21 already have prior to going into the interview with the
22 child. And while I'm talking to the child, especially in
23 the beginning part of the interview, throughout the
24 interview, but especially at the beginning at the before
25 setting part of the interview, I'm asking the child about

1 who lives in the home, what school they go to, grades and
2 at the same time I'm thinking about what has been told
3 prior to that and sort of checking it off and checking off
4 their competency. And I do a truth/lie competency
5 exercise with much younger children, three, four, five,
6 six-year olds, usually. And that's just an exercise aimed
7 at trying to understand if the child understands the
8 difference in truth and lying and consequences of lying.

9 Q Okay. What types of rules are there in terms of
10 types of questions, whether they're leading questions or
11 suggestive questions?

12 A Well, I certainly try not to lead or suggest a child.
13 I want as unbiased an interview as possible so I'm going
14 in there asking the child lots of general questions, first
15 of all, in a very narrative -- trying to elicit a very
16 narrative form from the child or getting the child to talk
17 as much as possible, not me. Asking questions like tell
18 me about you? Tell me about your family? Tell me about
19 school? What kind of stuff do you like to do? Just
20 getting that child comfortable and getting the child as
21 narrative as possible so that the questions are very
22 narrative and sort of funnel down to more specific
23 questions.

24 Q Now, given the subject matter, you have to talk to
25 them a fair amount about the anatomy; is that right?

1 A I do.

2 Q How do you determine a child's familiarity with the
3 human anatomy?

4 A We have a tool called the anatomical drawings and I
5 use gender specific drawings for the child. If it's an
6 African-American female child, I will use African-American
7 female drawing. If it's a white boy, I'll use a white or
8 Caucasian drawing for the boy. And just go over and
9 explain, of course, to begin with and just go over body
10 parts, starting with usually the head and kind of working
11 down and just ask the child to tell me what they call
12 parts of their body into the genitalia. And I don't make
13 a big deal about any part. I use the same term that the
14 child tells me, the same label.

15 Q Okay. Do you ever run into children who come into
16 the Care House who present what's called delayed reporting
17 or delayed disclosure?

18 A I do.

19 Q What is that?

20 A It's a very common occurrence in children. It really
21 means just what it sounds like. Children, when there's
22 been a sexual assault or some sort of incident that's
23 happened that's been sexual to a child, they normally do
24 not just run and go tell someone. Because when there is
25 sexual abuse, it is usually by a family member or member

1 that's close to the child, somebody that they love,
2 somebody that's in a protective or caring role of that
3 child. So usually they don't just go run and tell
4 somebody immediately. It could be days, it could be
5 weeks, it could be months, it could be years before a
6 child tells, if at all.

7 Q Okay. So some of the factors that play a role in
8 delayed disclosure could be that the abuser is a member of
9 the family or somebody close to them or fear. What other
10 factors do you typically run into?

11 A Usually, that it is somebody that's close to the
12 child that's in an authoritarian role, somebody that the
13 child been taught to obey, respect, love.

14 Q Okay. When you interview children, what -- how often
15 are they able to get the chronological order of events
16 down precisely to a given time period?

17 A I wouldn't say that's too very common. It's
18 difficult for adults to tell you what they did last month,
19 last week. And to expect children to tell us what
20 happened years ago, an exact day, time, place, what the
21 weather was like is kind of incredible.

22 Q So is it pretty common in your experience with
23 children they have a hard time with dates and times?

24 A They do.

25 Q Specific to this case, Ms. Elliott, did you have

1 occasion to interview Child

2 A I did.

3 Q Okay. Was that , 2007?

4 A Yes, sir.

5 Q Okay. She actually gave two interview with you; is
6 that right?

7 A I did, that was the first one.

8 Q And the second one was when?

9 A September the 10th, 2009.

10 Q All right. Do you recall what agency referred her to
11 you?

12 A Investigator Michael Robinson with the Florence
13 Police Department.

14 Q Okay. When you interview -- let's stick with the
15 first interview. When you interviewed Child the first
16 time, did she appear to you to be competent, know what was
17 going on?

18 A Yes, sir.

19 Q Okay. Was she able to accurately identify parts of
20 the body?

21 A Yes, sir.

22 Q Okay. What was her testimony or answers to you in
23 terms of the time frame of her assault?

24 A Well, she was actually 14 the day that she came into
25 the interview. It was her birthday that day. She talked

1 about having been assaulted. But the last time that the
2 sexual intercourse had happened was she was 13, but that
3 fondling had started around age seven or eight and it
4 progressed into other forms of sexual abuse.

5 Q All right. Did she tell you the place or places that
6 the abuse occurred?

7 A Yes, sir. What happened at her uncle's home on
8 Church Street in his bedroom. It happened other places as
9 well. Yes, sir, in this interview, it was the bedroom in
10 her uncle's home.

11 Q Okay. What was her emotional affect during the
12 interview?

13 A Child was choked up initially because she is a
14 special needs child and she was upset about -- she was a
15 little upset because it was her birthday and she was
16 having to spend her birthday at the Care House getting an
17 interview and a medical examination and talk about things
18 that were very hard for her. But she was very narrative
19 about what had happened, very talkative about what had
20 happened.

21 Q She was able to talk to you in a clear, concise
22 manner about what happened?

23 A Yes, sir.

24 Q Was anything about her disclosure to you that it
25 seemed like it had been suggested to her in any way? Did

1 she appear to be coming from the heart, so to speak?

2 MR. MEETZE: Objection, Your Honor.

3 THE COURT: I'll sustain the objection. It's an
4 inappropriate question.

5 BY MR. RICHARDSON:

6 Q How long did your interview last with her?

7 A Approximately an hour.

8 Q Okay. Is that typical for forensic interviews?

9 A For teenagers, especially ones that are pretty
10 verbal, yes, sir. Younger children, a little bit shorter
11 usually.

12 Q Her second interview, you said was in September of
13 '09.

14 A Yes, sir.

15 Q Was the information she provided then consistent with
16 the first interview?

17 A It was.

18 Q Okay. Did it last approximately the same amount of
19 time?

20 A It may have been a little bit shorter.

21 Q Okay. Did you make reports or some type of diagnosis
22 or what have you after the interviews about
23 recommendations for her?

24 A Did I make recommendations?

25 Q Yes, ma'am.

1 A Yes, I did. I recommended that she have no direct or
2 indirect contact with her uncle. That she begin therapy
3 to begin the process of sexual victimization.

4 Q Okay. In her subsequent interview in September, the
5 time frame that she told you about the abuse and the
6 places, were those both the same as the first interview?

7 A She actually talked about other -- another place that
8 the sexual abuse had occurred.

9 MR. MEETZE: Objection, Your Honor.

10 THE COURT: Might counsel approach the bench.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury, but out of the hearing of the
13 jury.)

14 MR. RICHARDSON: Objection sustained.

15 BY MR. RICHARDSON:

16 Q Ms. Elliott, what is your experience in dealing with
17 children who have been victims of sexual abuse and, for
18 lack of a better term, the grooming process? And by that,
19 I mean where it may start with touching and progress. Is
20 that a common occurrence?

21 A It's common with chronic sexual abuse. In my
22 experience, children that I interview talk about -- I
23 usually ask children when -- if they can remember the
24 first time anything ever happened. And they will talk
25 about that incident, but they will also talk about other

1 things. I'll ask about what was your relationship like
2 with that person. And they'll talk about things that they
3 usually do for them, especially if it's a trusted family
4 member or relative, things they did together, places they
5 went together. Money may have been given, gifts may have
6 been given in the form of bribery, in the form of threats.
7 But it is -- the grooming process is really the way that
8 perpetrators are able to do what they do and go undetected
9 for sometimes years.

10 Q Does the grooming process tend to relate directly to
11 delayed disclosures in your experience?

12 A Yes, sir.

13 Q Okay.

14 MR. RICHARDSON: Please answer any questions
15 Mr. Meetze have may have for you.

16 THE COURT: Cross-examination, Mr. Meetze.

17 MR. MEETZE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MEETZE:

20 Q Ms. Elliott, you said that you interviewed Child
21 twice in regard to this case; is that correct?

22 A Yes, sir.

23 Q And the first time was 2007; is that
24 correct?

25 A That's correct.

1 Q Okay. And she told you during that interview about
2 having sex with K.R.

3 A Hold on just a second. What did you say the name
4 was?

5 Q I said K.R.

6 A She did not say anything about K.R.

7 Q Well, K.R. put it that way.

8 A Yes, sir, a K.R.

9 Q And she told you -- and again, this interview was
10 October the 22nd, 2007, correct?

11 A Correct.

12 Q And she told you in the interview that Uncle Robert
13 let K.R. spend the night in his home last month,
14 correct?

15 A That's correct.

16 Q Okay. She also indicated to you in that interview
17 that -- during that interview, she denied that Robert had
18 sex with her after she had sex with K.R. is that
19 correct?

20 A Yes, sir, at that point, she did.

21 Q And in the 2009 interview you did with her in
22 September of 2009, she indicated to you that after
23 K.R. left that they did have sex; is that correct?

24 A She did.

25 Q She indicated to you in the 2007 statement that the

1 last time that she had sex with Robert was back in the
2 summer; is that correct?

3 A Yes, sir.

4 Q Ma'am?

5 A Yes, sir, I'm sorry.

6 Q She never indicated or said anything to you about a
7 taser?

8 A She did not and I didn't ask.

9 Q Sure. But she was there to tell you what all
10 happened?

11 A Well, I ask the children to tell me what happened.
12 Sometime children don't provide information unless you ask
13 them and I didn't ask that question.

14 Q Okay. With regards to the first statement again --
15 in the first statement, there was never any mention of her
16 performing oral sex on Robert?

17 A In the first interview?

18 Q In the first interview, I'm sorry, yes, ma'am.

19 A Yes, sir, in the 2007, she does tell me about that.
20 That he performed oral sex on her?

21 Q No, no, that she performed oral sex on him?

22 A I'm sorry. No, sir.

23 MR. MEETZE: I don't have any further questions.

24 THE COURT: Any redirect, Mr. Richardson?

25 MR. RICHARDSON: None, Your Honor. We ask that

1 this witness be excused.

2 THE COURT: Any objection from the defense?

3 MR. MEETZE: No, Your Honor.

4 THE COURT: You're free to leave. Thank you
5 ma'am.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, we have some legal matters we need to tend to
10 before we break for lunch. We're going to allow y'all to
11 go and be back at 2:00.

12 Once again, do not discuss the case. Do not do
13 any independent investigation, don't look on the internet.
14 We know that there has been some press coverage. I gave
15 you instructions yesterday not to pay that any attention,
16 divert your attention from that. Don't read any articles
17 and don't watch news reports of that. If it were to come
18 on, we'd ask that you cut it off. I want you to take that
19 order to heart. Do not do that. And it very well may be
20 that I call upon you with an inquiry and I want everybody
21 to be able to answer that truthfully. Do not do that.
22 This is an important case and your decision needs to be
23 based on what transpires here in this courtroom.

24 Thank you very much. And we will see you back
25 at 2:00.

1 Everyone remain seated as the jury exits the
2 courtroom.

3 (WHEREUPON, the jury was excused for lunch.)

4 THE COURT: All right. I'm going to ask the
5 deputies if they can have Mr. Johnson in here about 10
6 minutes till 2:00. If y'all can have him sitting down at
7 the table at 10 minutes till 2:00.

8 Anything from the State before we break for
9 lunch?

10 MR. JEPERTINGER: No, sir.

11 THE COURT: How many more witnesses do y'all
12 have, Mr. Jepertinger?

13 MR. JEPERTINGER: Ms. Robinson will be our final
14 witness. Of course, if there's any rebuttal testimony.

15 THE COURT: Just kind of get an idea, do you
16 anticipate -- when do you anticipate the -- knowing what
17 she's going to testify to, how long do you anticipate that
18 will be?

19 MR. JEPERTINGER: She will not be long, Your
20 Honor. I mean, there will be some length, but not long.

21 THE COURT: All right. I'm going to ask counsel
22 if y'all could meet me in chambers. We're going to
23 discuss the verdict form. Very good.

24 All right. We'll stand at ease until 2:00.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: What is the State's position to
2 elevating one of the alternate jurors?

3 MR. RICHARDSON: No objection to that.

4 THE COURT: Mr. Meetze.

5 MR. MEETZE: No objection, Your Honor.

6 THE COURT: Okay. Let me give them about five
7 more minutes.

8 (WHEREUPON, a pause in the proceedings.)

9 THE COURT: Madam Clerk, I'm going to ask you to
10 draw randomly from the two alternate jurors.

11 (WHEREUPON, a pause in the proceedings.)

12 THE COURT: There seems to be a split in
13 authority as to whether or not you do it first alternate
14 and second alternate. But the law in my opinion seems to
15 indicate that it would be better to do it randomly.

16 What does the State --

17 MR. JEPERTINGER: The State agrees.

18 THE COURT: From the defense?

19 MR. MEETZE: That's fine, Your Honor.

20 THE COURT: Okay. Very good.

21 THE CLERK: It would be Juror No. 93, Qingmin
22 Li.

23 THE COURT: Let's bring the entire jury out if
24 we could.

25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Ms. Lee, I'm going to -- we have had

3 --

4 MR. MEETZE: May we approach?

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: We were waiting on one of the jurors
9 to show up. Obviously, it's a quarter after, your time is
10 precious. We were in a position to elevate one of the
11 alternate jurors, but it's come to my attention that the
12 one that's missing is, indeed, an alternate. So we are
13 going to proceed forward with one alternate from this
14 point forward. We will, indeed, at some point in time
15 what the juror's difficulty was and we will deal with that
16 accordingly. But thank y'all for being here and being
17 here on time.

18 Mr. Jepertinger, you're recognized.

19 MR. JEPERTINGER: The State would call Michael
20 Robinson to the stand.

21 THE COURT: Ms. Robinson, if you could place
22 your left hand on the Bible and raise your right hand as
23 the clerk administers the oath.

24 THE CLERK: Do you swear the testimony you give
25 in this case to be the truth, the whole truth, and nothing

1 but the truth so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full
4 name for the record?

5 THE WITNESS: My name is Michael Robinson and I
6 am a detective with the City of Florence Police
7 Department.

8 WHEREUPON,

9 Michael Robinson,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JEPERTINGER:

13 Q Investigator Robinson, how long have you worked for
14 the City Police Department other than in investigations?

15 A Total number of years since 1999.

16 Q And what did you start as a patrol officer?

17 A Yes, sir, I did. I was hired as a patrol officer
18 with the City of Florence and continued my career through
19 the accreditation division where job functions were to
20 rewrite the policy and procedures manual for the City of
21 Florence. I did that for several years and then I was
22 transferred to the investigation divisions where I
23 currently am.

24 Q And what are your responsibilities with the
25 investigation division?

1 A I am a corporal in the investigations division with
2 the Florence Police Department. My main function with the
3 police department is to investigate allegations of child
4 sexual abuse, physical abuse and neglect.

5 Q All right. In this present case, can you tell the
6 ladies and gentlemen of the jury how you got involved?

7 A Well, I got involved with this case from a call from
8 Williams Middle School. I responded to Williams Middle
9 School to meet with the school counselors there and a
10 teacher of Child

11 Q All right. And the date that you -- I think
12 everybody's mentioned 2007; is that
13 accurate?

14 A Yes, sir, it is.

15 Q All right. And could you go through step by step
16 when you respond, what do you start doing?

17 A Well, I was initially called to the school by a
18 patrolman. A routine patrol officer will respond
19 initially. They responded from central dispatch. Then
20 they'll call the investigator. They requested me to meet
21 with them at the school in reference to these allegations,
22 in which I did. When I first arrived at the campus, I
23 spoke with the guidance counselor and Miss Child
24 teacher.

25 Q That would be Ms. Livingston?

1 A That's correct.

2 Q And Ms. Ward, both who testified in court?

3 A That's correct.

4 Q Go on.

5 A Once I spoke with them, I determined that I needed to
6 contact Department of Social Services and have them
7 involved as well due to the allegations. I then contacted
8 the Care House of the Pee Dee, which would consist of a
9 medical examiner and a forensic interviewer. I wanted to
10 know everything that Miss Child wanted to tell and we
11 needed to make sure that she physically was okay.

12 Q Okay. So as a result of that, were you present at
13 the Care House when she was interviewed by both Debbie
14 Elliott and examined by Dr. Saunders?

15 A Yes, sir, I was. I then transported both her and her
16 mother to the Care House where she did receive a medical
17 examination and an interview. As Ms. Elliott described
18 earlier, the interview can be watched through a live feed
19 in a private room beside the interview room. That same
20 camera has the capabilities of recording audio and digital
21 recording. But I was watching what Miss Child was
22 disclosing.

23 Q Okay. And after she went through that procedure and
24 process, what did you do?

25 A Well, after Child disclosed the incident, the next

1 step would be to interview all witnesses, everybody
2 involved in the case to determine what the next step would
3 be. That led me to Mr. Johnson. Child was very clear
4 and very adamant with the allegations against her uncle.
5 So that was my next step, to go speak with her uncle.

6 Q Okay. Can you tell the ladies and gentlemen of the
7 jury how you went about speaking with the accused in this
8 case Robert Johnson?

9 A Well, I met with Mr. Johnson in my office.

10 Q Let's take it step by step. When would you have met
11 with him in your office?

12 A I believe it was the 25th. I can look at any notes.
13 It was the 25th of October, 2007.

14 Q All right. And your office is located where?

15 A It's at the City County Complex on the second floor.

16 Q This building?

17 A Yes, sir.

18 Q All right. And did you call him or how did he know
19 to come in to speak with you?

20 A I, actually, was at his house the day prior and I
21 asked him to come in and speak with me concerning the
22 allegations.

23 Q Okay. And you made no arrest of him at either the
24 24th; is that correct?

25 A No, sir, I did not.

1 Q And did you arrest him on the 25th for him to come to
2 speak with you?

3 A No, sir, I did not.

4 Q What would you characterize you doing in terms of
5 investigation at that point?

6 A It's a fact-finding mission. I wanted the facts. I
7 wanted to know everything I could possibly know about the
8 allegations.

9 Q All right. So he came in?

10 A He did.

11 Q Okay. And what did you do then?

12 A The first thing that I did was read Mr. Johnson his
13 Miranda rights.

14 Q Now, let me ask you, did you speak with him in your
15 office or did you go to some other room?

16 A I believe we were in the conference room, which is on
17 the same floor. Instances and allegations such as this,
18 it's more appropriate to take into a more quiet setting.
19 I share an office -- at the time, I shared an office with
20 another detective who was not directly involved in the
21 case and, therefore, it was not appropriate to speak with
22 him in that setting. So we went to a different setting.

23 Q He wasn't handcuffed at that time?

24 A No, sir.

25 Q All right. You didn't say you have to speak with me?

1 A No, sir.

2 Q Now, when you went to that conference room, was it
3 just you or you and another detective or how did that work
4 out?

5 A It was myself and another detective by the name of
6 Sergeant Larry Drayton.

7 Q Okay. And y'all went down to the conference room; is
8 that correct?

9 A We did.

10 Q Okay. Now, you began saying something about speaking
11 to him about his rights, are those the Miranda rights you
12 refer to?

13 A Yes, sir.

14 Q And for those of us who watch television, that's
15 where they say you have the right to remain silent and so
16 on and so forth?

17 A Yes, sir, it is.

18 Q Did you tell him those Miranda rights by memory or
19 did you have a form?

20 A We have a standard form that we use. It's kind of a
21 fill-in-the-blank form. Every time I give Miranda rights,
22 that's the form that I use. It's a standard form.

23 Q I'd like you to see what's been marked as Court's
24 Exhibit 1. Can you identify that form?

25 A Yes, sir, this is the Waiver of Rights form that was

1 used that day on the 25th of October.

2 MR. JEPERTINGER: Your Honor, at this time, I
3 would like to move this into evidence as State's Exhibit
4 3.

5 THE COURT: Has defense counsel seen this
6 document?

7 MR. MEETZE: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: State's Exhibit 3 is in evidence
11 without objection from the defense.

12 (WHEREUPON, State's Exhibit No. 3 was admitted
13 into evidence.)

14 BY MR. JEPERTINGER:

15 Q I'm going to show you what's now State's Exhibit 3,
16 formerly, Court's Exhibit 1. If you could come right
17 around here where the jury can hear you, please. And I
18 want you to tell the jury how you went over this form with
19 Mr. Johnson. And after you get done telling them how you
20 went over this form with him, go over the whole thing,
21 then you can return to your seat.

22 A Would you like me to read it?

23 Q Please.

24 A Whenever I issue somebody their Waiver of Rights,
25 whenever we review this form, I always do it the same way.

1 I show it to them and let them follow along while I read
2 it at the same time. What this is is a standard form with
3 blanks filled in by my hand. That was the case number in
4 reference to the allegations. It says Waiver of Rights,
5 division of police, Florence, South Carolina. The date is
6 October the 25th, 2007, and the place is the
7 investigations division. And it says I, Robert Johnson,
8 voluntarily without threat, duress, force, promises of
9 immunity or reward agree to be questioned by the Florence
10 Police Department. I fully realize I have the right to
11 remain silent the entire time I am here. Anything I may
12 say can be used against me in any court of law. I have
13 the right to have an attorney present and if I cannot
14 afford an attorney, a desire to be represented, one will
15 be appointed for me prior to any questioning without cost
16 to me. Even after signing this form, I realize I have the
17 opportunity to exercise these rights at any time I wish to
18 while I'm here. I also realize I have the right first to
19 consult with an attorney or anyone else I wish to before
20 signing this form or answering any questions.
21 Nevertheless, I voluntarily request and authorize the
22 Florence, South Carolina Police Department to proceed with
23 the questioning. In addition, I represent that I feel all
24 right both mentally and physically and I know of no mental
25 or physical ailment which might be impaired by any

1 questioning. This is an important note. If you do not
2 understand any part of this form do not sign it.

3 Mr. Johnson signed this form here and then I signed my
4 name underneath. And then he dated the form October 25th,
5 2007.

6 Q Thank you so much. Appreciate it. You may have a
7 seat. Now, when you spoke to Mr. Johnson and you went
8 over this waiver of rights form, did he appear to
9 understand those rights?

10 A Yes, sir, he did.

11 Q All right. Did he appear in any way, shape or form
12 to have any difficulty understanding any aspect of these
13 rights?

14 A No, sir, he did not.

15 Q All right. Did at any time you indicate to him or
16 Sergeant Drayton indicate to him that he had to sit in
17 that conference, he couldn't use the bathroom, make a
18 phone call, anything of that nature?

19 A No, sir.

20 Q Did you lock him into the conference room in any way,
21 shape or form?

22 A There is a lock on the conference room door, but it's
23 on the outside, not the inside. It's not possible to lock
24 somebody into that room.

25 Q All right. How long did you approximately speak with

1 him?

2 A Approximately two hours.

3 Q And during any of that two-hour time period, did he
4 ever tell you I don't want to talk to you any more?

5 A No, sir.

6 Q Okay. And once again, was he under arrest when he
7 made -- whatever he said to you, was he under arrest?

8 A No, sir, he was not under arrest.

9 Q In fact, after he spoke with you, you still didn't
10 place him under arrest, correct?

11 A No, sir, I did not.

12 Q Now, you did have questions for him during that
13 two-hour time period?

14 A Yes, sir, I did.

15 Q Okay. Now, tell the jury what were some of the
16 questions that you had for him?

17 A Well, originally, we just began talking about
18 different places where he had lived in the City of
19 Florence. I was trying to establish a time line and just
20 get feedback from him and his specific addresses.

21 Q Okay. And in terms of time line, what did you find
22 out from Robert Johnson about where he lived?

23 A He was able to help confirm with me -- in the
24 meantime, I had used police reports from the police
25 department to establish his residency filed in police

1 reports, so he was able to help establish his --

2 MR. MEETZE: Objection.

3 THE COURT: Might counsel approach the bench.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, I'm going to ask if you could to retire to the
9 jury room. Do not discuss the case. We have a brief
10 legal matter we need to tend to outside of your presence.

11 (WHEREUPON, the jury retire to the jury room.).

12 THE COURT: Mr. Meetze, be glad to hear from
13 you.

14 MR. MEETZE: Thank you, Your Honor. May it
15 please the Court. Your Honor, during the testimony
16 elicited just a moment ago, Investigator Robinson
17 referenced the time line in the investigation and how she
18 was determining the time line and indicated that she was
19 questioning him about prior residences and all that kind
20 of stuff and I think matching them up with addresses on
21 previous police reports, I believe. And I objected at
22 that point in time. I don't know where she was going with
23 that, but, certainly, when I hear other police reports,
24 prior police reports, certainly, my mind goes towards the
25 possibility of other cases involving Mr. Johnson and

1 different things like that.

2 So, again, I don't know what the testimony was
3 about to be, I just wanted to object. And I don't know if
4 you want to proffer that testimony outside the presence of
5 the jury, but, certainly, I think it would be natural for
6 the assumption to be that those were reports of prior
7 legal situations that Mr. Johnson had gotten into.

8 THE COURT: I do think that you're right and I
9 do sustain any reference to any prior police reports.

10 MR. JEPERTINGER: Yes, sir. I will point out,
11 my name has appeared on several police reports as being a
12 victim of a crime several times. There's a lot of
13 information there. But what we're trying to elicit from
14 her are just addresses and not where she got the
15 information from, Your Honor. I think it can be possibly
16 a double inference there. But I was not trying to elicit
17 if he has had any prior criminal behavior or trying to put
18 his character into issue at this stage of the game in
19 terms of prior criminal activity on his part at all. I
20 was just going to ask what his addresses were in terms of
21 time. If she can do that without using the term police
22 reports or any reference in terms --

23 THE COURT: She can say based on her knowledge,
24 these are the addresses that I've known that he's lived
25 at. She doesn't need to say where it came from.

1 MR. MEETZE: And again, I don't think and I
2 don't want to insinuate that I think anybody did or said
3 anything maliciously or anything like that. I don't at
4 all. You know, once you sometimes start talking,
5 sometimes things come out for whatever reason. But I do
6 think, however, that it's something that is out there. I
7 don't think there is any real way to cure that. Jurors, I
8 think, take all kinds of things into consideration,
9 whether they're told not to or not, and I don't think that
10 would be any different in this situation. It's a
11 situation where you can't unring that bell. I think that,
12 certainly, it would not be unreasonable to believe that
13 that would have compromised Mr. Johnson's ability to
14 receive a fair trial in the case and based on that would
15 ask the Court to declare a mistrial in this matter.

16 THE COURT: I'm not inclined to grant a mistrial
17 based on what's in the record to this point. However, I
18 do sustain the objection. And I will, at the Defendant's
19 option, order that any reference to police reports be
20 stricken and that there is to be no adverse inference
21 drawn from that and give a curative charge that you would
22 agree to.

23 MR. MEETZE: Your Honor, I would object to any
24 curative charge, but would move that any testimony be
25 stricken from the record.

1 THE COURT: All right. And once again, in order
2 to strike it from the record, I'm going to have to call
3 their attention to it. Do you have an objection to that?

4 MR. MEETZE: I think -- well.

5 THE COURT: If I strike it from the record,
6 there probably needs to be a curative charge.

7 MR. MEETZE: I would -- well, then I would
8 object to a curative charge. I would ask that at this
9 point in time, the objection has been sustained --

10 THE COURT: And the State's response is stricken
11 from the record.

12 MR. MEETZE: And they just pick up the response
13 without referencing police reports or whatever.

14 THE COURT: That's what the defense -- in view
15 of the fact that I did not grant a mistrial, that is --
16 the defense's request is that I sustain the objection and
17 that her response stricken from the record and I will
18 address that in the charge at the conclusion of the case
19 that they can't take into consideration evidence that has
20 been stricken from the record and proceed forward in that
21 fashion.

22 MR. MEETZE: In light of the fact that the Court
23 is not granting the mistrial, yes, sir, Your Honor.

24 THE COURT: And bearing in mind that I am in a
25 position to grant a more thorough curative charge, it's my

1 understanding that the defense has requested that I not do
2 that?

3 MR. MEETZE: Correct.

4 THE COURT: We're ready for the jury.

5 (WHEREUPON, the jury came into open court.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of
7 the jury, we all were aware of the fact that one of the
8 alternates did not show up. Unfortunately, she was
9 involved in a very minor automobile accident. She's on
10 her way up here. I just wanted to let y'all know that it
11 wasn't she was shirking her duty. It was something beyond
12 her control. She called as soon as she was able to do so.
13 But that's why we have alternates, for that very reason.
14 So I just wanted to let y'all know that.

15 Prior to your dismissal to the jury room, there
16 was an objection made. I sustained that objection and the
17 State's response is stricken from the record. I will
18 charge you at the conclusion of the case that you cannot
19 give any testimony that's been stricken from the record
20 any consideration whatsoever.

21 Mr. Jepertinger.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. JEPERTINGER:

24 Q Did he tell where he lived?

25 A Yes, sir.

1 Q Okay. Where did you find out he lived?

2 A Well, I knew that he lived at -- in 2007 at 613 South
3 Church Street.

4 Q Okay. And is that in the County of Florence?

5 A Yes, sir, it's in the city limits of Florence.

6 Q Also, in the county, correct?

7 A Yes, sir.

8 Q And prior to that?

9 A Prior to that, he resided, I think it was 311 Jarrett
10 Street, which is the house behind K.F.C. off of Palmetto
11 Street.

12 Q And prior to that?

13 A I think he was at 401 East Pine Street in the city
14 limits of Florence.

15 Q And you don't know where he lived prior to that,
16 correct?

17 A No, sir, I don't.

18 Q Was there ever any mention of Oaks Mobile Home Park
19 to you?

20 A I think that the victim, Child mentioned
21 the mobile home park, but I don't think she knew exactly
22 the name of it. She just called it the trailer park.

23 Q And I believe that Oaks Mobile Home Park shut down
24 many years ago, correct?

25 A Yes, sir.

1 Q Okay. All right. And after you determined where he
2 lived, all right, what questions did you have for him?

3 A Well, we just talked about his employment and his
4 lifestyle and things that he did recreational. You know,
5 I was aware that Miss Child and her siblings had been
6 staying at his address. And so we just talked of things
7 of that nature.

8 Q All right. As to Child were there any
9 specific questions based on the allegations that were
10 being made that you had for Mr. Johnson?

11 A Yes, sir, it was.

12 Q And what question did you have for Mr. Johnson?

13 A Well, Miss Child Child had
14 disclosed that several children were in the room the night
15 that she conceived or that she had had sexual intercourse
16 with a peer, K.R. And she had disclosed
17 that Mr. Johnson had witnessed the actual act. And I
18 wanted to know from Mr. Johnson if he remembered that
19 night and if that were the case.

20 Q And what was his response to you?

21 A He stated that he did know that they were having
22 sexual intercourse in the floor of his bedroom.

23 Q All right. And after he made that statement to you,
24 did you have another question in that regard or did you
25 move on to something else?

1 A I think I asked him -- I'm sure that we talked about
2 that for a few minutes just so I could be 100 percent sure
3 of what he was telling me, but I don't remember -- you
4 know, I'm sure that we would have talked about that for a
5 few minutes. You know, so you're saying that you knew
6 that they were having a sexual relationship in the floor
7 and he said he was sure that they were.

8 Q Okay. Let me just stop here. When you're talking,
9 none of this recorded; is that correct?

10 A No, sir, it was just a conversation.

11 Q And why did you not record it?

12 A Well, for various reasons. You know, the interview
13 lasted maybe two hours or so and I just -- I thought that
14 at the end, we would, but it just never came to fruition.

15 Q Please go on. What was the next area that you
16 covered?

17 A We talked about children sleeping in his room with
18 him and things of that nature, on the floor and things
19 like that.

20 Q Let's get to Miss Child what specifically did
21 you discuss with him in terms of Miss Child

22 A Well, he was able to confirm that yes, you know,
23 Child had stayed there and things of that nature.

24 Q All right. And was there ever an incident dealing
25 with a juice box or Juicy Juice or something of that

1 nature?

2 A There was a juice box incident. All the other
3 children had been given a juice box except for Child

4 Q Did you ask Mr. Johnson specifically about this
5 topic?

6 A Yes, sir, I did.

7 Q And go on.

8 A Mr. Johnson admitted that Child had called him a
9 pervert and that he had said -- and I'll read from my
10 notes. Mr. Johnson had responded to her that her baby was
11 going to come out looking like him because she had, in
12 anger, called him a pervert.

13 Q All right. Did you discuss any other topic with him
14 in regards to Child

15 A In regards to Child

16 Q Yes.

17 A I believe that covers it.

18 Q All right. Now, subsequently, were you still working
19 on this case; is that a fair --

20 A Absolutely, I was.

21 Q And he walked out of that conference room not
22 arrested, correct?

23 A Yes, sir, that's correct.

24 Q And is it a safe thing to say that you were still
25 trying to garner information and put this case together

1 since it was relatively new to you?

2 A Absolutely, interviewing as many witnesses as I
3 possibly could.

4 Q Now, I want jump forward if I could to November of
5 2009?

6 A November of 2009.

7 Q Okay. You finally procured a warrant for this
8 individual for crimes against Child correct?

9 A Yes, sir, I did.

10 Q All right. Did you personally serve the warrants on
11 Mr. Johnson -- or did you arrest him, let me ask that
12 first?

13 A Myself and Investigator Chase Osmond arrested Mr.
14 Johnson. I did not personally serve the warrants on Mr.
15 Johnson. I signed them and, therefore, I did not serve
16 them for that reason.

17 Q Okay. And where did you arrest him?

18 A Mr. Johnson was arrested in his home, which was 615
19 South Church Street. Since the interview with him in
20 2007, he had moved next door.

21 Q Okay. All right. And when you arrest someone, what
22 is the typical protocol before you put the handcuffs on
23 him and do that and stick them in the back of the patrol
24 car or cruiser, whatever you call it?

25 A Detectives don't have roll cages and things like

1 that, we don't transport prisoners usually who are in
2 custody. So I had an officer with myself and Investigator
3 Osmond. Mr. Johnson was arrested. We did place the
4 handcuffs on him first. And once the handcuffs are
5 secured, we want to search that individual for any
6 weapons, things like that. And when -- we searched him
7 after we put the handcuffs on him. Search incident to
8 arrest is what it's referred to, yes.

9 (WHEREUPON, State's Exhibit No. 4 was marked for
10 identification only.)

11 BY MR. JEPERTINGER:

12 Q Okay. I just marked this State's Exhibit 4 for
13 identification. I ask you what's been marked as State's 4
14 for identification at this point, can you identify that
15 object?

16 A Yes, sir, this is the taser that was found in
17 Mr. Johnson's pocket at the time of arrest.

18 Q All right. And it's -- it has a typed number on
19 there, what was that typed number on there?

20 A The typed number is KL609 and then it says type
21 underneath.

22 Q All right. And what did you do with that object?

23 A I requested that Investigator Chase Osmond log that
24 object into evidence while we were completing paperwork
25 and things like that and that's what he did.

1 Q And your evidence room is located where?

2 A Our evidence room is in the basement of the City
3 County Complex, the actual building that we're in. It's
4 the old jail, the back of the old jail. It's a secure
5 evidence room where evidence and property are stored.

6 Q And has that -- once it was checked in, it's remained
7 there?

8 A Yes, sir, it has. There's a chain of custody that we
9 complete when we log it in.

10 Q And it has remained there, correct?

11 A Absolutely, yes, sir, it has.

12 Q And who got it out of evidence?

13 A I took it out of evidence.

14 Q Is this the same taser that you got off of
15 Mr. Johnson, out of his pocket in November of 2009?

16 A Yes, sir, it is.

17 MR. JEPERTINGER: All right. At this time, I
18 would move State's Exhibit 4.

19 THE COURT: Any objection from defense?

20 MR. MEETZE: I would object, Your Honor.

21 THE COURT: All right. And the grounds?

22 MR. MEETZE: Well, could we do that outside --

23 THE COURT: You may approach the bench.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury, but out of the hearing of the

1 jury.)

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury, once again, we need to take up a matter of law
4 outside of your presence. Do not discuss the case.

5 Everyone remain seated as the jury exits the
6 courtroom.

7 (WHEREUPON, the jury retire to the jury room.)

8 THE COURT: Mr. Meetze, you're recognized.

9 MR. MEETZE: Thank you, Your Honor. Your Honor,
10 we would object to entering the taser as evidence in the
11 case and would object to the testimony with regard to it
12 based on the discovery of the taser being too remote from
13 when the allegations are, that it may or may not have been
14 used as a threat or whatever the testimony was from Miss
15 Child There wasn't anything in the incident reports
16 and all that I had from the interviews from the Care House
17 in regards to that. And so, when Miss Child
18 testified about it, that was a little bit of a surprise.
19 But again, there was a search done at the time of Mr.
20 Johnson, of his house, and nothing of that nature was
21 found and then it was located on his person in November of
22 2009, two and a half -- well, not two and a half years,
23 but 25 months after the allegation surfaced and, you know,
24 longer than that since the allegations. In fact, some of
25 the allegations with regard to the taser may have been --

1 and again, I don't remember the testimony exactly, but may
2 have been in regards to some of the lewd act charges,
3 which are alleged to have occurred even further back in
4 time. And I think it's just too prejudicial to enter that
5 piece of evidence with it being that remote to when it's
6 alleged to have been used or whatever.

7 THE COURT: Perhaps, if the victim didn't
8 testify as to the taser being used, a method of
9 intimidation, it might, indeed, be irrelevant and too
10 remote, but in view of the fact that there was testimony
11 in that regard, I think it does make it relative.
12 Clearly, what -- your objections really go more to the
13 weight than its admissibility. And, of course, you can
14 point out the fact that there was no mention of a taser in
15 any of the investigations, any of the reports, but I think
16 it is admissible. And I'll be happy to hear from the
17 State in that regard.

18 MR. JEPERTINGER: I agree with the Judge.

19 THE COURT: Very good.

20 Any further comment, Mr. Richardson?

21 MR. RICHARDSON: No, sir, Your Honor.

22 THE COURT: We're going to speak with the juror.
23 Ms. Graham?

24 MS. GRAHAM: Yes, sir.

25 THE COURT: I understand that you had an

1 unfortunate automobile accident, is that correct?

2 MS. GRAHAM: Yes, sir.

3 THE COURT: I do apologize, I'm sorry for your
4 misfortune. We have two alternates for this very reason.
5 But your duty as a juror has been fulfilled. For
6 circumstances beyond your control were not able to be
7 here, so you're excused for the week. And you have earned
8 a three-year exemption and I want to thank you for being
9 here. Good luck with your accident. Was it your fault?

10 MS. GRAHAM: I really don't think it's my fault.

11 THE COURT: Just Joking. We're ready for the
12 jury.

13 (WHEREUPON, the jury came into open court.)

14 THE COURT: Your objection is overruled.

15 Mr. Jepertinger, you may proceed.

16 MR. JEPERTINGER: That's all the questions I
17 have. The State's Exhibit is in evidence?

18 THE COURT: It's in evidence over defense
19 objection.

20 (WHEREUPON, State's Exhibit No. 4 was admitted
21 into evidence.)

22 MR. JEPERTINGER: Please answer any question
23 that Mr. Meetze may have for you.

24 CROSS-EXAMINATION

25

1 BY MR. MEETZE:

2 Q Investigator Robinson, over that period of time,
3 you've gained a lot of experience in different areas of
4 police work and investigation and that kind of thing?

5 A Yes, sir.

6 Q You go through training?

7 A Absolutely, certified by the Criminal Justice
8 Academy.

9 Q Right, training at the Academy?

10 A Yes, sir.

11 Q And you have to keep up with that year in and year
12 out?

13 A Yes, sir, and also specialized training in sexual and
14 physical abuse as well.

15 Q And your job, like a lot of our jobs, is also a job
16 where you learn just by doing it, coming to work everyday?

17 A Absolutely.

18 Q And I don't think that's unusual in a lot of
19 professions. But you can always improve, get better and
20 learn more things, I suppose?

21 A I suppose you can.

22 Q And part of your training is being on how to conduct
23 and do investigations, correct?

24 A Specific to child sexual and physical abuse and
25 neglect or in general?

1 Q In general?

2 A In general, absolutely, yes, sir.

3 Q And specific as well. And you did, again,
4 investigate this case. When you are taught and go to the
5 Academy and taught how to do investigations, part of that
6 is how to take statements and things such as that?

7 A Well, I received a -- at the Criminal Justice
8 Academy, once I was promoted to an investigator, I did
9 receive a basic instructor, but my child sexual and
10 physical abuse and neglect training came from conferences
11 throughout the state or throughout the nation in child
12 abuse conference in Texas, I attend conferences there.
13 I'm also a certified forensic interviewer, which you're
14 familiar with.

15 Q However, you did not conduct an interview in this
16 case yourself of Child

17 A No, sir, I did not.

18 Q That was done at the Care House?

19 A Yes, sir, it was.

20 Q Which you observed?

21 A Yes, sir, it was.

22 Q But did not participate in the questioning or any of
23 the interviewing that went on?

24 A No, sir.

25 Q Okay. And that's your policy, pretty much, with

1 regards to --

2 A It's not a policy. It's my standard proceed so
3 that -- it's how I conduct business. Now, I do assist
4 other agencies. For quite some time at the Care House,
5 before they had a forensic interviewer, I did all the
6 forensic interviews for the nine surrounding counties as
7 a -- on top of my responsibilities with the City of
8 Florence.

9 Q But you did interview other potential witnesses in
10 the case?

11 A Yes, sir.

12 Q You interviewed, I think -- well, you interviewed a
13 Sylvia Miles, correct?

14 A Yes, sir.

15 Q That's the aunt of Child

16 A Yes, sir.

17 Q You interviewed K.R. who there has been
18 testimony about as well?

19 A Yes, sir.

20 Q And you also did an interview with somebody named
21 Bennie Knowlin?

22 A B.J. Knowlin, yes, sir.

23 Q And those were all recorded?

24 A Yes, sir.

25 Q And transcribed?

1 A Yes, sir.

2 Q And many, in fact, many interviews that you do are
3 recorded and transcribed?

4 A Yes, sir, they are.

5 Q You also interviewed, again, Robert Johnson as part
6 of your investigation in this case?

7 A Which -- in 2007?

8 Q In 2007, that's right.

9 A Yes, sir.

10 Q And you talked to him for a couple hours?

11 A Two hours.

12 Q And did not -- that was not recorded at all?

13 A I did not.

14 Q No transcription of that?

15 A Other than my notes at the time and then the
16 documentation in my report.

17 Q Right. So there's not a transcribed account of that
18 interview?

19 A No, sir.

20 Q It lasted for two hours?

21 A Yes, sir.

22 Q And the testimony that's been presented today is with
23 regard to a few statements?

24 A Yes, sir, that's correct.

25 Q Now, in this case, also, this case began with a call

1 from Williams Middle School?

2 A Yes, sir.

3 Q Okay. And you were familiar with that portion of the
4 investigation?

5 A Once I arrived at the school, yes, sir, I
6 familiarized myself with what with the school personnel
7 knew.

8 Q School personnel, and the folks you spoke with, Ms.
9 Wardy and Ms. Livingston, correct?

10 A Yes, sir.

11 Q And they indicated -- or, at least, one of them
12 indicated that Child had told them -- well,
13 there was questions about whether or not Child was
14 pregnant or not?

15 A Child teacher had concerns that she may be
16 pregnant.

17 Q And, eventually, Child did admit that she was
18 pregnant, correct?

19 A That's correct.

20 Q And said that the father was her uncle?

21 A Well, she didn't directly say that my uncle is the
22 father of my child under no uncertain terms. I mean, she
23 was wishful and more hoping that he was not. Once you
24 pinpointed her down to say is -- you know, do you believe
25 that your Uncle Robert is the father of your child, she

1 was -- she wanted to believe that K.R. was
2 the father, hence the reason why I interviewed him and met
3 with him at the school. But to answer your question, I
4 believe that, yeah, she was afraid that her Uncle Robert
5 was the father, i.e., the reason why she wouldn't admit
6 she was pregnant originally.

7 MR. MEETZE: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MR. MEETZE:

10 Q Investigator Robinson, do you recognize that
11 document?

12 A Yes, sir, I do. It's the standard City of Florence
13 incident report.

14 Q And are you familiar with that document?

15 A Yes, sir.

16 Q And is that an incident report involving this case?

17 A It appears to be an initial incident report taken by
18 the school resource officer at the time.

19 Q Okay. And does that document indicate that Ms. Wardy
20 advised --

21 MR. JEPERTINGER: I would object unless this
22 officer -- on grounds of hearsay.

23 THE COURT: All right. Might counsel approach
24 the bench.

25

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

4 THE COURT: Objection overruled, not offered for
5 the truth of the matter asserted.

6 BY MR. MEETZE:

7 Q Does this statement -- or does this incident report
8 indicate that the complainant advised -- that victim
9 number one confided that she was pregnant and that the
10 suspect Johnson, who was her uncle, and her baby's father?

11 A I'm looking at the same report that you're looking at
12 and I'm just trying to find that in here directly.

13 Q The end of the third line, start of the sentence.

14 A Yes, sir, that's what this police report says. It's
15 taken by an officer who's not an investigating officer,
16 merely a reporting officer.

17 Q I understand. Now -- but that was certainly
18 something that you investigated?

19 A Yes, sir, it was.

20 Q Now, the baby in this case was not born until
21 February?

22 A I believe so.

23 Q And at that point in time, testing was done to
24 determine who the father was?

25 A Testing being?

1 Q Blood test.

2 A Yes, sir.

3 Q And it was determined at that point in time that
4 Robert Johnson was not the father?

5 A That's correct, D.N.A. results determined that
6 Mr. Johnson was not the biological father.

7 Q And also along the way, other folks were involved and
8 it's been testified to D.S.S. was called in this case?

9 A Yes, sir.

10 Q And you spoke with D.S.S. agents in regards to this
11 matter and in regard to this case as well, correct?

12 A Yes, sir.

13 Q And part of your discussions with D.S.S. were with
14 regards to the pregnancy; is that correct?

15 A Yes, sir.

16 Q And you gathered information as part of your
17 investigation in this case that at some point in time that
18 Child due date was February the 8th of 2008?

19 A That's correct.

20 Q And that Child doctor felt that the baby was
21 conceived around May 8th of 2008?

22 MR. JEPERTINGER: Objection, Your Honor, that
23 would be hearsay.

24 MR. MEETZE: Same response.

25 THE COURT: I'll overrule the objection.

1 BY MR. MEETZE: :

2 Q Okay. Is that correct?

3 A I think that my information of the due date came from
4 Department of Social Service, actually, the case worker
5 involved.

6 Q But that is information you got?

7 A Yes, sir.

8 Q From D.S.S.?

9 A Yes, sir.

10 Q Which was reported to have come from her doctor?

11 A Yes, sir.

12 Q Also, in 2007, you -- as part of your investigation,
13 you conducted a search of Mr. Johnson's residence?

14 A Yes, sir, I did.

15 Q And that was back in, was it November of 2007 or
16 October of 2007?

17 A I believe it was October of 2007.

18 Q All right. And during that search in 2007, you did
19 not locate any tasers, correct?

20 A No, sir, I did not.

21 Q There's nothing in the incident report in this case
22 at all where there's any indication that any statement was
23 made prior to this trial of a taser ever being involved in
24 any allegation centered around Mr. Johnson, correct?

25 A No, sir, at the time, the scope of the search warrant

1 was just for the residence and not for Mr. Johnson's
2 person. So whenever we searched his residence, we did not
3 locate a taser, but that did not include his person.

4 Q There was not an allegation with regards to a taser
5 from anyone --

6 A I am not aware of any at that time.

7 Q And you're the lead investigator in this case?

8 A Yes, sir.

9 MR. MEETZE: I don't have any further questions.

10 THE COURT: Any redirect, Mr. Jepertinger?

11 MR. JEPERTINGER: No, sir.

12 THE COURT: You may step down.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: Mr. Richardson, you may call your
16 next witness.

17 MR. RICHARDSON: That's the case, Judge.

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, necessarily, I have to take up matters of law
20 outside of your presence at this juncture in the trial. I
21 ask that you retire to the jury room, but do not discuss
22 case.

23 Everyone remain seated while the jury exits the
24 courtroom.

25 (WHEREUPON, the jury retire to the jury room.)

1 THE COURT: Be glad to hear motions at this
2 time.

3 MR. MEETZE: Thank you, Your Honor. May it
4 please the Court. Your Honor, at this point in time at
5 the close of the State's case, we would make a motion for
6 a directed verdict that pertains to all seven counts of
7 the indictment, arguing that the evidence presented here
8 is not sufficient to allow a reasonable jury to find Mr.
9 Johnson guilty beyond a reasonable doubt in this matter.

10 THE COURT: Be glad to hear from the State with
11 regard to this motion.

12 MR. RICHARDSON: Thank you, Your Honor. Going
13 through each count sequentially. Your Honor, Count one,
14 contributing to the delinquency of a minor, the victim in
15 the case gave testimony that during that summer before she
16 started school and discovered she was pregnant, she had
17 sex on the floor of her uncle's bedroom, at which point
18 she said she saw him watching she and her boyfriend at the
19 time. She was almost 13, so 12, and the boy was 12 as
20 well. She stated that the uncle, the Defendant, was
21 watching them have sex. The date of the indictment was on
22 or about May 8th, 2007. Here, the victim was somewhat
23 hazy on the exact date. Of course, it was three years
24 ago. But K.R. turned out to be the father of
25 her child. Nine months from around that time, the child

1 was born. I think that language is the key word there.
2 And I believe there's enough to get to the jury in that
3 regard.

4 Counts two, three, four and five are all
5 criminal sexual conduct with a minor in the second degree.
6 All dates range from October 1st, 2005, to October 1st,
7 2007. Doing the math that Child is 16 now in 2010, in
8 2005 she would have been around 11. She testified that
9 about the time she turned 11, the oral sex started, 12 and
10 13 was vaginal, anal, digital penetration. I believe
11 those time lines, the way she stated it and the age she
12 said she was when it took place fits right in that 2005,
13 2007 time line on each count. She also stated that the
14 penetration happened more than five occasions. And there
15 are four separate counts here mainly distinguished by the
16 type of penetration. She stated that she was penetrated
17 vaginally, anally, digitally, orally. And I believe that
18 accounts for all those things within the time period
19 listed in the indictment.

20 Count six, lewd act on a minor from 2001 to
21 2003, the victim initially testified that she beginning at
22 the age of, I believe she said, six or seven begin staying
23 with her Uncle Robert and that is when he began to touch
24 her inappropriately on her chest and private area. Again,
25 with the math, given her age, she was born in '93, so 2001

1 to 2003 would fit into the time period where she states
2 this behavior started. And she stated it continued and
3 escalated up to worst things later.

4 Count seven, Your Honor, is lewd act from 2003
5 to 2005. This fits in the time line where she stated she
6 was being inappropriately touched and, also, I believe
7 that gets us to the time period where the oral sex would
8 have started. I believe both of those are encompassed by
9 a lewd act on a minor.

10 For those reasons, we believe there is
11 sufficient evidence to get it to the jury.

12 THE COURT: Anything further, Mr. Meetze?

13 MR. MEETZE: Just maintain my motion for the
14 directed verdict.

15 THE COURT: Very good.

16 Based on the consideration of all the testimony,
17 I deny your motion for directed verdict. I think that
18 there is ample testimony for each count to go to the jury.

19 And Mr. Meetze, of course, this is going to be
20 the occasion where you're allowed to present a defense.
21 Have you had an opportunity to speak with your client and
22 are you in a position to proceed forward with a defense?

23 MR. MEETZE: I have spoken to him about it. I
24 haven't gotten an answer yet. If we could have a brief
25 recess so I can confer with him about that to see if he

1 has made his mind up.

2 THE COURT: Of course, there are two questions.
3 One is whether you're going to present any defense
4 witnesses and one is with regard to his testifying. Have
5 you decided whether or not he's going to testify? Has he
6 decided that?

7 MR. MEETZE: He has not indicated to me a
8 decision in that regard..

9 THE COURT: Well, I'm going to ask that you
10 discuss that with him in great detail and we will have a
11 discussion with him on the record when we come back.

12 MR. MEETZE: Thank you, Your Honor.

13 THE COURT: Very good. We will stand at ease
14 for five minutes.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Mr. Meetze, have you had an
17 opportunity to speak with Mr. Johnson?

18 MR. MEETZE: I have, Your Honor.

19 THE COURT: Have you talked with him about his
20 right to testify and his Fifth Amendment rights?

21 MR. MEETZE: I have.

22 THE COURT: Does he understand these things?

23 MR. MEETZE: He does.

24 THE COURT: All right. Let me speak with
25 Mr. Robert Lee Johnson. If you could stand right where

1 you are, I'm going to ask the clerk to administer the
2 oath.

3 THE CLERK: Do you swear to tell the truth, the
4 whole truth, and nothing but the truth so help you God?

5 THE DEFENDANT: I do.

6 THE COURT: Mr. Robert Lee Johnson, at this
7 time, I'm going to explain to you certain of your rights.
8 If you do not understand anything that I say, please let
9 me know. If you want me to explain anything in more
10 detail, please let me know. Do you understand what I'm
11 saying?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. We have now reached the
14 stage in this trial where you may present your defense.
15 You have the right to claim the protection given to you by
16 the Fifth Amendment to the Constitution of the United
17 States, which provide in relevant part that no person
18 shall be compelled in any criminal case to be a witness
19 against himself. This means that you cannot be required
20 to testify in this case. You have the right to testify on
21 your own behalf, however, no one can make you testify.
22 This is a personal right and no one can waive this right
23 except you. You can talk to your lawyer about it, you can
24 talk to your family members about it, you can get advice,
25 but that's your right. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you decide to testify, you will
3 be subject to the same rules that govern other witnesses.
4 You may be examined and cross-examined on any relevant
5 issue in this case. In addition, if you have any
6 convictions involving dishonesty or false statements for
7 crimes punishable by imprisonment for more than one year
8 and this court determines that the probative value of
9 admitting this evidence outweighs the prejudicial effect
10 to you, the solicitor will be able to introduce your
11 record to attack your credibility.

12 If you decide to testify, this decision on your
13 part must be freely, voluntarily and intelligently made
14 with knowledge of the protection given to you by the Fifth
15 Amendment of the United States Constitution and the
16 consequences of your decision to testify. If you decide
17 not to testify, I will instruct the jurors that they
18 cannot give the fact that you did not testify any
19 consideration whatsoever, that there is to be absolutely
20 no prejudice to you because you decided not to testify.
21 It is left entirely up to you whether or not to testify.
22 You may talk with your attorney, your family and friends,
23 or anyone else, but the final decision will be left
24 entirely up to you.

25 Do you understand these rights I've explained to

1 you, Mr. Johnson?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Do you have any
4 questions about the matter that I can help explain to you?

5 THE DEFENDANT: I didn't get that one.

6 THE COURT: All right. I've explained to you
7 that you don't have to take the witness stand, but if you
8 want to, you can. The reason why you can't be compelled
9 to do so is that the Fifth Amendment of the Constitution
10 ensures the right as an American citizen not to be
11 compelled to testify in a criminal proceeding because you
12 don't have to prove anything. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. That's your right. You
15 have an absolute right to take the witness stand, tell the
16 jury your version of the facts and any defenses that you
17 might assert, but you aren't compelled to do so. If you
18 don't -- I've explained that if you don't testify, I will
19 inform the jury that they can't hold that fact against
20 you. You've talked with your lawyer in great detail about
21 these rights, haven't you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand your conversations
24 with your lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Do you understand what
2 I've explained to you here today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Do you have any
5 questions that you want to discuss with your lawyer or any
6 questions for me?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Do you wish to testify
9 or not?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Very good. All right.
12 You may be seated.

13 Mr. Meetze, do you feel confident in your
14 discussions with Mr. Johnson that he understands his Fifth
15 Amendment rights?

16 MR. MEETZE: I do.

17 THE COURT: And have you talked with him in
18 great length about that?

19 MR. MEETZE: I have.

20 THE COURT: And he indicates to me here in the
21 courtroom that he wishes not to testify, is that your
22 understanding of your conversations?

23 MR. MEETZE: We had not gotten that far with our
24 conversations. He had not told me one or way or another
25 prior to coming back out here, but.

1 THE COURT: He has made his decision here on the
2 record?

3 MR. MEETZE: He has made his decision --

4 THE COURT: This is something that you've been
5 talking to him throughout the preparation of this case;
6 isn't that correct?

7 MR. MEETZE: I had notified him when we talked
8 long ago that when the case came to trial, one of the
9 things he was going to be needing to think about would be
10 whether or not he wanted to testify.

11 THE COURT: Right. Okay. Do you need any
12 additional time to confer with your client?

13 MR. MEETZE: No, sir, Your Honor.

14 THE COURT: All right. Very good. Do you --
15 I'm going to bring the jury out. You'll be given an
16 opportunity to call any defense witnesses on behalf of the
17 Defendant. Do you anticipate calling any defense
18 witnesses other than the Defendant?

19 MR. MEETZE: No, Your Honor.

20 THE COURT: Very good. All right.

21 Well, that presents a very interesting question
22 because we're in a position to proceed forward with
23 arguments. It's 3:30 now.

24 How long do you anticipate your argument being,
25 Mr. Jepertinger or Mr. Richardson?

1 MR. JEPERTINGER: Fifteen to 20 minutes.

2 THE COURT: And will you be doing the closing
3 argument?

4 MR. JEPERTINGER: I will, sir.

5 THE COURT: All right. Obviously, and you will
6 go first, you understand that?

7 MR. JEPERTINGER: Yes, sir.

8 THE COURT: All right. And how long do you
9 anticipate your argument will be?

10 MR. MEETZE: About the same, I suppose, maybe a
11 little longer.

12 THE COURT: All right. Is there any objection
13 to doing the closing arguments today and charging and
14 beginning deliberation in the morning? I think that if we
15 were to go through all of the argument, charge and begin
16 deliberation, we're probably going to be into the evening
17 hours.

18 MR. MEETZE: If we were going to split it up --
19 I would probably rather do it all in the morning, but
20 however the Court wants to do it is certainly fine.

21 THE COURT: Okay.

22 MR. JEPERTINGER: I will leave it up to the
23 Court.

24 THE COURT: Well, indeed, I believe we will do
25 that. We will argue and we will charge in the morning and

1 begin deliberations in the morning in order not to have
2 the jury out for so long. Very good.

3 MR. MEETZE: We will argue now?

4 THE COURT: We will argue now.

5 MR. MEETZE: Sorry, if I could have one quick
6 little break? I was talking to Mr. Johnson.

7 THE COURT: As a matter of fact, we are going
8 to -- in view of the fact that y'all have indicated it's
9 going to be fairly short in duration, that does give us
10 the luxury of time with regard to that. So I'm going to
11 give you the appropriate time to gather your thoughts,
12 organize your thoughts and we will reconvene here shortly.
13 We will stand at ease for a reasonable amount of time.

14 (WHEREUPON, a break was taken.)

15 THE COURT: In an effort to have some
16 continuity, we have reached the stage where the State has
17 completed their case and the Defendant is going to have an
18 opportunity to present any defense they might have.
19 Mr. Meetze has indicated to me that the Defendant elects
20 not to testify, not to put forth any evidence on his
21 behalf to support any defense that he might have. When we
22 bring the jury out, I'm going to recognize the Defendant
23 and you indicate the defense rest. And then we will
24 proceed forward. The State will go first in the argument
25 because the defense did not present any testimony, but

1 rather than breaking again, is there any objection to
2 making the next necessary motions at the close of the
3 defense case. Would you like to go ahead and preserve the
4 record in that regard?

5 MR. MEETZE: Sure, Your Honor. At this time, we
6 would renew previous motions in regard to this case,
7 directed verdict motion at the close of the State's case
8 as well as renew all of my previous objections for the
9 record to the extent they were overruled.

10 THE COURT: Okay. Very good. All right. I
11 know that the law that applies to this case is pretty
12 basic, but I think it would probably be good for us to
13 have a charge conference before you argue. I'm going to
14 charge the general law with regard to the fact that an
15 indictment is not evidence. I'm going to charge the
16 general law with regard to multiple charges and that each
17 indictment are separate and distinct and that they are to
18 be determined and deliberated separately and distinctly.
19 I'm going to charge the law with regard to the presumption
20 of innocence, reasonable doubt. I'm going to explain to
21 them the general law with regard to the duties of the
22 judge and the jury. I'm going to charge the general law
23 with regard to the credibility of witnesses. Charge the
24 law with regard to expert witnesses. We had one expert
25 qualified. I'm going to charge the law with regard to

1 failure of the Defendant to testify.

2 Mr. Meetze, some lawyers elect not to have that
3 charge. Do you want that charge or not, on the
4 Defendant's failure to testify?

5 MR. MEETZE: I do want that charge.

6 THE COURT: Very good. I'm going to charge the
7 law with regard to a statement of Defendant and the jury's
8 obligation to evaluate the elements of the admissibility
9 of -- not admissibility, but the voluntariness issues and
10 the questions of fact submitted to the jury with regard to
11 the statement of the Defendant. I'm going to charge
12 assault and battery of a high and aggravated nature and
13 define that for them. Second degree criminal sexual
14 conduct with a minor. And the appropriate section is the
15 Defendant was at least 11 years old, but not more than 14
16 years of age at the time of the sexual battery. I'm also
17 going to charge that consent as willingness, indifference
18 or ignorance is not a defense. I'm going to charge the
19 substitutive law with regards to contributing to the
20 delinquency of a minor and the substitutive law with
21 regard to lewd act on a minor as defined by 16-15-140.

22 Any -- I'm going to give each side an
23 opportunity to object after I've given the charge in full,
24 but do you see anything I've left out or do you have any
25 objections to anything that I'm going to charge, Mr.

1 Meetze?

2 MR. MEETZE: No, Your Honor.

3 THE COURT: Mr. Richardson?

4 MR. RICHARDSON: Your Honor, we request the
5 charge on the corroboration of the victim's testimony,
6 statute number 657 or 659. The statute saying that the
7 victim's testimony does not require corroboration.

8 THE COURT: Do you have that?

9 MR. JEPERTINGER: It's statutory there, Your
10 Honor.

11 MR. RICHARDSON: I can find the statute number
12 for you.

13 THE COURT: All right. If you submit it to me,
14 I'll be happy to consider it.

15 Mr. Meetze, have you had an opportunity to
16 review the proposed request to charge?

17 MR. JEPERTINGER: It's under 16-3-657.

18 MR. MEETZE: I don't see where that's different
19 than any case involving victims if the jury believes the
20 victim. I don't know, that would just sort of tend to
21 bolster his testimony.

22 THE COURT: All right. I will, indeed, charge
23 that.

24 Any further objections or requests from the
25 defense?

1 MR. MEETZE: No, Your Honor.

2 THE COURT: Any from the State?

3 MR. JEPERTINGER: In terms of your reasonable
4 doubt charge, will you be charging under, I guess, the
5 Darvey case or the hesitation act or the firmly convinced
6 or the Cochran or --

7 THE COURT: I charge it is -- it defines
8 reasonable doubt. What is a reasonable doubt in the law?
9 Reasonable doubt is the kind of doubt that would cause a
10 reasonable person to hesitate to act. And then I go and
11 define in great detail what reasonable doubt is. I
12 compare it to a civil case and then say that it doesn't
13 have to be beyond all doubt and with absolute certainty.
14 Firmly convinced language, all of that. I'm going to
15 charge it all.

16 MR. JEPERTINGER: Thank you, Judge.

17 THE COURT: Anything further?

18 MR. RICHARDSON: No, sir, Your Honor.

19 THE COURT: Are we ready to proceed forward with
20 arguments, Mr. Meetze?

21 MR. MEETZE: Yes, Your Honor.

22 THE COURT: Mr. Richardson?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: We're ready for the jury.

25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury, the State has presented their case. They've
4 rested. That concludes their presentation of evidence.

5 At this time, the defense is recognized. Mr.
6 Meetze.

7 MR. MEETZE: Your Honor, the defense rest.

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, that puts us in a posture for closing arguments.
10 Closing arguments, as I mentioned to you earlier on, are
11 very similar in form to opening statements. The lawyers
12 are going to have an opportunity to get up and address you
13 in summary fashion. What they say is not evidence.

14 I implore you to pay very close attention to
15 what these lawyers have to say because they've been
16 working with this case for a long time. What they say
17 will aid you immensely in your deliberation process. So
18 it's important to pay very close attention to that. The
19 rules of evidence under this set of circumstances requires
20 Mr. Jepertinger to go first.

21 MR. JEPERTINGER: May it please the Court.

22 THE COURT: Mr. Jepertinger.

23 MR. JEPERTINGER: A great Russian author wrote a
24 few years ago, We do not err because truth is difficult to
25 see. It is visible at a glance. We err because this is

1 more comfortable.

2 It would be a whole lot easier, ladies and
3 gentlemen, and tolerable for everyone here to deny that
4 sexual predators like Robert Johnson live among us, work
5 amongst us, shop at stores with us, like Ms. Charles,
6 worship with us. But that would be the comfortable way to
7 deny the truth. And it is that horrible truth that
8 compels us to be here. That truth, which is visible at a
9 glance and is crystal clear to see and comprehend. Robert
10 Johnson is not a fiction of some authors twisted
11 imagination. He's the living embodiment of a vivid and
12 all too real nightmare in the life of Child
13 And the Child that you saw here today is the
14 by-product of that abuse.

15 If it were possible, I'd make a time machine to
16 let this Child tell you her story about the
17 abuse she suffered at this man's hands. I would let this
18 young lady, while everything was fresh in her mind, tell
19 you what happened. But the State can't.

20 Robert was to be the trusted uncle, the
21 caretaker, the volunteering neighbor, the kind and gentle
22 friend. He proved to be the opposite, didn't he? Unable
23 to curb his own lust, he stole innocence from Child And
24 if Child has proved to be promiscuous, it well may be
25 argued that Robert Johnson destroyed or marred that moral

1 compass in her life. If his goal was to create a sexual
2 play thing, in a sorted way, he's been successful. But in
3 so doing, not only has he offended the conscience of
4 everyone, resoundingly, he has broken several laws of the
5 State of South Carolina. And in breaking those laws, he's
6 now called to judgment before you.

7 Folks, it's in your judgment today that the
8 State of South Carolina puts its trust. The Judge told
9 you at the beginning of this trial that the State has to
10 prove each and every element of Robert's crimes to your
11 satisfaction beyond a reasonable doubt. The Judge is
12 going to tell you something about reasonable doubt, ladies
13 and gentlemen. He will say something like it is a doubt
14 that -- sometimes he'll say it's a doubt for which you can
15 give a reason. Sometimes, the Judge will tell you that
16 it's a doubt that leaves you firmly convinced of the
17 defendant's guilt. Obviously, if you're not firmly
18 convinced of the defendant's guilt, it's incumbent upon
19 you to acquit him.

20 Folks, in this case, based on the testimony of
21 what you heard, based on the credibility and demeanor of
22 the witness, I believe the State has proven guilt in the
23 three principle charges he's charged with and even a
24 lesser-included that we'll talk about here.

25 What is he charged with in the indictment? I'm

1 going to ask Mr. Richardson to help me with a little
2 PowerPoint presentation. The first thing -- and I know
3 it's a little hard to see. But he is charged with
4 criminal sexual conduct with a minor in the second degree.
5 A person is guilty of criminal sexual conduct with a minor
6 in the second degree if the actor engages in a sexual
7 battery, which we will soon define. That the victim was
8 14 years of age or less at the time of the offense. What
9 did Child Richardson tell you? That about 11 or 12, he
10 began oral sex with her. And it progressed from the time
11 of 11 or 12 all the way to the time she was 13 years old
12 with vaginal and anal sex.

13 And now we define what a sexual battery is.
14 Sexual battery means sexual intercourse. Cunnilingus,
15 oral sex on a woman. Fellatio, which is oral sex on a
16 man. Anal intercourse or any intrusion, however slight,
17 of any part of a person's body or any object into the
18 genital or anal openings of another person's body, except
19 when such intrusion is accomplished for medically
20 recognized treatment or diagnostic purposes. Like when
21 girls go through a pap smear, that type thing. That's the
22 only exception, folks. Once again, it means sexual
23 intercourse, oral sex of any way, shape or form, anal
24 intercourse.

25 He is also charged with lewd act on a minor.

1 What is that? Lewd act on a minor, a person over the age
2 of 14 years. Now, we found out he was born in 1969.
3 Okay. So he would have been 14 in 1983. These events
4 happened in early 2000 going forward. Willfully and
5 lewdly commits or attempts a lewd and lascivious act upon
6 or with the body or its parts of a child under the age of
7 16 years. She was -- the oldest she was when she reported
8 this was 13. Remember, she reported all of this on her
9 14th birthday. With the attempt of arousing, appealing
10 to, or gratifying the lust or passions or sexual desires
11 of the person or the child.

12 He's also charged with the crime of contributing
13 to the delinquency of a minor. Any person over the age of
14 18, which he was at the time, to knowingly and willfully
15 encourage, aid or cause to do any act which shall cause or
16 influence a minor to so deport herself as to willfully
17 injury or endanger his or her morals or health or the
18 moral or health of others. Folks, I tell you, this
19 exactly was going on when he allowed K.R. and Child
20 to have sex at the foot of his bed watching them. And who
21 do we believe on this? Not only Child but his own
22 confirmation to Michael Robinson that this business was
23 going on. And he allowed it to happen. Two 12-year-olds.

24 Finally, and we don't have this on PowerPoint, a
25 lesser-included offense the Judge is going to talk about

1 should you not find him guilty of the greater offense of
2 criminal sexual conduct, second, with a minor is a crime
3 called assault and battery of a high and aggravated
4 nature. What is that? It's an unlawful act of violent
5 injury to another. Think about where you get the violent
6 injury here. Remember how she said when he digitally
7 penetrated her, it hurt? Accompanied by aggravating
8 circumstances, among those, intent to commit a felony.
9 Great disparity in ages and physical conditions of the
10 parties. He's a grown man, she was a little girl,
11 difference in sexes, indecent liberties with a female,
12 purposeful infliction of shame and disgrace. Those are
13 crimes for which he is charged.

14 Now, I'm going to turn the light back on and
15 take a break from this for a while. Applying these laws
16 to the facts of this particular case, what did we observe?
17 We observed a 16-year-old come into court and tell 13
18 strangers, at one time, 14 strangers, about the most
19 intimate details of her life. I couldn't imagine in any
20 social setting where you get up and ask an individual,
21 tell me about the last time you had sex and what you did.
22 She came in and looked the lawyers square in the eye and
23 recounted to both of them about her journey into purgatory
24 at the hands of this man. She was forthright. I don't
25 think she was feigning in any way her testimony to you.

1 She testified to what she perceived.

2 And I'd like to stop here one second because I
3 know Mr. Meetze is a fine attorney and he'll bring up what
4 he perceives as inconsistencies, things that he thinks are
5 going to create reasonable doubt in your mind. He'll
6 bring up the fact that Child said well, we never --

7 Robert never had sex with me after I had sex with

8 K.R. And the last time that she had sex with

9 K.R. was close to the time school started in the
10 school year. Well, I mean, he's going to go back
11 February, January, December, November, count all way back
12 to May. But let me ask you this, you are 13 years old,
13 having been abused, beginning with fondling, the grooming
14 technique, as they talked about, you think she ever sat
15 there and took a log of when she was having intercourse
16 with Robert Johnson? Well, let me see, on February 26th,
17 2001, he began feeling me. That's ridiculous. She was a
18 child, a child..

19 What did she tell you? About six or seven years
20 old when the touching began at the Oaks Mobile Home
21 Trailer Park in Florence, he touched her breast, her
22 thigh, what she referred to as her below area, her neck.
23 She said this, There wasn't one spot he didn't touch.
24 This went on until she was about 11 or 12.

25 Then go over to Pine Street, the physical stuff,

1 sucking me, oral sex, eating me. I mean, it's vulgar,
2 but, I mean, that's what she said. He had his head
3 between her legs, any chance he could get, when we were
4 alone. He made me give him oral sex four to five times.
5 What did he say, I love you, you're my best niece. We'd
6 be in his room, always alone. He sent others away. He
7 tried to be the trickster with her, you know. He made her
8 sit on a wet bed and then oh, you better take your pants
9 off. I mean, it started like that.

10 He moved to Church Street. The family had to
11 move in with him for a period of time. There was an
12 electrical problem at the apartment, the electricity
13 wasn't turned on. Her mother broke her ankle. She went
14 to the hospital. Sent her to stay with Uncle Robert and
15 Grandpa Freddie. He started sticking it in her. Then he
16 played with the taser. And isn't it interesting when he
17 got arrested in 2009, they could have found anything on
18 him. What did they find? A taser. Began feeling
19 threatened by the use of -- remember how she said it was
20 like click, click, click, click. Just like a taser goes.
21 Digitally penetrated her. Felt like she was having a
22 burning sensation. Nails scratched her. Made some
23 comment about her bleeding. Then she said this to you,
24 when this was all going on, I wasn't wise enough to know
25 the difference.

1 What did he keep telling her? Don't tell
2 anyone. This is our secret, while threatening her with
3 the taser. She would call Robert a pervert and she was
4 kind of called down. I'm not throwing Ms. Charles, her
5 mom, under the bus, but this is so hard. What did this
6 little girl say? Why didn't you tell her? I was scared
7 mama wouldn't believe me.

8 Now, you know, like I said, she told Debbie
9 Elliott a lot of things I'm sure Mr. Meetze will come up
10 with here. Oh, didn't this little girl say that
11 somebody -- Uncle Tiger touched her or her mama's
12 boyfriend touched her and told her that K.R. or K.R.
13 was her baby's father? All those things. But you know
14 what she's consistent with, of all the things that she
15 said, the only one she said raped her was that man. No
16 one else. No one else.

17 I thought it was interesting, too, what Reba
18 Livingston, the guidance counselor, said. When they
19 finally placed the call to the mama, who came trucking up
20 to Williams Middle School? Mama and who else? Robert
21 Johnson. And when Child asked him to leave, what's the
22 language that Ms. Livingston used? He seemed reluctant to
23 leave the office after Child asked him to leave. He only
24 left after Ms. Charles asked him to leave. Why was he so
25 reluctant? Was she going to spill the beans? Was he

1 there to make sure she didn't spill the beans? Ms. Wardy,
2 the initial report, the teacher, happened at the uncle's
3 house a number of times.

4 Now, when you judge her credibility and
5 demeanor, take that all into consideration. Take into
6 consideration, what Dr. Saunders testified to, that there
7 was a cleft at the number five position that could be
8 consistent with past sexual abuse, taking into
9 consideration that she was pregnant, that it would be
10 harder to tell, that the body's regenerative powers might
11 have healed her, that time may have healed her, that she
12 had had consensual sex with K.R. Take that
13 all into the facts. But the one thing that was important
14 and I think the reason we put her up -- you know, as much
15 as she said -- and I didn't know this, honestly, as much
16 as she said she was raped, I thought she'd be tore up. I
17 hate to use that kind of vulgarism, but I did not know
18 about the body's ability to heal itself like that in that
19 type situation. But it is consistent, that five -- that
20 cleft at five is consistent with past sexual abuse.

21 Mr. Richardson asked Debbie Elliott -- you see
22 she's dealt with 2500 cases, 2500 to 3000 cases, why is
23 there this delay in disclosure? It's something that we
24 teach our kids from the time they're small. They're
25 taught to respect and obey authority, obey your elders.

1 How many times do we hear that? You need to love your
2 relatives. She was obeying her relative. Don't tell
3 anybody. This is our secret. But this man let down his
4 guard and he let down his guard in this case when he spoke
5 to Michael Robinson back in 2007, after she went through
6 the Miranda rights with him and she began to ask him
7 questions. On October 25th, 2007, what did he admit to
8 having said after she had called him a pervert -- and not
9 Michael Robinson, but Child calling him a pervert and she
10 questioned him about that incident? I don't what you're
11 talking about because you're baby is going to come out
12 looking like me. Now, I have never known an uncle to tell
13 anybody pregnant girl that your baby is going to come out
14 looking like me.

15 I've got two sons myself. I can't tell you how
16 many times -- the oldest one looks like his mother. He's
17 good looking. The youngest one looks like me. I'll leave
18 that up to your own decisions whether that's good looking
19 or not. But I have never heard my brother-in-laws tell my
20 wife when she was pregnant with either one of them, your
21 baby is going to come out looking like me. He let his
22 guard down. He was telling you what Child told you
23 today. He thought he was the father of the child. And
24 how did they find out that he was not the father of the
25 child, but he was under that impression she was until she

1 had the baby. Not on her 14th birthday did she have that
2 baby, but she had it in February of 2008. And through
3 blood test and D.N.A., that Mr. Meetze asked the
4 investigator about, found out that K.R. was
5 the father and not Robert Johnson. He didn't know that
6 back on October 25th, 2007. Your baby is going to come
7 out looking like me.

8 Now, I'm going to ask you folks to do something
9 very brave. I'm going to ask you to make a decision in
10 this case. The Judge is going to give you the law, what
11 the appropriate law is. This is going to be my last time
12 to address you. Knowing full well that this poor girl got
13 raped by this man and her testimony doesn't need to be
14 corroborated by any evidence. You can take her word for
15 what happened based on her credibility and demeanor. But
16 I'm going to ask you to be brave and in reaching that
17 decision weigh everybody's testimony that you heard from
18 this courtroom and the exhibits that you've seen.

19 I had a chance not to long ago to travel to
20 London, England. And they took me by the old central
21 criminal court. A building they refer to as the Old
22 Bailey. I don't know why they call it the Old Bailey, but
23 they call it the Old Bailey. And on the side of that
24 building is inscribed this, Defend the children of the
25 poor and punish the wrongdoer. This is the brave thing

1 I'm going to ask you to do. I'm going to ask you to
2 defend this daughter of the poor. I'm going to ask you to
3 defend her dignity as a human being. I'm going to ask you
4 to defend her decision to testify about this horror that
5 she suffered at the hands of this man. I'm going to ask
6 you to find him guilty.

7 I thank you from the bottom of my heart for
8 listening to me.

9 THE COURT: Thank you, Mr. Jepertinger.

10 Mr. Meetze, you're recognized.

11 MR. MEETZE: Ladies and gentlemen, I told you at
12 the beginning of the case and the Judge has told you, a
13 number of people have told you, this is, obviously, a
14 serious case, serious allegations, about as bad
15 allegations as we have in our criminal law. From an
16 allegation standpoint, it doesn't get much worse -- if it
17 gets worse at all, it doesn't get much worse than this.
18 Nobody is sugar-coating that. Nobody is trying to tell
19 you or convince you of anything other than that.

20 Certainly, we appreciate your service of
21 listening to all of the evidence and listening to all of
22 the testimony and weighing the evidence and credibility of
23 the witnesses and making a decision based on that, not
24 based on emotion or anything like that. Basing it just
25 strictly on what you have heard from this witness stand.

1 Because as bad as it is for someone to be the victim of a
2 child sexual assault of some kind, it's just as bad to be
3 falsely accused of that kind of crime. And that's what
4 we're dealing with here today.

5 Robert Johnson stands here or sits here in this
6 courtroom presumed innocent and he is innocent. He chose
7 not to testify in this case and the Judge will instruct
8 you there's nothing that can be held against him with
9 that. That is perfectly within his rights. He pled not
10 guilty. That means he said he didn't do it. There's
11 nothing else from him that needs to be said in that
12 regard. He is presumed innocent and it is up to the State
13 to prove to you and convince you beyond a reasonable doubt
14 that he is guilty in order for him to be convicted. And
15 again, as I said, the charges that we are dealing with in
16 this court are as serious as they get. But it's also --
17 again, as bad as that is for those kind of crimes to have
18 been committed when they're committed, it's equally as bad
19 to be facing false allegations in that regard.

20 Again, you will get charged on the law from the
21 Judge. You have gotten to hear the State talk. You've
22 gotten to hear all of the witnesses in the case. And the
23 Judge will charge you on the law. And whatever the Judge
24 charges you with regard to the law, that's what you go by.
25 Mr. Jepertinger indicated what he anticipates the Judge

1 telling you the law to be and I'm going to do some of that
2 as well, but, ultimately, the law is going to be given to
3 you by the Judge in this case and that's the law that
4 you'll need to go by. But he'll charge you with regard to
5 credibility of the witnesses and that's what this case is
6 all about. Who you believe, who do you not believe. The
7 only allegations with regards to any kind of sexual
8 assault of any kind, and Mr. Jepertinger had all of the
9 elements up here, came from Child She
10 testified with regard to all of that. So this case comes
11 down to credibility of Child So let's look
12 at that.

13 First off, you know, we've been doing this for a
14 while as far as practicing law and that kind of thing.
15 The State can get up here and try to anticipate what I may
16 say or what I may not say. And that's nothing more than
17 them showing you that they understand the holes in their
18 case as well. But I am going to point those out to you.
19 One of the things that I found interesting with regard to
20 the testimony is when Child -- with regard to disclosing
21 late. The late disclosure, as they said. The first
22 person she mentioned anything to you or made an allegation
23 of child molestation regarding Robert Johnson was to Ms.
24 Wardy at Williams Middle School, who was her teacher.
25 That happened in October, sometime in October of 2007.

1 Whether it was the 22nd or some time earlier than that, it
2 was about that time. I mean, that's the first person that
3 she disclosed this to according to some of the testimony
4 that was given here today. She said she was afraid her
5 mother wouldn't believe her. And that's why she didn't
6 want to say anything before. She didn't say she was
7 afraid she would get in trouble or she didn't say -- she
8 just said she was afraid her mother wouldn't believe her.

9 Now, I'll have to tell on myself a little bit,
10 have to admit something here. When I was growing up, I
11 had an older brother. When I was growing up, I was not
12 always as familiar with the truth as I should have been.
13 I would bend it a little bit with regard to my parents.
14 My brother, on the other hand, never did. He always told
15 the truth in all circumstances. And that helped him out.
16 In one instance, he was accused of doing something at
17 school, nothing serious. He had thrown a pencil in his
18 little cubby-hole locker in his classroom. And the way it
19 hit, it just sort of bounced out. As it happened, the
20 principal was walking by and saw that and thought that he
21 had thrown it intentionally across the room, which isn't
22 what happened. And he got marched down to the office, my
23 brother. And my brother told him the story, told him what
24 happened. And the principal didn't believe him, wanted to
25 call my father in regards to that. And when my father got

1 on the phone and heard the principal basically telling him
2 that he thought my older brother was lying to him, my
3 father said I'll be down there in just a minute. So he
4 went down there and he just walked into the principal and
5 as calmly as he could, he said, you know, I'll just tell
6 you this. He's never lied to me. I can't say the same
7 about his younger brother.

8 Now, I think it speaks volumes that what she was
9 afraid of was that her mother wouldn't believe her.
10 Certainly, she didn't go into it any more than that. She
11 didn't go into why she felt that way, why she didn't think
12 her mother would believe her. But, certainly, I submit to
13 you that it wouldn't be unreasonable to think or to
14 believe that the reason her mother wouldn't believe her is
15 because she's given her reason not to believe her in the
16 past. That's not an unreasonable result or basis for that
17 statement. Keeping in mind, we don't know why she said
18 that. Certainly, that's not an unreasonable thing to
19 believe. And again, when you're dealing with credibility
20 of the witnesses, what's the truth and what's not the
21 truth. You don't have much to base it on. You don't have
22 much to go on. You have to take the testimony as it is
23 and decide based on that what you believe and who you
24 believe.

25 I will also say with regards to credibility of

1 the witnesses, or, primarily, the witness, Child
2 Child You can try not to make a big deal out of it.
3 You can try to make a big deal out of. I'll submit to you
4 it's a big deal that she said in October to Ms. Wardy when
5 it was found out that she was pregnant, when she finally
6 came forward and said yes, I'm pregnant, she told her that
7 the father was Robert Johnson. She was unequivocal about
8 that. She didn't give any other possibilities of any
9 other person being the father. Some testimony was that
10 that actual conversation happened on . If
11 it wasn't on it was close to then. What's
12 unquestioned is, it was determined unequivocally that
13 Robert Johnson was not the father after the baby was born
14 in February of 2008.

15 But in October of 2007, Child also had an
16 interview with Debbie Elliott of the Care House. And in
17 that interview, she told Ms. Elliott, I know my uncle is
18 not the father of my baby. I know who the father is, it
19 is K.R. who I had sex with. That happened and that
20 statement was made in October of 2007, right at -- either
21 the same day or within days of when she had blamed that on
22 Robert Johnson. That got the ball rolling on this case.
23 That's what got this whole thing started. And that turned
24 out to be not true. And it's not that it just isn't true,
25 it wasn't true and Child knew it wasn't true when she

1 said it because the same day she said it was Robert's
2 child, she said I know it's not my uncle's child. So
3 there's no other way to explain that other than she was
4 lying when she said it was Robert's child and she knew she
5 was lying because long before any D.N.A. testing was done,
6 she said it's not my uncle's child. There's only one way
7 she could have known it wasn't her uncle's child and that
8 is that she had had sex with K.R. who is the
9 father of the child, but didn't have sex with Robert
10 Johnson. That's the only way you would know that. In her
11 interview with Debbie Elliott she told her, I know it's
12 not my uncle's child.

13 Those two things -- first of all, obviously,
14 it's not her uncle's child. In one statement, she says
15 that it is her uncle's child and gives no other
16 possibility of it being anybody else's. That got the ball
17 rolling on this thing. And for the same day forward, she
18 came clean and said no, it's not. I know it's not.
19 Here's who I had sex with and here's who the father of the
20 child is. That is more than just an inconsistency.
21 That's just a ball-faced lie. And it goes to how this
22 investigation started, so the whole investigation in this
23 case is based on a lie. And that's a fact. That's
24 undisputed. That fact creates a reasonable doubt in your
25 mind. And based on that reasonable doubt and that

1 reasonable doubt alone, you should come back and find Mr.
2 Johnson not guilty of these charges.

3 Again, the Judge will charge you that a victim's
4 testimony in this case doesn't have to be or doesn't need
5 to be corroborated. The words will come -- the Judge will
6 charge to you the exact language. Well, in any case, a
7 victim's involvement -- you know, victims come in
8 different forms or fashion. I've had checks stolen and
9 forged of mine. I was a victim of that crime. You know,
10 there's other ways to be a victim. In any case,
11 corroboration helps, but it doesn't have to be. So that
12 doesn't set this case apart from any other case involving
13 a victim.

14 The Judge will also charge you with regard to
15 credibility of the witnesses. It's your job as finders of
16 the fact to determine what's true and what's not true. As
17 judges of the facts and judges of the credibility of the
18 witnesses, you can believe a witness's testimony over
19 another witness. You can disbelieve somebody's testimony
20 entirely. You can disbelieve a part of a person's
21 testimony and believe other parts. All of that is solely
22 up to you. But all you had to go on was what was said.
23 And where you've got instances where, clearly, there was
24 lying going on, that creates a huge issue with regards to
25 credibility of the State's key witness. And that's what

1 happened in this case.

2 Now, again, they can try to minimize things as
3 best they can, but that's not all there was. She was
4 again -- this interview back in 2007 by Debbie Elliott at
5 the Care House, in that interview she indicated that after
6 she had sex with Robert Johnson -- excuse me, after she
7 had sex with K.R. that Robert Johnson did
8 have sex with her. But then in a subsequent interview in
9 2009, she said the exact opposite. Can't have it both
10 ways. Both of those can't possibly be true. We know that
11 for a fact. All right. And I submit to you that the fact
12 that, again, that is an consistency. That is something
13 that calls into question her credibility. And that
14 credibility is the evidence in the case. And when that
15 credibility is called into question, it creates a
16 reasonable doubt and should create a reasonable doubt in
17 your mind and a reasonable doubt as to her guilt.

18 You heard different things with regards to age
19 and all that. Certainly, the evidence is clear in the
20 record that she was born on . And all
21 of these allegations arose in October in 2007 when she was
22 13 and turned 14 that same month. I don't think there's
23 any question about that.

24 She also, again, told Debbie Elliott that she
25 hadn't -- in October of 2007, that she didn't disclose

1 what happened to anybody prior to telling -- she said she
2 told Ms. Livingston. That's another inconsistency, by the
3 way, because the testimony given here was -- from Ms.
4 Wardy was that Ms. Wardy was the person she disclosed all
5 that to. Ms. Livingston testified that no, Miss Child
6 Child did not tell her anything, didn't make any
7 allegations with regard to Robert Johnson to her. And
8 that's nothing major, but it is an inconsistency. It is
9 something that she's wrong about.

10 But she interviewed with Debbie Elliott at the
11 Care House . And she said -- and, of
12 course -- you know, the State indicated they would have
13 loved to have gotten all this to you when it was fresh in
14 her mind. Well, on October the 22nd, a lot of this was
15 fresh in her mind. All right. At that point in time when
16 she was talking and doing interviews at the Care House and
17 that kind of thing, a lot of it was fresh in her mind.
18 And at that point in time, she said that she had had --
19 first of all, and then she testified today that she had
20 had sex with K.R. one time. And she said it
21 happened when she spent the night at Robert's house last
22 month, last month being September of 2007. And then
23 another time, she said the beginning of the school year.
24 Well, you know, those two aren't necessarily
25 inconsistent. The early part of September is at the

1 beginning of the school year. Whether it happened at the
2 beginning of September or before the beginning of August,
3 that's a difference that's understandable. That's not
4 much of a difference at all. That, clearly, would be at
5 the end of the school year. But the testimony and the
6 evidence is that she would have been having sex with him
7 long before that, in May of 2007. And she never mentioned
8 that. She just said in October that a month ago or at the
9 beginning of the school year, I met this guy, K.R.
10 Robinson, met him at my Uncle Robert's house. My Uncle
11 Robert let him spend the night and we had sex in his room,
12 but that's the only time. Well, that can't be. It's not
13 possible because the evidence is the baby was born
14 February the 5th. She would have been pregnant nine
15 months earlier, which would have been May of 2007.

16 You know, when you start off telling a lie, it's
17 not unusual for you to have to cover that up with more
18 lies. I don't know why that is. It's certainly not
19 something that's unusual. It's not a revelation to
20 anybody here in this courtroom that sometimes once that
21 ball gets rolling or that train gets going down the track,
22 you can't stop it and one lie turns into another. You get
23 caught up in one and you go to another to try to cover
24 that up. You may sit here and you may want an
25 explanation, well, why would she lie about this? I don't

1 know, but she did. That's the one thing that we do know,
2 that she did lie about several things involved in this
3 case. And knowing that creates reasonable doubt. And
4 reasonable doubt is the burden the State has to meet in
5 order to prove this case.

6 Now, you heard testimony -- and again, I'll say
7 just as I've said before and y'all have been told, y'all
8 are the judges of the facts. I'm going to recount what I
9 remember the testimony to be to you all, but it's your job
10 to remember the testimony. And how you remember the
11 testimony is how you should apply it to the facts in this
12 case. But you heard Kathy Saunders when she testified
13 that the injury that she reported as a result of the
14 examination she had, that it was consistent with sexual
15 abuse and it was consistent with consensual sex as well.
16 Of those two things, we know she was having consensual sex
17 with K.R. And based on that, there's just
18 absolutely no weight that can be put on that testimony.
19 If anything, it's consistent with what we know, which is
20 she was having consensual sex with K.R. It
21 absolutely gives no indication of any corroboration of the
22 testimony with regard to abuse by Robert Johnson. And,
23 again, the State -- you will be charged that the victim's
24 testimony in this case doesn't have to be corroborated,
25 but it's still your job to be the judges of the facts and

1 to want to have all of the evidence and want to know
2 things. Certainly, your job is easier if somebody can get
3 on the stand and say yes, siree, that is consistent with
4 sexual abuse and nothing else. But that's not what you
5 heard, that's not what the testimony was. It's consistent
6 with consensual sex. Certainly, if it's consistent with
7 consensual sex, it would be consistent with abuse as well,
8 but in this case, we know she was having one. She
9 testified that the other happened as well.

10 And Ms. Saunders indicated that that's not
11 unusual. In a high percentage of cases, I think she said
12 90 to 95 percent, they don't see any serious, you know,
13 injury or whatever, except in very recent cases or very
14 chronic cases, insinuating or saying, I guess, that since
15 there wasn't any other injury than what was reported in
16 this case that it wouldn't have fallen under the category
17 of chronic.

18 And, again, you can remember the testimony
19 however you want to remember it or however you remember
20 it, but Child indicated at one point in time
21 -- first of all, she was -- she didn't have a lot of
22 details a lot of times. When they said when did this
23 happen, when did that happen, she would say I don't
24 remember or something like that. But at one point in
25 time, Mr. Richardson asked her how often would this

1 happen, referring to how often would Robert have sex with
2 you and she indicated every day I was over there. And her
3 mother testified she was over there a lot. She was over
4 there two and three weekends a month during the summer,
5 one to two weekends a month during the school year and
6 there were times when she was over there every day of a
7 particular week. She didn't indicate how often she stayed
8 for a week at a time, but that certainly happened. And
9 the testimony was he had been doing this every day, but
10 yet, you don't see any kind of injury that would have been
11 more than just what would have been consistent with
12 consensual sex.

13 Not to mention testimony of all the other people
14 that were in the house, the granddaddy and the sister, the
15 two brothers, Tata, I think was her name. And you saw the
16 house. They've got a picture of the house, not a big
17 house. That's a whole lot of folks in there and you're
18 expected to believe that there's this chronic sexual abuse
19 every time she's over there and nobody sees anything,
20 hears anything. Child doesn't tell anybody at all. And
21 just yep, that's what happened and they're asking you to
22 believe that.

23 Well, as the triers of the fact and the jury of
24 the facts in this case, you have a right to want more than
25 that. This is a criminal case. This is a case where an

1 individual's liberties are at stake. It doesn't get any
2 higher than that. And they're wanting you to find Mr.
3 Johnson guilty due to testimony that's just not
4 believable, not credible at all.

5 Another bit of evidence in the case, and, again,
6 it's evidence that I submit to you should create a
7 reasonable doubt in your mind. Evidence that this
8 investigation stated in 2007. Child said what happened,
9 she interviewed at the Care House. An investigation was
10 done. Certainly, they knew by the time February of 2008
11 came that Mr. Johnson wasn't the father of the baby, but
12 had, you know, pretty much all of the evidence then that
13 we have now. But yet, still waited until November of 2009
14 to make any arrest, over two years after the allegations
15 first surfaced. It was over a year and a half after it
16 was determined who the father of the child was. They're
17 wanting you to convict, wanting you to sit here and say
18 Mr. Johnson is an evil man, but they didn't arrest him
19 until November of 2009. That creates a reasonable doubt.
20 Certainly, it does.

21 Again, Child testified that some things
22 happened when Robert lived at this house and some things
23 happened at this house and then again, other things
24 happened at this house. Well, again, when all this was
25 fresh in her mind in October of 2007, in just a few

1 months, it will be three years, when all this was a lot
2 fresher in her mind, the only location she gave was Church
3 Street. And then all of a sudden, she comes in here today
4 and she's saying some in this place, some in that place
5 and others in even different places. Again, when you
6 compare what was said then with what was said today, you
7 don't know what to believe. And when you don't know what
8 to believe, you have to acquit. Not knowing what to
9 believe creates a reasonable doubt.

10 Another piece of testimony that was heard for
11 the first time today was the testimony regarding a taser.
12 Again, she had numerous, multiple opportunities and times
13 to tell people about all this stuff, the folks at the
14 school, Ms. Wardy, Ms. Livingston, her mother, her
15 relatives, testimony about an aunt, Ms. Elliott, never
16 said anything about that. Yet, comes here today and
17 there's testimony regarding a taser.

18 Now, they have a taser that has been placed into
19 evidence that they indicate was found on Mr. Johnson's
20 person when they arrested him in November of 2009. Well,
21 that's over two years after these allegations surfaced and
22 over two years after a thorough search of his residence
23 had already been done and completed and no such evidence
24 was found. And I would submit to you that with regards to
25 that, what was not found in 2007 is much more important

1 than what was found two years after the allegations
2 surfaced. Not clear how many years after the allegations
3 of using the taser surfaced because it wasn't clear about
4 that. Said that it happened, but wasn't exactly clear as
5 to when or what year. Again, this is -- these are
6 allegations of abuse. She said it happened every time she
7 was over there, but she wasn't able to give details. She
8 wasn't able to tell you all these different times. It was
9 just general yeah, it happened every time I was over
10 there.

11 Well, again, that's just testimony that's just
12 not credible. For the allegations to be that many times
13 and there to be absolutely no signs of trauma to any of
14 her genital area or her anal area or any of that, it's
15 just not believable. And if you can't believe that
16 testimony, then you can't find Robert Johnson guilty.
17 It's just that simple. And the evidence in this case is
18 clear and it's clear that Child has not told
19 the truth in this case. It's clear from the start. The
20 very first allegation was not true. And not only was it
21 not true, she knew it wasn't true. And there's no way to
22 sugar coat that either. When you say something that's not
23 true that you know is not true, that's a lie. And knowing
24 that Child lied about that and all the other
25 circumstances surrounding her testimony and her

1 credibility, there's only one verdict in this case that
2 speaks the truth and that is a verdict of not guilty.
3 Thank you.

4 THE COURT: Thank you, Mr. Meetze.

5 Mr. Foreman, ladies and gentlemen, we have
6 concluded all the testimony. You've heard the closing
7 arguments of counsel and it is 5:15. We're going to
8 retire for the evening.

9 Once again, the same prohibitions apply with
10 regard to reading any news accounts or watching the news
11 with regard to any story that might be on. Do not discuss
12 the case amongst yourselves.

13 Mr. Foreman, I'm going to ask that you enforce
14 that when you're in the jury room.

15 Do not discuss it with your significant other.
16 Don't talk about the case. Y'all have heard everything
17 that you need to hear with regard to the facts. But you,
18 ladies and gentlemen of the jury, have the responsibility
19 to listen to the evidence that's been presented in this
20 case or the lack thereof and determine what the truth is.
21 But that's only one part of it. And I've watched each and
22 every one of you throughout the trial of this case and
23 you've paid very close attention to the facts. But in
24 order for you to fulfill your solemn duty which you've
25 taken and solemn oath to fulfill, you have to know what

1 the law is. And that's my job. I need to charge you the
2 law. I'm going to do that in the morning. We need to
3 have you here at 9:30 sharp in the morning, 9:30 sharp.
4 Do not discuss the case. Do not do any independent
5 investigation. Do not look at any news media sources with
6 regard to this case.

7 Everyone remain seated as the jury exits the
8 courtroom.

9 (WHEREUPON, the jury is excuse for the day.)

10 THE COURT: Anything from the State before we
11 recess for the evening, Mr. Richardson?

12 MR. RICHARDSON: No, sir, Your Honor.

13 THE COURT: Anything from defense?

14 MR. MEETZE: No, Your Honor.

15 THE COURT: All right. Once again, before we
16 leave today, I'm going to give y'all another opportunity
17 to review the verdict form and make sure it's in order.

18 Mr. Meetze, I'm going to let you look at it
19 first.

20 (WHEREUPON, the proceedings were concluded for
21 the day to be reconvened on August 4, 2010.)

22 THE COURT: Okay. Anything before we charge the
23 jury?

24 MR. RICHARDSON: No, sir.

25 THE COURT: Anything from the defense?

1 MR. MEETZE: No, sir.

2 (WHEREUPON, the jury came into open court.)

3 THE COURT: Good morning. Thank y'all for being
4 here and thank you for being here on time. We're getting
5 in the short rows of this case. You've heard all the
6 evidence. We've heard the closing arguments. As I
7 mentioned to you yesterday, the only thing left to do
8 before we begin deliberations is for you to hear the law
9 that's applicable to this case. You know, there's really
10 not an easy way to do it. It's sort of like taking
11 medicine. It's somewhat a long a laborious process, but
12 this is important. It's an important case to the State of
13 South Carolina and it's important to the Defendant. And
14 I'm going to ask you if you could to pay very close
15 attention as I explain the law to you. Pay very close
16 attention. I'm going to ask you to perk up -- I know it's
17 very early in the morning, but I want y'all to perk up.
18 These are serious matters and we need to proceed forward
19 with a serious mind.

20 The indictments charge the Defendant with four
21 separate and distinct counts of criminal sexual conduct
22 with a minor second degree. One count of contributing to
23 the delinquency of a minor and two separate and distinct
24 counts of lewd act on a minor. I'll remind you that the
25 fact that the Defendant was arrested, charged and indicted

1 is not evidence and cannot be considered by you as
2 evidence of guilt nor does it create any presumption or
3 inference of guilt. This document is simply the formal
4 written instrument which contains the charges made against
5 the Defendant. It is the formal document by which this
6 case is brought to court.

7 The indictment in this case alleges several
8 different offenses which I have set forth for you
9 previously. Each indictment charges a separate and
10 distinct offense. You must decide each indictment
11 separately on the evidence and the law applicable to it
12 uninfluenced by your decision as to the other indictment.
13 The Defendant may be convicted or acquitted on any or all
14 of the offenses charged. You will be asked to write a
15 separate verdict of guilty or not guilty on each
16 indictment.

17 The Defendant has pled not guilty to this
18 indictment and that plea puts the burden on the State to
19 prove the Defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove himself innocent. I charge you that it
22 is an important rule of the law that the defendant in a
23 criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed to be innocent of
25 the crime for which the indictment was issued unless guilt

1 has been proven by evidence satisfying you of that guilt
2 beyond a reasonable doubt.

3 This presumption of innocence does not end when
4 you begin your deliberations, but it accompanies the
5 Defendant throughout the trial until you reach a verdict
6 of guilt based on evidence satisfying you of that guilt
7 beyond a reasonable doubt. The presumption of innocence
8 is like a robe of righteousness placed about the shoulders
9 of the Defendant which remains with the Defendant until it
10 has been stripped from the Defendant by evidence
11 satisfying you of the Defendant's guilt beyond a
12 reasonable doubt. Presumption of innocence is not a mere
13 legal theory. It is not just a legal phrase. It is a
14 substantial right to which every defendant is entitled to
15 unless you, the jury, are satisfied from the evidence of
16 the Defendant's guilt beyond a reasonable doubt.

17 What is a reasonable doubt in the law? A
18 reasonable doubt is the kind of doubt that would cause a
19 reasonable person to hesitate to act. The State has the
20 burden of proving the Defendant guilty beyond a reasonable
21 doubt. Some of you may have served as a juror in civil
22 cases where you were told that it was only necessary to
23 prove that a fact is more likely true than not true, such
24 as by the greater weight or preponderance of the evidence.
25 In criminal cases, the State's proof must be more powerful

1 than that. It must be proof beyond a reasonable doubt.
2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the Defendant's guilt. There are very
4 few things in this world we know with absolute certainty.
5 In criminal cases, the law does not require proof that
6 overcomes every possible doubt. If based on your
7 consideration of the evidence, you are firmly convinced
8 that the Defendant's guilty of the crime charged, you must
9 find the Defendant guilty. If on the other hand, you
10 think there's a real possibility that the Defendant is not
11 guilty, you must give the Defendant the benefit of the
12 doubt and find him not guilty.

13 I remind you that during this trial you and I
14 have certain duties to perform. As the trial judge, it is
15 my responsibility to preside over the trial of this case.
16 And I also have the duty to rule on the admissibility of
17 evidence offered during this trial. You are to consider
18 only the competent evidence before you. There was
19 testimony ordered stricken from the record in this case
20 during this trial. You must disregard that testimony.
21 You are to consider only the testimony which has been
22 presented from this witness stand, any exhibits which have
23 been made a part of the record in this case and any
24 stipulations of counsel.

25 I have the additional duty to charge you the law

1 applicable to this case. As the presiding judge, I am the
2 sole judge of the law in this case. It is your duty as
3 jurors to accept and apply the law as I now state it to
4 you. If you already have an idea as to what the law is or
5 what the law ought to be and it does not agree with what I
6 now tell you the law is, you must abandon this idea
7 because you are sworn to accept and apply the law exactly
8 as I state it to you.

9 In every case tried in this court before a jury,
10 the jury becomes the sole and exclusive judge of the facts
11 in the case. A trial judge cannot intimate, state,
12 comment on or make any statement to a trial jury about the
13 facts in a case. Since, you, the jury, are the sole judge
14 of the facts in the case, you are not to infer from what I
15 have said during the progress of this trial in ruling upon
16 the admissibility of evidence or otherwise or anything
17 that I say now during the course of this instruction to
18 you that I have any opinion about the facts in this case.
19 The law does not allow me to have an opinion about the
20 facts in this case. This is a matter solely for you, the
21 jury, to determine. As jurors, it is your duty to
22 determine the effect, value, weight and truth of the
23 evidence presented during this trial.

24 Ladies and gentlemen of the jury, necessarily,
25 you must determine the credibility of witnesses who have

1 testified in this case. Credibility simply means
2 believability. It becomes your duty as jurors to analyze
3 and evaluate the evidence and determine which evidence
4 convinces you of its truth. In determining the
5 believability of witnesses who have testified, you may
6 believe one witness over several witnesses or several
7 witnesses over one witness. You may believe a part of the
8 testimony of a witness and reject the remaining part of
9 the testimony of that same witness. You may believe the
10 testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may consider
12 whether any witness has exhibited to you any bias,
13 interest, prejudice or other motive in this case. You may
14 also consider the appearance and the manner of the witness
15 while on the witness stand, their demeanor.

16 Rules of evidence ordinarily do not permit
17 witnesses to testify to opinions or conclusions. An
18 exception to this rule exist for witnesses we call expert
19 witnesses. A witness, who by education and experience has
20 become expert in some art, science, profession or calling
21 may state an opinion as to relevant and material matter in
22 which the witness claims to be an expert may also state
23 the reasons for the opinion. You should consider any
24 expert opinion received in evidence in this case, and like
25 any other evidence, give it the weight you think it

1 deserves. If you decide that the opinion of an expert is
2 not based on sufficient education or experience or if you
3 conclude that the reasons given in support of the opinion
4 are not sound or that the opinion is outweighed by other
5 evidence, you may disregard the opinion entirely. An
6 expert witness's testimony is to be given no greater
7 weight than that of other witnesses simply because the
8 witness is an expert. Further, you are not required to
9 accept an expert's opinion even though it is not
10 contradicted.

11 I instruct you and emphasize that the fact that
12 the Defendant did not testify is not a factor to be
13 considered by you in any way in your deliberations and in
14 your consideration on the question of guilt or the
15 innocence of the Defendant. It must not be considered by
16 you in any manner whatsoever. A defendant has the
17 Constitutional right to remain silent and the assertion of
18 this right must not be considered by you in your
19 deliberations. I repeat, under your oath, you are to draw
20 no conclusion whatsoever from the fact that the Defendant
21 in this case did not testify. The fact that this
22 Defendant did not testify should not even be discussed in
23 the jury room.

24 Mr. Foreman, I'm going to ask that you enforce
25 that rule. That's not even a matter for you to consider,

1 cannot be a part of your deliberations. Do not discuss
2 the fact that the Defendant did not take the witness
3 stand.

4 The burden of proof, as I stated it to you, is
5 on the State. The Defendant is not required to prove his
6 innocence. The burden of proof remains on the State to
7 prove guilt beyond a reasonable doubt.

8 A statement alleged to have been made by the
9 Defendant has been admitted into evidence in this case.
10 While the Court has determined that the statement is
11 admissible, I instruct you that you make the ultimate
12 decision of whether or not the Defendant made the
13 statement. If the Defendant did make the statement, you
14 must determine whether the statement was made by the
15 Defendant voluntarily and on his own free will. This
16 means that the statement was not caused by pressure,
17 force, fear, threats, coercion or intimidation or by hope
18 or promise of leniency or reward of any kind. In
19 determining whether the statement was voluntary, you
20 should consider both the characteristics of the Defendant
21 and the details of the questionings. Some of the factors
22 you must consider are the age of the Defendant, the
23 Defendant's education or lack of education, the
24 Defendant's mental ability or capacity and the Defendant's
25 IQ or intelligence, the Defendant's background and

1 environment, place and length of detention and nature of
2 the questioning, the advise or lack thereof to the
3 Defendant of his Constitutional rights, including, but not
4 limited to the right to remain silent, that any statement
5 could be used against him in a court of law, the right to
6 have a lawyer present, that if he could not afford a
7 lawyer, a lawyer would be appointed to represent him
8 without any cost and that he could stop making a statement
9 at any time. You must carefully consider all the
10 surrounding circumstances before you give any weight to an
11 alleged statement.

12 The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary.
14 If you determine it was, you may give the statement any
15 further consideration that you deem proper. You must
16 decide what weight, if any, should be given to the alleged
17 statement. If you determine that the alleged statement
18 was not a free and voluntary statement of the Defendant,
19 you should not consider the statement at all.

20 I'm going to charge you the substitutive law
21 with regard to second degree criminal sexual conduct with
22 a minor as defined in 16-3-655(2) and (3). The Defendant
23 is charged with second degree criminal sexual conduct with
24 a minor. The State must prove beyond a reasonable doubt
25 that the Defendant engaged in a sexual battery with the

1 victim. Sexual battery is sexual intercourse,
2 cunnilingus, fellatio, anal intercourse or any intrusion,
3 however slight, of any part of a person's body or of any
4 object into the genital or anal openings of another
5 person's body, except when the intrusion is accompanied by
6 a medically recognized treatment or diagnostic purposes.
7 The State must then prove beyond a reasonable doubt that
8 the victim was at least 11 years old, but not more than 14
9 years old at the time of the sexual battery. Consent,
10 willingness, indifference or ignorance on the part of the
11 minor, if any, as to what was taking place does not in any
12 way affect the charge of criminal sexual conduct with a
13 minor because an unmarried woman under the age of 14
14 cannot legally consent to sexual intercourse.

15 The testimony of a victim need not be
16 corroborated in prosecutions under sections 16-3-652
17 through 16-3-658. In this case, there have been counts of
18 criminal sexual conduct and there is a lesser-included
19 offense which you are going to be given the opportunity to
20 consider. If on these counts of criminal sexual conduct
21 you were to find the Defendant not guilty, then you're
22 required to consider whether or not the evidence that's
23 been presented in this case would prove beyond a
24 reasonable doubt they are guilty of the lesser-included
25 offense of aggravated assault, assault and battery of a

1 high and aggravated nature. I am going to define for you
2 that lesser-included offense. I'm going to talk with you
3 about the verdict form you're going to be called upon to
4 deliberate that, but for now, you need to pay attention to
5 what assault and battery of a high and aggravated nature
6 is and how that's defined.

7 Assault and battery of a high and aggravated
8 nature is an unlawful act of violent injury to the person
9 of another accomplished by circumstance of aggravation.
10 Assault occurs when a person unlawfully attempts to offer
11 to commit a violent injury upon another person and have
12 the present ability to complete the attempted injury.
13 Assault is the intentional creation of a reasonable fear
14 of immediate bodily harm. It is not necessary that the
15 attempted injury or harm actually take place. For
16 example, if I walk up to you and when we are within arms
17 length, I draw back to hit you, that is an assault.

18 A battery is the unlawful touching of another
19 person by a person who has committed the assault. An
20 unlawful touching can be caused by a part of the accused's
21 body or by any object the accused puts in motion. A
22 battery is the completion of the assault by using or
23 applying force to another person, however slight, in a
24 rude, angry or resentful manner without legal
25 justification for doing so. Using my earlier example, if

1 I carry through the assault by hitting you, then that is a
2 battery.

3 The State must also prove a circumstance of
4 aggravation. Circumstance of aggravation include the use
5 of a deadly weapon, the intent to commit a felony, the
6 infliction of serious bodily injury, a great disparity
7 between the ages or physical conditions of the parties, a
8 difference in the genders of the parties, the taking of
9 indecent liberties or familiarities with a female through
10 the use of force, the purposeful infliction of shame and
11 disgrace and the resistance of lawful authorities. These
12 are only examples of aggravation. You need to take into
13 consideration all of the facts and circumstances in an
14 alleged offense.

15 I want to charge you the substitutive law with
16 regard to contributing to the delinquency of a minor as
17 defined in 16-17-490. The Defendant is charged with
18 contributing to the delinquency of a minor. A minor is a
19 person who is less than 18 years old. The State must
20 first prove beyond a reasonable doubt that the Defendant
21 was over 18 years of age. The State must then prove
22 beyond a reasonable doubt that the Defendant knowingly and
23 willfully encouraged, aided, or caused a minor to do any
24 act which caused or influenced the minor to engage in any
25 violation of the laws of the State of South Carolina or to

1 behave in a way which would willfully injure or endanger
2 the minor's morals or health or the morals or health of
3 others.

4 I'm going to define for you the offense of lewd
5 act on a minor. The Defendant is charged with committing
6 a lewd act on a minor. A minor is a person under the age
7 of 18. The State must first prove beyond a reasonable
8 doubt that the Defendant was over the age of 14. Next,
9 the State must prove that the Defendant willfully and
10 lewdly committed or attempted a lewd or lascivious act on
11 or with the body or its part of a child under the age of
12 16 years, with the intent to arouse or appeal to or
13 gratify the lust, passions or sexual desires of the
14 Defendant or the child. Willfully means voluntarily and
15 intentionally with a specific intent to do something the
16 law forbids. Lewd means obscene, lustful, indecent or
17 lecherous. Lascivious means tending to incite lust, lewd,
18 indecent, obscene or tending to deprave the morals in
19 respect to sexual relations.

20 Ladies and gentlemen of the jury, I'm going to
21 come forward and share with you the verdict form.

22 Mr. Foreman, I'm going to ask if you could to
23 stand up. I'm going to go over this verdict form with
24 you. And you'll see that it's got the State of South
25 Carolina, County of Florence, the State of South Carolina

1 vs. Robert Lee Johnson in the court of general sessions.
2 It's got the docket number here. And this document is
3 obviously the verdict form.

4 It's fairly self-explanatory as to how this goes
5 forward. There is several -- well, there's one offense
6 with regard to contributing to delinquency of a minor as
7 it relates to May 8th, 2007. And it says we, the jury,
8 unanimously find the Defendant, Robert Lee Johnson, guilty
9 of contributing to the delinquency of a minor or not
10 guilty of contributing to the delinquency of a minor. I
11 point out that there's no significance to be given to the
12 order in which I say guilty or not guilty. One,
13 obviously, has to come first and just, arbitrarily, one is
14 before the other. But do not attribute to that
15 whatsoever.

16 There are a number of -- I think four counts of
17 criminal sexual conduct with a minor second degree as it
18 relates to activities between dates of October 1st, 2005
19 and October 1st, 2007. It's got a place we, the jury,
20 unanimously find the Defendant, Robert Lee Johnson, guilty
21 of criminal sexual conduct with a minor or not guilty of
22 criminal sexual conduct with a minor. And it says right
23 here if you find the Defendant guilty of 2A, proceed to
24 number three, which deals with the subsequent offense of
25 criminal sexual conduct. However, if you find him not

1 guilty, it says, if you find the Defendant guilty of 2A,
2 then proceed to count three. However, if you find the
3 Defendant not guilty of 2A, then you must consider the
4 lesser-included offense of assault and battery of a high
5 and aggravated nature as set forth in 2B. Each of these
6 counts of criminal sexual conduct, obviously, you can't
7 find him guilty of criminal sexual conduct and assault and
8 battery. It is a lesser-included offense. It has to be
9 one or the other. If you read through it logically, it
10 will do that. But, clearly, you need to realize that you
11 can't convict an individual of a principle offense and a
12 lesser-included offense. And if you follow through to the
13 logical conclusion, that will become very clear.

14 There are two separate and distinct offenses of
15 lewd act on a minor. There is a place for you to find
16 guilty or not guilty on each of these.

17 I'm going to let you have a seat right there. I
18 want to talk to you a little bit about the deliberation
19 process.

20 First of all, the alternate, yes, ma'am, I'm
21 going to ask that you stay with us. Don't go back in the
22 jury room. You're going to remain with us and I'm going
23 to speak to you momentarily.

24 One thing that you need to realize is that this
25 verdict has to be unanimous. It can't be 11 to 1, 6 to 6,

1 8 to 4. It has to be all 12 people have to agree. It has
2 to be unanimous.

3 One thing that I do want to mention to you,
4 Mr. Foreman, is that during this deliberation process, if
5 someone were to get up and use the restroom, I want you to
6 stop deliberation because everybody has to participate in
7 all the deliberations. All must be present. There might
8 come an occasion where you have a question. I'm going to
9 tell you from the very outset that the hard questions in
10 this case, y'all are going to be called upon to resolve in
11 your collective wisdom. Y'all have heard all the facts
12 that were presented in this case and that's the difficult
13 task that you've been assigned. You've taken a solemn
14 oath to do that. Y'all have heard the evidence. I know
15 you've paid very close attention. And those questions I
16 can't answer, that's going to be left up to you. If you
17 have a question about the law, feel free to ask me that
18 and I'll be in a position to answer that and recharge the
19 law, if necessary. Y'all have listened to the law and I
20 think y'all understood it, you were paying attention. I
21 don't anticipate that there's going to be any questions.
22 But if there is, and if there's a question as to whether
23 or not it's a question of law or fact, write it down and
24 give it to the bailiff and I'll address it. If it's
25 something I can answer, I will, indeed, do that. But I

1 don't anticipate there are going to be any questions.

2 I'm going to ask that you retire to the jury
3 room, but do not begin deliberations. I'm going to have
4 to take an opportunity to speak with these very fine
5 lawyers to determine whether or not they have an objection
6 to the manner in which I charged the law, whether I've
7 inadvertently left something out or put something in that
8 was incorrect. I'm going to ask them that. So, once
9 again, I'm going to ask you not to begin deliberations.

10 In addition to that, we're going to have to
11 gather up documentary evidence that's been introduced into
12 evidence. And if there are no objections to the charge,
13 then I will give the documents and pad and pencil and tell
14 the bailiff to give you the instructions to begin
15 deliberations. But do not begin deliberations until you
16 have been given instructions to do so. I do want you to
17 note the very last page that says to knock on the door
18 when you've reached a verdict. I hear tale in Greenville
19 one time that the jury stayed back there three and a half
20 days and didn't knock on the door, so we don't want that
21 to happen. But, nonetheless, I'm going to ask you to
22 retire to the jury room, but do not begin deliberations.

23 (WHEREUPON, the jury retire to the jury room
24 10:02 a.m.)

25 THE COURT: Yes, ma'am, I know you sort of feel

1 like you've been invited to a dance and didn't get to
2 dance, but you have provided a very valuable service. In
3 the short number of years that I have been on the bench, I
4 have utilized alternates quite often. You're sort of like
5 our insurance policy. We lost one of the alternates and
6 if we would have lost two more, we would have had to start
7 this all over again. There's been a lot of time and
8 resources dedicated to the preparation of this case and
9 you have been sort of like our insurance policy and for
10 that, we're grateful. Have you ever served on a jury
11 before?

12 JUROR: No.

13 THE COURT: Hopefully, this has been a learning
14 experience for you. Hopefully, it hasn't been too
15 difficult. Do you have any questions about what's
16 transpired?

17 JUROR: No.

18 THE COURT: Okay. Well, you ought to have a
19 question about how much you're getting paid. You're
20 getting paid a lot. I think it's what \$10 a day and 10
21 cents mile. It's not very much, it's a small token of our
22 appreciation. But you have, indeed, a three-year
23 exemption and you're free to leave at this time. Thank
24 you so much.

25 (WHEREUPON, the alternate was excused.)

1 THE COURT: Is there any objection with regard
2 to the jury charge, Mr. Richardson?

3 MR. RICHARDSON: No, sir.

4 THE COURT: Any from defense?

5 MR. MEETZE: Your Honor, the only thing I would
6 say -- and, of course, like you said, I think the verdict
7 form is very self-explanatory. Obviously, there's guilty
8 or not guilty under each one, but when you were explaining
9 the lesser-included, I think you worded it something along
10 the lines of you can't find them guilty of both, it has to
11 be one or the other. I was hoping you would go a step
12 further and say but you can find them not guilty of both.

13 THE COURT: I probably should have done that. I
14 will --

15 MR. MEETZE: That's the only thing.

16 THE COURT: I'll bring them back and make that
17 clarification. I think that's important.

18 If we could bring the jury back.

19 (WHEREUPON, the jury came into open court at
20 10:06 a.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury, I want to clarify something that I said as I was
23 going over the verdict form. One of the things that I
24 mentioned was in considering the lesser-included offense,
25 obviously, you can't find them guilty of a principle

1 offense and the lesser-included offense. But I did not go
2 forward to say what is a logical conclusion from that is
3 that you could find them guilty of one of those or you
4 could find them not guilty. There's guilty and not guilty
5 as to each offense. You understand that. And that each
6 offense needs to be decided in and of themselves. You
7 could be found not guilty of all of the offenses or guilty
8 of all of the offenses or any combination thereof. You
9 have to decide each count based on the laws as I have
10 charged it to you and the evidence that's been presented
11 in this case or the lack thereof. Thank you so much.

12 Once again, I made the statement that you can't
13 find them guilty of the principle and the lesser-included
14 offense. And I should have gone forward to say that you
15 can find them not guilty of both if, in your collective
16 wisdom, you think that's the appropriate verdict. That's
17 completely left up to you in your wisdom as the triers of
18 fact.

19 I'm going to ask that you retire to the jury
20 room.

21 (WHEREUPON, the jury retire to the jury room at
22 10:08 a.m.)

23 THE COURT: Any objection from the State?

24 MR. RICHARDSON: No, sir, Your Honor.

25 THE COURT: Any objection from defense?

1 MR. MEETZE: No, Your Honor.

2 THE COURT: And I understand what you're saying
3 and I'm glad I did clarify that, but if look at the first
4 charge, it talks about each -- and specifically states the
5 law they can be found guilty on all offenses or not guilty
6 on that, but I think that was a clarification that needed
7 to be made.

8 Anything further from the State?

9 MR. RICHARDSON: No, sir.

10 THE COURT: Let's come forward. I'm going to
11 ask that the exhibits be placed in this box. Let's make
12 sure that everything in that box is in evidence and make
13 sure there's not anything in the box that's not in
14 evidence.

15 Mr. Richardson, is everything that's in that box
16 in evidence?

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: Is there anything in that box that's
19 not in evidence?

20 MR. RICHARDSON: No, sir.

21 THE COURT: All right. Mr. Meetze, is
22 everything in that box in evidence?

23 MR. MEETZE: Yes, Your Honor.

24 THE COURT: Is there anything in that box that's
25 not in evidence?

1 MR. MEETZE: No, sir, Your Honor.

2 THE COURT: You may take that into the jury room
3 and tell them to begin deliberation.

4 (WHEREUPON, a pause in the proceedings.)

5 THE COURT: I understand the jury has a
6 question. They're reducing it to writing now.

7 THE BAILIFF: Do you need the whole jury or just
8 the Foreman?

9 THE COURT: We're going to see what the question
10 is first.

11 (WHEREUPON, a pause in the proceedings.)

12 THE COURT: So, apparently, they have in their
13 deliberative process have resolved whatever question they
14 had and do not need our assistance. So if y'all can kind
15 of stay close by so if they've got a question.

16 (WHEREUPON, the jury began deliberations at
17 10:15 a.m.)

18 THE COURT: Okay. All right. The question been
19 posed what is the basis of four counts of criminal sexual
20 conduct with a minor second degree between October 1,
21 2005, and October 1, 2007? That's the first question.
22 Second question is does this mean the Defendant is accused
23 of this crime on four different occasions during
24 October 2005, and October 1, 2007? That's the issue that
25 I talked with you about in chambers about the confusion

1 that it might cause. And --

2 MR. JEPERTINGER: The second question would be
3 yes. And the first question I don't think we can get
4 into.

5 MR. MEETZE: What was the second question?

6 THE COURT: Does this mean the Defendant is
7 accused of this crime on four different occasions during
8 October 1, 2005, and October 1, 2007?

9 MR. MEETZE: Yeah.

10 THE COURT: You agree that -- I think what we
11 ought -- I think the second question answers the first
12 question. I'm not even going to address that. I'm going
13 to do like you say, does this mean the Defendant is
14 accused of this crime on four difference occasions during
15 October 1, 2005, and October 1, 2007? Based on the
16 State's request and defense request, I'm going to answer
17 yes.

18 MR. MEETZE: I mean, I think that's what it
19 means. I don't know if that's commenting on the facts or
20 not or that's just something they --

21 THE COURT: That's one of my concerns.

22 MR. JEPERTINGER: Obviously, there was testimony
23 that there were multiple acts of --

24 THE COURT: But that was the problem that I
25 talked with counsel in chambers about from the very

1 beginning because there was never really -- because given
2 the general nature of the allegations, it's hard to put a
3 particular date on it. But the testimony was such that
4 there were numerous occasions, nobody knows how much. It
5 never was quantified for the jury. And that was the
6 problem I saw with the indictment when we -- that was
7 problem I saw with the indictment and I ask for
8 clarification and I think it was appropriate to go forward
9 in that fashion, but I knew that it might cause some
10 problems.

11 MR. MEETZE: Like I said, I didn't mean to
12 suggest that I support this answer yes to the second
13 question send it back in there, but as we speak --

14 THE COURT: The answer is yes.

15 MR. MEETZE: The answer is yes. But whether
16 that -- my feeling is that could be a comment on the
17 facts. I mean, that's the kind of stuff that needed to be
18 proven by the State.

19 THE COURT: I'm not sure that it's saying that
20 he did it, they're saying he was accused of it on four
21 different occasions, which I think the obvious answer is
22 yes. It doesn't mean that he's guilty of it. As a matter
23 of fact, they fashioned it, Does this mean the Defendant
24 is accused of a crime on four different occasions? And
25 really to answer yes to that doesn't mean -- that just

1 means what the accusation is and that's what the
2 indictment is.

3 MR. MEETZE: That is true. He is accused and
4 been charged on four having -- four different charges
5 between that period of time.

6 THE COURT: I really don't think that's a
7 comment on the facts because it doesn't say anything about
8 the proof, but it reiterates that an indictment is an
9 accusation.

10 MR. MEETZE: Correct.

11 THE COURT: All right.

12 MR. MEETZE: Would you mind reading the first
13 question again?

14 THE COURT: What is the basis of four counts of
15 criminal sexual conduct with a minor second degree between
16 October 1, 2005 and October 1, 2007? Then there's a
17 second question. Does this mean the Defendant is accused
18 of this crime on four different occasions during
19 October 1, 2005, and October 1, 2007? They've asked a
20 question and then they are proposing an answer in the form
21 of a question.

22 MR. JEPERTINGER: Once again, I think the second
23 question is yes. The first question, I don't think we can
24 get into in terms of what the basis is for the State
25 prosecuting.

1 MR. MEETZE: I don't know whether --

2 THE COURT: I think what I'm going to do is call
3 them back and say that I can answer the second question.
4 The other matters are factual questions for you to
5 resolve. Does this mean the Defendant is accused of this
6 crime on four different occasions during October 1, 2005,
7 and October 1, 2007? Yes.

8 All right, let's bring the jury back.

9 (WHEREUPON, the jury came into open court at
10 approximately 10:57 a.m.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, the questions have been posed, What is the basis
13 of four counts of criminal sexual conduct with a minor
14 second degree between October 1, 2005, and October 1,
15 2007? To the extent this asked what the basis is, that's
16 a factual question for you to resolve. With regard to --
17 under the second question, Does this mean the Defendant is
18 accused of this crime on four different occasions during
19 October 1, 2005 and October 1, 2007? The answer is yes.

20 You may return to the jury room for
21 deliberations. I am going to make this question a part of
22 the record.

23 (WHEREUPON, the jury retire to the jury room
24 10:58 a.m.)

25 THE COURT: We will stand at ease and proceed

1 forward -- with regard to this case. We will proceed with
2 pleas if any of them are ready.

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 the record.)

5 (WHEREUPON, court at ease while awaiting a jury
6 verdict.)

7 THE COURT: Okay. Anything from the State
8 before we bring the jury out?

9 MR. RICHARDSON: No, sir, Your Honor.

10 THE COURT: Anything from the defense?

11 MR. MEETZE: No, Your Honor.

12 THE COURT: We're ready for the jury.

13 (WHEREUPON, the jury came into open court at
14 2:04 with a verdict.)

15 THE CLERK: Mr. Foreman, have you reached a
16 verdict?

17 THE FOREMAN: We have.

18 THE COURT: The verdict form seems to be in
19 order.

20 Madam Clerk, if you could publish the verdict.

21 THE CLERK: The State of South Carolina, County
22 of Florence, in the Court of General Sessions, 12th
23 Judicial Circuit, the State of South Carolina vs. Robert
24 Lee Johnson, indictment number 2010-GS-21-664.
25 Contributing to the delinquency of a minor as it relates

1 to May the 8th, 2007, we, the jury, unanimously find the
2 Defendant, Robert Lee Johnson, guilty of contributing to
3 the delinquency of a minor.

4 Criminal sexual conduct with a minor second
5 degree as it relates to activity between the dates of
6 October 1, 2005, and October 1, 2007, we, the jury,
7 unanimously find the Defendant, Robert Lee Johnson, guilty
8 of criminal sexual conduct with a minor.

9 Criminal sexual conduct with a minor second
10 degree as it relates to activity between the dates of
11 October 1, 2005, and October 1, 2007, we, the jury,
12 unanimously find the Defendant, Robert Lee Johnson, guilty
13 of criminal sexual conduct with a minor.

14 Criminal sexual conduct with a minor as it
15 relates to activity between the dates of October 1, 2005,
16 and October 1, 2007, we, the jury, unanimously find the
17 Defendant, Robert Lee Johnson, guilty of criminal sexual
18 conduct with a minor.

19 Criminal sexual conduct with a minor as it
20 relates to activity between the dates of October of 1,
21 2005 and October 1, 2007, we, the jury, unanimously find
22 the Defendant, Robert Lee Johnson, guilty of criminal
23 sexual conduct with a minor.

24 Lewd act on a minor as it relates to activity
25 between the dates of October 1, 2001, and October 1, 2003,

1 we, the jury, unanimously find the Defendant, Robert Lee
2 Johnson, guilty of lewd act on a minor.

3 Lewd act on a minor as it relates to activity
4 between the dates of January 1, 2003, and October 1, 2005,
5 we, the jury, unanimously find the Defendant, Robert Lee
6 Johnson, guilty of lewd act on a minor. Signed Carroll
7 Smith, foreperson, dated August 4, 2010.

8 Members of this jury, if this is your verdict
9 please raise your right hand.

10 That's everybody, Judge.

11 THE COURT: Any additional request for polling?

12 MR. MEETZE: Please, Your Honor.

13 THE CLERK: I'm going to call each one of your
14 names individually and, if you will, please stand and I'm
15 going to ask you if this was our verdict then and you
16 answer yes or no and if this is your verdict now and you
17 answer yes or not.

18 Melinda Leftridge, Juror No. 92. Was this your
19 verdict then?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict now?

22 JUROR: Yes.

23 THE CLERK: Ryan Lovell, was this your verdict
24 then?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict now?

2 JUROR: Yes.

3 THE CLERK: Bradley Cooke, was this your verdict
4 then?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict now?

7 JUROR: Yes, ma'am.

8 THE CLERK: Anthony Nettles, was this still your
9 verdict then?

10 JUROR: Yes.

11 THE CLERK: Is this still your jury verdict now?

12 JUROR: Yes.

13 THE CLERK: Liston Williams, was this jury
14 verdict then?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict now?

17 JUROR: Yes.

18 THE CLERK: Rebecca Plechek, was this your
19 verdict then?

20 JUROR: Yes.

21 THE CLERK: Is this still your verdict now?

22 JUROR: Yes.

23 THE CLERK: Carroll Smith, was this your verdict
24 then?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict now?

2 JUROR: Yes.

3 THE CLERK: Matthew Jones, was this your verdict
4 then?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict now?

7 JUROR: Yes.

8 THE CLERK: Wilbur Darby, was this your verdict
9 then?

10 JUROR: Yes.

11 THE CLERK: Is this still your verdict now?

12 JUROR: Yes.

13 THE CLERK: Alyssa Stoddard, was this your
14 verdict then?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict now?

17 JUROR: Yes.

18 THE CLERK: Stanley Williams, was this your
19 verdict then?

20 JUROR: Yes.

21 THE CLERK: Is this still your verdict now?

22 JUROR: Yes.

23 THE CLERK: Leland Jolley, was this your verdict
24 then?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict now?

2 JUROR: Yes.

3 THE CLERK: That's it, Judge.

4 THE COURT: Very good. All right. Thank you,
5 Madam Clerk.

6 Mr. Foreman, ladies and gentlemen of the jury, I
7 want to thank you for your time and your attention to this
8 matter. It's clear that from watching y'all throughout
9 the trial y'all paid very close attention to the evidence
10 that came from the witness stand. You listened to the
11 law, you paid very close attention. And, clearly, y'all
12 didn't rush to judgment. Y'all gave this matter serious
13 consideration and deliberation. Y'all have deliberated
14 since about 10:00 this morning. So, clearly, this isn't
15 something that y'all took lightly. And I know that when
16 y'all showed up Monday morning, this is the last thing
17 that you wanted to do. But it's certainly an important
18 duty as an American citizen to be willing to serve on a
19 jury. It's been said that the only civic duty that you
20 can perform that's more important than that is service in
21 the Armed Services. I know it's a very difficult thing to
22 stand in judgment of someone, but you've done what you've
23 taken a solemn oath to do and for that, we appreciate it.

24 It's certainly the best system known to man.
25 It's certainly not perfect, but it's the best that man has

1 ever created. And every time I lay my head down on the
2 pillow at night -- I practiced law for over 20 years and
3 have been on the bench for a short period of time, and
4 every time I lay my head down on the pillow, I thank God
5 that we, as American citizens, have the right to come
6 before a jury to resolve our disputes. I don't think it
7 ought to be resolved by judges or professional jurors. I
8 think that fellow citizens ought to resolve these type
9 disputes and not the government. One thing we probably
10 all need to realize is that we're one breath away from a
11 civil dispute, having a lawsuit filed against you or
12 you're put in a position where you have to file one, or
13 criminal charges being levied against you or some loved
14 one. So it makes me eternally grateful that we do have
15 this system and I want to thank y'all for what you have
16 done.

17 I do want to inform you that you've earned a
18 three-year exemption. If you're subpoenaed to participate
19 in the jury system here on the 10th and 11th floor of the
20 Florence City County Complex, you're exempt for the next
21 three years. It doesn't apply to Federal court, which is
22 over on Evans Street and you can be subpoenaed all over
23 the state for that. It doesn't apply to magistrate's
24 court and it doesn't apply to municipal court, but if
25 you're subpoenaed here, you remind them of this date and

1 the fact that I presided, tell them that and you'll earn
2 an exemption. Of course, you can serve if you want to,
3 but if you elect not to, you've done your service for the
4 next three years.

5 I have told y'all throughout the trial of this
6 case not to discuss this case. And you're released from
7 that order now. You can talk with anybody you want to
8 talk to. But I do want to let you know that if you don't
9 want to talk about it, you don't have to talk about it.
10 If someone comes up to you and ask you about it, you can
11 talk to them if you want to. But if you don't, tell them
12 that you don't want to talk about it. If they insist on
13 doing so, get their name, identify them as best you can
14 and I will deal with them accordingly. I don't anticipate
15 that would happen. But this is a public forum and you are
16 free at this time to discuss it with anybody you want to
17 talk to about it.

18 I want to thank you. You are going to get paid
19 handsomely for your service, \$10 a day, 10 cents a mile,
20 hardly enough to buy a new frock or new pair of britches,
21 but it's a small token of our appreciation on behalf of
22 the State of South Carolina. You're free to leave at this
23 time. You've discharged your duty.

24 An additional duty I have as a trier of law is
25 to sentence this individual. This is a public forum.

1 You're welcome to -- as you exit the courtroom, if you'd
2 like to come in and see what the sentence will be, you can
3 come in that door and have a seat. Certainly, you aren't
4 required to do that. Don't feel obligated to do that.
5 But it's a public forum. You participated in
6 deliberations, if you want to see, you're welcome to do
7 so. Otherwise, you're free to leave. Thank you so much
8 for your service.

9 (WHEREUPON, the jury was dismissed.)

10 THE COURT: Mr. Meetze, if you can bring
11 Mr. Johnson forward.

12 And Mr. Jepertinger and Mr. Richardson, y'all
13 could come forward as well.

14 MR. MEETZE: Your Honor, if I may make a motion?

15 THE COURT: Yes, you may.

16 MR. MEETZE: Your Honor, at this time, I would
17 like to renew all of my previous motions as well as
18 previous objections that were overruled in this. In
19 addition, at this time, I would make a motion on Mr.
20 Johnson's behalf for a new trial based on the verdict as
21 reported, that the evidence presented does not support the
22 verdicts that were returned.

23 THE COURT: Be glad to hear from you, Mr.
24 Richardson.

25 MR. RICHARDSON: Your Honor, I feel the jury had

1 ample evidence to consider and I believe they did so and
2 did not rush to it. They deliberated for a number of
3 hours and returned a verdict and I do not believe it
4 should be disturbed.

5 THE COURT: Okay. Your motions are noted,
6 you're protected on the record in that regard, however,
7 they're denied.

8 I'll be glad to hear from the State with regard
9 to sentencing.

10 MR. RICHARDSON: Thank you, Your Honor. May
11 please the Court, briefly, the Defendant's prior record,
12 Your Honor, the N.C.I.C. shows back in 1992 a breach of
13 trust conviction, contributing to the delinquency of a
14 minor four convictions for that in 1994, another
15 contributing to the delinquency of a minor in 2000,
16 Federal charter financial institution crime in 2004, and a
17 forgery in 2004.

18 THE COURT: Okay. Anything further with regard
19 to sentencing?

20 MR. JEPERTINGER: I don't know if Investigator
21 Robinson would have anything to ask of the Court in terms
22 of sentencing this individual?

23 MICHAEL ROBINSON: No, Your Honor, I don't.

24 THE COURT: Mr. Jepertinger, would you like to
25 say anything?

1 MR. JEPERTINGER: Your Honor, obviously, we're
2 dealing with a 16-year-old girl, Your Honor, and I would
3 ask the Court to take this into consideration, everything
4 that transpired in this case, Your Honor. I would ask the
5 Court to consider consecutive sentence if the Court would
6 deem appropriate in this case.

7 THE COURT: Very good.

8 Mr. Meetze, you're recognized.

9 MR. MEETZE: Thank you, Your Honor. May it
10 please the Court. Your Honor, I've represented
11 Mr. Johnson since he was arrested on the charge. We have
12 certainly been over the charges and the serious nature of
13 the charges and potential penalty for those charges. The
14 Court has certainly been here for all of the trial and
15 testimony and is aware of the facts of the case in that
16 regard. I would just simply say that he has been
17 incarcerated since his arrest, 260 days. He's been
18 supported here this week during his trial by his
19 stepfather, to my immediate left, and his mother. Jake
20 Dillard and his mother is Marie Dillard. And, you know,
21 certainly, there's a vast range of options with regards to
22 sentencing with his number of charges and the amount of
23 time that these charges carry. Certainly, we would ask
24 the Court to consider concurrent sentencing in this matter
25 and then whatever mercy and leniency the Court feels is

1 appropriate. I would also ask that the Court hear from
2 his stepfather and mother if they wish to address the
3 Court and, of course, Mr. Johnson if he would like to
4 address the Court.

5 THE COURT: Yes, sir, your full name?

6 JAKE DILLARD: Jake Dillard.

7 THE COURT: Thank you, Mr. Dillard. I'll be
8 happy to hear anything you've got to say. It's not
9 necessary that you speak, but if you'd like to, I'll be
10 glad to hear from you.

11 JAKE DILLARD: You know, Robert, I been -- I see
12 Robert every day when he was on the street. And he come
13 and help me work on the weekend, along with his mother.
14 You know, I listen at the thing from start to finish, you
15 know, and all that in this trial. And I listen at what
16 his sister said about when she found about this situation.
17 I mean, he deserve a little leniency because, actually,
18 his mother notice that when his -- his father was at our
19 house in his truck and they know way before what was wrong
20 with this child. You know, there's a lot of untruth in
21 this case. I know he got to suffer even though he didn't
22 do anything. But I would pray that you would have a
23 little leniency.

24 THE COURT: Thank you.

25 Yes, ma'am, your full name?

1 MARIE DILLARD: Marie Dillard.

2 THE COURT: And, once again, it's not necessary
3 that you speak, but I'll be glad to hear anything you've
4 got say in mitigation.

5 MARIE DILLARD: Well, Robert is my son and I
6 love him dearly. And the reason I think Robert might have
7 got in this predicament like he is now, sometime you can
8 just help people and you can help them until you just -- I
9 don't even know how to explain it. But see, Robert is a
10 person -- and I'm not trying to take up for him because
11 he's my son. If it was anybody else in here and I knew
12 them and I had to stand up for them, I'd say the same
13 thing. But see, Robert is a giving and he's a helping
14 person. And it's a lot of things, you know, that just
15 wasn't known in this court of law, you know, like me and
16 him, you know, about some of the situation. But anyway, I
17 say like my husband said, if you will, please, sir, have a
18 little leniency on him.

19 THE COURT: Thank you.

20 All right. Mr. Meetze, anything further?

21 MR. MEETZE: Not from me, Your Honor. Like I
22 said, if Mr. Johnson wishes to address the Court.

23 THE COURT: Mr. Johnson, be glad hear from you.

24 THE DEFENDANT: From the very start since this
25 problem has started for me, I have been stuck to my

1 honesty and told them I never committed a crime. Not
2 saying that I've never committed a crime in my life, but
3 these charges I'm sitting here with I didn't do. That's
4 why I came to court. That's why I stand here and I took
5 the jury trial because I know I'm innocent of this. I
6 know things that were said in this court that I brought to
7 attention saying hey, I didn't live in this spot where
8 they say I stayed to.

9 You know, all this time I sat here and I
10 wondered, you know, how did I get myself into this? Why
11 is it me? Out of anybody you can find to pick at -- well,
12 not saying that you picked at me, Your Honor, but anyone
13 that you can find, it's just mean. I have tried to live a
14 long honest life. I respect my parents. I have done
15 everything they've asked for me to do.

16 When Investigator Robinson came to arrest me,
17 they had no problem. The problem is I saw them when they
18 first came. I didn't try to run. I didn't try to hide
19 from them. Tell you truth, when they knocked on the door,
20 I'm the one who opened the door for them.

21 I owe a lot of people an apology, one for
22 putting everybody through this because my father had to
23 take off from work for the last three days standing here
24 in this courtroom with me and bringing my mother here.
25 Mr. Meetze had to take into a lot of time to do a lot of

1 work on this case. Prosecutors had to work this case as
2 well. Even Investigator Robinson put in time for this
3 case. My pastor and his wife even came in and they sat in
4 this case. The officers that are here. And the jury that
5 sat and listened to this case, I do appreciate them for at
6 least listening to the case. I appreciate you for coming
7 and presiding over this case.

8 I know that right now the jury has already found
9 me guilty of it. There's nothing I can do about that. I
10 apologize for putting everybody through this harassment,
11 for this hasslement for having to go through all this just
12 so I can -- so they can understand that I didn't do
13 anything. But even though I'm sitting here as they found
14 me guilty, I'm still going to go on serving the Lord just
15 like I been doing. I'm still going to continue to follow
16 his directions and I'm still going to survive, I'm going
17 to live one way or the other. But I do thank you for
18 giving me the opportunity to sit in that jury box -- well,
19 sit at this table and hear this case.

20 I mean, it's hard for me. I don't normally talk
21 in front of a whole lot of people. And I knew the
22 consequences of me taking this to trial. But the
23 consequences was worth me going to take it to trial to try
24 to prove my innocence. I ask that if you would just be as
25 lenient as you possibly can.

1 THE COURT: All right. Thank you, Mr. Johnson.
2 Anything further, Mr. Meetze?

3 MR. MEETZE: No, sir, Your Honor.

4 THE COURT: We're going to stand at ease for
5 about five minutes. I'll be back with regard to
6 sentencing.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Okay. Mr. Johnson, the things that
9 I do as circuit court judge criminal sentence is, indeed,
10 the most difficult. These are particularly difficult
11 cases because of the ramifications that flow from such
12 criminal activity. I can't help but ask myself why
13 somebody would do something like this. Anybody who sat in
14 this trial for three days can't help but say why would an
15 individual do these type things to a child. There are
16 probably a number of different answers to that. Perhaps,
17 someone who would do that to a child suffered sexual abuse
18 as a child themselves. We don't know that here today.
19 Could be that the individual suffers a mental illness or
20 it might purely be an act of free will. But the fact of
21 the matter is, this is a terrible crime. And the damage
22 that this young girl has suffered are going to be lasting.
23 She's going to have lasting scars. We've already seen the
24 ramifications of this activity and how it's affected her
25 life. She's engaged in early sexual activity. She has

1 become pregnant, had a child. She's essentially a
2 16-year-old child who's very immature, who's actually
3 raising a child.

4 She will definitely throughout the rest of her
5 life have a distorted view of love. I doubt that she will
6 ever have a healthy marital relationship with a man. I
7 believe that in my experience in family court and in
8 criminal court, when a person is abused as a child, quite
9 often, they suffer depression, anxiety. And that manifest
10 themselves in self-mutilation, substance abuse, sexual
11 misconduct themselves. And the bad thing about it is,
12 this sexual abuse on children goes from generation to
13 generation. And it's not lost on me that some of the
14 perpetrators were victims themselves when they were
15 children. But it has to stop somewhere. This is a
16 terrible crime and it needs to stop here. And you
17 understand that you have to accept responsibility, don't
18 you, Mr. Johnson?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. One thing that I'm sure
21 your lawyer has explained to you that is criminal sexual
22 conduct with a minor is a most serious offense subject to
23 the two strike rule, which means that if you get another
24 most serious offense, you're subject to life without
25 parole. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And it's a violent
3 offense, which means that it will adversely affect your
4 incarceration status when you are in the Department of
5 Corrections. You need to understand that. In addition to
6 that, the criminal sexual conduct with a minor is a
7 non-parolable offense, which means for all practical
8 purpose, you will serve this sentence day for day. It's
9 subject to the 85 percent rule. It could be, if the stars
10 line up, you only serve 85 percent of it. There's no way
11 we can tell that now because a lot of that depend on
12 variables that we can't determine here today. But for all
13 practical purposes, you need to understand that you will
14 serve this sentence day for day. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Mr. Johnson, on
17 indictment 2010-GS-21-0664, criminal sexual conduct with a
18 minor second degree, the sentence of the Court is that you
19 be committed to the State Department of Correction for a
20 period of 20 years. The sentence is to run consecutive
21 with the sentence that derives -- or that emanates out of
22 arrest warrant 37575. It will run consecutive.

23 With regard to indictment 2010-GS-21-0664,
24 criminal sexual conduct with a minor second degree, the
25 sentence of the Court is that you be committed to the

1 State Department of Corrections for a period of 20 years.
2 The sentence runs consecutive with a previous sentence
3 that I had mentioned, which emanates out of arrest warrant
4 number 375576.

5 With regard to indictment 2010-GS-21-0664,
6 contributing to the delinquency of a minor, the sentence
7 of the Court is you be committed to the State Department
8 of Corrections for period of three years. The sentences
9 run concurrent.

10 With regard to indictment 2010-GS-21-0664, lewd
11 act, the sentence of the Court is that you be committed to
12 the State Department of Corrections for a period of 15
13 years. The sentences run concurrent.

14 With regard to indictment 2010-GS-21-0664, lewd
15 act, the sentence of the Court is that you be committed to
16 the State Department of Corrections for a period of 15
17 years. The sentences to run concurrent.

18 With regard to indictment 2010-GS-21-0664,
19 criminal sexual conduct with a minor second degree, the
20 sentence of the Court is that you be committed to the
21 State Department of Corrections for a period of 20 years,
22 the sentences run concurrent.

23 With regard to indictment 2010-GS-21-0664,
24 criminal sexual conduct with a minor, the sentence of the
25 Court is that you be committed to the South Department of

1 Corrections for a period of 20 years, the sentence is to
2 run concurrent.

3 Mr. Johnson, I'm sure your lawyer has discussed
4 with you the sexually violent predator's act, which you
5 will be subject to a civil commitment when and if you are
6 ever released from jail. Your lawyer will explain that to
7 you in greater detail. Good luck to you, Mr. Johnson.

8 MR. JEPERTINGER: Thank you, Your Honor.

9 MR. MEETZE: Your Honor, I think it was clear
10 from your sentence, but just for the record, the intent of
11 the Court's sentence here was that he basically sentence
12 to an active 40 years with all the other sentences to run
13 concurrent?

14 THE COURT: That's correct, and all other
15 sentences run concurrent and sex offender registry.

16 MR. MEETZE: Thank you, Your Honor.

17 END OF REQUESTED TRANSCRIPT.

18

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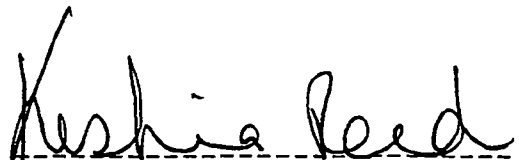
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 265, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 2nd through the
4th day of August, 2010.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 12th
day of February 2011.


Keshia Reed, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF *Florence*)*Robert L. Johnson 211854*
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-21-1147

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 the 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 *McLormick Correctional Facility, 386 Redemption Way, McLormick, South Carolina, 29899*
2. Name and location of Court which imposed sentence *Florence County Court of General Sessions*
3. Name(s) of co-defendant(s) (if any) *N/A*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2010-65-21-0664-CSC-2nd, Lewt Act, Contributing to the delinquency*
 - (b) *of a minor*
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *August 4, 2010*
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 31, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 220(b), S.C.A.C.R.; State v. Barton, 387 S.C. 412, 417, 692
- ii. 5E2d 201, 203 (Ct. App. 2010); State v. Craig, 267 S.C. 262, 268, 227
- iii. 5E2d 306 (1976); State v. Council, 335 S.C. 11-13, 515 5E2d 508, 513
14 (1999); State v. Thompson, 352 S.C. 552, 561, 575 5E2d 77, 82 (Ct. App. 2003)
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: Ineffective Assistance of Counsel

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) *Failure to properly object to trial court's failure*
- (b) *to operate in commercial law jurisdiction.*
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - 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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (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? _____

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. Vicki Meetze, Florence County Public Defender, City-County Complex, Room 703
 - ii. 180 N. Irby Street, MSC-11, Florence, South Carolina, 29501
 - iii. Breen Richard Stevens, SC Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina, 29201
- (b) the proceedings at which each such attorney represented you:
 - i. Vick Meetze, Trial and sentencing
 - ii. Breen Richard Stevens
 - iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Florence)I, Robert L. Johnson, 211854)

, 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.

Robert Lee Johnson

SWORN to and subscribed before me this 13
day of Feb, 2013

J. Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

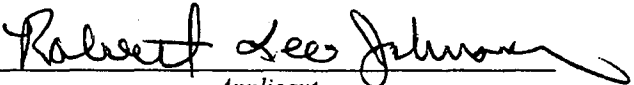
2013 APR 29 PM 12:24
FILED
CONNIE REEL-SHEARER
CLERK OF COURT CP & GS
FLORENCE COUNTY, SC

VERIFIED A TRUE COPY
Connie Reel-Shear
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, 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.



Applicant

SWORN or affirmed to and subscribed before me this

13 day of Feb., 2013



Notary Public

My Commission Expires: 12-16-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Robert L. Johnson, #211854,	)	Case No. 2013-CP-21-1147
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed April 29, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2010, the Florence County Grand Jury indicted Applicant for contributing to the delinquency of a minor, four (4) counts of second degree criminal sexual conduct with a minor, and three (3) counts of lewd act on a minor (2010-GS-21-664).¹ William V. Meetze, Esquire, represented Applicant. On August 2, 2010, Applicant proceeded to trial before the Honorable Michael G. Nettles and a jury. The jury found Applicant guilty as indicted. Judge Nettles sentenced Applicant to a term of twenty (20) years on one count of second degree criminal sexual conduct with a minor. On a second count of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to a consecutive

¹ The Grand Jury also indicted Applicant in June 2010 for first degree criminal sexual conduct with a minor and two (2) counts of lewd act on a minor (2010-GS-21-666). Upon information and belief, this indictment was *not* *prossed* after Applicant's conviction.

term of twenty (20) years. On the remaining counts of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to concurrent terms of twenty (20) years. Judge nettles sentenced Applicant to concurrent terms of fifteen (15) years for each count of lewd act on a minor and three (3) years for contributing to the delinquency of a minor.

Applicant filed a timely notice of appeal, and Breen R. Stevens, Esquire, of the Office of Appellate Defense perfected Applicant's appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 31, 2012. State v. Johnson, Op. No. 2012-UP-590 (S.C. Ct. App. filed October 31, 2012). The remittitur was returned to the circuit court on November 27, 2012.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. Failure to properly object to trial court's failure to operate in common law jurisdiction"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation not expressly admitted, qualified, or explained is hereby denied.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

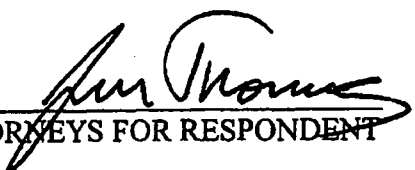
Respectfully submitted,

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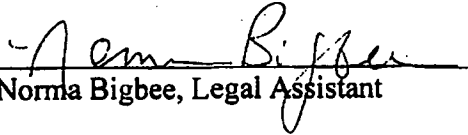
May 14, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2013-CP-21-1147
	)	
ROBERT L. JOHNSON, #211854	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29201

DATED this 14th day of May, 2014.


Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-1147
	)	
Robert L. Johnson,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

April 15, 2015
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Croom Hunter, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

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1 APRIL 15, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 10:50 a.m.)

5 THE COURT: Yes, sir?

6 MR. HUNTER: Your Honor, may it please the Court. This
7 is Robert Johnson versus the State of South Carolina, 2013-CP-
8 21-1147. Mr. Johnson is presently confined in SCDC pursuant
9 to the Florence County Clerk of Court's orders.

10 He was indicted at the June -- in June 2010 by the
11 Florence County Grand Jury for contributing to the delinquency
12 of a minor, four counts of second degree criminal sexual
13 conduct with a minor, and three counts of lewd act on a minor.
14 It was 2010-GS-21-664. He was represented by William V.
15 Meetze.

16 On August 2nd, 2010, Mr. Johnson proceeded to trial before
17 the Honorable Michael G. Nettles and a jury. The jury found
18 Mr. Johnson guilty as indicted. Judge Nettles sentenced him
19 to 20 years on one count of second degree criminal sexual
20 conduct with a minor. On the second count of second degree
21 criminal sexual conduct with a minor, Judge Nettles sentenced
22 Mr. Johnson to a consecutive term of 20 years. On the
23 remaining counts of second degree criminal sexual conduct with
24 a minor, Judge Nettles sentenced him to concurrent terms of 20
25 years. He also sentenced Mr. Johnson to concurrent terms of

1 15 years for each count of lewd act on a minor, three years
2 for the contributing to the delinquency of a minor, for an
3 aggregate term of 40 years' imprisonment.

4 Mr. Johnson filed a timely notice of appeal that was
5 handled by Greene Stevens [phonetic] of the Office of
6 Appellate Defense. South Carolina Court of Appeals affirmed
7 Mr. Johnson's conviction on October 31st, 2012. That's *State*
8 *v. Johnson*, Opinion Number 2012-UP-590, S.C. Court of Appeals,
9 filed October 31st, 2012.

10 The remittitur was returned on November 27th, 2012. Mr.
11 Johnson filed this application for post-conviction relief on
12 April 29th, 2013. He's represented here today by Mr. Waller.
13 The State is ready to proceed.

14 THE COURT: Mr. Waller?

15 MR. WALLER: Thank you, Your Honor. And again, just
16 briefly to clarify to the Court the issues we are raising here
17 today, there is somewhat of a general ineffective assistance
18 of counsel argument. Additionally, there are -- were some
19 testimony that we believe was objectionable that was not
20 objected to. At this time, I would call Robert Johnson to the
21 stand.

22 THE COURT: Sir, if you'll come around and be sworn.

23 THE CLERK: Please step up to the Bible, place your left
24 hand on the Bible, and raise your right hand. Do you swear to
25 tell the truth, the whole truth, and nothing but the truth, so
26

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 help you God?

2 THE APPLICANT: I do.

3 THE CLERK: Please take your seat and state your name for
4 the record.

5 THE APPLICANT: Robert Lee Johnson.

6 ROBERT L. JOHNSON, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WALLER:

10 Q: Mr. Johnson, how old are you?

11 A: Forty-five.

12 Q: Okay. And where are you from?

13 A: Florence.

14 Q: Okay. How long have you lived in Florence?

15 A: Off and on about all my life.

16 Q: Okay. When you say off and on, where else have you
17 lived?

18 A: North Carolina. I've stayed sometimes with my parents in
19 Lake City.

20 Q: Okay. Now, kind of jump right -- jumping right into your
21 case, you were arrested on these charges back in 2009; is that
22 right?

23 A: Yes, sir.

24 Q: Okay. And they were alleged to have taken place between
25 2005 and 2007; is that right?

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 A: They was alleged to take place they're claiming from 2001
2 all the way to 2007.

3 Q: Okay. But it was -- it was sometime after they allegedly
4 -- there was a big gap between when -- between when you were
5 arrested and these allegedly took place; is that right?

6 A: Yes, sir.

7 Q: Okay. Who was your lawyer on these charges?

8 A: Vick Meetze.

9 Q: Okay. Was he your first lawyer?

10 A: Yes, sir.

11 Q: He was the only one you had?

12 A: Yes, sir.

13 Q: Okay. Now, how did he come to be your lawyer?

14 A: He was appointed.

15 Q: Okay. Were you able to make bond before your trial or
16 were you out or were you locked up?

17 A: I was locked up.

18 Q: Okay. How long were you locked up before your trial?

19 A: I was arrested 11/18/2009 and remained in jail the whole
20 time.

21 Q: Okay. Were you and Mr. Meetze able to meet and discuss
22 your case before your trial?

23 A: About twice.

24 Q: Okay. When y'all -- when y'all met, do you remember the
25 first time y'all met?

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

- 1 A: Yes, sir.
- 2 Q: How -- how long after you had been arrested was that?
- 3 A: A couple of months.
- 4 Q: Okay.
- 5 A: He showed up.
- 6 Q: Okay. How many times -- you said you met about twice?
- 7 Did y'all meet getting ready for trial?
- 8 A: We met one time when he had me come up to the jail to try
- 9 to get me to plead guilty.
- 10 Q: Come up to the courthouse?
- 11 A: Yeah.
- 12 Q: Okay. All right. When y'all met, did y'all discuss the
- 13 charges against you?
- 14 A: Briefly, yeah.
- 15 Q: Okay.
- 16 A: Yes, sir.
- 17 Q: And there were several; is that right?
- 18 A: Yes, sir.
- 19 Q: Okay. Did y'all discuss the indictments?
- 20 A: Not really. Just what was alleged.
- 21 Q: Okay. Now, for each of these charges, did y'all discuss
- 22 the possible sentences?
- 23 A: No.
- 24 Q: Okay. How about any other I guess conditions that would
- 25 be on you if you were convicted --

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 A: No.

2 Q: -- other than jail time?

3 A: No.

4 Q: Okay. Did y'all discuss the evidence that the State had

5 and would present against you?

6 A: Not really.

7 Q: Okay. Well, when you say not really, what -- did y'all

8 talk about any of it?

9 A: During the preliminary hearing that I went to, the State

10 had -- had said that they had no evidence. I spoke to Mr.

11 Meetze about the same thing, the certain issues that I had the

12 way the paperwork was done, but most of the things that he

13 told me is they can do that.

14 Q: Okay. Outside of the paperwork, what -- what did y'all

15 discuss when getting ready for your trial?

16 A: The only thing we mostly discussed was -- well, one, on

17 the way going to the courthouse he kind of told me that the

18 judge is not going to let me go on anything. That we're going

19 to go forward with everything. He also told me that nine

20 times out of ten that they're going to find me guilty.

21 Q: Okay. Mr. Meetze said that to you?

22 A: Yeah.

23 Q: Okay. When -- when did he say that to you?

24 A: He said it once at the preliminary hearing when I talked

25 to him. He said it again when I was at the -- just before I

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 saw him in the courtroom.

2 Q: Okay. When y'all met prior to going to court, did y'all
3 discuss any defenses that you might have?

4 A: No.

5 Q: Did you give him any information regarding a defense?

6 A: I gave him a witness list. I showed him the issue of the
7 warrants that I saw. The officer when he signed the warrants
8 -- Detective Jonathan Chase Eisman signed the warrants, but he
9 signed it under a false name. He signed it under Jay
10 Chandler. And I explained to him that that was not the man's
11 name because I knew his name. I knew the officer personally.
12 Badge Number 229-D.

13 Q: Okay. And so you brought that to Mr. Meetze's attention?

14 A: Yes, sir, I did.

15 Q: Okay. Back to the witness list, you did provide Mr.
16 Meetze with a list of witnesses?

17 A: Yes, sir, I did.

18 Q: Okay. Do you know, to your knowledge, did he or anyone
19 on his behalf attempt to contact those witnesses?

20 A: From the paperwork that I saw and my Rule 5, it says that
21 he wanted the witnesses to be on standby by the phone, but he
22 never called them to actually be in the courtroom.

23 Q: Okay. Do you know -- okay. Do you know if he contacted
24 them before the trial started?

25 A: No, I don't know.

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 Q: Okay. Do you know were any of those witnesses
2 subpoenaed?

3 A: Well, again, the paperwork shows that there were
4 subpoenas sent out, but all the subpoenas were given to
5 someone different. In other words, if Freddie Johnson was
6 subpoenaed, Chaves Charles got his subpoena. Chaves Charles
7 was subpoenaed, Priscilla Charles picked up the subpoena. Dr.
8 Daniel Hyler was subpoenaed, but Dr. Daniel Hyler's -- someone
9 in his office picked up the subpoena.

10 Q: So the subpoenas didn't go to who they were supposed to
11 is what you're saying?

12 A: No, sir. They didn't get to where it was supposed to go.

13 Q: Okay. Now, leading up to trial, did you and Mr. Meetze
14 discuss the procedures of a trial?

15 A: You mean how the court runs?

16 Q: Yes, sir.

17 A: He pretty much told me about the judge sits up there and
18 the jury and what was supposed to happen in court.

19 Q: Okay. So y'all did talk about it though?

20 A: Yeah.

21 Q: Okay. Were y'all able to have any communications once
22 the trial began?

23 A: Not really.

24 Q: During breaks or anything like that?

25 A: I spoke to him when they was trying to get -- they wanted

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 to know did I want to testify. He took me into an office and
2 he advised me not to testify. I asked him why because if
3 they're lying on me, which they were, I would want to testify
4 to prove my innocence.

5 Q: Okay. So Mr. Meetze advised you not to testify?

6 A: Yes, sir.

7 Q: Okay.

8 A: I also brought up an issue. The house at 613 South
9 Church Street -- he showed me a picture and I explained to him
10 that the picture that he showed me is not the way the house
11 looked when the -- when the investigators came there to do the
12 search warrant, that is not -- the picture that he showed me
13 is not the way the house actually looked.

14 Q: Okay.

15 A: We had a screened-in porch on the front.

16 Q: Okay. That was the picture that was placed into
17 evidence?

18 A: Yes, sir.

19 Q: Okay. Back to when your trial was going on, did you have
20 a pen and pad or any way to take notes or anything like that?

21 A: No, sir.

22 Q: Okay.

23 A: But I mostly can memorize everything that happened in
24 court.

25 Q: Okay. When you brought it to Mr. Meetze's attention

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 about the picture, what was his response?

2 A: He kind of brushed it off.

3 Q: Okay.

4 A: And went on to do whatever he was doing.

5 Q: Okay. Mr. Johnson, I've asked you all the questions that
6 I have. Is there anything that you feel I've left out or
7 forgotten that you think the Court needs to be aware of about
8 Mr. Meetze's representation of you?

9 A: There was some other issues that I had with the way he
10 represented me. One, when I spoke to Mr. Meetze on the issue
11 of the people who -- the search warrant that was done.

12 All right. When the officers came to arrest me on
13 11/18/2009, I noticed Investigator Michael Robinson and also
14 Investigator Jonathan Chase Eisman when they pulled up in the
15 yard. When they pulled up, Chase Eisman went to the side door
16 and Michael Robinson went to the front door. When they opened
17 the door -- I mean knocked on the door, I opened the door and
18 I stepped out. All right? Once I stepped out, Chase Eisman
19 came around and that's when they handcuffed me. All right?

20 They asked me about did I have any weapons on me.
21 Because I worked as security and also worked with the bondsmen
22 company, I had a Taser on me in my front right pocket, and I
23 explained that to them. I explained it to him that I had --
24 that I had a Taser on me. All right?

25 The investigators wanted to take me back into the house,

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 which I couldn't understand why because if I'm already outside
2 of the house and you already got me in handcuffs, why go back
3 in? But they wanted to go in, take the Taser out of my pocket
4 inside of the house. Then they did a search inside of the
5 house, in which I explained to him that that was an illegal
6 search.

7 Q: So you brought that to Mr. Meetze's attention?

8 A: Yes, sir.

9 Q: Okay. What -- what was his response?

10 A: Again, he brushed it off. The same like with the
11 warrants when I told him about the man, Jonathan Chase Eisman,
12 signing those warrants in front of me and I noticed the
13 officer sign them. He told me they can do that. That's his
14 nickname and he can -- they can sign it with their nickname.
15 And I asked him if that was possible, then why is it that you
16 lock up people for forgery if the officers can also get away
17 with forging names on legal documents and they don't get
18 prosecuted for it?

19 Q: Okay. Is there anything else about Mr. Meetze's
20 representation you'd like the Court to be aware of?

21 A: Let's see. If I had my notes over there, I'd probably --

22 Q: Anything that you can remember?

23 A: One would be the idea of the Taser. The Taser they used
24 as an exhibit inside of the trial. The Taser -- the day of
25 the trial -- now, it was taken and supposed to have been put

ROBERT L. JOHNSON - DIRECT BY MR. WALLER

1 into -- put it for safekeeping because I didn't want anyone to
2 get hurt if they might go and find the Taser. It was supposed
3 to have been put in safekeeping.

4 The day of the trial, all of a sudden the Taser becomes a
5 weapon in 2007, which he brought that up in court, but now the
6 transcript shows that -- which I also wrote that the
7 transcripts have been altered. And the transcript shows that
8 he mentioned it after actually Richardson had testified, but
9 actually he mentioned the Taser before the court even started
10 to get the Taser taken out. And he advised me that the Taser
11 would have been a part of the evidence.

12 I told him how was that when the search warrant that they
13 had had in 2007 did not indicate anything about a Taser. The
14 warrants that they gave me did not indicate anything about a
15 Taser. I said -- and the reports that came from the Care
16 House of Florence didn't indicate anything about a Taser, but
17 all of a sudden now when we get in court, we're talking about
18 a Taser.

19 Q: Okay. Mr. Johnson, I don't have any further questions
20 for you. Please answer any questions Mr. Hunter has.

21 THE COURT: Mr. Hunter, cross-examination.

22 CROSS-EXAMINATION

23 BY MR. HUNTER:

24 Q: Good morning, Mr. Johnson.

25 A: Good morning.

ROBERT L. JOHNSON - CROSS BY MR. HUNTER

1 Q: How many times did you testify that you met with your
2 attorney prior to your trial?

3 A: I met with him about twice.

4 Q: Okay.

5 A: If I met more than that, then I don't remember. I know
6 twice.

7 Q: Okay. And did you -- did you go over most of -- did you
8 go over your discovery with him?

9 A: I went over the issues with the warrants, certain things
10 that I saw in there.

11 Q: Okay. So he provided that stuff to you and you saw it?

12 A: Yeah.

13 Q: Okay. Did you discuss with Mr. Meetze whether you had
14 any -- what your defense was to this case to these charges?

15 A: I gave him how to prove my innocence, but he didn't do
16 anything about it.

17 Q: Okay. What -- well, what did you -- what did you give
18 him? How did you want him to prove your innocence?

19 A: Well, one, by the witnesses. If the witnesses would have
20 testified in my behalf, they would have proved my innocence.

21 And also I can prove also the warrants. You got -- the
22 warrants that they have have two addresses to it.

23 Q: Okay. So you gave Mr. Meetze some witnesses that you
24 wanted to testify?

25 A: Yes, sir.

ROBERT L. JOHNSON - CROSS BY MR. HUNTER

1 Q: Okay. Are they here today to testify?

2 A: They haven't been subpoenaed.

3 Q: Okay. Now, you were offered a plea in this case, weren't
4 you?

5 A: Yeah.

6 Q: Do you remember how long that plea was? Do you remember
7 the length of that sentence if you'd have taken the plea?

8 MR. WALLER: Objection, Your Honor. I don't see how this
9 has anything to do with Mr. Meetze's effectiveness as trial
10 counsel.

11 MR. HUNTER: Your Honor, I'm just trying to make a record
12 and I ask for a little leeway, but I can --

13 THE COURT: Over applicant's objection, I'll allow it.
14 Go ahead. Answer the question, please, sir.

15 THE APPLICANT: Oh, okay.

16 THE COURT: I'm sorry.

17 THE APPLICANT: I was trying to figure out what you was
18 --

19 THE COURT: That's okay.

20 BY MR. HUNTER:

21 A: Okay. Yeah, he gave -- now, the plea that he gave me was
22 ten years.

23 Q: Okay. And Mr. Meetze conveyed that to you?

24 A: Yeah.

25 Q: Okay. But you -- it was your decision to go to trial?

ROBERT L. JOHNSON - CROSS BY MR. HUNTER

1 A: Yes, sir.

2 Q: Okay. Now, I may have misunderstood you earlier, but did
3 you say Mr. Meetze did not discuss the possible prison
4 sentences that you would face if you were found guilty or did
5 y'all discuss that?

6 A: No. We didn't discuss it.

7 Q: You didn't discuss that? Okay. Now, do you recall after
8 you were convicted when you were speaking to the Court --

9 MR. HUNTER: And, Your Honor, this starts on the bottom
10 of page 258.

11 Q: Do you recall telling the judge Mr. Meetze had to take a
12 lot -- had to take into a lot of time to do a lot of work on
13 this case?

14 A: Yeah. I do remember saying that.

15 Q: Okay.

16 MR. HUNTER: And then at the bottom of page 259, Your
17 Honor.

18 Q: Do you recall telling the judge -- and I knew the
19 consequences of me taking this to trial?

20 A: Yeah. I know. In my mind, I know the consequences.

21 Q: Okay. Now, you testified that you had some issues with
22 -- with the Taser coming into evidence?

23 A: Yes, sir.

24 Q: Okay. But didn't the victim testify that you used the
25 Taser to intimidate her?

ROBERT L. JOHNSON - CROSS BY MR. HUNTER

1 A: That's the part of the transcript that's also been
2 altered.

3 Q: Okay. So you --

4 A: Because her testimony was that the Taser went zoom, zoom,
5 zoom, zoom, but I was not afraid of it. But in the trial
6 transcript, the testimony has said that I had used the Taser,
7 presented the Taser, and I was afraid and I knew what to do.

8 Q: Okay. So it's your position that the transcript is not
9 accurate?

10 A: Yes, sir, it is.

11 Q: Okay.

12 MR. HUNTER: No further questions, Judge. Thank you.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Nothing further, Your Honor.

15 THE COURT: All right. Sir, you may step down. Thank
16 you.

17 MR. WALLER: I would call Vick Meetze.

18 THE CLERK: Place your left hand on the Bible and raise
19 your right hand. Do you swear to tell the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Okay. Please take your seat and state your
23 name for the record.

24 THE WITNESS: Vick Meetze.

25 VICK MEETZE, being first duly sworn,

VICK MEETZE - DIRECT BY MR. WALLER

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WALLER:

4 Q: Good morning, Mr. Meetze. It's still morning.

5 A: Yes, sir.

6 Q: How were you -- how did you come to represent Robert
7 Johnson?

8 A: I work in the Public Defender's Office for Florence
9 County and I was appointed to represent him on this case.

10 Q: Okay. And did you meet with him to discuss this case
11 prior to going to trial?

12 A: I did.

13 Q: Okay. Did he provide you with any information regarding
14 a potential defense?

15 A: He gave me -- he did give some witnesses he wanted us to
16 talk to and that kind of thing. You know, his defense was
17 always he didn't do it, you know, so that was -- I mean that
18 was always his position and that was -- that was the defense.

19 He did provide some names for us to investigate and talk
20 to. Our investigators -- I think Ron Smith in our office
21 tracked who he could down. Ultimately, I did not feel like
22 they added anything that would benefit him from a testimonial
23 standpoint to where I felt like we -- that it was in his best
24 interest to call them. I didn't -- I didn't believe that to
25 be the case.

VICK MEETZE - DIRECT BY MR. WALLER

1 Q: Okay. Now, the time period of these incidents was -- as
2 contained in the indictments was over a pretty broad period of
3 time; is that right?

4 A: Right.

5 Q: Okay. Did you feel that that time frame was specific
6 enough for you to be properly notified to prepare your
7 defense?

8 A: I don't recall thinking anything of that one way or
9 another. You know, I know that they can -- those things can
10 be broad and, you know, I think, if anything, I felt like
11 that, you know, would play into, if anything, the victim's
12 memories as well and -- and can be used, you know, to maybe
13 attack her credibility because that was going to be the
14 biggest part of the defense during trial would be, you know,
15 because their primary witness was the victim in the case and
16 -- and what we could do to -- to cast any doubt on her
17 testimony to -- to create a reasonable doubt in the jury's
18 mind.

19 But as far as the broad -- the length of time and the --
20 contained and what the allegations were allegedly to have
21 happened that nothing specifically regarding that -- I didn't
22 think anything in regards to that as specifically hurting my
23 chances or his chances at trial.

24 Q: Okay. And you didn't make any challenge to the
25 indictments pre-trial?

VICK MEETZE - DIRECT BY MR. WALLER

1 A: I did not.

2 Q: Okay. If we could jump -- have you had a chance to
3 review the transcript of the trial?

4 A: Yes, sir.

5 Q: Okay. Now, was there a *Jackson v. Denno* hearing done in
6 this case?

7 A: There was.

8 Q: Okay. And this is not part of that hearing, but if you
9 could turn to page 25? I believe this is the State's first
10 witness. And if you could read lines 4 through 7 for me?

11 A: You said 4 through which?

12 Q: Four through 7.

13 A: Okay.

14 Q: Mr. Meetze, are you familiar with Rule 801(d) of the
15 South Carolina Rules of Evidence?

16 A: I believe so if that's the rule -- I don't always know
17 the numbers. Is that the rule regarding testimony of --
18 regarding time and place of alleged sexual assaults with
19 regards to disclosure witnesses?

20 Q: Yes, sir.

21 A: Okay.

22 Q: It is. What was the trial strategy behind not objecting
23 to the answer given on page 25 at line 6?

24 A: There would not have been any strategy. It would have --
25 if it's objectionable, it would be an objection that I missed.

VICK MEETZE - DIRECT BY MR. WALLER

1 Q: Okay. If I could get you to bounce all the way to page
2 128?

3 A: Okay.

4 Q: Lines 1 through 4. If you could review those as well?

5 A: Okay.

6 Q: Again, the same type question. What was the -- what was
7 the strategy behind failing to object to that answer?

8 A: No strategy. If it's objectionable, it's an objection
9 that I missed.

10 Q: Okay. And then just briefly if you would turn to page
11 148? You made an objection that was sustained and then a
12 motion for a mistrial based on some comments by one of the
13 officers. Is that your recollection?

14 A: Yes, sir.

15 Q: Okay.

16 THE COURT: What page is that again?

17 MR. HUNTER: I'm sorry, Your Honor. It's page 148.

18 THE COURT: Thank you.

19 BY MR. HUNTER:

20 Q: The -- the judge -- if you recall, what was the basis of
21 your objection and what was the circumstances surrounding the
22 answer?

23 A: Investigator Michael Robinson with the Florence Police
24 Department was testifying with regards to timeline and
25 referencing timeline in the investigation and how she was

VICK MEETZE - DIRECT BY MR. WALLER

1 determining the timeline. And during her testimony indicated
2 that she was questioning him about prior residences that he
3 lived at and then matching them up with addresses on previous
4 police reports.

5 And essentially, Mr. Johnson is somebody -- an individual
6 that the Florence Police Department had been investigating in
7 regards to these types of allegations for a long time, and so
8 that testimony she was referencing to other incidents that we
9 were not there at trial on, and I think that was the basis of
10 my objection.

11 Q: Okay. And the judge sustained your objection; is that
12 right?

13 A: He did.

14 Q: Okay.

15 A: But he did not grant a mistrial.

16 Q: Okay. Now, there was some discussion about whether you
17 wanted a curative charge to go along with that; is that
18 correct?

19 A: There was.

20 Q: Okay. What was -- what was your reason for not asking
21 for the curative charge?

22 A: I'll be honest with you. One thing that has always
23 confused me is the proper way to preserve a mistrial motion
24 and a denial of a mistrial. And why you can't just say I move
25 for a mistrial, have that mistrial denied, and it be

VICK MEETZE - DIRECT BY MR. WALLER

1 preserved, I don't know. But there are steps that you have to
2 go through, and some people say you're supposed to ask for a
3 curative instruction, then get the curative instruction and
4 then object to it after it's given, which doesn't make any
5 sense to me, but that may be the proper way to do it.

6 And I was trying to think of the proper way to preserve a
7 mistrial motion, and I don't know if I was recalling the
8 proper way to do it as being to ask for or not ask for, but
9 that was my line of thinking, what's the right way to preserve
10 this, because I knew that just making the motion and having it
11 denied was not the right way to do it, and that's always
12 something that has confused me and -- and so anyway, that was
13 what -- whether I asked for one or didn't ask for one. If I
14 didn't ask, I was -- I was trying my best to preserve it the
15 proper way.

16 Q: Okay. You also asked that the testimony be stricken from
17 the record. Is that how you recall it?

18 A: Yes.

19 Q: Okay. If I could back up, just kind of the overall trial
20 strategy, the first -- or the first two things I had you look
21 at were testimony of other witnesses. What do you recall as
22 far as who testified about what?

23 A: I know there was a teacher that testified that -- that
24 Ms. Child had told her that she had gotten pregnant by
25 her uncle. And I know that -- and that wasn't true. I mean

VICK MEETZE - DIRECT BY MR. WALLER

1 that was part of the defense to -- you know, that was an
2 allegation that she had made that turned out not to be
3 accurate. And she had a number of siblings I think that
4 testified --

5 Q: Okay.

6 A: -- as well.

7 Q: Do you recall Debbie Elliott testifying?

8 A: I do.

9 Q: Okay. Have you had Ms. Elliott testify in your cases
10 before?

11 A: I had.

12 Q: Okay. Do you -- just for the record, do you recall the
13 nature of Ms. Elliott's testimony in general of what she did?

14 A: She's a forensic interviewer with -- at the time, the
15 Care House I believe, and she was testifying in regards to her
16 interview with the victim in this case.

17 Q: Okay.

18 A: And any conversation she had with her.

19 MR. WALLER: No further questions.

20 THE COURT: Mr. Hunter?

21 MR. HUNTER: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. HUNTER:

25 Q: Mr. Meetze, how long have you been practicing law?

VICK MEETZE - CROSS BY MR. HUNTER

1 THE COURT: Hold on a minute. Ladies, you all need to
2 hold it down back there, please. Okay? Go ahead. I'm sorry.
3 A: I've been practicing law for 16 years.
4 Q: And of that 16 years, how much of it has been devoted to
5 criminal defense?
6 A: And this August will be 13 years.
7 Q: Okay. Do you recall how many times you met with Mr.
8 Johnson prior to his plea -- or -- excuse me -- prior to his
9 trial?
10 A: We met a number of times. I don't recall a specific
11 number, but we -- he was at -- he did not ever bond out on the
12 charges. He was at the jail and we met numbers of times at
13 the jail.
14 Q: Okay. Did you file the Rule 5 and Brady motions?
15 A: Yes, sir.
16 Q: Did you have any problems getting discovery?
17 A: No, sir.
18 Q: Did you review it with Mr. Johnson?
19 A: Yes, sir.
20 Q: Okay. Did you discuss his version of the facts?
21 A: Yes, sir.
22 Q: Okay. What would you say your -- did you -- I believe
23 you testified earlier that your trial strategy would have been
24 just basically to cast doubt on the victim's story?
25 A: Yes, sir. It was -- you know, some trials when you go

VICK MEETZE - CROSS BY MR. HUNTER

1 into them, your best case as far as defending your client is
2 to make an argument that the State had not proven beyond a
3 reasonable doubt the allegations. That's their burden and I
4 felt like that was the best strategy in this case.

5 Q: And did you discuss the elements of the charges that Mr.
6 Johnson was facing?

7 A: Yes, sir.

8 Q: And possible exposure?

9 A: Yes, sir.

10 Q: Could you just kind of briefly describe the evidence the
11 State had against Mr. Johnson?

12 A: Testimony from the victim was the primary evidence, and
13 then things such as the Taser that was mentioned before, which
14 corroborated at least a part of her testimony, and then there
15 was testimony from siblings and other things like that and
16 what they saw, but the specific allegations of misconduct came
17 from the -- came from the victim.

18 Q: And I believe you testified that the witnesses Mr.
19 Johnson asked you to look into didn't really pan out?

20 A: They were not witnesses that I felt like were in his best
21 interest to call.

22 Q: Okay. Did he ever indicate that he didn't understand
23 anything in your discussions with him?

24 A: No, sir.

25 Q: Now, did you -- did you attempt to -- or did the State

VICK MEETZE - CROSS BY MR. HUNTER

1 offer any plea agreements in this case?

2 A: They did. They offered a ten-year sentence on everything
3 leading up to trial.

4 Q: And whose decision to go to trial was it?

5 A: Mr. Johnson's.

6 Q: Okay. You discussed the plea with Mr. Johnson?

7 A: Yes, sir.

8 Q: Okay. Did Mr. Johnson ever tell you that he wanted to
9 take notes during the trial?

10 A: I don't know if he did or not.

11 Q: You don't know? You don't recall if he ever asked for a
12 pen and paper or anything?

13 A: I don't recall whether he did or not.

14 Q: Okay. Did you have any issues with the search warrant?

15 A: No, sir.

16 Q: Okay. You felt -- you didn't feel there was any need to
17 challenge the indictments in this case?

18 A: No, sir.

19 Q: Okay. Do you recall a preliminary hearing in this case?

20 A: I recall him having a preliminary hearing.

21 Q: Okay. Was there any issues with that?

22 A: No, sir.

23 Q: Okay. I believe Mr. Johnson testified that he said he
24 wanted a bunch of subpoenas sent out and they all went to the
25 wrong people. Do you know what's going on with that?

VICK MEETZE - CROSS BY MR. HUNTER

1 A: No, sir.

2 Q: Okay. So you didn't have any problems subpoenaing
3 anyone?

4 A: I don't -- don't recall whether we subpoenaed anybody or
5 not.

6 Q: Okay.

7 A: I know that we -- like I said, the witnesses that he gave
8 us, we looked into those and did not have any intentions of
9 calling them as a witness at trial. I think that is the case
10 --

11 Q: So you don't recall any --

12 A: -- but we might have.

13 Q: -- specific issues with any subpoenas?

14 A: I don't recall any specific issues --

15 Q: Okay.

16 A: -- with any subpoenas. That's correct.

17 Q: I believe you testified that the time frame being so
18 broad, you thought that might be able to help?

19 A: Well, I mean it could have. I don't recall specifically
20 thinking that this is good for us at trial because of this
21 broad thing. I didn't -- I was just answering that I didn't
22 see it as anything that necessarily hurt us either, you know,
23 but I don't specifically recall saying, oh, this is good, this
24 could help us at trial. I was just I guess --

25 Q: Okay.

VICK MEETZE - CROSS BY MR. HUNTER

1 A: -- using that as an example of how I might not have seen
2 it as a hindrance either.

3 Q: And -- and you did move for a mistrial; that's correct?

4 A: Yes, sir.

5 Q: I believe you testified that you didn't ask for a
6 curative charge because you thought that was the way you
7 needed to preserve your mistrial motion?

8 A: Right.

9 Q: Okay. Do you recall whether or not you objected to the
10 introduction of the Taser into evidence?

11 A: I did object to that.

12 Q: Okay. Did you make directed verdict motions?

13 A: Yes, sir.

14 Q: Okay. Do you recall whether you asked for a -- for a
15 jury charge on Mr. Johnson's decision not to testify?

16 A: I don't recall specifically asking for it. It's standard
17 that a judge will include that in their charge if the
18 defendant doesn't.

19 Q: But you agree it's in the record?

20 A: It's in the record. Yes, sir. It would be in the
21 record, whether I'm the one that asked for it or not.

22 Typically, that's not something I have to ask for. Judges put
23 that in there.

24 Q: Okay. And finally, I think this is my last question, Mr.
25 Meetze. With regard to Debbie Elliott, you were successful in

VICK MEETZE - CROSS BY MR. HUNTER

1 keeping her from being qualified as an expert in this case,
2 weren't you?

3 A: Yes, sir.

4 Q: Okay.

5 MR. HUNTER: That's it. Thank you, Mr. Meetze.

6 MR. WALLER: No further questions, Your Honor.

7 THE COURT: Mr. Meetze, you may step down. Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 MR. WALLER: The applicant rests at this time.

10 THE COURT: Anything from the State?

11 MR. HUNTER: No, Your Honor.

12 THE COURT: All right. Anything by way of argument?

13 MR. WALLER: Yes, sir, Your Honor. Your Honor, there are
14 two main issues.

15 Two witnesses testified that applicant believes is
16 impermissible corroboration testimony. Rule 801(d) does
17 provide for an exception to the hearsay rule in these types of
18 cases. However, it limits it to time and place. Your Honor,
19 both Ms. Ursula Charlene Moree [phonetic], the teacher, and
20 Ms. Debbie Elliott testified outside of those bounds.

21 If I could, Your Honor, I have two cases I would like to
22 hand up. One is exactly on point. Your Honor, that's *Jolly*
23 *v. State*, and it's 443 S.E.2d 566. It's a 1994 Supreme Court
24 opinion. In that case, the witness testified as to the
25 identity of the alleged abuser. The Court held that that was

1 -- that was improper.

2 The Court -- the Court goes on to say that how -- that
3 improper corroboration testimony that's merely cumulative to
4 the victim's testimony cannot be harmless because that is
5 precisely the cumulative effect that enhances the devastating
6 impact of improper corroboration. And that's quoting *State v.*
7 *Barrett* at 299 S.C. 485.

8 Your Honor, the other case I handed up is *Vail v. State*.
9 That is at 2 -- excuse me -- at 738 S.E.2d 503. That is a
10 case that deals specifically from a PCR aspect. It walks
11 through the -- the analysis in that the failure to object to
12 this type of -- this type of testimony is ineffective
13 assistance of counsel outside of a valid trial strategy. Then
14 it goes on to say that it is also -- it meets the prejudice
15 prong. So it walks through all three -- three considerations.

16 Your Honor, clearly this happened twice, the first time
17 with Ms. Charlene Moree. She testifies that -- the question
18 was a proper question. It asked what -- it asked about time
19 and place. She testified that it took place at her uncle's
20 house by her uncle. That's the impermissible part of it.

21 And then with respect to Debbie Elliott, essentially the
22 same place in that she testifies that there was more specifics
23 about the -- what actually took place contained on page 128,
24 Your Honor, lines 1 through 4.

25 Your Honor, I think that Mr. -- Mr. Meetze was

1 ineffective for failure to object to those and that Mr.
2 Johnson was -- was prejudiced by that.

3 Your Honor, the other thing, the last argument, is that
4 during the testimony of Investigator Michael Robinson, Mr.
5 Meetze made a valid objection. That objection was sustained.
6 Mr. Meetze made a good motion for a mistrial, which was
7 denied. His reasoning that he presented to the Court for not
8 asking for a curative instruction was that he wanted to -- did
9 not want to alert the jury to the impermissible comment.

10 However, he asked that it be stricken from the record.
11 Your Honor, in order for it to be stricken from the record,
12 it's got to be brought back up to the jury. I don't feel that
13 was effective assistance of counsel and that Mr. -- by
14 bringing it back up to the jury, Mr. Johnson was prejudiced by
15 that. Thank you.

16 THE COURT: Mr. Hunter?

17 MR. HUNTER: Just very briefly, Your Honor. In response
18 to the allegation of ineffective assistance of counsel with
19 regards to the objectionable testimony, I would point Your
20 Honor to *Caprood v. State*. That's 338 S.C. 103, 525 S.E.2d
21 514. That's a 2000 case. There the Court said that
22 objectionable testimony may not be prejudicial where it is
23 merely cumulative to other evidence presented at trial.

24 There's plenty of testimony from the victim in this, as
25 well as other -- other people as to the fact that she was

1 pregnant, and so I don't think that Mr. Waller has shown any
2 prejudice there.

3 With regard to the mistrial and the failure to ask for a
4 curative instruction, I don't believe Mr. Waller has shown the
5 prejudice there either. That's the State's position.

6 THE COURT: All right. I'll take a look at what you all
7 have -- what you've submitted. I'll read these cases and I'll
8 let you know. All right.

9 MR. WALLER: Thank you, Your Honor.

10 (WHEREUPON, the proceedings ended at 11:37 a.m.)

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12 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Robert L. Johnson, #211854,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-1147

ORDER OF DISMISSAL

FILED
2015 JUN 24 PM 1:41
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 29, 2013. Respondent made a Return on or about May 14, 2014. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2010, the Florence County Grand Jury indicted Applicant for contributing to the delinquency of a minor, four (4) counts of second degree criminal sexual conduct with a minor, and three (3) counts of lewd act on a minor (2010-GS-21-664). William V. Meetze, Esquire, represented Applicant. On August 2, 2010, Applicant proceeded

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Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

to trial before the Honorable Michael G. Nettles and a jury. On August 4, 2010, the jury found Applicant guilty as indicted. Judge Nettles sentenced Applicant to a term of twenty (20) years imprisonment on one count of second degree criminal sexual conduct with a minor. On a second count of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to a consecutive term of twenty (20) years. On the remaining counts of second degree criminal sexual conduct with a minor, Judge Nettles sentenced Applicant to concurrent terms of twenty (20) years. Judge Nettles sentenced Applicant to concurrent terms of fifteen (15) years for each count of lewd act on a minor and three (3) years for contributing to the delinquency of a minor.

Applicant filed a timely notice of appeal, and Breen R. Stevens, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on October 31, 2012. State v. Johnson, Op. No. 2012-UP-590 (S.C. Ct. App. Filed October 31, 2012). The remittitur was returned to the circuit court on November 27, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
 - a. Failure to properly object to trial court's failure to operate in common law jurisdiction.

However, at the PCR hearing, Applicant proceeded with the following allegations:

1. Failure to utilize alibi witnesses.
2. Ineffective assistance of counsel for failure to object to objectionable testimony.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness

who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

A. Summary of Testimony

Applicant testified he was arrested in 2009 for crimes alleged to have taken place between 2001 and 2009. Applicant testified Vick Meetze (Counsel) was appointed to represent him. Applicant expressed concerns with the fact that there was a gap of a number of years between his arrest and when the crimes allegedly took place. Applicant testified he only met with Counsel twice, and they only briefly discussed the charges he was facing. Applicant testified Counsel never discussed the possible sentencing exposure he faced, nor did Counsel discuss the State's evidence in any detail. Applicant testified the State did not present any evidence at the preliminary hearing. Applicant testified he requested certain witnesses be subpoenaed, but the subpoenas went to the wrong addresses. Applicant testified he and Counsel spoke during breaks in the trial, and Counsel advised him not to testify. Applicant testified the house where the crimes took place looked different in pictures than it did when he was there. Applicant testified he believed there were issues Counsel should have raised with regard to the search warrants. Applicant testified he did not believe the tazer should have been allowed into evidence.

On cross-examination, Applicant admitted that he recalled reviewing discovery with Counsel. Applicant asserted that he wanted certain witnesses to testify for him at trial, but Applicant admitted those witnesses were not present to testify at the PCR hearing either. Applicant admitted Counsel conveyed the state's plea offer, but he elected to proceed to trial. Applicant admitted the tazer he

objected to was on him when he was arrested. Applicant testified he believed the trial transcript was inaccurate where it reflected the victim testified at trial that Applicant used the tazer to intimidate her into submission. Applicant admitted that he told the trial court at sentencing that Counsel "had to take into a lot of time to do a lot of work on this case." (Transcript pp. 258-69). Applicant further admitted he also told the trial Court on page 259 of the transcript, "I knew the consequences of me taking this to trial."

Applicant next called Counsel to testify. Counsel testified he was appointed to represent Applicant as part of his work at the Public Defender's office. Counsel testified he had his investigator track down the witnesses Applicant gave him. Counsel testified that after the investigator spoke with those witnesses, Counsel determined they would not be beneficial to Applicant's case. Counsel testified the indictments covered a broad timeline, but he did not recall thinking there was anything significant to challenge. Counsel testified he had no particular strategy for failing to object to Ursula Wardy's testimony on page 25, lines 4-7, of the transcript. Counsel admitted the testimony was likely objectionable. Counsel admitted he did not have a strategy for not objecting to the forensic interviewer's (Debbie Elliot) testimony on page 128, lines 1-4. Counsel testified he objected to Officer Robinson's testimony on page 148 of the transcript and asked for a mistrial. Counsel testified he decided not to ask for a curative charge because he wanted to make sure his objection and request for a mistrial was preserved.

On cross-examination, Counsel testified he has been practicing criminal defense for thirteen years. Counsel testified he met with Applicant a number of times at the jail prior to his trial. Counsel testified he filed Rule 5 and Brady motions, and that he went over the discovery with Applicant. Counsel testified he discussed Applicant's version of the facts, and it was Counsel's belief that the extended timeframe covered by the indictments could help Applicant's case. Counsel testified there

was no reason to challenge the indictments. Counsel testified he believed the best defense at trial was to attempt to cast doubt on the victim's story. Counsel testified there was a large amount of evidence against Applicant, particularly victim's testimony, the tazer that was recovered, and testimony from the victim's sibling. Counsel reiterated that it would not have been in Applicant's best interest to present testimony from the witnesses he gave Counsel to pursue. Counsel testified the State offered a plea of ten years, but Applicant decided to proceed to trial. Counsel testified there were no issues with the preliminary hearing. Counsel testified he saw no reason to challenge the search warrants. Counsel testified that he did object to the tazer being allowed into evidence, but that it was on Applicant when he was arrested, and the victim's testimony mentioned the tazer. Counsel reiterated that his strategy in not asking for a curative charge was that he wanted to preserve his request for a mistrial. Counsel testified there were no issues with any of the subpoenas that were sent. Finally, Counsel acknowledged he was successful in keeping the forensic interviewer from being qualified as an expert.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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 Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials.

1. Alibi Witnesses

With regard to Counsel's alleged failure to call Applicant's alibi witnesses, this Court finds Applicant has failed to show any ineffectiveness on the part of Counsel. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540

(1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

This Court finds Counsel is an extremely capable and experienced criminal lawyer. Counsel testified his investigator interviewed the potential alibi witnesses, and after consultation, Counsel decided presenting those witnesses before the jury would not be in Applicant's best interest. Furthermore, Applicant did not have those witnesses present to testify at the PCR hearing. This Court has weighed Counsel's testimony as well as reviewed the transcript of Applicant's trial. Based on the foregoing, and in conjunction with the applicable jurisprudence, this Court can find no ineffectiveness on the part of Counsel for electing not to call Applicant's alleged alibi witnesses at trial. Nor has Applicant shown any resulting prejudice since he did not present testimony from the witnesses in question at the PCR hearing. As such, this Court finds the allegation without merit.

2. Failure to Object

With regard to Counsel's alleged failure to object to portions of the testimony presented by Ursula Wardy, Debbie Elliott, and Michael Robinson, this Court finds Counsel's performance was not deficient. Under Strickland, Applicant must show that Counsel's performance fell below the accepted standard of reasonableness for defense counsel, and but for that deficient performance, the outcome of the trial would likely have been different. Furthermore, it is well founded that "any alleged impropriety must be examined on appeal in light of the entire record." State v. Brown, 333 S.C. 185, 191, 508 S.E.2d 38, 41 (Ct.App.1998). A criminal defendant is entitled to a fair trial, not a perfect one. State v. Mizell, 332 S.C. 273, 504 S.E.2d 338 (Ct.App.1998), *cert. denied* (Apr. 12, 1999). State v. Sweet, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000).

This Court finds Applicant has failed to show that there is a substantial likelihood the outcome of the trial would have been different, had Counsel objected to the testimony in question. The record

clearly indicates Counsel offered multiple objections and did a fine job of challenging the state's case. Additionally, Applicant has failed to show how Counsel's objections at the times in question would have served to change the outcome of the trial. As such, this Court finds no ineffectiveness on the part of Counsel for not objecting. Further, this Court finds no resulting prejudice. Accordingly, the allegation is without merit.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

D. Overwhelming Evidence of Guilt

This Court notes that Applicant can show no prejudice in regards to any of the alleged allegations as there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes 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 must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of June, 2015.


D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

Flower, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE JOHNSON,

APPELLANT

FINAL BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court abused its discretion by failing to grant a mistrial after Appellant's objection to testimony regarding prior police reports at his address was sustained, but the information was already heard by the jury?

STATEMENT OF THE CASE

Appellant Robert Lee Johnson was indicted by the Florence County Grand Jury on June 3, 2010, with four counts of criminal sexual conduct with a minor in the second degree, three counts of lewd act on a minor, and one count of contributing to the delinquency of a minor. R. 256. Appellant's case proceeded to trial before the Honorable Michael G. Nettles and a jury from August 2 through 4, 2010. Vick Meetze represented Appellant. The State was represented by John Jepertinger and David Richardson. R. 1.

Appellant was found guilty of all charges submitted to the jury.¹ R. 215, ln. 21—R. 217, ln. 7. The trial court sentenced Appellant as follows: twenty years for each count of criminal sexual conduct with a minor in the second degree, one of which is to run consecutive, and all others to run concurrently; fifteen years for each of the two counts of lewd act on a minor, to run concurrently; and three years for the one count of contributing to the delinquency of a minor, to run concurrently. R. 230, ln. 16—R. 232, ln. 2; R. 259-265.

¹ All charges were submitted to the jury except one of the counts for lewd act on a minor. R. 203, ln. 2—R. 204, ln. 16.

ARGUMENT

The trial court abused its discretion by failing to grant a mistrial after Appellant's objection to testimony regarding prior police reports at his address was sustained, but the information was already heard by the jury.

At Appellant's trial, Detective Michael Robinson (Robinson) testified as the investigating officer in the case. During the course of her investigation, she interviewed Appellant approximately two years prior to his arrest. R. 119, ll. 6-25; R. 135, ll. 4-20. When asked at trial about where Appellant lived during the timeline of events alleged by the minor complaining witness (Minor), Robinson stated that Appellant "was able to help confirm with me—in the meantime, I had used police reports from the police department to establish his residency filed in police reports" R. 125, ln. 23—R. 126, ln. 1.

Defense counsel objected due to the inference of prior criminal activity by Appellant.² Additionally, a motion for mistrial was made, asserting that the error could not be cured because the information is "something that is already out there," and the bell could not be unrung. As such, the Appellant's ability to receive a fair trial was compromised. R. 126, ln. 2—R. 127, ln. 7; R. 128, ll. 1-15.

The State responded that it was merely "trying to elicit from her [Robinson] are just addresses and not where she got the information from I think it can possibly be a double inference there." R. 127, ll. 13-16. The State also denied it was attempting to elicit testimony placing Appellant's character into issue or that Appellant had a prior criminal history. R. 127, ll. 16-19.

² Defense counsel also moved for directed verdict at the close of the State's case. He also renewed all objections and motions at the close of evidence, and again after the verdict was returned by the jury. R. 151, ll. 3-9; R. 156, 1-9; R. 221, ll. 16-22.

The trial court sustained the objection, but denied the motion for mistrial. R. 127, ll. 8-9; R. 128, ll. 16-22. In response, defense counsel objected to any curative instruction, but moved to have the testimony stricken from the record. R. 128, ll. 23-25; 129, ll. 7-9. The trial court agreed to strike the record, but also concluded that a curative charge would likely be necessary. Thus, the jury was informed that the testimony in question was stricken, and was not to be considered. R. 129, ln. 5—R. 130, ln. 20.

Although the decision to grant or deny a mistrial is within the trial court's discretion,³ such discretion is not unfettered. Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) "perhaps other matters." State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976).

In the present case, the Robinson's testimony constituted character evidence of prior bad acts. Such information would be impermissible pursuant to Rule 404(b) of the South Carolina Rules of Evidence, as no exceptions under the Rule were proffered to allow testimony of the prior police reports. See Rule 404(b), SCRE. Moreover, Appellant did not offer evidence of a pertinent trait of character. Thus, Robinson's testimony also breached the rule forbidding the State to introduce evidence of Appellant's character or traits prior to the defense raising the issue. See Rule 404(a)(1).

Second, the testimony was offered by the State's lead investigator as she was explaining her interview with the Appellant at the police station prior to his arrest. Under

³ See, e.g., State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

these circumstances, it is likely that the jury's attention was heightened and focused on Appellant's interaction with the police. Therefore, Robinson's testimony, which linked Appellant's addresses to prior police reports, likely conveyed to the jury that Appellant had a prior record, and thus compounded the impact of bad character evidence.

Third, the nature of the case is one of sexual assaults allegedly occurring over a period of time at Appellants residences. Robinson's testimony linking police reports to those residences again highlights the inference that Appellant had a prior record covering the same time he is alleged to have committed the sexual offenses for which he was on trial. Moreover, the case is one where both the State and defense recognized the primary issue was that of credibility. R. 7, ll. 8-9; R. 162, ll. 20-22; R. 171, ll. 8-15; R. 174, ll. 6-11. Under such circumstances, the harm of Robinson's statement was significant.

Fourth, although other testimony was present in the case regarding general locations of Appellant's prior residences, the only testimony inferring Appellant's prior entanglements with law enforcement came from Robinson. Additionally, Robinson's testimony itself contained not one, but two references to police reports linked to Appellant's prior addresses. R. 125, ln. 23—R. 126, ln. 1.

Therefore, the applicable factors the court is to consider when ruling upon a motion for mistrial militate toward granting a mistrial. Yet, the trial court instead struck the statement from the record, and gave a curative instruction to the jury.

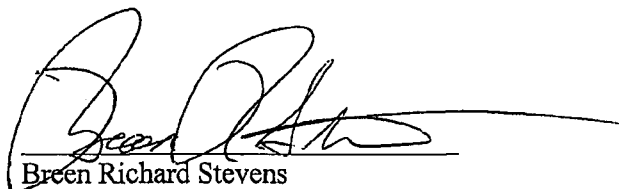
A curative instruction is generally deemed to cure an alleged error, "unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced." Craig, 267 S.C. at 269, 227 S.E.2d at 309. As asserted by the defense, the information is "something that is already out there," and the bell could not

be unrun. Moreover, as indicated above, the impact of Robinson's testimony was likely significant due to the fact that it improperly linked police reports to the Appellant's prior addresses over the exact period of time the sexual offences for which he was on trial allegedly occurred. Thus, the Appellant's ability to receive a fair trial was compromised, and a mistrial should have been granted. R. 126, ln. 2—R. 127, ln. 7; R. 128, ll. 1-15.

CONCLUSION

For the foregoing reasons, Appellant Robert Johnson respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", written over a horizontal line.

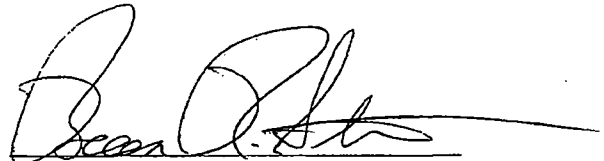
Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of June, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read "Breen R. Stevens", is written over a horizontal line.

BREEN RICHARD STEVENS
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

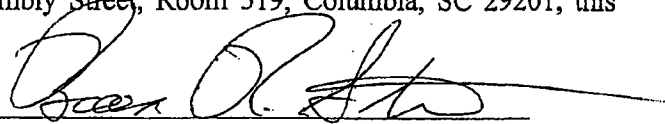
V.

ROBERT LEE JOHNSON,

APPELLANT

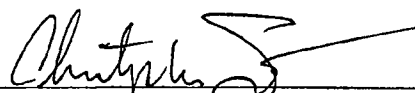
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of June, 2012.


Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of June, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021

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

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

The State, Respondent,

v.

Robert Lee Johnson, Appellant.

Appellate Case No. 2010-169668

Appeal From Florence County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2012-UP-590
Submitted October 1, 2012 – Filed October 31, 2012

AFFIRMED

Appellate Defender Breen Richard Stevens, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Christina J. Catoe, all of Columbia; and
Solicitor Edgar Lewis Clements, III, of Florence, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) ("The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law."); *State v. Craig*, 267 S.C. 262, 268, 227 S.E.2d 306, 309 (1976) ("An instruction to disregard incompetent evidence or the withdrawal of such evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced."); *State v. Council*, 335 S.C. 1, 11-13, 515 S.E.2d 508, 513-14 (1999) (affirming the denial of a mistrial where a witness for the State referenced prior SLED records); *State v. Thompson*, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) (holding a witness's vague reference to the defendant's prior criminal activity did not warrant a mistrial when the State did not attempt to introduce evidence of other crimes).

AFFIRMED.¹

FEW, C.J., and WILLIAMS and PIEPER, J.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

DOCKET NO. 2010-GS-21-0664

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

vs.

ROBERT LEE JOHNSON

Indictment for

CONTRIBUTING TO THE DELINQUENCY
OF A MINOR,
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE
(FOUR COUNTS),
LEWD ACT ON A MINOR
(THREE COUNTS)

FILED
JUN 3 2010
CLERK OF COURT
FLORENCE COUNTY, SC

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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

CONTRIBUTING TO THE DELINQUENCY
OF A MINOR,

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE (FOUR COUNTS),

LEWD ACT ON A MINOR

(THREE COUNTS)

At a Court of General Sessions, convened on JUNE 3, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CONTRIBUTING TO THE DELINQUENCY OF A MINOR

That ROBERT LEE JOHNSON did in Florence County on or about May 8, 2007, violate Section 16-17-0490 of the Code of Laws of South Carolina (1976), as amended, in that he, being a person over the age of eighteen (18), did knowingly and willfully encourage, aid, or cause or did any act which shall cause or influence a minor to so deport themselves as to willfully injure or endanger their morals or health or the morals or health of others, contribute to the delinquency of a minor, to wit: A JUVENILE by allowing her to engage in sexual intercourse with another male in the same bedroom.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That ROBERT LEE JOHNSON did in Florence County between the dates of October 1, 2005 and October 1, 2007 violate Section 16-03-0655(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did willfully and unlawfully commit, or attempt to commit, a sexual battery in and upon A CHILD who is fourteen years of age or less but who is at least eleven years of age, by vaginally penetrating her with his penis.

COUNT THREE - CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That ROBERT LEE JOHNSON did in Florence County between the dates of October 1, 2005 and October 1, 2007 violate Section 16-03-0655(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did willfully and unlawfully commit, or attempt to commit, a sexual battery in and upon A CHILD who is fourteen years of age or less but who is at least eleven years of age, by vaginally penetrating her with his penis.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR CONTRIBUTING TO THE DELINQUENCY OF A MINOR, CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE AND LEWD ACT ON A MINOR WITH THE AFORESAID NAMES(S) OF ROBERT LEE JOHNSON SHOWN THEREON:

COUNT FOUR- CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That ROBERT LEE JOHNSON did in Florence County between the dates of October 1, 2005 and October 1, 2007 violate Section 16-03-0655(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did willfully and unlawfully commit, or attempt to commit, a sexual battery in and upon A CHILD who is fourteen years of age or less but who is at least eleven years of age, by anally penetrating her with his penis.

COUNT FIVE - CRIMINAL SEXUAL CONDUCT WITH A MINOR

That ROBERT LEE JOHNSON did in Florence County between the dates of October 1, 2005 and October 1, 2007 violate Section 16-03-0655(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did willfully and unlawfully commit, or attempt to commit, a sexual battery in and upon A CHILD who is fourteen years of age or less but who is at least eleven years of age, by orally penetrating her vagina.

COUNT SIX - LEWD ACT ON A MINOR

That ROBERT LEE JOHNSON did in Florence County between the dates of October 1, 2001 and October 1, 2003, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he, who is a person over the age of fourteen years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: A GIRL UNDER THE AGE OF SIXTEEN, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself by kissing her breast and neck and forcing her to hold his genitalia.

COUNT SEVEN - LEWD ACT ON A MINOR

That ROBERT LEE JOHNSON did in Florence County between the dates of January 1, 2003 and October 1, 2005, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he, who is a person over the age of fourteen years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: A GIRL UNDER THE AGE OF SIXTEEN, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself by kissing her breast and neck and forcing her to hold his genitalia

DOCKET NO. 2010-GS-21-0666

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE

vs.

ROBERT LEE JOHNSON

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE
AND
LEWD ACT ON A MINOR
(TWO COUNTS)

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CLERK OF COURT
FLORENCE COUNTY, SC

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CLERK
FLORENCE COUNTY, SC

Department

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STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE

AND

LEWD ACT ON A MINOR
(TWO COUNTS)

At a Court of General Sessions, convened on JUNE 3, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That ROBERT LEE JOHNSON did in Florence County between the dates of November 1, 2007 and November 1, 2008, violate Sections 16-03-0655(A)(1) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did willfully and unlawfully commit, or attempt to commit, a sexual battery in and upon one CHILD UNDER THE AGE OF ELEVEN YEARS, by vaginally penetrating her with his penis.

COUNT TWO- LEWD ACT ON A MINOR

That ROBERT LEE JOHNSON did in Florence County between the dates of November 1, 2007 and November 1, 2008, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he, who is a person over the age of fourteen years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: AN EIGHT YEAR OLD GIRL, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself by removing and/or pulling down the victim's pants, touching and/or fondling her vagina and penetrating her vagina with his penis.

COUNT THREE - LEWD ACT ON A MINOR

That ROBERT LEE JOHNSON did in Florence County between the dates of November 1, 2007 and November 1, 2008, violate Section 16-15-0140 of the Code of Laws of South Carolina (1976), as amended, in that he, who is a person over the age of fourteen years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: A FOUR YEAR OLD BOY, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of himself by placing his hand inside the victim's pants and fondling him while in the same bed.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

368

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Lee Johnson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-0664

AW#: M375579

Date of Offense: 5/8/2007

S.C. Code §: 16-17-0490

CDR Code #: 0048

SENTENCE SHEET

AKA:

Race: B Sex: M Age: 40

DOB: SS#: ?

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Minor / Contributing to the delinquency of a minor

In violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 74742

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Aug 4, 2010☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 260 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐Attend Voc. Rehab. Or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

August 4, 2010

Recipient:

*Fine: \$

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (If paid in installments) \$

TOTAL \$ 105.00

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (08/2010)

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

IN THE COURT OF GENERAL SESSIONS

369

INDICTMENT/CASE#: 2010-GS-21-0664

VS.
Robert Lee Johnson

AW#: M375575

AKA:
Race: B Sex: M Age: 40

Date of Offense: 10/1/2005 - 10/1/2007

DOB: SS#:

S.C. Code §: 16-03-0655(B)(1)

Address:

CDR Code #: 0396

City, State, Zip:

SENTENCE SHEET

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daryl Anderson 74742
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE sentence on: Aug 4, 2010 (WN) M 375576

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 260 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning _____

*Fine: \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing ☐

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 10000

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 500

§44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 10500

☐ Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk M. Beecher

Presiding Judge Michael J. Smith

Court Reporter: IC Reed

Judge Code: _____

Sentence Date August 4, 2010

SCCA/217 (06/2010)

370

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

VS.

Robert Lee Johnson

AKA:

Race: B Sex: M Age: 40

DOB: SS#: 2

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Solicitor

SC Bar # 74742

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: August 4, 2010 (A 113 7575)☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 20 days☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: see offender registry☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Michael P. Miller

Judge Code: _____

Sentence Date August 4, 2010

Recipient: _____

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
§44-53-450(C) (Conditional Discharge)	\$350	\$	
3% to County (if paid in installments)		\$	
TOTAL		\$	105.00

Clerk of Court/Deputy Clerk M. BeecherCourt Reporter: Reed

SCCA/217 (08/2010)

STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

IN THE COURT OF GENERAL SESSIONS

371

VS.
Robert Lee Johnson

INDICTMENT/CASE#: 2010-GS-21-0664

AW#: M375573

Date of Offense: 10/1/2005 - 10/1/2007

S.C. Code §: 16-03-0655(B)(1)

CDR Code #: 0396

SENTENCE SHEET

AKA:
Race: B Sex: M Age: 40
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor David L. Johnson SC Bar # 14742 Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: August 4, 2010

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 260 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
\$14-1-206 (Assessments 107.5%)		\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
\$44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>105.00</u>

Clerk of Court/Deputy Clerk M. B. B. B.

Court Reporter: K. Reed
SCCA217 (06/2010)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Michael P. Hall

Judge Code: _____

Sentence Date August 4, 2010

372
STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

VS.
Robert Lee Johnson

AKA:
Race: B Sex: M Age: 40
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David McIntosh 74742
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: August 4, 2010

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 260 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ _____
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
§44-53-450(C) (Conditional Discharge) \$350 \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ 105.00

Clerk of Court/Deputy Clerk N. Bell

Court Reporter: K. Reed
SCCA217 (06/2010)

IN THE C T OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-0664

AW#: M375574

Date of Offense: 10/1/2005 - 10/1/2007

S.C. Code §: 16-03-0655(B)(1)

CDR Code #: 0396

SENTENCE SHEET

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge Michael P. Smith

Judge Code: _____

Sentence Date August 4, 2010

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Lee Johnson

AKA:

Race: B Sex: M Age: 40

DOB: SS#: ?

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code# 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 74742

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Aug 4 2010☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 260 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2895 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$ _____
3% to County (if paid in installments)	\$	_____
TOTAL	\$	\$ <u>105.00</u>

Clerk of Court/Deputy Clerk M. ButlerCourt Reporter: K. Reed

SCCA217 (08/2010)

IN THE COURT OF GENERAL SESSIONS

373

INDICTMENT/CASE#: 2010-GS-21-0664

AW#: M375577

Date of Offense: 10/1/2001 - 10/1/2003

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Michael J. Smith

Judge Code: _____

Sentence Date August 4, 2010

374
STATE OF SOUTH CAROLINA
COUNTY OF Florence
STATE

VS.
Robert Lee Johnson

AKA:
Race: B Sex: M Age: 40
DOB: SS#: !
Address:
City, State, Zip:
DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David L. Johnson 74742
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Aug 4, 2010

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 260 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>105.00</u>

Clerk of Court/Deputy Clerk N. B. Baker

Court Reporter: K. Reed

SCCA/217 (08/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-21-0664

AW#: M375578

Date of Offense: 1/1/2003 - 10/1/2005

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge Michael H. Smith

Judge Code: _____

Sentence Date August 4, 2010