

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Roger E. Henderson, Family Court Judge

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SC SUPREME COURT

RONALD L MCCAULEY

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001998

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) INDICTMENT NO.: 2009-GS-08-2123
 through 2126; 2129; 2131 through
 2133

THE STATE OF SOUTH CAROLINA)
)
VS.)
)
RONALD MCCAULEY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Monday, December 13, 2010, Commencing at 11:15 a.m.

SUSAN "MIA" PERRON, CVR-CM
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EXHIBITS

[None]

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PROCEEDINGS

1
2 THE COURT: All right. I have numerous motions.
3 Is there any preference in the order that we start
4 with?

5 MS. WILLIAMS: Your Honor, I think that if we
6 could start with the competency motion, because we have
7 two witnesses here from the school district about one
8 of the witnesses and I think as the testimony unfolds
9 each of the boys -- we could probably handle the 404(b)
10 testimony and the competency testimony, you know, all
11 at once.

12 THE COURT: Mr. Schwacke, you're challenging the
13 competency -- how old are the children?

14 MS. WILLIAMS: The twins are ten years old. One
15 of the twins -- oh. They're thirteen now. I'm sorry,
16 Your Honor. They were ten when it happened.

17 They are thirteen years old. One of the twins
18 has an auditory issue and a developmental delay, so we
19 have two witnesses here, in addition to him, to discuss
20 his obstacles. And then the other child is eleven.

21 THE COURT: All right. And so, Mr. Schwacke, I
22 have your motion to exclude testimony of the alleged
23 victims for lack of competency to testify or for the
24 Court to order a competency evaluation in the
25 alternative. Is that correct?

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1 MR. SCHWACKE: That's correct, Your Honor.

2 THE COURT: All right.

3 MS. WILLIAMS: And, Your Honor, Mr. Schwacke, as
4 part of his -- what he wanted for the competency was he
5 was asking for some psychological records of one of the
6 boys. Ms. Herring-Lash and I were here Friday, went
7 and found a release from DSS and got the records sealed
8 from the place where this one boy was being seen. And
9 we did submit them to Your Honor in camera. And we
10 were just, you know, waiting to see what you decided
11 about what's relevant to competency in those records.

12 THE COURT: And the purpose of the Court
13 evaluating what's contained in the envelope was merely
14 for competency, not in any sort of determination to
15 make whether or not it's relevant or admissible. Is
16 that correct?

17 MS. WILLIAMS: Mr. Schwacke had asked that we
18 get those for competency, and that's what he was asking
19 for for them. We have not seen them. So we understood
20 that it was for the limited purpose of competency. Our
21 position is that they're presumed competent and they
22 are competent. But we're just trying to comply with
23 what he needs to make his argument.

24 THE COURT: All right. Thank you.

25 MR. SCHWACKE: And, Your Honor, on that, there's

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1 actually two motions. There's one was for
2 determination of the competency of the child victims.
3 The other was I noticed that on the motion to require
4 disclosure for alleged victims' counsel's records --
5 and the reasons that I asked for that were that I
6 require that information, on behalf of my client, to
7 determine whether the victims have provided any
8 inconsistent statements or statements inconsistent with
9 the guilt of my client that I need to make a
10 determination as to whether or not the child may have
11 been abused by other individuals and whether or not
12 that abuse might be the source of the child's
13 reporting, and then to determine whether or not --
14 whether or not further competency determinations need
15 to be made.

16 THE COURT: All right. I have a motion to
17 consolidate. Should we address that before we go
18 further?

19 MS. HERRING-LASH: Your Honor, I think that it
20 would be -- we'll probably have to do the 404(b) motion
21 before we do the motion to consolidate, and I think we
22 would have to do the competency before we did the
23 404(b) motion.

24 MR. SCHWACKE: And I believe at some point,
25 based on what happens, I may have indictment amendments

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1 or motions to quash as to specific charges.

2 MS. HERRING-LASH: The reason I say that is part
3 of the consolidation motion, we have to address the
4 impact the consolidation would have on the defendant.
5 And if the 404(b) motion is granted and the jury would
6 hear the information anyway, it would greatly impact
7 whether consolidation occurs.

8

- - - - -

9 MOTION TO EXCLUDE TESTIMONY FOR LACK OF COMPETENCY

10 THE COURT: All right. So we'll go forward on
11 the motion to exclude the testimony for lack of
12 competency.

13 MR. SCHWACKE: Your Honor, as you've selected I
14 guess my motion to go forward, it puts the burden on me
15 to start.

16 What I'm asking for is a determination by the
17 Court, prior to the jury hearing any testimony from the
18 children, that they comply with the requirements of
19 competency under 601 and ask for the Court to make a
20 determination based upon the examination of the
21 witnesses.

22 THE COURT: All right. And so are you -- you
23 have the victims available to testify?

24 MS. WILLIAMS: Yes, Your Honor.

25 THE COURT: All right. Counsel, before we get

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1 started, if you could just give me a short, concise,
2 non-argumentative statement of the facts.

3 MS. WILLIAMS: Yes, Your Honor.

4 Your Honor, the defendant came into contact with
5 the three young victims. At the time there's two twins
6 that were ten years old and then turned eleven while he
7 -- while they knew him, and an eight-year-old brother
8 who turned nine while he knew them. He befriended the
9 mother of the children and essentially became the
10 babysitter, the disciplinarian, the person that was
11 pretty much controlling the kids. He would take them
12 to school, they would spend the night at his trailer,
13 he would spend the night at their house.

14 After about a year or so that he had contact
15 with them, one of the children's father walked in and
16 found Mr. McCauley in bed with his eight-year-old son.
17 This was the day after Thanksgiving of 2008. He asked
18 his son if anything happened. At first the child just
19 wouldn't disclose, but eventually did disclose sexual
20 abuse by the defendant. At a later time when the other
21 two children were in foster care, they both disclosed
22 sexual abuse by the defendant.

23 The children have also disclosed physical abuse
24 by the defendant in terms of beating, psychological
25 abuse, and that sort of thing.

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1 Do you want our position on competency or --

2 THE COURT: No. I just need to know the facts,
3 who the victims are.

4 MS. WILLIAMS: So we have Minor1 and
5 Minor2 Watts, who are the twins who are now
6 thirteen, and Minor Thacker, who is now eleven. And so
7 there's three, total, victims. The defendant is
8 charged with five counts of criminal sexual conduct in
9 the first degree under A.2 and then he is charged with
10 three counts of unlawful conduct and three counts of
11 lewd act upon a minor.

12 THE COURT: All right. Call your first witness.
13 Call your first witness.

14 MS. WILLIAMS: Minor2 Watts.

15 [Off the record momentarily]

16 MS. WILLIAMS: We could do the professional --
17 we call Dr. Craver.

18 THE COURT: Sir, please come forward and be
19 sworn.

20 [Whereupon, Dr. Craver comes forward]

21 THE CLERK OF COURT: Raise your right hand,
22 place your left hand on the Bible.

23 [Whereupon, Dr. Craver is duly sworn by the
24 clerk of court as follows: do you solemnly swear or
25 affirm the testimony you give the Court in this matter

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1 will be the truth, the whole truth, and nothing but the
2 truth, so help you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Please be seated. State
5 your full name and spell your last name for the record.

6 [Whereupon, Dr. Craver takes the witness stand]

7 THE WITNESS: My name is Jeffrey R. Craver.

8 C-R-A-V-E-R.

9

10 JEFFREY CRAVER,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Dr. Craver, what is your occupation?

16 A. I'm a school psychologist, and coordinator for
17 behavior services, in Berkeley County School District.

18 Q. What is your educational background?

19 A. Master's and Ph.D. in school psychology from the
20 University of South Carolina.

21 Q. And where did you receive your training?

22 A. Undergrad was UNC Greensboro, and graduate
23 school was University of South Carolina.

24 Q. Are you a member of any specialized medical or
25 scientific groups or associations?

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1 A. I am a member of the South Carolina Association
2 of School Psychologists and the National Association of
3 School Psychologists.

4 Q. Do you have any certifications?

5 A. I do. I'm certified as a Level 3, which is a
6 Ph.D. level, with the State Department of Education in the
7 area of school psychology. And I'm also a licensed
8 psycho-educational specialists, which means that I can do
9 private evaluations on the outside.

10 Q. Okay. And what does the field of school
11 psychology involve?

12 A. We are the highest trained, in terms of the
13 entry level for -- to be a school psychologist is a
14 master's-plus-thirty degree. We are -- our training is a
15 four-year program, three years in -- of course work and a
16 one-year internship. And we are trained to cover from
17 three-year-old through high school.

18 Q. Okay. And where do you presently work?

19 A. At Berkeley County School District.

20 Q. What does that work actually involve?

21 A. Yeah. I primarily oversee, with another school
22 psychologist, the evaluations that goes on throughout the
23 district, as well as consult with groups whenever we have
24 behavior concerns when a school team is not being
25 successful with a student.

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1 Q. Okay. And in your duties, do you review and
2 evaluate like the developmental status of specific
3 students?

4 A. I do. Prior -- from 1994 until 2000, I was a
5 psychologist for the Department of Developmental
6 Pediatrics at MUSC. I functioned as a school
7 psychologist, but in that capacity we did -- and I had
8 great exposure to a lot of rare developmental disorders in
9 working with other pediatricians and psychologists. So,
10 yes, I do review the assessments and troubleshoot with --
11 especially with complex cases that are sometimes rare.

12 Q. Okay. And what kinds of tools do you use to
13 evaluate these students?

14 A. Well, a variety. We use observation. We
15 certainly use any kind of standardized measures that are
16 individually administered, and that can range from
17 adaptive behavior, which is how a child functions day to
18 day. Parent interviews. We also administer standardized
19 evaluations of intelligence and academic achievement,
20 primarily.

21 MS. WILLIAMS: Your Honor, just for purposes of
22 the hearing, we would ask that he be qualified as a
23 school -- in the field of school psychology as an
24 expert.

25 THE COURT: Mr. Schwacke?

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1 MS. KENNEDY: We have no objection, Your Honor.

2 THE COURT: All right. Thank you.

3 Q. [Ms. Williams] Dr. Craver, are you familiar
4 with a child named Minor1 Watts?

5 A. Yes, ma'am.

6 Q. And what school is Minor1 in?

7 A. He's at Middle.

8 Q. And what grade is he in?

9 A. He is eighth grade.

10 Q. Now, is Minor1 in any special classes?

11 A. He is.

12 He gets primarily his entire day -- all of his
13 core subjects, which includes science, social studies,
14 language arts, and math, is in with a certified special
15 education teacher. He is mainstreamed for art and for
16 P.E. right now, which means he goes out with his age-mates
17 for those two classes.

18 Q. Okay. And has he been evaluated to determine
19 his developmental level?

20 A. Yes, ma'am.

21 The history of him: he started in our school
22 district, when he was three years of age, with Baby Net.
23 And he had severe delays overall with potty training and
24 language and so we started the evaluations, his earliest
25 evaluation when he was three, and then we have done

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1 reevaluations every three years. And that sometimes
2 encompasses giving actual measures, and then other times
3 it is the team that knows him getting together and
4 discussing what other needs so that it reaffirms whether
5 or not he's continued to be eligible for special
6 education.

7 Q. So in your opinion, where is he developmentally?

8 A. Developmentally, he is behind academically. He
9 is anywhere from a second to fifth grade in terms of his
10 academic achievement. But he has made consistent progress
11 and we have gotten much better at progress monitoring,
12 looking at where he is from year to year and from month to
13 month. And his last evaluation was 2005 where they
14 administered standardized measures. And by they I mean
15 other school psychologists that were assigned to his
16 school at that time that are not -- no longer there, no
17 longer employed by our school district, for various
18 reasons.

19 The last evaluation, his nonverbal ability -- he
20 was given something called the test of nonverbal
21 intelligence. It's been around for a long time. It
22 continues to be revised. And that measure is given by
23 using gestures and pointing so that it does not really
24 take any part of language. It really does pull away the
25 language-based portion. And he consistently, on every one

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1 of those sub scales, scored in the seventies. The average
2 is eighty-five to a hundred and fifteen.

3 His overall nonverbal intelligence was a
4 seventy-one, which falls in that borderline range. We
5 consider, in the school district in the State, a measure
6 lower than sixty-nine is considered to be in the mild
7 mentally disabled range, intellectually disabled range.
8 So he's slightly above that with his nonverbal ability.

9 What that means is that when you consider the --
10 or pull out the language portion, it would be like a
11 mechanic or a surgeon being able to use their visual motor
12 skills to problem-solve. And he is not able to always
13 tell you language-wise what he's doing, how he gets to
14 that way, how he gets to the answer, but his nonverbal
15 skills when you give him abstract, brand new, novel
16 information, he did well in that he is not -- he is not in
17 that mentally disabled range for the nonverbal portion.

18 Q. So Minor 1 has trouble with auditory
19 communication?

20 A. Absolutely.

21 His what he -- and I think you've got another
22 witness. But what he is hearing, his receptive vocabulary
23 is much stronger. And the way that we know that is he --
24 his capacity to follow directions. And unlike most
25 students who have trouble verbally expressing themselves,

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1 he has never been a behavior problem. He -- and much --
2 you would think that when you have trouble communicating
3 language-wise, you would get frustrated, which most of the
4 time will lead to some behavioral difficulties. But he
5 has always been the kind of kid that wants to please
6 adults. He has craved being with adults in terms of
7 needing their approval, but he wants very much to please.
8 He follows directions. He follows instructions. His
9 grades right now range from eighty-two to a hundred in his
10 special classes.

11 Q. So he understands the rules at school?

12 A. Absolutely.

13 Q. The right thing and the wrong thing to do at
14 school?

15 A. Yes, ma'am.

16 Q. He's not a behavior problem.

17 A. [No response]

18 Q. So is it fair to say that to listen to him
19 communicate is really not a fair judge of what's going on
20 up here, of how he's able to understand things and process
21 those cognitively?

22 A. His expressive capacity is greatly diminished,
23 absolutely, but what he is understanding is much stronger
24 from the tests that he's had since he was three.

25 MS. WILLIAMS: Court's indulgence.

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1 THE COURT: Yes, ma'am.

2 [Whereupon, Ms. Williams and Ms. Herring-Lash
3 confer]

4 MS. WILLIAMS: Please answer any questions the
5 defense has.

6 MS. KENNEDY: Good morning.

7 THE COURT: Ms. Kennedy.

8 MS. KENNEDY: Good morning.

9 THE WITNESS: Good morning.

10 MS. KENNEDY: Good Morning, Dr. Craver. My name
11 is Patti Kennedy. How are you?

12 THE WITNESS: Fine, thanks.

13 MS. KENNEDY: I just have a couple of questions,
14 just so I'll understand.

15 CROSS-EXAMINATION

16 BY MS. KENNEDY:

17 Q. You indicated that he was tested every three
18 years but his last evaluation was in 2005?

19 A. Yes, ma'am.

20 The way the new state regulations read, or the
21 federal regulations, is you have to meet -- his school
22 team meets at a minimum of every three years to discuss
23 the current information we have available. And what we're
24 using now in the schools is something called the measures
25 of academic progress so that we are monitoring not just

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1 with a standardized measure every three years, but we're
2 looking at his performance, such as words read per minute.
3 And, for example, he was able to read nineteen of twenty-
4 six words at a sixth-grade level in a one-minute time
5 frame. And when you look at that progress, he has
6 consistently gained. He's not been stagnant at all during
7 his school career.

8 Q. Well, I understand that. But what I'm trying to
9 figure out, if you would be kind enough to help me with
10 it, sir --

11 A. Sure.

12 Q. -- is simply this: you indicate that he -- that
13 there is some mental dysfunction?

14 A. Uh-huh. With his language.

15 Q. With his language.

16 And to testify in court, he obviously would have
17 to have some ability to do that?

18 A. Sure.

19 Q. Okay. And but that you also indicate that he's
20 been making steady progress over the years?

21 A. Yes, ma'am.

22 Q. Okay. And but he -- but the things that you've
23 described that he receives resource or special education
24 for are those things which require some greater
25 intellectual ability than say art and physical education?

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1 A. Uh-huh.

2 Q. Right? Some critical-thinking skills?

3 A. And what we do to modify that is make
4 accommodations and modifications in his curriculum, and
5 that is much easier to do in a self-contained classroom
6 with smaller numbers.

7 Q. Well, tell me, sir, what kind of modifications
8 do you make?

9 A. And I don't have his individual education plan
10 with me, but the kinds of things is smaller -- looking at
11 what is critical for each of the subject areas, what's the
12 critical knowledge he needs for science, what is the
13 critical knowledge he needs for language arts. And now as
14 he's getting toward high school, we're going to be looking
15 more for vocational interests.

16 Q. So please help me here. So what you're talking
17 about, though, are measures that are sort of -- that are
18 either mandated by the Department of Education or those
19 measurements that are required by the federal government,
20 correct, to show -- to measure progress?

21 A. We have curriculum goals that every school is
22 mandated to try to achieve. But he needs modifications
23 and accommodations in those core subject areas.

24 Q. But those -- those mandates are from the state
25 or the federal government; correct?

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1 A. The curriculum. Yes, ma'am.

2 Q. Okay.

3 A. But the modifications and accommodations are
4 determined by his individual education team.

5 Q. But the curriculum dictates the measurements you
6 need to make, right, to see what his progress is?

7 A. Sure.

8 Q. All right. And when was the last -- you say he
9 hasn't been evaluated since 2005. Have you had any
10 personal contact with him?

11 A. No, ma'am, I have not.

12 Q. Okay. All right. So what you're telling us
13 today just has to do with what you see from reviewing the
14 records?

15 A. Yes, ma'am.

16 Q. Okay. And you have no -- other than looking at
17 the records, you have no firsthand knowledge of how he
18 communicates?

19 A. I do not.

20 Q. Or his ability to communicate?

21 A. Yes, ma'am.

22 MS. KENNEDY: Court's indulgence.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Kennedy and Mr. Schwacke confer]

25 MS. KENNEDY: That would be all I would have,

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1 Your Honor. Thank you.

2 Thank you, Dr. Craver.

3 THE WITNESS: Thank you.

4 MS. KENNEDY: Pleasure meeting you.

5 THE WITNESS: You, too. Thank you.

6 MS. KENNEDY: Good luck with that.

7 MS. WILLIAMS: Nothing further, Your Honor.

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

9 THE WITNESS: Thank you so much.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 MS. WILLIAMS: The State calls Valerie Kroesen.

13 [Whereupon, Ms. Kroesen comes forward]

14 MS. WILLIAMS: Kind of confusing, isn't it?

15 Just come right up here, and walk through here, and get
16 up to that chair right over there.

17 MS. KROESEN: This chair right here?

18 THE CLERK OF COURT: Raise your right hand,
19 place your left hand on the Bible.

20 [Whereupon, Ms. Kroesen is duly sworn by the
21 clerk of court as follows: do you solemnly swear or
22 affirm the testimony you give the Court in this matter
23 will be the truth, the whole truth, and nothing but the
24 truth, so help you God]

25 THE WITNESS: I do.

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1 THE CLERK OF COURT: Please be seated. State
2 your full name and spell your last name for the record.

3 [Whereupon, Ms. Kroesen takes the witness stand]

4 THE WITNESS: My full name is Valerie Kroesen,
5 and the last name is spelled K-R-O-E-S-E-N.

6 - - - - -

7 VALERIE KROESEN

8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Ms. Kennedy, what is your occupation?

13 A. I am a speech and language pathologist for
14 Berkeley County School District.

15 Q. And what is your educational background?

16 A. I have -- I obtained my bachelors and masters in
17 speech and language pathology at Towson State University
18 and completed that in 1985.

19 Q. Okay. And where did you receive your training?

20 A. Most of my training for speech and language
21 pathology at that level was at Towson State University in
22 Maryland.

23 Q. Okay. Are you a member of any specialized
24 groups or associations?

25 A. Yes. Do you want me to name them?

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1 Q. Please.

2 A. I am a member of the American Speech and Hearing
3 Association, and I am also a member of RESNA, which is the
4 Rehabilitation and Engineering and Assistive Technology
5 Society of North America. And those are the -- I'm also a
6 national board certification, so I'm on that certification
7 list, as well.

8 Q. Okay. What's required for certification?

9 A. Each one is a little bit different but there --
10 each one requires a certain number of years experience.
11 Each one of those required completion of an evaluation,
12 which was different depending on which one I was speaking
13 about.

14 Q. And you said that you are employed at the
15 Berkeley County School District. What do you do,
16 specifically, there?

17 A. I have two different roles in the district. My
18 primary role is running and -- running the assistive
19 technology team for the district. I'm actually the speech
20 pathologist on the team but I also run the team. And I
21 also am the lead speech pathologist for the district and
22 provide content information for the director and all the
23 special ed coordinators.

24 Q. Okay. So you implement policies district-wide?

25 A. I do, specifically in the area of assistive

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1 technology.

2 Q. Do you also work with students individually?

3 A. I do, as part of the assistive technology
4 program and team implementation.

5 MS. WILLIAMS: Your Honor, for purposes of this
6 hearing, we would ask that she be qualified as an
7 expert in the field of speech pathology.

8 MS. KENNEDY: No objection, Your Honor.

9 THE COURT: Thank you.

10 Q. [Ms. Williams] Ms. Kroesen, are you familiar
11 with a student named Minor1 Watts?

12 A. I am.

13 Q. Have you worked with him personally?

14 A. I have.

15 Q. How long have you worked with Minor1

16 A. Well, I first met Minor1 when he was three,
17 just coming into the district, and I've been involved with
18 him ever since. The way the services looked have changed
19 over the districts -- has changed over the time that I've
20 known him. But it's primarily in a consultative format,
21 which is direct observation, sometimes direct work with
22 him, and consult with all staff members that work with
23 him.

24 Q. And what services does he -- you know, just
25 briefly, what does he -- what services does he receive

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1 from the school district with regard to his speech
2 problems?

3 A. Minor has a speech and language disability so he
4 has a disability in several areas of communication. And
5 so as part of that disability he has required different
6 forms of assistive technology in one specific area, which
7 is called augmentative alternative communication. So as
8 Minor has been growing up, his speech has changed over time
9 and he has required different augmentative devices and
10 systems to help him communicate with everybody in his
11 environment.

12 So I don't know if that's enough information.

13 Q. So his condition has evolved?

14 A. It has. Oh, it's definitely changed over time.

15 Q. And in the past, he's used devices to assist him
16 in speaking?

17 A. He has. He has.

18 As -- now that he's older, he's very capable of
19 communicating verbally. Because of his articulation
20 difficulties, you don't always understand him and so he
21 has chosen to use more low-tech systems now as opposed to
22 some higher-tech systems he's used in the past.

23 Q. Okay. And has he had some surgical
24 intervention, as well?

25 A. Now, when Minor was very little he had repair of

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1 a clef pallet. And I don't know exact surgical -- I know
2 that he's had some recent surgery on his ear, and there
3 had been some talk about some surgery on his mouth. But I
4 don't know that information.

5 Q. So in laymen's terms, what is it that prevents
6 Minor1 from communicating as clearly as other people?

7 A. I'm going to see if I can divide it into two
8 different areas. The primary issue that makes him
9 difficult to understand is his articulation. And so
10 basically the part of our brain that helps make our tongue
11 and all of the anatomy in our mouth move, that part of the
12 brain for some reason with Minor1 just did not develop as
13 ours did and so his ability to use his tongue and
14 everything in his mouth to make very specific speech
15 sounds is impaired. And so what happens is he substitutes
16 other sounds for sounds that he's intending, or he deletes
17 him.

18 Q. Okay. And what's the second part?

19 A. The second part is his language, and it's his
20 development of vocabulary and phrases and sentences to
21 convey his thoughts. And Minor1 language is delayed.
22 However, he -- it has developed to the point where he is
23 very capable of telling you a thought and giving you key
24 details about things. It may not be grammatically
25 constructed like a thirteen-year-old would be, but it has

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1 all the key elements to it so that you would understand.

2 Q. Does he understand what is asked of him and told
3 to him?

4 A. He does, to my knowledge. Uh-huh.

5 Q. And if he doesn't understand something, does he
6 make that clear?

7 A. He does. He does.

8 Q. Does he correct you when you say something
9 that's not true?

10 A. Oh, absolutely. Uh-huh.

11 Q. So how do you know that he's understanding what
12 you say like when you work with him one-on-one as a speech
13 pathologist?

14 A. I can give you some observations. When I have a
15 conversation with him and I am trying to zero in on
16 something that he has said to me, if I say to him it
17 sounds like you said such and such, he'll say no, no, and
18 he will persevere until you understand. And if one method
19 doesn't work, he'll choose another method until you
20 understand.

21 The other piece of it is when Minor was younger
22 and he didn't understand something that was said or
23 processed, he would echo. And that is a signal that he
24 didn't process and understand. He does none of that
25 anymore.

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1 If he's not clear about something, he will
2 sometimes ask you a question, as well, and he will
3 redirect you until you understand exactly what it is he's
4 talking about.

5 Q. So Minor won't just agree with you to please you?

6 A. That's never been my observation of Minor¹ huh-
7 uh.

8 MS. WILLIAMS: Court's indulgence for just a
9 second.

10 THE COURT: Yes, ma'am.

11 [Whereupon, Ms. Williams and Ms. Herring-Lash
12 confer]

13 MS. WILLIAMS: Please answer any questions the
14 defense may have.

15 THE WITNESS: Okay.

16 THE COURT: Ms. Kennedy?

17 MS. KENNEDY: Thank you.

18 [Off the record momentarily]

19 MS. KENNEDY: Good morning. How are you?

20 THE WITNESS: I'm okay.

21 MS. KENNEDY: My name is Patti Kennedy and I'm
22 one of the attorneys representing Mr. McCauley.

23 I have a few --

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MS. KENNEDY:

Q. Where was Minor on this process two years ago?

A. In terms of his augmentative communication?

Q. Yes.

A. Approximately two years ago, Minor was utilizing several different forms of augmentative communication. Is that what you wanted me to talk about?

Q. Yes.

A. Okay.

Q. That would be -- that would have been one of my questions --

A. Okay.

Q. Yes. Go ahead and please proceed.

A. Thank you very much.

Q. Thank you.

A. He -- at that point in time he was -- from a communication standpoint, he was still having difficulties with articulation. He was speaking in phrases and sentences. When people had difficulty understanding him, he would use different methods. One method is that he likes to spell out loud, and he began doing that a couple of years ago, and he also was utilizing a high-tech communication system that looks like a small laptop which would speak for him when he pushed the buttons. He did

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1 not -- once he hit twelve last year, he didn't want that
2 anymore. And so the other thing he would start doing is
3 writing, in order to communicate, so that you understood.

4 Q. So but two years ago he was -- based on where he
5 was and his progress at that time --

6 A. Uh-huh.

7 Q. -- he was using a computer to -- well,
8 augmentation devices --

9 A. Yes.

10 Q. -- to communicate?

11 A. That was one of -- it wasn't his first choice.
12 It would have been available to him, and he would have
13 opted to spell first, then write it, and then that would
14 have been his last resort.

15 Q. Okay. So if he was spelling and he had trouble
16 academically, how would someone know what he's trying to
17 say?

18 A. He spells well enough and phonetically enough
19 that it would confirm what he's saying.

20 I could give you an example. If he --

21 Q. No, I just -- I'm trying to understand, if you
22 don't mind, please.

23 A. Sure.

24 Q. Please walk me --

25 A. That's okay.

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1 Q. Please walk me through..

2 A. That's okay.

3 Q. All these measurements are things that you-all
4 do in the school system to further his intellectual
5 functioning --

6 A. Uh-huh.

7 Q. -- correct?

8 So that he then would meet certain criteria for
9 the requirements that the State Department of Education
10 and the federal department of education have?

11 A. Uh-huh.

12 Q. And you have measurement goals for those?

13 A. Uh-huh.

14 Q. And that's part of the consultation process --

15 A. Uh-huh.

16 Q. -- that you have?

17 A. Uh-huh.

18 Q. Okay. Now, could you tell me, or would you be
19 kind enough to tell me, how frequently you see him or have
20 seen him, given your history with him --

21 A. Uh-huh.

22 Q. -- on a one-to-one basis during each school
23 year.

24 A. I would say minimally -- I can tell you,
25 minimally, I see him four times a year for approximately

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1 it's usually a two-hour visit. I observe him in different
2 settings within the school system. And then other than my
3 direct observation of him, in addition to that I routinely
4 -- and if I had to give you a number on that, at least two
5 or three times a quarter. So approximately twelve times a
6 year we'll consult with teachers and therapists --

7 Q. No. I understand that.

8 A. Okay.

9 Q. I'm talking about you one-one-one --

10 A. Oh. My one-on-one --

11 Q. -- with him.

12 A. -- with him?

13 Q. Yes.

14 A. Would be at least four times a year. When Minor
15 was younger, it was much more frequent than that.

16 Q. And when you say four times a year, we're just
17 talking about an academic term, not --

18 A. Quarterly. Yes. We do -- yes, we do it per
19 quarter of the school year.

20 Q. The school year.

21 A. Yes.

22 Q. Okay. So you don't see him at all in June --

23 A. Not during the summertime.

24 Q. Okay. And you indicated that he has
25 articulation -- or what you referred to as articulation

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1 difficulties because the part of his brain that controls
2 that did not develop properly?

3 A. The -- because of his sounds when -- as a speech
4 pathologist, when presented with a child like Minor¹ when
5 he is having difficulty producing sounds and after
6 therapeutic intervention he's still having trouble
7 producing certain sounds, then that part of -- that motor
8 part of the brain is usually where the difficulty is in
9 producing -- as the reason to why he's having difficulty
10 producing the sounds.

11 Q. Okay.

12 A. I hope I said that right, explained that right.

13 Q. No, no. I think I understand.

14 A. Okay.

15 Q. But what I'm trying to find out, actually, is, I
16 mean, in -- is most of these things are directed toward
17 achieving educational goals; correct?

18 A. The -- well, yes and no. Now that Minor is
19 thirteen we are guided by the law to look at his
20 transitional skills, and so we now are also focusing our
21 goals on what he will also be doing as he continues to get
22 older and eventually ages out and goes out into the world.

23 Q. But when he was ten, he didn't have --

24 A. No, that's right.

25 Q. -- or eleven, those weren't the goals.

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1 A. We were focused on --

2 Q. The goals were to help him communicate in school
3 so that he could achieve certain -- or have a certain
4 level of academic achievement?

5 A. Yes. And -- I'm sorry.

6 Q. No, no, no. Go ahead.

7 A. His augmentative tools that he was using for
8 augmentative communication also continuously went back and
9 forth with him to home, wherever he was. And so all of
10 the tools over the years, the different ones that he has
11 tried and evolved, have always gone home.

12 Q. And what do you mean by that?

13 A. They would go home for his use at home. So they
14 were also -- what we attempt to do is to also make sure
15 that vocabulary is on his system that could help him
16 communicate thoughts at home.

17 Q. Are we talking about the computer, then?

18 A. Both. The computer and he's also had some
19 lower-tech systems, as well.

20 Q. And I would assume, then, that his mother or
21 somebody would have been trained to learn to do these
22 things --

23 A. Uh-huh.

24 Q. -- and assist him with it?

25 A. Uh-huh.

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1 [Whereupon, Ms. Kennedy and Mr. Schwacke confer]

2 MS. KENNEDY: Just one last question.

3 THE WITNESS: Uh-huh.

4 Q. [Ms. Kennedy] During that time I think you said
5 it was approximately like eight hours that you would have
6 with him --

7 A. Uh-huh.

8 Q. -- individually during this course of the school
9 year.

10 A. Uh-huh.

11 Q. Did anything -- did he ever communicate to you
12 anything at all about the matter that we're here on today?

13 A. No, he did not.

14 MS. KENNEDY: That's all I would have. Thank
15 you.

16 THE WITNESS: Uh-huh.

17 MS. WILLIAMS: Just one question.

18 REDIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. When was the last time you saw Minor 1

21 A. I saw Minor twice last week, so it would have
22 been -- I believe I saw him Monday and Thursday. I could
23 double check.

24 MS. KENNEDY: Your Honor, just a follow up.

25 THE COURT: You may.

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RE CROSS-EXAMINATION

BY MS. KENNEDY:

Q. Did you see him in relation to this case or as a part of your normal school --

A. As part of my assisted technology minutes.

THE COURT: You may step down. Thank you.

THE WITNESS: May I take my water?

THE COURT: You may.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness.

MS. HERRING-LASH: Your Honor, we will go in, now, to calling the victims for the 404(b) motion.

We had filed a 404(b) motion and Mr. Schwacke had filed a motion to have live testimony for that hearing, and we have agreed that that would be the appropriate way to handle the motion, to do the limited testimony of the victims so that the Court can understand the similarities in what they would say.

I will not be going into Minor 2 entire testimony, but mainly the details of the assaults.

So Minor 2 Watts.

THE COURT: All right. And let me ask you: I'm assuming, then, based upon his testimony then the Court will make a determination as to competency based upon

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1 that testimony, as well; is that correct?

2 MR. SCHWACKE: That is my understanding. We're
3 trying to kill two birds with one stone.

4 THE COURT: All right.

5 MS. HERRING-LASH: He would be the primary
6 victim. We're calling him before Minor1 which is the
7 child we just heard about, just so those people could
8 leave.

9 THE COURT: All right. Thank you. What are the
10 children's full name?

11 MS. HERRING-LASH: It's Minor2 Watts.

12 [Whereupon, Minor2 Watts comes forward]

13 MS. HERRING-LASH: Right up there, Minor2

14 THE CLERK OF COURT: Raise your right hand,
15 place your left hand on the Bible.

16 [Whereupon, Minor2 Watts is duly sworn by
17 the clerk of court as follows: do you solemnly swear
18 or affirm the testimony you will give the Court in this
19 matter will be the truth, the whole truth, and nothing
20 but the truth, so help you God]

21 THE WITNESS: Yes, ma'am.

22 THE CLERK OF COURT: Please be seated. State
23 your full name and spell your last name for the record.

24 [Whereupon, the witness takes the witness stand]

25 THE WITNESS: Minor2 Watts.

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1 THE CLERK OF COURT: Spell your last name.

2 THE WITNESS: W-A-T-T-S.

3 - - - - -

4 Minor 2 WATTS,

5 Having Been First Duly Sworn,

6 was Examined and Testified as Follows:

7 DIRECT EXAMINATION

8 BY MS. HERRING-LASH:

9 Q. Minor 2 how old are you?

10 A. Thirteen.

11 Q. And what is your birth date?

12 A.

13 Q. And so you turned -- you will turn fourteen next

14 --

15 A. Yes, ma'am.

16 Q. -- in a couple of months?

17 Where do you live right now, Minor 2

18 A.

19 Q. Okay. Who do you live with?

20 A. Miss Joanne and Byron Dupree [phonetic].

21 Q. Okay. And what relation is she to you?

22 A. Foster parents.

23 Q. And have you lived in more than one foster home
24 since you left your mom?

25 A. Yes, ma'am.

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1 Q. Do you know how many?

2 A. The same place two things, which is Kyle and
3 Lacy, and then -- four, I should say.

4 Q. One being Ms. Twomey. That wasn't really a
5 foster home but a --

6 A. Yes, ma'am.

7 Q. And where do you go to school?

8 A. Middle.

9 Q. And what grade are you in?

10 A. Seventh.

11 Q. And, Minor² do you know where you are today?

12 A. Court.

13 Q. And before you took the stand, what did this
14 lady have you do?

15 A. Swear on the Bible.

16 Q. And what does that mean?

17 A. That I promise to tell the truth and the whole
18 truth.

19 Q. And do you promise to tell the truth?

20 A. Yes, ma'am.

21 Q. Do you know what would happen in court if
22 someone said something that was not the truth?

23 A. They would end up going -- they'd be in -- they
24 would be the one in court.

25 Q. They would be the one in court?

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1 A. Yes, ma'am.

2 Q. Is it important to tell the truth while you're
3 in court?

4 A. Yes, ma'am.

5 Q. And, Minor2 do you know what it means to tell
6 the truth?

7 A. Yes, ma'am.

8 Q. And will you tell us the truth today?

9 A. Yes, ma'am.

10 Q. Minor2 we mentioned that you were in foster
11 care.

12 A. Yes, ma'am.

13 Q. Who is your mom?

14 A. My biological mom?

15 Q. Yes.

16 A. Julie Barnes.

17 Q. And do you -- when did you leave Julie Barnes'
18 home?

19 A. 2008.

20 Q. And why did you leave her home?

21 A. Because I was sexually abused.

22 Q. And how did that come out? Who found out about
23 that?

24 A. Charlie Thacker.

25 Q. And who is Charlie Thacker?

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1 A. Minor3 -- my brother Minor3 dad.

2 Q. And is Minor your little brother or your twin
3 brother?

4 A. Little.

5 Q. And you said you were sexually abused. Who were
6 you sexually abused by?

7 A. Mack McCauley.

8 Q. And who is Mack?

9 A. He is a taxi driver or --

10 Q. Okay. That's what he did?

11 A. Yes, ma'am.

12 Q. How did you know Mack?

13 A. My mom -- he was my mom's friend.

14 Q. And what did he do, as far as taking care of you
15 and your brothers?

16 A. He would like discipline us.

17 Q. Would you call him your babysitter?

18 A. Sometimes.

19 Q. And why would he be babysitting you? Where
20 would your mom be?

21 A. While she was at work or at school or teaching
22 school.

23 Q. Was she a student teacher or --

24 A. I think she was a student teacher for special-ed
25 students.

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1 Q. And what work did she do besides that?

2 A. She was also a taxi driver.

3 Q. And where would Mack be with you-all? What two
4 residences?

5 A. Home.

6 Q. Your home?

7 A. Yes, ma'am. And his house.

8 Q. Where did he live?

9 A. In a trailer. I don't know the name of the
10 park.

11 Q. And you said that he sexually abused you. Where
12 did that happen?

13 A. Both homes.

14 Q. Tell us about what happened at your mother's
15 home.

16 A. It happened several times on the couch, or in
17 the living room on the couch, and one time in the bedroom.

18 Q. In whose bedroom?

19 A. My mom's.

20 Q. Tell us about what happened in the bedroom.

21 A. He was sucking my penis.

22 Q. And how did that come about?

23 A. I actually don't remember.

24 Q. Did you have your clothes on or off?

25 A. I think they were down to my ankles.

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1 Q. And where in the room were you?

2 A. When you walk in, the bed's here and the
3 computer's there, and then it's on the other side.

4 Q. Other side of the bed?

5 A. Yes, ma'am.

6 Q. And what position were you in on the bed?

7 A. I was sitting, I think.

8 Q. And what did -- where -- what position was he
9 in?

10 A. I think he was on his knees.

11 Q. And did anything else happen in that room that
12 time?

13 A. No, ma'am.

14 Q. Did anything else happen on the couch?

15 A. He had stuck his penis in my butt.

16 Q. And how were you on the couch when that
17 happened? What position were you in?

18 A. I think he had me on my knees, if I remember.

19 Q. And what about him?

20 A. Same.

21 Q. He was on his knees?

22 A. [Indicates affirmatively]

23 Q. Where was he in relation to you?

24 A. Could you say that again?

25 Q. Was he in front of you, behind you, beside you?

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1 How was he?

2 A. Behind me.

3 Q. And did he say anything about that?

4 A. Not that I remember.

5 Q. Did he ever say anything to you at all about
6 what was going on?

7 A. Sometimes.

8 Q. What would he say?

9 A. Like he would say that, don't tell anyone.

10 Q. Did he tell you what would happen if you told?

11 A. He would hurt my mom.

12 Q. Did anything else happen on the couch?

13 A. I think he made me suck his penis.

14 Q. And tell us about where you were when that
15 happened on the couch.

16 A. The same spot, but I think I was laying down and
17 he was just sitting.

18 Q. Okay. Did your clothes -- were they on or off?

19 A. I think they were off.

20 Q. What about his clothes?

21 A. I think his only -- only his pants were off.

22 Q. Let's go now to his house. Did something happen
23 at his house?

24 A. Yes, ma'am.

25 Q. Where at his house?

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1 A. His room.

2 Q. Anywhere else?

3 A. I think -- I don't know if it happened on the
4 couch or not. I don't remember.

5 Q. Let me go back one second to your home. Did
6 something happen to you -- you said one time in your
7 mother's room.

8 A. Yes, ma'am.

9 Q. As far as the couch, did things happen once or
10 more than once?

11 A. More than once.

12 Q. And now going to the bedroom at Mack's house.
13 Did things happen, sexual things happen, to you there
14 once? or more than once?

15 A. More than once.

16 Q. Tell us about a time you remember.

17 A. Where he tried to get me and Minor³ my brother,
18 to do stuff.

19 Q. Tell me about that.

20 A. He tried to get me and him to suck each other's
21 penises.

22 Q. And where were y'all?

23 A. On his bed.

24 Q. And was Mack in there?

25 A. Yes, ma'am.

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1 Q. And what were you and Minor doing?

2 A. We were just sitting there.

3 Q. Were your clothes on or off?

4 A. On.

5 Q. Did they come off?

6 A. I think Minor³ pants. That's it.

7 Q. How -- go ahead.

8 A. That's it.

9 Q. How do you know what he wanted you to do?

10 A. He told us.

11 Q. And what was he doing?

12 A. Trying to videotape.

13 Q. Did it work?

14 A. No, ma'am.

15 Q. Did you-all actually do that to each other?

16 A. No, ma'am.

17 Q. Tell us about something else that happened in
18 his bedroom.

19 A. He put his penis in my butt.

20 Q. And you said you were where?

21 A. On the edge of his bed. When you walk in it's
22 on -- because his bed was facing -- right when you walk
23 in, there's the bed, and there's a computer right here,
24 and then there's like a chair.

25 Q. Uh-huh.

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1 A. And it was right by the chair.

2 Q. And you said you were on the edge of the bed?

3 A. Yes, ma'am.

4 Q. And what position were you in?

5 A. I was like laying across the bed, like -- like
6 that [indicates].

7 Q. And what about him? What position was he in?

8 A. He was standing up, I think, if I remember.

9 Q. And you said he put his penis in your butt?

10 A. Yes, ma'am.

11 Q. Did he say anything about that?

12 A. No, ma'am.

13 Q. Did -- you said a few moments ago that sometimes
14 he would say don't tell anybody. Did he ever say anything
15 else while any of this was going on?

16 A. No, ma'am.

17 Q. Did he ever talk about his feeling for you?

18 A. He would say he loved me.

19 Q. When he told you he loved you, what did you say?

20 A. He said I love you, son.

21 Q. He said I love you, son?

22 A. [Indicates affirmatively]

23 Q. And what did you say?

24 A. I love you, too.

25 Q. And what did you call him?

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1 A. Sometimes dad.

2 Q. Did you think --

3 A. At the beginning it was Mr. Mack. But it led to
4 dad.

5 Q. To dad.

6 What else happened in his room?

7 A. He made me suck his penis and put my penis in
8 his butt.

9 Q. And when he made you put your penis in his butt,
10 where were you?

11 A. On the bed.

12 Q. And what position were you in when that
13 happened?

14 A. I think he was on his knees and I was, too.

15 Q. You were both on your knees?

16 A. [No response]

17 Q. Did Mack also discipline you?

18 A. Yes, ma'am.

19 Q. How did he discipline you?

20 A. He would spank us, and he would make us hold up
21 cans.

22 Q. What do you mean by make you hold up cans?

23 A. Like the biggest cans we had. And we would have
24 to do it on our -- how -- we had to do it for how long as
25 old we all were.

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1 Q. And how did you have to hold them?

2 A. For how long we -- old were we.

3 Q. And what position did you have to hold them?

4 A. We were standing up, like that [indicates].

5 MS. HERRING-LASH: Let the record reflect the
6 victim held his arms over his head.

7 Q. [Ms. Herring-Lash] How would the cans be
8 sitting?

9 A. They would be cuffed.

10 Q. What do you mean cuffed?

11 A. They would be cuffed in there. Not like cuffed,
12 but they would be like [indicates].

13 Q. Like that, or like -- okay. Flat?

14 A. No, ma'am. Like that [indicates].

15 Q. What would he spank you with?

16 A. A belt.

17 Q. What did it look like?

18 A. It was black. Sometimes it was a different
19 belt, but the main one was one with pyramids. And then
20 the next one, the second main one, was like a flat one,
21 leather.

22 Q. And where would he spank you? Where on your
23 body?

24 A. My butt.

25 Q. Would your clothes be on or off?

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1 A. The pants would be down.

2 Q. And would you have marks on your bottom
3 afterward?

4 A. I think I did once.

5 Q. Did you see your brothers disciplined?

6 A. Yes, ma'am.

7 Q. What did you see happen to Minor3

8 A. Minor3 he would always get spanked and he would
9 have to hold up the cans a lot.

10 Q. How would Minor get spanked?

11 A. The same way.

12 Q. Did you see marks on Minor3 ever?

13 A. Once or twice, yes, ma'am.

14 Q. Once or twice.

15 Would you be spanked at the same time or
16 sometimes the same time, sometimes separately?

17 A. Sometimes separate. Separate and together.

18 Q. What about Minor1

19 A. Minor1 he got spanked but -- this is my
20 opinion. I think he got spanked more.

21 Q. More than you and Minor3

22 A. Well, I always took the blame for them so they
23 didn't --

24 Q. Why?

25 A. -- have to face it.

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1 Q. What did you say?

2 A. I would always take the blame for them.

3 Q. Why would you take the blame for them?

4 A. So I didn't want to -- because I didn't want to
5 see them get beat.

6 Q. Were you in some ways their caretaker sometimes?

7 A. Yes, ma'am.

8 Q. Did Minor 1 ever have marks on him?

9 A. Yes, ma'am.

10 The main one was like on -- one or two on his
11 back. His butt was mainly covered --

12 Q. Covered?

13 A. Yes, ma'am.

14 -- and about three on his thighs.

15 Q. What did Mr. McCauley hit Minor 1 with to cause
16 those wounds?

17 A. A belt.

18 Q. Did he ever hit anyone with a board?

19 A. I think it was Minor 3

20 Q. What did the board look like?

21 A. It was like --

22 [Off the record momentarily]

23 A. It was a two-by-two.

24 Q. [Ms. Herring-Lash] Two-by-two?

25 A. Or two-by -- one-by-four.

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1 Q. One-by-four?

2 A. Yes, ma'am. One-by-four.

3 MS. HERRING-LASH: The Court's indulgence for
4 just one moment.

5 THE COURT: Yes, ma'am.

6 [Whereupon, Ms. Herring-Lash and Ms. Williams
7 confer]

8 Q. [Ms. Herring-Lash] Minor 1 -- I mean, excuse
9 me. Minor 2 did you ever see Minor go into Mr. Mack's
10 room?

11 A. Once or twice.

12 Q. And would the door be opened or closed?

13 A. Closed around twice, I've seen twice, and --

14 Q. Did Minor ever spend the night in there?

15 A. Yes, ma'am. Yes, ma'am.

16 MS. HERRING-LASH: Is it cold?

17 THE WITNESS: Yes, ma'am.

18 Q. [Ms. Herring-Lash] Did you ever see Minor 1 go
19 into Mack's room?

20 A. Once. But not that I've seen anything.

21 Q. Was the door open when Minor 1 went in there?

22 A. Open.

23 Q. You said that you thought something also
24 happened on Mack's couch. Can you tell us about that?

25 A. Yes, ma'am. Well, I don't remember it, really,

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1 that couch --

2 Q. Okay.

3 A. -- but it seems like something did, but I don't
4 -- I can't really place it.

5 MS. HERRING-LASH: Your Honor, at this point
6 those would be all the questions I have as far as the
7 404(b) motion regarding this.

8 THE COURT: Thank you. Mr. Schwacke?

9 MR. SCHWACKE: Minor² how are you doing?

10 THE WITNESS Good.

11 CROSS-EXAMINATION

12 BY MR. SCHWACKE:

13 Q. They asked you some questions about being in
14 here before. Is this the first courtroom you've ever been
15 in?

16 A. No, sir. It's the first criminal. But I've
17 been in the family.

18 Q. What were the other courtrooms?

19 A. Sir?

20 Q. What were the other courtrooms you've been in?

21 A. Family.

22 Q. Family.

23 So in this section of the building? The same
24 building over there?

25 A. Yes, sir.

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1 Q. How many times were you in there?

2 A. Once.

3 Q. And did you have to testify like you are now?

4 A. Yes, sir.

5 Q. And you're not with your mom anymore?

6 A. No, sir.

7 Q. When's the last time you've seen her?

8 A. Family court.

9 Q. And you testified in the hearing involving her
10 having any custody of y'all; right?

11 A. Yes, sir.

12 Q. Are you mad at Mr. Mack for not being able to
13 see your mom?

14 A. Yes, sir.

15 Q. Do you want to see her?

16 A. Well, sort of.

17 Q. And you blame him?

18 A. I kind of don't, but I kind of do. I don't,
19 because she didn't protect me.

20 Q. Now, you talked about some things that you say
21 happened. When did it all start?

22 A. I think around the end of 2007.

23 Q. And why would you -- why would you guess then?

24 A. Because I remember he was there a couple months
25 before my birthday.

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1 Q. Okay. And that's -- what's the first time you
2 can remember anything about him?

3 A. Well, my mom told me that I had met him before,
4 because she was a taxi driver and I had met him before,
5 because I would always ride with her.

6 Q. But you don't remember that first time meeting
7 him as a taxi driver?

8 A. No, sir. I met him -- in memory-wise, yes, sir.

9 Q. I'm not sure I understand. Tell me what you
10 mean by that.

11 A. In memory-wise, like I -- the first time we
12 started -- like they started talking and all.

13 Q. And so that's going to be the time a couple of
14 months before your birthday?

15 A. Yes, sir.

16 Q. Okay. Now, how many people do you figure you've
17 talked to about what you testified here today?

18 A. Seven, I guess. Probably more.

19 Q. So if we count the time in family court, that
20 would be one of those times?

21 A. Yes, sir.

22 Q. And did you talk with Miss Debbie, Miss Anne, or
23 both or --

24 A. Both.

25 Q. Okay. How many times did you do that?

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1 A. Around five.

2 Q. Okay. And how about the caseworker from DSS.
3 Do you remember her?

4 A. Which one? I had Ms. Evelyn Case and -- now I'm
5 not sure -- Ms. Evelyn Case and Gloria Waller [phonetic].

6 Q. Okay. Well, let's talk about Ms. Case first.
7 How many times do you figure you've talked to her about
8 this?

9 A. Once, because -- I think once. And then like a
10 week after I had talked to her about it, she -- I got
11 placed a new caseworker.

12 Q. And there are times that people were asking you
13 if things happened and you said nothing?

14 A. Yes, sir.

15 Q. And that was a couple of times; right?

16 A. Yes, sir. The first time, when the DSS people
17 came to our house. And the -- several times to the -- I
18 don't know what their name is called. The checkup things.

19 Q. Well, when you were talking with Miss Anne or
20 Miss Debbie, or even Ms. Case or anyone, about what you're
21 here today about, did you ever watch any kind of videotape
22 of you talking about this?

23 A. No, sir, I have not.

24 Q. Do you remember doing that process over in
25 Summerville?

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1 A. That's what I'm talking about. That's one of
2 the times.

3 Q. Okay. And they told you they were videotaping
4 it and these were microphones and that was a camera? Do
5 you remember?

6 A. Yes, sir.

7 Q. As far as the punishment -- I'm trying to
8 understand the process you were talking about. I have --
9 these are cups, but we're going to pretend they're cans.
10 Okay? So how would he have you stand?

11 THE WITNESS: Can I stand up for a second?

12 Q. [Mr. Schwacke] Or you could just show --

13 THE COURT: You may.

14 Q. [Mr. Schwacke] Do you want to pretend like
15 those are cans.

16 A. Like he would make us stand like this
17 [indicates].

18 Q. And they had to stay above your hands -- your
19 head at all times?

20 A. Yes, sir. And if they dropped --

21 Q. If they came down --

22 A. -- you had double time.

23 Q. Okay. And are we talking about like soup cans
24 or are we talking about beer cans or soda cans?

25 A. Around soup cans.

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1 Q. Campbell Soup cans or something that size?

2 A. Yes, sir. The -- but they were pretty big.

3 Q. Tell me about the board.

4 A. The what?

5 Q. The board. You said he spanked Minor with a
6 board one time?

7 A. Yes, sir.

8 Q. What was that -- what was it for?

9 A. I don't actually remember what it was for.

10 Q. Okay. And when you talk about being spanked
11 either with the belt -- you said pants down. But there
12 would be underwear up and pants down, that kind of thing?

13 A. Underwear up.

14 Q. Are you and Minor together now, living together
15 now, or --

16 A. No, sir. He's in a special home for like
17 parents that can actually deal with him.

18 Q. Do you get to see him?

19 A. Yes, sir.

20 Q. When's the last time you got to see him?

21 A. Today.

22 Q. Before that?

23 A. Saturday.

24 Q. Okay. So does that get to happen often enough?

25 A. [Indicates affirmatively]

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1 Q. You're happy that you get to see him some?

2 A. [Indicates affirmatively]

3 Q. What about Minor 3 When's the last time you've
4 seen Minor 3

5 A. Today.

6 Q. Today. And before that?

7 A. Family court.

8 Q. So it's been a while for that one.

9 A. [Indicates affirmatively]

10 Q. Was that -- the last time you saw him when you
11 got taken from your mom's? Before that?

12 A. Wait. Say that again.

13 Q. All right. You told me you've seen him today
14 and then you saw him over the weekend and then you saw him
15 in court. And so the time before you saw him in court
16 over in family court, was that when y'all got taken away
17 from your mom?

18 A. No.

19 Q. It was some other time in between that?

20 A. I'm getting confused.

21 Q. Okay. Well, you ask me a question and I'll try
22 to fix it. What do you -- what do you not -- what are you
23 confused about? I'm trying to just figure out --

24 A. Are you talking about Minor or Minor 3

25 Q. No. I'm asking Minor now, because you told me

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1 when you had seen --

2 A. The last time I saw Minor was family court. And
3 I got taken away November of 2008.

4 Q. And so from 2008 until family court, you hadn't
5 seen Minor?

6 A. After family court, yes, I have seen him.

7 Q. Right. I'm talking about the time in between
8 when you got taken away and when you went to family court.
9 There was no --

10 A. Yes, I've seen him.

11 Q. There was no time in between there?

12 A. I just don't understand.

13 Q. Okay. We'll move on.

14 What helped you to remember that these things
15 happened?

16 A. Pictures.

17 Q. Like what kind of pictures?

18 A. Like pictures of the house and the trailer.

19 Q. And when you saw those pictures, it made you
20 remember that you had been -- something happened on the
21 couch, or something happened on that bed --

22 A. Yes, sir.

23 Q. -- or the -- those are the kind of things that
24 you remembered?

25 When were you shown those pictures?

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1 A. The other day.

2 Q. So how much do you remember -- and who showed
3 you the pictures?

4 A. I don't -- I know Miss -- I don't actually know.
5 The solicitor.

6 Q. One of these two ladies sitting back here?

7 A. Both of them.

8 Q. Both of them.

9 I just want to ask a quick question. The time
10 that you met with the people in Summerville when they said
11 that this was a camera and these are microphones --

12 A. Yes, sir.

13 Q. -- that wasn't the first time you had been in a
14 room like that over there, was it?

15 A. No, sir.

16 Q. You had been there before and saying somebody
17 else had -- a babysitter's son had done something to you;
18 correct?

19 A. Yes, sir.

20 Q. And you were able to tell them what happened?

21 A. Yes, sir.

22 Q. And they asked you questions about, well, who
23 you could tell if something like that happened to you
24 again?

25 A. I think so, yes, sir.

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1 MR. SCHWACKE: Just a moment. One moment, Your
2 Honor.

3 THE COURT: Take your time, Mr. Schwacke.

4 [Whereupon, Mr. Schwacke and Ms. Kennedy confer]

5 Q. [Mr. Schwacke] Minor2 do you see a doctor
6 to talk about all these things?

7 A. Yes, sir.

8 Q. Who do you see?

9 A. Charlene Garner. I used to see Minor2 Cosgrove.

10 Q. Okay. And how long has that been going on?

11 A. Since around May of last year. Or -- May.

12 Q. They help you?

13 A. I don't really particularly care for them
14 because I've known Minor2 Cosgrove for like -- he's been my
15 family doctor for six years, I guess.

16 Q. You like him better than the other person you're
17 seeing?

18 A. Yes, sir. And I can like talk to him more
19 because me and him understand each other.

20 Q. Okay. So you have to start -- start off from
21 scratch with somebody else?

22 A. Yes, sir.

23 Q. Is it a woman, or a man?

24 A. Woman.

25 Q. You find it easier to talk to a guy doctor?

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1 A. Yes, sir.

2 Q. I understand.

3 A. Because he's been my therapist for like six
4 years so --

5 Q. For six years?

6 A. Around there.

7 Q. How often were you seeing him when this was
8 going on with Mr. Mack?

9 A. Once a month, I think. I have been away from
10 home for almost three years, so I don't really know.

11 Q. And you never told him what was happening?

12 A. No, sir.

13 MR. SCHWACKE: I appreciate it. That's all the
14 questions I have for you right now.

15 THE COURT: Hold on one second.

16 MS. HERRING-LASH: Just a couple of follow up,

17 Minor 2

18 REDIRECT EXAMINATION

19 BY MS. HERRING-LASH:

20 Q. You just now said that you did not tell

21 Mr. Minor 2 Cosgrove; right?

22 A. Yes, ma'am.

23 Q. Why didn't you tell him?

24 A. Because I was -- I was afraid that he would hurt
25 my mom.

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1 Q. Who would hurt your mom?

2 A. Mack.

3 Q. And why were you afraid Mack would hurt your
4 mom?

5 A. Because he's built and he's really tough.

6 Q. And during the time when you -- some of the time
7 when you were seeing Minor2 Cosgrove is when Mack was
8 taking care of you or babysitting you?

9 A. Yes, ma'am.

10 Q. And so when you left Minor2 Cosgrove's office and
11 you went back, Mack would be there?

12 A. Sometimes.

13 Q. And when you went to the place in Summerville
14 and they told you that they were going to video, you did
15 not tell them about this, did you?

16 A. No, ma'am.

17 Q. Why not?

18 A. Because I was afraid he would hurt my mom.

19 MS. HERRING-LASH: That's all I have.

20 THE COURT: Mr. Schwacke?

21 MR. SCHWACKE: No questions, Your Honor.

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

23 [Whereupon, the witness is excused and exits the
24 witness stand.

25 THE COURT: Call your next witness.

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1 MS. HERRING-LASH: Minor Thacker. Minor Thacker.

2 [Whereupon, Minor Thacker comes forward]

3 MS. HERRING-LASH: Right up there where that
4 lady is with the green jacket on.

5 THE CLERK OF COURT: Please raise your right
6 hand, place your left hand on the Bible.

7 [Whereupon, Minor Thacker is duly sworn by the
8 clerk of court as follows: do you solemnly swear or
9 affirm the testimony you give the Court will be the
10 truth, the whole truth, and nothing but the truth, so
11 help you God]

12 THE WITNESS: Yes.

13 THE CLERK OF COURT: Please be seated. State
14 your full name and spell your last name for the record.

15 [Whereupon, Minor Thacker takes the witness
16 stand]

17 THE CLERK OF COURT: State your full name.

18 THE WITNESS: Charles Minor Thacker.

19 MS. HERRING-LASH: Minor³ talk in this
20 microphone, okay, so that this lady here can hear you
21 and the judge can hear you.

22 THE WITNESS: Okay. Like my full, entire name,
23 like?

24 MS. HERRING-LASH: Uh-huh. Your full name.

25 THE WITNESS: My name is Charles Minor Thacker.

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1 T-H-A-C-K-E-R.

2 MS. HERRING-LASH: Thank you, Minor 3

3 - - - - -

4 Minor THACKER,

5 Having Been First Duly Sworn,

6 was Examined and Testified as Follows:

7 DIRECT EXAMINATION

8 BY MS. HERRING-LASH:

9 Q. Minor 3 how old are you?

10 A. I am eleven years old.

11 Q. And when did you turn eleven?

12 A. h.

13 Q. So you turned eleven?

14 A. Yes.

15 Q. And where do you go to school?

16 A. Elementary.

17 Q. Elementary?

18 A. Yes.

19 Q. And what grade are you in?

20 A. Fourth.

21 Q. And do you like school, Minor 3

22 A. Kind of.

23 Q. What grades do you make?

24 A. A's and B's.

25 Q. And, Minor 3 do you know that this is a courtroom?

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1 A. Yes.

2 Q. And do you know that it's important to tell the
3 truth in the courtroom?

4 A. Yes.

5 Q. And do you know what it means to tell the truth?

6 A. Yes.

7 Q. Minor³ if I told you I had on a white sweater,
8 would that be the truth or a lie?

9 A. A lie.

10 Q. And if I told you I had on a red sweater, would
11 that be the truth or a lie?

12 A. The truth.

13 Q. Do people get in trouble for telling the truth?
14 Or do they get in trouble if they lie?

15 A. They get in trouble if they lie.

16 Q. Is it -- in court are you supposed to tell lies?

17 A. No.

18 Q. What are you supposed to tell?

19 A. The truth.

20 Q. Do you know what would happen if somebody told
21 something that was not the truth in court?

22 A. They would most likely get arrested.

23 Q. And are you going to promise to tell the truth?

24 A. Yes.

25 Q. Minor³ who do you live with now?

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1 A. My dad named Charlie, and my mom named Lida
2 [phonetic].

3 Q. Do you have some sisters and brothers there,
4 too?

5 A. My sister's name is Justine and my brother's
6 name is T.T.

7 Q. Do you have some other brothers that you don't
8 live with?

9 A. Yes.

10 Q. Who are they?

11 A. Minor and Minor2 And my other sister is
12 Alley.

13 Q. Alley?

14 A. Uh-huh.

15 Q. Who's the oldest?

16 A. I'm not sure how old Alley or Justine is.

17 Q. Okay. Oh. Justine is the oldest? Okay.

18 A. Actually, I'm not really sure.

19 Q. Who did you live with, in whose house, when you
20 lived with Minor2 and Minor1

21 A. My other mother's house named Julie Barnes.

22 Q. So you lived in Julie Barnes' house?

23 A. Yeah.

24 Q. And why don't you live in Julie Barnes' house
25 anymore?

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1 A. Well, I'm not really sure why not.

2 Q. Did something happen to you while you lived at
3 Julie Barnes' house?

4 A. Yeah.

5 Q. What was that?

6 A. [No response]

7 Q. Did somebody hurt you?

8 A. Yeah.

9 Q. Who hurt you?

10 A. Mr. Mack.

11 Q. And how did you know Mr. Mack?

12 A. Mr. Mack.

13 Q. How did you know Mr. Mack?

14 A. I'm not really sure.

15 Q. Did he visit you at Julie Barnes' house?

16 A. Yeah, but not that often.

17 Q. Did you visit his house?

18 A. Yes.

19 Q. Did Mr. Mack take care of you when your mommy
20 was at work or school?

21 A. Yeah.

22 Q. And would he take care of you sometimes at your
23 house?

24 A. Yeah.

25 Q. And what about his house?

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1 A. Yes.

2 Q. And would he also be taking care of Minor2 and
3 Minor 1

4 A. Yeah. Yes, ma'am.

5 Q. And you said that Mr. Mack did something to hurt
6 you. What did he do to hurt you?

7 A. Mostly he would put us in the corner with -- and
8 sometimes if we like wiggled around too much, he usually
9 would put cans on our hands and we had to hold them up in
10 the air and usually it would hurt a lot.

11 Q. It would hurt a lot?

12 A. Uh-huh.

13 Q. And did he do anything else that hurt you?

14 A. He usually spanked us with a belt with holes in
15 it. And once he left blisters on my brothers and me.

16 Q. He did? What part of your body would he spank
17 with the belt?

18 A. Usually if we squirmed around a lot, he would
19 hit on -- around the butt area.

20 Q. Would you keep your pants on or would you pull
21 them down when you got a spanking with the belt?

22 A. Down.

23 Q. Did he spank you at Julie Barnes' house?

24 A. No.

25 Q. Did he spank you at his house?

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1 A. Yes.

2 Q. And did he do anything else to you that was not
3 good?

4 A. No, not -- no.

5 Q. What about at his house?

6 A. Yeah.

7 Q. What did he do at his house?

8 A. Sometimes he -- can't find the word. Sometimes
9 we would spend the night at his house, because my mom
10 usually had overnight jobs at the taxi, and --

11 Q. Did he touch a part of your body?

12 A. Yeah.

13 Q. What part?

14 A. Usually my pee-pee.

15 Q. And what would he touch your pee-pee with?

16 A. Usually his mouth.

17 Q. And what would he do with your pee-pee?

18 A. Usually he would suck it.

19 Q. What would happen to your pee-pee?

20 A. Usually it would get kind of hard.

21 Q. And did he ever do anything with his pee-pee?

22 A. Sometimes forced it into my mouth.

23 Q. And when he forced it into your mouth, what
24 happened?

25 A. Usually -- five or six times he had something

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1 come out and it did not taste good. Never saw the color
2 of it.

3 Q. What happened with that stuff?

4 A. I'm not sure.

5 Q. Where at his house were you when these things
6 happened?

7 A. It was -- usually in his bed.

8 Q. Was it any other where besides in his bed?

9 A. No.

10 Q. Did you ever spend the night in his bedroom?

11 A. Yeah.

12 Q. And did you ever know if Minor2 spent the night
13 in his bedroom?

14 A. Yeah.

15 Q. Did he?

16 A. Yes, ma'am.

17 Q. And did Minor1 stay at Mr. Mack's house
18 sometime, too?

19 A. Yeah.

20 Q. Did he ever stay in the bedroom?

21 A. I'm not really sure.

22 Q. Okay. Did Mr. Mack do anything else to you?

23 A. No.

24 Q. Did he ever have you and Minor2 together in the
25 room?

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1 A. Yeah, but that's really when we were watching
2 like a cool movie like Batman. Trying to remember the
3 rest of the things. Batman, the Dark Knight usually were
4 the movies. The others I can't remember.

5 Q. Okay. That's okay. You just try to remember
6 what you can. Okay?

7 A. [Indicates affirmatively]

8 Q. Minor3 did you and Minor2 ever talk about this
9 stuff?

10 A. No.

11 Q. Did you ever tell anybody?

12 A. No.

13 Q. Why didn't you tell somebody?

14 A. I was kind of afraid.

15 Q. What were you afraid of?

16 A. I'm not really sure what.

17 Q. Did Mr. Mack ever talk to you about telling
18 somebody?

19 A. Yeah.

20 Q. What would he say?

21 A. He just said, if you tell someone, then -- wait
22 -- don't tell anyone, or else. And then that's all he
23 said.

24 Q. Or else?

25 A. Uh-huh.

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1 Q. Did you know what the or else was?

2 A. No. And I did not want to know what it was.

3 Q. You didn't?

4 A. [Indicates negatively]

5 MS. HERRING-LASH: Okay. Just one moment, Minor 3.

6 [Whereupon, Ms. Herring-Lash and Ms. Williams
7 confer]

8 MS. HERRING-LASH: Those are all the questions I
9 have now, Minor 3. Now somebody else will ask you some
10 questions. Okay?

11 THE WITNESS: Okay.

12 THE COURT: Mr. Schwacke.

13 MR. SCHWACKE: Hey, Minor 3 how are you?

14 THE WITNESS: Good.

15 CROSS-EXAMINATION

16 BY MR. SCHWACKE:

17 Q. You say you kind of like school?

18 A. Yes.

19 Q. What do you kind of like about it?

20 A. A little bit of everything.

21 Q. Do you have a favorite class?

22 A. Usually computer lab.

23 Q. Okay. Are you good at it?

24 A. Yeah.

25 Q. What do you like doing with the computer?

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1 A. Usually playing a few games on it. Not that
2 much, though.

3 Q. And you say you're in the fourth grade?

4 A. Yes.

5 Q. And you're making good grades, it sounds like.

6 A. Uh-huh.

7 Q. When Ms. Debbie was asking you about coming in
8 here and telling the truth, she asked you some questions
9 about some different things like colors and stuff. What
10 is a lie?

11 A. A lie is when you're not telling someone what
12 really happened.

13 Q. Okay. And so you know that you've got to do
14 that here; right?

15 A. Yes.

16 Q. Because what will happen?

17 A. Normally I might get arrested or something.

18 Q. Okay. You don't want that?

19 A. No.

20 Q. So you're going to have to tell the truth in
21 here?

22 A. [Indicates affirmatively]

23 Q. How old is -- how old is your other brother,
24 your brother T.T.

25 A. He's eight years old.

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1 Q. Okay. So you're older than he is. And how old
2 is --

3 A. Yes.

4 Q. How old is Justine? You're not sure?

5 A. I think she's about fifteen or fourteen.

6 Q. Okay. So it's a race somewhere between Justine
7 and Alley as being the oldest?

8 A. Yeah, I think.

9 Q. Okay. You were talking about holding up cans.
10 And I'm going to ask you to play along with me just for a
11 second about something. We're going to pretend these are
12 cans. Okay? So I'm going to hand you two cans. I'm
13 going to ask you, can you show us what you mean by how he
14 would make you hold them? You want to hold them, and then
15 show us what --

16 A. [Indicates]

17 Q. And you would have to do it that way?

18 A. Yes.

19 Q. What -- would you be looking at the wall, or
20 looking away from the wall?

21 A. We were looking at the wall.

22 Q. Looking at the wall.

23 How long would you have to -- how long did you
24 have to do that?

25 A. Depending on whether you stand -- stood there

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1 correctly or not. And usually he would do it by your age.

2 Q. Okay. So if you were nine, you would have to
3 stand there for nine minutes?

4 A. Yes.

5 Q. So it would be good to be the youngest, huh?

6 A. Yep.

7 Q. It wouldn't last as long.

8 Let me ask you: you say that he hit you with a
9 belt that had holes in it.

10 A. Yes.

11 Q. Do you have on a belt?

12 A. No.

13 Q. You don't? See, I've got on a belt. And see,
14 this belt has holes in it, too. Is that what you're kind
15 of talking about?

16 A. No. Like holes going up and down it.

17 Q. Up and down?

18 A. Like several holes on it.

19 Q. Well, I mean, I showed you one. This belt keeps
20 on going with holes. Is that --

21 A. Yeah. Like a belt that goes continuously all
22 the way until it hits the end of holes.

23 Q. Okay. And you got spanked with that?

24 A. Yes.

25 Q. And you said pants down. But was your underwear

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1 up or your underwear down, too?

2 A. It was down.

3 Q. That's -- and have you been in a courtroom
4 before?

5 A. No.

6 Q. You've not been in a room like this with a judge
7 and --

8 A. No.

9 Q. -- people in it?

10 A. No.

11 Q. How many times do you figure you've had to talk
12 about this with somebody?

13 A. I'm not sure.

14 Q. Well, this is the first time you and I talked
15 about it; right?

16 A. Yes.

17 Q. You've not even met me before?

18 A. No.

19 Q. How about Miss Debbie or Miss Anne? How many
20 times have you met them before?

21 A. I'm not sure.

22 Q. A lot?

23 A. I'm --

24 Q. Say what?

25 A. I think so.

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1 Q. You think so? What is a lot to you? How many
2 is a lot?

3 A. Like over fifty or something.

4 Q. Fifty? Okay.

5 All right. So when you were talking about the
6 bad things that Mr. Mack did to you, you said none of them
7 happened at your mom's house?

8 A. No.

9 Q. So nothing bad happened like that with Miss
10 Julie?

11 A. No, ma'am. I mean, no, sir.

12 Q. Did that include the spanking?

13 A. Yes.

14 Q. So you didn't get spanked?

15 A. [Indicates negatively]

16 Q. You didn't have to hold up cans?

17 A. No.

18 Q. And he didn't touch you in a place you didn't
19 want him to touch you at Miss Julie's?

20 A. No.

21 Q. Okay. So all that, that you said happened,
22 happened at Mr. Mack's?

23 A. Yes.

24 Q. Do you know about how old you were when all that
25 started?

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1 A. I'm not sure.

2 Q. You're not sure.

3 Did it start -- you went on a trip, right, on a
4 boat?

5 A. Yeah.

6 Q. Got a Disney cruise?

7 A. Yeah.

8 Q. Did it happen before that cruise, or after?

9 A. I think before.

10 Q. You think the first time was before?

11 A. Yeah. I think.

12 Q. Could be? maybe not? you're not sure?

13 A. Yeah.

14 Q. But stuff was going on at Mr. Mack's house?

15 A. Yes.

16 Q. And about how many times do you remember things
17 like that happening with Mr. Mack at his house?

18 A. I would say about several times.

19 Q. Several?

20 Now, I think they asked you about whether or not
21 anybody had ever slept in Mr. Mack's room; right?

22 A. Yeah.

23 Q. You said you did; right?

24 A. Uh-huh.

25 Q. About how many times did you sleep in there?

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1 A. About one or two times. I don't know.

2 Q. Okay. And then I think she asked you whether
3 Minor had slept in there and you said that he -- you don't
4 remember him ever being in there?

5 A. Huh-uh. Nope.

6 Q. And then Minor² you think slept in there?

7 A. Yeah.

8 Q. And did you see him go in there, or did you wake
9 up and he was in there asleep, or did you -- how did that
10 happen?

11 A. He was in there asleep.

12 Q. And when did you see him in there asleep?

13 A. When I woke up.

14 Q. Okay. So did you see Minor² go -- just go
15 to bed in Mr. Mack's room, or did you just wake up and
16 that's where he was?

17 A. That's where he was.

18 Q. Okay. And how about you? When you went to
19 Mr. Mack's room, did he ask you to come in there and sleep
20 with him, or did you -- or what?

21 A. I asked him.

22 Q. You asked him?

23 A. [Indicates negatively]

24 Q. He didn't ask you?

25 A. [Indicates negatively]

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1 Because like his bed is kind of like a king-
2 sized bed and me, Minor2 and Minor have to share a
3 teeny-tiny bed.

4 Q. Oh. Okay.

5 A. And that's hard to do.

6 Q. Did you have a TV in the room that you slept in?

7 A. No.

8 Q. Did Mr. Mack have a TV in the room he slept in?

9 A. Yes.

10 Q. Did you get to watch it before you fell asleep?

11 A. Barely.

12 Q. And was Mr. Mack's bed high off the floor, or
13 low to the floor?

14 A. High off the floor.

15 MR. SCHWACKE: All right. I appreciate you
16 answering my questions. That's all I'm going to ask
17 you. Okay?

18 THE WITNESS: Okay.

19 MS. HERRING-LASH: Minor3 those are all the
20 questions. You can go back out now.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 THE COURT: Call your next witness.

24 MS. WILLIAMS: Minor1 Watts.

25 MS. HERRING-LASH: Minor1 come right --

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1 [Whereupon, Minor1 Watts enters the courtroom]

2 MS. HERRING-LASH: Your Honor, may we let the --

3 Minor2 and his family, and Minor and his family,

4 leave at this point?

5 THE COURT: Yes, ma'am.

6 [Whereupon, Minor1 Watts comes forward]

7 MS. WILLIAMS: Okay. Minor1 you can just walk

8 right up here --

9 MS. HERRING-LASH: Minor1 see that lady with
10 the green? Walk up there to her. She's got the Bible.

11 THE CLERK OF COURT: Please raise your right
12 hand. Raise this one. Place your left hand on the
13 Bible. This one. Okay?

14 [Whereupon, Minor1 Watts is duly sworn by the
15 clerk of court as follows: do you solemnly swear or
16 affirm the testimony you give the Court in this matter
17 will be the truth, the whole truth, and nothing but the
18 truth, so help --

19 THE WITNESS: Yes.

20 THE CLERK OF COURT: -- you God] Say yes.

21 THE WITNESS: Yes.

22 THE CLERK OF COURT: Okay. Come sit here.

23 Right here, Minor1 Come sit right here. Okay?

24 MS. WILLIAMS: Careful. Go ahead and sit in
25 that chair.

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1 [Whereupon, the witness takes the witness stand]

2 THE CLERK OF COURT: Now, Minor 1 tell us your
3 full name, your whole name, and spell your last name.

4 THE WITNESS: Watts.

5 MS. WILLIAMS: Can you speak into the microphone
6 and say your whole name? Go ahead. Can you open your
7 eyes? It's all right. Just say your name into the
8 microphone.

9 THE WITNESS: Watts.

10 MS. WILLIAMS: Watts? Do you sometimes go
11 by Minor 1

12 THE WITNESS: Yes.

13 MS. WILLIAMS: Can you spell Watts?

14 THE WITNESS: C-A-R-L.

15 MS. WILLIAMS: That's Can you spell
16 Watts?

17 THE WITNESS: W-A-T-T-S.

18 MS. WILLIAMS: W-A-T-T-S?

19 THE WITNESS: [Indicates affirmatively]

20 MS. WILLIAMS: All right. I know it's hard, but
21 you're going to have to talk right into that
22 microphone, okay, so we can hear you. Can you do that?

23 THE WITNESS: [Indicates affirmatively]

24 MS. WILLIAMS: All right. You can look at me,
25 Minor 1

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Minor 1 WATTS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Minor 1 how old are you?

A. Thirteen.

Q. Thirteen? What grade are you in?

A. Eighth.

Q. Eighth? Can you say yes?

A. Yes.

Q. Remember, you cannot nod. You have to say the
word yes. Okay?

A. [No response]

Q. Where do you go to school, Minor 1

A.

Q.

A. Yes.

Q. And who's your teacher at

A. Ms. Lewis.

Q. Can you say that into the microphone?

A. Ms. Lewis.

Q. Ms. Lewis?

A. [Indicates affirmatively]

Q. Is it Ms. Lewis? Can you say --

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1 A. Ms. Lewis.

2 Q. Can you say yes?

3 A. Yes.

4 MS. WILLIAMS: This lady here has to write down
5 everything you say, so you have to talk clearly and
6 make -- push your air out. Okay?

7 Q. [Ms. Williams] Are you a little nervous today?

8 A. [Indicates affirmatively]

9 Q. Yeah? That's okay.

10 Minor 1 who do you live with now?

11 A. Miss Robin.

12 Q. Miss Robin? Do you like living with Ms. Robin?

13 A. Yes.

14 Q. Who did you used to live with?

15 A. Julie Barnes.

16 Q. Julie Barnes?

17 A. [Indicates affirmatively]

18 Q. You have to say yes or no.

19 A. Yes.

20 Q. How come you can't live with Julie Barnes
21 anymore?

22 A. Mack.

23 Q. What did Mack do?

24 A. Wee-wee mouth.

25 Q. Are you saying wee-wee mouth?

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- 1 A. [Indicates affirmatively]
2 Q. Whose wee-wee?
3 A. Mack.
4 Q. Mack's.
5 Did Mack's wee-wee touch part of your body?
6 A. Yes.
7 Q. What part of your body did Mack's wee-wee touch?
8 A. Mouth.
9 Q. Your mouth?
10 A. [Indicates affirmatively]
11 Q. You have to say yes or no.
12 A. Yes.
13 Q. Where were you when Mack's wee-wee touched your
14 mouth?
15 A. Living room.
16 Q. What room?
17 A. Living room.
18 Q. Living room?
19 A. Yes.
20 Q. And whose house was it?
21 A. Julie's house?
22 Q. Julie Barnes?
23 A. [Indicates affirmatively]
24 Q. You have to say yes --
25 A. Yes.

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1 Q. -- or no.

2 Where were you in the living room, Minor 1

3 A. At the couch.

4 Q. On the couch?

5 A. Yes.

6 Q. And where were -- who else lived in that house?

7 A. Minor 2 Minor 3 me, Julie Barnes.

8 Q. Minor 2 Minor 3 you, and Julie Barnes?

9 A. Yes.

10 Q. And where were Minor 2 and Minor when this
11 happened?

12 A. On school bus.

13 Q. On the school bus? Is that what you said?

14 A. Yes.

15 Q. And was this before you went to school, or after
16 school?

17 A. Before.

18 Q. Before?

19 A. [Indicates affirmatively]

20 Q. Yes? Or no?

21 A. Yes.

22 Q. Did anything happen after he put his wee-wee in
23 your mouth?

24 A. No.

25 Q. Did anything come out?

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- 1 A. Yes.
- 2 Q. What was it?
- 3 A. White [phonetic].
- 4 Q. What was it?
- 5 A. White [phonetic].
- 6 Q. What did it taste like? Was that a good taste
- 7 or a bad taste?
- 8 A. Bad taste.
- 9 Q. Did Mack ever touch any part of -- any other
- 10 part of your body?
- 11 A. No.
- 12 Q. Did anyone ever touch your pee-pee?
- 13 A. No.
- 14 Q. Did you ever get in trouble at home when you
- 15 lived at Julie Barnes'?
- 16 A. Yes.
- 17 Q. What would happen when you would get in trouble?
- 18 A. Get --
- 19 Q. Did you get punished?
- 20 A. Yes.
- 21 Q. How did you get punished?
- 22 A. Belt --
- 23 Q. Did you ever get spanked?
- 24 A. Yeah.
- 25 Q. What part of your body got spanked?

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1 A. Butt.

2 Q. Your butt?

3 A. [Indicates affirmatively]

4 Q. You have to say --

5 A. Yes.

6 Q. -- or no.

7 A. Yes.

8 Q. Was it your butt?

9 A. Yes.

10 Q. And what did you get spanked with?

11 A. Belt.

12 Q. A belt?

13 A. Yes.

14 Q. Who spanked you?

15 A. Mack.

16 Q. What did you do? Why did you get spanked?

17 A. Fire.

18 Q. A fire?

19 A. Yes.

20 Q. Where was the fire?

21 A. Back yard.

22 Q. In the back yard?

23 A. [Indicates affirmatively]

24 Q. Was it in the back yard?

25 A. Yes.

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- 1 Q. Whose house was it at?
- 2 A. Julie Barnes.
- 3 Q. And what color was your butt after the spanking?
- 4 A. Purple.
- 5 Q. Purple?
- 6 A. Yes.
- 7 Q. Who else saw your butt after this spanking?
- 8 A. No one.
- 9 Q. Did you ever go to Mack's house, Minor 1
- 10 A. Yes.
- 11 Q. Did you ever sleep over at Mack's house?
- 12 A. Yes.
- 13 Q. Who else would go over there?
- 14 A. Julie Barnes, Minor 3 Minor 2 me.
- 15 Q. Did your mom go over there?
- 16 A. Yes.
- 17 Q. And what's her name?
- 18 A. Julie Barnes.
- 19 Q. Julie Barnes?
- 20 A. [Indicates affirmatively]
- 21 Q. You have to say yes or no.
- 22 A. Yes.
- 23 Q. Was it Julie Barnes?
- 24 A. Yes.
- 25 Q. Who else?

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1 A. Me, Minor 2 Minor 3,

2 Q. You, Minor 2 and Minor 3

3 A. Yes.

4 Q. Good.

5 MS. WILLIAMS: If you talk into that microphone.

6 We could hear you real good that time. All right?

7 Q. [Ms. Williams] Where did you sleep at Mack's
8 house?

9 A. In J. bedroom.

10 Q. I'm sorry. Can you say that again?

11 A. In J. bedroom.

12 Q. In the living room?

13 A. In the bedroom.

14 Q. In the bedroom.

15 A. Yes.

16 Q. In Mack's bedroom, or a different bedroom?

17 A. Different bedroom.

18 Q. Different bedroom; is that right?

19 A. Yes.

20 Q. Did anyone ever sleep in Mack's bedroom?

21 A. No.

22 Q. Did you ever see anyone sleep in Mack's bedroom?

23 A. No.

24 Q. Minor 1 did Mack ever say anything about you
25 telling anyone about his pee-pee in your mouth?

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1 A. No. Yes.

2 Q. Is it yes or no?

3 A. No.

4 Q. Did he say anything to you about telling?

5 A. No.

6 MS. WILLIAMS: The Court's indulgence.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Williams and Ms. Herring-Lash
9 confer]

10 Q. [Ms. Williams] Minor 1 did Mack ever touch
11 your pee-pee?

12 A. No.

13 Q. Did he ever put his mouth on your pee-pee?

14 A. No.

15 Q. Did he ever tell you not to tell?

16 A. No.

17 MS. WILLIAMS: Minor 1 someone else is going to
18 ask you questions now. Okay?

19 Do you need some water?

20 THE WITNESS: [Indicates negatively]

21 THE COURT: Mr. Schwacke.

22 MR. SCHWACKE: Hey, Minor 1 How are you?

23 THE WITNESS: Good.

24 MR. SCHWACKE: We've never met before, have we?

25 THE WITNESS: No.

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1 MR. SCHWACKE: Okay. Because I'm going to have
2 to make sure I'm understanding what you're going to
3 tell me. Okay?

4 THE WITNESS: [Indicates affirmatively]

5 MR. SCHWACKE: So if I say something and you say
6 that's not right, let me know right off the bat. Okay?

7 THE WITNESS: [Indicates affirmatively]

8 CROSS-EXAMINATION

9 BY MR. SCHWACKE:

10 Q. Have you been in a courtroom before?

11 A. No.

12 Q. Okay. You know that's what this is that you're
13 in; right?

14 A. Yes.

15 Q. Courtroom?

16 What do you know about a courtroom? What goes
17 on in a courtroom?

18 A. Trouble.

19 Q. Say it again.

20 A. Trouble.

21 Q. Try me again. Say it a different way. In a
22 courtroom, what goes on in a courtroom?

23 A. True or false.

24 Q. Okay. I'm not sure I'm understanding what
25 you're saying. Can you spell it or --

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- 1 A. True or false.
- 2 Q. True or false. Okay. So what does that mean?
- 3 A. [No response]
- 4 Q. What's the truth?
- 5 A. Good.
- 6 Q. The truth is good?
- 7 A. [Indicates affirmatively]
- 8 Q. And what's false?
- 9 A. Bad.
- 10 Q. It's bad to say something that's not true;
- 11 right?
- 12 A. Yes.
- 13 Q. And it's good to say something that is true?
- 14 A. [Indicates affirmatively]
- 15 Q. Okay. And that's what you're trying to tell me?
- 16 A. Yes.
- 17 Q. Okay. You talked about your pee-pee in Mack's
- 18 mouth; right?
- 19 A. Yes.
- 20 Q. But you're saying your mouth and his pee-pee,
- 21 that never happened; right?
- 22 A. Yes.
- 23 Q. That's what you're telling me?
- 24 A. [No response]
- 25 Q. Okay. And the only time something like that

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1 happened with you and Mr. Mack was at Julie Barnes' house?

2 A. Yes.

3 Q. It never happened at Mr. Mack's house?

4 A. No.

5 Q. And did you set a fire?

6 A. Yes.

7 Q. What did you use to set the fire?

8 A. Grill. Grill.

9 Q. Try me again. What did you use to try to set --

10 A. Grill. Grill.

11 Q. All right. I'm giving -- well, let me just ask:
12 matches?

13 A. No.

14 Q. No? A lighter?

15 A. No.

16 Q. Was it a big fire?

17 A. [Indicates affirmatively]

18 Q. Did the fire trucks have to come?

19 A. Yes.

20 Q. Did you start the fire?

21 A. Yes.

22 Q. Okay. Is that the only time you remember being
23 spanked?

24 A. Yes.

25 Q. You never got spanked other than that time?

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1 A. Yes.
2 Q. But you've been punished with the cans; right?
3 A. Yes.
4 Q. You said your butt was purple?
5 A. Yes.
6 Q. How did you see it?
7 A. Looked around. Look around.
8 Q. Looked around?
9 A. Yeah.
10 Q. You were able to turn around and see?
11 A. Yes.
12 Q. But nobody else saw it?
13 A. No.
14 Q. Did you show it to Miss Julie, your mom?
15 A. No.
16 MR. SCHWACKE: Just a minute. Okay?
17 [Whereupon, Mr. Schwacke and Ms. Kennedy confer]
18 MR. SCHWACKE: Minor 1 I don't have anymore
19 questions for you, okay, so thank you.
20 THE COURT: Ms. Williams?
21 MS. WILLIAMS: Just a couple, Your Honor.
22 REDIRECT EXAMINATION
23 BY MS. WILLIAMS:
24 Q. Minor 1
25 A. Yes.

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1 Q. Do you not want to look over there? Would you
2 rather just look at me?

3 A. Yes.

4 Q. That's okay.

5 MS. WILLIAMS: Can you force your air out and
6 talk right into this microphone? You can do it. Just
7 look at me. But put your head up, okay, so that we can
8 talk into the microphone.

9 Q. [Ms. Williams] When you set the fire, what did
10 you set it with?

11 A. Grill.

12 Q. A grill? Was the grill in the back yard?

13 A. Yes.

14 Q. Yes?

15 And do you know the difference between true and
16 false?

17 A. Yes.

18 Q. Minor 1 if I said that this chair was purple,
19 would that be true or false?

20 A. False.

21 Q. False?

22 A. [Indicates affirmatively]

23 Q. You have to say yes or no.

24 A. Yes.

25 Q. If I said this chair was orange, would that be

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1 true or false?

2 A. True.

3 Q. Say it again.

4 A. True.

5 Q. True.

6 And when you're in court, are you supposed to
7 tell the truth or are you supposed to say things that are
8 false?

9 A. False.

10 Q. False in court?

11 A. True.

12 Q. You're supposed to tell the truth in court?

13 A. Yes.

14 Q. What would happen to you if you don't tell the
15 truth in court?

16 A. False.

17 Q. Do you get in trouble?

18 A. Yes.

19 Q. Are you going to tell the truth in court?

20 A. Yes.

21 Q. Are you going to tell what happened to you?

22 A. Yes.

23 Q. Now, Mr. Schwacke was asking you questions about
24 what part of Mack touched what part of you. Okay?

25 A. [Indicates affirmatively]

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- 1 Q. What part of Mack touched you?
- 2 A. Wee-wee.
- 3 Q. His wee-wee?
- 4 A. [Indicates affirmatively]
- 5 Q. And where on your body did it touch?
- 6 A. Mouth.
- 7 Q. In your mouth?
- 8 A. [No response]
- 9 Q. And did he ever put his mouth on your wee-wee?
- 10 A. [Indicates negatively]
- 11 Q. Can you say --
- 12 A. No.
- 13 Q. -- yes or no?
- 14 A. No.
- 15 Q. No?
- 16 And this happened at whose house?
- 17 A. Julie Barnes.
- 18 Q. Julie Barnes?
- 19 A. Yes.
- 20 MS. WILLIAMS: Thank you, Minor 1
- 21 THE COURT: Mr. Schwacke?
- 22 MR. SCHWACKE: No questions, Your Honor.
- 23 THE COURT: You may step down. Thank you, Minor 1
- 24 MS. WILLIAMS: Minor 1 you can come off the chair
- 25 now. Can you walk around? You're all finished. Just

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1 swing it around.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 MS. WILLIAMS: You've got to go this way,
5 Sweetie.

6 THE CLERK OF COURT: Minor 1 go with Miss Anne.

7 MS. WILLIAMS: You don't have to look over
8 there. Let's walk right up this way and Mr. Chuck will
9 take you outside. Okay? Right through here.

10 THE COURT: Any additional witnesses from the
11 State?

12 MS. HERRING-LASH: No, Your Honor.

13 THE COURT: Mr. Schwacke, do you have any
14 witnesses?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: All right. I'll be happy to hear
17 from you regarding -- how do we want to do this motion?
18 Mr. Schwacke, let's go forward --

19 MR. SCHWACKE: It is my --

20 THE COURT: -- on your motion --

21 MR. SCHWACKE: -- my motion --

22 THE COURT: -- for competency.

23 MR. SCHWACKE: -- under 601, Your Honor.

24 THE COURT: All right. I'll be happy to hear
25 from you.

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1 MR. SCHWACKE: I believe based on the testimony
2 we don't have any issue with regards to Minor Thacker
3 and Minor2 Watts, Your Honor. But the situation
4 concerning Minor1 Watts or Minor1 Watts is a
5 little bit more problematic. I know I'm going to hear,
6 and you're going to hear, that the minimum here is that
7 everybody is presumed qualified to testify and -- as
8 long as they can differentiate truth from lie and
9 testify accordingly.

10 I believe there's also a requirement here, Your
11 Honor, though, that it be done in a manner that is
12 understandable by the jury. And I think that's going
13 to be a problem here. Obviously, we were able to get
14 some bare minimum information out of him, but I would
15 just argue that he would not be competent to testify in
16 this case.

17 MS. WILLIAMS: Your Honor, all witnesses are
18 presumed competent, and the only thing that the witness
19 has to be able to do is to be able to express themself
20 so that the jury can understand them.

21 Clearly Minor1 Watts has some auditory
22 problems. But the Court heard from the school
23 psychologist and the speech pathologist. He knows what
24 he's saying. It's just difficult for him to make his
25 mouth work. That's one of his handicaps. When he says

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1 something, if it's repeated back he will say yes or no.
2 He also correct Mr. Schwacke. A couple of times when
3 Mr. Schwacke asked him a question, he said no. He
4 doesn't agree to everything that is said to him. He
5 says no when it's no, and yes when it's yes.

6 And, quite frankly, the way that he communicates
7 goes to weight. If it looks like he's just being led
8 along and coached, the jury will make that assumption.
9 All they have to do is understand what he is saying.

10 He may not be able to tell the same kind of
11 details as his brother, but he remains consistent. He
12 said the same thing over and over again. He said that
13 Mack put his penis in his mouth. He said it happened
14 at Julie Barnes' house. He said it happened at the --
15 on the couch. He talked about the beating he got after
16 he started a fire. He said it was the grill. I know
17 it was difficult to understand but for the purposes of
18 the record, if it's repeated back to him he'll say yes.
19 If you repeat the wrong thing back to him, he will
20 correct you and say no.

21 There is a couple of cases that I'm sure Your
22 Honor is familiar with, the competency law. I gave Mr.
23 Schwacke a copy of Sellers vs. State of South Carolina.
24 And in that case there was a witness who was mentally
25 ill and the attorney did not ask for a competency

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1 hearing. The Court found initially that it was
2 ineffective assistance of counsel, but that was
3 reversed and the Court said that just because someone
4 is mentally ill doesn't mean that they're not competent
5 to testify, that that would go to weight and that could
6 be fully flushed out through cross-examination.

7 So we would ask Your Honor to let him testify.
8 Just because he has a mental handicap doesn't mean that
9 he shouldn't be able to express himself in court and
10 have his day in court and be able to tell what happened
11 to him. What he said is substantially similar to the
12 other two boys. They all experienced fellatio, and he
13 was able to articulate that for the record.

14 THE COURT: Ms. Williams, should the Court be
15 concerned that you corrected the witness when you were
16 inquiring on redirect as to truth or false?

17 MS. WILLIAMS: Your Honor, when Mr. Schwacke was
18 asking him about true and false, he answered all the
19 questions correctly. I went back over that again and I
20 think at that point he was just weary. We had gone
21 through it over and over again. In the end, he did say
22 what was true and what was false. And he has
23 consistently answered questions about what was true and
24 what is false. He knows the difference between the
25 truth and a lie.

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1 And you also heard that he follows the rules at
2 school, he knows what he's supposed to do, what he
3 isn't supposed to do, he's never been a behavior
4 problem, he knows how to act, and he knows the
5 difference between what's right and what's wrong.

6 THE COURT: Ms. Williams, I could understand
7 Minor with a yes or no or true or false. What concerns
8 the Court is that there were some responses and you --
9 it appeared that you made the determination of what the
10 response was and then used that terminology, such as
11 couch or grill, to use two examples. How is the Court
12 to ensure that you aren't, in essence, leading or
13 suppling the word and he's merely saying yes or no?

14 MS. WILLIAMS: Well, Your Honor, I mean, there
15 is going to be a certain amount of leading with a
16 witness like this, just like you would with a small
17 child, but he does say the word and then if the word is
18 repeated back to him he will say whether it's yes or
19 no. because Mr. Schwacke sat there and said matches,
20 and he said, no; a lighter, no. he was trying to say
21 grill. If he was just agreeing with everything we were
22 saying, he would have said yes when Mr. Schwacke was
23 providing the wrong answer.

24 And I recognize that it is a challenge, but the
25 jury can evaluate his credibility as a witness and

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1 whether or not what he's saying really happened. The
2 important thing is that he's able to confirm what the
3 answers are for the record. And the rest -- we would
4 ask the Court to consider that the rest goes to how
5 he's evaluated as a witness.

6 THE COURT: Mr. Schwacke?

7 MR. SCHWACKE: Your Honor, just, in essence,
8 it's almost like you have a Hispanic defendant who
9 needs an interpreter here and at that point you know
10 you've got an individual who's been placed under oath
11 to swear to tell the truth in terms of what the -- the
12 translating this person says.

13 In this instance you're totally dependent upon,
14 in terms of the examination that we had -- Ms.
15 Williams, in terms of her pretrial preparation with the
16 person, has been able to flesh out what she thinks he's
17 saying, to be able to get that yes or no response.

18 You saw me have to take the effort to try to
19 understand what he was saying and make a translation.
20 And, Your Honor, I don't know, because I've not had any
21 prep time with the witness. He could be actually
22 saying something back to me that's helpful to my client
23 and I -- because I've not had that prior contact with
24 him to the extent to go through that, not know how to
25 use it or develop it.

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1 So to me, Your Honor, it's -- you've had the
2 opportunity to witness it. I just don't believe that
3 he's going to be able to communicate to the jury in the
4 sense that they're going to be able to understand him.

5 THE COURT: Ms. Williams, we heard testimony
6 from Dr. Craver and Ms. Kroesen. There was some
7 indication that there were some use-of-language skills.
8 Is there anything that would assist the Court, that he
9 could use -- some sort of language translation, for
10 lack of a better word -- that could be of assistance
11 here?

12 MS. WILLIAMS: Yes, Your Honor. There is a
13 machine called the Franklin Speller that he could use
14 in court. It would take just a little bit more time.
15 But since his testimony is rather short, that may
16 assist the Court. It's basically him spelling out the
17 word he wants to say and then a voice says it. He has
18 used that before. He's reluctant to use it now but I
19 think if that would assist the court reporter and the
20 Court and the jury, we could ask them to bring that
21 machine in.

22 THE COURT: Mr. Schwacke, are you familiar --

23 MR. SCHWACKE: I am not. And I apologize. I am
24 not familiar enough with that device to make a
25 determination. Assuming that -- and I always hate to

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1 assume. But assuming that it works as I think that
2 it's going to work, it may be that that might be a
3 device that we could use.

4 Under 601, it's merely to -- that the testimony
5 can be interpreted. And so if that's merely a device
6 that we can use, and I have some sort of assurance that
7 that exactly is a device that is consistent and
8 reliable, then I would be inclined to have another
9 competency hearing for the purposes of determining
10 whether or not that would assist the Court.

11 Your Honor, if that's the machine that is used
12 in the Dorchester Children's Center -- it's not? It's
13 a different machine?

14 MS. WILLIAMS: It's more modern.

15 MR. SCHWACKE: I'm not familiar with the
16 machine, Judge. He did have one at his evaluation that
17 he obviously didn't want to use but could use. And,
18 Your Honor, that may provide some assistance to the
19 jury in understanding what he has to say. Because if
20 it's the same type of operation where he inputs the
21 information, it may be something that could establish
22 his competency to testify.

23 THE COURT: Would we -- would you be able to
24 facilitate that this afternoon, Ms. Williams?

25 MS. WILLIAMS: We will. We will ask if he can

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1 borrow that machine back from the school district and
2 have it -- if you could just give me a general time
3 when he should be here with the machine?

4 THE COURT: I'm anticipating -- because we're
5 going to need to break fairly quickly in order for
6 everyone to have lunch before the jury comes in. So
7 we'll need to -- what I'm anticipating is we will do a
8 general qualification of the jury and, depending on
9 whether or not -- I suppose that I'm going to need to
10 make some more rulings before we even select a jury.

11 Is that correct, Mr. Schwacke?

12 MR. SCHWACKE: I don't know that it affects the
13 selection of the jury. Obviously, we don't swear them
14 today so I don't think that would prevent us from at
15 least getting a jury selected.

16 MS. HERRING-LASH: The one question that I have,
17 and I don't know that Mr. Schwacke has filed a motion:
18 we filed a motion regarding this indictment for this
19 charge because within this indictment it alleges his
20 three prior convictions that put him on the sex
21 offender registry. And if that's going to be an issue,
22 I just wanted to make it a point before you read the
23 indictment to the jury.

24 MR. SCHWACKE: Your Honor, I would move to amend
25 the indictments or to strike some of the sections of

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1 them. I don't know if you need to hear that now.

2 THE COURT: What I'm just trying to determine is
3 whether or not -- how far we need to get with our
4 motions before we could simply select a jury. My
5 inclination was is if we could select the panel, then
6 I'll pick fourteen and then we'll start testimony in
7 the morning, finish our --

8 And I apologize. I have a horrible sore throat.
9 I apologize.

10 MR. SCHWACKE: Does Your Honor publish the
11 indictments to the jury at this stage or do you wait
12 until --

13 THE COURT: I typically just -- to see if
14 anybody has any information, has heard anything. I
15 don't need to read the body of the indictment. So we
16 can address that issue before. And at that point --
17 and it's merely just does anybody know anything about
18 this case. And I think we could accomplish that with
19 just a general basis, on this day between this and this
20 period of time this is alleged to have happened,
21 without reading the entire body of the indictment.

22 MR. SCHWACKE: Yes, ma'am.

23 MS. HERRING-LASH: I think that would be the
24 only -- that you don't read that out before we get
25 to --

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1 THE COURT: All right. And then with the
2 indication what -- we need to read all the indictments
3 out? Because I have five counts of CSC with a minor
4 first degree, three counts of committing or attempting
5 a lewd act, and three counts of unlawful conduct
6 towards a child.

7 MS. HERRING-LASH: I would think that we would
8 need to have the motion to consolidate before you read
9 them all, because if you rule against the
10 consolidation, then they would have already heard all
11 of the indictments.

12 THE COURT: All right. So we'll need to hear
13 that motion. Can I hear that without making a ruling
14 on the 404(b)?

15 MR. SCHWACKE: Yes, ma'am.

16 MS. HERRING-LASH: I think the part -- one of
17 the cruxes, I guess, of the consolidation is that the
18 defendant's substantive rights would not be prejudiced.
19 And my argument would be if the jury is going to hear
20 the -- all of these witnesses and all of this
21 information because they're admitted under 404(b), then
22 he would not be prejudiced as far as the consolidation.
23 So they kind of are merged.

24 THE COURT: Let's do this. We'll take our lunch
25 break. Please be back here. The jury -- we'll do the

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1 pre-qualification in the jury panel room, they'll be
2 brought over here at 2:30. So please be back here,
3 prepared, at 2:30.

4 Is Mr. McCauley in custody, Mr. Schwacke?

5 MR. SCHWACKE: Yes, ma'am.

6 THE COURT: Please make sure, Mr. Schwacke,
7 Ms. Kennedy, you've gone over all the procedures,
8 entering and exiting with the jury present, since
9 Mr. McCauley is in custody.

10 MR. SCHWACKE: Your Honor, what is that process?
11 Because at various times we've been asked to identify
12 people at the table and we ask them just to stand up
13 and not walk anywhere, and normally we get a "sit down,
14 sit down" from the security staff.

15 THE COURT: Is Mr. McCauley in shackles? Leg
16 shackles?

17 OFFICER: He is.

18 THE COURT: What's the -- Mr. Schwacke, for your
19 client to stand up and turn around, is it difficult?

20 MR. SCHWACKE: When he's introduced, just to do
21 the process and --

22 THE COURT: All right. Mr. McCauley, you'll be
23 allowed to stand up and turn around when Mr. Schwacke
24 introduces you to the jury. All right? Thank you.

25 So please make sure whomever is sitting next to

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1 Mr. McCauley that you don't make any motion to have him
2 sit down. He is allowed, pursuant to that --

3 OFFICER: Your Honor, is that just for the
4 introduction for him? Or that's during the trial.

5 THE COURT: Just for the introduction. There is
6 no need for Mr. McCauley to stand up throughout the
7 trial unless he is told to do so by this Court, and at
8 that point, I'll be -- make sure that we're outside of
9 the presence of the jury.

10 Anything else, just simply procedurally, before
11 we break for lunch?

12 MS. WILLIAMS: Your Honor, so do you want us to
13 deal with the issue of Minor 1 before --

14 THE COURT: You're going to need to call and see
15 if we --

16 MS. WILLIAMS: Right.

17 THE COURT: -- can even get that equipment. I'm
18 going to need some guarantee of reliability how that
19 machine works, something of that nature, before I allow
20 that machine to be used, if it's even going to be used,
21 to determine how it works.

22 MS. WILLIAMS: I guess I'm just asking
23 logistically what time you would need us to have it
24 here.

25 THE COURT: Logistically, I'm trying to give my

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1 staff an hour for lunch. All right? So it's close to
2 1:30. So the jury will be here at 2:00. We're going
3 to start general qualification, this Court's general
4 qualification, at 2:30 or as close to that as possible.
5 That will take about thirty minutes to forty-five
6 minutes, the general qualification. Then, assuming
7 that we can select a jury, then that will take about an
8 hour to select this jury. And then we will have the
9 remainder of the motions until 5:30 this afternoon. So
10 that should give you time wise.

11 MS. WILLIAMS: Okay. Thank you.

12 THE COURT: All right. Thank you. We're at
13 ease.

14 [Whereupon, a recess is taken from 1:22 p.m. to
15 3:36 p.m.]

16 [Whereupon, roll call and jury qualification
17 from 2:45 p.m. to 3:30 p.m.]

18 - - - - -

19 JURY VOIR DIRE

20 THE COURT: All right. Ladies and gentlemen,
21 the case that we are about to begin is the case of the
22 State versus Ronald McCauley.

23 Mr. Schwacke, if you would please stand,
24 introduce your client, yourself, and any persons that
25 will be assisting you throughout this trial.

MIA PERRON, CVR-CM

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1 MR. SCHWACKE: Thank you, Your Honor.

2 Good afternoon. My name is David Schwacke.

3 I'll be representing Mr. Ronald McCauley, and assisting
4 me will be Ms. Patricia Kennedy.

5 THE COURT: Is there any member of the jury
6 panel related by blood, marriage, close personal
7 friend, ever have any business, personal, professional
8 dealings with Mr. McCauley? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 Any member of the jury panel related by blood,
12 marriage, close personal friend, ever been represented
13 by, either Mr. Schwacke or Ms. Kennedy? If so, please
14 stand.

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Ms. Herring-Lash, if you would please stand,
18 introduce yourself, the persons that will be assisting
19 you throughout this trial, as well as the office with
20 which you work.

21 MS. HERRING-LASH: Thank you, Your Honor.

22 My name is Debbie Herring-Lash. I'm assistant
23 solicitor for Solicitor Wilson. Sitting with
24 me will be Anne Williams. And we also have a
25 paralegal, Joanne Gould [phonetic], sitting with us

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1 after today.

2 THE COURT: Is there any member of the jury
3 panel related by blood, marriage, close personal
4 friend, ever been represented by, either Ms. Herring-
5 Lash or Ms. Williams with the solicitor's office? If
6 so, please stand.

7 Thank you --

8 Yes, ma'am. Your jury number and name?

9 MS. COULSTON: Connie Coulston. 28.

10 THE COURT: Yes, ma'am?

11 MS. COULSTON: My grandbaby's father was
12 murdered recently and they represented the family.

13 THE COURT: All right. And is there anything
14 about that that would affect your ability to be fair
15 and impartial in this case?

16 MS. COULSTON: Yes, there is.

17 THE COURT: All right. And your jury number and
18 name?

19 MS. COULSTON: Connie Coulston, 28.

20 THE COURT: Ma'am, I'm going to excuse you from
21 the trial of this case. You do not have to answer any
22 further questions regarding this matter, but I need you
23 to remain with us for just a few moments. Thank you.

24 Is there anyone else?

25 [Whereupon, there is no response]

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1 THE COURT: Thank you. There are none.

2 Ladies and gentlemen, I'm now going to call a
3 list of potential witnesses who may be called to
4 testify in this case. If you are related by blood,
5 marriage, close personal friend, ever have any
6 business, personal, professional dealings with any of
7 these individuals, please stand.

8 Minor 2 Watts; Minor Thacker; Dr. Jeff
9 Craver, Berkeley County School District; Valerie
10 Kroesen, Berkeley County School District; Minor 1
11 Watts; Allison Gunnells; Carrie Britt; Kris Phillips;
12 Nathan Tobey; Crystal Brown; Michael Hope; Charles
13 Thacker; Robin Carrigan; Lucy Twomey; Evelyn Case,
14 Berkeley County DSS; Nancy Winston; Kathleen Fabrizio,
15 nurse with MUSC; Catherine Leisy, State Law Enforcement
16 Division; Detective Rene Ramsey, Berkeley County
17 Sheriff's Department; Dr. Ann Able, Medical University
18 of South Carolina; Fred Thornton, Berkeley County
19 Sheriff's Department; Sara Lippe, Charleston County
20 Clerk's office; Julie Barnes; Dr. Allison Foster, with
21 ARC in Columbia; William Gunnells; Josh Slate.

22 Any member of the jury panel related by blood,
23 marriage, close personal friend, ever have any
24 business, personal, professional dealings with any of
25 those individuals, please stand.

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1 MS. VROMAN: I may have trained with one of the
2 physicians, Jeff Cramer. I don't know if it's the same
3 person or not.

4 THE COURT: All right. Ma'am, I need your jury
5 number and name.

6 MS. VROMAN: 164. Deanna Vroman.

7 THE COURT: All right. And you think you may
8 have trained with --

9 MS. VROMAN: Yes. I trained with Jeff Cramer.

10 THE COURT: It's Dr. Jeff Carver [phonetic].

11 MS. VROMAN: I don't know.

12 THE COURT: All right. Thank you.

13 MS. VROMAN: Okay.

14 THE COURT: Your jury number and name, sir.

15 MR. GARRETT: 52. My name is Patrick Garrett.

16 I was employed by Berkeley County as a carpenter
17 and I know Officer Ramsey and possibly the lady from
18 DSS. I did maintenance in their buildings.

19 THE COURT: All right. Is there anything about
20 your being employed by Berkeley County that would
21 affect your ability to be fair and impartial in this
22 case?

23 MR. GARRETT: No, ma'am.

24 THE COURT: And how often do you think that you
25 came in contact with Officer Ramsey or the other

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1 individual?

2 MR. GARRETT: Well, ma'am, I've been retired
3 about three years but before that, I would see them
4 occasionally, off and on. I wouldn't say on a daily
5 basis, but I would see them. DSS: I did building
6 maintenance for them so I was in their building off and
7 on. And Officer Ramsey, I did building maintenance for
8 the Berkeley County Detention Center, as well as other
9 Berkeley County buildings.

10 THE COURT: All right. And, again, would that
11 affect your ability to be fair and impartial in this
12 case, sir?

13 MR. GARRETT: No, ma'am.

14 THE COURT: Your jury number and name?

15 MR. GARRETT: 52. Patrick Garrett.

16 THE COURT: Thank you, Mr. Garrett. Is there
17 anyone else?

18 [Whereupon, there is no response]

19 THE COURT: Thank you. There are none.

20 Is there any member of the jury panel currently
21 employed by, or previously employed by, or a close
22 friend or family member currently employed or
23 previously employed by, the Berkeley County School
24 District in any capacity, Berkeley County DSS, MUSC,
25 State Law Enforcement Division, or Charleston County

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1 clerk's office, or Abuse Recovery Center, or Berkeley
2 County Sheriff's Department? If you were employed
3 previously by any of those employers, please stand.

4 UNIDENTIFIED: Or currently?

5 THE COURT: Or currently.

6 Currently employed, formerly employed, a family
7 member currently or previously employed. We'll start
8 on the front row.

9 Yes, ma'am?

10 MS. GREENWELL: Melinda Greenwell, number 57.

11 I was formerly employed by MUSC.

12 THE COURT: All right. And what did you do at
13 MUSC?

14 MS. GREENWELL: I was a pharmacy technician.

15 THE COURT: All right. And I have read several
16 witnesses that may be called to testify from MUSC. Did
17 you know any of those individuals?

18 MS. GREENWELL: Not offhand, no, ma'am.

19 THE COURT: And is there anything about your
20 previous employment with MUSC that would affect your
21 ability to be fair and impartial in this case?

22 MS. GREENWELL: No, ma'am.

23 THE COURT: All right. Your jury number and
24 name?

25 MS. GREENWELL: Melinda Greenwell, 57.

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1 THE COURT: Thank you.

2 Yes, ma'am?

3 MS. CROSS: I'm Wanda Cross and I'm employed by
4 Berkeley County school systems.

5 THE COURT: All right. And remind me. I think
6 when you gave your general introduction you let us know
7 what you did. Please remind me again for the record.

8 MS. CROSS: Teacher assistant.

9 THE COURT: Teacher assistant. And how long
10 have you been employed there?

11 MS. CROSS: Thirty-four years.

12 THE COURT: All right. And do you know the
13 individuals from Berkeley County School District that I
14 read?

15 MS. CROSS: No, ma'am.

16 THE COURT: Is there anything about your
17 employment with Berkeley County School District that
18 would affect your ability to be fair and impartial in
19 this case?

20 MS. CROSS: No, ma'am.

21 THE COURT: All right. Your jury number and
22 name one more time.

23 MS. CROSS: 31. Wanda Cross.

24 THE COURT: Thank you. Yes, sir?

25 MR. BLAS: Juror number 6, Michael Blas.

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1 My first cousin, Bobby Schuler, Sargent Schuler,
2 is a detective with Berkeley County Sheriff's Office.

3 THE COURT: All right. And is there anything
4 about your first cousin being employed with the
5 Berkeley County Sheriff's Office that would affect your
6 ability to be fair and impartial in this case?

7 MR. BLAS: No, ma'am.

8 THE COURT: All right. Your jury number and
9 name one more time, sir.

10 MR. BLAS: Michael Blas, juror number 6.

11 THE COURT: Thank you, sir. Yes, sir?

12 MR. POUND: Roy Pound, 116.

13 My mother is retired from Berkeley County School
14 District.

15 THE COURT: All right. And what did she do
16 there?

17 MR. POUND: She was a teacher.

18 THE COURT: All right. Is there anything about
19 that that would affect your ability to be fair and
20 impartial in this case?

21 MR. POUND: No.

22 THE COURT: All right. Your jury number and
23 name one more time, sir.

24 MR. POUND: Roy Pound, 116.

25 THE COURT: Thank you, sir. Yes, ma'am?

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1 MS. WILSON: I'm currently employed by MUSC.

2 THE COURT: And what do you do there?

3 MS. WILSON: A dental hygienist.

4 THE COURT: Okay. And did you know the
5 individuals that are employed with MUSC that may be
6 called as witnesses?

7 MS. WILSON: No.

8 THE COURT: Is there anything about your
9 employment at MUSC that would affect your ability to
10 be fair and impartial in this case?

11 MS. WILSON: No.

12 THE COURT: Your jury number and name?

13 MS. WILSON: Alvina Wilson, number 111.

14 THE COURT: Thank you, Ms. Wilson.

15 MS. WILSON: Thank you.

16 THE COURT: Yes, ma'am?

17 MS. VROMAN: 164, Deanna Vroman.

18 I am currently employed by MUSC.

19 THE COURT: And is there anything about your
20 being employed by MUSC that would affect your ability
21 to be fair and impartial in this case?

22 MS. VROMAN: No.

23 THE COURT: All right. Thank you.

24 Yes, ma'am?

25 MS. SMITH: Jury number 145, Wanda Smith. I was

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1 previously employed at MUSC.

2 THE COURT: And what did you do there, Ms.
3 Smith?

4 MS. SMITH: I was a pathologist supervisor
5 there.

6 THE COURT: All right. And is there anything
7 about your previous employment that would affect your
8 ability to be fair and impartial in this case?

9 MS. SMITH: No.

10 THE COURT: All right. Ms. Smith, your jury
11 number?

12 MS. SMITH: 145.

13 THE COURT: Thank you. Yes, ma'am?

14 MS. CATTLES: Juror number 23, Hope Cattles.
15 I'm employed with MUSC at the store --

16 THE COURT: And the same question to you.
17 Anything about your occupation and being employed by
18 MUSC that would affect your ability to be fair and
19 impartial in this case?

20 MS. CATTLES: No.

21 THE COURT: Jury number and name?

22 MS. CATTLES: 23. Hope Cattles.

23 THE COURT: Thank you. Yes, ma'am?

24 MS. DICKERSON: Mary Dickerson, jury 37.

25 Previously employed by Berkeley County School

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1 District, teacher's assistant, four years.

2 THE COURT: All right. Anything about your
3 occupation with Berkeley County School District that
4 would affect your ability to be fair and impartial in
5 this case?

6 MS. DICKERSON: No, ma'am.

7 THE COURT: Thank you, ma'am.

8 Is there anyone else?

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 Ladies and gentlemen, is there any member of the
12 jury panel that has previously been a witness in either
13 a civil or a criminal case? If so, please stand.

14 [Whereupon, there is no response]

15 THE COURT: Thank you. There are none.

16 Ladies and gentlemen, is there any member of the
17 jury panel, or a member of your close family, that has
18 ever been affiliated with or is currently affiliated
19 with a group that supports law enforcement or that is
20 affiliated or supports victims' rights, such as Mothers
21 Against Drunk Driving, Students Against Rape, People
22 Against Rape, anything of that nature? If so, please
23 stand.

24 [Whereupon, there is no response]

25 THE COURT: Thank you. There are none.

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1 Ladies and gentlemen, I'm now going to call --
2 read a list of questions. And, again, I have
3 determined that you will need to come forward and
4 answer these questions with me in private.

5 Ladies and gentlemen, if there's any member of
6 the jury panel who has ever been arrested, I will need
7 you to come forward at the appropriate time.

8 Ladies and gentlemen, I neglected to ask you --
9 I need to inform you. Mr. McCauley has been charged
10 through what's called an indictment. It's a piece of
11 paper and it's merely the formal document that brings
12 us here to court today. Mr. McCauley has pled not
13 guilty to each of these indictments and that puts the
14 burden on the State to prove Mr. McCauley guilty of the
15 indictments and the crimes charged. Mr. McCauley has
16 been charged, through the indictment process, for
17 criminal sexual conduct with a minor in the first
18 degree. Mr. McCauley has been charged with an
19 indictment for unlawful conduct towards a child. Mr.
20 McCauley has been charged through an indictment for
21 committing or attempting to commit a lewd act upon a
22 child. The State alleges that these offenses occurred
23 in Berkeley County between June 1st of 2006 and January
24 19th of 2009.

25 Is there any member of the jury panel that knows

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1 anything about this, other than what I have just read
2 to you? If so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: Thank you. There are none.

5 Ladies and gentlemen, is there any member -- and
6 this is another question that you will come forward and
7 speak with me.

8 Is there any member of the jury panel or a
9 member of your family that has ever been the victim of
10 or a witness to a sexual assault?

11 Is there any member of the jury panel that has
12 ever been accused of committing a sexual assault?

13 Is there any member of the jury panel who has
14 ever been the victim of a violent crime?

15 Is there any member of the jury panel who has
16 been involved in any way with law enforcement or the
17 legal system in any case of sexual assault?

18 If there's any member of the jury panel that is
19 a member -- excuse me -- or a member of your close
20 family, you or a member of your family has ever been
21 placed on the sex offender registry, I will need you to
22 come forward at the appropriate time.

23 Ladies and gentlemen, if there's any member of
24 the jury panel who has ever volunteered for any child
25 advocacy group, or you received any specialized

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1 training as a volunteer for a child advocacy group, or
2 if you have participated in any way as a guardian ad
3 litem in any capacity, through DSS or a private entity,
4 I will need you to come forward.

5 Ladies and gentlemen, if you need to answer any
6 of those questions, please come forward at this time.

7 Ladies and gentlemen, you have not heard any of
8 the facts in this case but for whatever reason if you
9 feel that you cannot be fair and -- ladies and
10 gentlemen, you have not heard the facts in this case
11 but if for any reason, based upon what you have heard
12 so far, you feel that you cannot be fair and impartial
13 for whatever political, religious, moral beliefs that
14 you have, that you feel that you would be unable to
15 listen to the facts as presented by the witness stand,
16 apply the law as the Court gives it, and render a
17 verdict based only on those things, I will need to
18 speak with you concerning that matter, as well. Thank
19 you.

20 THE BAILIFF: Number 76, John Hutson.

21 [Whereupon, Mr. Hutson comes forward]

22 MR. HUTSON: Hello.

23 THE COURT: Yes, sir?

24 [Whereupon, Mr. Hutson, the Court and counsel
25 confer]

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1 THE COURT: Juror 76 is excused from the trial
2 of this case.

3 THE BAILIFF: Number 23, Hope Cattles.
4 [Whereupon, Ms. Cattles comes forward]
5 [Whereupon, the Court, Ms. Cattles, and counsel
6 confer]

7 THE COURT: Juror 23 is excused from the trial
8 of this case.

9 THE BAILIFF: Juror number 95, Leonard Maddox.
10 [Whereupon, Mr. Maddox comes forward]

11 THE COURT: Yes, sir.
12 [Whereupon, the Court, Mr. Maddox, and counsel
13 confer]

14 THE COURT: Juror 95 is excused from the trial
15 of this case.

16 I need you to stay with us but you don't have to
17 answer anymore questions. All right?

18 THE BAILIFF: Number 182, Katheryn Wilson.
19 [Whereupon, Ms. Wilson comes forward]

20 THE COURT: Yes, ma'am.
21 [Whereupon, the Court, Ms. Wilson, and counsel
22 confer]

23 THE COURT: 182 will remain. Thank you.

24 THE BAILIFF: Number 70, Kathlene D. Hill.
25 [Whereupon, Ms. Hill comes forward]

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1 THE COURT: Yes, ma'am?

2 [Whereupon, the Court, Ms. Hill, and counsel
3 confer]

4 THE COURT: Juror 70 will remain.

5 THE BAILIFF: Number 74, Jimmy Honeycutt.

6 [Whereupon, Mr. Honeycutt comes forward]

7 THE COURT: Yes, Mr. Honeycutt.

8 MR. HONEYCUTT: I'm back.

9 THE COURT: All right. Thank you.

10 [Whereupon, the Court, Mr. Honeycutt, and
11 counsel confer]

12 THE COURT: All right. You're going to stay
13 with us. Thank you.

14 THE BAILIFF: Number 57, Melinda Greenwell.

15 [Whereupon, Ms. Greenwell comes forward]

16 THE COURT: Yes, ma'am?

17 [Whereupon, the Court, Ms. Greenwell, and
18 counsel confer]

19 THE COURT: Juror 57 is excused from the trial
20 of this case.

21 THE BAILIFF: Number 37, Mary Ann Dickerson.

22 [Whereupon, Ms. Dickerson comes forward]

23 THE COURT: Yes, ma'am?

24 [Whereupon, the Court, Ms. Dickerson, and
25 counsel confer]

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1 THE COURT: Juror 37 is excused from the trial
2 of this case.

3 I need you to stay with us, though. Thank you.

4 THE BAILIFF: Number 116, Roy W. Pound, Jr.

5 [Whereupon, Mr. Pound comes forward]

6 THE COURT: Yes, Mr. Pound?

7 [Whereupon, the Court, Mr. Pound, and counsel
8 confer]

9 THE COURT: 116 will remain. Thank you.

10 THE BAILIFF: Number 34, Charles Denson.

11 [Whereupon, Mr. Denson comes forward]

12 THE COURT: Yes, sir?

13 [Whereupon, the Court, Mr. Denson, and counsel
14 confer]

15 THE COURT: Juror 34 will remain. Thank you.

16 THE BAILIFF: Number 6, Michael Blas.

17 [Whereupon, Mr. Blas comes forward]

18 [Whereupon, the Court, Mr. Blas, and counsel
19 confer]

20 THE COURT: Juror 6 will remain. Thank you.

21 THE BAILIFF: Number 19, John Cantrell.

22 [Whereupon, Mr. Cantrell comes forward]

23 THE COURT: Yes, Mr. Cantrell?

24 [Whereupon, the Court, Mr. Cantrell, and counsel
25 confer]

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1 THE COURT: Juror 19 will remain. Thank you.

2 THE BAILIFF: Number 173, Michael Wilson.

3 MR. SCHWACKE: Your Honor, can we stop --

4 THE COURT: Hold on one second.

5 [Whereupon, the Court and counsel confer]

6 THE BAILIFF: 173, Michael Wilson.

7 [Whereupon, Mr. Wilson comes forward]

8 THE COURT: Yes, sir?

9 [Whereupon, the Court, Mr. Wilson, and counsel
10 confer]

11 THE COURT: 173 will remain. Thank you, sir.

12 THE BAILIFF: Number 172, Bill K. Williamson.

13 172.

14 [Whereupon, Ms. Williamson comes forward]

15 THE COURT: Yes, ma'am?

16 [Whereupon, the Court, Ms. Williamson, and
17 counsel confer]

18 THE COURT: 172 will remain.

19 THE BAILIFF: Number 168, Deborah Anschutz.

20 [Whereupon, Ms. Anschutz comes forward]

21 THE COURT: Yes, ma'am?

22 [Whereupon, the Court, Ms. Anschutz, and counsel
23 confer]

24 THE COURT: 168 is excused from the trial of
25 this case.

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1 Ma'am? Ma'am, if you'll call back after 6:00 to
2 receive further instructions.

3 MS. ANSCHUTZ: Okay. Thanks.

4 THE BAILIFF: Number 103, Ben Morris.

5 [Whereupon, Mr. Morris comes forward]

6 THE COURT: Hello, Mr. Morris, 103. How are
7 you?

8 MR. MORRIS: Pretty good.

9 [Whereupon, the Court, Mr. Morris, and counsel
10 confer]

11 THE COURT: Juror 103 is excused from the trial
12 of this case.

13 THE BAILIFF: Number 54, Danny Goodine. 54,
14 Danny Goodine.

15 [Whereupon, Mr. Goodine comes forward]

16 THE COURT: Yes, sir?

17 [Whereupon, the Court, Mr. Goodine, and counsel
18 confer]

19 THE COURT: Juror 54 will remain. Thank you.

20 THE BAILIFF: Number 98, Patrick McPherson. 98.

21 [Whereupon, Mr. McPherson comes forward]

22 [Whereupon, the Court, Mr. McPherson, and
23 counsel confer]

24 THE COURT: Juror 98 will remain.

25 THE BAILIFF: Number 31, Wanda Cross. 31.

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1 [Whereupon, Ms. Cross comes forward]

2 THE COURT: Yes, ma'am?

3 [Whereupon, the Court, Ms. Cross, and counsel
4 confer]

5 THE COURT: Juror 31 is excused from the trial
6 of this case.

7 THE BAILIFF: Number 102, Larry Mincey.

8 [Whereupon, Mr. Mincey comes forward]

9 THE COURT: Yes, sir?

10 [Whereupon, the Court, Mr. Mincey, and counsel
11 confer]

12 THE COURT: 102 is excused from the trial of
13 this case.

14 THE BAILIFF: Number 157. 157, Cathleen Tobin.

15 [Whereupon, Ms. Tobin comes forward]

16 THE COURT: Yes, ma'am?

17 [Whereupon, the Court, Ms. Tobin, and counsel
18 confer]

19 THE COURT: 157 is excused from the trial of
20 this case. Thank you.

21 THE BAILIFF: Number 177, Paul Wright.

22 [Whereupon, Mr. Wright comes forward]

23 THE COURT: Yes, sir?

24 [Whereupon, the Court, Mr. Wright, and counsel
25 confer]

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1 THE COURT: Juror 177 will remain.
2 THE BAILIFF: Number 122, April Provost.
3 [Whereupon, Ms. Provost comes forward].
4 THE COURT: Ms. Provost?
5 [Whereupon, the Court, Ms. Provost, and counsel
6 confer]

7 THE COURT: Juror 122 will remain.
8 Is there anyone else?
9 [Whereupon, the Court and counsel confer]

10

11

STRIKING OF THE JURY

12

13

THE COURT: Strikes are ten and five. Is that
correct? From the State?

14

MS. HERRING-LASH: Yes, Your Honor.

15

THE COURT: From the defense?

16

MS. KENNEDY: Yes.

17

18

THE COURT: We'll be selecting two alternates.
Is the State prepared?

19

20

MS. HERRING-LASH: The State is prepared, Your
Honor.

21

THE COURT: Defense prepared?

22

MR. SCHWACKE: Yes, Your Honor.

23

24

THE COURT: Thank you. Madam Clerk, please
select the jury.

25

THE CLERK OF COURT: Is the State ready to

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1 proceed?

2 MS. WILLIAMS: Court's indulgence for just one
3 moment.

4 THE COURT: Yes, ma'am.

5 [Whereupon, Ms. Williams reviews documents]

6 THE COURT: Mr. Schwacke, are you ready?

7 MR. SCHWACKE: Yes, Your Honor.

8 THE CLERK OF COURT: Ladies and gentlemen of the
9 jury, as I call your name, please come forth and the
10 bailiff will instruct you where you need to stand. And
11 if say seat the juror, you have a seat in the jury box.
12 If I say excuse the juror, please return to your
13 original seat.

14 Juror 118, Tiffany Powell.

15 THE COURT: Juror 118. Please come forward.

16 [Whereupon, Ms. Powell comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. HERRING-LASH: Please present the juror.

19 THE CLERK OF COURT: What says the defense?

20 MR. SCHWACKE: Please excuse the juror from the
21 trial of this case.

22 THE CLERK OF COURT: Excuse the juror.

23 THE BAILIFF: Return to your seat, ma'am.

24 [Whereupon, Ms. Powell returns to the audience]

25 THE CLERK OF COURT: Juror 122, April Provost.

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1 [Whereupon, Ms. Provost comes forward]
2 THE CLERK OF COURT: What says the State?
3 MS. HERRING-LASH: Please present the juror.
4 THE CLERK OF COURT: What says the defense?
5 MR. SCHWACKE: Please excuse the juror from the
6 trial of this case.
7 THE CLERK OF COURT: Excuse the juror.
8 [Whereupon, Ms. Provost returns to the audience]
9 THE CLERK OF COURT: Juror 111, Alvinia Parish-
10 Wilson.
11 [Whereupon, Ms. Parish-Wilson comes forward]
12 THE CLERK OF COURT: What says the State?
13 MS. HERRING-LASH: Please present the juror.
14 THE CLERK OF COURT: What says the defense?
15 MR. SCHWACKE: Please seat the juror.
16 THE BAILIFF: This way, ma'am.
17 [Whereupon, Ms. Parish Wilson is seated in the
18 jury box as a juror]
19 THE CLERK OF COURT: Juror 71, Glenn Hilos.
20 [Whereupon, Mr. Hilos comes forward]
21 THE CLERK OF COURT: What says the State?
22 MS. WILLIAMS: The Court's indulgence for just a
23 moment.
24 THE COURT: Yes, ma'am.
25 [Whereupon, Ms. Herring-Lash and Ms. Williams

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1 confer]

2 MS. HERRING-LASH: Please excuse the juror.

3 THE CLERK OF COURT: Excuse the juror.

4 THE BAILIFF: Go back to your seat.

5 [Whereupon, Mr. Hilos returns to the audience]

6 THE CLERK OF COURT: Juror 30, Kristin Crosby.

7 [Whereupon, Ms. Crosby comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. HERRING-LASH: Please present the juror.

10 THE CLERK OF COURT: What says the defense?

11 MR. SCHWACKE: Please seat the juror.

12 THE CLERK OF COURT: Seat the juror.

13 THE BAILIFF: This way, ma'am.

14 [Whereupon, Ms. Crosby returns to the audience]

15 THE CLERK OF COURT: Juror 69, Randy Heyward.

16 [Whereupon, Mr. Heyward comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. HERRING-LASH: Please present the juror.

19 THE CLERK OF COURT: What says the defense?

20 MR. SCHWACKE: Please seat the juror.

21 THE CLERK OF COURT: Seat the juror.

22 THE BAILIFF: This way, sir.

23 [Whereupon, Mr. Heyward is seated in the jury

24 box as a juror]

25 THE CLERK OF COURT: Juror 52, Patrick Garrett.

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1 [Whereupon, Mr. Garrett comes forward]
2 THE CLERK OF COURT: What says the State?
3 MS. WILLIAMS: Court's indulgence.
4 THE COURT: Yes, ma'am.

5 [Whereupon, Ms. Herring-Lash and Ms. Williams
6 confer]

7 MS. HERRING-LASH: Please present the juror.

8 THE CLERK OF COURT: What says the defense?

9 MR. SCHWACKE: Please seat the juror.

10 THE CLERK OF COURT: Seat the juror.

11 [Whereupon, Mr. Garrett is seated in the jury
12 box as a juror]

13 THE CLERK OF COURT: Juror 90, Michael King.

14 [Whereupon, Mr. King comes forward]

15 THE CLERK OF COURT: What says the State?

16 MS. HERRING-LASH: Please present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. SCHWACKE: Please seat the juror.

19 THE CLERK OF COURT: Seat the juror.

20 [Whereupon, Mr. King is seated in the jury box
21 as a juror]

22 THE CLERK OF COURT: Juror 54, Danny Goodine.

23 [Whereupon, Mr. Goodine comes forward]

24 THE CLERK OF COURT: What says the State?

25 MS. HERRING-LASH: Please excuse the juror

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1 THE CLERK OF COURT: Excuse the juror.
2 [Whereupon, Mr. Goodine returns to the audience]
3 THE CLERK OF COURT: Juror 140, Randy Simmons.
4 [Whereupon, Mr. Simmons comes forward]
5 THE CLERK OF COURT: What says the State?
6 MS. HERRING-LASH: Please excuse the juror.
7 THE CLERK OF COURT: Excuse the juror.
8 [Whereupon, Mr. Simmons returns to the audience]
9 THE CLERK OF COURT: Juror 108, Minor2 Neff.
10 [Whereupon, Ms. Neff comes forward]
11 THE CLERK OF COURT: What says the State?
12 MS. HERRING-LASH: Please present the juror.
13 THE CLERK OF COURT: What says the defense?
14 MR. SCHWACKE: Please seat the juror.
15 THE CLERK OF COURT: Seat the juror.
16 [Whereupon, Ms. Neff is seated in the jury box
17 as a juror]
18 THE CLERK OF COURT: Juror 172, Billy
19 Williamson.
20 [Whereupon, Mr. Williamson comes forward]
21 THE CLERK OF COURT: What says the State?
22 MS. HERRING-LASH: Please present the juror.
23 THE CLERK OF COURT: What says the defense?
24 MR. SCHWACKE: Please seat the juror.
25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, Mr. Williamson is seated in the jury
2 box as a juror]

3 THE CLERK OF COURT: Juror number 2, Minor 2
4 Artis.

5 [Whereupon, Mr. Artis comes forward]

6 THE CLERK OF COURT: What says the State?

7 MS. HERRING-LASH: Please seat the juror.

8 THE CLERK OF COURT: What says the defense?

9 MR. SCHWACKE: Please excuse the juror from the
10 trial of this case.

11 THE CLERK OF COURT: Excuse the juror.

12 [Whereupon, Mr. Artis returns to the audience]

13 THE CLERK OF COURT: Juror 116, Roy Pound, Jr.

14 [Whereupon, Mr. Pound comes forward]

15 THE CLERK OF COURT: What says the State?

16 MS. HERRING-LASH: Please present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. SCHWACKE: Please seat the juror.

19 THE CLERK OF COURT: Seat the juror.

20 [Whereupon, Mr. Pound is seated in the jury box
21 as a juror]

22 THE CLERK OF COURT: Juror 173, Michael Wilson.

23 [Whereupon, Mr. Wilson comes forward]

24 THE CLERK OF COURT: What says the State?

25 MS. HERRING-LASH: Please present the juror.

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1 THE CLERK OF COURT: What says the defense?

2 MR. SCHWACKE: Please excuse the juror from the
3 trial of this case.

4 THE CLERK OF COURT: Excuse the juror.

5 [Whereupon, Mr. Wilson returns to the audience]

6 THE CLERK OF COURT: Juror 145, Wanda Smith.

7 [Whereupon, Ms. Smith comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. HERRING-LASH: Please present the juror.

10 THE CLERK OF COURT: What says the defense?

11 MR. SCHWACKE: Please excuse the juror from the
12 trial of this case.

13 THE CLERK OF COURT: Excuse the juror.

14 [Whereupon, Ms. Smith returns to the audience]

15 THE CLERK OF COURT: Juror number 9, Patricia
16 Brand.

17 [Whereupon, Ms. Brand comes forward]

18 THE CLERK OF COURT: What says the State?

19 MS. HERRING-LASH: Please present the juror.

20 THE CLERK OF COURT: What says the defense?

21 MR. SCHWACKE: Please seat the juror.

22 THE CLERK OF COURT: Seat the juror.

23 [Whereupon, Ms. Brand is seated in the jury box
24 as a juror]

25 THE CLERK OF COURT: Juror 141, Andrea Simpson.

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1 [Whereupon, Ms. Simpson comes forward]
2 THE CLERK OF COURT: What says the State?
3 MS. HERRING-LASH: Please present the juror.
4 THE CLERK OF COURT: What says the defense?
5 MR. SCHWACKE: Please seat the juror.
6 THE CLERK OF COURT: Seat the juror.
7 [Whereupon, Ms. Simpson is seated in the jury
8 box as a juror]
9 THE CLERK OF COURT: Juror 21, Everone Carter.
10 [Whereupon, Ms. Carter comes forward]
11 THE CLERK OF COURT: What says the State?
12 MS. HERRING-LASH: Please present the juror.
13 THE CLERK OF COURT: What says the defense?
14 MR. SCHWACKE: Please seat the juror.
15 THE CLERK OF COURT: Seat the juror.
16 [Whereupon, Ms. Carter is seated in the jury box
17 as a juror]
18 THE CLERK OF COURT: Juror 159, David Travis.
19 [Whereupon, Mr. Travis comes forward]
20 THE CLERK OF COURT: What says the State?
21 MS. HERRING-LASH: Please excuse the juror.
22 THE CLERK OF COURT: Excuse the juror.
23 [Whereupon, Mr. Travis returns to the audience]
24 THE CLERK OF COURT: The State has four strikes.
25 Juror 82, Grover Johnson, Jr.

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1 [Whereupon, Mr. Johnson comes forward]
2 THE CLERK OF COURT: What says the State?
3 MS. WILLIAMS: Please present the juror.
4 THE CLERK OF COURT: What says the defense?
5 MR. SCHWACKE: Please seat the juror.
6 THE CLERK OF COURT: Seat the juror.
7 [Whereupon, Mr. Johnson is seated in the jury
8 box as a juror]

9 THE CLERK OF COURT: Our first alternate. Juror
10 182, Kathryn Wilson.

11 [Whereupon, Ms. Wilson comes forward]
12 THE CLERK OF COURT: What says the State?
13 MS. HERRING-LASH: Please present the juror.
14 THE CLERK OF COURT: What says the defense?
15 MR. SCHWACKE: Please excuse the juror from the
16 trial of this case.

17 THE CLERK OF COURT: Excuse the juror.
18 [Whereupon, Ms. Wilson returns to the audience]
19 THE CLERK OF COURT: Juror 4, Robert Barnwell.

20 [Whereupon, Mr. Barnwell comes forward]
21 THE CLERK OF COURT: What says the State?
22 MS. WILLIAMS: Please excuse the juror.
23 THE CLERK OF COURT: Excuse the juror.

24 [Whereupon, Mr. Barnwell returns to the
25 audience]

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1 THE CLERK OF COURT: Juror 16, Anthony Burke.

2 [Whereupon, Mr. Burke comes forward]

3 THE CLERK OF COURT: Any cause for challenge
4 from the State?

5 MS. HERRING-LASH: Please present the juror.

6 THE CLERK OF COURT: What says the defense?

7 MR. SCHWACKE: Please excuse the juror from the
8 trial of this case.

9 THE CLERK OF COURT: Excuse the juror.

10 [Whereupon, Mr. Burke returns to the audience]

11 THE CLERK OF COURT: Juror 45, Johnny Elerby.

12 [Whereupon, Mr. Elerby comes forward]

13 THE CLERK OF COURT: Any cause for challenge
14 from the State?

15 MS. HERRING-LASH: Please present the juror.

16 THE CLERK OF COURT: Any cause for challenge
17 from the defense?

18 MR. SCHWACKE: Seat the juror.

19 THE CLERK OF COURT: Seat the juror.

20 [Whereupon, Mr. Elerby is seated in the jury box
21 as a juror]

22 THE CLERK OF COURT: Alternate two. Juror 107,
23 Douglas Murdock, Jr.

24 [Whereupon, Mr. Murdock comes forward]

25 THE CLERK OF COURT: What says the State?

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1 MS. HERRING-LASH: Please present the juror.

2 THE CLERK OF COURT: What says the defense?

3 MR. SCHWACKE: Please excuse the juror from the
4 trial of this case.

5 THE CLERK OF COURT: Excuse the juror.

6 [Whereupon, Mr. Murdock returns to the audience]

7 THE CLERK OF COURT: Juror 74, Jimmy Honeycutt.

8 [Whereupon, Mr. Honeycutt comes forward]

9 THE CLERK OF COURT: What says the State?

10 MS. HERRING-LASH: Please present the juror.

11 THE CLERK OF COURT: What says the defense?

12 MR. SCHWACKE: Please excuse the juror from the
13 trial of this case.

14 THE CLERK OF COURT: Excuse the juror.

15 [Whereupon, Mr. Honeycutt returns to the
16 audience]

17 THE CLERK OF COURT: Juror 15, William
18 Buffington.

19 [Whereupon, Mr. Buffington comes forward]

20 THE CLERK OF COURT: What says the State?

21 MS. HERRING-LASH: Please seat the juror.

22 THE CLERK OF COURT: Any cause for challenge
23 from the defense?

24 MR. SCHWACKE: Please seat the juror.

25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, Mr. Buffington is seated in the jury
2 box as a juror]

3 THE COURT: Any motions or matters pertaining to
4 the jury as selected? From the State?

5 MS. HERRING-LASH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SCHWACKE: No, Your Honor.

8 THE COURT: Ladies and gentlemen, you have been
9 selected as the jury to try this case. Please be
10 escorted to your jury deliberation room and we'll
11 receive you back in the courtroom in just a few
12 moments.

13 [Whereupon, the jury exits the courtroom at
14 4:38 p.m.]

15 THE COURT: Outside the presence of the jury,
16 any motions or matters from the State?

17 MS. HERRING-LASH: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 those of you who were not selected, you know that your
22 term of service is for the week. So ladies and
23 gentlemen, as we cannot get started with any other
24 business today. You are excused for today. I will
25 need you to call back tomorrow after 6:00 p.m. to

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1 receive your instructions for the remainder of the
2 week.

3 Ladies and gentlemen, if you do not call back,
4 if you do not receive your instructions, and let's say
5 that you are told to report Wednesday morning and you
6 do not do so, a bench warrant may issue for your arrest
7 and I could hold you in contempt.

8 Ladies and gentlemen, I see some of you smiling
9 or nodding your heads. Ladies and gentlemen, we have
10 worked out this system to avoid each of you coming back
11 every day and sitting here all day long until we have a
12 case to try or other matters that need your service.
13 So, ladies and gentlemen, it is important. If you
14 don't show up that there's got to be -- we've got to
15 know -- and we count on you because as I indicated to
16 you before, none of us can do our jobs if you are not
17 here today.

18 Ladies and gentlemen, I've shared this story
19 with several of my jurors. There's actually -- when I
20 was in another county, we did not have enough jurors to
21 try a case and so business had to shut down. The
22 courthouse had to shut down our business for that week
23 because we did not have people doing their duty as you
24 are doing it here today.

25 Ladies and gentlemen, thank you for your service

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1 to Berkeley County. Please remember, you don't have to
2 call back tonight. You must call back when?

3 [Whereupon, jury panel responds]

4 THE COURT: Tomorrow after 6:00 p.m. Thank you.
5 I look forward to seeing some of you back in my
6 courtroom at a later time. If I don't, happy holidays.
7 Good luck to you. Thank you.

8 [Whereupon, the jury panel exits the courtroom
9 at 4:38 p.m.]

10 THE COURT: All right. I am not going to swear
11 the jury. I'm just going to bring them in, advise them
12 that they cannot read, watch, listen to, do any
13 independent investigations, those general caveats.

14 [Off the record momentarily]

15 THE COURT: Please rise for the jury.

16 [Whereupon, the jury enters the courtroom at
17 4:44 p.m.]

18 THE COURT: Ladies and gentlemen, we typically
19 go until 5:00 p.m. and as you can see, that will be the
20 clock that we will use, it is -- we're going to go
21 ahead and recess for the evening.

22 Ladies and gentlemen, I just wanted to give you
23 just a general warning or advisement of what you can
24 and cannot do as a juror.

25 Ladies and gentlemen, until you have been

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1 discharged from this case, you may not perform any
2 investigation, research, or experiment of any kind, on
3 your own either -- or as a group, about this case. You
4 may not consult any dictionaries for the meanings of
5 words or any encyclopedia for general information on
6 the subjects of this trial.

7 Do not look up anything on the internet
8 concerning this case or any of the people involved.
9 Ladies and gentlemen, that includes the defendant, the
10 attorneys involved, any of the witnesses that I have
11 read out to you, as well as the judge.

12 Do not go to the scene where any of the events
13 that are the subject of this trial are alleged to have
14 occurred, or use internet maps or Google Earth or
15 anything of that nature, or to search for or view any
16 of the places that may be discussed throughout this
17 trial.

18 You must not have any discussions about this
19 case or make any entry on facebook, my space, linked
20 in, or any other internet social media site. That
21 includes all other forms of oral, written and
22 electronic communication and that includes twittering,
23 emailing, texting, or blogging concerning this case.

24 Ladies and gentlemen, please understand that I
25 am giving these directions as part of my responsibility

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1 to ensure fairness is done to all of the parties in
2 this case. That fairness would be compromised and your
3 actions could jeopardize the results of this trial if
4 you violate these instructions.

5 Ladies and gentlemen, I will give you a more
6 specific instruction on the law as we progress
7 throughout this trial. I'll give you a general opening
8 in the morning but due to the lateness of the hour, I
9 just wanted to give you that caveat and that will also
10 go through until I have discharged you from your
11 service in this case.

12 Ladies and gentlemen, with that being said, you
13 are discharged until 10:00 a.m. in the morning. Please
14 report back to your jury room and once all fourteen of
15 you are back in your room, we will begin the trial of
16 this case.

17 Thank you, and have a wonderful evening. You
18 are excused.

19 Please rise for the jury.

20 [Whereupon, the jury exits the courtroom at
21 4:48 p.m.]

22 THE COURT: Thank you. Please be seated.

23 All right. So are we prepared to go forward
24 with the additional witness?

25 Anyone need to take a comfort break? Yes?

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1 MS. WILLIAMS: And, Your Honor, just for
2 clarification, what the device is is it's a Franklin
3 Speller. So I would ask Minor 1 a question. The
4 speech pathologist is going to be here to read what he
5 types on a screen and she can read it into the record.
6 Mr. Schwacke can be up there just to make sure that
7 what she's reading is what he thinks it says, as well.

8 The device that actually spoke is not as
9 accurate as this. He just types it in. And I think
10 that that would be the best way to ensure accurate
11 response.

12 THE COURT: All right. Mr. Schwacke, do you
13 have an objection to the use of that device?

14 MR. SCHWACKE: This will give me a chance to
15 kind of see and get familiar with it. I don't know the
16 first thing about it, Your Honor, other than what's
17 been described.

18 THE COURT: All right. Let's go ahead and take
19 our comfort break. We'll take five minutes. All
20 right?

21 And then, Ms. Williams, if you will have
22 Minor 1 --

23 MS. WILLIAMS: Yes, Your Honor.

24 THE COURT: -- prepared with the equipment and
25 with his speech pathologist prepared. All right.

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1 Thank you.

2 MS. WILLIAMS: Here in the courtroom?

3 THE COURT: Yes.

4 [Whereupon, a recess is taken from 4:49 p.m. to
5 5:00 p.m.]

6 THE COURT: Please be seated.

7 [Off the record momentarily]

8 MS. WILLIAMS: Your Honor, I think they probably
9 both need to be administered the oath, since she's
10 going to be reading the comments.

11 THE COURT: Thank you, Ms. Williams. We have
12 that under control.

13 We'll need to -- the witness has already been --
14 actually, they've both been sworn in.

15 But I need you to give the interpreter oath to
16 Ms. Kroesen.

17 THE CLERK OF COURT: Just raise your right hand,
18 please.

19 [Whereupon, Ms. Kroesen is duly sworn by the
20 clerk of court as follows: do you solemnly swear or
21 affirm that you will well interpret unto the witness
22 all statements made by the Court and its officers and
23 to interpret all statements made by the witness to the
24 Court and its officers, so help you God]

25 MS. KROESEN: I do.

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1 THE COURT: Now, Mr. Watts, I need you to come
2 and take the witness stand like you did before. Okay?
3 Can you sit in that orange chair?

4 [Whereupon, Minor¹ Watts comes forward]

5 THE COURT: Ms. Kroesen, I have never done this
6 before so I am looking to you. Do you need a chair, or
7 will you be okay?

8 MS. KROESEN: No. I think I'm comfortable here.
9 Okay?

10 THE COURT: All right.

11 MS. KROESEN: Okay?

12 THE COURT: If at any time you need a break --

13 MS. KROESEN: We'll adjust.

14 THE COURT: If you could, just for the record,
15 explain to the Court, so the record is clear, what you
16 will be doing and how you will be assisting Mr. Watts
17 in his testimony.

18 MS. KROESEN: Okay. When Minor communicates, if
19 there is anything that's not understood then what he
20 likes to do is spell it out loud. And when you can't
21 understand that, he likes to type this. Now, this is a
22 very simple -- actually, a dictionary. It does not
23 have voice output so it really is just something he
24 types into. He can just spell what he wants. And then
25 he would have to show it to somebody or I would

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1 basically be reading out loud what he types.

2 THE COURT: All right. And, Ms. Kroesen, when I
3 place you --

4 Am I pronouncing that correct?

5 MS. KROESEN: Uh-huh. Yes. Kroesen.

6 THE COURT: Ms. Kroesen, you have testified and
7 been give the oath that you will read accurately and
8 testify as to what --

9 MS. KROESEN: Uh-huh.

10 THE COURT: -- what Mr. Watts types --

11 MS. KROESEN: Uh-huh.

12 THE COURT: Is that correct?

13 MS. KROESEN: Uh-huh. I will.

14 THE COURT: All right. You will not be giving
15 him any assistance; is that correct?

16 MS. KROESEN: No.

17 The only time that I need to give assistance is
18 if for some reason Minor spells phonetically and I'm not
19 clear of what the word is. Usually, ninety percent of
20 the time it's effective and then there's -- every once
21 in a while I might not understand and so sometimes I
22 need to say things like, give me more information or
23 can you tell me another word. So that's typically how
24 it works with Minor1

25 THE COURT: All right. And if you need more

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1 information, I need for you to indicate out loud and
2 not just to Mr. Watts, that you need more information.
3 So I need you to read what's contained --

4 MS. KROESEN: Okay.

5 THE COURT: -- what the response is --

6 MS. KROESEN: Okay.

7 THE COURT: -- and then if you're unable to
8 interpret that, then I need for you to clearly indicate
9 out loud to the Court so that -- and then --

10 MS. KROESEN: Okay.

11 THE COURT: -- Mr. Watts can make further
12 adjustments as needed. All right?

13 MS. KROESEN: Okay.

14 THE COURT: But at that point, that will give
15 everyone an opportunity, if needed, to object to what
16 is going on. All right?

17 MS. KROESEN: Okay. Is it --

18 THE COURT: Any objection to proceeding that
19 way? From the State?

20 MS. WILLIAMS: No, not from the State, Your
21 Honor.

22 THE COURT: From the defense?

23 MR. SCHWACKE: No, Your Honor.

24 I met with Ms. Kroesen during the break and had
25 a demonstration of the machine, what she intends to do.

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1 And as you've already instructed her, the only thing
2 that I would want to make certain is that any exchanges
3 between her and the witness are on the record and out
4 loud for all of us to hear.

5 THE COURT: All right. And, Ms. Kroesen, again,
6 I am going to caution you there can be no dialog
7 between -- you are merely here to interpret with is
8 contained on the machine --

9 MS. KROESEN: Okay.

10 THE COURT: -- do you understand that?

11 MS. KROESEN: I do.

12 Is it possible for me to confirm? What usually
13 happens is if Minor types something, then often we will
14 say to him it says such and such, and Minor will tell us
15 yes or no.

16 THE COURT: All right. Any objection from the
17 State or from the defense: Ms. Kroesen will read the
18 word out loud and if there's an objection, then Mr.
19 Watts will need to indicate out loud that that is
20 incorrect.

21 MS. WILLIAMS: Nothing from the State, Your
22 Honor.

23 MR. SCHWACKE: Your Honor, obviously we're doing
24 this to try and see if it can happen real time in front
25 of a jury, so I have no objection to it happening this

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1 way today. But if it develops into a problem, I might
2 have a different position at trial.

3 THE COURT: All right.

4 MS. WILLIAMS: Is he going to hold it?

5 MS. KROESEN: Yeah. That's fine with me.

6 THE COURT: Now, Mr. Watts, it is important for
7 the Court -- and sometimes I could understand you very
8 clearly as to what you were saying, but that was when
9 you were speaking very loudly into the microphone. Can
10 you try to always speak very loudly and very clearly
11 into the microphone?

12 MR. WATTS: Yes.

13 THE COURT: All right. Now, Mr. Watts, if
14 you're going to keep your head down, which I think is
15 causing some problem with us hearing you, then I need
16 you to pull that microphone closer to you so that you
17 can speak directly into the microphone. Can you
18 practice that for me?

19 MR. WATTS: Yes.

20 [Off the record momentarily]

21 THE COURT: All right. Now, Mr. Watts, you may
22 yell. Please use your outside voice. Do you know what
23 that is, Mr. Watts?

24 MR. WATTS: Yes.

25 THE COURT: All right. Let's practice our

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1 outside voice when we respond. What is your first
2 name?

3 MR. WATTS: Watts.

4 THE COURT: All right. Ms. Williams?

5 MS. WILLIAMS: Thank you.

6 - - - - -

7 PROFFER

8 Minor 1 WATTS,

9 Having Been Previously Sworn,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Minor 1 how old are you?

14 A. Fifteen.

15 Q. And what grade are you in?

16 A. Eight.

17 Q. Minor 1 do you know the difference between true
18 and false?

19 A. Good, bad.

20 Q. One is good and one is bad?

21 A. Yes.

22 Q. Which is good, true or false?

23 A. True.

24 Q. And which is bad?

25 A. False.

MIA PERRON, CVR-CM

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1 Q. And, Minor 1 look at this chair. If I said
2 that this chair was purple, would that be true or false?

3 A. False.

4 Q. I'm sorry?

5 A. False.

6 Q. If I said the chair was orange, would that be
7 true or false?

8 A. True.

9 Q. What about if I said my name was Minor 1 Would
10 that be true or false?

11 A. False.

12 Q. Minor 1 do you have to tell things that are
13 true or things that are false in court?

14 A. Truth.

15 Q. And what happens if you don't tell the truth?

16 A. It's false.

17 Q. What happens?

18 A. Bad.

19 Q. Is it bad to say something that's false?

20 A. Yes.

21 Q. Do you get in trouble if you say things that are
22 false --

23 A. Yes.

24 Q. -- at school?

25 A. Yes.

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1 Q. What about in court? If you come into court and
2 say things that are false, do you get in trouble?

3 A. No.

4 Q. Yes, or no?

5 A. No.

6 Q. You don't get in trouble in court?

7 A. Yes.

8 Q. Minor 1 this is very important. When you come
9 to court, do you tell the truth or do you tell something
10 that's false?

11 A. False.

12 Q. False in court?

13 A. [No response]

14 Q. Are you going to tell the truth or false here
15 today?

16 A. Truth.

17 Q. Minor 1 do you think when you come into court
18 that you have to tell the truth?

19 A. Yes.

20 Q. And do you think you'll get in trouble if you
21 say things that are false?

22 A. No.

23 Q. What happens to people that tell things that are
24 false at school?

25 A. Trouble.

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1 Q. Do you want to type it? They get in trouble?

2 Is that what you said?

3 A. Yes.

4 Q. Well, if people come into the courtroom and say
5 things that are false, what happens to them?

6 A. It, too.

7 Q. Can you repeat that?

8 A. It, too.

9 Q. Do you want to type it?

10 A. Read it [phonetic].

11 Q. You want me to repeat the question?

12 A. Yes.

13 Q. Okay. When you come into the courtroom and you
14 don't tell the truth, if you tell the judge false things,
15 what happens?

16 A. Trouble.

17 Q. You get in trouble?

18 A. [No response]

19 Q. Are you going to tell the truth in this
20 courtroom?

21 A. Yes.

22 Q. Are you going to get up there and say things
23 that are false?

24 A. No.

25 Q. Did you say no?

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1 A. Yes.
2 Q. Minor 1 who do you live with now?
3 A. Ms. Robin.
4 Q. Ms. Robin?
5 A. Yes.
6 Q. And who did you used to live with?
7 A. Julie Barnes.
8 Q. Can you say that a little bit louder into the
9 microphone?
10 A. Julie Barnes.
11 Q. What's the first name?
12 A. Julie Barnes.
13 Q. Can you type it into your device, please?
14 A. [Witness complies]
15 Q. You can just type her first name.
16 A. Julie Barnes. Julie.
17 Q. Julie? Did you type it?
18 A. [Through the interpreter] He typed J. Didn't
19 type the rest. He typed J.K.
20 Q. J.K.
21 A. [The interpreter] Uh-huh.
22 Q. What does J.K. mean, Minor 1
23 A. [No response]
24 Q. Are you saying you used to live with Julie
25 Barnes?

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- 1 A. Yes.
- 2 Q. Why don't you live with Julie Barnes anymore?
- 3 A. Mack.
- 4 Q. Mack?
- 5 A. Yes.
- 6 Q. What did Mack do?
- 7 A. Wee-wee mouth.
- 8 Q. What part of Mack touched you?
- 9 A. Mouth.
- 10 Q. Touched whose mouth?
- 11 A. Mack.
- 12 Q. What part of Mack touched you?
- 13 A. Mouth.
- 14 Q. Mack's mouth?
- 15 A. Yes.
- 16 Q. What part of your body did Mack's mouth touch?
- 17 A. My wee-wee.
- 18 Q. Your wee-wee?
- 19 A. [Indicates affirmatively]
- 20 Q. Did Mack's wee-wee ever touch you?
- 21 A. Yes.
- 22 Q. What did it touch on your body?
- 23 A. Mouth.
- 24 Q. Where did this happen?
- 25 A. Living room. Living room.

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- 1 Q. Did you say room?
- 2 A. Yes.
- 3 Q. What room? Can you push your air out?
- 4 A. Living room.
- 5 Q. Living --
- 6 A. Living room.
- 7 Q. Living room? And where in the living room did
- 8 it happen?
- 9 A. On the couch.
- 10 Q. Are you saying couch?
- 11 A. Yes.
- 12 Q. Did this happen one time, Minor 1 or more than
- 13 one time?
- 14 A. More than one time, yes.
- 15 Q. And where were your brothers Minor 2 and Minor 3
- 16 A. On bus.
- 17 Q. Can you type where they were?
- 18 A. [Complies]
- 19 [Through the interpreter] He typed "on bus".
- 20 Q. On bus. Is that right?
- 21 A. Yes.
- 22 Q. And was that before school, or after school?
- 23 A. Before.
- 24 Q. Did you ever get in trouble at your house?
- 25 A. Yes.

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- 1 Q. What did you do?
- 2 A. Fire, backyard.
- 3 Q. What happened in the backyard?
- 4 A. Grill.
- 5 Q. A grill? What did you do in the grill?
- 6 A. Fire. Made a fire.
- 7 Q. You made a fire?
- 8 A. Yes.
- 9 Q. And what happened to you?
- 10 A. Spanked.
- 11 Q. Can you say that again?
- 12 A. Spanked.
- 13 Q. You got spanked?
- 14 A. Yes.
- 15 Q. Who spanked you?
- 16 A. Mack.
- 17 Q. What did he spank you with?
- 18 A. Big belt.
- 19 Q. What did the belt look like?
- 20 A. Purple.
- 21 Q. It had a buckle?
- 22 A. Purple.
- 23 Q. Can you type it?
- 24 A. Purple.
- 25 Q. Buckle? A belt with holes? Can you type it on

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1 there so I can understand?

2 A. [Complies]

3 THE INTERPRETER: Can I confirm with him what he
4 tried to type? He spelled P-E-P-L-E. Can I confirm
5 with him what he was typing?

6 THE COURT: Can he retype it?

7 THE INTERPRETER: Can you retype it?

8 I know what he was trying to say, though.

9 A. Purple.

10 Q. [Ms. Williams] Are you saying purple?

11 A. Yes.

12 Q. What was purple?

13 A. Butt.

14 Q. Your butt?

15 A. Yes.

16 Q. Did you get spanked one time, Minor 1 or more
17 than one time?

18 A. One time.

19 Q. One time?

20 A. Yes.

21 MS. WILLIAMS: Your Honor, I would just like to
22 show him these pictures very briefly. I'm going to
23 show Mr. Schwacke.

24 THE COURT: All right. Counsel approach.

25 [Whereupon, an off-the-record bench conference

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1 is held]

2 THE COURT: Mr. Watts, you may step down. Thank
3 you. You are excused from the courtroom for today.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Ms. Kroesen, those are big steps so
7 if you could just help him. Thank you. Thank you, Ms.
8 Kroesen.

9 MS. WILLIAMS: Thank you, Minor 1

10 THE COURT: All right. What I indicated at
11 sidebar was that we are here making a determination as
12 to the competency of Mr. Watts to testify. What this
13 Court has observed in using the computer, the
14 minicomputer, for lack of a better word, was that Mr.
15 Watts was still incapable of expressing himself so that
16 the judge and their directly -- since we're in a jury
17 trial so that the judge and the jury could directly, or
18 through an interpretation, understand the witness.

19 Based upon the dialog that was observed, the
20 conversation and the direct examination of Mr. Watts,
21 it did not appear, it does not appear, that that
22 methodology is going to be of any assistance to the
23 trier of fact to determine whether or not -- and so at
24 this point the Court is making a determination that
25 that is not going to be useful in allowing Mr. Watts to

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1 testify.

2 During our conference at sidebar, I indicated
3 that my concern was not so much as to the mental
4 competency of Mr. Watts at this time, based upon his
5 responses, but whether or not Mr. Watts could be
6 understood and could communicate. And primarily my
7 concern was the potential inability of Mr. Schwacke to
8 cross-examine Mr. Watts on behalf of his client. So we
9 had discussed some other alternatives that may be
10 utilized and so we will work on those over the evening
11 hours, because I made my ruling.

12 And I believe that that was the only individual,
13 Mr. Schwacke, that you still had some issue concerning
14 competency and ability to testify. Is that correct?

15 MR. SCHWACKE: In terms of this testimony,
16 correct?

17 MS. WILLIAMS: Competency of these three
18 witnesses.

19 MR. SCHWACKE: Correct.

20 THE COURT: The other two witnesses you have,
21 based upon their responses.

22 MR. SCHWACKE: I believe, Your Honor, they are
23 able to testify, the jury's able to understand them,
24 and they understand the difference between right from
25 wrong and truth from lie and can communicate that to

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1 the jury, so I have no objection.

2 THE COURT: All right. So I agree.

3 - - - - -

4 PRETRIAL MOTIONS

5 THE COURT: So then we move on to our next set
6 of motions at this time. Ms. Herring-Lash?

7 MS. HERRING-LASH: Your Honor, as far as the
8 404(b) motion, I think there are three issues. First
9 of all, the testimony had to be clear -- or the proof
10 has to be clear and convincing, it has to fall under an
11 exception to the 404(b) rule, and it has to be more
12 probative than prejudicial.

13 State v. Sweat, which is at 608 S.E.2d 508,
14 makes clear that it need not be necessary for the
15 State's case as long as it -- if it is logical,
16 relevant, to establish a material fact.

17 State v. Wilson, which is in my brief, talks
18 about the clear and convincing proof that is needed by
19 the State and that that proof needs to be viewed in an
20 any-evidence standard and if there's any evidence to --
21 any evidence to support the trial court's ruling, that
22 it should not be disturbed, that the credibility of
23 that evidence is something that will be judged by the
24 jury and as long as there is evidence for the trial
25 court to rule on.

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1 State v. Wallace is the most current case
2 regarding 404(b) with child sexual assault cases, and
3 in that case the Supreme Court overturned the Court of
4 Appeals decision. The Court of Appeals decision,
5 according to the Supreme Court, had imposed an
6 additional factor that the State had to prove of some
7 kind of connection and the -- the Supreme Court set out
8 some factors to consider, not that these would be all,
9 but that the age of the victims, the relationship
10 between the victim and the defendant, the location of
11 where the events occurred, use of threat or coercion of
12 some type, the manner of occurrence. And the manner of
13 the occurrence, the court talked about the type of
14 battery. And I would suggest manner of occurrence may
15 be, in our case, a mother was absent and the child --
16 children were told not to tell. In that court they
17 said what is shown is close similarity and no further
18 connection must be shown.

19 The court also found that in Wallace -- I think
20 in the Court of Appeals decision they thought it was
21 wrong that the trial judge had redacted some of the
22 404(b) witnesses' testimony to make it more similar,
23 and the Supreme Court said that that is done all the
24 time, that redactions occur all the time to benefit the
25 defendant, and that that was not a mistake that the

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1 trial court made.

2 I think the difference here that we have in
3 Wallace, the 404(b) victim, and not the primary victim,
4 had much more egregious battery and the trial court
5 kept -- limited the 404(b) victim from talking about
6 the intercourse because the primary victim did not
7 suffer that badly.

8 Here our primary victim, Minor2 Watts,
9 actually suffered more abuse. And with him there was
10 anal and, of course, in addition to being made to
11 perform fellatio and fellatio being performed on him.

12 And back to the McClelland case: all of those
13 foster children were able to testify, and the court in
14 McClelland said -- well, the facts were the youngest
15 child was only touched, while the others -- where the
16 others, there were actual batteries committed. And the
17 court said that because a more reprehensible act was
18 committed on the primary victim and it was stopped
19 before it carried on, that that did not make it not
20 similar in that case.

21 And in the McClelland and in Wallace, they talk
22 about the more similar, the more probative and actually
23 the similarity of the sexual assaults makes one more
24 probative of the other.

25 In our case we have Minor2 who talks about

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1 the sexual assaults occurring in his home and in Mr.
2 McCauley's home. And with Minor3 they -- he talks about
3 them in Mr. McCauley's home, both of them in the
4 bedroom at Mr. McCauley's home. They were -- they're
5 similar in age. Minor2 was between ten and eleven and
6 Minor was between eight and nine. They're all males.
7 They all had the same relationship to Mr. McCauley. He
8 was their mother's friend. It happened at various
9 times when he was their caretaker. It happened at
10 where it was the caretaker. Whether it be at their
11 mother's house or his house, it was the same -- not
12 exactly the same residence every time, but where he was
13 the caretaker.

14 He also was -- they're also all three -- just
15 talk about Minor1 for these purposes -- subjected to
16 this because of an unprotective mother. There were
17 threats used. With Minor3 threats of -- I think he said
18 don't tell or else, but with Minor2 it was don't tell or
19 I will hurt your mother. So he both -- he coerced and
20 made threats to both of them. They were both beaten
21 with a belt. They were both made to stand holding
22 heavy cans and they were up against the wall with their
23 face to the wall. So they're very -- there are a lot
24 of similarities. The main difference is that Minor2
25 suffered a further abuse of anal penetration. This

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1 stopped because -- not because anyone told, but because
2 Mr. Thacker, Minor3 dad, actually intervened before
3 things got -- progressed any further with Minor3,

4 Also, Minor and Minor2 would be necessary
5 witnesses. Minor testified he saw Minor2 go in the room,
6 shut the door, and sleep with Mr. McCauley. Likewise,
7 Minor2 saw Minor go in the room, the door was shut, and
8 he would be sleeping in there with Mr. Minor [sic].
9 Minor2 talks about a time when the both of them were
10 called into the room and Mr. McCauley tried to direct
11 them to perform oral intercourse upon each other.

12 Just in candor to the Court, and you will see
13 from the indictments, Minor had, in the beginning -- in
14 his interviews did acknowledge anal intercourse and did
15 remember the event. I don't think that he is going to
16 testify about that. I don't know if he's forgotten or
17 if that is just something he will not talk about. But
18 that was, in the beginning, something he did talk
19 about.

20 Court's indulgence for one moment.

21 THE COURT: Yes, ma'am.

22 [Whereupon, Ms. Herring-Lash and Ms. Williams
23 confer]

24 MS. HERRING-LASH: And I think they also talked
25 about it being on the bed when it was in the two

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1 different bedrooms: on the mom's bed, and both of them
2 on Mr. McCauley's bed.

3 I think that's all at this point, Your Honor.

4 THE COURT: And do I need to hear you any
5 further regarding consolidation?

6 MS. HERRING-LASH: Yes. I can make the
7 consolidation argument now, Your Honor.

8 What we need to show in consolidation is that
9 the offenses charged in a separate indictment or the
10 same general nature involving connected transaction or
11 the -- are the same or closer related in time, place
12 and character and the defendant's rights would not be
13 substantively prejudiced.

14 These are similar offenses. They are offenses
15 on these children. They're closely connected in time.
16 They were simultaneously going on. These children are
17 not going to be able to tell us if they happened on the
18 exact day because they don't remember the day, but it
19 was the same time frame that it was happening, they're
20 the same kind of assaults, they were the same place as
21 where he was their babysitter, they would be proved by
22 the same evidence. Even if this was just Minor 2 trial,
23 Minor would have to testify as to the things he saw. If
24 it was just Minor 3 trial, Minor 2 would have to testify
25 even about the time when they were in the room. They

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1 would both have to testify about the physical assaults
2 committed upon them. And the other witnesses, the same
3 law enforcement people, would have to testify, the same
4 experts would have to testify, as far as the doctor
5 that saw them. The laywitnesses that were in the home
6 and could put these children in the home and talk about
7 what they saw. They saw some of the physical
8 discipline, they saw -- some of them saw the marks.
9 They saw the amount of time that he spent with these
10 kids. So those would all be the same witnesses.

11 It would be literally the same trial except the
12 jury would just hear from -- about the sexual abuse.
13 So it would be two of the exact same trials. And if
14 the 404(b) motion is granted, the defendant's rights
15 would not be prejudiced in that the jury would hear --
16 as an example, if consolidation was not allowed and we
17 called Minor 2 case but the 404(b) motion is granted,
18 the jury could still hear from Minor 3 so that any
19 information from hearing from the second child would
20 not be a substantive-right prejudice of the defendant.

21 THE COURT: Ms. Herring-Lash, if I grant your
22 motion for consolidation, does the 404(b) motion become
23 moot, or do I need to do that 404(b) analysis before I
24 do the analysis for the consolidation?

25 MS. HERRING-LASH: I think that just for

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1 clarity, the 404(b) analysis should probably be done
2 so that the -- it is clear that tried together, the
3 defendant's rights would not be prejudiced because of
4 the 404(b) would be granted, so that they would hear
5 from Minor anyway. And Minor 1, if that goes well
6 tomorrow. We don't know about that yet.

7 And the other part about the 404(b): I think
8 it's -- Tooten is the case where it was -- where a
9 404(b) motion was overturned. And it's very clearly
10 distinguished from that. In Tooten it was one event
11 and then there was many, many months, or maybe a couple
12 of years later, and there was a separate battery. And
13 the court had granted that those -- that victim could
14 testify, and that was overturned.

15 These cases were ongoing. They're the same
16 manner, same activity, same time frame, and they are
17 connected, clearly.

18 THE COURT: Mr. Schwacke, I'll be happy to hear
19 from you.

20 MR. SCHWACKE: Your Honor, I guess at this point
21 I'll limit it to the 404 arguments.

22 The motion by the defendant not only encompasses
23 the information that's been contained that you heard
24 from here but as additional Rule 5 materials, we were
25 provided a case file from the earlier cases in which my

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1 client was convicted. Apparently they're not going to
2 go forward with any of that information in their case.

3 MS. HERRING-LASH: Yes. The prior victim was a
4 twelve-year-old young boy. I talked with his mother
5 and at this point in time she will not allow him to go
6 through this again. So, no, we cannot.

7 MR. SCHWACKE: So the motion was based, in part,
8 on that extra information outside of these particular
9 facts. And so then, Your Honor, we're just limited now
10 to the allegations that have already been -- you've
11 heard part of here today.

12 Admittedly, and in full candor to the Court, the
13 motion as it deals with Minor 2 and Minor 3 cases,
14 where there is that overlap where both have testified
15 there was some effort to have them involved in an act,
16 that is the same type of evidence. So I have to be
17 frank with the Court in that regard.

18 With Minor 1 case, however, in terms of what
19 we're hearing and not hearing, there's not the specific
20 type of overlap. He's relating only one incident that
21 happened at his mom's house before school when the
22 other kids weren't there. So from that standpoint, I
23 think that may have a factual break which would prevent
24 it from being incorporated into the same act -- or the
25 same action.

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1 My concern, in terms of combining these
2 offenses, is that the State has chosen to prosecute for
3 the criminal sexual conduct under subsection A-2, which
4 allows -- or apparently allows -- there's a motion for
5 that, as well -- for the State to put into evidence, to
6 the jury, a Minor¹ of a prior conviction that'll place
7 him on the sex offender registry. Because that is an
8 element of those criminal sexual conduct offenses and
9 not an element of the lewd act upon minors and unlawful
10 conduct towards a child, I would submit to Your Honor
11 that that is the substantial prejudice that would be
12 faced by the client going -- my client going forward,
13 particularly on those two charges, since in a separate
14 trial it would not be admissible.

15 There may be another motion that I have coming
16 from that, depending upon your ruling here, but at this
17 time, Your Honor, I believe my motion only has any
18 viability to it -- again, having full candor to the
19 Court -- as it relates to the Minor¹ allegations.

20 THE COURT: All right. And, Ms. Herring-Lash,
21 the State is going forward under the CSC first with a
22 minor under the provision of two prior convictions and
23 not as to the age of the victim?

24 MS. HERRING-LASH: Right.

25 We're going forward under the part of the

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1 statute that says if the victim is under the age of
2 sixteen and the person is on the sex offender registry,
3 it makes it a first degree.

4 Although we have spoken with Mr. Schwacke and
5 from reading the case law that I have read, I do not
6 think that it would be -- that the State should be able
7 to prove what his three convictions were, because one
8 of them was criminal sexual conduct with a minor. And
9 I'm really basing that on the United States Supreme
10 Court case of Old Chief, where it talks about if there
11 is a way to fit the statute in the least prejudicial to
12 the defendant during the 403 analysis.

13 And I'm thinking this case -- because the
14 statute says if the person is on the sex offender
15 registry -- that we would, out of an abundance of
16 caution, just want to put up if he was on the registry
17 and not have the jury hear that it was for criminal
18 sexual conduct with a minor in the second degree and
19 criminal sexual conduct in the third degree and the
20 dissemination, but simply that he was on the -- he had
21 committed a crime that placed him on the sex offender
22 registry and that we would just call the person that
23 does the registry to say that he had gone on there and
24 the time that he went on there so the jury would not
25 think he was on there for these offenses.

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1 And I -- and as far as the argument that because
2 they will hear the more serious charges and they will
3 hear that he's on the sex offender registry in the lewd
4 act case and the unlawful case, we could -- someone
5 could always make that argument if, say, you were
6 trying someone for a burglary and murder and possession
7 of a burglary tool. They would hear the most serious
8 and the most egregious while they were also being tried
9 for something that was less. And the case that the
10 unlawful conduct actually kind of is interwoven with,
11 the reason that the children submitted and didn't tell,
12 because they were afraid. So I think the jury would
13 have to hear about those assaults in the criminal
14 sexual conduct with a minor first degree case because
15 it goes to them being afraid of him and not telling.

16 THE COURT: All right. In determining whether
17 to admit 404(b) prior bad acts, the Court must
18 determine initially whether the proffered evidence is
19 relevant as required under Rule 401.

20 I do find that the alleged prior acts of the
21 defendant are relevant. Then I must determine whether
22 the bad act evidence fits within the exception of
23 404(b), according to Rule 404(b), evidence of prior
24 crimes or misconduct is inadmissible to prove the
25 specific crime charged unless the evidence tends to

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1 establish motive, intent, absence of mistake, or
2 accident, or common scheme or plan embracing the
3 commission of two or more crimes so related to each
4 other that the proof of one tends to establish the
5 proof of the other. To be admissible, the bad act must
6 be logically related to the crime with which the
7 defendant has been charged.

8 In this present case the alleged prior bad acts
9 point to a common plan or scheme of the defendant. The
10 sexual abuse of Minor2 Watts by the defendant is
11 directly related to the sexual abuse committed against
12 Minor1 Watts and Minor Thacker. Their evidence
13 presented shows similarities in the sexual acts, the
14 victim's age, the relationship to the defendant, the
15 place of the alleged acts, threats, as well as the
16 other abuses alleged by all three children during their
17 testimony here today.

18 Having found that the 404(b) acts logically
19 relate to the crime which the defendant has been
20 charged, and the same being shown by clear and
21 convincing evidence, the Court must determine whether
22 404(b) -- excuse me -- whether Rule 403 permits the
23 introduction of this evidence. If the probative value
24 is substantially outweighed by the danger of unfair
25 prejudice to the defendant, then the evidence must

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1 still be excluded.

2 After I have heard the testimony and reviewing
3 the submitted memorandum by counsel and hearing
4 arguments here today, I find that the probative value
5 outweighs any prejudice to the defendant. As a result,
6 the 404(b) evidence shall be admitted.

7 I next move to the request -- the State's motion
8 in support of consolidation. The Court is concerned
9 whether the charges in the indictments should be tried
10 together, whether or not they arise out of a single
11 chain of circumstances. The testimony that has been
12 presented, the acts all occurred within the same time
13 frame. They were simultaneously going on. Whether
14 they are proved by the same evidence: the indication
15 by the State, as well as the testimony that was
16 presented today, indicates that the witnesses, as well
17 as the eyewitnesses, will all be the same. The whether
18 or not the charges are of the same general nature, and
19 the Court find that they are, indicating in my previous
20 ruling that I am allowing the 404(b) evidence, the
21 Court finds that there is no real right of the
22 defendant that has been prejudiced.

23 The motion to consolidate the indictments is
24 hereby granted.

25 We will grant the motion, the defendant's

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1 motion, on how to address in order to minimize the
2 statements or the element that the State must prove as
3 to whether or not -- or as to why the defendant was on
4 the sex offender registry tomorrow morning.

5 Please be back. We'll finish all outstanding
6 motions at 9:15 in the morning.

7 Anything regarding the 404(b) analysis or the
8 consolidation?

9 MS. HERRING-LASH: No, Your Honor.

10 MR. SCHWACKE: No, Your Honor.

11 THE COURT: All right. We are at ease until
12 9:15.

13 [JURY TRIAL ADJOURNS AT 5:28 P.M.]
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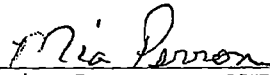
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, December 13, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 3rd day of July, 2011.



Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) INDICTMENT NO.: 2009-GS-08-2123
 through 2126; 2129; 2131 through
 2133

THE STATE OF SOUTH CAROLINA)
)
 VS.)
)
 RONALD MCCAULEY,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on Tuesday, December 14, 2010, Commencing at 9:20 a.m.

SUSAN "MIA" PERRON, CVR-CM
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PROCEEDINGS

1
2 THE COURT: I still have motions outstanding but
3 I'm not sure which ones we still need to address, so
4 I'll be happy to hear from you, Ms. Williams or Mr.
5 Schwacke.

6 MS. WILLIAMS: Your Honor, I think one of the
7 motions that is still pending is the statute for the
8 prior offenses. And I think, as Ms. Herring-Lash
9 articulated, the State's position is -- at first,
10 Mr. Schwacke was saying that we had to just pick
11 one of the offenses, and we think out of an abundance
12 of caution that it should just be that he is a
13 registered sex offender and since that is an element of
14 the statute, that we just be allowed to prove that.
15 But as we said, out of an abundance of caution, we
16 would not go into what the offenses are that placed him
17 on the sex offender registry or how many there are.

18 THE COURT: All right. Mr. Schwacke, I'll be
19 happy to hear from you regarding that position.

20 MR. SCHWACKE: Your Honor, there have been a
21 number of South Carolina court cases dealing with the
22 requirement of the State to prove two prior burglaries
23 for the purposes of a burglary first conviction, but no
24 cases have yet been decided in South Carolina dealing
25 with the criminal sexual conduct statute in the first

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1 degree..

2 Subsection A-2, as to whether or not that is a
3 specific element that the State is required to prove,
4 or whether that is a sentencing enhancer that upon
5 conviction -- if that's found to be the case, then the
6 Court is allowed to sentence them pursuant to that
7 subsection.

8 That section has its own punishment subsection
9 within 16-3-65. So initially the defense would argue
10 that, as intended by the legislature, that would be
11 designed for the Court to use for the purposes of
12 determining the appropriate sentence of punishment upon
13 conviction. In support of that argument, obviously the
14 Court would see that in the other type of conviction
15 that unless the defendant took the stand, that it would
16 be prejudicial and against the constitutional rights of
17 the defendant for that record to go forward to the jury
18 absent some other purpose such as impeachment.

19 As the Court has to undertake responsibilities
20 to protect the rights of defendants to make certain
21 that they're not convicted upon unduly prejudicial
22 evidence, that's the purpose that the rules of evidence
23 have been created, particularly that as set out within
24 the evidence of character, conduct and bias of
25 witnesses, as well as any type of character evidence

1 under 404, 404(a), would be.

2 So as a result of that, the other argument would
3 be that not only would the introduction of the prior
4 record violate his constitutional rights as being
5 unduly prejudicial, both under the state and federal
6 constitutions, I would argue that the incursion of the
7 legislature into the rule-making authority of the
8 courts would be a separation of powers violation, in
9 that the Court should proceed under the long-
10 established rules of evidence and not allow that
11 testimony to go to the jury but allow that to be a
12 sentencing enhancement issue that upon conviction by
13 the jury that the Court could then consider that prior
14 record for purposes of sentencing.

15 THE COURT: All right. Mr. Schwacke, you would
16 agree that had the State gone under the A-1 provision,
17 that you would have required them to prove that the
18 victim was less than eleven; correct?

19 MR. SCHWACKE: Which they can obviously do with
20 regards to Minor Thacker because the indictment alleges
21 his age, alleges his -- the date of the occurrence.
22 And because of that, the State could prove that with
23 regard to one of the two -- or at least one of apparent
24 two victims they're going forward on, if they decide
25 not to pursue the case at this time with regard to

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1 Minor 1

2 So, Your Honor, yes, they could get a conviction
3 for first degree burglary -- I mean, I'm sorry. They
4 could get a conviction for first degree criminal sexual
5 conduct with a minor and based upon their notification
6 under the life without parole provision of the code,
7 that that would allow the State, without that
8 additional information, without that prejudicial
9 information, to get a life without parole sentence if
10 he's convicted of a sexual assault on Minor Thacker.

11 THE COURT: My question -- and perhaps I didn't
12 phrase it as eloquently as I needed to. My question is
13 had they gone under another provision, you would have
14 required the State to prove every element of that
15 statute; correct?

16 MR. SCHWACKE: They would have been -- the Court
17 would have required them to have to do that. Certainly
18 I would have expected to --

19 THE COURT: And you would have made the motion,
20 at the appropriate time, that they had not met the
21 elements; correct?

22 MR. SCHWACKE: I would have. Yes, ma'am.

23 THE COURT: And, Mr. Schwacke, you do agree that
24 there is case law -- although I cannot find any
25 specifically with this issue addressed. But there is

1 case law, specifically a burglary case, that required
2 or allowed the State to use two prior burglary
3 convictions to meet the elements; correct?

4 MR. SCHWACKE: There are a number of cases that
5 have developed, including the first one which happened
6 while I was solicitor, on first degree burglary where
7 it was allowed that the State could prove the element
8 of two or more prior convictions.

9 There have been restrictive cases since then,
10 including State vs. James, where the State in that case
11 tried to introduce eight prior convictions and again
12 the principles of undue and unfair prejudice to the
13 defendant were considered by the Court, despite the
14 fact. And in that instance, they were found -- they
15 found that that was improper and unduly prejudicial.

16 So the issue about whether the Court should
17 consider unfairness or prejudice to the defendant is
18 still a consideration the Court has to make.

19 THE COURT: And, Mr. Schwacke, you believe that
20 if I exclude that element, that that would be an issue
21 for sentencing for the Court and I would just withhold
22 a ruling on directed verdict and not present that
23 element to the jury?

24 MR. SCHWACKE: I believe that the -- my initial
25 argument, Your Honor, is that this is a sentencing

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1 enhancement provision that does not require proof of
2 that element and at this point that particular matter
3 of law has not yet been decided by either the Court of
4 Appeals or the Supreme Court, in the sense -- it's my
5 understanding from Ms. Herring-Lash that this may be
6 the only -- second case in the State to have this issue
7 raised. So, Your Honor, it is a novel one and it's up
8 to the Court to make a determination as to what the
9 legislature intended.

10 Clearly, though, the Court should be mindful of
11 its responsibilities to respect and adhere to
12 longstanding rules of evidence that have been adopted
13 by the Court and not allow the legislature to infringe
14 upon the Court's ability to set those rules; and that
15 the other argument obviously is is that this is a
16 separation of powers issue, that this provision is
17 adopted by the general assembly violated -- has
18 violated that separation of powers. And I would argue
19 that for that reason, specifically because the State
20 can prove a first offense -- or, excuse me -- a
21 criminal sexual conduct in the first degree case
22 against one of the two victims, that that would be a
23 motion as to -- that would be another reason as to why
24 the cases should not be tried together, but separate,
25 so that they could protect the rights of my client

1 going forward without being unduly prejudiced by his
2 prior record.

3 THE COURT: Thank you.

4 MS. HERRING-LASH: Yes.

5 Your Honor, I think it clearly is an element and
6 it is written to make it clear that it is an element.
7 As an example, going forward on Minor2 Watts' case: if
8 we did not prove that Mr. McCauley had been convicted
9 of a crime that would place him on the sex offender
10 registry, you would have to direct that verdict because
11 he is over the age of ten, and that -- so we would be
12 missing an element.

13 I think the courts -- the only cases that we've
14 also been able to find are the burglary cases. And
15 it's clear from those cases -- and the court addressed
16 in I think Hamilton, or it may have been Simmons, that
17 the legislature clearly made a decision to make the
18 burglary issue an element, rather than a sentence
19 enhancement, and the court said that it's beyond the
20 court's province to question a legislature enactment or
21 the wisdom of a legislature enactment.

22 The way that the burglary cases have handled the
23 issue is a limited instruction by the Court that the --
24 for purposes -- that the fact that he's on the sex
25 offender registry is limited to an element of the crime

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1 and not to be considered as evidence of him committing
2 this offense. I think that that's how they've
3 addressed it with a limited instruction.

4 The other thing that we have agreed to do is not
5 place into evidence that what his convictions are but
6 simply that he's on the sex offender registry, which is
7 the 403 analysis that I was able to find from reading
8 other cases. But there's no way to really read the
9 statute without reading that it is an element. If the
10 court had wanted it to be a sentencing enhancement, it
11 could have clearly done that by saying second offense
12 would bring the -- would bring the sentencing up. But
13 it didn't. It just said if -- it included eleven,
14 twelve, thirteen, and fourteen, and fifteen-year-olds,
15 under CSC first, in those situation.

16 THE COURT: Ms. Herring-Lash, why did the State
17 elect to charge under the A-2 provision? Or should I
18 even be concerned with that analysis?

19 MS. HERRING-LASH: Well, I think that it --
20 there are two reasons.

21 One, of course it makes it a first degree for
22 Minor2 Watts. Had we gone forward with his case as a
23 second degree, it would have been zero to twenty. With
24 him being first degree, it is ten to thirty. And I
25 think that that question was kind of handled in Chittam

1 [phonetic] where they went with -- the case went forward
2 as a criminal -- excuse me -- burglary first degree
3 based on two priors and the Court clearly said the State
4 can make that decision rather than going forward with
5 burglary based on nighttime.

6 And of course it makes the case stronger because
7 of the element. And I think that was the legislative
8 intent, to make sure that people who have violated the
9 criminal sexual conduct statutes in the past do get more
10 punishment.

11 But Chittam -- the Chittam [phonetic] court did
12 address that under the burglary. But I think that is
13 analogous when they had another option, nighttime, they
14 chose two priors and the court said that was okay.

15 THE COURT: All right.

16 MR. SCHWACKE: Your Honor?

17 THE COURT: Yes?

18 MR. SCHWACKE: Just in response to that, the
19 State has yet an additional option. And also understand
20 that they have noticed this as a life without parole,
21 with the appropriate notice under that statute, that
22 based upon your ruling on the 404 evidence coming in,
23 with the other -- all these three victims considered
24 together, they still have the possibility of getting
25 that life without parole sentence through a conviction

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1 solely upon Minor Thacker as the victim and still being
2 allowed to use the Minor2 Watts' testimony to
3 enhance their prosecution.

4 What Ms. Herring-Lash said in her argument to you
5 just now was, yeah, it makes our case stronger to have
6 that prior conviction in. And you were a prosecutor, I
7 was a prosecutor, they are prosecutors, and obviously we
8 know why they're arguing, how they're arguing, and why
9 I'm arguing why I'm arguing.

10 In the one thing in the case that has been cited
11 by the State, Old Chief: Old Chief stands for the
12 proposition that the Court needs to explore alternatives
13 to proof elements if they, in fact -- is a way to
14 proceed to the same result without violating the
15 constitutional rights and long-settled rules of evidence
16 to prevent an undue result happening to him based on
17 prior -- or prejudice, undue prejudice, based upon his
18 prior conviction.

19 THE COURT: All right. This Court is in a very
20 unique position because there is not directly a case on
21 point and so I've had to review cases relying on the
22 cases that the State and the defense have presented, as
23 well as their arguments here today.

24 My concern is, of course, ensuring that justice
25 is done between the parties here today, and evaluating

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1 whether or not and making a determination whether the
2 constitutional rights of Mr. McCauley are violated, as
3 well as making sure that -- again, that justice is done.

4 I have read thoroughly the cases that have been
5 presented and discussed here today. I have read the
6 statute, 16-3-655: a person is guilty of a criminal
7 sexual conduct with a minor in the first degree if a --
8 excuse me -- one, the actor engages in sexual battery
9 with a victim who is less than eleven years of age; or,
10 the actor engages in sexual battery with a victim who is
11 less than sixteen years of age and the actor has
12 previously been convicted or pled guilty or nolo
13 contendere to or adjudicated delinquent for an offense
14 listed in section 23.3, 430(c) or has been ordered to be
15 included in the sex offender registry pursuant to
16 section 23-4-430(d).

17 I have weighed the prejudicial effect of
18 including the sex offender registry with the probative
19 value. I do find that the State elected to go forward
20 under the 2 provision of the statute, based upon one of
21 the victim's age.

22 I am -- I will allow, based upon I do not find
23 that the legislature intended the 2 provision to be
24 merely a sentence enhancement. As a matter of fact,
25 it's the Court's understanding that there is a

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1 difference in the statute and the sentencing. It is not
2 considered merely a sentence enhancement and I find that
3 the inclusion of the and in the 2 provision makes it an
4 element of this crime.

5 I will be giving -- I will allow the State to
6 introduce evidence only that Mr. McCauley has been
7 placed on the sex offender registry. There will be
8 given a limited instruction to the jury regarding the
9 fact that that is to be considered merely as an element
10 of the crime and for no other purpose.

11 Note your exception for the record, Mr. Schwacke.
12 Thank you.

13 MR. SCHWACKE: Thank you, Your Honor.

14 Based upon the Court's ruling there, I would ask
15 at lease for consideration by the Court to reconsider
16 its ruling in terms of the State's motion to join all
17 the indictments into a single proceeding. Naturally,
18 when they made that motion, my opposition to it would
19 indicate that the defense was actually asking for a
20 severance of those actions.

21 Your Honor, what I would ask now -- based upon
22 that ruling, I'm going to ask the Court to consider a
23 bifurcation of aspects of the trial. Your Honor, the
24 motion to bifurcate -- I'm making a motion pursuant to
25 three different rules, two of which are under the rules

1 of civil procedure, the other which is in the rules of
2 criminal procedure. Under civil rule of procedures 42-
3 D, in the Court's discretion the Court is allowed to
4 address individual trial issues in a manner that's non
5 prejudicial to either party's right to a jury trial in
6 order to assure that the result is of being a fair
7 result.

8 Obviously, on the civil side -- and I'm sure you
9 probably have done it as a judge now -- usually issues
10 of liability are separated from issues of damages. On
11 the criminal side, bifurcation is allowed in death
12 penalty trials and specifically is allowed under the
13 15-3-655 under one of its subsections.

14 So, Your Honor, the motion to bifurcate a trial
15 is addressed to the sound discretion of the judge.
16 Under Wright vs. Hyster Construction Company [phonetic],
17 the Court may order a separate trial of any separate
18 issue, always preserving to violate the right of a trial
19 by jury. And that's from 42(b) of the civil rules.
20 While that is a civil rule, I would note to the Court
21 that within the applicability sections of both the civil
22 rules and the criminal rules -- and that would be at
23 civil rule 81 and criminal rule 37 -- that any
24 procedures and practice that heretofore exists in the
25 courts of the state are deemed to live, despite the fact

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1 that there may not be a specific rule that allows it.

2 It's noted that originally the civil and criminal
3 rules in South Carolina were all part of the rules of
4 practice for the circuit courts of South Carolina. It
5 wasn't until 1985, and then again in '86, when they were
6 divided and separated. It's also noted that the
7 practice of bifurcation was a requirement of prior
8 statute and adhered to.

9 Your Honor, I would submit to Your Honor that
10 this also complies with the requirement in Old Chief, a
11 United States Supreme Court case where the court
12 considered alternatives to methods that allow all
13 aspects of the trial to continue forward. It doesn't
14 infringe upon the State's ability to prove the issues
15 you've now found that they can submit to the jury. It's
16 just a question of the timing so that it doesn't violate
17 and unduly prejudice -- because they've already told you
18 that it makes their case stronger to have it in -- it
19 allows the jury to make a determination based solely on
20 the issues of did these events happen and were they
21 committed by my client. And then if those factors are
22 determined independently of the bias, it then allows the
23 jury to hear whatever and how much ever proof the State
24 wishes to put forward. So --

25 THE COURT: Mr. Schwacke, how do you envision the

1 trial proceeding, just so that I'm clear as to -- you
2 are requesting that the trial go forward without any
3 mention or evidence admitted as to Mr. McCauley's
4 placement on the sex offender registry?

5 MR. SCHWACKE: Correct.

6 Your Honor, they've already indicated they intend
7 to call a detective with the Berkeley County Sheriff's
8 Office to say that he's on the sex offender registry.
9 That can happen at any time during the trial. They
10 simply proceed forward with their case, as it is, up to
11 the point where we've reached that is the last matter of
12 evidence. The jury -- we do closing arguments to the
13 jury without any formal resting point. Your Honor
14 instructs them on those aspects of the case. They come
15 back and on a special verdict indicate to you that they
16 have found these acts have been committed by my client
17 or not. They then go back into the -- go back into the
18 jury box. They present their evidence. We present a
19 reply, if any. You instruct them if they have found --
20 or they are now to go and deliberate as to whether or
21 not the State has proven that element. They go
22 deliberate. They come back in with a verdict on that
23 point. At that point, you have a clear determination of
24 all of the elements of the offense made by one jury and
25 then Your Honor can proceed with sentencing. That's how

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1 I would envision it.

2 THE COURT: All right. Your response?

3 MS. HERRING-LASH: Yes, Your Honor.

4 I think what you would have to do under that
5 scenario is not instruct them on the law. You couldn't
6 because if you had instructed them on the law, you would
7 have to tell them that criminal sexual conduct with the
8 first degree is a crime against a child under the age of
9 sixteen when a person is on the sex offender registry,
10 which is what he's charged with, for both Minor and
11 Minor2 So you just would not be able to tell them
12 what the charges were, to start with.

13 It's not at all analogous to a death penalty
14 case. You're not separating out an element of the
15 offense. The death penalty scenario is when you're
16 deliberating the sentence and not deliberating a
17 separate element. And I think if that were a viable
18 option, surely the burglary cases and burglary trials
19 would have had that same approach of making them find
20 the decision based on if it was a burglary before they
21 knew why it was a burglary first degree. And so it's
22 not -- the courts have had years of opportunity to
23 address that and have always gone forward. But the main
24 -- it's no different than it was yesterday. It is still
25 an element of the offense.

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1 And the part of Mr. Schwacke's argument about
2 admitting the convictions: we have already, based on
3 Old Chief, agreed not to admit those specific
4 convictions but just that he is on the sex offender
5 registry.

6 THE COURT: All right. Mr. Schwacke, your
7 response.

8 MR. SCHWACKE: Just one. I can't -- don't hold
9 it against my client because no one has thought to make
10 this motion before in connection with a burglary case.

11 THE COURT: And I'm certainly not going to
12 consider that, Mr. Schwacke.

13 MR. SCHWACKE: Thank you.

14 THE COURT: As we've noted in the previous
15 ruling, this is a novel issue and just because it has
16 not occurred before does not mean that no one has raised
17 or thought to raise this issue, and I certainly will not
18 hold that against your client.

19 MR. SCHWACKE: Thank you, Your Honor.

20 The commutative nature of the procedure that we
21 propose does allow you to instruct, ultimately, the jury
22 on the full statute and the requirement for the
23 conviction of a prior crime, Your Honor. So it's,
24 again, akin -- you talk about a death penalty and what's
25 the difference there: all of those items, it deals with

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1 not just punishment but it deals with the -- all of the
2 things that have been determined to be prejudicial or
3 potentially prejudicial against a criminal defendant in
4 that type of case. So that's why you have -- reserved
5 for any of the aggravating factors or any of the
6 mitigating factors. All of that comes in after a point
7 where the judge or a jury has -- independently of the
8 bias, or potential bias and prejudicial bias of a
9 defendant's prior record, should they not take the
10 stand. And that's why that procedure is set up that
11 way.

12 I believe with special verdict forms that the
13 Court could proceed in a manner that would allow
14 ultimately all aspects of the case to be shown and if
15 proven and found so by the jury, to result in a
16 conviction that would sustain review -- not that I'm
17 asking him to be convicted. But obviously I'm trying to
18 protect his interest here, with his prior record, and
19 survive any further challenge down the road.

20 THE COURT: Based upon the Court's previous
21 analysis that this is, in fact, an element of the crime,
22 my review of Old Chief and the cases in the state
23 delineating -- and, again, I have nothing -- no case on
24 point that interprets this particular statute so I am
25 relying on the burglary second -- excuse me -- burglary

1 first analysis as to an element in the prior
2 convictions. I believe that by including the limiting
3 instruction, by only allowing the State produce evidence
4 that Mr. McCauley is on the sex offender registry, that
5 that meets the balancing test. It is not -- it is more
6 probative than prejudicial to allow the introduction of
7 the element required.

8 Again, will be giving a limited instruction.
9 Deny your motion to bifurcate the trial as suggested.

10 Thank you, Mr. Schwacke.

11 MR. SCHWACKE: Thank you, Your Honor.

12 THE COURT: The State has indicated that you are
13 not -- with the exception to meet the element, you are
14 only going to introduce the fact that Mr. McCauley is on
15 the sex offender registry; is that correct?

16 MS. HERRING-LASH: Yes, Your Honor.

17 The person from the sheriff's department that has
18 the registry will be called to testify that he's on the
19 registry, and when he was put on there, so the jury does
20 not think he's on there for this particular offense.

21 THE COURT: All right. So with that being said,
22 I have a notice that you -- notice of intent to admit
23 prior convictions. So we do not need to address that?

24 MS. HERRING-LASH: Right.

25 THE COURT: So that motion is withdrawn at this

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1 time?

2 MS. HERRING-LASH: Yes, Your Honor.

3 THE COURT: And I also have a motion in limine to
4 exclude evidence of other sexual assaults.

5 MS. HERRING-LASH: Yes, Your Honor.

6 And the -- for the compliance with the rape
7 shield statute. Initially I filed those two because I
8 file them in every case in case the defense has
9 something they will go ahead and we can air that in-
10 camera. There --

11 I don't know of any rape shield issue, but there
12 is an issue of a prior sexual assault on Minor 2
13 that -- I don't think it falls under the case that I
14 have listed in this motion, because I do not think it's
15 a Bortner [phonetic] issue, because that would be where
16 the defense will have to prove it was false and that it
17 was close in time and that it was similar. I don't
18 think they have any proof it was a false allegation.

19 However, I do think that where the Court -- where
20 we will have to address it is under Grovenstein
21 [phonetic], which is a case that goes to knowledge.
22 Minor 2 was previously sexually assaulted by a
23 babysitter's husband, and that included both fellatio
24 and anal intercourse. It was before he knew Mr.
25 McCauley, according to what he has said. He is very

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1 clear on the distinction between who did -- you know,
2 what happened. And Mr. McCauley did have a different
3 sexual battery than just the ones that the babysitter's
4 husband had.

5 I think the Court would have to decide -- at the
6 time Minor² made this allegation against Mr.
7 McCauley, he was eleven years old. He's now thirteen.
8 I think that the Court would have to decide if he was of
9 tender enough age that he would not know those kind of
10 sexual behaviors. Like in Grovenstein [phonetic], the
11 solicitor actually argued to the jury there's no way
12 this child could have known these behaviors would have
13 existed if it not had happened to him. Of course, we
14 would never argue that, knowing that he had been exposed
15 before to fellatio and the anal penetration.

16 But even in Grovenstein [phonetic], it did say
17 there is a difference and the Court should be very
18 mindful of making a victim go through his prior
19 victimization. Grovenstein [phonetic], the victim in
20 that case, had committed a sexual assault against
21 another child and that had been kept out under the rape
22 shield statute.

23 So I do think the way to handle that, if the
24 Court finds that he was of such tender years that the
25 jury would think there was no other way for him to have

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1 had that knowledge had it not been for the prior assault
2 -- if the Court finds that, then we would ask that any
3 mention of the prior assault be just extremely limited
4 so that the child would not have to recount another
5 sexual assault that was committed against him.

6 There was also, as he talks about in his
7 interview, another babysitter's son had put a pen in his
8 butt previously, a couple of years before '07. That is,
9 we would argue, not similar enough to fall under the
10 scenario where it would attribute knowledge of fellatio
11 or penal anal intercourse. But in all -- the situation
12 with the babysitter's husband -- Mark is his name --
13 that is very similar. And so we would ask that if you
14 find that he was of tender enough years, that at least
15 we have some limited way to present that.

16 THE COURT: Mr. Schwacke?

17 MR. SCHWACKE: Your Honor, we're kind of arguing
18 something that may or may not happen, because obviously
19 we're talking about does the alleged victim have a fund
20 of knowledge that they wouldn't otherwise have.
21 Certainly it becomes relevant if there's other things
22 that happened. I don't know. I don't think that kind
23 of testimony comes from the victim and I don't think I
24 cross-examination [phonetic] the victims on that point.
25 They have a number of experts lined up to call and

1 that's where I would expect it to potentially become an
2 issue, whatever they're going to say, how they're going
3 to answer questions. At that point I think it certainly
4 could become relevant to go into as to that.

5 I just want to make sure because it was my
6 understanding yesterday that they were talking about it
7 was Minor Thacker that had alleged this incident with
8 Mark.

9 But you're saying it was Minor 2

10 MS. HERRING-LASH: It's Minor 2

11 MR. SCHWACKE: And then Minor 2 -- I actually
12 asked Minor 2 about it on the stand yesterday, has
13 he previously been through the videotape process and did
14 he tell anybody anything happened then. I think that's
15 potentially important, Your Honor, because that happened
16 in March of 2007, within the indictment frame -- time
17 frame. They have the incident -- they want to prove it
18 from June 1st, 2006, up through January the 19th of
19 2009.

20 And so if he's having -- and, again, this might
21 come from anybody who testifies about interrogation
22 techniques or -- but, again, I think it could
23 potentially become relevant, particularly because they
24 have alleged a time frame in which he was interviewed,
25 asked the normal questions that you would expect to have

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1 -- be asked in the course of the Dorchester children's
2 interview: has anyone ever touched you here, has anyone
3 ever done this to you, has anyone ever made you do
4 anything. Those questions are all part of that
5 interview. So I think it could become relevant,
6 depending upon how the trial proceeds.

7 THE COURT: All right. I'm going to withhold
8 ruling or any further argument until --

9 And, Mr. Schwacke, if you at some point determine
10 that it becomes relevant, I will ask you to approach.
11 Or just ask the Court to excuse the jury and I will hear
12 you fully on your argument.

13 MR. SCHWACKE: Thank you.

14 THE COURT: Thank you.

15 Anything further? We're getting close to 10:00.
16 The jury is close. Is there anything before that we
17 must address before the jury comes in?

18 MS. WILLIAMS: Your Honor, just in terms of
19 Minor 1 Watts, we have decided to not go forward on the
20 charges that we would have to prove using him as a
21 witness. That basically eliminates 2009-GS-08-2127 and
22 2128. The only charge left regarding Minor 1 is
23 unlawful conduct, and that can be proven by other
24 witnesses who witnessed him being beaten and another
25 witness who Mr. McCauley told that he beat him.

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1 We also are electing not to go forward on
2 indictment 2009-GS-08-2130 regarding Minor because
3 although Minor has disclosed anal penetration in the
4 past, he has not disclosed it in the courtroom during
5 the hearing and that indictment specifically deals with
6 penile anal penetration.

7 So we would just not go forward on those three
8 indictments.

9 THE COURT: So just so I'm clear, we're going
10 forward on 2009-GS-08-2123 --

11 MS. WILLIAMS: Yes, Your Honor.

12 THE COURT: 2126, 2125, 2124, 2131, 2132, and
13 2133.

14 MS. WILLIAMS: And 2129, which is just unlawful
15 conduct, with Minor 1

16 THE COURT: And 2129. I apologize. It got stuck
17 in the stack.

18 MS. WILLIAMS: Yes, Your Honor. That's correct.

19 THE COURT: All right. So the State is not going
20 forward on 2127, 2128, and 2130; is that correct?

21 MS. WILLIAMS: That is correct, Your Honor.

22 Your Honor, there was one last issue that --

23 THE COURT: Yes, ma'am.

24 MS. WILLIAMS: -- I forgot to address.

25 Julie Barnes is a witness in this case. She is

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1 in the courtroom because she -- I have not been able to
2 make her or her attorney understand the rule of
3 sequestration. We are going to be asking that the
4 witnesses be sequestered. I think Mr. Schwacke would
5 probably also ask that.

6 Not only is she a witness in this case, but her
7 presence is very intimidating for the children. I
8 called her attorney this morning and tried to explain to
9 him why she could not sit in the courtroom and watch the
10 trial when she is going to be called to testify, and he
11 said that she might take the fifth.

12 We don't know what she's going to do when she
13 gets to the witness stand, and we would ask out of an
14 abundance of caution that she be excluded from the
15 courtroom because she's a witness.

16 I think her attorney, Mr. Ruemelin, was going to
17 try to come up here. He was in his office in Mount
18 Pleasant this morning. But I think we just need to deal
19 with that before the first witness is called, because
20 she's sitting in the courtroom now.

21 THE COURT: All right. As to the rule of
22 sequestration, any position, Mr. Schwacke?

23 MR. SCHWACKE: I would be asking for it, Your
24 Honor.

25 THE COURT: All right. And, State, I need you to

1 -- other than Ms. Barnes, is there any other -- do you
2 have any other witnesses in the courtroom at this time?

3 MS. WILLIAMS: Just Rene Ramsey, who is the
4 investigator on the case, Your Honor. We would just ask
5 that she be excluded from the Rule.

6 THE COURT: And, Mr. Schwacke, do you have any
7 potential witnesses in the courtroom at this time?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Ms. Barnes, the rule of sequestration
10 has been invoked and what that is --

11 Ms. Williams, I can't see Ms. Barnes.

12 MS. WILLIAMS: I'm sorry.

13 THE COURT: Thank you.

14 Ms. Barnes, if you could just come forward. Stay
15 right there. That's fine. Are you Julie Barnes?

16 MS. BARNES: Yes.

17 THE COURT: You have been listed as a potential
18 witness in this case and simply what the rule of
19 sequestration is intended to do -- and I am going to
20 invoke the rule of sequestration at the request of both
21 parties -- is it is to keep witnesses out of the
22 courtroom, until they have testified, to prevent them
23 from hearing the testimony before them and adjusting
24 their testimony at that time. It is a very common
25 procedure that we use in almost every jury trial.

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1 So the rule has been invoked. I need you to
2 remain outside of the courtroom until you are called to
3 testify. The solicitor's office can give you some
4 information as to when you may be called to testify so
5 you do not have to sit outside. But I understand you
6 may be called as a witness, so you are on call and under
7 subpoena.

8 Is that correct, Ms. Williams?

9 MS. WILLIAMS: Yes, Your Honor, that is correct.
10 And we would anticipate calling her tomorrow.

11 THE COURT: All right. And, Ms. Barnes, what --
12 that puts another additional duty on a witness. You may
13 not just stand outside the courtroom -- and I tell this
14 to all the witnesses who may be called. You can't stand
15 outside the courtroom and ask a witness as they get off
16 the witness stand what did you testify to or what
17 questions were you asked.

18 Do you understand that?

19 MS. BARNES: Yes.

20 THE COURT: All right. Thank you, Ms. Barnes.
21 You are excused. Thank you.

22 [Whereupon, Ms. Barnes exits the courtroom at
23 9:41 a.m.]

24 MS. WILLIAMS: Your Honor, I think we're just
25 going to inquire as to who that other witness is, just

1 to make sure she's not a witness for the State.

2 THE COURT: Ma'am, are you a witness in this
3 case?

4 MS. SIMMONS: No, ma'am.

5 I'm guardian ad litem on the family court
6 proceedings. My name is Sessions.

7 THE COURT: All right. What is your name?

8 MS. SESSIONS: Sessions.

9 THE COURT: And, Ms. Sessions, are you involved
10 in this case at all?

11 MS. SESSIONS: I am only involved in the family
12 court case.

13 THE COURT: Any indication that she may be called
14 as a potential witness, Ms. Herring-Lash?

15 MS. HERRING-LASH: It could happen in rebuttal or
16 reply, we just don't know. So out of an abundance of
17 caution, I think she should not be in here.

18 THE COURT: All right. Ms. Sessions, the same
19 admonishment to you. The rule of sequestration has been
20 invoked. And as a guardian, you probably know -- are
21 very familiar with what that means. But, again, out of
22 an abundance of caution, the State indicates that you
23 could possibly be called due to your involvement in this
24 case and I am going to request that you remain outside
25 of the courtroom throughout the progression of this

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1 trial. Thank you, Ms. Sessions.

2 [Whereupon, Ms. Sessions exits the courtroom at
3 9:42 a.m.]

4 THE COURT: Anything further?

5 MS. WILLIAMS: Nothing further from the State,
6 Your Honor.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Any other procedural matters?

10 MS. WILLIAMS: No, Your Honor. Nothing from the
11 State.

12 MR. SCHWACKE: They did have a motion dealing
13 with the videotape, and I don't know if they have made a
14 decision whether to admit those or seek to admit those.

15 THE COURT: Have you made a determination if
16 you're going to use the videotape?

17 MS. WILLIAMS: Your Honor, we have it. We will
18 make a determination after the first few witnesses
19 testify and then we will advise Mr. Schwacke in a timely
20 manner. And the Court.

21 THE COURT: And at that point, we will have the
22 hearing that is required by statute and so we will break
23 appropriately. I would like to stay --

24 [Off the record momentarily]

25 THE COURT: Everyone take your -- take a break if

1 anyone needs to use the restroom or anything of that
2 nature. We'll take five minutes.

3 MR. SCHWACKE: Thank you, Your Honor.

4 THE COURT: Thank you.

5 [Whereupon, a recess is taken from 9:43 a.m. to
6 10:06 a.m.]

7 MS. HERRING-LASH: Judge, just one matter.

8 Mr. Ruemelin, who is Julie Barnes' attorney, is
9 here and I think he wanted to ask the Court.

10 THE COURT: Yes, sir.

11 MR. RUEMELIN: Ms. Barnes is charged with three
12 counts that are associated with this trial. Her case
13 has not been up for trial yet. She's been subpoenaed as
14 a witness in this case but plans to take the fifth and
15 not testify in this matter.

16 As it relates to her case, and these are her
17 children, she would like to be present in court to
18 observe. I think if she is going to take the fifth
19 amendment and not testify, she technically is not a
20 witness and should be allowed to observe.

21 I understand the issue with the children
22 testifying. My offer is that she not be present for the
23 testimony of the children but that she should be allowed
24 to observe the other testimony. And she's still here at
25 the courthouse, although I believe she's been instructed

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1 not to come into the building.

2 THE COURT: No, sir. She was instructed not to
3 come into the courtroom while any testimony is taking
4 place.

5 MR. RUEMELIN: Okay.

6 THE COURT: This Court has ruled under 615 of the
7 Rules of Evidence and I am sequestering all witnesses.
8 Ms. Barnes is listed as a potential witness and the rule
9 of sequestration has been invoked. Thank you.

10 All right. Let's bring in the jury.

11 [Whereupon, the jury enters the courtroom at
12 10:08 a.m.]

13 THE COURT: Thank you. Please be seated.

14 Good morning, ladies and gentlemen. Did every
15 juror comply with the Court's instructions given at the
16 close at the evening hour? If you did not comply,
17 please stand.

18 [Whereupon, there is no response]

19 THE COURT: Thank you. May the record reflect
20 that all jurors have complied with the Court's
21 instructions given at the evening hour.

22 Good morning again, ladies and gentlemen. As you
23 have noticed, you have been given note pads. You will
24 be allowed to take notes during the progress of this
25 trial. I always caution jurors some of us were much

1 better note-takers in school than others. Your notes
2 are your notes. One juror's notes are no more accurate
3 or correct than another juror's notes. We will collect
4 your note pads at the evening hour and return them back
5 to you. They will be kept locked and separate. No one
6 will be reviewing your notes over the evening hour.
7 Ladies and gentlemen, I always caution jurors, as well,
8 as while you are taking notes you have the tendency
9 sometimes to look down and you may miss what is going on
10 on the witness stand. So with those caveats, you will
11 be allowed to take notes.

12 Ladies and gentlemen, once again, just as a
13 reminder, please come in. All the parties involved in
14 this case, as well as the members of the audience, will
15 be standing out of respect for your new position as
16 judges of the facts. So please come in and take your
17 seat.

18 Ms. Crosby, I understand that you have been
19 selected as the foreperson of this trial -- of the jury.
20 As such, you are the jury spokesperson here in court.
21 If any of your members need an additional break or they
22 cannot hear, if you would just let your foreperson know
23 and she will alert the bailiff and they -- we will make
24 the necessary arrangements. As such, it is important
25 that you always maintain that seat.

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1 To my two alternates, Mr. Elerby and Mr.
2 Buffington, you may sit in either one of those seats but
3 I need to know that my alternates are on those two end
4 seats. So you may alternate in the alternate chairs but
5 I need you to always maintain in those seats.

6 The rest of you, with the exception of those
7 three seats, may sit wherever you choose.

8 Ladies and gentlemen, I will now administer the
9 oath to be given to you.

10 Madam Clerk.

11 THE CLERK OF COURT: Ladies and gentlemen of the
12 jury, please stand and raise your right hand to be
13 sworn.

14 [Whereupon, the jury is duly sworn by the clerk
15 of court as follows: you shall well and truly try and a
16 true deliverance make between the State of South
17 Carolina and the defendant at the bar whom you shall
18 have in charge and a true verdict render according to
19 the evidence, so help you God]

20 [Whereupon, jurors respond]

21 THE CLERK OF COURT: Please be seated.

22 THE COURT: Thank you.

23 If there was any member of the jury that could
24 not take the oath, please stand.

25 [Whereupon, there is no response]

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1 THE COURT: Thank you. All members of the jury
2 have taken the oath.

3 Ladies and gentlemen, the case that we are about
4 to try is the case of the State vs. Ronald McCauley.

5 Before we begin this trial, I want to tell you
6 that this trial probably will be different from what you
7 might expect. Most people don't have the opportunity to
8 come to court as you are doing now and most people
9 think, from watching television or movies or reading
10 books, that trials are full of high drama, intense
11 action and riveting circumstances.

12 While all of these things may be true during this
13 trial, please remember this trial is not for your
14 entertainment. It is a fundamental part of our
15 democracy, a search for the truth, in an effort to make
16 sure that justice is done between the parties before you
17 here today. Searching for the truth is often slow,
18 deliberate, and repetitive, the opposite of what you may
19 have seen on movies or on television or read in books.

20 This courtroom is a place of honor. It is
21 dedicated to the protection and preservation of citizens
22 rights through what many have called the greatest
23 justice system ever created. The attorneys that are
24 appearing before you are advocates for the parties that
25 they represent, but, first and foremost, they are

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1 officers of this court. They are sworn to uphold the
2 integrity and the fairness of our judicial system and to
3 help you in the search for the truth. You should expect
4 them to be professional, ethical, and competent in the
5 representation of their client's interest.

6 And remember that you have just taken an oath to
7 try this case and you are also expected to be
8 professional, ethical, and competent. Thank you again
9 for accepting this most important responsibility of jury
10 service and for your contribution to our justice system.

11 What I now say is intended to serve as an
12 introduction to the trial of this case. These remarks
13 are not a charge on the law. I will instruct you on the
14 law applicable to this case at the end of the trial
15 before you retire to consider your verdict. This is
16 merely an explanation of the procedure that we will
17 follow so that you may better understand what is
18 happening.

19 The defendant is charged by an indictment filed
20 with this Court. Mr. McCauley has been charged in
21 indictment 2009-GS-08-2123 with the crime of criminal
22 sexual conduct with a minor first degree, indictment
23 2009-GS-08-2124 with the crime of criminal sexual
24 conduct with a minor first degree, indictment 2009-GS-
25 08-2125, committing or attempting a lewd act upon a

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1 child; 2009-GS-08-2126, unlawful conduct towards a
2 child; 2009-GS-08-2129, unlawful conduct towards a
3 child; 2009-GS-08-2131, criminal sexual conduct with a
4 minor first degree; 2009-GS-08-2132, committing or
5 attempting a lewd act upon a child; 2009-GS-08-2133,
6 unlawful conduct towards a child. The elements of those
7 crimes will be explained to you later. This indictment
8 is simply the charge by which the case is brought into
9 this court. It is not, in any sense, evidence of the
10 allegations that it contains.

11 The defendant has pled not guilty to each
12 indictment. The State therefore has the burden of
13 proving each of the elements of the indictment beyond a
14 reasonable doubt. It will be your duty, ladies and
15 gentlemen, to determine whether the State has met that
16 burden.

17 Your purpose as jurors is to find and determine
18 the facts. You are the sole judge of the facts. If at
19 any time I make any comment regarding the facts, you
20 must disregard it. You are to determine the facts from
21 the testimony you hear and any other evidence that is
22 introduced in court. It is up to you to determine the
23 inferences which you feel may be properly drawn from the
24 evidence. It is especially important that you perform
25 your duty of determining the facts diligently and

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1 conscientiously because ordinarily there is no way to
2 correct an erroneous determination of the facts by a
3 jury.

4 On the other hand, and with equal emphasis, the
5 same law that makes you the judges of the facts makes me
6 the judge of the law. The law as given by this Court is
7 the only law that you may consider. You must accept it
8 and follow it, even though you may disagree with me. I
9 cannot tell you what the facts are and you cannot
10 disagree with me about what the law is or what the law
11 should be. Your job is to take the law as I give it to
12 you, apply it to the facts as you find them from the
13 testimony of the witnesses and any other evidence that
14 is introduced. After doing that, you will render your
15 verdict, a true and just verdict, under the solemn oath
16 that you took -- just took as jurors.

17 Until I advise you to begin your deliberations,
18 you must not discuss this case with anyone. That
19 includes your fellow jurors, your friends, your family
20 members, and anyone else. This includes discussions
21 that are face-to-face, as well as those by telephone,
22 e-mail, texting, blogging, or any other method of
23 communication. After this case is submitted to you, you
24 must discuss it only in the jury room with your fellow
25 jurors.

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1 The attorneys and the parties in this case have
2 been advised that they are not to talk to you at all.
3 So if you should see them at lunch or in the hallways
4 and they don't speak to you, they are not being rude,
5 they're merely following the Court's instruction.

6 During the trial do not read, watch, listen to
7 any news accounts, should there be any, regarding this
8 case and do not do any independent investigation. It is
9 important that you keep an open mind and not decide any
10 issue in this case until all of the evidence has been
11 presented, the parties have made their closing
12 arguments, and I have instructed you on the law
13 applicable to this case.

14 It is your solemn responsibility to determine the
15 guilt or innocence of the defendant and your verdict
16 must be based solely on the evidence as it is presented
17 to you in this trial and on the law as I instruct during
18 and at the close of the trial.

19 In just a moment the solicitor will make what is
20 called an opening statement in which the solicitor will
21 explain to you the issues in this case, or at least what
22 the solicitor thinks the issues are. The attorney for
23 the defendant may also make an opening statement,
24 although he is not required to do so. What the
25 attorneys tell you in their opening statements is not

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1 evidence in this case. It is only their contention as
2 to what the issues are. The evidence in this case will
3 be presented to you from the testimony of sworn
4 witnesses from the witness stand, as well as any
5 exhibits that may be introduced during this trial.

6 From time to time you may hear one of the lawyers
7 say something like, Your Honor, I believe we have a
8 question of law or a matter of law to discuss, or I
9 might find it necessary to excuse you from the
10 courtroom. Please don't speculate as to what we are
11 discussing. The reason for this is because you are the
12 judges of the facts in this case and sometimes while I
13 am discussing matters of law with the attorneys, it may
14 be necessary for me to make some comment as to the facts
15 in connection with ruling whether or not a particular
16 law applies. I am not supposed to tell you what I think
17 the facts are so I will excuse you from the courtroom
18 for a short while so that in no way will you be
19 influenced by anything that I might say or do in
20 connection with the facts.

21 In determining what the true facts are in this
22 case, you must decide whether or not the testimony of
23 the witnesses is believable. It will be my
24 responsibility to rule as a matter of law as to whether
25 certain testimony is admissible at all but once this

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1 testimony is admitted, whether or not you believe it is
2 solely for you to determine.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of any witness,
5 the bias of any witness, the prejudice of any witness,
6 the opportunity for that witness to have seen the
7 matters and things about which the witness may testify,
8 as well as the way the witness acts on the witness
9 stand. You have a right to consider anything that is in
10 the record that will help you evaluate the testimony of
11 the witnesses. That means it is your duty to pay close
12 attention to the witnesses, to observe the witnesses, to
13 listen to the witnesses, as well as to pay close
14 attention to the attorneys and to the Court. Please do
15 not let your thoughts wander but give strict attention
16 to all of the testimony in this case so at the end of
17 the testimony, after the arguments of counsel, you will
18 be in a position to determine what the true facts are in
19 this case, apply the law to those facts, and render a
20 true and just verdict.

21 Ladies and gentlemen, please give your attention
22 to Madam Solicitor.

23 MS. WILLIAMS: Thank you, Your Honor. May it
24 please the Court, counsel for the defense.

25 - - -

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OPENING STATEMENT

1
2 MS. WILLIAMS: How far would a mother go to
3 protect her children? How far would a mother go to keep
4 her children safe from a registered sex offender? The
5 shocking truth in this case is not very far. The
6 shocking truth in this case is that you're going to hear
7 about a woman named Julie Barnes that did absolutely
8 nothing to protect her children from this man, Ronald
9 McCauley, a registered sex offender.

10 Julie Barnes and Ronald McCauley met when they
11 both worked for the same taxicab company. Sometime in
12 late 2006 or early 2007, Julie Barnes began to bring the
13 defendant around her three young sons. In fact, she
14 gave Mr. McCauley unlimited access to her sons. It
15 wasn't long before he became the primary disciplinarian
16 in the home, started taking the kids to his trailer,
17 sometimes as frequently as three times a week, where
18 they would spend the evening with him there without
19 their mother. He would also spend the night at their
20 house. Sometimes Ms. Barnes would be there, sometimes
21 she wouldn't.

22 During this time, two of the boys were subjected
23 to ongoing sexual assaults. Three of her sons were
24 subjected to physical abuse. You're going to hear
25 witnesses in this case that will testify that the only

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1 reason they didn't think it was strange that he spent so
2 much time with these little boys was because he lied.
3 He told people that two of the kids were his, which is
4 entirely not true.

5 Now, some of you may have watched programs on
6 television like NCIS or CSI, Law and Order. And in
7 those shows usually the case is cracked with forensic
8 evidence, miraculous forensic evidence. That's not
9 going to happen in this case. In this case, by the time
10 the children were examined there was no opportunity to
11 collect any meaningful forensic evidence. And you're
12 going to hear witnesses testify about that. You'll hear
13 from a sexual assault nurse examiner who attempted to
14 collect such evidence, and a forensic scientist from the
15 South Carolina Law Enforcement Division. And she'll
16 talk about the attempts they made to salvage this kind
17 of evidence and why they were unable to do so.

18 Nonetheless, you will hear compelling testimony.
19 You will hear testimony from the victims themselves.
20 Two little boys are going to get up on that stand and
21 they're going to tell you what happened to them, and
22 they're going to have to relive the horror of what
23 happened to them.

24 Minor 2 Watts was ten years old when the
25 defendant came into his life, and he endured anal

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1 penetration, oral sex that was performed on him, being
2 forced to perform oral sex on the defendant. His twin
3 brother, Minor1 who is mentally impaired, endured
4 physical beatings. Their little brother Minor3 who was
5 just eight years old when the defendant was in his life,
6 endured the defendant forcing him to perform oral sex on
7 him and the defendant performing oral sex on Minor3 All
8 three boys endured beatings. All three were afraid of
9 the defendant and were told not to tell.

10 Now, the State has the burden of proof in this
11 case and we're going to meet it. The State has to prove
12 all of the elements of each statute that is charged.
13 Mr. McCauley is charged with -- he's charged with
14 criminal sexual conduct in the first degree. And in
15 order to prove that statute or the elements of that
16 statute, the State is going to have to prove that, [a],
17 the child that he molested was under the age of sixteen,
18 that Mr. McCauley was a registered sex offender, and
19 that he committed a sexual battery on the child. Sexual
20 battery is defined as fellatio, which is oral sex, some
21 type of penetration which in this case would be anal sex
22 with Minor2 Watts. And we will prove each of those
23 elements.

24 Mr. McCauley is also charged with lewd act upon a
25 child. And, actually, that statute is called the

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1 attempted or completed lewd act on a child. And what
2 that means is that Mr. McCauley touched the body or had
3 them touch his body for sexual gratification. And when
4 you hear these children talk about what happened to
5 them, it will be clear that those elements have been
6 met.

7 In addition to that, Mr. McCauley is charged with
8 unlawful conduct toward a child. What the State has to
9 prove for that is that he put them in harm or that he
10 hurt them.

11 At the conclusion of the trial, the judge will go
12 through the specific elements. And you can look at the
13 evidence, hear the evidence, and determine if we've met
14 our burden.

15 All three children were beaten repeatedly by the
16 defendant, sometimes with a belt -- actually, two
17 different belts: one belt was described as having
18 little metal pyramids on it and the other one just holes
19 all the way down. They were also punished by making
20 them stand in a corner holding cans above their heads
21 for lengthy periods of time. If they dropped the cans,
22 they had to start their time all over again.

23 Now, ladies and gentlemen, the most important
24 thing you bring into this process is common sense, gut
25 feelings, life experience. As you listen to the

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1 testimony from this stand -- you are the sole judges of
2 -- evaluate the testimony. Use your common sense. At
3 the conclusion of the trial, we are going to ask for
4 justice for these kids. We're going to ask you to find
5 Mr. McCauley guilty and make him accountable for each of
6 the charges.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: Thank you, Your Honor.

9 - - - - -

10 OPENING STATEMENT

11 MR. SCHWACKE: It occurred to me, listening to
12 the judge's instruction, that one thing that you
13 probably really don't catch as jurors here for the first
14 time is that what we as attorneys say doesn't matter.
15 What matters is what you determine individually and then
16 as a whole about what happened, based upon evidence that
17 comes from the witness stand. It doesn't come from us.
18 It doesn't come from the podium. It comes from up
19 there.

20 So what we ask you to do in this case is to
21 listen, because you heard a list of some pretty horrible
22 crimes that Mr. McCauley has been charged with. And
23 it's got to be hard, sitting there, not to start to form
24 a judgment. But that's your oath, to sit there and
25 listen to all of the evidence before you start to make

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1 up your mind one way or the other.

2 So what has Mr. McCauley done? He's accused of
3 all the crimes that you've just heard described to you
4 by the State. And according to the State, they're going
5 to say that this happened between the dates of June the
6 1st of 2006, clear through January the 19th of 2009. So
7 the first thing that you would consider is that that
8 time frame encompasses one thousand three hundred and
9 eighty-six, seven hundred and twenty minutes. And there
10 is no possible human way for anyone to account for that
11 much time in their life. So alibi is not a question
12 here. Out.

13 And then you're faced with the burden of trying
14 to disprove that something happened, which the law says
15 no one can ever be expected to do. No one can disprove
16 anything. So if you can't disprove it -- because the
17 law says the defendant doesn't have to -- who has to
18 prove it? And that would be the State. And the State
19 has to prove it beyond a reasonable doubt. And that's
20 what we ask you and invite you to listen to in the
21 course of this case, words that come from that stand.

22 Mr. McCauley has pled not guilty. That means I
23 didn't do it, it didn't happen. And until there is
24 proof of that beyond a reasonable doubt that you
25 determine -- and that doesn't happen now, it didn't

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1 happen when the judge read the list, it didn't happen
2 when Ms. Williams gave her opening statement to you. It
3 only happens at one point during this entire trial, and
4 that's when you go into the jury room and deliberate.
5 So for right now, if you're starting to have that
6 sneaking suspicion that this is a bad man on trial here,
7 you need to get rid of it. Your oath says you can't
8 have that suspicion. If you have it, you need to let
9 the Court know now. Otherwise, we're expecting you to
10 honor your oath. And we're asking you because we're
11 confident in a not-guilty verdict.

12 Mr. McCauley has done the only thing he can do at
13 this point, and that's to say it didn't happen, I'm not
14 guilty. And he selected twelve out of the fourteen of
15 you, that will decide this, as representatives from this
16 community to sit in judgment today, and that it is his
17 hope and his belief that you will find him not guilty.

18 THE COURT: Call your first witness.

19 MS. HERRING-LASH: The State would call

20 Minor 2 Watts.

21 [Whereupon, Minor 2 Watts comes forward]

22 MS. HERRING-LASH: Go right up there where that
23 lady with the Bible is standing.

24 THE CLERK OF COURT: Please raise your right
25 hand, place your left hand on the Bible.

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1 [Whereupon, Minor2 Watts is duly sworn by
2 the clerk of court as follows: do you solemnly swear or
3 affirm the testimony you will give the Court in the
4 trial of this case will be the truth, the whole truth,
5 and nothing but the truth, so help you God]

6 THE WITNESS: Yes, ma'am.

7 THE CLERK OF COURT: Please be seated.

8 [Whereupon, Minor2 Watts takes the witness
9 stand]

10 THE CLERK OF COURT: State your full name and
11 spell your last name for the record.

12 THE WITNESS: Minor2 Watts. W-A-T-T-S.

13 - - - - -

14 Minor2 WATTS,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Minor2 what is your age right now?

20 A. Thirteen.

21 Q. What is your birth date?

22 A. --

23 Q. And what school do you go to?

24 A. Middle.

25 Q. And what grade are you in?

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1 A. Seventh.

2 Q. Do you like school?

3 A. Yes, ma'am.

4 Q. What's your favorite thing about school?

5 A. Lunch.

6 Q. Lunch.

7 Minor2 who do you live with now?

8 A. Joanne Dupree.

9 Q. And what relation is Joanne Dupree to you?

10 A. Foster parents.

11 Q. And before you lived with Ms. Dupree, did you
12 live in another foster home?

13 A. Yes, ma'am.

14 Q. Do you remember what their name was?

15 A. Ms. Dot [phonetic] and Mr. Darrien.

16 Q. And before you lived with those foster parents,
17 where did you live?

18 A. Callen Lacy [phonetic]

19 Q. Do you know what Callen Lacy is?

20 A. A group home or an emergency shelter.

21 Q. Or an emergency shelter?

22 A. [No response]

23 Q. And before you went to Callen Lacy, where did you
24 stay?

25 A. Ms. Twomey's house.

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- 1 Q. And what was Ms. Twomey?
2 A. She was a friend of my mom's.
3 Q. Was she kind of like a foster placement?
4 A. Yes, ma'am.
5 Q. And before you went to stay with Ms. Twomey, who
6 did you live with?
7 A. My biological mom.
8 Q. And what is your biological mom's name?
9 A. Julie Barnes.
10 Q. And when you lived in Julie Barnes's house, who
11 all lived there?
12 A. Me; Minor1 my brother; and Minor3 my other brother;
13 and every other weekend, Alley.
14 Q. And who is Alley?
15 A. My sister.
16 Q. Okay. Let's go over it. Minor is your brother.
17 How old is Minor1
18 A. He is thirteen..
19 Q. And is he your twin?
20 A. Yes, ma'am.
21 Q. And Minor is your other brother. How old is he?
22 A. I think ten or eleven right now.
23 Q. And what about Alley? Do you know how old she
24 is?
25 A. Fifteen.

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1 Q. And you said Alley just visited?

2 A. Yes, ma'am.

3 Q. And do you know what year it was, or the date, or
4 the grade, when you had to leave your mom's house?

5 A. Around the middle -- the last day of November of
6 2008.

7 Q. Of 2008?

8 A. Yes, ma'am.

9 Q. And so since November of 2008, you have been at
10 the different foster homes?

11 A. Yes, ma'am.

12 Q. When you were living at your mom's house, did law
13 enforcement come there?

14 A. Yes, ma'am. Two. Two officers.

15 Q. Okay. And is that -- did they take you away, at
16 some point, from your mom?

17 A. You mean the first night they came?

18 Q. Yeah. Did they take you away the first night?

19 A. No, ma'am.

20 Q. Did they come back?

21 A. Not the officers.

22 Q. Who came back?

23 A. Miss -- I done forgot her name --

24 Q. Do you know --

25 A. -- but she was my first caseworker.

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- 1 Q. And by caseworker, what agency are you talking
2 about?
- 3 A. DSS.
- 4 Q. And did she then take you away?
- 5 A. Yes, ma'am.
- 6 Q. Why did you have to leave your mom's house?
- 7 A. Because I was sexually abused.
- 8 Q. And who were you sexually abused by?
- 9 A. Mack McCauley.
- 10 Q. And do you -- what relation were you to Mack
11 McCauley? How were you around him?
- 12 A. Babysitter.
- 13 Q. He was your babysitter?
- 14 A. And my mom's friend.
- 15 Q. Now, you said he is the person who sexually
16 abused you?
- 17 A. Yes, ma'am.
- 18 Q. Then why did you have to leave your mom?
- 19 A. Because she did not protect me.
- 20 Q. And when you left, you went to Ms. Twomey's
21 house?
- 22 A. Yes, ma'am.
- 23 Q. Now, Minor 2 you will need to explain to the
24 jury what Mr. McCauley did.
- 25 A. Yes, ma'am.

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1 Q. Where were you when he sexually abused you?

2 A. Both my house and at his trailer.

3 Q. Let's talk about your house. What was your house
4 like? How many bedrooms did you-all have?

5 A. Three bedrooms, and then we had just turned the
6 garage into a bedroom, so, technically, four.

7 Q. And who all slept in the rooms?

8 A. Me, Minor1 and Minor slept in the same room. We
9 had two sets of bunk beds. I slept on top of one and Minor
10 slept on the bottom of the one. Me and Minor shared one;
11 and Minor slept on his own on the bottom; and Alley slept in
12 her own room; and my mom slept in her room.

13 Q. Did Mack McCauley ever spend the night at Julie
14 Barnes's house?

15 A. Yes, ma'am.

16 Q. And when he did that, where would he most often
17 sleep?

18 A. The couch, or either my mom's bed.

19 Q. And where in Julie Barnes's house did he sexually
20 abuse you?

21 A. My mom's room once, and several times on the
22 couch.

23 Q. Tell the jury about what happened in your mom's
24 room.

25 A. He had sucked my penis.

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1 Q. Where were you?

2 A. On -- when you walk into the room, there's a bed.
3 There's a bathroom right here. And then there is the
4 computer. And it was over here. Like on the edge.

5 Q. On the edge of what?

6 A. The bed. By the computer.

7 Q. And what position were you in?

8 A. I was sitting down.

9 Q. And what about Mr. McCauley?

10 A. He was on his knees.

11 Q. And were your clothes on or off?

12 A. My pants were down to my ankles.

13 Q. And did he do anything else in your mom's room
14 besides suck your penis?

15 A. No, ma'am.

16 Q. Do you have any idea when that happened,

17 Minor 2

18 A. No, ma'am.

19 Q. And you said also something happened on the
20 couch?

21 A. Yes, ma'am.

22 Q. What happened on the couch?

23 A. He had made me suck his penis, and he had stuck
24 his penis in my butt.

25 Q. Let's talk first about that he made you suck his

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1 penis. Where -- tell us about that.

2 A. He was laying down and he made me like lay down.

3 Q. And what did he make you do?

4 A. Suck his penis.

5 Q. While you were doing that, what did he do?

6 A. He would just sit there.

7 Q. Did anything else happen? You said something
8 else happened. What was that?

9 A. Stuck his penis in my butt.

10 Q. And tell us about that.

11 A. He --

12 THE WITNESS: Could I get some water?

13 A. You mean like the position?

14 Q. [Ms. Herring-Lash] Yes.

15 A. I was on my knees and my hands, and he was on his
16 knees.

17 Q. And where was he?

18 A. On the couch.

19 Q. And was he in front of you, behind you --

20 A. Behind me.

21 Q. -- beside you? Pardon me?

22 A. Behind me.

23 Q. Did those things happen once or more than once?

24 A. More than once.

25 Q. Did anything else happen at your house on the

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1 couch?

2 A. Not that I recall.

3 Q. You also said that things happened at Mr.
4 McCauley's house?

5 A. Yes, ma'am.

6 Q. Why would you be over at Mr. McCauley's house?

7 A. When my mom was working as a teacher or a
8 taxidriver.

9 Q. And what kind of teacher did your mom work as?

10 A. She was a student teacher. She was trying to get
11 a degree, for special ed students, for a sub.

12 Q. And when she was a taxidriver, what hours would
13 she usually work?

14 A. Around nighttime.

15 Q. And I guess obviously the student teaching would
16 be during the day?

17 A. Yes, ma'am.

18 Q. And you would be over at Mr. McCauley's house?

19 A. Yes, ma'am.

20 Q. Who would be there with you?

21 A. Minor and Minor and me.

22 Q. And describe Mr. McCauley's house for us.

23 A. When you walk in there's a couch right in front
24 of you. Or like there's a TV you could see first. There
25 was a couch a little to the left against the wall, and

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1 there was a La-z chair and a dress -- long dresser straight
2 to your left. And there's a hallway straight to your
3 right. And his bedroom is all the way down. There's a
4 bathroom beside his bedroom. And then the kitchen is to
5 your left when you walk in.

6 Q. Let me show you some pictures.

7 MR. SCHWACKE: Your Honor, may we approach?

8 THE COURT: You may.

9 [Whereupon, an off-the-record bench conference is
10 held]

11 THE COURT: Just for the record: Ms. Herring-
12 Lash, are those photographs already marked?

13 MS. HERRING-LASH: Yes, Your Honor.

14 State's Exhibit Number 2 is the outside of the
15 mobile home and State's Exhibit Number 22 is a diagram
16 of the mobile home that I'll show the witness.

17 THE COURT: And you have seen both of those, Mr.
18 Schwacke?

19 MR. SCHWACKE: I've seen both of those. There
20 are modifications to those but I think for the limited
21 purposes, we would have no objection.

22 MS. HERRING-LASH: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q. [Ms. Herring-Lash] Minor2 I want to show

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1 you what has been previously marked as State's Exhibit
2 Number 2. Do you recognize that?

3 A. Yes, ma'am.

4 Q. Is that -- what is that?

5 A. The trailer. Just if you get rid of this shed or
6 just get rid of like the sides.

7 Q. When you were there, that shed was not there?

8 A. The shed in the background, no, ma'am, and the --
9 when you go into the house, that part right there, that
10 wasn't there except for the roof part.

11 Q. It was like a porch before?

12 A. Yes, ma'am.

13 Q. And now it's just that part?

14 A. Yes, ma'am.

15 Q. I want to show you what has been previously
16 marked as State's Exhibit Number 22. Can you look at that
17 and recognize what that is? You may have to turn it
18 around.

19 [Whereupon, the witness reviews documents]

20 A. Yes, ma'am.

21 Q. [Ms. Herring-Lash] Okay. And what is that?

22 A. The trailer.

23 Q. And can you see the layout of where Mr. Mack's
24 bedroom was? Can you recognize that?

25 A. Yes, ma'am.

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1 Q. Where was that?

2 A. On the right.

3 Q. And what about after Mr. Mack's bedroom? What is
4 the next room?

5 A. The bathroom.

6 Q. And what is the next room after that?

7 A. It's like a -- it was a room with a lot of stuff
8 in there, but I think now it's a room.

9 Q. Did -- while you-all were still going over there,
10 eventually did there -- some kind of bed or mattress end up
11 in there?

12 A. I don't remember.

13 Q. It was just junk in there?

14 A. Yes, ma'am. Basically.

15 Q. And after that room, what is there?

16 A. The living room.

17 Q. And after the living room, what room is there?

18 A. The kitchen. And then there -- after that,
19 there's a little dining room.

20 Q. And then after that, what is it?

21 A. There's Kris' and Doug's room.

22 Q. And who are Kris and Doug?

23 A. They were the roommates.

24 Q. And so their room was at the other end of the
25 trailer?

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1 A. Yes, ma'am. At the left.

2 Q. And mister -- you were talking about how the
3 living room was set up.

4 A. Yes, ma'am.

5 Q. And when you walked in the door, what did you
6 see?

7 A. When you walked in the door, you -- the first
8 thing you could probably see is the couch, the La-z chair,
9 and the TV.

10 Q. Couch, La-z chair, and TV?

11 A. Yes, ma'am.

12 Q. And if you took a right and went all the way
13 down?

14 A. Yes, ma'am. It would be Mr. Mack's bedroom.

15 Q. And if you took a left, you would go through the
16 kitchen?

17 A. The kitchen and Doug's room.

18 Q. Dining room and then Doug's room?

19 A. Yes, ma'am.

20 Q. And you said you would go there with your three
21 brothers when he would be babysitting you there?

22 A. Yes, ma'am.

23 Q. Were you there one time, or more than one time?

24 A. More than once.

25 Q. Were you there more often in the summer, more

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1 often during school, or was there a difference?

2 A. I've got to say about once more a week than
3 during school.

4 Q. So you were there more than once a week?

5 A. During the summer. Yes, ma'am.

6 Q. And where at Mr. Mack's house did he abuse you?

7 A. The bedroom.

8 Q. Whose bedroom?

9 A. His bedroom.

10 Q. And where in his bedroom?

11 A. On his bed.

12 Q. And what did he do?

13 A. He had stuck his penis in my butt; he had made me
14 suck his penis; he had made me stick my penis in his butt;
15 and he had sucked -- did I already say mine?

16 Q. I don't know. But just tell us what all he did.

17 A. He had sucked my penis.

18 Q. So you're saying he did -- sucked your penis and
19 made you suck his?

20 A. Yes, ma'am.

21 Q. Tell the jury about one time and how that -- and
22 how it happened.

23 A. One time he had tried to get me and my brother
24 Minor to do something.

25 Q. What did he try to get y'all to do?

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- 1 A. To suck each other's penises on video.
2 Q. And what room were you in then?
3 A. His room.
4 Q. And where were you and Minor 3
5 A. We were on the bed.
6 Q. And where was Mr. Mack?
7 A. On the -- in the room, standing up on the floor.
8 Q. And how do you know what he wanted y'all to do?
9 A. He told us.
10 Q. What did he say?
11 A. Suck each other's penises.
12 Q. Did he use the word penis?
13 A. Yeah. I think so, yes, ma'am.
14 Q. And what clothing did you have on?
15 A. I don't think he had any pants on.
16 Q. Who?
17 A. Minor 3
18 Q. And what about you?
19 A. I had mine on.
20 Q. Did you suck each other's penises?
21 A. No, ma'am.
22 Q. And why not?
23 A. Because I refused.
24 Q. And what about Minor 3 What did he do?
25 A. He didn't want to, either.

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1 Q. Now, did anything ever happen to you on -- in
2 Mr. Mack's bedroom?

3 A. Yes, ma'am. He had me -- he had --

4 Q. Tell us about one time.

5 A. Once he had stuck his penis in my butt.

6 Q. Where were you?

7 A. On his bed.

8 Q. And tell the jury about the position that you
9 were in.

10 A. I was on my knees.

11 Q. And where was he?

12 A. On the bed. Or I think I was like laying like
13 that way [indicates]. Like here was the edge of the bed
14 and then -- here was the edge of the bed right here, and I
15 was laying like that [indicates].

16 Q. Okay. And what part of you would this be?

17 A. My legs.

18 Q. Okay. And what part would this be?

19 A. My upper body.

20 Q. And where was Mr. Mack in relation to you?

21 A. Ma'am?

22 Q. Where was Mr. McCauley?

23 A. He was behind me.

24 Q. And you said he stuck his penis in your butt?

25 A. Yes, ma'am.

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1 Q. Tell us about another thing that happened.

2 You've listed four things. Tell us about another.

3 A. He had made me suck his penis.

4 Q. Do you remember a specific time? I don't mean
5 the date, but do you remember an event?

6 A. I think I do know around the time, though.

7 Q. Okay.

8 A. It was around like about a week before the
9 cruise.

10 Q. And what was the cruise?

11 A. The Disney cruise from Minor1 because he had a
12 Make-A-Wish Foundation wish.

13 Q. Minor1 your brother?

14 A. Yes, ma'am.

15 Q. And do you know when that cruise was?

16 A. October 4th of '08.

17 Q. So you remember at least one time was before the
18 cruise?

19 A. Yes, ma'am.

20 Q. And what happened on that time?

21 A. He had put his -- or made me suck his penis.

22 Q. And where were you?

23 A. His room.

24 Q. And what -- tell us about what happened.

25 A. He had his hand on my head and I was -- I think

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1 he was on his knees and I was like laying -- or the
2 opposite way what I just said.

3 Q. What do you mean?

4 A. I think I was on my knees and he was laying and
5 he had forced my head.

6 Q. Did this stuff happen more than one time?

7 A. Yes, ma'am.

8 Q. Was it pretty similar each time?

9 A. Yes, ma'am.

10 Q. Did Mr. Mack ever say anything to you about this?

11 A. Don't tell anyone.

12 Q. Did he tell you what would happen if you told?

13 A. He would hurt my mom.

14 Q. He would hurt your mom?

15 A. Yes, ma'am.

16 Q. Did you believe him?

17 A. Yes, ma'am.

18 Q. Why did you believe him?

19 A. Because he's built and he's strong.

20 Q. Now, you had said that in his bedroom he also
21 made you put your penis in his butt?

22 A. Yes, ma'am.

23 Q. Can you tell the jury about that?

24 A. He had told me like if I don't do it, he'll hurt
25 my mom.

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- 1 Q. How did he get you to put your penis in his butt?
- 2 A. [No response]
- 3 Q. Were you in the bed or on the floor or --
- 4 A. Yes, ma'am.
- 5 Q. Where?
- 6 A. On the bed.
- 7 Q. And what happened?
- 8 A. He had like -- I can't really explain how it was.
- 9 It was very confusing.
- 10 Q. Were you laying or sitting or standing or
- 11 kneeling?
- 12 A. I think I was like on my knees but I was facing
- 13 up.
- 14 Q. On your knees but facing up?
- 15 A. I was like that [indicates].
- 16 Q. And what -- where was -- how was he?
- 17 A. I think he was on his hands and knees.
- 18 Q. Did he do anything to your penis before he made
- 19 you put it in his butt?
- 20 A. I think he would put this lube. It was in a big
- 21 white bottle.
- 22 Q. And where would he put that?
- 23 A. On my penis.
- 24 Q. Did he ever put it anywhere else?
- 25 A. In his butt -- or like around it.

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- 1 Q. Around what?
- 2 A. His butt.
- 3 Q. And did he ever put that stuff on his penis?
- 4 A. Yes, ma'am.
- 5 Q. And when would he put that stuff on his penis?
- 6 A. When he put his penis in my butt.
- 7 Q. During any of these times did anything come out
- 8 of his penis?
- 9 A. Yes, ma'am.
- 10 Q. What was it?
- 11 A. Sperm.
- 12 Q. At the time when he first started doing this, did
- 13 you know what it was?
- 14 A. Yes, ma'am.
- 15 Q. And how did you know?
- 16 A. School.
- 17 Q. In Mr. Mack's room, was there any kind of
- 18 television or video --
- 19 A. Yes, ma'am.
- 20 Q. Did you ever see anything on television there?
- 21 A. I remember a station called Logo.
- 22 Q. And what was that?
- 23 A. A station for like gays.
- 24 Q. And what did you see on there?
- 25 A. Gay shows. Like, just gays.

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1 Q. Did you ever see any -- not on that show, but any
2 other people having sex?

3 A. On the computer.

4 Q. On whose computer?

5 A. On Mack's.

6 Q. And how would you see that?

7 A. He would put it on there, I guess.

8 Q. Would he be in the room when you saw it?

9 A. Yes, ma'am.

10 Q. You also said, Minor 2 that something
11 happened in the -- on the couch at Mr. Mack's house?

12 A. I can't really place it but I think something
13 did, yes, ma'am. I don't actually remember.

14 Q. And that -- only tell the jury about what you
15 remember.

16 A. Yes, ma'am.

17 Q. You said that he said something to you about
18 don't tell or he would hurt his [sic] mother. Did he ever
19 say anything else to you about this stuff?

20 A. No, ma'am.

21 Q. Did he ever say anything about his feelings?

22 A. He would say he loved me.

23 Q. And when would he say he loved you?

24 A. I don't know. Just sometimes. Like three times

25 -- or --

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1 Q. Did he ever say he loved you while he was doing
2 some of these things to you?

3 A. Sometimes, yes, ma'am.

4 Q. And when he told you he loved you, what would you
5 say?

6 A. I love you, son.

7 Q. What?

8 A. I love you, son.

9 Q. I love you, son? Would he say I love you, son,
10 or would you say I love you, son?

11 A. He would say that. Oh. You were talking about
12 what I --

13 Q. Uh-huh. What would --

14 A. -- would say? Oh.

15 Q. -- you have said? I'm sorry.

16 A. I love you, too.

17 Q. What did you call Mr. McCauley?

18 A. Dad.

19 Q. And where is your natural dad or your biological
20 dad?

21 A. Columbia. I don't actually -- the last time I
22 heard, he was in Columbia.

23 Q. Do you have any kind of contact with him?

24 A. No, ma'am.

25 Q. Was Mr. Mack like a dad to you?

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1 A. Sometimes.

2 Q. When he was not doing these things that we've
3 talked about, did he do -- ever do good things?

4 A. Yes, ma'am.

5 Q. And what would that be?

6 A. Take us to the movies, to the park.

7 Q. So dad things?

8 A. [Indicates affirmatively]

9 Q. Is he the only person you've ever had in your
10 life as a dad?

11 A. Basically, yes, ma'am.

12 Q. Did Mr. Mack ever do anything to hurt you besides
13 the sexual stuff?

14 A. He would spank us.

15 Q. How would he spank you?

16 A. He would spank us with a belt.

17 Q. What was the belt like?

18 A. It was a leather belt with metal pyramids, like
19 silver metal pyramids.

20 Q. Like what?

21 A. Silver -- metal silver pyramids.

22 Q. And where on your body would he spank you?

23 A. My butt.

24 Q. And would your pants be up or down?

25 A. Down.

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- 1 Q. What about your underwear?
- 2 A. Up.
- 3 Q. And would you just stand there or would he -- how
- 4 did he --
- 5 A. I would have to lean over the couch.
- 6 Q. Would you ever have bruises or marks afterwards?
- 7 A. I think once or twice.
- 8 Q. Did you ever see Minor get a spanking?
- 9 A. Yes, ma'am. Several times.
- 10 Q. And what would you see Minor get a spanking with?
- 11 A. The same thing.
- 12 Q. Where would Minor be?
- 13 A. Same place. The couch.
- 14 Q. Would you -- did you ever see marks on Minor?
- 15 A. I think once.
- 16 Q. How would Minor act when he was getting spanked?
- 17 A. He would cry and scream.
- 18 Q. What would he scream?
- 19 A. He just screamed.
- 20 Q. What about your brother Minor?
- 21 A. Minor he got spanked most of the time but I
- 22 was -- I always tried to take most of the blame.
- 23 Q. Why would you try to take most of the blame,
- 24 Minor?
- 25 A. So they didn't have to deal with it.

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1 Q. Did you kind of take care of them?

2 A. Yes, ma'am.

3 Q. Tell the jury about Minor getting beaten.

4 A. The worst beating he had was when he -- he's like
5 special needs, so he doesn't really know better. And he
6 had been messing with the gas grill and caught the back
7 yard on fire and he had -- Mr. Mack had spanked him a bunch
8 that day and left bruises on -- one or two on his back,
9 bunches -- like his whole butt was mainly covered in
10 bruises.

11 Q. What color was his butt?

12 A. Black and blue and purple.

13 Q. Any bruises anywhere else besides his back?

14 A. On his thighs.

15 Q. Were you there when that happened?

16 A. Yes, ma'am.

17 Q. What did Minor1 -- I'll call him Minor1 since
18 Minor and Mack sound so much alike. What did Minor1 do
19 while he was getting that spanking?

20 A. He would scream even louder than Minor did.

21 Q. And afterwards, did he talk to you about it?

22 Minor1 I mean.

23 A. No, ma'am. He just showed me. It was bad.

24 Q. Did -- were there any other kind of punishments
25 that you had?

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1 A. He had made us hold up cans.

2 Q. Hold up cans?

3 A. Yes, ma'am.

4 MS. HERRING-LASH: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 THE WITNESS: May I stand up?

8 Q. [Ms. Herring-Lash] Minor 2 I do not
9 know --

10 THE COURT: One second. Hold on one second. You
11 just need to --

12 MS. HERRING-LASH: Stand up.

13 THE COURT: Yes, you may.

14 Q. [Ms. Herring-Lash] I don't know if these cans
15 are the same size. If they're not, just explain to the
16 jury and show the jury what you would have to do.

17 A. These aren't even half the size.

18 Q. They were bigger?

19 A. Yes, ma'am.

20 Q. Okay. But even though those are much smaller
21 than the cans you had to hold, can you still demonstrate to
22 the jury how you had to hold them?

23 A. Yes, ma'am.

24 We had to hold them like this, above our head,
25 for around how old we were.

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1 Q. What do you mean by how old you were?

2 A. The time.

3 MS. HERRING-LASH: I'll take those back.

4 Q. [Ms. Herring-Lash] Do you mean like if you were
5 ten, ten minutes?

6 A. Yes, ma'am.

7 Q. When you were standing there, like would you be
8 in the middle of the room or --

9 A. We would have to stand against -- or we couldn't
10 touch the wall. We couldn't lean against anything.

11 Q. Where did you have to face?

12 A. The wall.

13 Q. What happened if you squirmed or dropped a can or
14 something like that?

15 A. Your time would be doubled. So if you had like
16 four minutes left, and you were ten, you would have
17 fourteen minutes.

18 Q. And did that happen to Minor 3 also?

19 A. It happened to him mostly.

20 Q. You saw it?

21 A. Yes, ma'am.

22 Q. Why would it happen to him mostly?

23 A. Because he was the most misbehaved.

24 Q. Minor is younger than you?

25 A. Yes, ma'am. He's eleven or ten right now.

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1 Q. And did it happen to Mack -- Minor 1 I'm sorry,
2 also?

3 A. Yes, ma'am.

4 Q. And did you see it happen to Minor 1

5 A. Yes, ma'am.

6 Q. Was Minor 1 able to hold a can?

7 A. Hardly.

8 Q. What would happen if he didn't?

9 A. He would just have to restart.

10 Q. When you-all were at Mr. Mack's house, did you
11 ever observe Minor spending the night in Mr. Mack's room?

12 A. Once or twice, yes, ma'am. Once around -- the
13 door was open, but the other times -- or the other time was
14 closed.

15 Q. And would he stay in there for the night?

16 A. Yes, ma'am.

17 Q. And how do you know?

18 A. Because I was -- I played video games.

19 Q. What do you mean you played video games?

20 A. I would play video games all night.

21 Q. And where would you be when you were playing
22 video games?

23 A. In the La-z chair.

24 Q. And that was in?

25 A. The trailer.

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- 1 Q. Okay. In the living room?
- 2 A. Yes, ma'am.
- 3 Q. And you know that Minor was in the room?
- 4 A. Yes, ma'am.
- 5 Q. Would Minor1 ever be in the room?
- 6 A. Not with the door closed.
- 7 Q. Talking about your brothers: when you -- you
- 8 spoke earlier to the jury about being taken away. Did they
- 9 also get taken away?
- 10 A. Yes, ma'am.
- 11 Q. And do you get to see Minor very much?
- 12 A. Well, lately I have been seeing him a lot more.
- 13 Q. Like today and yesterday?
- 14 A. Yes, ma'am.
- 15 Q. Before that, when was the last time you saw him?
- 16 A. The day of family court.
- 17 Q. Do you have any idea when family court was?
- 18 A. Around -- this year -- it was either May or July.
- 19 Q. Of 2001?
- 20 A. Yes, ma'am. Or '09. No. Yeah, 2010.
- 21 Q. And if you don't know a date, Minor2 just
- 22 say you don't know.
- 23 A. It was 2010.
- 24 Q. And you got to see Minor at the family court?
- 25 A. Yes, ma'am.

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1 Q. What was that family court about?

2 A. I had to testify for parental rights.

3 Q. About your mom?

4 A. Yes, ma'am.

5 Q. Other than that court, do you know when you saw
6 Minor before that?

7 A. McDonald's.

8 Q. Do you know when?

9 A. Around three months before May.

10 Q. Who does Minor live with?

11 A. His biological dad.

12 Q. Speaking of his biological dad, can you explain
13 to the jury how all this stuff came to be known to people?

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

15 THE COURT: You may.

16 [Whereupon, an off-the-record bench conference is
17 held]

18 Q. [Ms. Herring-Lash] Do you know what happened
19 that people found out?

20 A. It was because Mr. Mack was in bed with Minor when
21 his biological dad came to pick him up for the weekend.

22 Q. And were you in that room, also?

23 A. Yes, ma'am.

24 Q. And after that, you had -- I think you said in
25 the very beginning at one point two people came to your

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1 house. Do you know who they were?

2 A. Three.

3 Q. Three?

4 A. Two cops and a -- I don't know his name.

5 Q. Do you know where he worked?

6 A. DSS.

7 Q. And they came to your house. Did they talk to
8 you?

9 A. Yes, ma'am.

10 Q. And did they question you?

11 A. Yes, ma'am.

12 Q. And what did they question you about?

13 A. Did he sexually abuse us.

14 Q. And what did you say?

15 A. No, because I did not know if he would find out
16 and hurt my mom.

17 Q. So when they first questioned you, you said no?

18 A. Yes, ma'am.

19 Q. And before these people questioned you, why
20 hadn't you told anyone?

21 A. Because I didn't want my mom to get hurt.

22 Q. After they -- those people left that night, did
23 you see Mack?

24 A. Around one more time, yes, ma'am, because he came
25 back right after --

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- 1 Q. Right after --
- 2 A. -- they left. Right after they left.
- 3 Q. So they came and questioned you, they left, and
- 4 then Mack came?
- 5 A. Yes, ma'am.
- 6 Q. And that was at your mom's house?
- 7 A. Yes, ma'am.
- 8 Q. After those people came, did you speak to your
- 9 mom? After they left. I'm sorry.
- 10 A. Yes. Yes, ma'am.
- 11 Q. Did you tell her what had happened?
- 12 A. Yes, ma'am.
- 13 Q. Did you tell her the truth about what had
- 14 happened?
- 15 A. Yes, ma'am.
- 16 Q. And what did she do?
- 17 A. Cry.
- 18 Q. And when Mr. Mack got there, what happened?
- 19 A. They argued.
- 20 Q. Were you in the room or not --
- 21 A. I was in my room.
- 22 Q. Do you know what room they were in?
- 23 A. My mom's room.
- 24 Q. Did Mr. Mack leave after the argument?
- 25 A. I think he spent the night or he left. I don't

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1 actually remember. I think he spent the night.

2 Q. He spent the night that night?

3 A. Yes, ma'am.

4 Q. Is that the last time that you saw Mr. Mack --

5 A. Yes, ma'am.

6 Q. -- before today?

7 A. Yes, ma'am.

8 Q. Mr. Mack.

9 A. Yes, ma'am.

10 Q. Now, did DSS come back to your home again?

11 A. Yes, ma'am. Several times.

12 Q. And what happened when -- you were still with
13 Julie Barnes?

14 A. Yes, ma'am.

15 Q. Did -- when was it that DSS came back? Like
16 days, weeks, years?

17 A. Ma'am?

18 Q. May?

19 A. Ma'am?

20 Q. Ma'am. Oh.

21 When did DSS come back to your house after those
22 three people had been there that night?

23 A. Around two weeks later.

24 Q. And what happened when they came back?

25 A. They had told me I had a caseworker, which I do

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1 know her name now.

2 Q. What is it?

3 A. It's Evelyn Case.

4 Q. Okay. And what happened?

5 A. They had just said that I have a caseworker now.

6 Q. Did you have to leave Julie Barnes's house?

7 A. Not that time. It took about three weeks.

8 Q. And where did you have to go when you left Julie

9 Barnes's house?

10 A. Ms. Twomey's house.

11 Q. And when you went to Ms. Twomey's house, do you
12 remember having to go to a place where they interview you
13 and it's on camera?

14 A. Yes, ma'am.

15 Q. And who went with you to that place?

16 A. Ms. Twomey.

17 Q. And did somebody ask you about this stuff?

18 A. Yes, ma'am.

19 Q. And what did you tell them?

20 A. No.

21 Q. You told them no.

22 Why did you tell them no?

23 A. Because I didn't know if he was arrested then and
24 if -- I didn't know if he was still out there to hurt my
25 mom.

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1 Q. Did you eventually tell somebody?

2 A. Yes, ma'am.

3 Q. Do you remember who it was?

4 A. Ms. Twomey.

5 Q. And after you told Ms. Twomey, what happened?

6 A. She called my caseworker and she had -- my
7 caseworker had called the police and had him arrested.

8 Q. And did you talk to your caseworker about it?

9 A. Yes, ma'am.

10 Q. When the -- I wanted to ask you about something
11 else, Minor 2 When the people came to take you from
12 your home --

13 A. Yes, ma'am.

14 Q. -- was your mom there?

15 A. Yes, ma'am.

16 Q. And what happened while that was going on?

17 MR. SCHWACKE: Your Honor, I have a matter I
18 think we need to take up outside the presence of the
19 jury.

20 THE COURT: All right. Please approach for just
21 a moment.

22 [Whereupon, an off-the-record bench conference is
23 held]

24 Q. [Ms. Herring-Lash] When the officers --

25 THE COURT: Hold on. Hold on one second.

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1 Ladies and gentlemen, we're going to take a
2 comfort break.

3 Please do not begin your deliberations. Do not
4 discuss this case amongst yourselves.

5 Please rise for the jury.

6 [Whereupon, the jury exits the courtroom at
7 11:20 a.m.]

8 THE COURT: Thank you. Be seated.

9 The witness indicated that he needed to go to the
10 restroom and he could not wait.

11 So you are excused. Please don't discuss this
12 case with anyone. All right?

13 THE WITNESS: Yes, ma'am.

14 MS. HERRING-LASH: Can this gentleman take him?

15 THE COURT: Yes.

16 All right. We'll be at ease for just a few
17 moments. Please don't go far. If anyone needs to take
18 a comfort break, please do so now. Thank you.

19 [Whereupon, a recess is taken from 11:20 a.m. to
20 11:26 a.m.]

21 THE COURT: Be seated.

22 All right. Anything before we bring in the jury?

23 MR. SCHWACKE: Your Honor, there's a spectator in
24 the courtroom who is related to two -- or an
25 acquaintance related to two witnesses on the State's

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1 list. There's nothing to exclude him from being in here
2 but I just ask that he be instructed that if he remains
3 in the courtroom, that he not speak with any of the two
4 designated witnesses --

5 THE COURT: All right. Ms. Herring-Lash, do you
6 know who the spectator is?

7 MS. HERRING-LASH: I know -- yes.

8 He is a friend of two of the witnesses. He's
9 been instructed, and he says he understands he cannot
10 speak to them about anything he hears in here. But if
11 the Court would like to instruct him, also.

12 THE COURT: All right. And his name?

13 MS. HERRING-LASH: Paul?

14 MR. HARPER: Paul Harper.

15 THE COURT: All right. Mr. Harper, please stand.

16 [Whereupon, Mr. Harper complies]

17 THE COURT: Mr. Harper, the rule of sequestration
18 has been invoked. And I'm not sure if that's how the
19 State entitled it to you or that's what they called it,
20 but what that means is that witnesses are prohibited
21 from being in the courtroom in order -- so that they
22 don't tell the next witness that testifies what's going
23 on.

24 You may remain in the courtroom but the rule of
25 sequestration has been invoked. And so you're not

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1 listed as a witness, but you may not discuss what is
2 discussed in the courtroom pursuant to their testimony.
3 Do you understand that, Mr. Harper?

4 MR. HARPER: I understand that.

5 THE COURT: And, Mr. Harper, if I hear or it's
6 relayed back to the Court that you are not following the
7 Court's rules, I will bring you back into the courtroom
8 and we will have a further discussion. Do you
9 understand that, Mr. Harper?

10 MR. HARPER: Yes, ma'am.

11 THE COURT: All right. Thank you.

12 Anything before we bring in the jury?

13 MS. WILLIAMS: Not from the State, Your Honor.

14 THE COURT: Mr. Schwacke?

15 MR. SCHWACKE: No, Your Honor.

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

17 MS. HERRING-LASH: Your Honor, while we're
18 waiting, perhaps you could -- I don't think this will
19 ever be an issue, because these children don't like to
20 speak about it -- but explain to Minor2 that during
21 lunch he cannot talk to his brother about this.

22 THE COURT: You may not discuss what -- the
23 testimony that you gave here with anyone. Do you
24 understand that?

25 THE WITNESS: Yes. I'll probably be playing a

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1 game, so --

2 THE COURT: Thank you.

3 THE BAILIFF: They're ready.

4 THE COURT: They're ready?

5 THE BAILIFF: Yes.

6 THE COURT: Please rise for the jury.

7 [Whereupon, the jury enters the courtroom at
8 11:32 a.m.]

9 THE COURT: Please be seated.

10 Ms. Herring-Lash, you may continue.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. HERRING-LASH:

13 Q. Minor2 just to remind you: before we took
14 the break, we were at the evening or the afternoon when DSS
15 came and took you and Minor1 away from your mom.

16 A. Yes, ma'am.

17 Q. And what, if anything, did your mom say to you
18 about that?

19 A. She said it's all up to me to fix this.

20 Q. Up to you to fix this?

21 A. Yes, ma'am.

22 Q. And from there you went to Ms. Twomey's house?

23 A. Yes, ma'am.

24 Q. When she said that, did you get upset?

25 A. Yes, ma'am.

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1 Q. Did Minor1 get upset?

2 A. He didn't know what was going on so I can't
3 really say that he did or he didn't.

4 Q. Going back when I had asked you about when you
5 were punished and you had described a belt: did Mr. Mack
6 ever use anything else to punish anyone?

7 A. A board and a universal remote.

8 Q. What did the board look like?

9 A. It was like a one-by-four.

10 Q. And what would he do with that board?

11 A. I've only seen him like -- if -- it seems like
12 it's in my memory. But it seems like he spanked someone,
13 but I don't actually remember who.

14 Q. Okay. And that's -- if you're not really sure
15 about something, that is the best way to handle it.

16 A. Yes, ma'am.

17 Q. What about the universal remote?

18 A. He used it on me, Minor3 Me and Minor3

19 Q. And what is a universal remote?

20 A. It's a remote about -- his was about that big
21 [indicates].

22 Q. And is it like a remote control for a TV or --

23 A. Yes, ma'am.

24 Q. Okay. And where would he hit you and Minor with
25 it?

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1 A. On our butt.

2 Q. I think you had said earlier that Mr. Thacker had
3 walked in?

4 A. Yes, ma'am.

5 Q. Had that not happened, Minor2 do you think
6 you would have ever told anybody about this?

7 MR. SCHWACKE: Objection, Your Honor.

8 THE COURT: Basis?

9 MR. SCHWACKE: Speculation. Calling for him to
10 speculate: if that had not happened.

11 THE COURT: Sustained.

12 Q. [Ms. Herring-Lash] Minor2 had you planned
13 to ever tell anyone about this?

14 A. No, ma'am.

15 Q. Was it difficult?

16 A. Very.

17 Q. Pardon?

18 A. Very.

19 Q. Are you sure about what you've told the jury here
20 today?

21 A. Yes, ma'am. Very sure.

22 MS. HERRING-LASH: Minor2 those are all the
23 questions I have. Mr. Schwacke will have some for you
24 now.

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Mr. Schwacke.

2 MR. SCHWACKE: Thank you.

3 Covered a lot of ground today, Minor2 How are
4 you doing?

5 THE WITNESS: Good.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Yesterday was the first time you and I had ever
9 talked; right?

10 A. Yes, sir.

11 Q. After you testified yesterday in court --

12 A. Yes, sir.

13 Q. -- did you talk with anybody about what you had
14 said?

15 A. No, sir.

16 Q. Anybody try to talk to you about what you had
17 said?

18 A. No, sir.

19 Q. Okay. And in terms of that, you told me and I
20 think you told the jury there have been times when you've
21 told people that nothing happened?

22 A. Yes, sir.

23 Q. And that includes a lot of people; right?

24 A. Sir?

25 Q. Well, it would include the DSS caseworker,

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1 because one time you told her nothing happened.

2 A. [No response]

3 Q. It would include all the people over at the
4 Dorchester Children's Center --

5 A. Yes, sir.

6 Q. -- the room where they had the TV --

7 A. Basically, yes, sir.

8 Q. -- camera, because you told them nothing
9 happened.

10 A. Yes, sir.

11 Q. And you were seeing a therapist the whole time
12 this was going on; right?

13 A. Yes, sir.

14 Q. And I think you said one of those -- what was the
15 name you said yesterday --

16 A. Minor2 Crossgrove [phonetic]. Minor2 Cosgrove.

17 Q. Cosgrove. And you liked him a lot as a
18 therapist?

19 A. Yes, sir, because he's been my family therapist
20 for like six years.

21 Q. Six years.

22 You've been seeing him for like six years. How
23 often would you go see him?

24 A. About once or twice a month.

25 Q. So in a year you might see him twenty-four times?

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- 1 A. Yes, sir.
- 2 Q. Okay. And you never talked to him about this?
- 3 A. No, sir.
- 4 Q. And Julie Barnes is your mother?
- 5 A. Yes, sir.
- 6 Q. And do you want to see her again?
- 7 A. It's kind of in between.
- 8 Q. Yesterday you kind of told me yeah but --
- 9 A. Yes, but no. Yes because I love her, but no
- 10 because she didn't protect me.
- 11 Q. And you've told people you blame Mr. Mack for
- 12 that?
- 13 A. Yes, sir.
- 14 Q. That the reason you're not with your mom or able
- 15 to see your mom is because of him?
- 16 A. Yes, sir.
- 17 Q. And you're not happy with him?
- 18 A. No, sir.
- 19 Q. In the trailer at Mr. Mack's house, did the door
- 20 to his bedroom close all the way or did it stick?
- 21 A. I don't remember.
- 22 Q. Is it possible it didn't close all the way?
- 23 A. I don't remember.
- 24 Q. And you said there were two people that lived
- 25 there?

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1 A. Yes, sir.

2 Q. Who were they?

3 A. Doug and Kris.

4 Q. How well do you know them?

5 A. I -- they played Play Station with me sometimes
6 so -- I don't really know the relationship.

7 Q. Okay. How often were they there when you were
8 over there?

9 A. Kris was there most of the time but Doug --

10 Q. Kris is a woman; right?

11 A. Yes, ma'am. Yes, sir. I'm sorry. And Doug.

12 Q. Did they work?

13 A. Doug did.

14 Q. What did he do?

15 A. Doug was a Domino's Pizza driver and he was
16 always gone.

17 Q. Did that ever mean free pizza for everybody at
18 the house?

19 A. No. He would always bring two-liter Cokes or
20 Pepsi.

21 Q. So you could get two-liter Cokes but you never
22 got any free pizza?

23 A. [Indicates affirmatively]

24 Q. You talked about being disciplined for things,
25 but you didn't say kind of what kind of things you were

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- 1 getting punished for. What are we talking about?
- 2 A. Like behavior.
- 3 Q. Like what kind of behavior?
- 4 A. Like talking back.
- 5 Q. And you talked about your brother Minor¹ getting
- 6 punished for setting the back yard on fire.
- 7 A. Yes, sir. But he didn't know better.
- 8 Q. Were you there?
- 9 A. Yes, sir. I was the one who discovered the fire.
- 10 Q. And was this at Mack's -- Mr. Mack's house or was
- 11 that at your mom's house?
- 12 A. My mom's house.
- 13 Q. And how big a back yard are we talking about?
- 14 A. About 250 feet.
- 15 Q. How much of it caught on fire?
- 16 A. Probably 75. 75 feet.
- 17 Q. Okay. So a lot. Did the police -- did the fire
- 18 trucks come?
- 19 A. Yes, sir.
- 20 Q. The police come for that?
- 21 A. Huh-uh. No, sir.
- 22 Q. But the fire trucks came?
- 23 A. Yes, sir.
- 24 Q. Now, how many times do you figure that you had a
- 25 policeman around that you could talk to?

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1 A. They didn't really come to our neighborhood a
2 lot.

3 Q. Okay. Did they have, like at school, a resource
4 officer at your school?

5 A. No, sir.

6 Q. Where did you go to school?

7 A. [phonetic] Intermediate.

8 Q. Okay. But there's no question there were two
9 police officers that came to your house with the DSS worker
10 that one night?

11 A. Yes, sir.

12 Q. And you didn't tell them what happened?

13 A. No, sir, because I didn't know if he was going to
14 hurt my mom or not.

15 Q. But the police were right there to stop that from
16 happening, weren't they?

17 A. Well, I didn't know because it was one o'clock in
18 the morning. I was really tired.

19 Q. But you saw the policemen?

20 A. Yes, sir.

21 Q. You remember that there were policemen?

22 A. Yes, sir.

23 Q. So would there be a difference in how you were
24 being punished, depending upon what you did? For instance,
25 you say sometimes you got spanked and sometimes you had to

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1 hold the cans above your head.

2 A. Yes, sir.

3 Q. What would be -- what would get you what kind of
4 punishment?

5 A. I don't really know.

6 Q. You don't know?

7 A. It would just be back and forth.

8 Q. Okay. So talking back is one thing?

9 A. Yes, sir.

10 Q. What's another?

11 A. Like making one bad grade.

12 Q. Like a bad grade on your report card or on a
13 test?

14 A. Report card or a test.

15 Q. Is that something Mr. Mack would punish you for,
16 or your mom?

17 A. Mr. Mack.

18 Q. Did your mom ever spank you?

19 A. Once.

20 Q. Did she --

21 A. She didn't really like that.

22 Q. Did she do the can thing?

23 A. No, sir.

24 Q. Well, I've never heard of the can thing before.

25 When's the first time you remember anything about it?

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1 A. Sir?

2 Q. When's the first time that you remember being
3 asked to hold the cans over your head?

4 A. I don't remember.

5 Q. You don't remember?

6 A. [No response]

7 Q. And talking about the times that -- let's say
8 talking about the times that you described at your mom's
9 house. You said one time on her bed and two times on the
10 couch?

11 A. Several times on the couch.

12 Q. At her house?

13 A. Yes, sir.

14 Q. How many is several?

15 A. I don't know. Just several. More than -- more
16 than once.

17 Q. Okay. And when did that happen?

18 A. I don't know.

19 Q. Do you remember the first time it happened?

20 A. The first time? The first time was when he had
21 made me fake sick so I could stay home from school.

22 Q. And about when was that? Do you know how old you
23 were, or what time of the year it was, if you were in
24 school?

25 A. 2008.

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- 1 Q. Huh?
- 2 A. 2008.
- 3 Q. 2008.
- 4 A. Around a month after my birthday.
- 5 Q. And your birthday is ?
- 6 A. Yes, sir.
- 7 Q. So sometime in March of 2008 you say is the first
- 8 -- and that would be before the Disney cruise?
- 9 A. Yes, sir.
- 10 Q. On the Disney cruise, how many different -- who
- 11 all went?
- 12 A. Me, Mack, Alley, Minor3 Me, Mack, Alley, Minor3 my
- 13 mom, Mack.
- 14 Q. How many different rooms did you have on the
- 15 boat?
- 16 A. Two.
- 17 Q. Two. Who stayed in what room?
- 18 A. Me, Mack, Minor3 Me, Mack and Minor -- Mack and
- 19 Minor stayed in one room, and Alley, Minor and my mom stayed
- 20 in the other.
- 21 Q. Okay. Anything happen on the cruise?
- 22 A. No, sir.
- 23 Q. Nothing bad?
- 24 A. No, sir.
- 25 Q. Now, on the pictures that you got shown, you said

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1. some of that has changed on the shed on the outside?

2. A. Yes, sir.

3. Q. And you remember that much?

4. A. Yes, sir.

5. Q. But you're not certain about the door, whether it
6. wouldn't close all the way, in Mr. Mack's bedroom?

7. A. No, sir.

8. Q. And there were --

9. MR. SCHWACKE: Your Honor, may we approach?

10. [Whereupon, an off-the-record bench conference is
11. held]

12. Q. [Mr. Schwacke] We talked about the Dorchester
13. Children's Center where they had the cameras and the two
14. microphones.

15. A. Yes, sir.

16. Q. And you've gone there twice; correct?

17. A. I think so, yes, sir.

18. Q. Okay. And each time they asked you if anyone has
19. touched you inappropriately or in an area that you didn't
20. want them to touch you; correct?

21. A. Yes, sir.

22. Q. And never at any of those times did you say that
23. Mr. Mack had done that?

24. A. No, sir.

25. MR. SCHWACKE: One moment, Your Honor.

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1 [Whereupon, Mr. Schwacke and Ms. Kennedy confer]
2 MR. SCHWACKE: Thank you, Your Honor. That's all
3 the questions I have.

4 THE COURT: Redirect?

5 MS. HERRING-LASH: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. HERRING-LASH:

8 Q. Minor 2 do you remember when Mr. Mack first
9 came into your life?

10 A. No, ma'am.

11 Q. Do you remember what grade you were in?

12 A. No, ma'am.

13 Q. But the first time you remember is when he made
14 you stay home from school and pretend to be sick? Is that
15 what you --

16 A. No, not -- wait. I thought you meant my first
17 time I ever met him.

18 Q. Right. Do you remember the first time you ever
19 met him?

20 A. No, ma'am. I think I was little.

21 Q. You were little.

22 Doug and Kris were two people that stayed in the
23 trailer, also, you said?

24 A. Yes, ma'am.

25 Q. And I think you described earlier they -- which

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1 room did they stay in?

2 A. The one all the way down on the left.

3 Q. Did they -- did there come a time before you left
4 there that they moved out?

5 A. I think they didn't pay the rent.

6 Q. So they got -- they had to move out?

7 A. Yes, ma'am.

8 Q. Mr. Schwacke asked you about not telling the DSS
9 people and the Dorchester Children's Center people. Why
10 did you not tell those people?

11 A. Because I didn't want my mom to get hurt.

12 Q. Is this something that you wanted to talk about?

13 A. Yes, ma'am.

14 Q. Who did you want to talk about it to?

15 A. Anyone I could. I just wanted him to be like
16 locked up so I don't -- so my mom couldn't get hurt.

17 Q. Well, if you wanted him to be in trouble, why
18 didn't you tell?

19 A. Because I didn't know if he would have found out
20 before they could get him.

21 Q. I think you said he came back to your house the
22 night after you told your mom?

23 A. Yes, ma'am.

24 Q. And you were seeing a counselor, Minor 2 Cosgrove,
25 that Mr. Schwacke asked you about?

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1 A. Yes, ma'am.

2 Q. Why were you -- you said your family was -- he
3 was your family counselor. Why were y'all seeing him?

4 A. Because basically me and Minor had -- I basically
5 took care of everyone.

6 Q. But why did you have to see Minor2
7 Cosgrove.

8 A. To like -- so we can see him, all of us could see
9 him, and like relieve some stress off my shoulders.

10 Q. Who all in the family went?

11 A. My mom, me, and Minor3 Or -- yeah. Me and Minor
12 and sometimes Minor1

13 Q. Did he give you medicine?

14 A. That was Dr. Wilcox.

15 Q. Was he part of Minor2 Cosgrove's office?

16 A. Yes, ma'am.

17 Q. During the time that you were seeing Minor2
18 Cosgrove, was Mr. Mack in your life?

19 A. Yes, ma'am.

20 Q. And when you would leave seeing Minor2 Cosgrove,
21 would you see Mr. Mack?

22 A. Sometimes.

23 Q. So he was still around?

24 A. Yes, ma'am.

25 Q. What about Mr. Mack makes you not see your mom?

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1 A. That he abused us.

2 Q. And why does that make you not see your mom?

3 A. Because of -- because she didn't take care of us.
4 She didn't like protect us while he was doing all that.

5 Q. You told Lucy Twomey?

6 A. Yes, ma'am.

7 Q. And do you know how long you had been at Lucy
8 Twomey's home before you told her?

9 A. One month. I told her around Minor 2 because
10 we were -- I think I was only with -- no, around two
11 months, actually, because I was with her for three months,
12 from the last day of November to somewhere in January.

13 Q. What is it about Lucy Twomey that made you tell
14 her?

15 A. She was caring and kind.

16 MS. HERRING-LASH: Those are all the questions I
17 have.

18 THE COURT: Mr. Schwacke, recross?

19 MR. SCHWACKE: No, Your Honor.

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

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 THE COURT: Ladies and gentlemen, we break for
24 lunch as close to 12:00 as possible. I'm going to go
25 ahead and we're going to break for our lunch break.

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1 Again, please remember my admonitions. Do not
2 discuss this case amongst yourselves or with anyone.
3 Please do not read, watch, listen to, any news accounts
4 or do any independent investigation.

5 Ladies and gentlemen, please be back in your jury
6 room at 1:15. You are excused.

7 Please rise for the jury.

8 [Whereupon, the jury exits the courtroom at
9 11:54 a.m.]

10 THE COURT: Thank you. Please be seated.

11 Anything before we break for lunch?

12 MS. WILLIAMS: Nothing from the State, Your
13 Honor.

14 MR. SCHWACKE: No, Your Honor.

15 THE COURT: All right. Please check the clock
16 behind us and please be back prepared to go at 1:10.
17 Thank you. We're at ease.

18 [Whereupon, a recess is taken from 11:55 a.m. to
19 1:06 p.m.]

20 THE COURT: Anything from the State?

21 MS. WILLIAMS: Nothing from the State, Your
22 Honor.

23 THE COURT: Anything from the defendant?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Are they all here?

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1 THE BAILIFF: Yes, ma'am.

2 [Off the record momentarily]

3 THE COURT: All right. Please rise for the jury.

4 [Whereupon, the jury enters the courtroom at

5 1:11 p.m.]

6 THE COURT: Please be seated.

7 Call your next witness.

8 MS. HERRING-LASH: The State would call Minor

9 Thacker.

10 [Whereupon, Minor Thacker comes forward]

11 THE CLERK OF COURT: Please raise your right
12 hand, place your left hand on the Bible.

13 [Whereupon, Minor Thacker is duly sworn by the
14 clerk of court as follows: do you solemnly swear or
15 affirm the testimony you will give the Court in the
16 trial of this case will be the truth, the whole truth,
17 and nothing but the truth, so help you God]

18 THE WITNESS: Yes.

19 THE CLERK OF COURT: Please be seated.

20 [Whereupon, Minor Thacker takes the witness stand]

21 THE CLERK OF COURT: State your full name and
22 spell your last name.

23 THE WITNESS: My name is Charles Minor Thacker.

24 T-H-A-C-K-E-R.

25 MS. HERRING-LASH: Thank you, Minor 3

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1 Minor THACKER,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Minor3 how old are you?

7 A. I'm eleven years old.

8 Q. And when did you turn eleven?

9 A. .

10 Q. So you were eleven on .

11 A. Yes.

12 Q. What school do you go to, Minor3

13 A. Elementary School.

14 Q. Elementary. What grade are you in?

15 A. Fourth.

16 Q. And do you like school, Minor3

17 A. Kind of.

18 Q. What do you like best?

19 A. A little bit of everything.

20 Q. What do you not like?

21 A. I'm not sure really.

22 Q. Okay. Minor3 where do you live?

23 A. [phonetic] Street.

24 Q. And who do you live with?

25 A. My mom named Devina [phonetic], and my dad named

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1 Charlie, and my sister and brother named -- (), she's
2 my sister. My brother's name is T.T. James Thacker.

3 Q. How old is T.T. Do you know?

4 A. T.T. is eight years old.

5 Q. Do you know how old () is?

6 A. I would have to say about fifteen. I'm not
7 really sure.

8 Q. Okay. She's a teenager, though?

9 A. Yes.

10 Q. Do you have some other brothers?

11 A. Yes.

12 Q. Who are they?

13 A. Well, I also have another sister named Alley, and
14 two brothers named Minor1 and Minor2

15 Q. And where you live right now with your dad, does
16 -- do Alley and Minor1 and Minor2 live with you?

17 A. No. Only T.T.

18 Q. Only T.T. your brother?

19 A. Yes.

20 Q. And whose mom -- who is your mom, your other mom?

21 A. Julie Barnes.

22 Q. Julie Barnes?

23 A. [Indicates affirmatively]

24 Q. And who is Minor1 and Minor2 and Alley's
25 mom?

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1 A. I have not a clue.

2 Q. Do you think it's Julie Barnes?

3 A. Yeah.

4 Q. When you lived with Julie --

5 A. But the other mother, I have no clue.

6 Q. Oh. You mean where they're living now you don't
7 know?

8 A. Yeah.

9 Q. Okay. Minor³ I'm sorry I didn't make that clear
10 for you.

11 When you lived with Julie Barnes, who all lived
12 there in that house?

13 A. Me, my brothers, Julie, and my sister.

14 Q. Did your sister live there all the time, or did
15 she visit?

16 A. She usually just visits for like a few holidays
17 and stuff and usually sometimes on the weekend.

18 Q. Okay. And when you lived there with Julie
19 Barnes, did you sometimes visit with your daddy, Charles
20 Thacker?

21 A. Only on the weekends, provided my dad does not
22 have any work or anything.

23 Q. What?

24 A. I only spend the night -- I spent the night
25 always on the weekends at my dad's house, but only provided

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1 he does not have any work.

2 Q. Okay. If he had to work, you didn't go for the
3 weekend?

4 A. No.

5 Q. Is that what you're saying?

6 A. Yes, ma'am.

7 Q. And you do not live with Julie Barnes anymore?

8 A. No.

9 Q. Why do you not live with Julie Barnes anymore,

10 Minor 3

11 A. I'm not really sure why.

12 Q. Did somebody hurt you when you were there?

13 A. Yeah.

14 Q. Who was that?

15 A. Mr. Mack.

16 Q. And how did you know Mr. Mack?

17 A. I'm not sure, really.

18 Q. Did he visit Julie Barnes' house?

19 A. Yeah. But not that often.

20 Q. Did you visit his house?

21 A. Yeah.

22 Q. And when you went to visit at his house, who
23 would go with you?

24 A. My two brothers.

25 Q. Did Mr. Mack spend the night at your house

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1 sometimes?

2 A. No, not quite.

3 Q. Did you spend the night at his house?

4 A. Yeah.

5 Q. And you said that he did something to hurt you.

6 What did he do?

7 A. Usually he would make us stand in the corner with
8 -- and he would usually make us hold cans on the -- hold
9 cans however old you were and that's how long you would
10 stand in the corner. And usually he would spank us with a
11 belt with holes going down it.

12 Q. Let's go back to when you would hold the cans.
13 Would you -- which way would you face?

14 A. Toward the wall.

15 Q. And what if you dropped a can or wiggled around?
16 What would happen?

17 A. Usually he would double the time.

18 MS. HERRING-LASH: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q. [Ms. Herring-Lash] Minor³ I'm going to show you
22 some cans. I don't know that these were like the cans that
23 you had to hold, but would you use them to demonstrate or
24 show -- excuse me -- to the jury how you would have to hold
25 them?

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1 A. Yes. [Witness complies]

2 Q. Thank you, Minor 3,

3 Did you ever have to drop the can or wiggle
4 around and get double time?

5 A. Usually sometimes, yes.

6 Q. And when -- you also said that Mr. Mack would
7 spank you with a belt?

8 A. Well, it usually left bruises on our butts and
9 stuff. If we wiggled around, it would usually hit other
10 places on our backside.

11 Q. When Mr. Mack hit you with the belt, did you have
12 your pants on or off?

13 A. Off.

14 Q. And what about your underwear?

15 A. I -- down.

16 Q. Down?

17 A. Well, both pants and underwear were down.

18 Q. And would you stand there? Or how would you do
19 when he hit you?

20 A. Like we would bend over his knee.

21 Q. Oh. Bend over his knee?

22 A. Yes.

23 Q. Do you know what you would -- what would you do
24 that would make him spank you like that? Do you remember?

25 A. No.

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1 Q. Did you ever see Minor2 get a spanking?

2 A. Usually everybody in the family would get
3 spanked.

4 Q. Did you see Minor1 get spanked?

5 A. Yes.

6 Q. Did you ever see Minor1 get spanked hard?

7 A. Yeah.

8 Q. What happened that Minor1 got spanked really,
9 really hard?

10 A. I'm not really sure.

11 Q. Okay. Minor3 if you're not sure, you just say
12 you're not sure. You can only talk about what you're sure
13 of.

14 Did you ever see Minor2 have to stand with the
15 cans?

16 A. Yes.

17 Q. Did you ever see Minor1 have to stand with the
18 cans?

19 A. Yes, ma'am.

20 Q. You told us about Mr. Mack hurting you. Did
21 anything else happen to your body with Mr. Mack?

22 A. Yeah, one more thing.

23 Q. What was that?

24 A. Well, usually we would spend the night just a few
25 times when our mom was doing the night taxi jobs and

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1 sometimes when -- we would go in his bed. He wouldn't ask
2 us, but we would ask him if we could spend the night in his
3 room because he had a bed that's a king-sized bed and we --
4 well, me, Minor1 and Minor2 have only a little-sized
5 bed and it's really hard to sleep on it.

6 Q. So sometimes you would sleep in Mr. Mack's room?

7 A. Yes.

8 Q. Would he do anything to a part of your body when
9 you slept in his room?

10 A. Yeah.

11 Q. Which part of your body?

12 A. My wiener.

13 Q. Your what?

14 A. My wiener.

15 Q. Your wiener.

16 What do you [phonetic] do with your wiener?

17 A. Usually he would suck it.

18 Q. And what would happen when -- what would happen
19 to your wiener when he sucked it?

20 A. Usually it would get kind of hard.

21 Q. And did Mr. Mack say anything about sucking his
22 wiener?

23 A. He said not to tell anyone, or else.

24 Q. What was the or else?

25 A. I do not know, and I didn't want to find out.

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1 Q. And when Mr. Mack would suck on your wiener,
2 would your clothes be on, off, up, down?

3 A. Usually sometimes off and down.

4 Q. Did Mr. Mack suck your wiener one time, or more
5 than one time?

6 A. More than one time. And sometimes he forced me
7 to suck his.

8 Q. To suck his what?

9 A. Wiener.

10 MS. HERRING-LASH: Court's indulgence for one
11 moment.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Herring-Lash and Mr. Schwacke
14 confer]

15 MR. SCHWACKE: No objection.

16 MS. HERRING-LASH: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 MS. HERRING-LASH: Your Honor, I'm going to show
20 the witness what has been previously marked as State's
21 Exhibit Number 23.

22 Q. [Ms. Herring-Lash] Minor 3 I'm just going to show
23 you a picture. And what is that a picture of?

24 A. A naked boy.

25 Q. Okay. And does that naked boy have a wiener?

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1 A. Yes.

2 Q. And could you put a circle around what you call
3 the wiener?

4 A. [Witness complies]

5 MS. HERRING-LASH: Your Honor, may I publish
6 this?

7 THE COURT: Any objection, Mr. Schwacke?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: You may publish.

10 Q. [Ms. Herring-Lash] Minor³ you said that sometimes
11 Mr. Mack would force you to put his wiener in your mouth?

12 A. Yes.

13 Q. What would happen when he put his wiener in your
14 mouth?

15 A. Sometimes he would squirt something, and it
16 didn't taste good, and I've never seen its color before.

17 Q. You've never seen it before?

18 A. No.

19 Q. What would happen to that stuff?

20 A. I think I would just usually spit it out.

21 Q. Do you know where you would spit it?

22 A. Usually in the trash can.

23 Q. And you said that this happened in Mr. Mack's
24 bedroom?

25 A. Yes.

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1 Q. Did it happen in any other place in Mr. Mack's
2 house?

3 A. No.

4 Q. Did you ever see Minor2 spend the night in
5 Mr. Mack's bedroom?

6 A. Yes. And Minor1

7 Q. Pardon me?

8 A. And also Minor1

9 Q. And also Minor1

10 Minor3 did you ever tell people about what was
11 going on?

12 A. No.

13 Q. Why not?

14 A. Well, I was afraid of what Mack could -- Mack
15 would do to me.

16 Q. Were you afraid of Mack?

17 A. Yeah.

18 Q. Why did you -- did -- how did you end up going to
19 your dad's?

20 A. I'm not sure.

21 Q. Did your dad come one day and find you there?

22 A. Yeah. But we were just sleeping.

23 Q. What do you mean you were just sleeping?

24 A. Like we were sleeping on a bunk bed.

25 Q. Okay. Who was sleeping on the bunk bed?

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1 A. Me, Mack, Minor 1 and Minor 2

2 Q. And in your room, how many sets of bunk beds did
3 you have?

4 A. Two.

5 Q. And was this at Mr. Mack's house or Julie Barnes'
6 house?

7 A. Julie Barnes' house.

8 Q. And who -- the day that your dad came, who was
9 sleeping where?

10 A. Mr. Mack was behind me, and I was in front of
11 him, and he was asleep but I wasn't because he was --
12 because I couldn't sleep when he was snoring behind me.

13 Q. Oh. He was snoring?

14 A. Yes.

15 Q. And where were Minor 1 and Minor 2

16 A. They had their own bunk bed.

17 Q. And when you said you were just sleeping, do you
18 mean he didn't do anything bad to you that day?

19 A. Yes.

20 Q. After you went to stay with your dad, did people
21 question you about Mr. Mack?

22 A. Sometimes, yes.

23 Q. Did you end up telling what Mr. Mack had done?

24 A. Yes.

25 Q. And, Minor 3 are you happy that you told, or not?

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1 A. Yes.

2 MS. HERRING-LASH: Court's indulgence for one
3 moment.

4 THE COURT: Yes, ma'am.

5 [Whereupon, Ms. Herring-Lash and Ms. Williams
6 confer]

7 MS. HERRING-LASH: Minor³ those are all the
8 questions I have for you. Mr. Schwacke will ask you
9 some questions now. Okay?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Schwacke.

12 MR. SCHWACKE: Hey, Minor³ how are you?

13 THE WITNESS: Good.

14 MR. SCHWACKE: We talked some yesterday. Do you
15 remember?

16 THE WITNESS: Yes.

17 MR. SCHWACKE: Okay. I'm going to ask you some
18 questions kind of like what we did yesterday.

19 CROSS-EXAMINATION

20 BY MR. SCHWACKE:

21 Q. You've met with Miss Debbie and Miss Anne before;
22 right?

23 A. Yes.

24 Q. About how many times do you figure you've met
25 with them?

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1 A. I'm not sure.

2 Q. Can you guess?

3 A. [No response]

4 Q. Well, if you don't remember, you can say I
5 don't --

6 A. I would say about ten or --

7 Q. Okay. And y'all have talked about the case and
8 what you were going to say here; right?

9 A. Yes.

10 Q. Okay. Now, your mom's name is Julie. The mom
11 that gave birth to you is Julie Barnes; right?

12 A. I'm not really sure which one gave birth.

13 Q. Okay. But she's one of the people you call mom?

14 A. Yes.

15 Q. And when you talk to her, do you call her mom, do
16 you call her Julie, do you call her -- what do you call
17 her?

18 A. I call her mom.

19 Q. Mom. Okay.

20 And then you have -- your dad is Charlie, and he
21 has a wife named Mylie?

22 A. I call them mom and dad. And also I -- also,
23 they have another dad. His name is Ted. And I called him
24 daddy, too, and he decided to break a computer, then move
25 away.

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1 Q. Okay. So that's a different kind of thing all
2 together?

3 A. Uh-huh.

4 Q. Okay. You say you go to Reed Elementary or
5 Reeves?

6 A. Reeves Elementary.

7 Q. And you said that you're in the -- you're in the
8 fourth grade?

9 A. Yes.

10 Q. Okay. How long have you been at that school?

11 A. I would say about for three years.

12 Q. Three years.

13 You've had different teachers while you've been
14 there?

15 A. Yeah.

16 Q. Okay. Do you have -- is there somebody that's a
17 school resource officer there? Have you ever seen somebody
18 that's kind of dressed up in a police uniform at the
19 school?

20 A. No.

21 Q. Let me flip through this a second.

22 [Whereupon, Mr. Schwacke reviews documents]

23 Q. [Mr. Schwacke] Do you know a Dr. Cosgrove?

24 A. No.

25 Q. No? You weren't seeing a doctor named that?

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1 A. No.

2 Q. So let's talk a little bit about in terms of
3 getting punished. You held up these cans for Miss Debbie?

4 A. [Indicates affirmatively]

5 Q. All right. Is this the kind of can we're talking
6 about?

7 A. Actually about a lot larger, like both of them
8 stacked on top of each other.

9 Q. Like that? That size?

10 A. Yeah.

11 Q. And what kind of things would you have to do that
12 for that you did something -- what was the kind of thing
13 that you did that you would get in trouble like that for?

14 A. Well, usually like running in the house.

15 Q. I'm sorry?

16 A. Like usually running in the house, usually
17 hitting on my other two brothers, and that's all I can
18 really think of.

19 Q. What happened more often, holding the cans up or
20 getting spanked?

21 A. What?

22 Q. Did you get spanked more times than you had to
23 hold up the cans, or did you hold up the cans more times
24 than you got spanked?

25 A. Holding up the cans. Usually that, or spankings.

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1 Q. So who all spanked you if you were -- if you had
2 done something?

3 A. Only Mr. Mack.

4 Q. Did Charlie ever spank you? Your dad.

5 A. Yeah, but it was like with a stick.

6 Q. A stick?

7 A. [Indicates affirmatively]

8 Q. Do you remember any marks on yourself when you
9 got spanked by Mr. Mack?

10 A. Yeah.

11 Q. And did you ever show them to anybody?

12 A. Usually my brothers.

13 Q. Your brothers.

14 Now, which brothers are we talking about? What
15 about --

16 A. Minor 2 and Mack.

17 Q. What about T.T.

18 A. No. He lived with me.

19 Q. Okay. Right.

20 But, I mean, you would visit your dad on weekends
21 that he wasn't working; right?

22 A. Yeah.

23 Q. Your dad Charlie.

24 Would you take baths over at your dad Charlie's
25 house?

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1 A. Not baths, but showers.

2 Q. Okay. And would people come in and check on you
3 taking a shower or were -- like your mom or your dad might
4 have? Or Charlie?

5 A. Yeah. But they wouldn't open the curtains. They
6 would just open the door and say hurry up.

7 Q. Okay. Hurry up. With a big house you're going
8 to hear hurry up a lot.

9 A. Yeah, because we only have one shower --

10 Q. What?

11 A. -- and no baths.

12 Q. Who stayed in there the longest?

13 A. Usually my mom and sister.

14 Q. That's an important lesson you're going to learn.

15 A. And also they use up all the hot water.

16 Q. All right. So you talked about some things
17 that -- bad things, about getting spanked. That was one of
18 them that you talked about.

19 A. Yes.

20 Q. Did you get spanked only while you were at
21 Mr. Mack's by Mr. Mack?

22 A. Yes.

23 Q. Did you ever get spanked at Miss Julie's by Mr.
24 Mack?

25 A. No.

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1 Q. Okay. And then you talked about some other
2 things that you said he did to you to your body. Did any
3 of those happen at Miss Julie's?

4 A. No. Only at Mr. Mack's.

5 Q. Okay. And what do you remember about Mr. Mack's
6 trailer?

7 A. He had a few cats.

8 Q. He had a what?

9 A. He had a few cats.

10 Q. Like what?

11 A. I can't really remember the names. I just
12 remember that he had a few cats.

13 Q. A few cats. Okay.

14 A. Not that much space to run around.

15 Q. Okay.

16 A. And most of the time it wasn't that clean.

17 Q. Okay. Do you remember whether or not Mr. Mack's
18 door to his bedroom was broken so it wouldn't close all the
19 way?

20 A. No.

21 Q. You don't remember it, or you don't -- or it
22 didn't?

23 A. It didn't. It closed all the way.

24 Q. Okay. And in -- you went and talked to some
25 people about this; right?

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1 A. Yes.

2 Q. And you went to a place where they had a camera
3 and some microphones?

4 A. [No response]

5 Q. Do you remember?

6 A. I'm not sure about the microphones and cameras.

7 Q. I'm sorry?

8 A. I'm not sure about the cameras or microphones.

9 Q. Okay. Do you remember going to see a woman over
10 in Summerville and the same time you were there your other
11 brothers, Minor 2 and Minor 1 were there to meet with
12 a woman and talk about this?

13 A. No.

14 Q. Okay. But you remember because you answered a
15 question to Miss Debbie that there were times you told
16 people nothing happened?

17 A. Yes.

18 Q. And do you remember who those people were that
19 you told that to?

20 A. Usually -- no.

21 Q. Did it happen more than once that you told people
22 it didn't -- nothing happened?

23 A. No.

24 Q. Just once?

25 A. No.

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1 Q. I mean, but you told people it didn't happen?

2 A. No.

3 Q. Well, I thought you answered Miss Debbie's
4 question that sometimes you didn't tell.

5 A. Yeah. But I didn't say -- I just said that -- I
6 just said I don't know, during your question.

7 Q. Okay. So I don't -- so is one of those right and
8 one of those not right in terms of whether -- because you
9 answered one question from her saying you told somebody --
10 you didn't tell somebody one time that anything happened.

11 A. Yeah. That's what I said. And I don't know.

12 Q. Okay. All right. And that's the time I'm
13 talking about. So you remember that now?

14 A. Yes.

15 Q. Okay. And the first time you talked to your dad
16 Charlie, you said that nothing happened?

17 A. No. Yeah, I -- no, I -- and I have no clue how
18 he figured that -- it out.

19 Q. Well, I know this is hard and you're doing your
20 hardest to try to answer the questions, and I appreciate
21 you doing that for me.

22 MR. SCHWACKE: Let me check my notes just for a
23 second, okay, because I think I'm almost done.

24 THE WITNESS: Okay.

25 [Whereupon, Mr. Schwacke reviews documents]

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1 MR. SCHWACKE: Give me just a second, okay, Minor3
2 Just one second.

3 [Whereupon, Mr. Schwacke and Ms. Kennedy confer]

4 MR. SCHWACKE: Thank you for answering all my
5 questions. Okay? I don't have anymore for you, but
6 Miss Debbie might have some.

7 MS. HERRING-LASH: Minor3 I just have a couple of
8 questions.

9 REDIRECT EXAMINATION

10 BY MS. HERRING-LASH:

11 Q. I'm just not sure I understood when you were
12 talking about your dad. Did you say your dad figured this
13 out?

14 A. Yes.

15 Q. Do you know how he figured it out?

16 A. No.

17 Q. When he figured it out, did he ask you about it?

18 A. Yeah.

19 Q. And did you tell him?

20 A. Yes, ma'am.

21 MS. HERRING-LASH: Those are all the questions I
22 have, Minor3 Thank you.

23 MR. SCHWACKE: No questions.

24 THE COURT: Minor3 you may step down. Thank you.

25 [Whereupon, the witness is excused and exits the

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1 witness stand]

2 THE COURT: Call your next witness.

3 MS. WILLIAMS: Allison Gunnells.

4 [Whereupon, Allison Gunnells comes forward]

5 THE CLERK OF COURT: Please raise your right hand
6 and place your left hand on the Bible.

7 [Whereupon, Allison Gunnells is duly sworn by the
8 clerk of court as follows: do you solemnly swear or
9 affirm the testimony you give the Court in the trial of
10 this case will be the truth, the whole truth, and
11 nothing but the truth, so help you God]

12 THE WITNESS: Yes.

13 THE CLERK OF COURT: Please be seated. State
14 your full name and spell your last name for the record.

15 [Whereupon, the witness takes the witness stand]

16 THE WITNESS: Allison Patricia Gunnells. G-U-N-
17 N-E-L-L-S.

18 MS. WILLIAMS: Hi, Allison.

19 THE WITNESS: Hey.

20

21

22

23

24

25

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1 ALLISON GUNNELLS,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Allison, how old are you?

7 A. Fifteen.

8 Q. And who do you live with?

9 A. My father and my stepmom.

10 Q. Where is it that y'all live?

11 A. North Charleston.

12 Q. And what grade are you in?

13 A. Tenth.

14 Q. Tenth?

15 A. Uh-huh.

16 Q. Who is Your mom, your --

17 A. Julie Barnes.

18 Q. -- biological mom?

19 A. Julie Barnes.

20 Q. And you don't live with your mom?

21 A. No.

22 Q. Why is that?

23 A. Court ordered.

24 Q. And was there a period of time when you used to
25 visit?

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- 1 A. Yes, ma'am.
- 2 Q. Do you visit her anymore?
- 3 A. No, ma'am.
- 4 Q. And why is that?
- 5 A. Court ordered.
- 6 Q. When you used to visit her, how often would you
7 be at the home?
- 8 A. Every other weekend and some holidays.
- 9 Q. And who lived in that home with your mom?
- 10 A. Her, and Minor2 Minor1 and Minor3
- 11 Q. And who are they?
- 12 A. My brothers.
- 13 Q. And at the time when you were visiting, do you
14 remember how old your brothers were?
- 15 A. From the time they were born until --
- 16 Q. I meant the last time that you --
- 17 A. Well, eleven and -- no. Ten and twelve, I think.
- 18 Q. So how old were Minor2 and Minor1
- 19 A. Eleven or twelve.
- 20 Q. Okay. And how old was Minor3
- 21 A. Nine or ten.
- 22 Q. And Minor2 and Minor1 are twins?
- 23 A. Yes, ma'am.
- 24 Q. Besides your mom, was there any other adult that
25 would come over to the home regularly?

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1 A. Yes, ma'am.

2 Q. Who was that?

3 A. Mack.

4 Q. And do you see Mack here today?

5 A. Yes, ma'am.

6 Q. Can you please point him out?

7 A. Right there.

8 Q. What's he wearing?

9 A. A red and green tie and a suit and a blue shirt.

10 MS. WILLIAMS: Your Honor, please let the record
11 reflect that the witness has identified the defendant,
12 Ronald McCauley.

13 THE COURT: All right. It will reflect.

14 Q. [Ms. Williams] And when you were visiting on the
15 weekends, did the boys ever go to anyone else's home?

16 A. Yes, ma'am.

17 Q. Whose home was that?

18 A. Mack's.

19 Q. And how long would they stay?

20 A. Most of the time the whole weekend.

21 Q. How did they react when they found out they had
22 to go to Mack's for a weekend?

23 A. Most of the time they would be upset and didn't
24 want to go.

25 Q. Did they have to go anyway?

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1 A. Yes.

2 Q. What would your mom be doing that the boys would
3 have to go to Mack's house on the weekend?

4 A. Either working or doing schoolwork.

5 Q. And who -- between your mom and Mr. Mack, who was
6 disciplining the boys?

7 A. Mack.

8 Q. And how would he discipline them?

9 A. Spankings or putting them in the corner.

10 Q. What did he spank them with?

11 A. Either his hand, or sometimes a belt.

12 Q. Okay. Did you ever see him spank the boys?

13 A. A couple of times.

14 Q. Is there any particular time that sticks out?

15 A. Not really.

16 Q. Did he spank Minor 2

17 A. Yes, ma'am.

18 Q. Did he spank Minor 3

19 A. Yes, ma'am.

20 Q. Did he spank Minor 1

21 A. Yes.

22 Q. Tell us about Minor 1 Does he have some special
23 needs?

24 A. Yeah.

25 Q. Do you know what his condition is?

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1 A. All I know is about the speech impediment.

2 Q. And is he in the grade that would be appropriate
3 for his age?

4 A. I'm pretty sure.

5 Q. Does he take special-ed classes?

6 A. Yes, ma'am.

7 Q. Does Minor 1 have a hard time communicating?

8 A. Sometimes. It depends on the person.

9 Q. Did you ever see any bruises or marks on the boys
10 after they were spanked?

11 A. Sometimes.

12 Q. Did you ever see any bruises on Minor 1

13 A. Sometimes.

14 Q. What types of things would Minor 1 do to get in
15 trouble?

16 A. Misbehaving, setting the back yard on fire.

17 Q. Tell us about that.

18 A. Playing with lighters after he was told not to.
19 And I don't know exactly how it happened.

20 Q. And did he get a spanking for that?

21 A. Yes, ma'am.

22 Q. Did you see what his backside looked after that
23 spanking?

24 A. Yes, ma'am.

25 Q. What did it look like?

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1 A. Red marks --

2 Q. And from what part --

3 A. -- from the butt.

4 Q. -- of his body to what part of his body? Can you
5 describe where on his body the marks were?

6 A. From his lower back to a little bit above the
7 back of the knee.

8 MS. WILLIAMS: I'm going to show you some
9 pictures, Allison.

10 [Whereupon, Ms. Williams reviews documents]

11 Q. [Ms. Williams] Did you ever see other people
12 come visit at Mack's house? Friends of Mack's?

13 A. Yes, ma'am.

14 Q. Did you know a Michael Hope?

15 A. Yes, ma'am.

16 MS. WILLIAMS: Your Honor, I'm going to show
17 defense counsel what's been previously marked as State's
18 18, State's 13, State's 15, State's 16, State's 12,
19 State's 9, State's 11, State's 1, and State's 21.

20 MR. SCHWACKE: I have a matter to discuss on
21 these two, Your Honor.

22 THE COURT: Please approach.

23 [Whereupon, an off-the-record bench conference is
24 held]

25 MS. WILLIAMS: Your Honor, may I approach the

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1 witness?

2 THE COURT: You may.

3 Q. [Ms. Williams] Allison, without saying what
4 these pictures are, can you tell me if you recognize them
5 and if they're an accurate depiction of the people in the
6 pictures? Just answer yes or no after you go through the
7 stack.

8 [Whereupon, the witness reviews documents]

9 A. Yes.

10 Q. [Ms. Williams] Are these an accurate depiction
11 of the people and the places in the picture?

12 A. Yes, ma'am.

13 MS. WILLIAMS: Your Honor, at this time the State
14 would move -- these are not in order -- 1, 11, 12, 16,
15 9, 21, 18, 13, and 15 into evidence.

16 MR. SCHWACKE: Your Honor, just subject to the
17 object as stated at sidebar.

18 THE COURT: All right. And there was no
19 objection to 9, 11, 12, 13, 15, 16, 18, 21.

20 There is an objection by the defendant as to
21 State's 1, pursuant to Rule 5. I will allow you to
22 articulate your objection outside the presence of the
23 jury.

24 State's 1, 9, 11, 12, 13, 15, 16, 18, 21 into
25 evidence.

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1 [Whereupon, State's Exhibit Number 1 is admitted
2 into evidence by the Court]

3 [Whereupon, State's Exhibit Number 9 is admitted
4 into evidence by the Court]

5 [Whereupon, State's Exhibit Number 11 is admitted
6 into evidence by the Court]

7 [Whereupon, State's Exhibit Number 12 is admitted
8 into evidence by the Court]

9 [Whereupon, State's Exhibit Number 13 is admitted
10 into evidence by the Court]

11 [Whereupon, State's Exhibit Number 15 is admitted
12 into evidence by the Court]

13 [Whereupon, State's Exhibit Number 16 is admitted
14 into evidence by the Court]

15 [Whereupon, State's Exhibit Number 18 is admitted
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 21 is admitted
18 into evidence by the Court]

19 MS. WILLIAMS: May I publish?

20 THE COURT: You may publish.

21 MS. WILLIAMS: Can you put State's 1 up.

22 Q. [Ms. Williams] What is that a picture of?

23 A. Mom's house.

24 Q. And where was your mom's house?

25 A. Summerville.

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1 MS. WILLIAMS: Can you put State's 15.

2 Q. [Ms. Williams] And is that the house that you
3 spoke of that you used to visit?

4 A. Yes, ma'am.

5 Q. Tell us what a -- what this is a picture of.

6 A. Mack's head laying on Minor2

7 MS. WILLIAMS: State's 18. 18.

8 Q. [Ms. Williams] Okay. Now, tell us --

9 MS. WILLIAMS: I'm going to give you a pointer.
10 Can you just point to who's in this picture. This red
11 thing is a little pointer.

12 THE WITNESS: The red --

13 MS. WILLIAMS: Yeah.

14 A. Michael, Minor2

15 Q. [Ms. Williams] So that's Minor2 in the
16 dress?

17 A. Yes, ma'am.

18 Q. And who is behind him?

19 A. Michael.

20 Q. And was that Mack's friend?

21 A. Yes.

22 Q. Do you know what Michael did on the weekends?
23 Like where he worked?

24 A. No.

25 Q. And who is that person off to the left?

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1 A. My mom.

2 Q. That's your mom, Julie Barnes?

3 A. Yes, ma'am.

4 MS. WILLIAMS: And if you could do State's 13.

5 Q. [Ms. Williams] Oh. Do you know who took that
6 picture?

7 A. No.

8 Q. Okay. And who is this a picture of?

9 A. Minor 2

10 Q. And do you know who took that picture?

11 A. No, ma'am.

12 MS. WILLIAMS: Okay. State's 11.

13 Q. [Ms. Williams] And who is holding up the little
14 boy?

15 A. Mack.

16 Q. Do you know who the little boy is?

17 A. I think it's Minor 3

18 MS. WILLIAMS: And State's 12.

19 Q. [Ms. Williams] Who's in that picture?

20 A. Minor 2 and Minor 1

21 Q. And just point to which one is which.

22 A. Minor 2 and Minor 1

23 Q. Okay. In the front is Minor 1

24 A. Yes, ma'am.

25 MS. WILLIAMS: Would you please publish State's

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1 16.

2 Q. [Ms. Williams] And who is the man holding the
3 two boys?

4 A. I think it's Michael.

5 Q. Okay. Michael Hope?

6 A. Yes, ma'am.

7 Q. And can you -- is your brother in that picture?

8 A. Yes, ma'am.

9 Q. Can you please point to him?

10 A. [Witness complies]

11 Q. Do you know who the other little boy is?

12 A. Either Justin or Jordan.

13 Q. Okay. Who were and ?

14 A. Minor2 and Minor1 friends.

15 Q. Okay. Do you know if they sometimes spent the
16 night at Mack's house?

17 A. Yes, they did.

18 MS. WILLIAMS: State's 21.

19 Q. [Ms. Williams] And who's in that picture?

20 A. Minor2 and Michael.

21 Q. Michael Hope?

22 A. Yes, ma'am.

23 MS. WILLIAMS: And, lastly, State's 9.

24 Q. [Ms. Williams] And what is that a picture of?

25 Can you --

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- 1 A. Mack's --
- 2 Q. -- see it on the screen?
- 3 A. Yeah. Mack's trailer.
- 4 Q. Okay. And do you know where that trailer was?
- 5 A. In Summerville.
- 6 Q. Summerville?
- 7 A. Yes, ma'am.
- 8 Q. Allison, do you remember spending Thanksgiving of
- 9 2008 with your mother?
- 10 A. Yes, ma'am.
- 11 Q. What did y'all do that day?
- 12 A. Ate dinner.
- 13 Q. And did you have plans for the next day?
- 14 A. Shopping.
- 15 Q. And what time did you get up to go shopping?
- 16 A. I didn't go to bed, but the rest of them got up
- 17 at like 2:00 or 3:00.
- 18 Q. Okay. And what did y'all do?
- 19 A. Went to Waffle House.
- 20 Q. And who was there?
- 21 A. Me, ¶Minor2 ¶Minor1 ¶Minor3 Julie, and Mack.
- 22 Q. Okay. So the boys were woken up to go?
- 23 A. Yes, ma'am.
- 24 Q. Okay. And then did everyone go shopping or --
- 25 A. No.

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1 Q. -- who went shopping?

2 A. There was just me and my mom.

3 Q. And where did everyone else go?

4 A. Back to the house.

5 Q. So Mack took the boys back?

6 A. Yes, ma'am.

7 Q. And sometime that day did you learn of a problem
8 that had come up?

9 A. Yes, ma'am.

10 Q. What was that?

11 A. That Mack was laying in the bed with Minor when
12 Minor3 dad came to pick him up.

13 Q. All right. And did DSS come to the house that
14 night?

15 A. Yes, ma'am.

16 Q. Tell me about that. What time was it?

17 A. 2:00 or 3:00 in the morning.

18 Q. And what happened?

19 A. They knocked on the door, and I went and woke my
20 mom up, and they talked to all of us.

21 Q. How many people came?

22 A. Two or three.

23 Q. Okay. And after they left, did anyone talk to
24 Minor2

25 A. Mom did.

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1 Q. Tell me about that.

2 A. I don't know the details on that. Mom took --

3 MR. SCHWACKE: Your Honor --

4 A. -- them into the room.

5 MR. SCHWACKE: Your Honor, I'm going to object.

6 Hearsay. I think we're getting into --

7 MS. WILLIAMS: We're not going to ask her what
8 she said, Your Honor.

9 THE COURT: All right. She just testified she
10 doesn't know the details. She may testify as to what
11 she personally observed but she may not -- she indicated
12 she doesn't know the details of the conversation.

13 Q. [Ms. Williams] Without saying what anyone said,
14 if you heard anything, just -- I think you had just started
15 to say she took them into the bedroom.

16 A. She took them into her bedroom and sent everyone
17 else to bed, back to bed, and that's the last I heard of
18 that.

19 Q. So you saw her take Minor 2

20 A. Yeah.

21 Q. And when did you leave Julie Barnes' home after
22 that visit?

23 A. Sunday.

24 Q. Which would have been -- was that that day or the
25 next day or --

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1 A. The next day.

2 Q. Did your mom call anyone after DSS left?

3 A. Mack.

4 Q. How did you know she called Mack?

5 A. Because I was in there when she called him.

6 Q. Okay. And do you know if Mack came back to the
7 house?

8 A. He did, but he did not come inside.

9 MS. WILLIAMS: Okay. Court's indulgence for just
10 a second.

11 [Whereupon, Ms. Williams and Ms. Herring-Lash
12 confer]

13 Q. [Ms. Williams] Allison, do you know where
14 and live now?

15 A. No.

16 Q. Do you know if they're still in this area?

17 A. No, they're not. I think they moved to Oregon,
18 but I'm not quite sure.

19 Q. And earlier I asked you about seeing the bruises
20 on Minor 1

21 A. Uh-huh.

22 Q. And at first you said they were red?

23 A. Yes, ma'am.

24 Q. Did you ever see them turn any other color?

25 A. No.

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1 MS. WILLIAMS: Please answer any questions
2 Mr. Schwacke has for you.

3 CROSS-EXAMINATION

4 BY MR. SCHWACKE:

5 Q. Were you ever threatened not to tell about
6 anything regarding this case?

7 A. Yes.

8 Q. You were threatened?

9 A. Uh-huh.

10 Q. By?

11 A. Well, I was told not to tell.

12 Q. By?

13 A. My mother.

14 Q. Not by Mr. Mack?

15 A. No.

16 Q. We don't get to use the projector so I'm going to
17 have to kind of hold the pictures up so the jury can have
18 an idea of what we're talking about. But this picture with
19 -- you've identified that's Michael Hope and Minor2

20 A. Uh-huh.

21 THE COURT: Mr. Schwacke, the State is indicating
22 that you may use the projector.

23 MR. SCHWACKE: All right. Exhibit 19.

24 Q. [Mr. Schwacke] Do you know when this was taken?

25 A. No, sir.

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1 Q. Do you know who took it?

2 A. No, sir.

3 Q. Do you know where it was taken?

4 A. My mom's kitchen.

5 MS. WILLIAMS: That's a different picture than we
6 put into evidence.

7 THE COURT: 18 is in evidence.

8 MS. WILLIAMS: Oh. 18 is in evidence?

9 THE COURT: But that's 19.

10 MS. WILLIAMS: You might have the wrong stack.
11 Over by the tissues.

12 Q. [Mr. Schwacke] So 18. The same deal goes,
13 though. You don't know who took it, you don't know when it
14 was taken, and you don't know where it was taken?

15 A. In my mom's kitchen.

16 Q. Oh. So your mom's kitchen.
17 You don't know what event that was?

18 A. No.

19 MR. SCHWACKE: Number 13.

20 Q. [Mr. Schwacke] Do you know who took that
21 picture?

22 A. No, sir.

23 Q. Do you know when it was taken?

24 A. No, sir.

25 Q. Do you know where it was taken?

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1 A. Mom's foyer.

2 MR. SCHWACKE: Okay. State's Exhibit Number 11.

3 Q. [Mr. Schwacke] Were you shown this picture prior
4 to testifying today or --

5 A. No.

6 Q. -- are you seeing it for the first time up there?

7 A. Seeing it for the first time.

8 Q. Would it help you to examine the actual picture?

9 A. Yes.

10 Q. You've identified that as your -- as Minor3 But
11 is that --

12 A. Yeah.

13 Q. -- one of the twins?

14 A. Yeah.

15 Q. So you were wrong when you identified that as
16 Minor3

17 A. Yes.

18 Q. And you don't know who took that picture?

19 A. No.

20 MR. SCHWACKE: Number 12.

21 [Whereupon, Mr. Schwacke and Ms. Williams confer]

22 Q. [Mr. Schwacke] Do you know who took that
23 picture?

24 A. No, sir.

25 Q. Do you know where it was taken?

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- 1 A. My mom's living room.
- 2 Q. Do you know when it was taken?
- 3 A. No, sir.
- 4 Q. Let me ask you, because there's been a couple of
- 5 pictures now with them just kind of hanging out in their
- 6 underwear. Is that something that was normal?
- 7 A. Yeah.
- 8 Q. Happened a lot at the house?
- 9 A. Yeah.
- 10 Q. Now, who is Michael Hope?
- 11 A. Mack's friend.
- 12 Q. And he would be over at your mom's house?
- 13 A. Yes, sir.
- 14 Q. Now, you talked to the same -- you talked to --
- 15 you went to the Dorchester Children's Center for an
- 16 evaluation of this case; correct?
- 17 A. Uh-huh.
- 18 Q. And you met with a caseworker who put you into a
- 19 room with microphones and a camera?
- 20 A. Uh-huh.
- 21 Q. And at no time during that interview did you
- 22 mention any of the things that you've testified to today
- 23 about bruises or kids being scared to go over to Mr. Mack's
- 24 house?
- 25 A. No.

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1 Q. That's all new today? not in your video
2 statement?

3 A. No. The video statement was mainly about my mom.

4 Q. But they asked you questions about what you had
5 observed and the fact that the kids went over there, and
6 you didn't mention anything about them being scared or not
7 wanting to go?

8 A. No.

9 Q. I'm asking a question. You didn't mention any of
10 those things; correct?

11 A. I don't recall.

12 Q. So the pictures of the kids kind of running
13 around in their skivvies or underwear --

14 A. Uh-huh.

15 Q. -- I mean, again, that was something that was
16 kind of an everyday kind of deal?

17 A. Yeah. Every time I was over there.

18 Q. Okay. One moment.

19 [Whereupon, Mr. Schwacke and Ms. Kennedy confer]

20 Q. [Mr. Schwacke] How many times do you figure
21 you've been over to Mr. Mack's trailer?

22 A. Six or seven.

23 Q. And each time you were there, you were there with
24 your brothers?

25 A. Yes.

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1 Q. And where would you stay?

2 A. I never spent the night. But we would be in the
3 living room watching movies.

4 MR. SCHWACKE: Okay. I think that's all the
5 questions I have.

6 THE COURT: Ms. Williams, redirect?

7 REDIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. You would not spend the night at Mack's; it
10 that --

11 A. No.

12 Q. -- true?

13 And when you were there, was your mom always
14 there?

15 A. Yes.

16 Q. Why did the boys have to spend the night and not
17 you?

18 A. Because they were more troublesome and
19 rambunctious while she was working on the schoolwork.

20 Q. And Mack was the babysitter?

21 A. Yes.

22 MS. WILLIAMS: Nothing further, Your Honor.

23 MR. SCHWACKE: Nothing from --

24 THE COURT: Miss Gunnells, you may step down.

25 Thank you.

MIA PERRON, CVR-CM

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1 [Whereupon, The witness is excused and exits the
2 witness stand]

3 [Off the record momentarily]

4 THE COURT: Please call your next witness.

5 MS. WILLIAMS: Nathan Tobey.

6 MR. SCHWACKE: May we approach, Your Honor?

7 THE COURT: You may.

8 Sir, please come forward to the witness stand.

9 [Whereupon, Mr. Tobey comes forward]

10 [Whereupon, an off-the-record bench conference is
11 held]

12 THE CLERK OF COURT: Please raise your right
13 hand --

14 THE COURT: Hold on one moment.

15 All right. There is a matter unrelated. I'm
16 going to need you to wait outside of the courtroom for
17 just a few moments. We're taking some witnesses out of
18 order, so I'll need you to wait back outside of the
19 courtroom. Thank you.

20 [Whereupon, Mr. Tobey exits the courtroom]

21 THE COURT: Ms. Williams, call your next witness.
22 I apologize for the inconvenience.

23 MS. WILLIAMS: Carrie Britt.

24 [Whereupon, Ms. Britt comes forward]

25 THE CLERK OF COURT: Please raise your right

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1 hand, place your left hand on the Bible.

2 [Whereupon, Ms. Britt is duly sworn by the clerk
3 of court as follows: do you solemnly swear or affirm
4 the testimony you give the Court in the trial of this
5 case will be the truth, the whole truth, and nothing but
6 the truth, so help you God]

7 THE WITNESS: I do.

8 THE CLERK OF COURT: Please be seated. State
9 your full name and spell your last name for the record.

10 [Whereupon, the witness takes the witness stand]

11 THE WITNESS: My name is Carrie Elizabeth Britt.
12 Last name is spelled B-R-I-T-T.

13 THE COURT: Ms. Williams.

14 - - - - -

15 CARRIE BRITT,

16 Having Been First Duly Sworn,
17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Ms. Britt, how old are you?

21 A. Nineteen years old.

22 Q. And where do you live?

23 A. I actually reside with the mother, Julie Barnes.

24 Q. Okay. Where is that?

25 A. That is at Court, Summerville, South

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1 Carolina, 29483.

2 Q. And do you know Ronald McCauley?

3 A. Yes, ma'am, I do.

4 Q. How do you know him?

5 A. He was actually my mother's friend, as well as my
6 mother's ex-boyfriend's son.

7 Q. Okay. Your mother's -- so your mother dated his
8 father?

9 A. Yes, ma'am.

10 Q. Okay. And did you ever go to his house when he
11 lived in the trailer in Summerville?

12 A. Yes, ma'am.

13 MS. WILLIAMS: Your Honor, I'm going to show
14 defense counsel what's been admitted as State's 9.

15 [Whereupon, Ms. Williams proffers documents to
16 Mr. Schwacke]

17 MS. WILLIAMS: May I approach?

18 THE COURT: You may.

19 Q. [Ms. Williams] Can you tell what this is a
20 picture of?

21 A. That's his house right there, that middle one.

22 MS. WILLIAMS: Can you put up State's 9.

23 Q. [Ms. Williams] Okay. So if you wouldn't mind
24 pointing to -- which trailer was Mr. McCauley living in?

25 A. The one right in the middle.

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1 Q. The middle?

2 A. Yes, ma'am.

3 Q. Hold on to that. The red dot is the pointer.

4 A. Okay.

5 Q. And --

6 A. That house right there.

7 Q. Okay. Thank you.

8 How often would you go over there?

9 A. Every weekend.

10 Q. All right. And who lived in his home with him?

11 A. He actually had two separate roommates throughout
12 the time me and my mother were hanging out with him.

13 Q. And what were their names?

14 A. The first couple that lived there I remember the
15 lady's name. Her name was Stephanie. I don't remember the
16 man's name. And then she -- and then he had Kris and Doug
17 living with him.

18 Q. Okay. And explain where the bedrooms were, as
19 far as where the roommates' bedroom was and where Mr.
20 McCauley's bedroom was.

21 A. Okay. As soon as you walk in the house, the
22 roommates' bedroom was the master bedroom, which was on the
23 complete opposite end of the house. And then his bedroom
24 was on the opposite end on this side. His was to the right
25 and the roommates' was to the left.

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1 Q. Okay. So which rooms were in between Mr.
2 McCauley's bedroom and the roommates' bedroom?

3 A. The laundry room, the kitchen, the dining room --
4 or the dining-kitchen area. The living room. There was
5 another spare bedroom that he had that he used for storage
6 a lot of the time. And then the bathroom.

7 Q. So if you were in one of the bedrooms, you
8 couldn't see all the way through to the other one?

9 A. No.

10 Q. And who else did you see over at the house?

11 A. I've seen several individuals there. I've seen
12 Ms. Barnes there, all the children, Minor 3 Minor 2

13 Minor 1 I have not seen Alley there.

14 Q. Okay. How old were Minor 2 Minor 1 and
15 Minor 3 if you remember?

16 A. I know Minor 2 and Minor 1 were eleven, Minor
17 was nine or seven. Nine, I believe.

18 Q. And why were the kids always over there?

19 A. Well, he took care of them. He made sure --
20 well, sometimes it was because she was working, they needed
21 a babysitter. And then there would be times he would go to
22 her house.

23 Q. And what was your understanding of Mr. McCauley's
24 relation to the twins?

25 A. He had told me several times that he was their

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1 father. I never quite believed it. And he just kept
2 insisting, I'm their father, I'm their father, it was a
3 drunken one-night stand.

4 Q. All right. And did the kids spend the night over
5 there?

6 A. Yes, ma'am.

7 Q. Were you living with Julie Barnes at that time?

8 A. No, ma'am.

9 Q. When did you actually meet her, if you remember?

10 A. I want to say I met her the end of 2007, I
11 believe.

12 Q. Okay. How did Julie act around her kids?

13 A. Kind of how she acts around anybody. She -- I
14 guess the word for it would be ditsey.

15 Q. Okay. And between Mack and her, who was
16 disciplining the children?

17 A. Mack, definitely.

18 Q. And how would Mack discipline the children?

19 A. With a hard-back book.

20 Q. Okay. Tell me about that.

21 A. I know on one occasion we had gone out to a
22 Mexican restaurant, and ^{Minor}1 could not sit down on his
23 bottom. And I kept asking him what's wrong, and he would
24 just hold his -- hold his bottom. And I said, what's
25 wrong. And Julie decided to take him in the bathroom and

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1 show me, and from one butt cheek to the other was purple.

2 Q. And did you learn how he got those purple marks
3 on him?

4 A. It was he and his brother had been playing with
5 the grill and his -- they had litten a piece of paper on
6 fire and burned down the back yard, almost, and that was
7 his punishment.

8 Q. Okay. And who inflicted those --

9 A. Mack.

10 Q. -- purple marks?

11 How do you know it was Mack?

12 A. He told me. I confronted him on it.

13 Q. What did you say to him?

14 A. I told him, I said, what makes you think you have
15 the right to put your hands on a child like that and leave
16 marks on him.

17 Q. And what did he say?

18 A. He said he needed a spanking.

19 Q. Is that all he said?

20 A. That's what he -- that's -- he said that's what
21 he deserved, that he needed a spanking.

22 Q. And did you know if any of the children took
23 medication?

24 A. Yes.

25 Q. Who did you know took medication?

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1 A. I know Minor 1 had growth hormones that he was
2 supposed to take I believe twice a day. And then I know
3 Minor had HD -- ADHD medicine that he took.

4 Q. And how did Minor act? What were your
5 observations about how Minor acted?

6 A. Minor was a good kid. I mean, he was very
7 hyperactive, I mean, of course. But when he was on his
8 medicine, like he wouldn't eat. He would just sit around
9 like a zombie until it wore off and then he would be
10 bouncing off the walls.

11 Q. Okay. Do you know if he was being given the
12 proper dosage?

13 A. I do not know.

14 Q. Okay. And did you ever see Mack McCauley hit the
15 kids with a book?

16 A. No, ma'am, I have not.

17 Q. How did Mack treat Julie?

18 A. Horrible.

19 Q. Can you give us some examples?

20 A. He used to call her a dumb B-I-T-C-H --

21 MR. SCHWACKE: Your Honor, I need to approach the
22 bench on this.

23 [Whereupon, an off-the-record bench conference is
24 held]

25 THE COURT: Overruled.

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1 Q. [Ms. Williams] If you remember, how did
2 Minor2 react to the way that Mack McCauley treated his
3 mother?

4 A. He didn't say anything.

5 Q. Okay. Do you remember about what month and year
6 you started seeing Mack or started getting back in touch
7 with him, or your mother and you --

8 A. My mother got in touch with him February 14th of
9 2007 when his biological father died.

10 Q. Okay. And did you remain in touch with him until
11 late 2008?

12 A. Yes, ma'am.

13 Q. And during that period of time, were the children
14 at the trailer?

15 A. Yes, ma'am.

16 Q. Court's indulgence for just a second.

17 [Whereupon, Ms. Williams and Ms. Herring-Lash
18 confer]

19 Q. [Ms. Williams] Were there a lot of different
20 adults at the trailer when the kids were there?

21 A. Sometimes.

22 MS. WILLIAMS: Your Honor, I'm going to show --

23 Q. [Ms. Williams] And did you sometimes go to
24 Julie's house --

25 A. Yes, ma'am.

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1 Q. -- when Mack was there?

2 MS. WILLIAMS: I'm going to show defense counsel
3 what's been marked as State's 20.

4 [Whereupon, Ms. Williams proffers documents to
5 Mr. Schwacke]

6 MS. WILLIAMS: May I approach?

7 THE COURT: You may.

8 Q. [Ms. Williams] Without saying what it is, do you
9 recognize that picture?

10 A. Yes, I do.

11 Q. Is it an accurate depiction of the people in the
12 picture?

13 A. Yes.

14 MS. WILLIAMS: Okay. Your Honor, at this time we
15 would offer State's 20 into evidence and ask to publish.

16 THE COURT: Any objection, Mr. Schwacke?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: State's 20 into evidence without
19 objection.

20 [Whereupon, State's Exhibit Number 20 is admitted
21 into evidence by the Court]

22 THE COURT: You may publish.

23 Q. [Ms. Williams] Who's in this picture?

24 A. Myself, and that is I believe Michael and

25 MMinor 2 and MMinor 1

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1 Q. Okay. And when you say Michael, what's his last
2 name?

3 A. Hope.

4 Q. Do you know where that is?

5 A. That's at Julie Barnes' house. That's in her
6 kitchen.

7 Q. Okay. Do you remember who took the picture?

8 A. No.

9 Q. And do you remember a time when Minor got a
10 medical procedure done?

11 A. Yes.

12 Q. What was that?

13 A. A circumcision.

14 Q. And how old was he when that happened?

15 A. Nine.

16 Q. And who took him?

17 A. Mack.

18 Q. Did you ever find out why Minor was circumcised at
19 age nine?

20 A. No. I had heard that he --

21 MR. SCHWACKE: Your Honor, she's saying I heard.
22 I object as to hearsay.

23 Q. [Ms. Williams] Without saying what someone else
24 told you, did you learn why?

25 THE COURT: Thank you, Ms. Williams.

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1 A. No.

2 Q. [Ms. Williams] Did you ever see -- did you ever
3 see it after the procedure was done?

4 A. Yes.

5 Q. Tell us about that.

6 A. I could not even tell that it was a little boy.
7 It was completely black and blue from -- I mean, his legs
8 were even black and blue.

9 MR. SCHWACKE: Your Honor, she's indicating --
10 we're going to have a speaking objection here unless
11 you're going to ask me to come up to --

12 THE COURT: All right. Please approach.

13 [Whereupon, an off-the-record bench conference is
14 held]

15 THE COURT: Overruled. Please move on, Ms.
16 Williams.

17 MS. WILLIAMS: Your Honor, I have no further
18 questions.

19 Ms. Britt, please answer any questions the
20 defense has.

21 THE COURT: Mr. Schwacke.

22 CROSS-EXAMINATION

23 BY MR. SCHWACKE:

24 Q. Ms. Britt, you're nineteen?

25 A. Yes, sir.

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1 Q. Are you employed?

2 A. No, sir.

3 Q. You live with Ms. Julie Barnes?

4 A. And my mother.

5 Q. Ms. Julie Barnes is your mother?

6 A. No, sir.

7 Q. Okay. You live with your mother and Ms. Julie
8 Barnes?

9 A. Yes, sir.

10 Q. Okay. And how long have you known Ms. Julie
11 Barnes?

12 A. I've known Ms. Julie Barnes for roughly
13 approximately three years.

14 Q. Are you married?

15 A. No, sir. I'm engaged.

16 Q. Is this going to be your first marriage?

17 A. Yes, sir.

18 Q. Do you have any children?

19 A. No, sir.

20 Q. How often would you be over at Ms. Barnes'
21 previous residence?

22 A. Excuse me?

23 Q. How often would you be over at Ms. Barnes'
24 previous residence?

25 A. What previous residence?

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1 Q. Where she was living with Minor2 with Minor1, and
2 Minor3}

3 A. That's the same house.

4 Q. So you're in the house where she was previously
5 living?

6 A. She's still living there.

7 Q. Okay. So how long would you go over there prior
8 to moving?

9 A. We didn't go over there very often at all.

10 Q. Okay. But you were over at Mack's --

11 A. Yes.

12 Q. -- or Mr. McCauley's house?

13 A. Yes, sir.

14 Q. Who did you go with?

15 A. My mother.

16 Q. And are you an only child? Does your mother have
17 more children than you?

18 A. No, it's just me.

19 Q. Okay. Did you tell your mother about the
20 bruising that you noticed at the restaurant --

21 A. Yes, I did.

22 Q. -- on the back?

23 And which one of you called the police?

24 A. We didn't.

25 Q. It was that bad, but you couldn't call the

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1 police?

2 A. I should have, but I didn't.

3 Q. But you didn't?

4 A. You're right.

5 Q. Okay. So we know how you're describing it. But
6 if the police had been called, we could have seen maybe
7 some photographs, a medical examination?

8 A. Yes, sir, you could have.

9 Q. And you didn't think it was important enough to
10 call?

11 A. It did not -- I figured that was a mother's
12 position.

13 Q. Okay. So you showed that to Ms. Barnes?

14 A. Ms. Barnes was in the bathroom when --

15 Q. Right.

16 A. -- she told him to drop his pants and show me.

17 Q. And she didn't call, either?

18 A. No.

19 Q. Have you ever seen the kids at Ms. Barnes' house
20 kind of just running around in their --

21 A. No.

22 Q. Okay. So you never saw that, or you never were
23 there to see it?

24 A. When I was there, they were always completely
25 clothed.

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1 Q. Okay. You've been in Ms. Barnes' residence now;
2 correct?

3 A. Yes, sir.

4 Q. And you've been in Mr. McCauley's residence?

5 A. Yes, sir.

6 Q. So if I'm going to show you what's been
7 introduced as State's Exhibit 12, is that Mr. McCauley's
8 house --

9 A. That --

10 Q. -- or is that Ms. Barnes' house?

11 A. That's Ms. Barnes' house. That's her living
12 room.

13 Q. Okay. I'm going to show you what's marked as
14 State's Exhibit 13.

15 A. That would be her foyer.

16 Q. And, again, that's Ms. Barnes' house?

17 A. That's Ms. Barnes' house.

18 Q. And, again, it's one of -- this is Minor 2

19 A. Yes, that's Minor 2

20 Q. Okay. And, again, he's in his underwear only?

21 A. Right.

22 Q. At Ms. Barnes' house?

23 A. Yep.

24 Q. Who is Mike Hope to you?

25 A. He was a friend of Mack's. He was a

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1 representative for Bed Head. Me and him became friends
2 because I was buying products from him from Bed Head.

3 Q. All right. So we're talking about hair products;
4 correct?

5 A. Uh-huh.

6 Q. Bed head.

7 Was Minor2 scared of Michael?

8 A. No.

9 Q. Did they have a name for Michael Hope?

10 A. Not that I know of.

11 Q. They didn't call him Auntie Michael?

12 A. Not that I know of. I've never heard him
13 [phonetic] refer to him that way.

14 Q. All right. And the important thing, I guess, in
15 terms of what I'm going to ask you here is: you saw
16 bruises --

17 A. Yes, sir.

18 Q. -- that you felt what right does this man have to
19 do to this child --

20 A. Yes, sir.

21 Q. -- and you didn't report it?

22 A. No, sir.

23 MR. SCHWACKE: Thank you.

24 THE COURT: Ms. Williams?

25 MS. WILLIAMS: Nothing further, Your Honor.

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1 THE COURT: Ms. Britt, you may step down. Thank
2 you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.

6 MS. WILLIAMS: Michael Hope.

7 [Whereupon, Mr. Hope comes forward]

8 MS. WILLIAMS: Mr. Hope, if you could just walk
9 this way and around to that --

10 THE CLERK OF COURT: Please raise your right hand
11 and place your left hand on the Bible.

12 [Whereupon, Mr. Hope is duly sworn by the clerk
13 of court as follows: do you solemnly swear or affirm
14 the testimony you give the Court in the trial of this
15 case will be the truth, the whole truth, and nothing but
16 the truth, so help you God]

17 THE WITNESS: Yes, I do.

18 THE CLERK OF COURT: Please be seated. State
19 your full name and spell your last name for the record.

20 [Whereupon, the witness takes the witness stand]

21 THE WITNESS: Michael Hope. H-O-P-E.

22 MS. WILLIAMS: Good afternoon, Mr. Hope.

23 THE WITNESS: Good afternoon.

24 - - -

25 - - -

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MICHAEL HOPE,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. How old are you?

A. I am thirty-seven.

Q. And where do you live?

A. I live in North Charleston.

Q. Where do you work?

A. Charleston Cosmetology Institute.

Q. What do you do there?

A. I'm an instructor.

Q. Is that like hair and --

A. I teach the skin portion of the curriculum.

Q. And do you know Ronald McCauley?

A. Yes, I do.

Q. How long have you known Ronald McCauley?

A. We went to high school together, but we didn't know each other very well in his school. I ran into him again probably three years ago.

Q. Okay. And when you say run into him, where did you run into him?

A. On the internet.

Q. And tell us about it.

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1 A. On a My Space type site. My Space.

2 Q. And did you start hanging out with him?

3 A. Yes, I did.

4 Q. What kinds of things did y'all go together?

5 A. We would go to the club, listen to karaoke, we
6 would go to Wal Mart, K-Mart, you know, late at night, go
7 to dinner.

8 Q. What kind of club?

9 A. A gay bar.

10 Q. Do you know what it's called?

11 A. Patrick's.

12 Q. Do you sometimes work at Patrick's?

13 A. Sometimes I do.

14 Q. What do you do there?

15 A. I am a female impersonator.

16 Q. And did you ever go to Mr. McCauley's home?

17 A. Yes, I did.

18 Q. And who would you go there with?

19 A. I would either go there by myself, or with at the
20 time my boyfriend, or a friend of mine that now lives in
21 Mexico City.

22 Q. And where did Mr. McCauley live at that time?

23 A. Summer Creek Mobile Home Park.

24 Q. Did you ever see Nate Tobey there?

25 A. I think I might have one time. I don't recall

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1 seeing him there. But like I said, that was three years
2 ago.

3 Q. And who lived in that home?

4 A. At the time, Ronald McCauley and Kris and Doug.

5 Q. Okay. And if you know, who were Kris Doug?

6 A. Kris and Doug were, that I knew of, his
7 roommates. I met them one time in an extremely brief
8 passing.

9 Q. Okay. Did you know -- did you go over there
10 often enough to know where everybody slept?

11 A. Yes, ma'am.

12 MS. WILLIAMS: Okay. Your Honor, I'm going to
13 show defense counsel what's been previously marked and
14 identified as 22.

15 [Whereupon, Ms. Williams proffers documents to
16 Mr. Schwacke]

17 MR. SCHWACKE: No objection.

18 MS. WILLIAMS: May I approach the witness?

19 THE COURT: You may.

20 Q. [Ms. Williams] Can you decipher this, as far as
21 a floor plan, and see if it's an accurate floor plan for
22 Mr. McCauley's trailer?

23 [Whereupon, the witness reviews documents]

24 A. Yes.

25 Q. [Ms. Williams] And can you identify all the

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1 rooms and are those where the rooms were for Mr. McCauley's
2 trailer?

3 A. Yes, ma'am.

4 MS. WILLIAMS: Okay. Your Honor, at this time we
5 would move State's 22 into evidence.

6 THE COURT: No objection?

7 MR. SCHWACKE: No objection.

8 THE COURT: State's 22 into evidence without
9 objection.

10 [Whereupon, State's Exhibit Number 22 is admitted
11 into evidence by the Court]

12 THE COURT: You may publish.

13 Q. [Ms. Williams] Mr. Hope, if you -- there's a
14 red dot on that pointer. If you could just show us where
15 Mr. McCauley's bedroom was in the trailer. If you'll point
16 it at that. Yeah.

17 A. Right there.

18 Q. Okay. And where did Kris and Doug sleep?

19 A. Back here.

20 Q. Okay. And were you ever there when any children
21 were at the house?

22 A. Yes.

23 Q. Do you know where they slept?

24 A. If they didn't sleep in his room, there was
25 another room that they slept in.

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1 Q. Where is that?

2 A. [Witness indicates]

3 Q. Okay. Thank you.

4 Who were the children that were at his house?

5 A. I was told they were his children.

6 Q. Who told you that?

7 A. Ronald McCauley.

8 Q. And tell us how many children you would see over
9 there.

10 A. At first it was two, then three. Then the three
11 that were brothers had two of their friends over that were
12 twins.

13 Q. Okay. And which ones were Mr. McCauley telling
14 you that were his friends?

15 A. Minor 1 and Minor 2

16 Q. Was that your understanding of why they spent so
17 much time with him?

18 A. Yes, ma'am.

19 Q. Do you remember how old the kids were?

20 A. Eleven.

21 Q. When you say eleven, are you talking about which
22 one?

23 A. Minor 1 and Minor 2 were eleven and I think
24 Minor was nine.

25 Q. Okay. And tell us about Minor 1 Did he have

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1 some special issues?

2 A. Yes. Minor 1 outwardly appeared to be a special-
3 needs child.

4 Q. Okay. And did you ever see Julie Barnes at his
5 house?

6 A. Yes, I did.

7 Q. And when the kids -- did the kids spend the
8 night?

9 A. Yes.

10 Q. Did she spend the night when the kids spent the
11 night at his house?

12 A. No.

13 Q. Did you ever go to Julie Barnes' house?

14 A. Yes, I did.

15 Q. And did you see Mack there?

16 A. Yes, I did.

17 Q. Do you know if Mack spent the night there?

18 A. Yes, ma'am, he did.

19 Q. How would Julie Barnes act around her children?

20 A. With or without him there?

21 Q. With Mack there.

22 A. Pretty much Mack had the reins at that time.

23 Q. And who disciplined the children?

24 A. Mack. Excuse me. Ronald McCauley.

25 Q. And is Ronald McCauley sometimes called Mack?

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1 A. Yes.

2 Q. What would Ms. Barnes do while he was
3 disciplining the children?

4 A. Sitting on the computer.

5 Q. Okay. What did he -- what methods did he use to
6 discipline them?

7 A. Belt, excessively; a board; standing them in the
8 corner; making them stand on their knees. That's all that
9 I observed.

10 Q. And tell me about the board.

11 A. There was a board by the back door leading into
12 the back yard --

13 Q. At whose house?

14 A. Julie Barnes' house.

15 Q. Okay. And how do you know that he disciplined
16 the children with that board?

17 A. I saw him use the board to paddle Minor 1

18 MS. WILLIAMS: All right. Court's indulgence for
19 just a second.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Williams reviews documents]

22 Q. [Ms. Williams] Did you ever have to take any
23 action regarding the board?

24 A. Yes, ma'am.

25 I told him that if -- he wasn't going to do that

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1 while I was there, and the board was taken and put back by
2 the door.

3 Q. What was he trying to do?

4 A. He was punishing Minor 1 for something he did.

5 MS. WILLIAMS: Your Honor, I'm showing defense
6 counsel what's already been admitted as State's 12.

7 [Whereupon, Ms. Williams proffers documents to
8 Mr. Schwacke]

9 MR. SCHWACKE: No objection.

10 MS. WILLIAMS: May I approach the witness?

11 THE COURT: You may.

12 Q. [Ms. Williams] Tell me if you see the board in
13 this picture.

14 A. Yes, ma'am.

15 Q. Okay. And how do you know it's that board?

16 A. There was a bent piece, on the bottom of the
17 board, that looked kind of like a little foot where the
18 wood had broken.

19 MS. WILLIAMS: Okay. Can you put up State's 12.

20 Q. [Ms. Williams] Is it a one-by-four, would you
21 say?

22 A. It looked like it was a non-planed piece of wood
23 shaped sort of like a one-by-four.

24 Q. Okay. Can you point out to the jury -- it's kind
25 of hard to see in that picture -- but with the pointer

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1 where that board is?

2 A. Right here next to a snake-hiding log. And the
3 reason I can tell from this picture is there's the little
4 bent piece right there.

5 Q. Okay. Thank you.

6 And did you see Mr. McCauley spank the kids?

7 A. Yes, ma'am.

8 Q. How many times would you say you've seen him
9 spank the kids?

10 A. Probably four or five.

11 Q. And did he spank each of the children?

12 A. I have seen him spank each of the children.

13 Q. What kind of things would they be doing to get a
14 spanking?

15 A. Laying in bed at night when they should be
16 sleeping; talking; or one would jump down out of the bed;
17 or sometimes it would be we would come -- one time it was
18 we came home from shopping or going out to dinner or
19 something, and he found out something one of the kids did
20 wrong and yanked the child out of bed out of his sleep.

21 Q. Did you think that --

22 MS. WILLIAMS: Withdrawn.

23 Q. [Ms. Williams] How did -- how did he treat the
24 children when he wasn't disciplining them? Like ^{Minor 2} M. for
25 example.

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1 A. Really well. Like it was his child. Like he was
2 very affectionate towards him.

3 Q. And did he ever say anything about Minor 2

4 A. Minor 2? was his special one.

5 Q. And how would Minor 2? act when he wasn't being
6 disciplined?

7 A. He would be sitting on Ronald's lap. Honestly,
8 he would be hugged up to him like he was, for lack of a
9 better term, a father.

10 Q. Did you know that -- did you know if the children
11 had a father in their life?

12 A. I was told that --

13 MR. SCHWACKE: Objection.

14 MS. WILLIAMS: You can't say what you were told.

15 THE WITNESS: Okay.

16 THE COURT: Sustained as to hearsay.

17 Q. [Ms. Williams] Just without repeating what
18 anyone told you, did you ever learn of another man in their
19 lives besides Mr. McCauley?

20 A. No, ma'am.

21 MS. WILLIAMS: Your Honor, I'm going to approach
22 the witness with what's already been admitted as State's
23 21 and 16. May I approach?

24 THE COURT: You may.

25 MS. WILLIAMS: Do you know who took these

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1 pictures?

2 A. Ronald McCauley.

3 Q. [Ms. Williams] Okay. And where are they taken?

4 A. This picture is taken in Ronald McCauley's home.

5 And that is in Julie Barnes' home.

6 MS. WILLIAMS: Okay. Can you put 21 and 16 up.

7 MR. SCHWACKE: What did you say the number --

8 MS. WILLIAMS: That was 21.

9 Q. [Ms. Williams] And whose house is that?

10 A. Julie Barnes.

11 Q. How about this one? Where was this?

12 A. Ronald McCauley's house.

13 Q. And who are the two boys in the picture?

14 A. Minor 2 And I don't -- there were another

15 set of twins. I want to say and . I don't

16 know. Don't remember.

17 Q. And did those twins spend the night, to your
18 knowledge?

19 A. Yes, ma'am.

20 Q. What kinds of activities or electronics were at
21 Mack's house?

22 A. Video games, DVD player, children's movies.

23 Q. Computer?

24 A. Computer.

25 Q. Did the children play on the computer ever?

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1 A. Not that I saw.

2 Q. Did Mack use the computer?

3 A. Yes, ma'am.

4 Q. What kinds of things did Mack do on the computer
5 that you know about?

6 A. That I know about? He went on chat sites, he was
7 on Craig's list a lot, and he kept pornography on the
8 computer.

9 Q. How do you know he kept pornography on the
10 computer?

11 A. He showed me some of it. Not like showed me
12 actual movies, but showed me what would be up at the time.

13 Q. And where was that computer?

14 A. In his bedroom, at the foot of his bed.

15 MS. WILLIAMS: Court's indulgence.

16 [Whereupon, Ms. Williams and Ms. Herring-Lash
17 confer]

18 Q. [Ms. Williams] You had told us before about him
19 jerking one of the children out of bed and then he beat
20 them. Do you remember which child it was?

21 A. Minor 3

22 Q. And do you remember any other time, besides the
23 punishments that you've described, that Minor was punished
24 for doing something?

25 A. Yes, ma'am.

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1 One time he was made to stand in the hallway.
2 And he was in the hallway standing with his nose against
3 the wall for quite a long time. He had to use the restroom
4 and when he wasn't allowed off the wall to use the
5 restroom, a brief time later he urinated on himself and the
6 floor and then was punished for doing that.

7 Q. How was he punished for urinating on the floor?

8 A. He was spanked for doing that.

9 Q. Did he have to stand in the pee?

10 A. Yes, ma'am.

11 MS. WILLIAMS: Nothing further. Please answer
12 any questions Mr. Schwacke has.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Mr. Schwacke.

15 MR. SCHWACKE: I had to move on to a new pad, so
16 I've got two up here.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. Mr. Hope, you're thirty-seven?

20 A. Yes, sir.

21 Q. How long have you known Mr. McCauley?

22 A. I --

23 Q. You said high school?

24 A. I met -- I knew of him, and knew of him in high
25 school, but I didn't know him on a person-to-person basis

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1 until about three years ago.

2 Q. And would that have kind of rekindled the
3 friendships -- rekindled at Patrick's or --

4 A. Say that again.

5 Q. Did you actually rekindle the friendship while
6 y'all were at Patrick's or --

7 A. No, sir. He invited me over to his home.

8 Q. And so you've been both to Mr. McCauley's
9 residence and Ms. Barnes' residence?

10 A. Yes, sir.

11 Q. How many times do you figure you've been to
12 Mr. McCauley's?

13 A. Any time frame?

14 Q. Well, total.

15 A. Total? After the first six months that I new
16 him, probably anywhere between two to four times a week.

17 Q. Okay. Did you ever sleep over?

18 A. No, sir.

19 Q. Where did you live in relation to where he lived

20 A. I lived -- when I first ran into him again, I
21 lived in Okatee in Goose Creek, then I moved to Fernwood,
22 and then to Fairfax.

23 Q. So when you went over there two to four times a
24 week, what time of day are we talking about?

25 A. It could be anywhere from late afternoon to late

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1 evening, depending on when I got off work or when he was
2 home.

3 Q. Weekdays? weekends? both?

4 A. Usually during the week, towards the end of the
5 week. Occasionally on the weekends. We liked to go --
6 usually go out on Thursdays.

7 Q. For some of that karaoke?

8 A. Yes, sir.

9 Q. That's karaoke night?

10 A. Yes, sir.

11 Q. So understanding that you were over there two to
12 four times a week and there would be times you would be
13 over there where there would be no children at all --

14 A. Yes, sir.

15 Q. And there would be other times that you would go
16 on the weekends and they would be there?

17 A. Yes, sir.

18 Q. What about Allison Gunnells? Would she be there?

19 A. I can only recall one time when she was there.

20 Q. Okay. Now, you also know Ms. Barnes?

21 A. Yes, sir.

22 Q. How do you know Ms. Barnes?

23 A. Through Ronald McCauley.

24 Q. Is that the only way you know her?

25 A. Yes, sir.

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1 Q. And you've been over to her residence?

2 A. Yes, sir.

3 Q. And how many times total do you figure you've
4 been over to her residence?

5 A. Any time Ronald was over there that I picked him
6 up or met him over there before we would go out -- I can't
7 really say how many times -- or that they invited us over
8 for dinner or they had a birthday function or a cookout.

9 Q. Do you still go over to Ms. Barnes?

10 A. Absolutely not.

11 Q. Why do you say it that way?

12 A. Can I be honest?

13 Q. You took an oath to do that, so please go ahead.

14 A. I'm sickened by the whole situation.

15 Q. Okay. Is that because you realize there's
16 something you might have been able to do to stop it?

17 A. I don't think there was anything I could do to
18 stop it because I didn't see anything outwardly that would
19 give me a means to intervene, other than spanking a child.

20 Q. And so you wouldn't characterize what you saw,
21 then, as excessive corporal punishment?

22 A. The times that I saw it, I would say that it was
23 very unusual.

24 Q. But not unusual enough that you would feel like
25 it needed to be reported or you needed to quit hanging out

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1 with Mr. McCauley or Ms. Barnes?

2 A. I said what I had to say about the punishment,
3 and it never happened around me again.

4 Q. And that is at both residences? Ms. Barnes' and
5 Mr. McCauley's?

6 A. The punishment was always at Ms. Barnes.

7 Q. That you observed?

8 A. Yes, sir.

9 Q. I'm going to show you --

10 [Whereupon, Mr. Schwacke and Ms. Williams confer]

11 Q. [Mr. Schwacke] I'm going to show you what's been
12 marked as State's Exhibit 21.

13 A. Yes, sir.

14 Q. That would be you and ^{Minor 2}
~~Minor 1~~

15 A. Yes, sir.

16 Q. And we've got a date on there of August the 17th,
17 2008?

18 A. Yes, sir.

19 Q. Does that appear to be accurate?

20 A. Yes, sir.

21 Q. I see a lot of red party cups on the counter
22 there. Was that a party?

23 A. That was a cookout.

24 Q. Cookout? What was the cookout about?

25 A. I want to say it was a birthday. It had to be

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1 somebody's birthday. I want to say it was Ron. I don't
2 know his birthday, but I want to say it was his birthday.
3 All of his friends were there.

4 Q. Okay. And that includes you?

5 A. Yes, sir.

6 Q. And you're hugging Minor 2 and Minor 2
7 is hugging back? Minor 2

8 A. Yes, sir.

9 Q. Was that unusual to happen?

10 A. Minor 2 hugged everybody.

11 Q. All right. Now I'm going to show you what's in
12 evidence as State's Exhibit 17. And that would be you?

13 A. Yes, sir.

14 Q. And you indicated that that was taken by
15 Mr. McCauley at his residence?

16 A. Yes, sir.

17 Q. Can you tell that by something in the background,
18 or what?

19 A. I can tell that by the couch that they're sitting
20 on, and the blue hair dye in Minor 2 hair that I put
21 in that night.

22 Q. Okay. So what was going on that night?

23 A. They had been out. It was -- I want to say it
24 was during the summer. They had been out playing or
25 swimming or something. Me and my boyfriend had stopped by

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1 because Minor² ad got his head shaved into a Mohawk
2 and wanted his hair colored. Because I always wore
3 different colors in my hair, my boyfriend wore different
4 colors in his hair, and Ronald McCauley and Julie Barnes
5 agreed to allow him to have color in his hair.

6 Q. And neither of the boys have shirts on. Is that
7 unusual or was that unusual?

8 A. Not at his house, no, sir.

9 Q. What about at Ms. Barnes' house?

10 A. No, sir.

11 Q. It wasn't unusual there, either?

12 A. Huh-uh.

13 Q. And that was just a thing kids do when they can?

14 A. Yeah.

15 Q. I'm going to show you what's been introduced as
16 State's Exhibit 18.

17 [Whereupon, the witness reviews documents]

18 Q. [Mr. Schwacke] And that would be you?

19 A. Yes, sir.

20 Q. And that would be Minor²

21 A. Yes, sir.

22 Q. That's Ms. Barnes in the background?

23 A. Yes, sir.

24 Q. All right. I don't see the red party cups on
25 that counter. So is this a different night?

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1 A. This was around Halloween. The outfit he's
2 wearing is actually one that I bought for my boyfriend, who
3 was entering a costume contest. The hair that he's wearing
4 was Ronald McCauley's, because he was dressing as a cave
5 woman for Halloween. And when I went and picked up the
6 costume -- me and Ronald McCauley actually went and picked
7 up the costume. And Minor2 wanted to try it on so
8 then they put the wig on his head, too.

9 Q. And where are you hands?

10 A. Over his chest.

11 Q. Was Minor2 scared of you?

12 A. No, sir.

13 Q. You indicated that there were some videos on
14 Mr. McCauley's computer that you described as pornographic?

15 A. Yes, sir.

16 Q. He actually burned you copies of those on disks,
17 didn't he?

18 A. Absolutely not. Absolutely not.

19 Q. In terms of the kids going around both houses in
20 just their skivvies or underwear, you haven't seen -- you
21 didn't see any kind of bruises on any of them at any time?

22 A. The occasional bruise here and there, but I never
23 saw like a lot of bruises.

24 MR. SCHWACKE: That's all the questions I have.

25 MS. WILLIAMS: Just briefly, Your Honor.

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1 Can you put State's 18 up.

2 REDIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. Who took that picture?

5 A. Ronald McCauley.

6 Q. About this time, did you ever learn of
7 ^{Minor 2}
Minor 2 having some issues with his sexuality?

8 A. Yes, ma'am.

9 Q. Tell me about that.

10 A. They had actually bought I want to say it looked
11 like a princess ball gown type dress because he had
12 apparently said he wanted to dress up as a girl for
13 Halloween. So they bought it for him saying they were
14 going to make him wear it. And it wasn't uncommon for him
15 at that time to say he was gay.

16 Q. What did Mr. McCauley say about that?

17 A. What did Mr. McCauley say about it?

18 Q. Did you ever hear him say anything about
19 ^{Minor 2}
Minor 2 thinking he was gay?

20 A. Just that he took after his daddy.

21 Q. And how old was ^{Minor 2} then? Eleven?

22 A. Eleven.

23 The three years that I knew Ronald McCauley, I
24 didn't know the boys for three years.

25 Q. Do you have any idea of the time frame of, you

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1 know, when you started seeing them at the trailer and when
2 -- you know, when you stopped seeing them at the trailer?

3 A. I didn't start seeing them until farther -- or
4 closer into the summer of the first year that I had run
5 back into Ronald McCauley.

6 Q. Do you know what year that was around, or --

7 A. Summer of 2008.

8 Q. And who cut Minor1 hair into a Mohawk?

9 A. I cut Minor2 hair into a Mohawk.

10 Q. Minor2 I'm sorry. And who died it blue?

11 A. I did.

12 Q. Mr. Schwacke asked you a question about the
13 sexual -- whether you still saw Julie and you said
14 absolutely not.

15 A. Yes, ma'am.

16 Q. And he said why and asked you about whether you
17 knew about the sexual abuse. In retrospect, are there
18 things that you didn't notice then but now that you think
19 back that leads you to believe that something might have
20 been going on?

21 A. There are things now, knowing what's come to
22 light, that -- like Minor2 would say to me, when I
23 would go over to Mr. McCauley's house, Ronald McCauley's
24 house --

25 MR. SCHWACKE: Your Honor, if Minor2 is

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1 going to say something, I'm going to object to the
2 hearsay aspects of it.

3 THE COURT: Please be mindful of hearsay.

4 THE WITNESS: Yes, ma'am.

5 A. Minor2 would say to me --

6 MR. SCHWACKE: Your Honor, again --

7 THE COURT: All right. Sir, you may not testify
8 as to what somebody -- or as to what Minor2 told
9 you.

10 Please rephrase your --

11 MS. WILLIAMS: Let me rephrase the question.

12 THE COURT: -- question, Ms. Williams. Thank
13 you.

14 Q. [Ms. Williams] Without saying what he said, you
15 can describe why you thought that? Like what you learned
16 from Minor2 or how he acted, and what you observed,
17 without saying the words that he said.

18 A. He wouldn't want me to leave. He would always
19 ask me to stay.

20 Q. Were there times when Minor2 would have to
21 be there without his brothers?

22 A. Yes, ma'am.

23 Q. Are those the times he didn't want you to leave?

24 A. Yes, ma'am.

25 MS. WILLIAMS: Nothing further.

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1 THE COURT: Recross?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Mr. Hope, you may step down. Thank
4 you.

5 THE WITNESS: Thank you.

6 THE COURT: You are excused.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 THE COURT: Ladies and gentlemen, we've reached
10 an appropriate time for us to take our mid-afternoon
11 break.

12 Do not begin your deliberations. Do not discuss
13 this case amongst yourselves.

14 Please rise for the jury.

15 [Whereupon, the jury exits the courtroom at
16 3:02 p.m.]

17 THE COURT: Please be seated.

18 All right. As to State's Number 1 -- just some
19 housekeeping matters, Mr. Schwacke. State's 1, you
20 objected. I admitted State's 1 over your objection.
21 You had indicated that that was not -- that you had not
22 been provided that photograph in Rule 5. My
23 recollection is that that was Julie Barnes' -- the front
24 of Julie Barnes's home, and I admitted that over your
25 objection. Any further -- anything further to put on

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1 the record --

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: -- Mr. Schwacke?

4 MR. SCHWACKE: No, Your Honor.

5 THE COURT: All right. And I believe it was
6 State's 21. I did not make an accurate note. And I
7 believe that the objection was as to cumulative --

8 MR. SCHWACKE: Cumulative nature to one that I
9 thought had already been admitted. But apparently the
10 State has elected to introduce that exhibit over the one
11 previously identified by I think Minor 2

12 THE COURT: All right. So I just wanted to make
13 sure the record was clear. That previous photograph of
14 Mr. McCauley's home was not admitted. The I believe it
15 was State's 21 was admitted. And I -- based upon the
16 fact that my --

17 My understanding of your objection to that
18 photograph was cumulative, I did not show an objection
19 to that photograph. Is that correct, Mr. Schwacke?

20 MR. SCHWACKE: That's correct, Your Honor.

21 THE COURT: Now, we have an additional issue.
22 The State had called --

23 MS. WILLIAMS: Nathan Tobey.

24 THE COURT: I'm sorry.

25 -- Mr. Tobey. And, Mr. Schwacke, you had

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1 indicated that you had not been provided the substance
2 of Mr. Tobey's testimony.

3 MR. SCHWACKE: Well, I wanted to make certain
4 that he was the witness that Ms. Williams had told me
5 was potentially going to come in and testify about some
6 alleged phone conversations with my client in which he
7 made some indications that, based upon the content, may
8 not be factually relevant to this case or the issues in
9 this case. And so prior to having that testimony go out
10 in front of the jury on the lines of the circumcision
11 scars and bruises with the earlier -- with the earlier
12 witness, I was taking an abundance of caution to ask
13 that to be done in-camera.

14 THE COURT: Mr. Schwacke, would it suffice if I
15 give you this time to go meet with Mr. Tobey to
16 determine what the nature of his testimony would be?

17 MR. SCHWACKE: Your Honor, I think I've been
18 told. I think the issue here -- and Ms. Williams can
19 even tell you what she's told me -- it may be something
20 you can decide, based even on what she's going to
21 represent the conversation to be.

22 MS. WILLIAMS: Yes, Your Honor.

23 Nathan Tobey met the defendant on Craig's List
24 when he was seventeen and he befriended him and they
25 spent some time together and would talk on the phone a

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1 lot and on the computer. And during one of the phone
2 calls, Mr. Tobey asked the defendant what he was doing.
3 He said he was babysitting the boys. He then said he
4 just finished -- and I won't use the word -- but having
5 sex with a young blond boy with a tight bottom. But
6 that's not the word he used.

7 That's an incriminating statement and has
8 everything to do with this case. Minor2 Watts has
9 alleged that the defendant subjected him to anal
10 intercourse. He is telling Nathan Tobey that he's
11 babysitting his children, which everyone understood to
12 be Minor2 Watts and Minor1 Watts, and then he just
13 finished telling him that he just had sex with a young
14 blond boy. Minor2 Watts was obviously a young
15 blond boy.

16 MR. SCHWACKE: And, Your Honor, the objection
17 obviously is that young blood boy doesn't necessarily
18 make the connection back to one of the alleged victims
19 in this case. He indicates he's babysitting the kids.
20 He doesn't indicate when this was supposed to have
21 happened, other than just some time prior to what he is
22 doing now.

23 I think it's highly prejudicial and inflammatory
24 to the jury without making any clear connection to one
25 of the victims in this case. And so, Your Honor, just

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1 because he's alleged to have had sex with the victims in
2 this case doesn't mean that there weren't other avenues,
3 opportunities, or individuals that could be a person
4 being referenced into that. Without more, I don't
5 believe it makes a sufficient causal connection to this
6 case, and I would ask you not to allow it.

7 THE COURT: And, Mr. Schwacke, based upon that
8 statement, do you believe that Mr. Tobey's entire
9 testimony should be excluded or just that statement?

10 MR. SCHWACKE: I think that's all he's here to
11 say, Your Honor.

12 MS. WILLIAMS: It's not all he's here to say,
13 Your Honor.

14 Mr. Tobey also observed the defendant around the
15 children at Ms. Barnes' house, and also how the children
16 acted around him, and the fact that he was the
17 disciplinarian. He also observed how Ms. Barnes acted
18 around Mr. McCauley and the children.

19 And, Your Honor, just getting back to that
20 statement, he clearly says he's with his children and
21 says, I just finished having sex with. So, Your Honor,
22 Mr. Schwacke can cross-examine the witness about, you
23 know, the weight of the statement. But it creates an
24 admission. And it's an admission by the defendant,
25 heard by the witness, and we would just ask that you

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1 admit it.

2 THE COURT: All right. The Court --

3 MR. SCHWACKE: Your Honor --

4 THE COURT: Yes?

5 MR. SCHWACKE: It's not an admission as it
6 relates to one of the alleged victims in this case.

7 And just for the record, we did this at sidebar
8 and I guess I should have made sure that it got on the
9 record at some other point: in cases like this where
10 the State discovers additional witnesses during the
11 course of their preparation for trial, and we don't have
12 any type of police interview or any type of document
13 from a therapist or any of those types of things, all we
14 can do on the defense side is rely upon the
15 representations by the State as to what the contents or
16 what the individual is going to testify to.

17 When told about the potential of this witness
18 testifying, the only thing I was told about that they
19 would testify to are -- is that phone conversation.
20 None of the other things mentioned by Ms. Williams just
21 -- Your Honor, in terms of other evidence that he could
22 present.

23 So I don't think we're going to -- or intending
24 to have a trial by ambush here. But it clearly helps
25 the Court, it helps the jury, and it helps us as

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1 attorneys to be prepared for these things as they come
2 up. And I just ask if that's going to happen again that
3 they please provide me with some additional information
4 as to what each of these other witnesses are going to
5 testify about.

6 THE COURT: All right. And just for scheduling,
7 Ms. Williams, who is after Mr. Tobey? Who did you plan
8 and who do you have available for the rest of the
9 afternoon?

10 MS. WILLIAMS: We would have Ms. Twomey, who
11 drove down here from Florence. Mr. Thacker is here.
12 Kris Phillips is here. So we have -- I think we have
13 enough witnesses to --

14 THE COURT: All right. We're going to go ahead
15 and take our mid-afternoon break. I'll issue my ruling
16 when I return. Ten minutes. Thank you.

17 MR. SCHWACKE: Thank you, Your Honor.

18 [Whereupon, a recess is taken from 3:13 p.m. to
19 3:22 p.m.]

20 THE COURT: Thank you. Please be seated.

21 Just for the purposes so the Court can make the
22 determination, could you please bring the witness in
23 just to testify as to the contents of that particular
24 statement.

25 MS. WILLIAMS: Yes, Your Honor.

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1 THE COURT: Thank you.

2 MS. WILLIAMS: And, Your Honor, just for the
3 record, we did tell Mr. Schwacke as soon as we found out
4 that Mr. Tobey had this information. I think it was
5 whenever it was that I met with him, I immediately told
6 Mr. Schwacke. We are not keeping evidence from him and
7 are complying with discovery.

8 [Whereupon, Mr. Tobey comes forward]

9 THE CLERK OF COURT: Raise your right hand.
10 Place your left hand on the Bible.

11 [Whereupon, Mr. Tobey is duly sworn by the clerk
12 of court as follows: do you solemnly swear or affirm
13 the testimony you will give the Court in this matter
14 will be the truth, the whole truth, and nothing but the
15 truth, so help you God]

16 THE WITNESS: Yes, ma'am.

17 THE CLERK OF COURT: Please be seated. State
18 your full name and spell your last name for the record.

19 [Whereupon, the witness takes the witness stand]

20 THE WITNESS: Ronald Nathan Tobey. T-O-B-E-Y.

21 MS. WILLIAMS: Mr. Tobey, this is just a hearing
22 outside the presence of the jury for the jury to decide
23 a specific issue, so I'm just going to ask you a couple
24 of questions.

25 THE WITNESS: Yes, ma'am.

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PROFFER

RONALD NATHAN TOBEY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

MS. WILLIAMS:

Q. Do you remember a time when you were talking to
Ronald McCauley while he was babysitting his children?

A. Yes, ma'am.

Q. Can you tell us about -- was it on the phone or
like on a chat?

A. It was on the phone.

Q. Okay. So who called who?

A. I called him.

Q. Okay. And what did he say he was doing?

A. He said that he was watching the children but he
was also doing schoolwork.

Q. For himself?

A. Yes, ma'am.

Q. And did he mention any other adults at the house?

A. No, ma'am.

Q. And did he say something to you about some sexual
activities he had just completed?

A. Yes, ma'am.

He stated that he had just finished having sex

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1 with a little -- a blond boy with a tight little ass.

2 MS. WILLIAMS: I don't have any other questions.

3 THE COURT: Ms. Williams, just for the purposes
4 of this hearing, if you could establish how this witness
5 and how long, so that we know that it was the defendant?

6 MS. WILLIAMS: Yes.

7 Q. [Ms. Williams] Mr. Tobey, how long -- how did
8 you meet Mr. McCauley?

9 A. We met on line. I posted an ad on Craig's List
10 and Mr. McCauley responded to it.

11 Q. And how long before he made this statement to you
12 was that?

13 A. Approximately five to six months.

14 Q. Okay. And did you go places with him in person?

15 A. Yes, ma'am.

16 Q. How often would you see him?

17 A. Every other day we would go and hang out -- eat
18 dinner, breakfast -- after the bar when I turned eighteen.
19 I also visited Julie's house one night that he -- I was
20 riding with him in the cab that he was driving. I have
21 visited Julie's house.

22 Q. Okay. And during the time that you were seeing
23 him in person, did you also sometimes talk to him on the
24 phone?

25 A. Yes, ma'am.

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1 Q. And this was one of those times?

2 A. Yes, ma'am.

3 Q. And do you see him in the courtroom?

4 A. Yes, ma'am.

5 Q. Can you identify him for the Court?

6 A. Yes, ma'am.

7 He's the gentleman sitting between the female on
8 the left and the male on the right.

9 MS. WILLIAMS: Your Honor, would you like me to
10 inquire further?

11 THE COURT: That's good.

12 Mr. Schwacke? And, Mr. Schwacke, I'm going to
13 give you extreme leeway on cross-examination to
14 establish any things that you need to inquire of this
15 particular witness.

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Would you have conversations with Mr. McCauley
19 about those types of things often?

20 A. No, sir.

21 Q. So that was kind of like a one-shot deal, then?

22 A. Things would come up as in reference to sexual
23 acts several times, but not specifically to the blond-
24 headed child or the blond-headed boy that he made reference
25 to.

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1 Q. And boy means what?

2 A. I could say boy as in look at the boy walking
3 down the street, and it could be from the age of six to
4 maybe eighteen, twenty years old.

5 Q. So -- and, again, so that whole discussion about
6 he was a twink, and that kind of discussion as well; right?

7 A. Can you repeat the question?

8 Q. If you start kind of characterizing ages of gay
9 men, one of the terms also could be twink?

10 A. No, sir.

11 Q. It's not?

12 A. No, sir.

13 Q. That's not a twink?

14 A. A twink is referred to -- twink is referred to as
15 the body build as well as the age.

16 Q. Okay. So, again, the boy to you could mean
17 anybody from ages -- you gave a low end I think of eight?
18 Is that what you said?

19 A. Six.

20 Q. Six? All the way up to --

21 A. Yeah. It's -- it could --

22 Q. -- up to twenty?

23 A. Yes, sir. It could refer to anyone.

24 Q. And you have no idea who Mr. McCauley was
25 referring to when you had that conversation with him on the

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1 phone?

2 A. I had assumed that as he was speaking of the
3 children because that's what he had told me he was doing,
4 he was watching the children while Julie was at work.

5 Q. Okay. He told you he was babysitting the kids?

6 A. Yes. He was babysitting his children.

7 Q. So we've established boy means that. What does
8 just mean? I just did. I just. What does just mean?

9 A. I don't understand.

10 Q. I mean, does it have to be in the past seconds,
11 or could it be up to two hours? What does I just did, I
12 just went to lunch?

13 A. Within the past -- to me it means within the past
14 hour or two.

15 Q. Okay. So we establish that just means within the
16 past two hours I had sex with somebody who's in the age
17 range of six to twenty, that could mean -- that could be
18 what you could have said?

19 A. No, sir. Like I said, under the assumption he
20 was watching the children --

21 Q. That was your assumption.

22 A. Yes, sir.

23 Q. So that's what you assumed happened, and you
24 don't know?

25 A. No, sir.

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1 Q. And there are a lot more than just -- how many
2 blond boys are there around?

3 A. I don't understand.

4 Q. When you hear the word blond boy, how many do you
5 think there are?

6 A. Being that he told me he was watching the
7 children and that there were three at home --

8 Q. Right. He said he was doing that at the time.
9 So we've established at the time he talked to you that's
10 what he was doing.

11 A. Yes, sir.

12 Q. You indicated that he said, I just, which to you
13 can mean any time in the two hours previous, had sex with a
14 blond boy. And a blond boy to you is anybody ages six to
15 twenty; correct?

16 A. No, sir.

17 Q. Okay. That's not what you testified to?

18 A. No, sir.

19 Q. Okay. Let's start over again --

20 A. Okay.

21 Q. -- because the Court has heard it, and maybe I'm
22 wrong. Boy: what age group are we talking about?

23 A. It's a general. A boy -- I could be a boy, you
24 could be a boy.

25 Q. Well, thank you, but I'm a little bit older --

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1 A. I mean, it's not -- it's not limited to a
2 specific age range or -- I revoke that. I'm sorry. Boy
3 could be referred to as Mr. McCauley, the gentleman in the
4 uniform behind Mr. McCauley. It's just a general
5 statement.

6 Q. So it's even greater than the age range of six to
7 twelve?

8 A. Yes, sir.

9 Q. Okay. And just, again, could be anywhere in the
10 past two hours?

11 A. It's possible, yes, sir.

12 MR. SCHWACKE: Your Honor, I think that's all the
13 questions I have.

14 THE COURT: Anything further regarding the
15 statement, Ms. Williams?

16 REDIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. But you assumed because he was only with the
19 children that it was --

20 A. Yes, ma'am.

21 MS. WILLIAMS: Thank you.

22 THE COURT: All right. Based upon that, Mr.
23 Schwacke --

24 MR. SCHWACKE: No questions. No questions.

25 THE COURT: Sir, you may step down.

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1 THE WITNESS: Thank you.

2 THE COURT: All right. I need you to remain
3 outside the courtroom. We're having some arguments,
4 okay, so I need you to remain outside of the courtroom
5 so that nothing I say will influence your testimony.
6 All right, sir?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you.

9 [Whereupon, the witness is excused and exits the
10 courtroom]

11 THE COURT: All right. Mr. Schwacke, my first
12 question to you is are you objecting to this witness
13 based upon the lack of discovery?

14 MR. SCHWACKE: No, Your Honor.

15 I'm objecting to it based on legal relevancy to
16 the issues in this case.

17 THE COURT: All right. Based upon what we've
18 heard, I'll hear you if you'll --

19 MR. SCHWACKE: I'm going to add -- I'm going to
20 add one, based on his testimony --

21 THE COURT: Yes.

22 MR. SCHWACKE: -- which is he said I am assuming,
23 which means he's speculating, which means speculation.
24 And for those two reasons combined, I would submit it's
25 not admissible.

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1 THE COURT: I'll be happy to hear from you.

2 MS. WILLIAMS: Just that, Your Honor, the reason
3 that he speculated is because Mr. Schwacke asked him to.
4 He was asking him, what do you think he meant by -- you
5 know, he just. It is what it is.

6 The whole thing is prejudicial. It's a
7 prejudicial crime. But I don't know how much closer we
8 can get to an admission when the defendant says, I'm
9 watching my three young children, there's no other
10 adults here, and I just finished having sex with a young
11 blond boy.

12 Mr. Schwacke can cross-examine him on other
13 possibilities and what the meaning of boy is and all
14 that, but that's what he said. And based on what the
15 witness is testifying to, that's what he assumed he
16 meant based on the conversation. He can't testify to
17 what he speculated, but he can testify to the facts he
18 heard and the statement he heard, and Mr. Schwacke can
19 cross-examine him on, you know, what that could have
20 meant, and he might assumed something differently, or
21 whatever the case may be.

22 THE COURT: Ms. Williams, it's your position that
23 this is an admission?

24 MS. WILLIAMS: Yes, Your Honor.

25 An admission or a statement against interest by a

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1 party opponent -- admission by a party opponent or a
2 statement against interest.

3 THE COURT: All right. Mr. Schwacke?

4 MR. SCHWACKE: Your Honor, just because something
5 could be an admission doesn't mean that it's relevant.
6 And in this instance you have -- you're inviting not
7 only the witness to speculate but the jury to speculate
8 as to what this means.

9 In terms of its prejudicial value, that's clear.
10 In terms of why the State even wants to even call the
11 witness, based on the cross-examination we just heard,
12 I'm on this side of the line now, not over there.

13 But, Your Honor, I think in terms of the evidence
14 that's already admissible, the prejudicial value of this
15 far outweighs its probative value, especially because it
16 does exist wholly in the field and the area of
17 speculation. It would require everybody to speculate
18 and it's not the type of evidence that you could deem
19 relevant to the case.

20 THE COURT: All right. Based upon what the Court
21 heard the testimony of this witness to be was that he
22 was having a conversation with the defendant, the
23 defendant indicated that he was babysitting his children
24 and then he made the statement. Just because testimony
25 or statements are prejudicial does not exclude them from

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1 being admitted. The Court must do an analysis based
2 upon my review of statement against interest and
3 admission by party opponent. Clearly the statement does
4 meet the elements of those, so the Court must do a
5 probative versus prejudicial analysis.

6 The fact that based upon this witnesses the
7 relating of the facts and the speculation, the witness
8 has testified to the facts that he heard, as well as to
9 the situation concerning the phone call, what had
10 transpired before the statement was made, I do not find
11 that the statement is -- while it may be considered to
12 be prejudicial, it is probative to the issue at hand. I
13 am admitting the statement.

14 Note the defendant's objection.

15 Mr. Schwacke, again, I would ask you -- I will
16 have the State either call the witness last today or
17 first thing in the morning if you need any additional
18 time to meet with him.

19 MR. SCHWACKE: No. I'm fine to cross-exam now.

20 THE COURT: All right. Thank you.

21 All right. Anything before we bring in the jury?

22 MS. WILLIAMS: Nothing from the State, Your
23 Honor.

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Thank you.

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1 [Whereupon, the jury enters the courtroom at
2 3:35 p.m.]

3 THE COURT: Thank you. Please be seated.
4 Please call your next witness.

5 MS. WILLIAMS: The State calls Nathan Tobey.

6 [Whereupon, Mr. Tobey comes forward]

7 THE CLERK OF COURT: Raise your right hand, place
8 your left hand on the Bible.

9 [Whereupon, Mr. Tobey is duly sworn by the clerk
10 of court as follows: do you solemnly swear or affirm
11 the testimony you will give the Court in the trial of
12 this case will be the truth, the whole truth, and
13 nothing but the truth, so help you God]

14 THE WITNESS: Yes, ma'am.

15 THE CLERK OF COURT: Please be seated. State
16 your full name and spell your last name for the record.

17 [Whereupon, the witness takes the witness stand]

18 THE WITNESS: Ronald Nathan Tobey. T-O-B-E-Y.

19
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24 - - -

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NATHAN TOBEY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Mr. Tobey, how old are you?

A. Twenty-one.

Q. And where do you live?

A. North Charleston.

Q. Do you know the defendant, Ronald McCauley?

A. Yes, ma'am.

Q. Can you point him out for the Court?

A. He's sitting at the table --

Q. What's he wearing?

A. -- in the center.

What appears to be a black jacket and a blue
shirt with a burgundy tie --

Q. Thank you.

A. -- with spots.

Q. Thank you, Mr. Tobey.

MS. WILLIAMS: Your Honor, please let the record
reflect that the witness has identified the defendant,
Ronald McCauley.

THE COURT: It will --

Q. [Ms. Williams] How did you meet Mr. McCauley?

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1 A. On line.

2 Q. What does that mean? On what --

3 A. I posted an ad on Craig's List, and he responded
4 to it, in the personal section.

5 Q. And how old were you when you posted that ad?

6 A. Seventeen.

7 Q. Did Mr. McCauley know you were seventeen?

8 A. Yes, ma'am.

9 Q. How do you know he knew you were seventeen?

10 A. I told him and he said, that's fine, it's legal
11 in the State of South Carolina with consent.

12 Q. And did you ever meet him in person?

13 A. Yes, ma'am.

14 Q. Do you remember about when that was?

15 A. I had turned eighteen, and it was at the bar
16 called Patrick's in West Ashley.

17 Q. And how often would you see Mr. McCauley?

18 A. When he was at the bar or we made contact and --
19 through -- we exchanged phone numbers, and this was through
20 establishing contact the first time we had met -- or talked
21 on line. I would talk to him several times, and I would
22 ride around with him when he was driving the cab, and we
23 would go to dinner or breakfast and just hang out.

24 Q. Okay. And did you ever go to his home?

25 A. Yes, ma'am.

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1 Q. And did he -- did he have a computer in his home?

2 A. Yes, ma'am.

3 Q. Did he ever show you anything on the computer?

4 A. Yes, ma'am.

5 He showed me how he liked to alter photographs
6 and make Avatar's, which are characters on line. He also
7 showed me several pictures of some extremely disturbing
8 photos that I at one point in time told him to stop showing
9 me.

10 Q. What kind of pictures were they? I mean --

11 A. It was of children in their underwear, children
12 posing nude, and I -- the image of saying that they were
13 children: they had absolutely no signs of being taller
14 than four foot tall.

15 Q. Okay. And did you ever go to Julie Barnes'
16 house?

17 A. Yes, ma'am.

18 Q. And what was your understanding of who she was
19 with relation to Mr. McCauley?

20 A. I was told that Julie was the children's mother
21 but he had sexual relations with her and those were his
22 children.

23 Q. Okay. And how long did you know Mr. McCauley,
24 would you say, total?

25 A. Up until the age of I believe nineteen. It was

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1 about two, two and a half years ago. I'm not exactly sure
2 as to the exact point in time.

3 Q. Did you hang out with him a lot?

4 A. Frequently. Yes, ma'am.

5 Q. And did you ever observe the children, that he
6 said were his children, during that period of time?

7 A. Yes, ma'am.

8 Under two -- two exact times that I can remember,
9 possibly three, in passing.

10 Q. Okay. Did you ever see them at Ms. Barnes'
11 house?

12 A. The house in yes, ma'am.

13 Q. Okay. Tell me about that.

14 A. It was late at night and Mack had -- I was riding
15 around with him in the cab. It was about between 2:00 and
16 3:00 a.m. and we were going to drop off the cab to pick up
17 his car. It was a white Lincoln. And we had walked to the
18 front door and I was standing in the doorway and when Mack
19 walked in, the children were running around in pajamas and
20 Mack stated in a very firm voice, y'all know y'all are
21 supposed to be in bed, go to bed. And it was almost like a
22 beaten or abused puppy. They -- it was like they tucked
23 their tails and they ran to the room.

24 Q. Was Ms. Barnes there?

25 A. She was. She was on the computer.

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1 Q. What was she doing while he was telling the
2 children what to do?

3 A. It was almost as if she didn't -- she was
4 oblivious to society. She didn't know what was going on.

5 Q. And did you ever speak with Mr. McCauley on the
6 phone --

7 A. Yes, ma'am.

8 Q. -- at times?

9 Did you ever talk to him at any time while he was
10 babysitting the boys that he said were his children?

11 A. Yes, ma'am.

12 Q. Tell me about that.

13 A. I called him one night and I said, hey, what's
14 up. And he said, nothing much, sitting here doing some
15 homework -- because he had told me he was in school. He
16 never told me what he was in school for. But later on,
17 some things had come out that it had occurred Julie was in
18 school. So I was under the assumption they were both doing
19 school work.

20 He said he was over at Julie's but he was
21 watching the kids and doing school work. And I was like,
22 oh, well, that's cool, you know, what else is going on.
23 And he said that he had just sex with this cute little
24 blond boy with a tight ass.

25 Q. Did he say sex, or did he express it a different

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1 way?

2 A. He said sex.

3 Q. But did he use those words?

4 A. To that -- yes, ma'am, to that structure. I
5 can't remember the exact way, but it was those -- those
6 distinct words is what I remember.

7 Q. Okay. And did he mention any other adults being
8 in the home?

9 A. No, ma'am.

10 Julie -- I was under the assumption that Julie
11 was at work, which is what he told me: he was watching the
12 children overnight while she was at work driving the cab.

13 Q. So it was just him and the kids?

14 A. Him and the kids.

15 I was under the assumption also that he was the
16 only one that watched the children because they were his
17 children and she didn't trust anyone else to be the
18 babysitter because one of the children was special needs.

19 MS. WILLIAMS: Okay. Court's indulgence for just
20 a second.

21 THE COURT: Yes, ma'am.

22 [Whereupon, Ms. Williams and Ms. Herring-Lash
23 confer]

24 Q. [Ms. Williams] To your knowledge, did both Ms.
25 Barnes and Mr. McCauley drive cabs?

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1 A. Yes, ma'am.

2 MS. WILLIAMS: Thank you. Please answer any
3 questions that Mr. Schwacke has.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Mr. Schwacke?

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. What kind of ad did you post on Craig's List?

9 A. It was a personals ad, male for male.

10 Q. In what section?

11 A. The personals section, male for male.

12 Q. Men looking for men?

13 A. Yes.

14 Q. Okay. And when did you do that?

15 A. When I was seventeen.

16 Q. Okay. And you met Mr. McCauley as a result of
17 that?

18 A. Yes, sir.

19 Q. And how many times had you been over to his
20 trailer?

21 A. To his trailer?

22 Q. Uh-huh.

23 A. Four times.

24 Q. And how many times had you been over to

25 Ms. Barnes'?

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1 A. Twice. Once in passing. So it would be a total
2 of three times, not -- twice actually in the residence,
3 once in the yard.

4 Q. How were you contacted to be here?

5 A. To be here today?

6 Q. Yeah.

7 A. A subpoena.

8 Q. And how did you come into contact with law
9 enforcement or the State to become subpoenaed?

10 A. I had met with a Josh at -- where I was working,
11 which was Club Anthony on downtown, and he stated that I
12 needed to contact Ms. Williams in reference to an issue
13 that my name had been brought up in. And I attempted to
14 contact Berkeley County twice and eventually was given
15 Ms. Williams' direct contact number.

16 Q. So you said Josh who?

17 A. I believe his last name is Slate.

18 Q. Okay. And are you friends with him?

19 A. No, sir. We're just acquaintances.

20 Q. Well, how would he know that you might have some
21 information that would be helpful to Ms. Williams?

22 A. Because I knew Josh. When I went over to Mack's
23 house, we were watching movies and we went to a store
24 or -- yeah. We went to a store together.

25 Q. I'm not sure -- you went to a store together?

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1 A. This was in the point of time that I was eighteen
2 years and we went to an adult bookstore.

3 Q. And so I'm still trying to figure out what -- you
4 had told Mr. Slate what you have testified here today?

5 A. No, sir.

6 I just -- I haven't discussed any of this with
7 anyone before this.

8 Q. And just out of the blue, Mr. Slate contacts you
9 saying you needed to call Ms. Williams?

10 A. No, sir.

11 He knew that I was acquaintances with Mack, we
12 were friends, and he told me that Mack had been
13 incarcerated for child molestation and that if I knew
14 anything about the children or if I knew anything about
15 Mack having sex with children, I needed to contact Ms.
16 Williams. And the question arose after the statement that
17 I remembered he had just had sex with a boy with a tight
18 little ass. That's what made me contact Ms. Williams.

19 Q. Well, you knew that -- I mean, because you had a
20 discussion with him about whether your age was legal or
21 not. You knew that could be an issue; correct?

22 A. Yes, sir.

23 Q. You've always known that could be an issue?

24 A. As far as me and him, me and Mr. McCauley, having
25 sex?

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1 Q. You know -- you have known, at least from the
2 time that you had the discussion with him, if not before,
3 that there is an age and it could be a problem to have sex
4 with somebody under a certain age; correct?

5 A. Yes, sir.

6 Q. Okay. So you had met these kids?

7 A. No, sir.

8 Q. You've never met the kids?

9 A. No, sir.

10 I was told names and descriptions of the
11 children.

12 Q. Was I -- I didn't understand you, then, about
13 that you had actually seen them one time, that you went to
14 Ms. Barnes' house and they were awake and shouldn't have
15 been awake and had to be sent to bed?

16 A. I don't understand.

17 Q. Did you see the kids that night?

18 A. Yes.

19 Q. Did you know what their age was?

20 A. They appeared to be children to me.

21 Q. Okay. Now, when did this conversation that
22 you're saying today happen with Mr. Mack?

23 A. Before I had ever seen the children, when I was
24 seventeen years old.

25 Q. Okay. And --

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1 A. The statement referring to my age; correct?

2 Q. No. I'm talking about the statement that I just
3 had a nice hot piece of young blond boy. When did that
4 happen?

5 A. The night that he was watching the children. I'm
6 not sure as far as a specific date.

7 Q. Okay. So you can't pin it to anything?

8 A. To be honest with you, you've said so much, I'm
9 confused. Can we like rephrase and set a time line?

10 Q. I'm trying to set a time line, but you have to do
11 it. I don't know what you did and when you did it. You
12 have to tell me.

13 A. I met Mr. McCauley at Patrick's Bar and Grill.

14 Q. After you posted the ad and you --

15 A. Before.

16 Q. Okay.

17 A. I met him in person at Patrick's Bar and Grill.
18 I had built a friendship with him and felt that I could
19 trust him, because he was old enough and we had established
20 contact. I eventually gained knowledge that he was -- the
21 children were his. He had told me -- I said, do you have
22 any kids. I got to know Mr. McCauley.

23 Q. I'm going to stop you for a second. And you get
24 the right to answer any question that I've asked you, but
25 I'm not sure you've answered the one I asked you.

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- 1 A. I'm trying to establish the time line.
- 2 Q. Okay. But the first thing on the time line is
- 3 you meet Mr. McCauley after posting an ad on Craig's List?
- 4 A. No, sir.
- 5 Q. No?
- 6 A. I posted the ad first.
- 7 Q. That's what I'm saying. You meet -- that's the
- 8 first thing on the time line is the posting on the Craig's
- 9 List?
- 10 A. Yes, sir.
- 11 Q. All right. He responds to that?
- 12 A. Yes, sir.
- 13 Q. Y'all meet?
- 14 A. Yes, sir.
- 15 Q. Okay. When does -- when does the incident or
- 16 when does the time happen that you go to Ms. Barnes' and
- 17 see the kids awake and he tells them they need to go to
- 18 bed?
- 19 A. About seven to eight months later that happened.
- 20 Q. When is the conversation that you say Mr.
- 21 McCauley had with you about the blond boy with the tight --
- 22 A. About two months later.
- 23 Q. After you had seen the kids?
- 24 A. Yes, sir.
- 25 Q. Now, let's talk about what you said he said. You

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1 remember talking with him on the phone?

2 A. Yes, sir.

3 Q. And he says he's watching the children?

4 A. Yes, sir.

5 Q. Because that's what he's doing now?

6 A. Yes, sir.

7 Q. And then -- and doing school work --

8 A. [Indicates affirmatively]

9 Q. -- and that he had just -- and I'm going to let
10 you finish that out for me -- he just --

11 A. Had sex with a cute little blond boy with a tight
12 ass.

13 Q. All right. So let's break that down for a
14 second. Boy: what does boy mean to you? What did you
15 understand or what do you understand boy to mean?

16 A. After having time to think about it, boy means to
17 me it could be of the male figure. It has no age range.

18 Q. Earlier you said anywhere from six up to twenty,
19 and then you changed it. So what is -- do you have an age
20 range at all now?

21 A. No, sir.

22 A boy means a general -- a gender to me.

23 Q. Okay. So boy means male?

24 A. Yes, sir.

25 Q. All right. And then you said just. That was the

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1 word you said he used?

2 A. Yes, sir.

3 Q. In a time frame indicator or indication, what
4 does just mean to you? How recently --

5 A. To me, within a couple of hours, a couple of
6 minutes. Not after twenty-four hours. Not after six or
7 eight hours. Just meaning within the past couple of hours.

8 Q. So to substitute these things in, based on what
9 you're saying, although you're saying Mr. McCauley said
10 that he just had sex with a little blond boy with a tight
11 ass, to you that could mean he just had sex within the past
12 two hours with some cute little male with a tight ass?

13 A. Yes, sir.

14 Q. So you don't know who he was talking about at
15 all?

16 A. Being that Julie was so protective over the
17 children, I made the assumption it was the children; he was
18 alone with the children.

19 Q. You made an assumption?

20 A. Yes, sir.

21 Q. You speculated; correct?

22 A. Yes, sir.

23 Q. And you already knew it was wrong for people
24 under a certain age to have sex, because we've established
25 you had that discussion?

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1 A. Yes, sir.

2 Q. And so he's -- if he's telling you what you're
3 now testifying to, at the time he said it you knew who
4 those kids were and you knew their age and you didn't
5 report it?

6 A. No, sir.

7 I attempted to make contact with Julie but was
8 told that she was always at work, to ask --

9 Q. So did you call the police?

10 A. No, sir.

11 Q. And suddenly you're just magically appearing here
12 because Josh Slate, a friend of yours, is saying they need
13 to talk to you but he didn't know what they needed to talk
14 to you about?

15 A. It was in reference to Mr. McCauley being
16 incarcerated for child molestation.

17 Q. Okay. And just suddenly out of the blue, you're
18 here today to testify about something that you knew was
19 wrong and didn't report?

20 A. Yes, sir.

21 MR. SCHWACKE: No other questions.

22 THE COURT: Ms. Williams?

23 - - -

24 - - -

25 - - -

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REDIRECT EXAMINATION

BY MS. WILLIAMS:

Q. Mr. Tobey, Mr. Schwacke asked you about your definition of boy, in general.

A. Yes, ma'am.

Q. With regard to this phone call, how did he describe the person he was having sex with? I think you said cute little blond boy?

A. Yes, ma'am.

Cute and little, which I made the assumption it was one of the children.

Q. And Mr. Schwacke indicated that you didn't report it. But actually you did call the Berkeley County Sheriff's Department, didn't you?

MR. SCHWACKE: Your Honor, leading.

THE COURT: Please rephrase your question.

Q. [Ms. Williams] Did you -- who did you call? Who did you try to call in law enforcement?

A. I attempted to contact the Berkeley County Sheriff's Department twice, as well as Julie, the mother.

MS. WILLIAMS: Thank you.

THE COURT: Mr. Schwacke?

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RECROSS-EXAMINATION

BY MR. SCHWACKE:

Q. I don't know if I'm in a parallel universe or not here, but you indicated to me that you never called law enforcement. That was your answer to me --

A. Yes, sir.

Q. -- correct?

A. Yes, sir.

MR. SCHWACKE: That's all.

THE COURT: Mr. Tobey, you may step down. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness.

MS. WILLIAMS: Lucy Twomey.

[Whereupon, Ms. Twomey comes forward]

MS. WILLIAMS: Ms. Twomey, if you could just walk up this way and around this way and up to the witness stand.

THE CLERK OF COURT: Please raise your right hand, place your left hand on the Bible.

[Whereupon, Ms. Twomey is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you will give the Court in the trial of this case will be the truth, the whole truth, and

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1 nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Please be seated. State
4 your full name and spell your last name for the record.

5 [Whereupon, the witness takes the witness stand]

6 THE WITNESS: My name is Lucy Ann Twomey.

7 T-W-O-M-E-Y.

8 MS. WILLIAMS: Thank you, Your Honor.

9 - - - - -

10 LUCY TWOMEY,

11 Having Been First Duly Sworn,
12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Ms. Twomey, how old are you?

16 A. Fifty.

17 Q. And where do you live?

18 A. Florence, South Carolina.

19 Q. Where did you live before you moved to Florence?

20 A. Mount Pleasant, South Carolina.

21 Q. And did you know Julie Barnes?

22 A. Yes, ma'am.

23 Q. How did you know her?

24 A. Through my father-in-law, John Twomey.

25 Q. Tell me about that.

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1 A. My father-in-law I believe met Ms. Barnes on the
2 internet. My father-in-law was seventy-five years old.
3 And I had met them -- I had met her I believe it was on her
4 birthday, actually. He was taking her out to dinner.

5 Q. How old was she on her birthday?

6 A. I think she was thirty-nine, forty.

7 Q. And at the time that you met your father-in-law
8 and Julie, what kind of relationship were they having?

9 A. He believed she was his girlfriend.

10 Q. Was -- did you ever meet Mack McCauley?

11 A. Yes, ma'am.

12 Q. And was he around at the same time?

13 A. He was around all the time.

14 Q. Tell me about how many times you saw Mack
15 McCauley at Julie's.

16 A. Every time. I mean, I couldn't even -- he was
17 always there.

18 Q. Who lived in Ms. Barnes' home?

19 A. Ms. Barnes, M^{Minor 2} M^{Minor 1} and M^{Minor} --

20 Q. And those --

21 A. -- to my knowledge.

22 Q. -- are her sons?

23 A. Yes.

24 Q. How old were they when you met them?

25 A. Originally, I believe M^{Minor 2} and M^{Minor 1}

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1 were ten. And Minor was little. I don't really know his
2 exact age.

3 Q. Okay. And how did Mr. McCauley act around Julie
4 and the kids?

5 A. Like he was their father, he was in charge.

6 Q. And did your father-in-law ever live in that
7 home?

8 A. Yes.

9 Q. Tell me about that.

10 A. He had gotten ill and Ms. Barnes made an
11 agreement with him for him to come to her home and she
12 would take care of him in exchange for him giving her money
13 to help pay the bills.

14 Q. And when did that -- did he remain there? When
15 did that --

16 A. He didn't stay very long. He was there maybe a
17 week, maybe a little less than a week.

18 Q. And what were the conditions in which he left?

19 A. Repeat.

20 Q. How did -- how did it come about that he -- that
21 situation changed?

22 A. I got a phone call from my father-in-law that he
23 was sick, and Ms. Barnes called him a martyr and refused to
24 help him, that they -- she and Mack were having a Mother's
25 Day party and she was too busy. So I got in my car and

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1 took up to Summerville and found my father-in-law not being
2 able to breathe very well, called an ambulance, and he ended
3 up his diagnosis was double pneumonia.

4 Q. And who lived in your home in November and
5 December of 2008?

6 A. That would be me, my son Minor 1 Twomey, my son
7 John Twomey, Minor 2 and Minor 1 Watts.

8 Q. And how did that come about that Minor 2 and
9 Minor 1 moved into your home?

10 A. I got a phone call from my father-in-law that
11 Julie had called him and that DSS was at her home and they
12 were taking the children. He told the social worker, the
13 DSS worker, that his daughter-in-law, which was me, was a
14 foster parent, that I had raised over forty children
15 besides my own, and that would I be willing to help out
16 because he didn't want the kids just thrown into foster
17 care.

18 Q. And did you?

19 A. I did.

20 Q. And do you remember when that was?

21 A. When what was?

22 Q. When it was that they came into your home --

23 A. It was the end of -- it was November. No, no.
24 December.

25 Q. Okay.

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1 A. Beginning of December.

2 Q. Of what year?

3 A. 2008.

4 Q. And did you have to take the kids anywhere to be
5 interviewed?

6 A. Yes.

7 Q. Where was that?

8 A. It was up here in Mocks Corner, I believe, a
9 forensics investigation.

10 Q. At the time of that interview, how long had the
11 twins been away from Mack and Julie?

12 A. Couple of days.

13 Q. And what was their demeanor like in the beginning
14 when they moved in with you?

15 A. Minor 1 is a very happy-go-lucky guy. You --
16 he's just -- he's happy to be anywhere. He, you know, hey,
17 how are you. Everything's a party to Minor 1.

18 Minor 2 was pretty sullen. I kept finding
19 him sitting on my stairs, you know, with his head down on
20 his knees. He was very worried. He was very upset all the
21 time. But once I got him on a routine and I started
22 getting him involved in programs and stuff, he started
23 coming around. It didn't take too long.

24 Q. Did they have any unusual habits with regard to
25 food or anything in the home?

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1 A. Yeah. They used to -- in the beginning, the
2 first couple of weeks, I would find food under the bunk
3 beds or in the closet. They would hoard it, afraid that we
4 would run out, or Minor2 was afraid if I punished him
5 that I would take dinner away.

6 Q. And did either of the boys need medication?

7 A. Yes.

8 Q. And who was that?

9 A. Both boys.

10 Q. What did Minor2 take medicine for?

11 A. Minor2 took medication for ADD.

12 Q. And what about Minor1

13 A. Minor1 has a disease that was not letting him
14 grow and he had to have shots and pills.

15 Q. And did you receive any of the medication for
16 Minor1

17 A. Yes, I did.

18 Q. And was it up-to-date?

19 A. No, ma'am.

20 Q. Tell me about that.

21 A. They were all expired, the needles and with the
22 medications. I had to discard them all. I had to call the
23 company, explain to them that all the medications were no
24 good. And apparently, the schedule I was given, Julie had
25 been giving him these shots all along even though they had

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1 been expired for almost a year.

2 Q. And did you have to take the kids to any medical
3 appointments?

4 A. Yes, ma'am.

5 Q. Can you tell me about that.

6 A. I took Minor 1 to MUSC, with a specialist with
7 his growth problem and stuff, and the physician had told me
8 that Minor 1 hadn't been there in over a year.

9 Q. And if you know, how often was he supposed to be
10 going?

11 A. Every three to six months to be monitored.

12 Q. Did either of the boys --

13 MR. SCHWACKE: Your Honor --

14 THE COURT: Hold on one second.

15 MR. SCHWACKE: Your Honor, may we approach?

16 THE COURT: You may.

17 [Whereupon, an off-the-record bench conference is
18 held]

19 Q. [Ms. Williams] Did either of the boys disclose a
20 sexual assault to you?

21 A. Yes.

22 Q. One, or both, or --

23 A. Both.

24 Q. And did they say when it happened?

25 A. Yes.

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1 Q. And did they tell you where it happened?

2 A. Yes.

3 Q. And what did you do after you got this
4 information?

5 A. I called Evelyn Catz [phonetic].

6 Q. And who does she work for?

7 A. DSS.

8 Q. What was your reaction hearing that?

9 A. I don't know. I was floored. I just -- I
10 couldn't even comprehend being Minor 2 or Minor 1 or
11 Minor 3

12 Q. And what did Ms. Case do as a result of your
13 phone call?

14 A. She came to my house. And because Minor 2
15 didn't really like trust too many people, I basically had
16 to convince him that I would stay with him through the
17 whole thing no matter what. And I had to hear it again.
18 And he did a good job. He did what he was supposed to do,
19 and I'm very proud of him for that.

20 Q. Do you know about when that was?

21 A. It was after Minor 2

22 Q. And did she interview the boys separately or
23 together?

24 A. Separately.

25 Q. How did that work?

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1 A. My dining room was the key place.
2 And Minor2 was there with me and Evelyn, and
3 Minor1 went upstairs with my two other -- my sons, my
4 biological sons. And then when it was time for Minor1 to
5 come down, Minor2 went upstairs.

6 Q. At that period of time, did they see Minor very
7 often?

8 A. No.

9 Q. Why didn't the boys disclose before, if you know?

10 A. Minor2 told me that the day that Evelyn
11 Katz [phonetic] came to get them that Julie was trying to
12 grab Minor2 and push him in the corner to speak with
13 him. And it was overheard, and then Minor2 verified
14 it later to me, that Julie had told him that he had to fix
15 this and make it right, that it was up to him, that he --
16 the family had to be put back together by him.

17 Q. Did the boys remain with you?

18 A. They stayed with me until the end of January,
19 almost February.

20 Q. Why did they have to leave?

21 A. I'm not a licensed foster home in the state of
22 South Carolina.

23 Q. Did Minor2 have a nickname for you? Or what
24 did he call you?

25 A. I'm his guardian angle.

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1 Q. Thank you, Ms. Twomey.

2 MS. WILLIAMS: Court's indulgence.

3 [Whereupon, Ms. Williams and Ms. Herring-Lash
4 confer]

5 Q. [Ms. Williams] I had asked you if the boys told
6 you when and where. Without saying everything that they
7 said to you, where did they say that the sexual assaults
8 took place?

9 A. Minor 2 can speak, so he had said his butt.

10 Q. No. I mean where, location wise, like an address
11 or a place.

12 A. Their house. Mack's house. The living room.

13 Q. And did they say when? Just a time range of
14 when?

15 A. It had been going on for a -- it was near the --
16 when the cruise had gone off, I guess it became more
17 predominate.

18 MS. WILLIAMS: Thank you, Ms. Twomey. Please
19 answer any questions from the defendant.

20 THE WITNESS: Sure.

21 THE COURT: Mr. Schwacke.

22

23

24

25

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CROSS-EXAMINATION

1
2 BY MR. SCHWACKE:

3 Q. I don't want to mispronounce your name. Could
4 you tell me how to say it right?

5 A. Which one?

6 Q. Your last name.

7 A. Twomey.

8 Q. Twomey.

9 A. T-W-O-M-E-Y. Like one, two, three. Twomey.

10 Q. Ms. Twomey, you were talking about Minor 1 of
11 medical neglect on both Minor 2 and Minor 1

12 A. Uh-huh. Yes.

13 Q. That would have been by Ms. Barnes' doing;
14 correct?

15 A. I believe so, yeah. That would be their mother.

16 Q. I mean, she was their mother, their only legal
17 guardian?

18 A. To my knowledge.

19 Q. You indicated that Minor 2 didn't trust too
20 many people.

21 A. No, sir.

22 Q. Did he express any type of observable emotion,
23 that you could see, with regards to someone he called
24 Auntie Michael?

25 A. Repeat that.

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1 Q. Did he talk to you about a person named Auntie
2 Michael?

3 A. Yes, sir.

4 Q. And what did you observe about his behavior as it
5 related to that person?

6 A. That he was a hairdresser in Mount Pleasant.

7 Q. Yeah. But, I mean, how did -- was he -- did he
8 want to see him, did he not want to see him, was he scared
9 of him, did he like him? What did he --

10 A. He didn't say. He just stated that he was a
11 hairdresser --

12 Q. Did you form --

13 A. -- and lived in Mount Pleasant.

14 Q. Did you form any type of opportunity that he --
15 did he tell -- ever tell Ms. Case that he was scared?

16 A. I don't remember.

17 Q. Could you have?

18 A. I don't remember.

19 Q. So you're not sure?

20 A. It was two -- I could have. I don't know.

21 MR. SCHWACKE: That's all the questions I have.

22 THE WITNESS: Okay.

23 MS. WILLIAMS: Nothing further, Your Honor.

24 THE COURT: Ms. Twomey, you may step down. Thank
25 you.

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1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MS. WILLIAMS: Your Honor, can Ms. Twomey be
4 excused so she can drive back --

5 THE COURT: Any objection, Mr. Schwacke?

6 MR. SCHWACKE: No objection.

7 THE COURT: You are released from your subpoena,
8 Ms. Twomey. Thank you.

9 [Whereupon, the witness is excused and exits the
10 courtroom]

11 MS. WILLIAMS: Crystal Brown.

12 [Whereupon, Ms. Brown comes forward]

13 THE CLERK OF COURT: Please raise your right
14 hand, place your left hand on the Bible.

15 [Whereupon, Ms. Brown is duly sworn by the clerk
16 of court as follows: do you solemnly swear or affirm
17 the testimony you give the Court in the trial of this
18 case will be the truth, the whole truth, and nothing but
19 the truth, so help you God]

20 THE WITNESS: Yes.

21 THE CLERK OF COURT: Please be seated. State
22 your full name and spell your last name for the record.

23 [Whereupon, the witness takes the witness stand]

24 THE WITNESS: Crystal Brown. B-R-O-W-N.

25 MS. WILLIAMS: Thank you, Your Honor.

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1 CRYSTAL BROWN,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Ms. Brown, where do you live now?

7 A. I live on F Road, Lot 87, Summerville.

8 Q. Summerville?

9 A. Uh-huh.

10 Q. Is that in Berkeley County?

11 A. Yes, ma'am.

12 Q. And do you know who Ronald McCauley is?

13 A. Yes, ma'am.

14 Q. How do you know him?

15 A. He lived next door to me.

16 Q. And do you still live in the trailer that's next
17 door to the one he used to live in?

18 A. Yes, ma'am.

19 Q. How far away was your house from his?

20 A. Approximately a few feet.

21 MS. WILLIAMS: Your Honor, I'm going to -- may I
22 approach, Your Honor?

23 THE COURT: You may.

24 Q. [Ms. Williams] This has already been admitted
25 into evidence.

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1 MS. WILLIAMS: And if you could publish State's

2 9.

3 Q. [Ms. Williams] If you could use this just to
4 show us where your trailer was -- and that's kind of hard
5 to see, so if you need to reference that -- and where his
6 trailer was.

7 THE WITNESS: How do I work this?

8 MS. WILLIAMS: It's the red dot.

9 A. Yeah. That's my mobile home right there.

10 Q. [Ms. Williams] Okay. And where is his?

11 A. Right there.

12 Q. All right. And when did he live there?

13 A. I would say he moved in about '06. 2006.

14 Q. And when did he leave, if you remember?

15 A. I'm wanting to say it was maybe seven, 2007.

16 Q. Could it have been later?

17 A. Maybe 2008.

18 Q. Did you socialize with him?

19 A. No, ma'am. Very -- just a few incidences.

20 Q. Did you ever see children at his home?

21 A. Yes, ma'am.

22 Q. Can you describe the children?

23 A. I only remember seeing two --

24 Q. Okay. What did they --

25 A. -- two children. One was a blond-headed kid. It

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1 was a boy.

2 Q. About how old?

3 A. About seven or eight, I would say.

4 Q. And what was the other one?

5 A. It was a dark-headed boy. And I'm not sure of
6 the ages because I very seldom seen that one.

7 Q. Okay. And did you know whose children they were?

8 A. Mack is what -- I knew Ron as Mack. Mack and
9 Julie's.

10 Q. Why did you think that they were Mack and Julie's
11 kids?

12 A. Because they posed as a family.

13 Q. Okay. Did they ever tell you they were his kids?

14 A. No, ma'am.

15 Q. How often did you see them over there?

16 A. I assumed they lived there and then I got to
17 thinking maybe they don't because it was sometimes I seen
18 them, sometimes I didn't. It was more like a weekend thing
19 that I seen the kids. So it would be a few days and then
20 it would -- I wouldn't see them for a few more days.

21 Q. Do you know if they spent the night?

22 A. No, ma'am, I can't say if I know for a fact.

23 Q. Did you observe the kids around the trailer
24 outside?

25 A. Yes, ma'am.

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1 One particular incident the blond-headed boy was
2 outside cutting grass with a pair of scissors around a
3 board in the yard, and I asked -- I spoke to the little
4 boy. I said, hi. And he said, hi. And I said, I have a
5 weed-eater and a lawnmower, if you would like. And he just
6 continued looking down and shook his head no at me. And I
7 looked up and Mack was standing at the doorway. And we had
8 a few words. I was like, I have a weed-eater and a
9 lawnmower if you would like to borrow them, you know. Or
10 if you need someone -- people around here pay people to cut
11 grass. And the little boy continued cutting the grass with
12 a pair of scissors.

13 Q. And do you know why he was cutting the grass with
14 a pair of scissors?

15 A. The little boy, if I remember correctly, he said
16 it was punishment.

17 Q. And did you ever see anything else that alarmed
18 you?

19 A. Yes, ma'am.

20 The same little blond-headed boy, that's usually
21 the one I seen, come outside and got in a vehicle and he
22 was dressed as a little girl. And I can't really say it
23 was a costume, because it wasn't -- it wasn't Halloween.
24 It was just this pink -- if I remember, it was pink. It
25 was real lacy and frilly. And he came out, got in the car,

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1 and they all left and they came back and he was still
2 dressed the same way.

3 Q. And you said it was not Halloween?

4 A. No, ma'am.

5 Q. Now, after Mack moved out of the trailer, did you
6 ever see Julie?

7 A. Yes, ma'am.

8 Julie was there, and she had a big sign up that
9 said things for sale so I walked over and I bought a few
10 things that she was selling. She said that he was
11 incarcerated and she was trying to get him out of jail,
12 that he was accused of doing something he didn't do. So
13 I -- like I said, I bought a few things from the home. And
14 the little boys wasn't there. It was just the few women
15 that was there cleaning out the trailer.

16 Q. So was it your understanding that she was still
17 in touch with Mack?

18 A. Yes, ma'am.

19 Q. And that she did not support her children --

20 A. Yes, ma'am.

21 Q. -- believe them?

22 A. Uh-huh. Yes, ma'am.

23 MS. WILLIAMS: Court's indulgence.

24 THE COURT: Yes, ma'am.

25 [Whereupon, Ms. Williams and Ms. Herring-Lash

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1 confer]

2 MS. WILLIAMS: Please answer any questions the
3 defense has.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Mr. Schwacke?

6 MR. SCHWACKE: I don't have any questions.

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

8 THE WITNESS: Thank you.

9 THE COURT: You are free to leave.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Call your next witness.

13 MS. WILLIAMS: Kris Phillips.

14 [Whereupon, Ms. Phillips comes forward]

15 MS. WILLIAMS: Ms. Phillips, if you would just
16 walk around this way and go sit in that chair.

17 THE CLERK OF COURT: Raise your right hand.
18 Place your left hand on the Bible.

19 [Whereupon, Ms. Phillips is duly sworn by the
20 clerk of court as follows: do you solemnly swear or
21 affirm the testimony you will give the Court in the
22 trial of this case will be the truth, the whole truth,
23 and nothing but the truth, so help you God]

24 THE WITNESS: I do.

25 THE COURT: Please be seated. State your full

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1 name, and spell your last name for the record.

2 THE WITNESS: Kris Marie Phillips.

3 P-H-I-L-L-I-P-S.

4 THE COURT: Ms. Williams.

5 MS. WILLIAMS: Thank you, Your Honor.

6 - - - - -

7 KRIS M. PHILLIPS,

8 Having Been First Duly Sworn,

9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. How old are you, Ms. Phillips?

13 A. Forty-five.

14 Q. And where do you live now?

15 A. In Summerville.

16 Q. Who did you used to live with?

17 A. Mack McCauley.

18 Q. And was it just you? Or someone else?

19 A. My husband and I.

20 Q. And is your husband still with us?

21 A. He passed away this year.

22 Q. How long did the two of you live with Mack?

23 A. Doug was -- around November of 2007 he moved in,
24 and then I moved in April the 1st, 2008.

25 Q. And did you rent a room, or did you live there

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1 free?

2 A. Yes, ma'am, we rented a room there.

3 Q. And I'm going to ask you some questions about
4 where your room was.

5 MS. WILLIAMS: If you could put up 22.

6 Q. [Ms. Williams] There's going to be a diagram put
7 up of the inside of the trailer. And then here is a
8 smaller version. This red thing is a pointer. If you
9 could just show us where your room was and where Mr.
10 McCauley's room was.

11 A. That was our room, and that was Mack's room.

12 Q. Okay. And did you ever see any children at his
13 house?

14 A. Yes.

15 Q. Okay. Who were the children?

16 A. Minor 1 Minor 2 and Minor 3

17 Q. And how old were the children, if you know.

18 A. Minor was probably five or six and the twins were
19 seven, eight, nine. I'm not sure. I'm not good with ages.

20 Q. Whose children were they?

21 A. Minor was from a previous marriage of Julie's.
22 and the two older twins were Mack's.

23 Q. Why did you think they were Mack's children?

24 A. That's what we were told.

25 Q. By who?

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1 A. By Mack and Julie.

2 Q. How often did you see them over there?

3 A. On and off. Usually it was a week at the time,
4 and then not for a week, and --

5 Q. Did they spend the night?

6 A. Yes, they spent the night.

7 Q. How often would they spend the night?

8 A. Like I said, probably for maybe a week at the
9 time, or weekends whenever Julie was working, things like
10 that.

11 Q. Did you ever meet Julie?

12 A. Yes.

13 Q. When did you meet her?

14 A. She came over to see Mack and had the kids one
15 day and we met her that way.

16 Q. And did you ever go to her house?

17 A. Yes.

18 Q. Did you go there with Mack?

19 A. Yeah.

20 One particular time, like a birthday party for I
21 think it was the twins. I'm not really sure. One of them
22 had a birthday party so we all went over there. And then a
23 couple of other times just to -- for whatever reason.

24 Q. How often would Mack be at Julie's house?

25 A. He -- well, as far as we knew, he stayed over

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1 there a pretty good bit. When he wasn't at home, he was
2 usually there.

3 Q. Did he spend the night over there?

4 A. As far as we knew, yes.

5 Q. How did Julie act around her children?

6 A. Complacent, maybe. Didn't seem to take much of a
7 role.

8 Q. Who did take a role?

9 A. Mack pretty much did everything.

10 Q. Who disciplined the children?

11 A. Mack.

12 Q. How did Mack discipline the children?

13 A. Well, the one that really bothered me the most
14 was the cans. He would have them have two ravioli cans,
15 one in each arm, put a spot on the wall with the nose, make
16 them hold it for however old they were and then if they did
17 this or whined or whatever, start all over. And it would
18 be like a long, long process. Just over and over again.

19 Q. And how -- I'm going to show you this can. Was
20 it bigger than this can?

21 A. It was probably that size or a little bigger.

22 Q. Okay. And did you see that with all three of the
23 boys?

24 A. Yes. More so of Minor than Minor 2 and Minor 1

25 Q. And what other things did he do to discipline the

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1 children?

2 A. Well, they weren't allowed to pretty much do
3 anything, speak, other than sit on the couch and watch TV.

4 Q. Were you ever concerned about the children?

5 A. Yes.

6 I was concerned for their well-being when they
7 were there. Didn't try to step in and do anything, other
8 than made a phone call once to DHS. But I couldn't really
9 say anything to Mack. He got pretty angry, so --

10 Q. And what prompted you to make that phone call?

11 A. One particular day my husband and I were walking
12 out to the car and Mack and Minor were walking back into the
13 apartment -- or to the trailer. And he put his hand on --
14 Minor put his hand on Mack's genital area and said, can we
15 do that now. And Mack just kind of brushed his hand away.
16 Didn't -- you know, it didn't -- to me it just didn't seem
17 like he was hugging on him to go somewhere or anything like
18 that. It just kind of made me wince.

19 Q. And so you called who you thought was social
20 services?

21 A. Right.

22 I remember speaking with a Nicole somebody,
23 but I -- she was supposed to relay a message to DSS and
24 I never got back in -- I mean, she never got in touch with
25 me so I assumed that there was -- there was, you know, an

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1 investigation at that point. I don't know.

2 Q. And when you say DHS: are you from another
3 state?

4 A. Alabama.

5 Q. Okay. Is that what they call the Department of
6 Social Services in Alabama? DHS?

7 A. Yeah. The Department of Human -- yeah.

8 Q. And did you keep track of some of your concerns
9 in any kind of written form?

10 A. I did.

11 I always took notes. I'm OCD, so I have to write
12 down everything. And I have tons of stuff. But, yeah, I
13 always kept notes of things that happened.

14 Q. And did you eventually type those notes up?

15 A. Yeah.

16 When I found out the case was coming, when, you
17 know, I was contacted. Again, OCD, so it has to be nice
18 and pretty for other people to look at.

19 MS. WILLIAMS: I'm showing defense counsel an
20 exhibit.

21 [Whereupon, Ms. Williams proffers documents to
22 Mr. Schwacke]

23 MS. WILLIAMS: May I approach, Your Honor?

24 THE COURT: The witness, yes.

25 Q. [Ms. Williams] What is this?

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1 A. That's -- that is the typed-up copy that I had.

2 Q. That you prepared?

3 A. I did. But I made a mistake on it. Sorry.

4 Q. What --

5 A. I had the wrong year. It was 2008 instead of
6 2009.

7 Q. So what year did you put on here?

8 A. I put 2009, but it was actually 2008.

9 Q. And is this from a written diary or --

10 A. Yes. Yes, yes.

11 Q. Was the correct date on the original one?

12 A. Yes.

13 Oh. Actually, I probably didn't have a date on
14 the original or I would have typed it correctly.

15 MS. WILLIAMS: Court's indulgence for just a
16 second.

17 THE COURT: Yes, ma'am.

18 [Whereupon, Ms. Williams and Ms. Herring-Lash
19 confer]

20 Q. [Ms. Williams] When the boys would spend the
21 night, did you ever see where -- which room they were in
22 and where they slept?

23 A. Yeah.

24 Usually, M^{Minor} was there more than the other two.

25 And I don't know why. I tried not to pry or ask. But M^{Minor}

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1 would always stay in Mack's bed. Minor1 -- well, they
2 would pretty much all stay in his room unless one of them
3 wanted to sleep on the couch. But Minor was usually the one
4 that was in the bed with Mack.

5 Q. Was there an extra room besides your room and
6 Mack's room?

7 A. There was.

8 It was full of junk at one time. It was like
9 this little storage room. And one of my friends had
10 decided to move in for like a month or two until she got on
11 her feet. So we took everything out, she put a mattress in
12 there, and so it was like that for a little while.

13 Q. Do you think the boys ever stayed in that room on
14 the Minor1 Or do you know?

15 A. Well, I think Minor2 and Minor might have
16 stayed in there at some point, but usually you would see
17 them on the couch or in Mack's room.

18 MS. WILLIAMS: Thank you. Please answer any
19 questions the defense has.

20 THE WITNESS: Okay.

21 THE COURT: Mr. Schwacke?

22 - - -

23 - - -

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. SCHWACKE:

Q. Do you have your notes that you made your
typed-written recollections?

A. I don't have a copy of it with me now, no.

Q. You weren't told to bring it with you?

A. No, sir. I was told somebody would have a copy.

Q. And no doubt what has been typed and prepared and
given to us has the wrong year on it?

A. Yes.

Q. Mr. McCauley was evicting you from the trailer;
isn't that correct?

A. Yes, sir.

Q. When was that?

A. I want to say it had to be end of October, first
of November, somewhere in there.

Q. You weren't happy with that?

A. Well, not -- nobody likes being evicted, but, I
mean, I understand he needed the money for the rent and we
didn't have it.

Q. But he had to go through the process of evicting
you?

A. Well, no, not really.

He told us to be out by Sunday and that's exactly
what we did. He didn't have to do anything. We would have

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1 left on our word.

2 Q. And you're the Kris Phillips who's been
3 previously convicted of forgery and a possession of a
4 controlled substance?

5 A. Yes, sir.

6 MR. SCHWACKE: That's all.

7 THE COURT: Redirect?

8 MS. WILLIAMS: Nothing further, Your Honor.

9 THE COURT: Ms. Phillips, you may step down.

10 Thank you.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Call your next witness.

14 MS. WILLIAMS: Charles Thacker.

15 [Whereupon, Mr. Thacker comes forward]

16 MS. WILLIAMS: Mr. Thacker, if you could just
17 walk up here and around here and up to this seat --
18 thank you -- to where she is in the blue.

19 THE CLERK OF COURT: Please raise your right
20 hand. Place your left hand on the Bible.

21 [Whereupon, Mr. Thacker is duly sworn by the
22 clerk of court as follows: do you solemnly swear or
23 affirm the testimony you will give the Court in the
24 trial of this case will be the truth, the whole truth,
25 and nothing but the truth, so help you God]

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1 THE WITNESS: So help me God.

2 THE COURT: Please be seated. State your full
3 name, and spell your last name for the record.

4 THE WITNESS: My full name is Charles Price
5 Thacker. T-H-A-C-K-E-R.

6 MS. WILLIAMS: Thank you, Your Honor.

7 - - - - -

8 CHARLES P. THACKER,
9 Having Been First Duly Sworn,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Mr. Thacker, who is Minor Thacker to you?

14 A. He is my son.

15 Q. And who is his mother?

16 A. Julie Barnes. Or Julie Gunnells. I'm not sure
17 which name she's going by.

18 Q. Were you ever married to her?

19 A. No.

20 Q. And does MMinor live with you now?

21 A. Yes, ma'am.

22 Q. Was that always the case?

23 A. I would see him for visitations on the weekends.
24 But he is presently in my custody, yes, ma'am.

25 Q. Who did he live with before?

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1 A. Julie Barnes.

2 Q. And did you pay child support for ^{Minor 3} ~~Minor 3~~ 3

3 A. Yes, ma'am.

4 Q. To who?

5 A. To Julie Barnes.

6 Q. And when he lived with Ms. Barnes, how often
7 would you say you saw him?

8 A. I would see him at least twice a month on the
9 weekends, for the full weekends. I'd pick him up generally
10 Saturday mornings, drop him off Sunday evenings.

11 Q. And would you -- when you would pick him up,
12 would you have a chance to make observations about the
13 interior of Ms. Barnes' home?

14 A. Yes, ma'am.

15 Q. What was it like?

16 A. It was usually in disarray, messy. There was
17 generally clothes and all stacked up on the couches.

18 MR. SCHWACKE: Your Honor, again, we're dealing
19 with issues about Ms. Barnes that have no relation to my
20 client. I would object to that and just ask her to move
21 on.

22 THE COURT: Sustained. Move on, Ms. Williams.

23 MS. WILLIAMS: Thank you.

24 Q. [Ms. Williams] Did you know Ronald McCauley?

25 A. I had seen him there a few times, yes, ma'am.

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1 Q. And what did you think his role was in that home?

2 A. From what Julie had told me, his role was as a
3 babysitter.

4 Q. And did Minor ever go to Mr. McCauley's home?

5 A. On two occasions I know of, when I was asked to
6 drop him off there. Julie was present at the time when I
7 took him to his home.

8 Q. And who else, to your knowledge, lived with Minor
9 at Ms. Barnes' home?

10 A. She had some other folks living there. A woman
11 named Tina, with her husband.

12 Q. I mean which children. Which children lived
13 there? His siblings.

14 A. Oh. Oh, oh. Excuse me. I'm sorry.

15 Minor 1 Watts and Minor 2 Watts were the only
16 two children that lived there constantly.

17 Q. And did you ever meet their father?

18 A. On a couple of occasions, yes, ma'am.

19 Q. And what was his name?

20 A. Craig Watts.

21 Q. If you know, was he very involved with the twins'
22 life?

23 A. To my knowledge, he had very little involvement.

24 Q. Now, what happened to change where Minor lived?
Minor

25 A. I had went by to pick him up one morning. The

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1 front door was open. I had called Julie the night before
2 and told her that I was coming to get him. And when the
3 front door was open, I walked in. Nothing was on, no TV or
4 nothing, so I walked back towards the bedrooms and I found
5 that man right there in bed with my child with nothing on
6 but his underwear. At the time I did not feel it was
7 important because I know my child has nightmares.

8 But after I got him home and I asked him what's
9 that man in bed with you for, to see what kind of
10 nightmares he's got, the expression on his face told me
11 everything I wanted to know. Something was wrong. Tried
12 to get him to clarify, okay, what's going on. Just kind of
13 looked away and said nothing. But like I said, the
14 expression on his face told me everything; there was
15 something wrong there.

16 Q. Did you -- so ^{Minor} didn't tell you anything that
17 happened?

18 A. Not that morning he didn't.

19 Q. Did you do something to try to find out what
20 happened?

21 A. Yes, ma'am, I did.

22 Q. What did you do?

23 A. Later on that day, it was probably about five,
24 six hours later, after he had come in from playing, I had
25 got off the phone with somebody. And I told him that I had

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1 just got through talking with Mack -- that's the only name
2 I know is Mack at that time -- and Mack had told me
3 everything, what him and Mack was doing.

4 And I said, now, you know me, Minor³₃ When you and
5 T.T. which is my other son, have problems, I want to
6 hear both sides of the story from each of you; now I want
7 to hear your version. And that's when he started telling
8 me about things that children should not know.

9 Q. And you can't tell what Minor told you, but did he
10 disclose sexual assault to you?

11 A. Yes, ma'am, he sure did.

12 Q. And where did he say it happened?

13 A. There at Julie Barnes' house --

14 Q. And --

15 A. -- and also at his house.

16 Q. When you say his, do you mean Mr. McCauley's?

17 A. Yes, ma'am.

18 Q. And did he tell you when it happened?

19 A. He couldn't clarify the dates or nothing. At
20 eight years old, you really don't understand time. But you
21 can tell it had happened. There's certain things he said
22 that only a person having been involved in such activities
23 would know.

24 MR. SCHWACKE: Your Honor, I need to object to
25 that in terms of -- if we could approach?

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1 THE COURT: I'll sustain the objection.

2 Ladies and gentlemen, I have determined the last
3 statement is not to be considered in any way in your
4 deliberations.

5 Ms. Williams.

6 Q. [Ms. Williams] What did you do, if anything,
7 next?

8 A. I then called the Moncks Corner Sheriff's
9 Department and went up there and took him before the
10 officer up there for him to tell him what happened.

11 Q. And did DSS get involved at that point?

12 A. Yes, ma'am, they did.

13 Q. And what happened next?

14 A. I took him to UMSC [phonetic] so that he can get
15 a sexual assault kit done on him. That didn't turn up
16 nothing because hadn't nothing happened that night, it was
17 beforehand.

18 Q. Mr. Thacker, before you took him to MUSC, had
19 Minor showered?

20 A. Yes, ma'am.

21 Q. Had he had a bowel movement?

22 A. To my knowledge, yes, ma'am.

23 Q. And did Minor stay at your house at that point or
24 did he go back to Ms. Barnes'?

25 A. The following day he had went back to his house

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1 because that's what I was instructed by DSS to do. Because
2 that was part of the court order: I would have him back on
3 the weekends at a certain time.

4 Q. So you took him back to Julie Barnes?

5 A. Yes, ma'am.

6 Q. And to your knowledge, was Mack McCauley back in
7 the home after that?

8 A. After the fact. Yes, ma'am.

9 Q. And when did you finally get Minor back?

10 A. I believe it was on that following Monday or
11 Tuesday morning when DSS called me and told me to meet them
12 over there, that all the children were being took from the
13 household.

14 Q. And did you take Minor to have a forensic
15 interview?

16 A. Yes, ma'am. At the child center.

17 Q. Right. And do you remember where that was?

18 A. It was in Summerville.

19 Q. And how many times did Minor go to have an
20 interview?

21 A. He went twice.

22 Q. And why did he have to go twice?

23 A. The first time he went, he did not say nothing.
24 He did not disclose any information or anything.

25 Q. Without saying any -- giving us any hearsay, do

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1 you know why he didn't disclose the first time? If you
2 know.

3 A. He was told not to say nothing.

4 Q. Now, is Minor on any kind of medication?

5 A. Yes, ma'am.

6 At that time he was on Ritalin, I think 90
7 milligrams a day.

8 Q. And how did he act -- was that the amount of
9 medication he was receiving from Mr. McCauley and Julie
10 Barnes?

11 A. Yes, ma'am.

12 Q. How did he act on that level of medication?

13 A. To me he acted like a zombie when he was on full
14 medication.

15 Q. And since that time, have you had his medication
16 changed?

17 A. Yes, ma'am.

18 Q. How much is he on now?

19 A. Right now he's on 50 milligrams of -- I can't
20 think of the name right offhand. It's like Ritalin but
21 it's under a different name.

22 Q. How has his behavior changed since the medication
23 changed?

24 A. His behavior and all is real good. It's real
25 good.

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1 Q. Does he still behave like a zombie?

2 A. No, ma'am.

3 He's pretty much alert. He understands what's
4 going on around him. You can talk to him and get a good
5 conversation from him.

6 Q. And was Minor circumcised at birth?

7 A. No, ma'am.

8 Q. When was he circumcised?

9 A. At the age of I believe it was seven. No. At
10 the age of eight.

11 Q. And were you told about that?

12 A. Not until after the fact.

13 Q. What's your understanding of the reason why he
14 got circumcised at age eight?

15 A. It was my understanding it was because of
16 cleanliness, he wasn't being well-cleaned.

17 Q. Was he experiencing infections?

18 A. Yes, ma'am.

19 Q. And after the circumcision, did you have to apply
20 any kind of medicine or ointment?

21 A. There was an ointment that was used on it to help
22 keep the stitches and all soft.

23 Q. And since MiMinor moved in with you, how often does
24 he get to see his brothers?

25 A. MiMinor 1 and MiMinor 2

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1 Q. Uh-huh.

2 A. Not that often. It's hard to get. It's so many
3 people involved just to try to get something lined up.
4 Maybe once a year.

5 MS. WILLIAMS: Court's indulgence for just a
6 moment.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Williams and Ms. Herring-Lash
9 confer]

10 Q. [Ms. Williams] You took him to the place in
11 Summerville for the interview the first time. When did he
12 go back?

13 A. He went back the next day.

14 Q. And who took him back?

15 A. My wife took him back.

16 MS. WILLIAMS: Thank you, Mr. Thacker. Please
17 answer any questions the defense might have.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Mr. Schwacke.

20 MR. SCHWACKE: Mr. Thacker, you couldn't be in
21 the courtroom when your son testified today, but I think
22 I speak for all of us that you have a remarkable son.

23 - - -

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. SCHWACKE:

Q. In terms of the circumcision, when was that done in relation to you finding out about these things?

A. I would say probably late October or early November.

Q. So at the time in November, around thanksgiving, when you picked him up that day the process of the ointment was still ongoing?

A. Yes, sir.

Q. Who would apply that to --

A. I would.

Q. And you obviously seem to be an attentive father. Did you notice any marks or bruising on your son?

A. Minor is a rambunctious young man. He does have a lot of -- I mean, he's like any kid that age. He's got bumps and bruises all the time.

MR. SCHWACKE: I think that's all the questions I have. Thank you.

THE WITNESS: Thank you.

MS. WILLIAMS: Nothing further, Your Honor.

THE COURT: Mr. Thacker, you may step down. Thank you.

THE WITNESS: Thank you.

[Whereupon, the witness is excused and exits the

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1 witness stand]

2 THE COURT: All right. Ladies and gentlemen, as
3 I indicated, we'll try to break as close to 5:00 as
4 possible. It's ten til 5:00 so we'll go ahead and break
5 for the evening.

6 Ladies and gentlemen, please remember my
7 admonitions. Do not read, watch, listen to, any news
8 accounts regarding this case. Do not do any independent
9 investigations involving any issue in this matter.
10 Please do not discuss this case with anyone. I know now
11 it's going to be difficult. You're going to go home on
12 day two and your significant other is likely going to
13 ask what did you do in court today. You just tell that
14 individual that the judge has instructed me that I
15 cannot talk about this case.

16 And so go home, have a restful evening. Please
17 stay warm. And please be back in your jury room --
18 there's a matter unrelated to this case that I have to
19 take up outside of your presence in the morning, so
20 we'll get started at 9:45. Please have a delightful
21 evening. I'll see you back in the morning.

22 Please rise for the jury.

23 [Whereupon, the jury exits the courtroom at
24 4:44 p.m.]

25 THE COURT: Thank you. Be seated.

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1 Anything before we recess for the evening? From
2 the State?

3 MS. WILLIAMS: Nothing from the State, Your
4 Honor.

5 THE COURT: From the defendant?

6 MR. SCHWACKE: None, Your Honor.

7 THE COURT: All right. And I have grand jury
8 selection in the morning so that will start at 9:00, so
9 that should only take about thirty minutes, so we'll
10 begin at 9:45. So if y'all want to be here at 9:40 to
11 begin. See y'all at that time. Have a wonderful
12 evening. Thank you.

13 MR. SCHWACKE: Thank you, Your Honor.

14 MS. HERRING-LASH: Thank you, Your Honor.

15 [JURY TRIAL ADJOURNS AT 4:45 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Tuesday, December 14, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 3rd day of July, 2011.


Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) INDICTMENT NO.: 2009-GS-08-2123
 through 2126; 2129; 2131 through
 2133

THE STATE OF SOUTH CAROLINA)
)
VS.)
)
RONALD MCCAULEY,)
)
 DEFENDANT.)
_____)

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Wednesday, December 15, 2010, Commencing at 9:41 a.m.

SUSAN "MIA" PERRON, CVR-CM
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MARKED/ADMITTED

State's Exhibit Number 23
[Diagram of Body]

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PROCEEDINGS

1
2 THE COURT: Anything before we bring in the
3 jury? From the State?

4 MS. WILLIAMS: Yes, Your Honor.

5 MR. SCHWACKE: I think we have an agreement on
6 something --

7 MS. WILLIAMS: Your Honor, we would just like to
8 put on the record that, [a], Mr. Schwacke has advised
9 his client that he used to be the solicitor and that he
10 was the solicitor for a period of time when Mr.
11 McCauley's previous case was handled; and, [b], that
12 Your Honor's father, at one time in the distant past,
13 had represented Mr. McCauley and that, you know -- that
14 you didn't know anything about the case or Mr. McCauley
15 or anything like that.

16 THE COURT: All right. Mr. Schwacke, did you
17 advise your client of those two matters?

18 MR. SCHWACKE: Yes, Your Honor. In fact, I did
19 it on I think a separate occasion, then on another
20 occasion when Ms. Kennedy was also present.

21 THE COURT: All right. And, Ms. Kennedy, you
22 agree that Mr. McCauley has been advised of those two
23 matters?

24 MS. KENNEDY: Yes, Your Honor. A number of
25 times.

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1 THE COURT: All right. And, Mr. McCauley, I'm
2 going to place you under oath for this limited purpose.
3 Please swear the defendant.

4 THE CLERK OF COURT: Please raise your right
5 hand.

6 [Whereupon, Mr. McCauley is duly sworn by the
7 clerk of court as follows: the testimony you give the
8 Court shall be the truth, the whole truth, and nothing
9 but the truth, so help you God]

10 MR. MCCAULEY: Yes, ma'am.

11 THE COURT: Mr. McCauley, you have been advised
12 that Mr. Schwacke formerly was the elected solicitor
13 during a period of time not during the allegation
14 period.

15 Is that correct, Mr. Schwacke?

16 MR. SCHWACKE: Correct.

17 THE COURT: Not during the incident case; is
18 that correct?

19 MR. SCHWACKE: It was during the time frame that
20 he was previously convicted which is forming the basis
21 of the prosecution under Subsection A-2, and also the
22 notice of life without parole.

23 THE COURT: All right. And so, Mr. McCauley,
24 you have been advised of that situation; correct?

25 MR. MCCAULEY: Yes, ma'am.

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1 THE COURT: All right. And do you have any
2 questions for the Court or for Mr. Schwacke regarding
3 that matter?

4 MR. MCCAULEY: No, ma'am.

5 THE COURT: All right. And you have also been
6 advised -- and what I understand is that one of the
7 charges, you were represented by Carter Harrington; is
8 that correct?

9 MR. MCCAULEY: That's correct. On all three
10 charges.

11 THE COURT: All three charges.

12 And you have been advised that Carter Harrington
13 is my father?

14 MR. MCCAULEY: Uh-huh.

15 THE COURT: All right. Any questions for Mr.
16 Schwacke or for the Court regarding that matter?

17 MR. MCCAULEY: I had already asked him, and he
18 said that he spoke with you about it.

19 THE COURT: All right. And just for the record
20 there was an in-chambers conference, not on the record,
21 concerning this matter.

22 Mr. Schwacke, you're not bringing any motion or
23 -- you're not indicating any actual bias regarding that
24 matter, are you?

25 MR. SCHWACKE: I think you had informed us at

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1 the time, Your Honor, that you had been out of the
2 state -- it may have been the time frame when you were
3 just returning back -- and that you weren't involved in
4 your father's practice in any way, or specifically with
5 this case, or you didn't have any recollection of that
6 at the time. And I informed him that that was what you
7 had indicated to us in chambers about two weeks ago.

8 THE COURT: All right. And just for the record,
9 I had indicated -- and I do not recall the exact time
10 frame but I believe when -- the prior case that Mr.
11 Harrington represented Mr. McCauley on occurred while I
12 was practicing law in Oklahoma. And then I returned to
13 South Carolina and assisted in a very minimal role
14 prior to and was studying the bar. I took the bar in
15 South Carolina in 2001. So I'm not sure -- and I had
16 indicated that I had no familiarity, did not represent
17 in any way any of those matters for Mr. McCauley.

18 Anything further required of that?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: And Mr. McCauley is certainly not --
21 is not at this time -- is he making any sort of motions
22 to have the Court recuse herself or to have you
23 recused, Mr. Schwacke?

24 [Whereupon, Mr. Schwacke and Mr. McCauley
25 confer]

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1 MR. SCHWACKE: Your Honor, he's telling me that
2 he's happy with me.

3 THE COURT: All right.

4 MR. SCHWACKE: But that he feels like there is a
5 sufficient basis there that you should be recused from
6 the case.

7 THE COURT: All right. And, again, just so the
8 record is --

9 Mr. McCauley, is that correct? You are
10 requesting -- you are happy and satisfied with the
11 services of Mr. Schwacke and Ms. Kennedy representing
12 you at this time, even understanding that Mr. Schwacke
13 was a former solicitor; correct?

14 MR. MCCAULEY: Yes, ma'am.

15 THE COURT: All right. And so now we need to
16 move to the analysis. Mr. Schwacke, just so the record
17 is abundantly clear or perhaps --

18 Mr. McCauley, you may have a seat.

19 -- perhaps, Ms. Herring-Lash, could you indicate
20 to the Court the time frame that Mr. Harrington
21 represented Mr. McCauley?

22 MS. HERRING-LASH: Let me get the old sentencing
23 sheet.

24 THE COURT: Thank you.

25 [Whereupon, Ms. Herring-Lash reviews documents]

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1 MS. HERRING-LASH: The indictment was a 1999
2 indictment, and the guilty plea --

3 THE COURT: He was indicted in 1999; is that
4 correct?

5 MS. HERRING-LASH: Yes, Your Honor.

6 THE COURT: Do you have the -- what month was it
7 indicated?

8 MS. HERRING-LASH: March 29th, week of March
9 29th, 1999.

10 THE COURT: All right. And, Ms. Herring-Lash,
11 when was the case tried? Or was it pled?

12 MS. HERRING-LASH: It was a guilty plea. It
13 looks like the guilty plea was 6/29/01. It's confusing
14 on here. I think that the guilty plea -- excuse me --
15 was 6/21/01. Sentence was deferred and he was
16 sentenced 6/29/01. So it was deferred for a few days.

17 THE COURT: All right. Is that the correct time
18 frame, Mr. Schwacke?

19 MR. SCHWACKE: That's what's indicated on
20 materials that they provided to me.

21 And just to cover the earlier motion: I was in
22 office as solicitor until January the 9th of 2001, so
23 the indictment process would have occurred while I was
24 solicitor. The sentencing and plea would have been
25 after I was no longer in office.

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1 THE COURT: All right. But, again, Mr. McCauley
2 has indicated that he is satisfied with the services
3 and is not raising that as an issue.

4 All right. Just so the record is abundantly
5 clear -- Mr. Schwacke, do you show -- do you have any
6 actual bias? Can you show any actual bias for the
7 Court to recuse herself?

8 [Whereupon, Mr. Schwacke and Mr. McCauley
9 confer]

10 MR. SCHWACKE: Your Honor, if you could indulge
11 us, because obviously it's a motion that's kind of
12 directed from him, and we're trying to get exactly
13 where it is.

14 THE COURT: All right. Out of an abundance of
15 caution, because we have the jurors here and due to Mr.
16 McCauley being unable to be moved around, I'm going to
17 request that the two State's attorneys step outside of
18 the courtroom -- and I am going to get off the bench --
19 to allow you to deliberate, unless there's another room
20 that we could move Mr. McCauley to with little
21 inconvenience. Or are you comfortable having your
22 conversation right there.

23 MR. SCHWACKE: Yes. We're fine --

24 THE COURT: All right.

25 MR. SCHWACKE: -- to stay here. It's easier

1 that way.

2 THE COURT: All right. State?

3 [Whereupon, Ms. Williams and Ms. Herring-Lash
4 exit the courtroom]

5 [Whereupon, a recess is taken from 9:52 a.m. to
6 10:12 a.m.]

7 THE COURT: Please be seated. All right. We're
8 back on the record.

9 Mr. Schwacke, I'll be happy to hear from you.

10 MR. SCHWACKE: Thank you, Your Honor.

11 During the break, Ms. Kennedy and I were able
12 to speak with Mr. McCauley at length. Among his -- the
13 concerns that he raised were that in addition to having
14 contact with your father during the course of his
15 representation at the office, there were also times
16 that he had contact with him at the home, at your home.
17 That contact also included contact with your mother.

18 There was a matter of a constructed computer
19 system, that was built I guess to specifications, that
20 was used at your home. Also, some other computer work
21 and software work that was done at the office.

22 He also raised an issue of your prior employment
23 in the Ninth Circuit Solicitor's Office as a prosecutor
24 on these types of cases.

25 So for those reasons, he's asked us to raise the

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1 motion for recusal.

2 THE COURT: And any response from the State?

3 MS. WILLIAMS: Your Honor, the State's position
4 is that there is no bias, that the Court should not
5 recuse herself. There's been no actual bias shown.
6 The Court had informed us that she has no memory of Mr.
7 McCauley and that it was her father that represented
8 him, not Your Honor.

9 Also, Mr. Schwacke has said that he and Ms.
10 Kennedy informed Mr. McCauley at least two times of the
11 fact that the Court's father represented him -- he knew
12 that before the trial started -- and also that Mr.
13 Schwacke was the solicitor at the time that the
14 indictments were true-billed.

15 So our position is that the Court should not
16 recuse herself, that there's been no actual bias shown.

17 THE COURT: All right. Just for the record and
18 so that the record is abundantly clear: the home that
19 you are referring to was not my home. I did not return
20 back to South Carolina until February of 2001. I have
21 no independent knowledge of Mr. McCauley, do not
22 recognize Mr. McCauley, and during the period which he
23 entered the guilty plea I was actively studying for the
24 South Carolina bar.

25 The defendant has not shown any actual bias,

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1 simply alleging that I was a former prosecutor, or that
2 someone related to the Court represented Mr. McCauley
3 on unrelated matters, that those unrelated matters are
4 not at issue here today. The Court has previously made
5 a ruling that we would limit any additional -- or any
6 testimony regarding those, simply to the fact that he
7 is placed on the sex offender registry.

8 Based upon all of those factors, the defendant
9 has not shown actual bias, and deny your request to
10 recuse myself from this matter.

11 Anything further, Mr. Schwacke?

12 MR. SCHWACKE: No, Your Honor.

13 I'm not sure you've actually ruled on the sex
14 offender registry. I think that's what the State has
15 informed you how they intend to proceed --

16 THE COURT: I thought I was very clear as to
17 that I found that the placement on the sex offender
18 registry was an element and that any testimony
19 regarding Mr. McCauley's prior convictions or bad acts
20 would only be limited to the fact that he is placed on
21 the sex offender registry; there would be no discussion
22 regarding the fact what placed him on the registry.

23 MR. SCHWACKE: And I think your ruling, as I
24 recall -- and I guess it will be on the record for down
25 the road.

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1 Your ruling dealt with the fact that it was a
2 required element for the State to prove whatever is
3 required under the statute and they could do so in the
4 manner they decided. And they informed Your Honor that
5 that's how they wished to pursue it, out of an
6 abundance of caution, under Old Chief, and that's how
7 they were going to proceed.

8 That's my recollection. I was just making sure
9 that was on the record.

10 THE COURT: All right. And, Ms. Williams, any
11 indication that you are going to proceed any other way?

12 MS. WILLIAMS: No, Your Honor.

13 We would just have Fred Thornton, who is the
14 deputy that handles that, testify to just two things:
15 that he is on the registry -- that that's what Mr.
16 Thornton's job is -- but that he's on the registry and
17 when he was placed on the registry, just so there's no
18 confusion that this has placed him on the registry. No
19 mention of --

20 And then we would also, before Fred Thornton
21 gets to take the stand, I've discussed with Mr.
22 Schwacke as just admonishing him one more time so he
23 doesn't -- there's no confusion and he doesn't blurt
24 out what Mr. McCauley is on the registry for.

25 MR. SCHWACKE: And obviously for the record,

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1 when that time comes up I'll have to just lodge an
2 objection.

3 THE COURT: Yes, Mr. Schwacke.

4 Anything before we bring in the jury?

5 Who is our next witness, Ms. Williams?

6 MS. WILLIAMS: The next witness is Kathleen
7 Fabrizio.

8 MS. HERRING-LASH: Fabrizio.

9 THE COURT: All right. If you'll go ahead and
10 just have her in the courtroom.

11 Anything, Mr. Schwacke?

12 MR. SCHWACKE: No, Your Honor.

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

14 [Whereupon, the jury enters the courtroom at
15 10:18 a.m.]

16 THE COURT: Thank you. Please be seated.

17 If any member of the jury panel did not abide by
18 the Court's instructions last evening, please raise
19 your hand.

20 [Whereupon, there is no response]

21 THE COURT: Please let the record reflect that
22 all jurors have abided by the Court's instructions.

23 Call your next witness.

24 MS. HERRING-LASH: The State would call Kathleen
25 Fabrizio.

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1 [Whereupon, Ms. Fabrizio comes forward]

2 THE CLERK OF COURT: Please raise your right
3 hand, put your left hand on the Bible.

4 [Whereupon, Ms. Fabrizio is duly sworn by the
5 clerk of court as follows: the testimony you give the
6 Court in the trial of this case shall be the truth, the
7 whole truth, and nothing but the truth, so help you
8 God]

9 THE WITNESS: Yes.

10 THE CLERK OF COURT: Please be seated. State
11 your name. Spell your last name for the record.

12 [Whereupon, Ms. Fabrizio takes the witness
13 stand]

14 THE WITNESS: My name is Kathleen Fabrizio. F,
15 as in Frank -- A -- B, as in boy -- R-I-Z, as in zebra
16 -- I-O.

17 - - - - -

18 KATHLEEN FABRIZIO,

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MS. HERRING-LASH:

23 Q. Ms. Fabrizio, where do you work?

24 A. I work at the Medical University of South
25 Carolina.

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1 Q. And what do you do?

2 A. I am a nurse practitioner in the violence
3 intervention and prevention program, which is a program
4 directed by Dr. Ann Abel.

5 Q. And how long have you been in that program?

6 A. I started as a nurse practitioner October of
7 this year, but I've worked for -- January will be three
8 years with Dr. Abel and her group. And prior to becoming
9 a nurse practitioner with the group, I had worked as a
10 pediatric sexual assault nurse examiner.

11 Q. Can you tell what -- the jury what a pediatric
12 sexual assault examiner means?

13 A. Pediatric means children, and that's from birth
14 until the eighteenth birthday, and sexual assault means
15 that an alleged sexual assault has occurred to the
16 patient, and examiner means that I have training to
17 examine a patient that has potentially had an assault.

18 Q. What is your educational background?

19 A. I have a bachelor of nursing degree, which I
20 received at the University of North Carolina in Chapel
21 Hill in 1982. And then I went to the Medical University
22 of South Carolina to get a master's in nursing. And then
23 a few years later I went back to -- I was living in
24 Georgia at the time -- to Emory University, did some post
25 graduate study, and became certified as a family nurse

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1 practitioner.

2 Q. And you mentioned that you have had training for
3 sexual assault exams. And what was that specialized
4 training that you had to do for sexual assault exams?

5 A. For the acute exams, I started in January of
6 2008. And in order to work in that capacity, Dr. Abel
7 sent me to a conference where you get training for how to
8 evaluate sexual assault of the pediatric patient. And
9 then a couple of months later I went to a conference,
10 medical training, for how you evaluate an acute sexual
11 assault for an adolescent patient.

12 So with the two conferences and training, you
13 get training for -- the pre-pubertal means the younger
14 children, and then the adolescents, also, up to age
15 seventeen.

16 Q. And is Dr. Abel also someone who supervises you
17 and --

18 A. Yes.

19 Q. -- looks at your work?

20 A. Yes.

21 Dr. Ann Abel is the director. She has lots of
22 experience in child abuse sexual assault. And she's been
23 a very close mentor to me from day one.

24 Q. How many exams have you done?

25 A. About ninety exams.

1 MS. HERRING-LASH: Your Honor, at this time we
2 would offer Ms. Fabrizio as an expert in sexual assault
3 examination.

4 MR. SCHWACKE: No objection.

5 THE COURT: Ladies and gentlemen, normally a
6 person cannot give opinion testimony. Normally, when a
7 person testifies, they must testify as to either what
8 they saw, heard, or sensed by smell or something of
9 that nature. There is an exception when someone is
10 qualified because of education or experience. They are
11 permitted to give their opinion in certain areas, if
12 the Court qualifies them this way. This witness will
13 be qualified in the area of sexual assault examination
14 to give opinion testimony in that area.

15 Ladies and gentlemen, that does not mean that
16 you must accept the opinion. It is evidence for you to
17 use in any way that you see fit.

18 Ms. Herring-Lash.

19 Q. [Ms. Herring-Lash] Ms. Fabrizio, did you see --
20 I will call him Minor3 because that's what we know him as,
21 but you've had him as Charles Thacker --

22 A. Yes.

23 Q. -- is his full name.

24 A. But he goes by Minor3 according to his father.

25 Q. Did you see him?

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1 A. I did.

2 Q. When and where did you see him?

3 A. I saw him in November of 2008, soon after his
4 ninth birthday.

5 Q. Do you know what the date was?

6 A. It was November 30th.

7 Q. What time of day was it?

8 A. It was about three o'clock in the morning.

9 Q. And was -- who was accompanying him to the exam?

10 A. His father, Charles Thacker, brought him.

11 Q. And did you get called out?

12 A. I'm sorry?

13 Q. Did you get called out to do that exam?

14 A. I did. I was on call that night and I got a
15 call from the MUSC pediatric emergency room saying that
16 there was a case. And they told me about the case,
17 because you listen to what the case is about and make sure
18 that it's a case that is to be seen. And for it to be
19 seen, it has to have occurred with a seventy-two-hour
20 period. That's the cutoff time. And this case fit that
21 criteria and so I came -- I came to the emergency room to
22 see the child.

23 Q. Now, one question. That criteria is based on
24 last access to the alleged offender; is that correct?

25 A. Correct. Correct.

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1 Q. You don't have an exact time frame of the last
2 assault, but the last access to the offender?

3 A. Yeah. The last -- the last time that the child
4 was in the presence of that -- of the person.

5 Q. And how does that acute exam differ from an exam
6 -- say it had been three -- two years since the child had
7 been around them?

8 A. Well, in the first -- the reason that the cutoff
9 is seventy-two hours is because there is some research
10 that says that up to seventy-two hours that you can
11 collect evidence that might pertain to the case, like DNA-
12 type evidence. And so the acute exam is to see if there's
13 any injury -- injuries of the anal-genital area heal very
14 quickly. And if there's injury at all, it can heal very
15 quickly. So you want to see the child as soon as possible
16 and you want to be able to collect evidence if it's there.
17 And the longer you wait, the less evidence --

18 Q. The less likely --

19 A. -- the less likely there is evidence.

20 Q. And before you began your exam, did you speak
21 with Mr. Thacker?

22 A. Yes.

23 You go in. And there's actually a very --
24 there's a large amount of paperwork that you have to get
25 to describe what you're going to do and to get consents

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1 for everything that you're going to do. So you get all
2 the consent forms signed ahead of time.

3 Q. And do you remember Minor 3

4 A. I do. I do. I remember Minor 3,

5 Q. And what condition was he in when you saw him?

6 A. Very sleepy. It was about three o'clock in the
7 morning I think when I first got there and he was very,
8 very sleepy.

9 Q. Did you attempt to get a medically pertinent
10 history from him?

11 A. I did.

12 Q. What is the medically pertinent -- just the
13 medically pertinent part of the history that you got from
14 Minor 3

15 A. He indicated by the nod of the head that he had
16 been touched, and he indicated by pointing his finger at
17 his penis where he had been touched.

18 Q. And after that, did you perform just a general
19 physical exam?

20 A. I did.

21 Q. What were the results of his physical exam?

22 A. The only thing that I saw of -- I did -- on his
23 -- on the shaft of his penis, he had a little bit of
24 reddening at the end of his penis. And the father said
25 that he had had a circumcision done three weeks prior so

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1 it was well healed but it was still a little red in color,
2 which it would not be unusual. That would be normal.

3 And then on his anal exam he had a little bit of
4 a prominence at the twelve o'clock. Around the anus you
5 have little folds. They're called peri-anal folds. And
6 his were normal except the one at twelve o'clock was a
7 little bit larger than the others. But in -- when I
8 discussed that with Dr. Abel and Dr. Amaya later, they
9 said that that was normal.

10 Q. And as part of the exams, do you do what is
11 called photo documentation?

12 A. I did.

13 Q. And why do you do that?

14 A. You do photo documentation to, first of all,
15 remind you what you saw. Because you can describe things,
16 but a picture is worth a thousand words. So a picture
17 actually gives you the ability to remember in more clear
18 detail what you saw. And also it's for review purposes.
19 You know, when you see -- you're one set of eyes. But as
20 I --

21 In the medical profession, there's a lot of
22 mentoring, you know, through -- you know, everybody goes
23 to school and gets their level of education. But then
24 once you put that education onto like diagnosing a child
25 or diagnosing a person, there's a lot of mentoring. And

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1 so you share pictures and they give you -- you know, they
2 help you understand what's normal, what's not normal.

3 Q. I guess as an example, just like in this case,
4 Dr. Amaya and Dr. Abel indicated to you that was a normal
5 --

6 A. Uh-huh.

7 Q. -- Minor³ exam was normal?

8 A. Correct.

9 Q. And did you also preform the sexual assault kit,
10 just out of an abundance of caution?

11 A. I did.

12 Q. And that includes swabbing areas of his body?

13 A. Yes.

14 The sexual assault kit I did do because it was
15 within the seventy-two hour time frame. And a normal exam
16 does not exclude that sexual abuse had occurred, and so
17 you collect an exam if it's within seventy-two hours and
18 you collect swabs.

19 Q. And did you collect his underwear?

20 A. I did not. His underwear had already been
21 collected by the police, according to his father.

22 Q. And you have indicated I think, but I just
23 wanted to ask you again, does a normal exam rule out a
24 sexual assault?

25 A. No.

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1 In fact, in over ninety percent of cases there's
2 completely a normal exam, even in light of sexual abuse
3 has occurred.

4 Q. And if the allegation is oral contact, would you
5 expect there to be any trauma?

6 A. No, not necessarily.

7 Q. Now, did you see Minor again for follow up?

8 A. He was seen in follow up, but I did not see him.
9 He was seen by another member of our team.

10 MS. HERRING-LASH: Court's indulgence for one
11 moment.

12 THE COURT: Yes, ma'am.

13 [Whereupon, Ms. Herring-Lash and Ms. Williams
14 confer]

15 Q. [Ms. Herring-Lash] Before seeing the patient
16 did you find out what activities he had engaged in, like
17 bathed and showered?

18 A. Yes.

19 Q. And had he done that?

20 A. Yes.

21 He had done pretty much all the questions that
22 we asked. And I can't remember every one, but at the top
23 of our form, like have you eaten anything, have you had
24 anything to drink, have you, you know pee-peed.

25 Q. Brushed his teeth?

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1 A. Brushed his teeth. Yes, he had done --

2 Q. Drink?

3 A. Yeah, he had had something to drink.

4 MS. HERRING-LASH: Okay. Those are all the
5 questions I have.

6 THE WITNESS: Okay.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: Thank you, Your Honor. Your
9 Honor, I don't have any questions.

10 THE COURT: Ms. Fabrizio, you may step down.
11 Thank you. You are excused.

12 THE WITNESS: Thank you.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: Call your next witness.

16 MS. HERRING-LASH: The State would call Dr. Ann
17 Abel.

18 [Whereupon, Dr. Abel comes forward]

19 THE CLERK OF COURT: Please raise your right
20 hand and put your left hand on the Bible.

21 [Whereupon, Dr. Abel is duly sworn by the clerk
22 of court as follows: the testimony you give the Court
23 in the trial of this case shall be the truth, the whole
24 truth, and nothing but the truth, so help you God]

25 THE WITNESS: Yes.

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1 THE CLERK OF COURT: Please be seated. State
2 your name and spell your last name for the record.

3 [Whereupon, Dr. Abel takes the witness stand]

4 THE WITNESS: My name is Dr. Ann Abel. Last
5 name is spelled A-B-E-L.

6 - - - - -

7 ANNE ABEL, M.D.,

8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. HERRING-LASH:

12 Q. Dr. Abel, where do you work?

13 A. Medical University of South Carolina.

14 Q. And what is your educational background?

15 A. I'm a medical doctor; I have an M.D. degree;
16 and I'm a board certified pediatrician; and I have a
17 fellowship completed in child abuse pediatrics and also
18 in child and adolescent psychiatry.

19 Q. And what do you do at the Medical University?

20 A. I'm the director of the Violent Intervention and
21 Prevention Program for Medical University of South
22 Carolina.

23 Q. What is that?

24 A. It's a division of the department of pediatrics,
25 and our task is the expert medical evaluation of children

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1 and adolescents when there is allegations of abuse or
2 neglect of any type, and then to manage the medical aspect
3 of that.

4 Q. And in that capacity, you supervise other nurse
5 practitioners?

6 A. Yes. I'm a physician. We have three
7 physicians. I'm the director. We have three nurse
8 practitioners, and I'm the supervisor-director.

9 MS. HERRING-LASH: And Your Honor, at this time
10 I would offer Dr. Abel as an expert in child abuse
11 pediatrics.

12 MR. SCHWACKE: No objection.

13 THE COURT: This witness will be qualified as an
14 expert in the area of child abuse pediatrics.

15 Ms. Herring-Lash.

16 Q. [Ms. Herring-Lash] I think that in speaking
17 about the people you supervise, did you supervise at one
18 time Tool?

19 A. Yes.

20 Q. Yes.

21 And was Tool a nurse that did these
22 exams?

23 A. Tool is a nurse, but she's a nurse
24 practitioner.

25 Q. Okay. And she performed sexual assault exams at

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1 one point?

2 A. Yes.

3 Q. Is she now working in another area?

4 A. Yes.

5 Q. And as part of being her supervisor, do you also
6 review her exams?

7 A. Yes. I review her reports and images that she
8 takes.

9 Q. And I think that we have already heard from
10 Ms. Fabrizio. But you also supervise her and review her
11 exams?

12 A. Yes.

13 Q. Now, did Tool see Minor2 Watts?

14 A. Yes.

15 Q. And in preparation for this case today, have you
16 reviewed the files of both Minor Thacker and Minor2 Watts?

17 A. Yes.

18 Q. And where was Minor2 Watts seen?

19 A. Minor2 Watts was seen at the Dorchester
20 Children's Center, where we have an outreach clinic.

21 Q. And is that where children also go to be
22 interviewed? At the same place?

23 A. Yes.

24 Q. And do you know when Minor2 Watts was seen?

25 A. I'm going to refer to my record to make sure I

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1 have the date perfectly right.

2 [Whereupon, the witness reviews documents]

3 A. He was seen on December 8, 2008.

4 Q. [Ms. Herring-Lash] And when he was seen, did --
5 Tool, was she the person that actually examined

6 Minor 2

7 A. Yes.

8 Q. And did she attempt to get any type of medical
9 history from him?

10 A. The child was brought by Ms. Twomey, who was
11 identified as the legal guardian. And the medical history
12 is usually obtained primarily from the parent. Sometimes
13 the child answers some of the questions.

14 Q. So in this case you didn't have a parent there?

15 A. No. We had a Ms. Twomey.

16 Q. And as far as a history of the sexual assault
17 that he was being examined for, do you-all do that or does
18 somebody up at Dorchester Children's Center do that prior
19 to your exam?

20 A. Yes.

21 The usual procedure is that the history is
22 obtained from the parent without the child present, or the
23 legal guardian, and then the child has an interview in
24 private with an interviewer that's specifically trained to
25 do that. And that's Dorchester Children's Center. And

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1 then the interviewer informs the medical examiner what was
2 the content of the interview, and then the medical
3 examiner does the medical exam usually with a witness in
4 the room with them.

5 Q. And in a case where the child had made no
6 disclosure, you would still do a medical exam; is that --

7 A. Yes.

8 Q. And in reviewing the findings of the medical
9 exam, what were the findings of the physical exam of Minor2
10 Watts?

11 A. Excuse me. I'm going to refer to this.

12 In his exam, he appeared to be normal height and
13 weight. He talked about not seeing things far away, so
14 that was considered a problem. He didn't have a specific
15 vision test during that exam.

16 The rest of his exam was normal. He did have a
17 normal anal exam with normal anal tone. He did have a
18 scar, on the right lower forearm, from an accident that
19 had required some surgery in the past. And his genital
20 exam was normal, and he was Tanner stage one, which is
21 childlike genital exam.

22 Q. Is Tanner like stage one --

23 A. It's the -- it's a name of a staging system. So
24 Tanner stage one is like a genital exam of a very young
25 child, and then two, three and four would be as they

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1 advance through the stages of puberty. So he was still
2 Tanner stage one.

3 Q. So he had not started puberty or --

4 A. Correct.

5 Q. -- advanced in puberty yet?

6 A. Correct.

7 Q. And did you also review the file of Minor
8 Thacker?

9 A. Yes.

10 Q. And did you see Minor 3

11 A. Yes.

12 Q. When did you see Minor 3

13 A. I saw Minor approximately two weeks after he had
14 been seen in the emergency room.

15 And I have the exact date, if you need that.

16 Q. Is that routine to see a child with trauma?

17 A. Yes.

18 It's the standard of care, nationwide, that
19 children that are suspected of being sexually abused have
20 follow-up medical exams to be sure that no new findings
21 come up that are related to the potential sexual abuse,
22 such as infections. So, yes. So I saw him on December
23 15th, 2008.

24 Q. And what were the genital findings for Minor 3.
25 From first, and then from you.

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1 A. All right. The --

2 Q. Excuse me. Catherine [phonetic] and then

3
4 A. Correct.

5 Minor 3 his first exam by my team was in the
6 emergency room on November 30th by Kathy Fabrizio; and at
7 that time he had a little bruise on his forehead; he had
8 some minor scrapes and scars on his legs and things from
9 other events; he had had a circumcision within the few
10 weeks prior to this, so he was still a little bit red
11 around the penis from the surgical procedure.

12 And his anus, the report says there was an
13 edematous fold at the twelve o'clock position. So as you
14 look at the anus, it would be like looking at the face of
15 the clock. So it would be at the top. But there was no
16 redness and there was no lacerations or anything like
17 that.

18 Q. And then when you saw him, what was --

19 A. When I saw him, he had an absolutely normal
20 anal-genital exam and there was nothing wrong at all. I
21 also looked carefully at his mouth -- and I gave him a
22 good general physical everywhere -- and there was nothing
23 wrong in his mouth. He had a few insect bites on his
24 chest and his arm. That was it.

25 Q. Now, when Minor 2 was seen, was what is called an

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1 acute kit performed on Minor 2

2 A. No.

3 The acute kit refers to the SLED kit, which
4 is -- let's see -- State Law Enforcement Division, right?

5 Q. Uh-huh.

6 A. And that is a special use. That box contains
7 documentation that the clinician fills out, and envelopes
8 for specimens, and it's for the collection of physical
9 evidence related to possible molestation and -- such as
10 DNA evidence or evaluation of body fluids for other
11 testing. And so that is reserved for cases that there's
12 alleged abuse within seventy-two hours.

13 Q. Or it's really access to the offender within
14 seventy-two hours, isn't it?

15 A. The investigator may choose to have a kit done
16 because there's access and because there's suspicion.
17 But, yes, it has to be -- the contact has to have been
18 within seventy-two hours because the evidence naturally
19 fades after that period from children.

20 Q. And the evidence that we're talking about is
21 just swabbing the body for let's say semen or any trace
22 kind of evidence?

23 A. Yes.

24 And sometimes you pick up things like body hair
25 that doesn't belong to the child, or, you know, something

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1 on the -- now, the examiner finds other things, too. Like
2 they may take a picture of other things. But what goes in
3 the box is physical things, like swabs, looking for
4 physical evidence.

5 Q. And I guess it's probably clear or commonsense,
6 but just in case it's not: if a child has bathed and
7 urinated and drank and brushed their teeth, or if it has
8 been, like in Minor2 case, a week or more since there had
9 been any access, any evidence that would have ever been
10 there would no longer exist?

11 A. Yeah.

12 Washing takes away body fluids off the skin of
13 an alleged victim. So -- and even going to the bathroom.
14 Like if the fluids have been placed inside the penis and
15 the urethra, or the fluids have been placed inside the
16 child's anus, just the normal bodily functions would
17 mechanically wipe away that --

18 Q. Just like a bowel movement?

19 A. Correct.

20 Q. Now, in relation to these findings, I think
21 you've said they were normal. Does a normal exam rule out
22 a sexual assault?

23 A. No.

24 Q. Does a normal -- does time frame have any impact
25 on that?

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1 A. Yes. We know from studies that -- of court-
2 proven cases of abuse that if evidence is collected
3 sooner, you're more likely to get positive physical
4 evidence, like in a rape kit. But, still, the majority of
5 cases of proven cases, that there is no physical evidence.

6 Q. Are we talking like even in a situation of anal
7 penetration?

8 A. Particularly in a case of anal penetration.
9 Because the anus is designed for stretching. Because you
10 think about the normal function of the rectum, and the
11 anus is to stretch, you know, let you -- let you have a
12 bowel movement. So insertion of something from the
13 outside causes a stretching, but it's already designed for
14 that function. So it can cause -- you know, if there's
15 extreme force it's possible to cause visible injury, but
16 it is not the usual case.

17 Q. And if there is injury caused, would that
18 healing be pretty quick?

19 A. Yes. The blood supply to the anal-genital area
20 is extremely good. Think about women, you know, having
21 babies and how quickly that area heals, unless there's
22 been surgery done. The anus is the same way, has
23 extremely good blood supply, and healing is very fast in
24 that part of the body.

25 Q. And has there been research on anal penetration

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1 that proved -- that has proven what your clinical
2 experience has been?

3 A. There's been research on anal-genital exams of
4 serious physical trauma that's visible. And images have
5 been made from the exact same position of the same victim
6 over periods of days, and it's amazing how fast that part
7 of the body heals, and, in many cases, heals so perfectly
8 that no scar can be detected several months later.

9 Q. And going also to oral contact, like the
10 fellatio or the penis in the mouth, does that commonly
11 cause damage or injury to the mouth?

12 A. It would depend on how much force. Occasionally
13 we can see little petechia in the pallet, or in the back
14 of the pharynx, from very forceful oral-genital contact.

15 Q. How quickly will that heal?

16 A. That -- oh. Those go away within twelve to
17 twenty-four hours.

18 MS. HERRING-LASH: Court's indulgence for one
19 moment.

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Herring-Lash and Ms. Williams
22 confer]

23 Q. [Ms. Herring-Lash] And going back to the anal
24 penetration. If lubrication was used, would that even
25 lessen the fact that -- or would that cause more -- be