

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Roger E. Henderson, Family Court Judge

RECEIVED

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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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1 likely to cause less damage? Sorry.

2 A. Intuitively, I would say yes. I don't know if
3 there's any research to back --

4 Q. Any research --

5 A. -- that up.

6 MS. HERRING-LASH: Those are all the questions I
7 have, Dr. Abel. Now answer any that Mr. Schwacke might
8 have.

9 THE COURT: Mr. Schwacke.

10 MR. SCHWACKE: Good morning, Dr. Abel.

11 THE WITNESS: Good morning.

12 CROSS-EXAMINATION

13 BY MR. SCHWACKE:

14 Q. In terms of how the operation is set up at the
15 Dorchester Children's Center, you indicated you have like
16 an outreach center there?

17 A. My team provides medical services there, as well
18 other sites in the tri-county region.

19 Q. I mean, do they have an examination room --

20 A. Yes.

21 Q. -- set aside --

22 A. Yes.

23 Q. -- one or more examination rooms?

24 A. There's one examination room, at Dorchester
25 Children's Center, for medicals.

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1 Q. Okay. So if three or four children are seen on
2 the same day at the same time, they're going to wait their
3 turn to go into that examination room?

4 A. Yes, they would.

5 Q. Okay. Are you responsible for -- or do you
6 participate in any of the -- the manner in which the
7 interviews are done prior to the medical examination? Is
8 that an area that you have any control over? Or are you
9 simply a partner with Dorchester Children's Center in that
10 regard.

11 A. I don't understand the first part of that
12 sentence. Do I -- can you say that again.

13 Q. Sure. You described the setup at the Dorchester
14 Children's Center would be that there is a process with
15 the parents or some guardian who has information about
16 what may or may not have happened to the child?

17 A. Yes.

18 Q. Then there's a clinical interview with the
19 child?

20 A. Yes.

21 Q. Then there is a discussion between your staff or
22 yourself, and the person that conducted that interview, to
23 discuss what may or may not have happened to the child?

24 A. Yes.

25 Q. And then there's a medical examination?

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1 A. Yes.

2 Q. All right. Are you -- do you have any
3 responsibility on the procedural -- or the mechanics of
4 the first two aspects of that process involving the
5 interview with the guardian or parent and the interview
6 with the child?

7 A. My staff is responsible for participating in the
8 interview of the guardian or the person bringing the
9 child.

10 And the second aspect is what?

11 Q. Well, the second aspect obviously is the method
12 by which the clinical interview with the child that's
13 recorded on video --

14 A. The forensic interview?

15 Q. -- is conducted.

16 A. No.

17 That -- Dorchester Children's Center has its own
18 director and they have their own team. We are partners
19 with them, in that we work in a collaborative way so that
20 the child doesn't have to be re-interviewed by multiple
21 different people. So we share the information for the
22 good of the child.

23 Q. But that's not to say that during the course of
24 the medical exam there might be some talk about what's
25 happened with the examining of the patient?

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1 A. There are times when the medical examiner has to
2 ask something possibly slightly different than an
3 interviewer did, such as was there any bleeding, did it
4 hurt, and then they -- are you okay today. And normally
5 it's normal procedure to say, do you know why you're
6 getting a medical exam, and then just listen to what the
7 child say [phonetic], and then to explain, this is what
8 this exam is going to entail and I'm here to -- for
9 instance, I'm giving you examples -- I'm here to make sure
10 your body is healthy and make sure that there's no
11 diseases and that you're going to be okay.

12 Q. Now, you're not just looking for signs of sexual
13 assault?

14 A. Correct.

15 We do a general forensic evaluation, for all
16 types of abuse, from a medical perspective.

17 Q. So that would include if there's been excessive
18 corporal punishment administered? Spankings --

19 A. Yes.

20 Q. -- bruising, those type of things?

21 A. Yes.

22 Q. And that would have done [phonetic] in both
23 situations involving Minor2 and Minor3

24 A. Yes.

25 Q. And you reviewed the medical records on both of

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1 those?

2 A. Yes, I did.

3 Q. And you found no evidence of that?

4 A. I found no evidence of what?

5 Q. Of any type of excessive corporal punishment
6 being administered.

7 A. I did find -- let me find the record here. On
8 one of the children -- let me review it just a second.

9 [Whereupon, the witness reviews documents]

10 Q. [Mr. Schwacke] Before you answer the question,
11 may I ask the Court to let me review what you're
12 refreshing your memory from. So if you would refresh your
13 memory first.

14 [Whereupon, the witness reviews documents]

15 A. All right. I --

16 THE COURT: Hold on, Dr. Abel. You may
17 approach, Mr. Schwacke.

18 Mr. Schwacke just needs to review what you are
19 reviewing to refresh your memory, Dr. Abel.

20 Q. [Mr. Schwacke] And show me where you --

21 A. All right. So this is the summary right here.

22 Q. Yes, ma'am.

23 A. So you're asking me --

24 Q. I'm not asking from the summary. I'm asking
25 from the medical exam.

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1 A. This is the summary of the medical exam.

2 Q. Okay.

3 A. This is the -- actually, we don't do just a
4 medical exam. We do a medical evaluation, which takes
5 into account the history, the physical findings,
6 everything.

7 Q. I'm indicating not anything that was provided as
8 history. Did you observe scaring?

9 A. On Carl Minor¹ Watts, the summary does not
10 indicate that there was any scaring. He did have
11 scratches on his buttocks, which was thought to have been
12 due to pinworms.

13 Q. Okay. Is there any indication on that report of
14 bruising?

15 A. No.

16 Q. And, now, that report is as to?

17 A. This is Carl Minor¹ He had a scar on his
18 abdomen from a previous surgical procedure --

19 Q. Okay. Now, hang on just a second. Now, what
20 patient are you referring to?

21 A. Carl Minor¹ Watts.

22 Q. In terms of bruises, anything in that report?

23 A. No, there was no bruises.

24 Q. Okay. Now, that's Minor¹

25 A. Yes.

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1 Q. As to Minor 3 anything in the medical reports to
2 indicate bruising?

3 A. I presume you're referring to the very first
4 exam in the emergency room?

5 Q. Well, you also did a follow up two weeks later
6 so --

7 A. Yes. And he had another follow up after that.

8 Q. Okay.

9 A. All right.

10 Q. So either one of those -- go ahead.

11 A. He had three exams.

12 Q. Yes, ma'am.

13 A. Okay. So --

14 Q. And you got the records for those, if you did
15 not participate in it. They're the normal type of records
16 you would use to refresh your memory or to provide
17 treatment; correct?

18 A. Yes. These are the medical records, yes.

19 Q. So, yes, ma'am.

20 Any indication, in any of those three
21 incidences, of bruising on Minor 3?

22 A. Minor had -- on the first exam by Kathy Fabrizio
23 in November, he had a bruise on his forehead. And that's
24 the only bruise.

25 Q. Yes, ma'am. As to Minor 2

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1 A. Wait a minute. Do you want to talk about the
2 other two exams that Minor had?

3 Q. Yes, ma'am. Go ahead.

4 A. Okay. He had no bruises on the exam of 12/15,
5 and he had no bruises on the exam of 1/20/09.

6 Q. Okay. So of the three medical examinations on
7 Minor3 there is a bruise on his forehead?

8 A. On the first exam.

9 Q. Yes, ma'am. And does it describe its condition,
10 its age?

11 A. No.

12 Q. In terms now of Minor2 his medical exam.

13 A. Just a minute.

14 [Whereupon, the witness reviews documents]

15 A. All right. I have his exam.

16 Q. [Mr. Schwacke] And in terms of his exam, is
17 there any indication of bruising?

18 A. No bruising.

19 MR. SCHWACKE: One moment, Your Honor.

20 THE COURT: Yes, sir.

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

22 MR. SCHWACKE: Thank you. That's all the
23 questions I have.

24 MS. HERRING-LASH: Just a quick follow up, Dr.
25 Abel.

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REDIRECT EXAMINATION

BY MS. HERRING-LASH:

Q. When we were discussing the healing process, we were -- we limited it to the genital area. If a child had had bruises in the past on their buttocks or their legs, would you -- would they always be there?

A. No.

Q. Is there -- do they heal?

A. Yes.

Q. Medically, it's hard to determine the age of bruising, isn't it?

A. Yes.

Q. And but they do heal and go away?

A. Yes.

Q. Have you seen patients that come in that have bruises and then when you see them at follow up, they've subsided?

A. Yes.

MS. HERRING-LASH: Those are all the questions I have.

THE COURT: Mr. Schwacke?

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RECROSS-EXAMINATION

BY MR. SCHWACKE:

Q. Bruises go through a stage in the healing process; correct?

A. Bruises change. We used to think we knew the exact order of how bruises change. That is not true in the consensus of the medical literature in the last few years. We now know that we're terrible at that and that it is not accurate to say that a bruise goes from one color to another color on a consistent basis. They do it differently.

Q. But you would describe a scar -- in terms of a scar -- a bruise that's in the healing process, obviously at some stage it goes to -- back to where there's no color at all?

A. Correct.

Q. And you're saying you can't tell -- you can't tell that one scar or one bruise might be older than another based on color?

A. You cannot scientifically tell, no. A lot of doctors try, but the recent literature indicates that we are not good at this.

Q. Well, that doesn't mean that it's not done; correct?

A. Doctors try.

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1 Q. Okay. And there's been research and there's
2 been studies that indicate that -- you're saying that
3 you're learning now that maybe that's not right. But
4 there's been a standard practice followed by physicians,
5 in examining bruises, that follow it through a color-
6 changing pattern that starts with darker colors to almost
7 a green color?

8 A. That's not scientifically accurate and people in
9 my field do not use that anymore because we know it's
10 wrong.

11 MR. SCHWACKE: No further questions.

12 THE COURT: Dr. Abel, you may step down. Thank
13 you.

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

16 THE COURT: Call your next witness.

17 MS. WILLIAMS: Catherine Leisy.

18 MS. HERRING-LASH: Your Honor, may Dr. Abel and
19 Ms. Fabrizio be excused?

20 THE COURT: Any objection, Mr. Schwacke?

21 MR. SCHWACKE: No objection.

22 THE COURT: They may be excused. Thank you.

23 [Whereupon, Ms. Leisy comes forward]

24 THE CLERK OF COURT: Please raise your right
25 hand, put your left hand on the Bible.

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1 [Whereupon, Ms. Leisy is duly sworn by the clerk
2 of court as follows: the testimony you give the Court
3 in the trial of this case shall be the truth, the whole
4 truth, and nothing but the truth, so help you God]

5 THE WITNESS: Yes.

6 THE CLERK OF COURT: Please be seated and state
7 your name, spell your last name for the record.

8 [Whereupon, Ms. Leisy takes the witness stand]

9 THE WITNESS: Catherine Leisy. L-E-I-S-Y.

10 MS. WILLIAMS: Thank you, Your Honor.

11 - - - - -

12 CATHERINE LEISY,

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

15 DIRECT EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Ms. Leisy, where do you work?

18 A. Work for the South Carolina State Law
19 Enforcement Division, also known as SLED.

20 Q. And how long have you worked there?

21 A. For just under five years.

22 Q. How long have you worked in the field of
23 forensic science?

24 A. Prior to my employment with SLED, I spent four
25 years as a forensic DNA analyst at a private testing

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1 facility known as Orchid Selmark [phonetic] in Germantown,
2 Maryland, where I performed the same types of tests and
3 analyses that I do at SLED.

4 Q. And what are your duties at SLED?

5 A. My responsibilities include processing forensic
6 cases, generating reports based on the results and
7 conclusions drawn, and testifying to those reports as
8 necessary.

9 Q. And what type of training and experience do you
10 have in this area?

11 A. I have a bachelor of science degree in genetic
12 engineering from Cedarcrest College in Allentown,
13 Pennsylvania. I have received in-house training in all
14 the different types of tests and analyses that I use on a
15 daily basis to perform my job. I'm also required to
16 attend external training in the forms of seminars or
17 specific training sessions and current testing techniques
18 to maintain credibility with the lab.

19 Q. Have you testified as an expert in the field of
20 forensic science and DNA analysis before?

21 A. Yes, I have.

22 Q. And roughly how many times?

23 A. I would say approximately thirty times.

24 Q. And how many times have you been qualified by
25 the court as an expert?

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1 A. All, as far as I can remember.

2 MS. WILLIAMS: Your Honor, at this time we would
3 offer Ms. Leisy as an expert in the field of forensic
4 science, DNA analysis.

5 MR. SCHWACKE: No objection.

6 THE COURT: This witness will be qualified as an
7 expert in the area of forensic science and DNA
8 analysis.

9 You may continue.

10 MS. WILLIAMS: Thank you, Your Honor.

11 Q. [Ms. Williams] In the course of your work as a
12 forensic scientist at SLED, did you receive items of
13 evidence from this case?

14 A. Yes, I did.

15 Q. And what items of evidence did you receive?

16 A. I received a sexual-assault evidence-collection
17 kit identified as being that of Minor Thacker. It
18 contained a blood standard, smears from penile, oral and
19 rectal swabs. It contained the swabs themselves, as well
20 as miscellaneous body-fluid swabs and fingernail
21 scrapings.

22 I also received several possible hairs, that had
23 been collected from a pair of underwear identified as
24 belonging to Mr. Thacker, that had been collected by one
25 of our DNA evidence technicians.

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1 Q. And before you received the hairs, do you know
2 what they were recovered from?

3 A. The information that I received was that they
4 had been recovered from a pair of underwear that had been
5 submitted in the case.

6 Q. Okay. So before you got that, was the underwear
7 tested in another part of SLED for the presence of any
8 kind of fluids?

9 A. It was.

10 Our evidence-processing technicians handle most
11 of the items of clothing that are submitted. They perform
12 initial screening tests to try and identify potential body
13 fluids or to identify hair. Those samples are then sent
14 on to DNA for possible testing. Based on the information
15 I received from the technician who performed testing on
16 this item, there was no blood or semen detected and the
17 only potential evidence was the possible hairs that were
18 sent on to me.

19 Q. So besides the hairs, was there any DNA
20 collected or recovered from anything that was taken from
21 Minor Thacker?

22 A. After I screened the sexual-assault collection
23 kit that was sent in, I tested one of the penile swabs. I
24 also tested the blood standard that was submitted and used
25 as -- to be used as a standard for Mr. Thacker. I was not

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1 able to obtain any human DNA from either the penile swab
2 or from the possible hair. I did obtain DNA from the
3 blood standard but I did not develop a DNA profile, as I
4 did not have any evidence profile to compare it to.

5 Q. And when you talk about no evidence profile to
6 compare it to, what specifically are you talking about?

7 A. What we try and do is develop a DNA profile from
8 an unknown biological stain that's found at a crime scene
9 on a piece of evidence. If we can develop a DNA profile
10 from the evidence, we then compare it to the DNA profile
11 of a known individual to try and determine whether or not
12 that individual could have contributed that stain. In
13 this instance I was not able to develop any DNA profile
14 from the evidence items that were sent in, and therefore
15 did not develop a standard for Mr. Thacker for comparison.

16 Q. And so you never received any DNA from the
17 defendant in this case?

18 A. No, I did not.

19 Q. And even if you had received DNA from the
20 defendant, would there have been anything to compare it
21 to?

22 A. In this instance, no, there would not.

23 Q. And you talked a little bit about some of the
24 items that you analyzed. Were there some items that you
25 did not analyze?

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1 A. There were.

2 Q. What were they?

3 A. From the sexual assault kit, I did not analyze
4 the fingernail scrapings or swabs that were identified as
5 miscellaneous body-fluid swabs.

6 Q. Can you explain why you didn't test those?

7 A. The miscellaneous body-fluid swabs were
8 described as buccal swabs. Buccal swabs are just swabs
9 taken from the inside of an individual's cheek that we use
10 as a known standard.

11 Because I already had a blood standard from Mr.
12 Thacker and because I had performed initial screening on
13 the oral swab that was already sent in, I didn't see any
14 need to go ahead and process the miscellaneous body-fluid
15 swabs.

16 I also did not analyze the fingernail scrapings.
17 When we screen a kit like this, we look for what we
18 consider the most probative samples, probative meaning the
19 sample that will provide an informative link between a
20 victim and a suspect. In cases where the victim and
21 suspect may live together, there can be very simple
22 explanations as to why one individual's DNA would be under
23 another's fingernails, something as simple as, you know,
24 passing a glass of milk at the breakfast table if your
25 fingernails come in contact with the other individual's

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1 hand. It could be a very simple and innocent transfer of
2 cells. So in a case like this, I didn't feel that the
3 fingernail scrapings would be a probative item.

4 Q. And the items that you did analyze, where no
5 sperm or no DNA was found, would the fact that the victim
6 took two showers before the evidence was collected impact
7 your ability to find evidence?

8 A. If you're taking a sample from an individual
9 where say semen or another body fluid has been deposited,
10 bathing, changing clothes, using the restroom, all these
11 things would make it more difficult and make it less
12 likely to find DNA upon examination because it will have
13 been washed away or wiped away.

14 Q. What about a bowel movement? If the victim had
15 had a bowel movement, would that affect your ability to
16 collect any kind of evidence?

17 A. That could make it less likely to collect
18 probative evidence, yes.

19 Q. Is there anything about the anal area and the
20 bacteria that's present there that makes it -- that breaks
21 down DNA or makes it more difficult to recover DNA?

22 A. When bacteria comes in contact with DNA, it
23 causes it to degrade or break down. As it degrades, it
24 makes it less likely for us to develop a profile. We need
25 intact pieces of DNA to be able to develop a profile.

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1 Because generally you find higher concentrations of
2 bacteria in the rectal area, you know, relative to the
3 rest of the body, it's not uncommon to see faster
4 degradation from samples that may be left in that area.

5 Q. What about if the victim had changed clothes?
6 Would that also affect your ability to collect DNA?

7 A. That could affect it, too. As you change
8 clothes, the material may be wiped away with the clothing
9 and make it less likely for us to be able to obtain a
10 sample.

11 Q. How about if a child had to put some kind of
12 antibacterial ointment or something on an area that had
13 been -- like say a circumcision. Would that affect your
14 ability to collect DNA?

15 A. It's possible. Any type of ointment or material
16 like that could act as a barrier between a swab and the
17 skin, making it difficult to collect the cells. It's also
18 possible that if the ointment were present on the swab, it
19 could inhibit our extraction techniques and cause problems
20 with the actual chemical process in the laboratory.

21 Q. So, ultimately, you were not able to connect
22 anything on the victim to anybody?

23 A. That's correct.

24 Q. Does that necessarily mean that nothing
25 happened?

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1 A. It just means that I was not able to develop a
2 DNA profile from the items. I have nothing to compare it
3 to a known individual from this case.

4 MS. WILLIAMS: The Court's indulgence for just a
5 moment.

6 THE COURT: Yes, ma'am.

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

9 Q. [Ms. Williams] When we're talking about the
10 difficulty of getting DNA from some of these samples,
11 turning your attention to the penile swabs: were you even
12 able to get Minor Thacker's DNA from his own penile swabs?

13 A. No.

14 Following the extraction technique that I
15 performed, where basically all we're trying to do is
16 isolate DNA from a swab that was taken, I then performed
17 quantitation [phonetic] tests to try and measure how much
18 DNA may be present and at that time there was no human DNA
19 obtained. I was not able to obtain any DNA from the swab
20 taken from Mr. Thacker.

21 Q. So not only not from the defendant, but not even
22 from the victim?

23 A. That's correct.

24 MS. WILLIAMS: Nothing further. Please answer
25 any question the defense has.

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1 MR. SCHWACKE: No questions.

2 THE COURT: Ms. Leisy, you may step down. Thank
3 you.

4 THE WITNESS: Thank you.

5 THE COURT: Is she excused from her subpoena?

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. SCHWACKE: No objection.

9 THE COURT: You are excused. Thank you.

10 THE WITNESS: Thank you, Your Honor.

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

13 THE COURT: Call your next witness.

14 MS. WILLIAMS: Julie Barnes.

15 [Whereupon, Ms. Barnes comes forward]

16 MS. WILLIAMS: Ms. Barnes, if you could just
17 walk this way, around, and to where that lady is
18 standing.

19 THE CLERK OF COURT: Please raise your right
20 hand, put your left hand on the Bible.

21 [Whereupon, Ms. Barnes is duly sworn by the
22 clerk of court as follows: the testimony you give the
23 Court in the trial of this case shall be the truth, the
24 whole truth, and nothing but the truth, so help you
25 God]

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1 THE WITNESS: Yes, ma'am.

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

4 [Whereupon, Ms. Barnes takes the witness stand]

5 THE WITNESS: My name is Julie Barnes.

6 B-A-R-N-E-S.

7 - - - - -

8 JULIE BARNES,

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

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Ms. Barnes, where do you live?

14 A. Summerville.

15 Q. And who are your children?

16 A. Minor 1 Minor 2 Minor 3 and

17 Q. And how old are your children now?

18 A. is fifteen, Minor 1 and Minor 2 are
19 thirteen, and Minor is eleven.

20 Q. Do your children live with you?

21 A. No.

22 Q. Why is that?

23 A. They're in foster care.

24 Q. Why are they in foster care?

25 A. Minor 1 and Minor 2 are in foster care, and

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1 and Minor are with their fathers.

2 Q. Why is with her father?

3 A. She has been since she was three.

4 Q. Why is that?

5 THE WITNESS: So I'm supposed to -- at the
6 advice of my attorney, not supposed to answer any
7 questions. So how do I do that? How do I --

8 THE COURT: Ladies and gentlemen of the jury,
9 there is a matter of law that I must take up outside of
10 your presence.

11 Do not begin your deliberations. Do not discuss
12 this case amongst yourselves.

13 Please rise for the jury. Ms. Barnes, stay
14 seated.

15 [Whereupon, the jury exits the courtroom at
16 11:11 a.m.]

17 THE COURT: Thank you. Please be seated.

18 Ms. Barnes, is your attorney present?

19 THE WITNESS: No.

20 THE COURT: And was he planning on being here
21 today? He was present yesterday?

22 THE WITNESS: Yes.

23 He said he was not going to be able to be here
24 today.

25 THE COURT: All right. And, Ms. Barnes, it is

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1 your belief and your desire to not answer any questions
2 here today?

3 THE WITNESS: That's what he told me to do.

4 THE COURT: All right. From the State?

5 MS. WILLIAMS: Your Honor, if her attorney has
6 instructed her to not answer questions and take the
7 fifth, I think she just needs to do that on the record
8 and that's fine. Mr. Ruemelin was here yesterday and
9 he did indicate to the Court, in our presence, that
10 that's what he intended her to do. And out of an
11 abundance of caution I would -- you know, we would
12 defer to that.

13 THE COURT: Counsel approach.

14 [Whereupon, an off-the-record bench conference
15 is held]

16 THE COURT: All right. Ms. Barnes, I understand
17 that you have pending criminal charges; is that
18 correct?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: And that you have pending family
21 court issues regarding this matter, as well; is that
22 correct?

23 THE WITNESS: Yes.

24 THE COURT: And your attorney has advised you
25 not to answer any questions; is that correct?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Ms. Barnes, is there any questions
3 that either the State or the defendant could ask you
4 that you will answer here today?

5 THE WITNESS: I answered the first couple. I
6 don't --

7 THE COURT: Okay. And will those be the only
8 questions that you are going to answer here today?

9 THE WITNESS: Yes, ma'am, at this time.

10 THE COURT: All right. Anything further from
11 the State?

12 MS. WILLIAMS: Your Honor, if the Court would
13 allow her to just say that in front of the jury, then
14 we would just excuse Ms. Barnes.

15 THE COURT: I believe, Ms. Williams, that she
16 has -- in her own words has made that clear to the
17 jury.

18 Mr. Schwacke, anything further?

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

20 MR. SCHWACKE: No, Your Honor, I don't.

21 Trying to remember exactly what she said. Is
22 there a way for the court reporter just to tell us that
23 part back?

24 MS. WILLIAMS: I believe she said, I don't know
25 what I'm supposed to do.

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1 THE COURT: My attorney has indicated to me not
2 to answer anymore questions.

3 And I believe -- based upon my understanding of
4 the charges that Ms. Barnes is facing, and the presence
5 of her attorney here yesterday, I believe that she has
6 satisfied what she needs to say and any further
7 questioning may result in impermissible inferences in
8 front of the jury.

9 Ms. Barnes, you are excused. Thank you.

10 THE WITNESS: May I ask you a question before I
11 go?

12 THE COURT: Well, it depends on what the
13 question is. I may not be able to answer it.

14 THE WITNESS: Well, yesterday there was an issue
15 because the witnesses were being sequestered until I --

16 THE COURT: So you're requesting --

17 THE WITNESS: -- until I was here --

18 THE COURT: -- to remain in?

19 THE WITNESS: Yes, ma'am. Please.

20 THE COURT: Any objection to Ms. Barnes at this
21 point now remaining in the courtroom?

22 MS. WILLIAMS: Your Honor, I don't think we have
23 a basis to object. We would just ask that she not sit
24 just right by the boys, if they come back into the
25 courtroom at a later time. I think there's a family

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1 court order that prevents her from having any kind of
2 contact with them. We would just ask that she be
3 discrete and not be right on top of them or try to
4 communicate with them.

5 THE COURT: Mr. Schwacke, any objection to
6 allowing her -- now that she has, in essence,
7 testified, any objection to allowing her to remain in
8 the courtroom?

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

10 MR. SCHWACKE: No objection, Your Honor.

11 THE COURT: All right. Ms. Barnes, you will be
12 allowed to remain in the courtroom. I just ask that
13 you abide by the request of the children's custodians,
14 as well as make sure that you follow all the guidelines
15 and conditions and restrictions of the family court
16 case.

17 You may step down.

18 THE WITNESS: I understand that. Thank you.

19 THE COURT: Thank you.

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

22 THE COURT: All right. Who's your next witness,
23 Ms. Williams?

24 MS. WILLIAMS: Your Honor, Fred Thornton is our
25 next witness and we would ask -- this might be a good

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1 time, before the jury comes back in, for the Court to
2 just admonish him or let us talk to him, Mr. Schwacke
3 and I, just to make sure that he doesn't blurt out what
4 Mr. McCauley is on the sex offender registry for and he
5 understands the limited purpose for his testimony. I
6 don't think we've spoken to him since before the Court
7 ruled on those issues, so I just want to make sure that
8 he's clear.

9 THE COURT: All right. Ms. Williams, you may
10 step out for the limited purpose of narrowing, pursuant
11 to the Court's order, what Mr. Thornton is allowed to
12 testify to.

13 And, Mr. Schwacke, are you going to accompany
14 Ms. Williams?

15 MR. SCHWACKE: She's asked me to, Your Honor.

16 MS. WILLIAMS: I just want to make sure that --

17 THE COURT: All right. Thank you.

18 [Whereupon, Ms. Williams and Mr. Schwacke exit
19 the courtroom]

20 [Whereupon, a recess is taken from 11:18 a.m. to
21 11:23 a.m.]

22 THE COURT: All right. Anything before we bring
23 in the jury? From the State?

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: From the defendant?

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1 MR. SCHWACKE: No, Your Honor.

2 THE COURT: And Mr. Thornton is present; is that
3 correct?

4 MS. HERRING-LASH: Yes, Your Honor, that's
5 correct.

6 THE COURT: All right. And that will be our
7 next witness?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: And I anticipate that his testimony
10 should be short, so do we have another witness at least
11 before lunch?

12 MS. HERRING-LASH: Detective Ramsey.

13 THE COURT: All right. And we anticipate her
14 testimony would take us to 12:15, 12:30?

15 MS. HERRING-LASH: Yes, Your Honor.

16 THE COURT: All right. And then --

17 MS. HERRING-LASH: We have one witness after
18 that, and that's Dr. Foster, and hers may be more --
19 too lengthy to go before lunch.

20 THE COURT: All right. When did you tell
21 Dr. Foster to be here?

22 MS. HERRING-LASH: She's here.

23 THE COURT: Okay. How long do you anticipate
24 her testimony will take?

25 MS. HERRING-LASH: I think her direct should be

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1 maybe thirty to forty minutes.

2 But I think Mr. Schwacke had asked about
3 something in camera.

4 MR. SCHWACKE: I just wanted -- rather than do
5 what Ms. Littlejohn did in the last trial -- I don't
6 know that I need to have all of her testimony for a
7 proffer to determine what area she's going to go into.
8 But I would like it to be sort of stated the areas they
9 wish, to make certain that she's not going to offer an
10 improper opinion as to whether or not the kids should
11 be believed, those types of -- those types of things,
12 and exactly where they're going with her testimony.

13 THE COURT: All right. Well, based upon that,
14 there's no need to squeeze her in before lunch.

15 But that will be your last witness before the
16 State rests; is that correct?

17 MS. HERRING-LASH: Yes, Your Honor.

18 THE COURT: All right. Mr. Schwacke, I haven't
19 advised your client of his right to testify, but do you
20 anticipate -- and I'm not going to inquire of your
21 client at this time. But do you anticipate any
22 additional witnesses?

23 MR. SCHWACKE: Not at this time, Your Honor.
24 And we have -- and doing discussions with him and he is
25 considering what his options are.

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1 THE COURT: All right. Thank you. I will
2 advise your client of his rights, and the consequences
3 of his right to testify, as to -- before we break for
4 lunch.

5 All right. Let's bring in the jury.

6 [Whereupon, the jury enters the courtroom at
7 11:25 a.m.]

8 THE COURT: Thank you. Please be seated.

9 Call your next witness.

10 MS. WILLIAMS: Deputy Fred Thornton.

11 [Whereupon, Mr. Thornton comes forward]

12 THE CLERK OF COURT: Please raise your right
13 hand, put your left hand on the Bible.

14 [Whereupon, Mr. Thornton is duly sworn by the
15 clerk of court as follows: the testimony you give the
16 Court in the trial of this case shall be the truth, the
17 whole truth, and nothing but the truth, so help you
18 God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Please be seated and state
21 your name. Spell your last name for the record.

22 [Whereupon, Mr. Thornton takes the witness
23 stand]

24 THE WITNESS: My name is Deputy Fred Thornton.
25 Last name spelling is T-H-O-R-N-T-O-N.

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1 FRED THORNTON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Deputy Thornton, where do you work?

7 A. Berkeley County Sheriff's Office, South
8 Carolina.

9 Q. And how long have you worked there?

10 A. May of 2007.

11 Q. And what are your duties there?

12 A. I'm in charge of the sex offender registry.

13 MR. SCHWACKE: Your Honor, just subject to our
14 previous objection, I would make an objection.

15 THE COURT: All right. Thank you, Mr. Schwacke.
16 You may continue, Ms. Williams.

17 Q. [Ms. Williams] So is that the only cases that
18 you deal with?

19 A. That's correct.

20 Q. And in this case, without telling us what the
21 records were or what they said, did you review the records
22 of Ronald McCauley, the defendant?

23 A. Yes, I did.

24 Q. And is Mr. McCauley on the sex offender
25 registry?

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1 A. Yes, he is.

2 Q. And when was he placed on the sex offender
3 registry?

4 A. First registered in Berkeley County in the year
5 2006.

6 Q. Did he register in any other county before that?

7 A. I do not have knowledge of that.

8 Q. 2006?

9 A. Yes, ma'am.

10 MS. WILLIAMS: Thank you, Deputy Thornton.

11 THE COURT: Mr. Schwacke?

12 MR. SCHWACKE: No questions.

13 THE COURT: Deputy, you may step down. Thank
14 you.

15 THE WITNESS: Thank you.

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

18 THE COURT: Call your next witness.

19 MS. HERRING-LASH: The State would call
20 Detective Rene Ramsey.

21 [Whereupon, Ms. Ramsey comes forward]

22 THE CLERK OF COURT: Please raise your right
23 hand, put your left hand on the Bible.

24 [Whereupon, Ms. Ramsey is duly sworn by the
25 clerk of court as follows: the testimony you give the

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1 Court in the trial of this case shall be the truth, the
2 whole truth, and nothing but the truth, so help you
3 God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Please be seated. State
6 your name. Spell your last name for the record.

7 [Whereupon, Ms. Ramsey takes the witness stand]

8 THE WITNESS: Rene Ramsey. My last name is
9 spelled R-A-M-S-E-Y.

10 - - - - -

11 RENE RAMSEY,

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

14 DIRECT EXAMINATION

15 BY MS. HERRING-LASH:

16 Q. Detective Ramsey, where do you work?

17 A. Berkeley County Sheriff's Office.

18 Q. And what do you do there?

19 A. I'm a deputy sheriff and I'm assigned to
20 criminal investigations.

21 Q. And how long have you been there?

22 A. I've been there since September of 2006.

23 Q. And were you assigned to investigate the case of
24 the State vs. McCauley?

25 A. Yes.

MIA PERRON, CVR-CM

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1 Q. How did you get this case?

2 A. It was assigned through my chain of command.

3 Q. How did this -- or, excuse me. When did this
4 come to the sheriff's department?

5 A. The report was taken on November the 29th, 2008.

6 Q. And how did it come in?

7 A. It came in as a forcible -- do you mind if I
8 refer?

9 [Whereupon, the witness reviews documents]

10 A. It came in as a forcible sodomy.

11 Q. [Ms. Herring-Lash] And did somebody call? Or
12 was it a walk-in? Or how was it reported?

13 A. Yeah. The complainant was a Mr. Thacker. He
14 came into our office.

15 Q. And do you know what time he came in?

16 A. Around 8:00 p.m., according to the report.

17 Q. And who saw him when he came in?

18 A. The report was taken by Lieutenant Rogers.

19 Q. And was Rogers like the on-call person at that
20 point in time?

21 A. He probably was scheduled to work that night.

22 Q. And so he took the report on the 29th in the
23 evening hours. And when did you get it?

24 A. Usually, when a report is taken it takes -- it's
25 approved by a supervisor, then it goes to records, then my

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1 supervisor gets it, then it's assigned to me.

2 Q. So you don't know exactly the date when you
3 first received the --

4 A. No, I don't know the exact day. It may have
5 been in like one or two days probably.

6 Q. What do you receive? Like an incident report?

7 A. Yes.

8 Q. And what is the first thing you did?

9 A. Review the incident report. And then from
10 there, depending on what it states, an appointment would
11 have been made for the child to be seen or be interviewed.

12 Q. Okay. Can you remember if you made an
13 appointment, for the children to be seen, or how it was
14 done?

15 A. Sometimes when it's an abuse case, sometimes the
16 Department of Social Services is involved, as well as law
17 enforcement. We kind of work the case kind of parallel
18 together. I'm not sure if I made the appointment, or the
19 Department of Social Services, but one of us did.

20 Q. But in this case, it was made?

21 A. Yes.

22 Q. And that was an appointment where?

23 A. At the Dorchester Children's Center.

24 Q. And what do they do?

25 A. They do forensic interviews, medical

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1 examinations, there.

2 Q. Since they do the forensic interviews does that
3 mean that you, as the detective, that you don't interview
4 the child yourself?

5 A. No, I don't.

6 Q. Did you go and observe?

7 A. Yes, I did.

8 Q. How are you able to observe those interviews?

9 A. The children usually goes in the room with the
10 interviewer, those two together. I observe from another
11 room.

12 Q. Is it on a monitor, or a one-way glass, or what?

13 A. I saw it on a TV screen. So a monitor.

14 Q. So it was on monitor?

15 A. Uh-huh.

16 Q. Now, in this case there were multiple children.
17 Did you observe -- do you know which child you observed?

18 A. If my memory serves me correct, I observed
19 Minor 3

20 Q. I guess you wouldn't have been able to observe
21 them all.

22 A. I'm not sure if we was flipping back and forth.
23 I can't remember.

24 Q. And do you recall if, during that interview,
25 Minor made any disclosures?

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1 A. He did not.

2 Q. And were Minor 2 and Minor 1 also observed?

3 A. Yes, they were.

4 Q. And was there any disclosure made?

5 A. No, it was not.

6 Q. Have you investigated or handled other cases
7 where a child did not disclose?

8 A. Yes, ma'am.

9 Q. And have you handled cases where a child did not
10 disclose, and later did disclose, assaults?

11 A. Yes, I have.

12 Q. Did Minor go back for an additional interview?

13 A. Yes, he did.

14 Q. Do you know when?

15 A. The following day.

16 Q. Were you able to go to that interview to
17 observe?

18 A. No, I did not.

19 Q. Were you informed about what happened?

20 A. Yes, I was.

21 Q. And what did you do as a result of that
22 information?

23 A. Once I got the information, I found that there
24 was probable cause to get an arrest warrant so I got an
25 arrest warrant for criminal sexual conduct with a minor in

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1 the first degree.

2 Q. And that was for Minor Thacker?

3 A. Yes, it was.

4 Q. Now, what did you do after that?

5 A. From then, the investigation continued going on.
6 Like I said, with Department of Social Services, we pretty
7 much work -- they have investigators, as well. So we had
8 been communicating back and forth. And during that time,
9 like I said, we went to the Children's Center the children
10 didn't disclose. So we had been communicating and she had
11 told me that Minor2 had now disclosed.

12 Q. And did you then go out and interview
13 Minor2

14 A. No, I did not.

15 Q. Did you get the information from the interview
16 from someone else?

17 A. Yes, I did.

18 Q. And based on that information, what did you do?

19 A. Based on that information, after we had talked
20 about it, had an e-mail sent to me in reference to the
21 facts of what the disclosure entailed and then from there
22 I obtained a warrant for criminal sexual conduct with a
23 minor in the second degree.

24 Q. When did you serve the first warrant regarding
25 Minor Thacker?

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1 A. I obtained the warrant on January the 12th of
2 '09. The warrant was served on the 13th.

3 Q. And when did you serve the warrant regarding
4 Minor 2 Watts?

5 A. The warrant was obtained on the 13th of February
6 of '09 and it was served the same day.

7 Q. And what did you do after that?

8 A. Then, from there, I did search warrants of the
9 residence of Mr. McCauley and Ms. Barnes.

10 Q. And who else?

11 A. Ms. Barnes.

12 Q. Why did you do both residences?

13 A. In the investigation it was revealed that the
14 children were at both residences, and they frequented both
15 of them, so I did search warrants for both of them.

16 Q. Did you recover anything from Mr. McCauley's
17 home?

18 A. No, I did not.

19 Q. When you did that search warrant, was anyone
20 living in the home at the time?

21 A. Yes, they were.

22 Q. Was -- who was it?

23 A. If my memory serves me correctly, it was a
24 gentleman by the last name of Forsythe. He was now
25 residing in that residence.

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1 Q. But it wasn't Mr. McCauley? Someone else had
2 already moved in?

3 A. Yes, that's right.

4 Q. And then you said you also did a search warrant
5 of Julie Barnes' house?

6 A. Yes, I did.

7 Q. Did you take anything from Ms. Barnes' house?

8 A. Yes, I did.

9 Q. And is that where you took the Black Maxter hard
10 drive?

11 A. Yes, it is.

12 Q. Did you learn whose hard drive that was?

13 A. Yes, I did.

14 Q. Whose?

15 A. Mr. McCauley's.

16 Q. Now, you have been sitting in the courtroom
17 through the testimony; is that correct?

18 A. Yes.

19 Q. And you saw the pictures that have been
20 displayed for the jury?

21 A. Yes, I did.

22 Q. And were those pictures from that hard drive?

23 A. Yes, they were.

24 Q. Was there also pornography found on the hard
25 drive?

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1 A. Yes, there were.

2 Q. Now, you have the booking report regarding
3 Mr. McCauley?

4 A. Yes, I do.

5 Q. What is his date of birth?

6 A. September the 18th of 1977.

7 Q. ?

8 A. Uh-huh.

9 Q. And what is the address of his residence?

10 A. Road, Lot Number 86.

11 Q. And is that in Berkeley County?

12 A. Yes, it is.

13 Q. What is the address of Julie Barnes' residence?

14 A. And that's in Summerville,
15 as well, in Berkeley County.

16 Q. In Berkeley County?

17 A. [Indicates affirmatively]

18 Q. Did you arrest another individual in regards to
19 this case?

20 A. Yes, I did.

21 Q. And who was that?

22 A. Julie Barnes.

23 Q. And what was her arrest for?

24 A. In reference to child neglect.

25 Q. And what was the basis of her arrest?

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1 A. In reference to allowing a registered sex
2 offender to be around her children if she had knowledge of
3 it, and after one of her children disclosed to her about
4 the sexual assault she did not report it to law
5 enforcement.

6 MS. HERRING-LASH: Court's indulgence for one
7 moment.

8 THE COURT: Yes, ma'am.

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

11 MS. HERRING-LASH: Detective Ramsey, those are
12 all the questions I have. You need to answer any Mr.
13 Schwacke might have for you.

14 Thank you.

15 THE COURT: Mr. Schwacke.

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. You had gone to the Dorchester Children's Center
19 for the interviews?

20 A. Yes, sir.

21 Q. And all -- there were four children seen all on
22 that same day; right?

23 A. Yes, sir.

24 Q. So it was Minor 2 Minor 1 and
25 Minor 3

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1 A. Yes, sir.

2 Q. Have you had a chance to review those recently?

3 A. In the last few months, no.

4 Q. You would recall, though, that there were
5 interviews being conducted simultaneously based on the
6 clocks [phonetic]?

7 A. [No response]

8 Q. At the same time one was being interviewed,
9 another was being interviewed by a different counselor in
10 a different room?

11 A. Yes.

12 Q. Were you -- when you were monitoring whichever
13 one you were listening to, were you able to hear the --
14 you could actually hear the conversation coming from the
15 other room?

16 A. When I was monitoring, I could hear the one that
17 I was watching. As for the other children, no.

18 Q. You could not hear it in the background?

19 A. No. Huh-uh.

20 Q. In terms of those interviews on that day, nobody
21 disclosed anything on December the 8th; correct?

22 A. No, sir.

23 Q. Now, you talked about the search warrants.
24 Those weren't issued until April.

25 A. They were done in April. April the 7th.

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1 Q. Okay. So some three months after Mr. McCauley
2 was first arrested?

3 A. Yes, sir.

4 Q. And when you arrested him on the second arrest
5 warrant for Minor2 Watts he was already in detention;
6 correct?

7 A. That's correct.

8 Q. And he had been in detention since you had
9 arrested him on January the 13th?

10 A. Yes.

11 Q. So from the 13th of January through April the
12 7th of '08 -- I'm sorry -- '09, he didn't have custody of
13 that Maxter hard drive that you're referring to?

14 A. Since his arrest he -- he had been in jail, so,
15 no.

16 Q. Okay. And who did you recover that from? The
17 hard drive.

18 A. Ms. Barnes.

19 Q. From Ms. Barnes. And was that at her residence?

20 A. Yes.

21 Q. And she's charged with unlawful conduct towards
22 a child --

23 A. Yes. Child neglect.

24 Q. -- times three?

25 A. That's correct.

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1 Q. For Minor 1 Minor 3, and Minor 2

2 A. That's correct.

3 MR. SCHWACKE: That's all the questions I have.

4 THE COURT: Ms. Herring-Lash?

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

6 REDIRECT EXAMINATION

7 BY MS. HERRING-LASH:

8 Q. When you're describing the hard drive, was that
9 hard drive being used with a computer?

10 A. Yes.

11 Q. At the time you found it?

12 A. No.

13 Q. At the time you found it, where was it?

14 A. Well, what happened, during the course of the
15 search warrant Ms. Barnes had returned home and we
16 explained the search warrant to her, why we were there,
17 and she had told me where it was and she escorted me to
18 the bedroom to get it.

19 Q. And it was not being used?

20 A. No, it was not.

21 Q. And where in her bedroom did she have it?

22 A. It was in her bedroom in a jewelry box.

23 MS. HERRING-LASH: That's all the questions I
24 have.

25 THE COURT: Any recross?

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RECROSS-EXAMINATION

BY MR. SCHWACKE:

Q. We're dependant upon believing Ms. Barnes about that, though; correct?

A. In reference to?

Q. Everything that you just testified about, we're -- where the Maxter hard drive was and whether it was in use -- depends upon us believing what Ms. Barnes told you about it?

A. I observed where it was. In reference to did it belong to him, yes.

Q. Correct. We have to believe Ms. Barnes.

A. In reference to it belonging to him, yes.

MR. SCHWACKE: Thank you.

THE COURT: Detective, you may step down. Thank you.

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

THE COURT: All right. Ladies and gentlemen, we're close enough to our lunch break we're going to go ahead and break for lunch.

Please do not begin your deliberations. Do not discuss this case amongst yourselves. Please be back in your jury room at 1:15. Thank you.

Please rise for the jury.

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1 [Whereupon, the jury exits the courtroom at
2 11:42 a.m.]

3 THE COURT: Please be seated.

4 - - - - -

5 DEFENDANT'S RIGHTS

6 THE COURT: All right. Mr. McCauley, please
7 stand.

8 [Whereupon, Mr. McCauley complies]

9 THE COURT: I remind you that you are still
10 under oath. I previously placed you under oath this
11 morning.

12 At this time I am going to explain to you
13 certain of your rights. If you do not understand
14 anything I say, please let me know and if you want me
15 to explain anything in further detail, please let me
16 know.

17 Do you understand?

18 MR. MCCAULEY: Yes, ma'am.

19 THE COURT: Mr. McCauley, we're close to the
20 part of the trial where you may present your defense.

21 You have the right to claim the protections
22 given to you by the fifth amendment to the constitution
23 of the United States. This amendment states, in part,
24 no person shall be compelled in any criminal case to be
25 a witness against himself. This means that you cannot

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1 be required to testify in this case.

2 You have the right to testify on your behalf.
3 No one can make you testify. This is a personal right
4 and no one can waive this right except for you. If you
5 decide to testify, you will be subject to the same
6 rules that govern other witnesses and you may be
7 examined and cross-examined on any relevant issue in
8 this case.

9 In addition, if you have any convictions
10 involving dishonesty or false statement or for crimes
11 punishable by imprisonment for more than one year and
12 this Court determines that the probative value of
13 admitting this evidence outweighs its prejudicial
14 effect to you, the solicitor will be able to introduce
15 your record to attack your credibility.

16 If you decide to testify, this decision on your
17 part must be freely, voluntarily, and intelligently
18 made, with the knowledge of the protections given to
19 you by the fifth amendment and the consequences of your
20 decision to testify.

21 If you decide not to testify, I will instruct
22 the jurors that they cannot give the fact that you did
23 not testify any consideration whatever, and that there
24 is to be absolutely no prejudice to you because you did
25 not testify.

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1 Sir, I will allow you over the lunch break to
2 discuss this matter with your attorney, your friends,
3 your family, and who else, and I will ask you at the
4 Court's -- after the Court has ruled on its -- on your
5 attorney's motion for a directed verdict whether or not
6 you wish to testify.

7 Have you understood what I said to you, sir?

8 MR. MCCAULEY: Yes, ma'am.

9 THE COURT: Any further questions?

10 MR. MCCAULEY: No, ma'am.

11 THE COURT: All right. You may be seated.

12 [Whereupon, Mr. McCauley complies]

13 THE COURT: Anything before we break for lunch?

14 MS. WILLIAMS: Nothing from the State, Your
15 Honor.

16 THE COURT: Anything from the defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: All right. We are at ease until
19 1:15. Thank you.

20 [Whereupon, a recess is taken from 11:45 a.m. to
21 1:14 p.m.]

22 THE COURT: Anything before we bring in the
23 jury?

24 MS. WILLIAMS: Just briefly, Your Honor.

25 Just going through the exhibits: Exhibit Number

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1 23, Ms. Herring-Lash asked if she could publish it to
2 the jury. I'm not sure if she actually used the words,
3 you know, that she was admitting it, but Mr. Schwacke's
4 understanding is that it is admitted. And we would
5 just ask that it be reflected that Number 23 is
6 admitted without objection.

7 THE COURT: Well, my notes doesn't show --
8 Do yours?

9 THE COURT REPORTER: [Indicates negatively]

10 THE COURT: All right. Our notes do not show
11 that it was admitted.

12 So you're at this time making a motion that
13 State's 23 be admitted?

14 MS. WILLIAMS: Yes, Your Honor.

15 THE COURT: There's no objection, Mr. Schwacke?

16 MR. SCHWACKE: My recollection actually is the
17 same as hers. It was without objection at the first
18 instance, and then upon her asking it be admitted and
19 then asking to publish it. So I believe it was already
20 in. I'm fine with that.

21 THE COURT: All right. State's 23 is now into
22 evidence without objection. It's already been
23 published.

24 [Whereupon, State's Exhibit Number 23 is
25 admitted into evidence by the Court]

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1 THE COURT: Anything further?

2 MS. WILLIAMS: Nothing from the State, Your
3 Honor.

4 THE COURT: From the defendant, Mr. Schwacke?

5 MR. SCHWACKE: No, Your Honor.

6 THE COURT: I'm sorry. Did you say no?

7 MR. SCHWACKE: Nothing further.

8 THE COURT: All right. Let's bring in the --

9 MS. HERRING-LASH: Your Honor, before we --

10 THE COURT: Yes, ma'am?

11 MS. HERRING-LASH: The next witness is the
12 witness that he had asked for some in-camera
13 question --

14 MR. SCHWACKE: Not necessarily in camera.

15 I just wished the State to kind of explain what
16 area they intend to question the witness in, to make
17 certain that we don't go into areas -- her opinion
18 about the voracity -- or any type of improper testimony
19 by the next witness.

20 MS. HERRING-LASH: I can do that.

21 The main area -- there are I guess two real main
22 areas. The first is what is meant by delay in
23 disclosure; and just explain what the literature is and
24 what her clinical experience is on why children delay
25 their reporting; and then the disclosure process and

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1 the different kinds of disclosure.

2 And then she actually reviewed the records in
3 this case; and if there are anything in these -- there
4 are things in these records that may have impacted the
5 timing of the disclosure.

6 MR. SCHWACKE: And what records did she review?

7 MS. HERRING-LASH: The incident report, the --

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

10 MS. HERRING-LASH: Probably all the discovery.

11 MR. SCHWACKE: DVDs?

12 MS. HERRING-LASH: Yes. And photographs.

13 And she will also talk about the grooming
14 process.

15 MR. SCHWACKE: Thank you, Your Honor.

16 THE COURT: All right. Mr. Schwacke, any
17 further assistance or --

18 MR. SCHWACKE: No, Your Honor.

19 THE COURT: -- clarification?

20 All right. Let's bring in the jury.

21 [Whereupon, the jury enters the courtroom at
22 1:18 p.m.]

23 THE COURT: Thank you. Please be seated.

24 Please call your next witness.

25 MS. HERRING-LASH: Dr. Allison Foster.

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1 [Whereupon, Dr. Foster comes forward]

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

4 [Whereupon, Dr. Foster is duly sworn by the
5 clerk of court as follows: do you solemnly swear or
6 affirm the testimony you will give the Court in the
7 trial of this case shall be the truth, the whole truth,
8 and nothing but the truth, so help you God]

9 THE WITNESS: I do.

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

12 [Whereupon, the witness takes the witness stand]

13 THE WITNESS: My full name is Allison Marie
14 Foster. F-O-S-T-E-R.

15 - - - - -

16 ALLISON M. FOSTER, PH.D.,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MS. HERRING-LASH:

21 Q. Dr. Foster, where do you work?

22 A. I work at the ARC, the Assessment and Resource
23 Center, which is a children's advocacy center.

24 Q. What is a children's advocacy center?

25 A. A children's advocacy center is a one-stop shop,

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1 so to speak, for integrating services when there is an
2 investigation of suspected child abuse. So it includes
3 forensic interviewers, and those are the people whose job
4 it is to interview the children about the allegations or
5 about the suspicions; medical examination; team
6 coordination, so we're coordinating with law enforcement
7 and child protective services, with the solicitor's
8 office; and making sure that children and families are
9 given referrals for therapy.

10 So it's essentially a child-friendly facility to
11 try to integrate all of these services that come into play
12 when child abuse is suspected.

13 Q. And what do you do at the ARC?

14 A. I'm the director.

15 Q. What is your educational background?

16 A. I went to college at Emory University in
17 Atlanta, and then I worked for a year at a residential
18 treatment facility in Kennesaw, Georgia, and then I moved
19 to Columbia to begin my doctoral studies at University at
20 South Carolina.

21 So I got a Ph.D. in clinical psychology from the
22 University of South Carolina. I graduated in 1996.

23 Q. And do you have any specialized training in the
24 area of child abuse?

25 A. Yes. In -- really, throughout my graduate

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1 studies I figured out that I wanted to work with youth and
2 in the criminal justice or forensic area. So when you're
3 getting your Ph.D. in psychology, you do a year that's
4 called a pre-doctoral internship year. I chose to do that
5 year at William S. Hall Psychiatric Institute and I began
6 my specialized training there, actually under Dr. Ann
7 Abel, who I saw leaving the courtroom today. So she was
8 sort of my first teacher in the area of child abuse.

9 So I interned at the ARC under Dr. Abel's
10 supervision. And then when I finished my internship,
11 Dr. Abel left the ARC and I assumed that position as
12 program director.

13 And in going forward from 1995 to the present
14 time, I attend and participate in national and regional
15 statewide and local conferences and trainings.

16 Q. Do you actually do training in state and
17 national?

18 A. Yes. I am a faculty. I'm a national trainer
19 for the National Children's Advocacy Center in Huntsville,
20 Alabama, and for a national five-day forensic interview
21 training course, that is now called Child First. South
22 Carolina it used to be called Finding Words. I'm a lead
23 faculty for the program for the state of South Carolina.
24 And then I also teach, as needed, on the national front
25 for that same course.

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1 Q. And do you have professional certification?

2 A. Yes.

3 I'm a licensed clinical psychologist, which is
4 the licensure that psychologists hold in South Carolina.
5 And I'm a member of particular boards: the American
6 Psychological Association; the South Carolina
7 Psychological Association; but also the American
8 Professional Society on the Abuse of Children, which is a
9 specialty organization for child abuse professionals; and
10 the South Carolina Professional Society on the Abuse of
11 Children and I'm a past president and a board member.

12 Q. How many abuse victims do you estimate that you
13 have seen?

14 A. Over 1,000.

15 MS. HERRING-LASH: Your Honor, at this time we
16 would offer Dr. Foster as an expert in the treatment
17 and assessment of child abuse.

18 THE COURT: Any objection?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: The record will reflect. You may
21 continue.

22 Q. [Ms. Herring-Lash] Dr. Foster, in your area,
23 what is meant by delay in disclosure?

24 A. Delay in disclosure is a term we use to describe
25 the phenomenon that child abuse victims often -- in fact,

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1 typically -- have a time delay before coming forward and
2 telling that they are in some way being victimized
3 sexually.

4 Q. And why don't kids tell?

5 A. A lot of reasons. A lot of reasons.

6 So it depends a little bit on the age of the
7 child and the relationship between the victim and the
8 perpetrator, but there are -- for most child victims,
9 there is an inherent and then it -- and then it develops
10 over time, a growing understanding that they're involved
11 in something that is wrong, and there's a sense of being
12 trapped in the situation, having not said no the first
13 time or having not been able to figure out how to rescue
14 oneself.

15 So children fear lots of consequences. They
16 fear for being in trouble themselves for being involved in
17 something that they know, at some level, is wrong. They
18 fear other consequences. Like if the perpetrator has made
19 threats, they fear those threats coming true. So they can
20 fear consequences for themselves or consequences for
21 others. They can worry about people going to jail or
22 being evicted, not having money, being harmed physically.

23 And, also, they can feel ambivalent or confused
24 about their feeling about the perpetrator. So honestly
25 they can also be worried about what's going to happen to

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1 the perpetrator. They can feel kind of a weird mix of
2 love and fear for the perpetrator.

3 Q. You're kind of explaining I guess both that they
4 have internal and external reasons for not telling?

5 A. That's exactly right.

6 Q. And the internal ones may be emotionally what
7 they're thinking; external, what's going on in their lives
8 that may make it harder for them to tell?

9 A. That is exactly right.

10 Q. And has there been research in this area?

11 A. Yes.

12 Q. And what is some of he -- what does that
13 research say?

14 A. Well, there are a couple of different bodies of
15 research. And there's been a tremendous amount of
16 research in the last thirty years about child-abuse
17 dynamics.

18 One of the things we know from the published
19 literature is that most victims of childhood sexual abuse
20 don't come to anyone's attention in childhood. So, in
21 other words, for two-thirds of American child-sex-abuse
22 victims, they won't tell anyone before they turn eighteen.
23 So we know that keeping it a secret and delaying in
24 disclosure -- delaying and disclosing is a sort of a
25 normal aspect of chronic child sexual abuse.

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1 The other things we know from the published
2 literature, and certainly from my experience, are the --
3 has to do with those internal factors that sustain the
4 secrecy. And we call that -- we call those the child
5 sexual abuse accommodation syndrome or dynamics. Secrecy,
6 helplessness, entrapment in accommodation, which means
7 kind of how they accommodate the abuse and just keep on
8 going about the business of life. And then the fact that
9 there may be a delayed disclosure. And there can even be
10 a period of recantation where a kid might tell or test the
11 waters and then they may even take it back.

12 Q. What are some of the things that may cause a
13 recantation? Like a child tells a little bit and then
14 takes it back: what are some of the things that may cause
15 that?

16 A. It goes back, again, to that idea of internal
17 and external factors. But one of the significant factors
18 has to do with when they test the waters, if they start to
19 venture into telling, how -- what kind of reaction they
20 get from adults. So are they supported, are they
21 believed. But also if the adults -- even if the adults
22 believe, if the adults are very, very distressed, it can
23 just scare the child and make the child want to withdraw
24 and just put everything back like it was.

25 So lack of -- particularly lack of maternal

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1 support. Lack of support and belief by the mother is a
2 particularly powerful component to children withdrawing or
3 taking it back.

4 Also, just internally. I mean, once they start
5 testing the waters and they see what's going to happen and
6 all the consequences that are going to unfold, sometimes
7 it overwhelming, particularly for a child who wasn't
8 really prepared to tell in the first place.

9 Q. And has your clinical experience mirrored that
10 of the research?

11 A. Yes.

12 Q. Do the -- there is something called a victim-
13 perpetrator continuum?

14 A. Yes.

15 Q. Can you explain a little bit about what that is?

16 A. Sure.

17 It's call a victim-perpetrator relationship
18 continuum and it's a way for us to think -- for us in the
19 child abuse field to think about how a perpetrator engages
20 a child in different ways and what the relationship is
21 like for the victim. So it moves from the most
22 externalized relationship to the most internalized
23 relationship. And what that means is -- an externalized
24 relationship would be like a stranger, a stranger who just
25 has no relationship with the child but who is able to

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1 commit their offense just by virtue of, you know, just
2 sheer force and opportunity, like an abduction kind of
3 thing where they control the victim really through just
4 fear and threat and the victim is affected by just kind of
5 the out of the blue, unpredictable trauma of it. That's
6 obviously not the most typical scenario.

7 The more typical scenarios fall in the middle of
8 the continuum where you have the friend relationship. The
9 friend relationship is really kind of the classic what we
10 call predatory offender. That's somebody who selects
11 children, makes friends with the children's family, gains
12 access to the children whether it be by being a teacher, a
13 coach, a babysitter, a boyfriend. But they select -- they
14 gain access to children that they think that they can
15 groom and establish relationships, and basically turn
16 those children into friends who kind of have this
17 affectionate feeling for the perpetrator. The perpetrator
18 has access and then once those dynamics are set, they
19 engage them in the sexual activity. And it becomes kind
20 of a very confused -- a confused relationship. Child
21 victims of those kinds of relationships have a very
22 difficult time trying to figure out how to get out of it.

23 And then there's the family-style victim-
24 perpetrator relationship, which is another one of those in
25 the continuum, and that's when the perpetrator is really

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1 in a parent type of role. That can be a father, a
2 stepfather, or just an authority role over the victims.
3 And those children are controlled also by a combination of
4 love, but also loyalty and dependency and fear because of
5 the perpetrator having such an authority over them and
6 being so embedded in the family life.

7 And then the -- at the last end of the continuum
8 is the lover dynamic, and that's those cases we hear about
9 every once in a while where you may have a -- for example,
10 a young teenage boy or girl who's engaging in sort of a --
11 what they think of as a love affair with an adult. And
12 they don't even necessary consider themselves to be
13 victims, but of course we consider them to be victims.
14 And that's called the lover relationship. And those
15 perpetrators control their victims by gaining them --
16 gaining their sort of sense of the idea that it's them
17 against the world and that they're really having a love
18 affair, that the victim is not really being victimized.

19 Q. You used the word grooming. Would you explain
20 what that word means to the jury.

21 A. Yes.

22 Grooming has to do with how a perpetrator
23 progressively breaks down the barriers, so that a child
24 becomes used to certain patterns of behavior, and starts
25 to lay down their defenses and gets closer and closer to

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1 being engaged in the full sexual behavior. So it's sort
2 of like shaping up the relationship and the patterns. And
3 that's called grooming.

4 So by the time the full-blown sexual abuse is
5 occurring, it's almost like the child has gotten so
6 accustomed to so many of the habits and the rewards that
7 come with the relationship, that they -- that it's
8 normalized and it becomes like something that they don't
9 even know how it ever got started or how to get out of it.

10 Q. And I guess there may be situations where, an
11 example, a child would continue to go back to the person
12 who is abusing them. Would that be a result of some I
13 guess grooming?

14 A. Absolutely.

15 That friend type of relationship I described,
16 it's difficult because children may really like certain
17 parts of the relationship. They main gain things, whether
18 it be privileges, gifts, opportunities to do things, play
19 video games, or just feel special. They have a feeling of
20 feeling special. And it's not unusual at all for victims
21 to return repeatedly to the perpetrator's home.

22 Q. And I think you touched on this, but it's
23 confusing, if there is love and good things coming of the
24 relationship, as well as the abuse going on. Now, I guess
25 the opposite of the grooming, cases where there's physical

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1 violence, either toward the child or other people, that
2 the child witnesses. And how would that impact --

3 A. Right.

4 Q. -- a child?

5 A. And that is, frankly, grooming of another sort.

6 So it is still -- it is still grooming. It is
7 demonstrating proof of their power and their authority,
8 the fact that they are capable of making goods on threats,
9 that they can be scarey and authoritarian. So it's -- it
10 is the grooming of fear and the development of that sense
11 of, you know, this is somebody who's more powerful and
12 more dangerous, you know, than I am and I better do what
13 they say because the threats are real.

14 Q. And have you seen cases in your clinical
15 experience where you have both the grooming of the
16 affection and the grooming of the physical -- the threats
17 of physical violence, or physical violence --

18 A. Yes.

19 Q. -- perpetrated?

20 A. Yes.

21 Q. So that would not be unusual for both to be
22 going on?

23 A. No.

24 In fact, I would actually say that it is
25 typical. I would say that it's typical. One of the

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1 things that I've learned in my training and over the years
2 has to do with the emotional dynamics of the perpetrator.
3 I mean, they have -- their expressing a lot of emotional
4 needs, obviously recognizing, typically, whether or not
5 their -- that their behavior is wrong and if they are
6 caught that there would be consequences. And so they're
7 going to utilize coercion, manipulation, threats, and
8 affection, as multiple tools to engage and maintain that
9 relationship.

10 Q. And I guess to really confuse?

11 A. Yes, and to really confuse.

12 Q. Now, speaking of disclosure, is disclosure a
13 process or an event?

14 A. One of the -- another one of the kind of
15 training themes in our work is to know that the disclosure
16 of sexual abuse is what we call a process, and not a one-
17 time event.

18 Typically, again, given that most child sexual
19 abuse occurs multiple times over time -- so it's what we
20 call chronic, typically. Not always, but typically. So
21 we know there's a relay in disclosure. Well, what that
22 means is, that means that a child has been spending a
23 significant amount of mental energy not talking about it
24 and not telling and not thinking about it and trying to
25 suppress it. So

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1 when they make the decision, or when it comes to
2 light -- you know, maybe they didn't make the decision for
3 it to come to light but it just comes to light and
4 suddenly they're being asked questions -- it really is
5 requiring a child to switch into the opposite -- into the
6 opposite kind of behavior and start thinking about it,
7 remembering it and talking about it.

8 And so what we know is is that children have to
9 get comfortable doing the exact opposite of what they've
10 been doing for years and start talking about it. And they
11 typically will test the waters. They will start to talk.
12 Some children move into full disclosure faster than others
13 but some children it takes longer, both because -- well,
14 because, number one, they have to recognize that it's
15 really safe to talk. But, number two, also, depending on
16 their memory and jogging their memory -- because honestly,
17 sometimes we're asking kids to talk about something that's
18 gone on for a long time or went on years ago. And so once
19 they start talking, then more memories start to come and
20 so it will kind of unfold over time.

21 Q. And does it just kind of, based on what you
22 said, also make it more difficult, if it has been
23 repetitive, to distinguish one event from another when
24 they're trying to remember?

25 A. Absolutely.

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1 I mean, just like if, you know, somebody -- we
2 call it the difference between script memory verses
3 episodic memory but, you know --

4 Q. What is the difference in those two?

5 A. Script memory is if I were to -- or if somebody
6 were to ask me how I get ready for work in the morning, I
7 would -- I kind of have a script. I mean, I sort of know
8 how I normally get ready for work on any given -- on any
9 given morning. So if somebody were to ask me a question,
10 I would talk about how I usually do it.

11 But that's very different than episodic memory,
12 which would be saying, well, I want you to recall exactly
13 how you got ready for work last Tuesday. And then for me
14 to really think about that as an episode, and focus on
15 what was the same or different on that day from any other
16 day, that's called episodic memory.

17 And so when we -- we we're engaged in things,
18 you know, all kinds of behaviors, with any routine or any
19 regularity, we kind of have a script for how it goes. And
20 that's the way we generally recall chronic events. If you
21 think about it, our brains wouldn't be -- our brains would
22 be pretty overwhelmed and inefficient if we were always
23 trying to remember each and every single event.

24 Q. And you kind of hinted on this when you were
25 talking about the different disclosures and if a decision

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1 had been made. What are the different kind of
2 disclosures?

3 A. We talk about two types of discovery or
4 disclosure at the front end of the disclosure process,
5 and that -- those two types are purposeful and accidental.

6 Q. What is the difference?

7 A. So a purposeful disclosure happens when a child
8 decides to tell. Which does happen. So sometimes
9 children reach a certain age, or maybe they receive a
10 personal safety education at school, or they just engage
11 in a relationship, perhaps, with a trusted counselor or
12 the parents of a friend. But for whatever reason, some
13 condition gets set where some children will just say, you
14 know what, I'm going to tell; I've reached this point, and
15 I'm going to tell somebody. And that's a purposeful
16 disclosure.

17 For those children, in making the decision to
18 tell, as long as -- when they tell, as long as they
19 receive support and people believe them and help them out,
20 they are likely to kind of come on out and tell the
21 details and go into what we call active disclosure much
22 more easily.

23 Then there are those children where the
24 discovery is what we call accidental. And an accidental
25 discovery happens when, for example, maybe a child has a

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1 medical symptom and so they are taken to a doctor and
2 sexually transmitted disease is diagnosed. That might be
3 a child who absolutely didn't plan on telling and all of a
4 sudden they're being confronted with information. Or
5 somebody walks in and is an eyewitness to an event and
6 that leads to questioning. And, again, that could be a
7 child who was absolutely not planning on telling and
8 suddenly they're being confronted with questions.

9 Q. And in your clinical work, have you interviewed
10 children and gotten disclosures and realized that that
11 child had been in ongoing therapy and never disclosed to
12 their therapist?

13 A. Yes.

14 Q. Does that happen often?

15 A. It does.

16 If a child is referred for therapy for something
17 other than child abuse, they can be -- they can be
18 evaluated and treated for some other condition. They can
19 certainly go to medical doctors. I mean, we know this
20 happens. I mean, actually, it happens with great
21 regularity that I'm interviewing children who have had --
22 who have been taken and presented to all kind of medical
23 professionals, including mental health professionals, and
24 even can -- have been directly asked as part of a
25 screening, a standard screening, that -- you know, mental

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1 health clinicians often kind of in a standard way will
2 screen with questions about abuse.

3 But first of all, sometimes they only ask those
4 questions of the parent, not the child. If that's not the
5 presenting problem, they may not ever really directly ask
6 the child. They might just screen with it for the parent
7 and the parent either may not know or may know and choose
8 to hide it and not tell it.

9 And, again, children are generally not really
10 motivated to come out with it. They're not really
11 interested in having it come to light, and so they can
12 keep it suppressed.

13 Q. So if you have one of those children who has not
14 made a purposeful decision and they're in therapy, it may
15 never come out in therapy?

16 A. Right. That would be a fairly ordinary
17 situation.

18 Q. Have you also had children that you interview
19 and they disclose, and then they're referred --

20 Let me ask you this. Do you refer children,
21 after you do your interview, to a therapist within the
22 ARC?

23 A. Ideally, yes. And if they don't live where it's
24 geographically convenient, then we'll refer them to
25 somebody else.

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1 Q. And have you seen children that at their
2 forensic interview disclose but when you refer them to
3 therapy, they just kind of close down and don't talk about
4 it anymore?

5 A. Yes.

6 And that actually happens at the ARC as much as
7 it happens anywhere, except our therapists are trained in
8 a particular kind of therapy called trauma focused
9 cognitive behavioral therapy. So they know how to
10 gradually encroach and make sure that they do get the
11 children back to talking about the abuse so that they can
12 deal with it therapeutically.

13 But it is a remarkable experience. When we do
14 forensic interviews of children -- when I first got in
15 this job I thought that I would see a lot of kids who
16 cried, for example, in forensic interviews. But they
17 pretty rarely cry.

18 Really, they come in, they answer the questions,
19 they're kind of emotionally walled off. They may give us
20 a whole lot of information. And then we refer them to
21 therapy. And so we can have kids who've said lots and
22 lots in their forensic interview, but then when they get
23 to therapy it's like pulling teeth and the therapist has
24 to work really hard to get the child to talk about that
25 same information.

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1 And the difference is is that when you're in
2 therapy, it's not about just getting the facts, it's about
3 dealing with the feelings. And so honestly I think it's
4 that -- and the children are given a lot more control to
5 kind of work through their feelings at their own pace.
6 And so what happens is I think they go back into using
7 coping mechanisms where they try to avoid feeling it
8 because it's not pleasant to talk about and feel the
9 feelings.

10 And it's the therapists job to know how to guide
11 the child through, kind of synthesizing those feelings
12 with the memories and then getting it to where it's not so
13 overwhelming. But that really takes specialized training.
14 So if you're not a specialist in working with child sex-
15 abuse victims, you can fall into the trap of just never
16 talking about it.

17 Q. Letting the child guide what happens?

18 A. Exactly.

19 Sort of saying it's at the child's pace, let the
20 child decide what to bring out. And what we know is is
21 that that's not ideal for child abuse victims. But if
22 they don't have the specialized training, then the
23 therapist doesn't really know how to get through to that.

24 Q. And when you were talking about affect, what is
25 a flat affect?

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1 A. Flat affect is just not showing much emotion.

2 And, you know, like I said, I -- when I first
3 imagined doing this work and interviewing kids about
4 something as sensitive and distressing as child sexual
5 abuse, I just assumed that I would see a lot of emotion.
6 But really what we see is a fair amount of flat affect,
7 which is -- means that they look kind of numb. They don't
8 really show a wide range of emotion while they're talking
9 about something.

10 Q. So a child can be telling you about a horrific
11 abusive event and show no emotion, no tears?

12 A. Right.

13 Q. Just talk about it like it was a trip to the
14 zoo?

15 A. Or even less animated than a trip to the zoo.
16 And it's not --

17 Q. That would be fun.

18 A. Right. Right.

19 And it's not unique to child victims of trauma.
20 It's true for adults, too. And it's -- and it goes
21 beyond, you know, obviously just a sexual assault or child
22 abuse. But a lot of times when you -- when people are
23 talking about a very traumatic event, you'll see them, I
24 mean, talking very matter of factly about something. And
25 it's because in order to be able to talk about it and

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1. narrate the facts, they kind of cope automatically by
2. suppressing the emotions. The fancy word for it is
3. dissociation. And that's the idea of kind of just
4. compartmentalizing and walling off the feelings so you can
5. talk about the facts. And in doing that, a person will
6. look sort of flat or emotionless.

7. Q. And I guess if you had been coping with abuse by
8. not talking about it and hiding it and dealing with it, it
9. would be easy to just continue to not show emotion?

10. A. Right.

11. The hard work is figuring out -- that's why
12. therapy can be so odd, because they have to work through
13. how to let the feelings come with the memory but not have
14. it flood and overwhelm them. So it is quite challenging.

15. Q. Now, for your preparation for court today, did
16. you review some of the materials in this case?

17. A. Yes, I did.

18. Q. What kind of disclosure would you term what
19. happened in this case?

20. A. Accidental.

21. Q. And why?

22. A. My understanding from the review of the records
23. was that the report was made after the father of -- let's
24. see if I say this right -- one of the children, I think
25. Minor 3 But I'm not looking at records, so I hope -- I'm

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1 not sure. But the father of one of the boys came to pick
2 up his son for his visitation time and was struck by the
3 fact that there was a grown man sleeping in the bed with
4 his son and I think in underwear. So on the basis of his
5 gut feeling that something was wrong, my review of the
6 records indicated that he suggested to his son that he
7 already knew everything from the defendant. And with only
8 that as a prompt, that unleashed the disclosure and then
9 he took the report.

10 So that's definitely an accidental discovery.
11 That's not a child who decided to come forward and tell,
12 but rather it was a child who hadn't told but in a clever
13 way was prompted to come out and tell to a trusted parent.

14 Q. And in that situation, would it be surprising if
15 then when that child was returned and then brought back
16 for another interview, that he may recant, if you will?

17 A. Right. No, it's not surprising.

18 Q. And I guess in this situation, too, because
19 it -- there was the accidental exposure. The other two
20 children, or Minor 2 kind of got questioned without
21 making a purposeful decision?

22 A. That's right.

23 That's my understanding from looking at the
24 record, that they had not provided any disclosure. And so
25 it would be like a cold call suddenly to be questioned.

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1 Q. And if the reaction of the mother -- do you
2 think the action of the mother, reaction of the mother,
3 had any impact on the children's ability to then tell?

4 A. Yes.

5 Q. And what would that reaction have caused?

6 A. Well, my understanding from reviewing the
7 records is that a substantial part of the mother's
8 reaction had to do with feeling concern for the defendant;
9 responding to a CPS caseworker in front of one of the kids
10 in a manner that did not suggest that she believed that
11 any abuse was occurring. So the -- it's what we call
12 social appraisal.

13 But the children are looking to the mother for
14 her reaction that tells them something about what they can
15 expect from that mother if she is to know, you know, about
16 the abuse. And so it would send a signal of either
17 inability to protect or inability to believe.

18 Q. And would the physical abuse have affected the
19 disclosure?

20 A. Yes.

21 Q. In looking at the documentation, did you see any
22 documents that you interpreted as some grooming behavior?

23 A. Yes.

24 Q. Let me show you --

25 MS. HERRING-LASH: May I approach the witness,

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1 Your Honor?

2 THE COURT: You may.

3 MS. HERRING-LASH: I'm showing the witness which
4 is -- exhibits which have previously been admitted,
5 State's Number 20, State's Number 18. I'm just going
6 to give them all to her.

7 Q. [Ms. Herring-Lash] State's Number 16, State's
8 Number 15, State's Number 13, State's Number 12, and
9 State's Number 21. And, Dr. Foster, I am not -- I may not
10 have an accurate memory that -- all of those may not have
11 been a picture that you thought. So if you'll just pick
12 the ones that you thought were some display of grooming.

13 [Whereupon, the witness reviews documents]

14 A. There are three that are most significant.

15 There are three others that, in a vacuum, I
16 might not consider so significant but in the totality --
17 you know, in the total, in the aggregate with these three,
18 I would say that there are six here out of the seven that
19 I would --

20 Q. First, give me the three that you think --

21 A. Are the most compelling?

22 MS. HERRING-LASH: Your Honor, may I just show
23 this to the jury?

24 MR. SCHWACKE: Could you tell me the numbers on
25 those?

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1 MS. HERRING-LASH: Yeah. I'm going to show the
2 jury -- publish to the jury State's 12, 18 and 13.

3 [Whereupon, Ms. Herring-Lash proffers documents
4 to the jury]

5 [Whereupon, the jury reviews documents]

6 A. May I ask for clarification on something?

7 Q. [Ms. Herring-Lash] What is it, and we'll have
8 the judge decide.

9 A. I'm not sure of the identity of the person here,
10 if that's the defendant or somebody else.

11 Q. [Ms. Herring-Lash] Someone else.

12 A. Okay.

13 [Whereupon, the jury reviews documents]

14 MS. HERRING-LASH: Your Honor, may I get the
15 pictures back?

16 THE COURT: You may.

17 Q. [Ms. Herring-Lash] Can you just -- as you speak
18 about one if you can just hold it up, now that the jury
19 has seen -- and say the exhibit number that's on the back
20 for the court reporter.

21 A. Okay. And so you would like me to explain why
22 I --

23 Q. Why you did.

24 A. -- selected these three? Just trying to decide
25 which order I want to go in.

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1 Okay. I'll start with State's Exhibit Number
2 12, which depicts two of the three children in this case,
3 and they are presumably both wearing nothing but their
4 underwear. Actually, the boy -- I can only see the
5 underwear on the boy in the front and his socks. The boy
6 in the back may be completely nude, but may have underwear
7 on, but obviously has no other clothes on. So these are
8 two brothers sitting on the floor, it appears to be
9 playing a video game, and being photographed. Now, in and
10 of itself, there's nothing sexual happening. But it's an
11 example of -- it can be an example of the grooming because
12 what it depicts and affirms is that it's okay, it's okay
13 to be sitting in your underwear, playing a video game,
14 have your photograph taken, that there's nothing wrong
15 with this, that this is being normalized.

16 So I talked earlier about things being
17 normalized. So it's a way of what we call disinhibiting
18 the kids, getting them more and more comfortable with the
19 idea that this is just normal and customary behavior.
20 It's sort of breaking down the barriers to the -- and
21 confusing them as to where the boundary is: if this is
22 okay, you know, what else is okay.

23 Q. And in some situations, if the other things
24 weren't happening, just sitting in your underwear may not
25 be anything?

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1 A. Correct.

2 I have photographs of my own children when they
3 were very young, you know, not in a lot of clothes, and
4 they're cute. But it's -- but if I'm being asked in a
5 sexual abuse scenario about the possibility for grooming,
6 and I see a photograph like this, it can -- it can
7 demonstrate the disinhibiting, normalizing quality that
8 this is how we hang out and this is how we behave.

9 Following that one, I would take State's Exhibit
10 Number 13. And State's Exhibit 13 shows one of the boys,
11 again, in his underwear. So, you know, I'm seeing a theme
12 here of frequent photographs of boy being photographed
13 with nothing on but his underwear and then a silly,
14 multicolored afro-style wig. He's leaning against the
15 wall in a -- I would say in a quasi-feminine sort of
16 posture. So it's kind of a playful, but somewhat what I
17 would call feminized, type of photograph for a boy. And,
18 again, it's perhaps done in the guise or in the theme of
19 being silly and taking a funny photograph, but, again,
20 it's sending the message to the boy that this is -- this
21 is acceptable, endorsed behavior.

22 And last, but actually most concerning, I would
23 say, would be State's Exhibit Number 18. And so this is
24 one of the boys and he's dressed like a girl. So he's
25 cross-dressing. So that clearly goes more to the idea of

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1 taking a boy and endorsing and making it okay to cross-
2 dress and play dress-up as a girl. It appears that he's
3 got something in the costume -- by looking at the way the
4 man in the picture, the way his hands are on the breasts,
5 that it does look like there's actually breast forms
6 there. So there's some kind of -- there's some kind of
7 padding there to be breasts.

8 Also, in this picture I am aware that in the
9 picture is this child's mother. So the fact that this
10 child's mother is present and therefore aware that this is
11 the behavior that the child is being engaged in, and is
12 doing obviously nothing to stop it, would be consistent
13 with the grooming, in that, again, it sends the message of
14 this is normal, this is okay, this is acceptable. Nobody
15 is standing in to stop it. And that's what I mean by
16 confusing, disinhibiting, and being components of what we
17 call grooming.

18 And I understand that that's not the defendant
19 in the photograph. I don't know who's taking the picture.
20 But it's, again, suggesting -- it is clearly a sexual
21 gesture. So even though it may be done in the guise of
22 fun, it is sexualizing the play.

23 Q. Would it make a difference if that was
24 Halloween?

25 A. Taken by itself, in isolation, if you said to me

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1 that this is the one and only time and it's Halloween and
2 that's what made it okay, and I knew no other facts, I
3 would probably -- I would probably be less inclined to
4 consider it. I would still wonder a little bit about the
5 appropriateness of the --

6 Q. Of the other person?

7 A. Of the other person, and the sexual gesture.

8 Q. If there had been other testimony that the child
9 had dressed like a girl before, would that impact -- have
10 an impact -- or good information for you?

11 A. That the child had dressed as a female before
12 when it wasn't Halloween?

13 Q. When it was not Halloween.

14 A. Just because he was --

15 Q. We don't know.

16 A. -- we found him dressing that way? Then I would
17 be concerned. Because as a parent, if one has a child who
18 is sort of playing at and doing what would be cross-gender
19 dress and play, it would raise the question as to whether
20 or not there was some sort of psychological issue going on
21 for that child that ought to be evaluated and addressed,
22 just to know what's behind it, why is the behavior going
23 on.

24 And because, frankly, it can cause --
25 developmentally it could cause problems for the child

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1 across time: social rejection, role confusion, sexual
2 identity issues. And it would just be something that most
3 parents I think would identify as possibly a problem and
4 something worth not encouraging but rather figuring out
5 why it's going on and perhaps even discouraging.

6 Q. Now, based on all of the information that you've
7 gone over, and your clinical experience, and the
8 literature, are you surprised that these children did not
9 disclose immediately if they were being assaulted?

10 A. No.

11 Q. And would you be surprised if they didn't
12 disclose even when asked about it?

13 A. No.

14 MS. HERRING-LASH: I think those are all the
15 questions I have, Dr. Foster.

16 THE COURT: Mr. Schwacke?

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. I want to go back to the pictures for a second.
20 You had picked out six and talked about three?

21 A. Yes.

22 Q. So that would have been one that we talked
23 about. That would be State's Exhibit 18?

24 A. Yes.

25 Q. And this is one that you had talked about. So

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1 that would be Exhibit 13?

2 A. Yes.

3 Q. And then this is one that you had talked about.
4 That would be State's Exhibit 12?

5 A. Yes.

6 Q. And then we didn't talk about these four.
7 There's one that you eliminated.

8 A. Yes.

9 Q. And I don't know which one that is. Could you
10 tell me?

11 A. Yes. The one I eliminated was State's Exhibit
12 20.

13 Q. And --

14 A. I can -- I mean, I can expound on that just by
15 saying that, you know, I -- it's just a photograph of --
16 it's a photograph that depicts affection and playful
17 behavior, not particularly in stages of undress that I
18 could tell. I just didn't think it necessarily rose to
19 the level that I would want to identify it as concerning
20 for grooming.

21 Q. Any concern that the person in the one grooming
22 picture you had picked out, with the hands over
23 Minor 2 chest, is also in this picture?

24 A. May I see that again?

25 [Whereupon, the witness reviews documents]

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1 A. Yes, somewhat. Somewhat, because it
2 demonstrates close physical activity, kind of an intrusive
3 in-each-other's-face play. So it could be, in that
4 respect, joined in as another disinhibiting sort of
5 picture.

6 Q. [Mr. Schwacke] Okay. Now, there's three
7 remaining ones up here that you put in the existing in a
8 vacuum, maybe not a problem but together with the others a
9 problem. I'm going to start with Number 16.

10 A. Okay.

11 Q. Correct? Now the jury I guess needs to see
12 which picture that is. And that hasn't been passed back
13 through, but -- you stated --

14 A. I guess the same would be true for the other
15 photograph that you asked me to comment on. And I don't
16 think it got passed by the jury.

17 Q. There were three I think that you said -- okay.
18 That's correct.

19 Now, in this photograph you asked a question,
20 you asked for clarification, and then it dealt with, well,
21 who is this person in the middle. Why should that matter
22 in your making a determination as to whether or not it's
23 evidence or potential evidence of grooming?

24 A. Well, because, first of all, in this picture I
25 couldn't tell if this was the defendant, because it looks

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1 somewhat like him but somewhat not like him, so I just
2 wasn't sure. And taken in the aggregate with everything
3 else that compiles this case, and the photographs, if that
4 were the defendant, it would be a picture of him sitting
5 with the two boys clearly without clothes on on their
6 torsos. I mean, they're shirtless. And I really
7 hesitated. I thought about including this one anyway. It
8 was right on the fence for me.

9 Q. So if we were to tell you that based upon prior
10 testimony, that that in fact is the same person with
11 Minor2 in the dress with the hands on the chest, what
12 would you say in reference to that picture?

13 A. That it is -- that it is concerning for more
14 disinhibiting, normalizing, or very close physical contact
15 and in -- at some level of being undressed, and that
16 that's -- that being okay and acceptable and endorsed by a
17 photograph.

18 Q. And then let's stick with State's Exhibit 15.
19 Why is that, not in a vacuum, perhaps problematic to you?

20 A. Okay. Again, we're documenting and
21 photographing a boy with his shirt undone, with an
22 adult man resting his head on his tummy, on his abdomen.
23 So it is -- I decided not to include it. And I said that
24 it was one of the six taken in aggregate. But by itself,
25 if this was the only picture, it could just be a perfectly

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1 ordinary maybe, quote, unquote, father-son picture.

2 Q. I mean, we've seen advertisement on TV with
3 bare-chested men hugging their infants in nothing but
4 diapers.

5 A. That's exactly right.

6 Q. So in terms of pictures like that, they could
7 very well be in any of the photo albums we have in our own
8 home --

9 A. Yes. That --

10 Q. -- and they would not be evidence of any attempt
11 at any -- they may not be evidence of any attempted
12 grooming behavior by anyone in that household.

13 A. That's right. Taken by itself, in a vacuum, I
14 agree with that.

15 Q. And I guess we'll do, since we're up here, 21.
16 Same deal on that. Why would, in a vacuum -- why not, in
17 a vacuum, is that problematic to you?

18 A. Well, because it's a repetition of the same male
19 with one of the boys who has testified, you know, that
20 he's a victim. So taking it in the composite of all the
21 data I've reviewed, it is another photograph of an
22 endorsement of affection. Just being kind of, again, this
23 is what we do, this is what we photograph, the
24 demonstration of a lot of physical closing of the gap and
25 a lot of physical affection between adult male and boy.

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1 Q. And if I were to tell you again the person
2 pictured in that photograph is the same person with
3 Minor 2 in the dress and the hands on the chest, does
4 that make it more problematic or not?

5 A. Yes.

6 Taken collectively, I would say it raises to a
7 level of problematic. I'm a little unsure what this man's
8 access was to the children.

9 Q. Well, if we were to tell you the testimony
10 indicates that that picture was taken at Ms. Julie Barnes'
11 house, does that help you understand what the access to
12 him might be?

13 A. The access might have been at Ms. Barnes' house.
14 And I don't know if it's a relative or a friend or what,
15 but it's clearly, again, sending, frankly, a confusing,
16 perhaps, message to the children about where any personal
17 boundaries lie, because it's being endorsed

18 But, you know, again, it may or may not be
19 sinister. But taken collectively, the pictures seem to
20 reinforce the idea that man-boy affection in various
21 levels of undress, and even with cross-dressing, is
22 endorsed and okay. And so I think that it could
23 contribute to the level of confusion that the children
24 might have experienced.

25 MR. SCHWACKE: I'm going to come back to those

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1 pictures.

2 Q. [Mr. Schwacke] You've referenced a couple of
3 times that you reviewed materials.

4 A. Yes.

5 Q. Could you give me a list of what you've been
6 previously provided and was that provided to you by the
7 prosecutor in the case?

8 A. It was provided to me, by one of the prosecutors
9 in the case, to be reviewed. And I'm going to do this by
10 my best memory because I don't have my documents here.
11 But, essentially, it was --

12 Q. Well, can I ask why you wouldn't bring your
13 documents?

14 A. I brought my documents. They're two seats back.

15 Q. All right.

16 A. Law enforcement -- things that I would routinely
17 review in a case like this: law enforcement incident
18 report, the child protective services case manager's
19 dictation that dictates her contacts and information that
20 she gathered; the Dorchester Children's Center forensic
21 interview reports; the Dorchester Children's Center
22 interview videos. I think there was a copy of the arrest
23 warrant in there. Oh. The medical exams of the children.
24 And that is probably all, but I may be leaving something
25 out inadvertently. I can check, if you would like.

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1 Q. The DSS case manager dictations: that's the
2 material from Ms. Case, Evelyn Case?

3 A. Yes.

4 Q. And do you recall, in reviewing those materials,
5 a reference to someone known as Auntie Michael?

6 A. Auntie Michael? Yes.

7 Q. And do you remember reference that Minor 2
8 feared him or was scared of him?

9 A. I don't off the top of my head, but I'm not
10 disputing that. Just would need to have my memory
11 refreshed.

12 Q. So in terms of the individual that we've
13 identified as being in Number 18, Number 16, Number 20,
14 and Number 21, if the testimony previously heard by the
15 jury would indicate that that's the person known as
16 Michael Hope, who would be that person, based on the
17 reference in the DSS materials, plus these pictures,
18 what's your concern there?

19 A. Okay. So you're asking me based on these
20 pictures, coupled with the fact that -- I'm going to
21 assume for the sake of your question that --

22 Q. Well, if you need your materials, I'm fine for
23 you to get them.

24 A. Okay. But that one of the children said that he
25 was afraid of this gentleman or this man?

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1 child who made those statements -- and I don't know which
2 of the three children made those statements at the moment
3 -- but why he was afraid. And the hypothesis would
4 include, certainly, physical abuse, sexual abuse,
5 participating in sexual activity alone or with someone
6 else.

7 Q. And how many videos were you provided?

8 A. I was missing one. I don't believe -- I did not
9 get an opportunity to review the video of Minor 1 the
10 child with the speech impairment. The other ones I
11 reviewed. So that was two interviews with Minor 3 an
12 interview with Alley, an interview with Minor 2 And
13 I think that's it.

14 Q. So you weren't made -- provided copies of three
15 other interviews that had occurred previously to the ones
16 that you were given of Minor 2 Minor 1 and Minor 3

17 A. Are you referencing from an unrelated -- a
18 historical case?

19 Q. A case --

20 MR. SCHWACKE: Your Honor, I don't know --

21 MS. HERRING-LASH: Your Honor, we would object
22 to going into --

23 THE COURT: I think she just needs some
24 clarification as to the question, Mr. Schwacke.

25 MR. SCHWACKE: And I'm not sure how to make it

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1 clear for her in a way that they're not going to
2 object, too, Your Honor. So can we approach?

3 THE COURT: You may.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 Q. [Mr. Schwacke] You've talked about the fact
7 that kids can be in therapy during a situation where they
8 could be subject to abuse and not disclose it to a
9 counselor. But as a person sort of in your position and
10 wanting to kind of learn and document all the types of
11 things for future reference, and to kind of improve
12 services, you didn't talk to the children's therapist
13 during this time frame, alleged where these acts had been
14 going on, to find out what may or may not have been said
15 or what they could have talked about?

16 A. No, I did not.

17 Q. And is that something that's important,
18 unimportant?

19 A. It depends on my role.

20 I mean, I'm not here providing any ultimate
21 opinions. I did not evaluate these children. I wasn't
22 responsible for helping this multi-disciplinary team make
23 the decisions it made, so I didn't consider that within
24 the scope of my job.

25 Q. And, ethically, it would be wrong for you to

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1 give an opinion about one of these kids if you hadn't
2 personally examined them, correct, under your rules of
3 ethics?

4 A. That's a good question.

5 I'm not here to offer an ultimate opinion and
6 wouldn't. But I'm actually not entirely sure if --
7 because we're not talking about a mental health diagnosis.
8 So I'm not entirely sure what the ethical guidelines would
9 say about opinion. I know my personal sense of restraint
10 about that. I would have to -- I would have to actually
11 reference my ethical guidelines on that point.

12 Q. I'm looking at competence, Section C-6, of your
13 code of ethics.

14 A. Is that the APA Code of Ethics?

15 Q. That's the one for South Carolina where you're
16 licensed; correct?

17 A. Yes.

18 Q. And it says: a psychologist rendering a formal
19 professional opinion about a person shall not do so
20 without direct and substantial professional contact with,
21 and a formal assessment of, that person.

22 A. But that's a diagnostic -- I think this is under
23 kind of diagnosing.

24 Q. And that's not what you're doing?

25 A. I'm not diagnosing. I'm not rendering any kind

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1 of psychiatric diagnosis.

2 Q. And, again, in terms of the pictures, they could
3 very well be innocent or they could very well be evidence,
4 as you've indicated, of grooming?

5 A. Right.

6 And I definitely said that, you know, taken in a
7 vacuum, because obviously I agree that photographs like
8 this can be innocent or they can demonstrate a pattern.

9 Q. And every child is different?

10 A. Every child is different. Every person is
11 different.

12 Q. Every child is going to react differently to
13 what may happen or may not have happened?

14 A. Yes.

15 Q. Children are going to disclose to you one way or
16 another, different ways, maybe not at all, but there's no
17 set way that that's going to happen?

18 A. There are a range of ways that it may occur and
19 it's unique to each child's individual circumstances.

20 Q. And just because something happens -- well, let
21 me rephrase. I'm trying to get a question. Just bear
22 with me a second.

23 In terms of -- you had indicated within the
24 grooming method that behavior that could -- on the one
25 hand, if it led to improper sexual behavior, might be

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1 viewed as potentially grooming or it could be viewed as
2 grooming, but dressing up people in play clothes, playing
3 video games, kids sitting around in their underwear --
4 when we don't even know who took these pictures, based on
5 the testimony -- they could be totally innocent?

6 A. That's correct.

7 MR. SCHWACKE: Thank you. That's all the
8 questions I have.

9 THE COURT: Redirect?

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

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

12 THE WITNESS: Thank you, Your Honor.

13 MS. HERRING-LASH: Your Honor, may Dr. Foster be
14 excused?

15 MR. SCHWACKE: No objection.

16 THE COURT: Any objection?

17 MR. SCHWACKE: No objection.

18 THE COURT: Dr. Foster, you are excused, but
19 feel free to remain with us.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

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

24 THE COURT: Call your next witness.

25 MS. HERRING-LASH: Your Honor, the State would

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1 rest at this time.

2 THE COURT: Ladies and gentlemen of the jury,
3 that indicates to the Court there is a matter of law
4 that I must take up outside of your presence.

5 Do not begin your deliberations. Do not discuss
6 this case amongst yourselves.

7 Please rise for the jury.

8 [Whereupon, the jury exits the courtroom at
9 2:27 p.m.]

10 THE COURT: Please be seated.

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1 MOTION FOR A DIRECTED VERDICT

2 THE COURT: All right. Mr. Schwacke, motions or
3 matters?

4 MR. SCHWACKE: Your Honor, I would move for a
5 directed verdict of acquittal based on the State's
6 case, as presented, failed to produce evidence of guilt
7 beyond a reasonable doubt as to all three types of
8 indictments as to all three -- as to all three victims.

9 THE COURT: All right. I have -- the
10 indictments that we have proceeded on are three counts
11 of criminal sexual conduct with a minor first degree;
12 three counts of committing -- excuse me -- two counts
13 of lewd act upon a child, and three counts of unlawful
14 conduct towards a child.

15 Ms. Williams, will you be arguing this motion?

16 MS. WILLIAMS: Yes, Your Honor. Your Honor --

17 THE COURT: As the Court requires, please, under
18 Rule 19, address each separate charge and give me the
19 elements of that charge and the testimony that has been
20 presented that establishes those charges.

21 MS. WILLIAMS: Yes, Your Honor.

22 As the Court is aware, for a directed verdict
23 the Court is not concerned with the weight of the
24 evidence but rather the existence of the evidence. And
25 viewing the evidence in the light most favorable to the

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1 State, if we begin with the criminal sexual conduct in
2 the first degree with a minor regarding Minor 2
3 and the one regarding fellatio, Minor 2 has
4 testified that he was under the age of sixteen, which
5 is one of the elements. We have had testimony of the
6 defendant's age. We have had testimony that the
7 defendant is on the sex offender registry. And
8 Minor 2 testified that numerous times the defendant
9 put his penis in Minor 2 mouth and that the
10 defendant put Minor 2 penis in his mouth. We've
11 also had testimony that all these events occurred in
12 Berkeley County.

13 With regard to the criminal sexual conduct in
14 the first degree with a minor with Minor 2
15 regarding penile-anal penetration, Minor 2 has
16 testified that on numerous occasion the defendant put
17 his penis into Minor 2 bottom. He described
18 lubricant being applied to the bottom and to the penis.
19 He said that this happened at Mack's trailer, which
20 we've had testimony that that is in Berkeley County.
21 And that it happened also one time in his mother's
22 bedroom, which is in Summerville in Berkeley County.

23 With regard to the unlawful conduct charge,
24 regarding victim Minor 2 Watts, there is testimony
25 that in Berkeley County the defendant forced

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1 Minor2 to hold up cans for as long as his age was,
2 which at that time would have been eleven minutes. He
3 described the cans as being heavier than the cans that
4 Ms. Herring-Lash -- or bigger than the cans Ms.
5 Herring-Lash showed, and that if his arms dropped that
6 he would have to start all over again. He also
7 described being beaten with a belt and bruises being
8 left. He said that that happened repeatedly. We had
9 witness testimony from a neighbor that said she saw
10 that Minor2 had to cut the grass with scissors.
11 There was testimony that the boys were beaten with a
12 book. And I think that all those things could be
13 danger to the physical well-being or psychological harm
14 to the children, as required by the statute.

15 With regard to the criminal sexual conduct in
16 the first degree -- I'm sorry, Your Honor. With regard
17 to the lewd act upon a minor with regard to victim
18 Minor2 Watts --

19 Your Honor, would you like me to start referring
20 to the indictment numbers?

21 THE COURT: No. That's fine.

22 MS. WILLIAMS: All right. Lewd act upon a minor
23 involving Minor2 Watts: there's been testimony of
24 his age, he's under the age of sixteen. We have
25 testimony of the defendant's age. And that statute

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1 requires that the defendant do something with his body
2 parts or the body parts of a child for sexual
3 gratification. There have been numerous descriptions
4 by Minor2 Watts of the defendant putting his penis
5 in his mouth and him putting his mouth on the child's
6 penis, anal intercourse, and that there would have had
7 to have been touching that occurred before that
8 happened. And obviously those acts are for sexual
9 gratification. He's only charged with one count each
10 of the CSC first with a minor for each type. So he's
11 testified that this happened numerous times. And any
12 of those other events could have been construed as lewd
13 act.

14 With regard to the CSC first with a minor in the
15 first degree regarding Minor Thacker: Minor Thacker, his
16 age was eight or nine at the time of the events. The
17 child described both at Mr. McCauley's trailer and --
18 actually, he just described at Mr. McCauley's trailer,
19 which is in Berkeley County, that Mr. McCauley would
20 put his wiener in Minor3 mouth. I think he said forced
21 into Minor3 mouth. He also described that Mr. McCauley
22 would put his mouth on his wiener, said it got hard,
23 and that when Mr. McCauley's wiener was in his mouth,
24 stuff came out. Again, there's been testimony that
25 he's on the sex offender registry, from Deputy

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1 Thornton, and that these events occurred in Berkeley
2 County.

3 With regard to lewd act on a minor with Minor 3,
4 he's described numerous times that this happened. Any
5 of the times that the defendant touched his penis or
6 put his penis in his mouth, that would be touching the
7 body parts of a child for sexual gratification either
8 for the child or for himself.

9 With unlawful conduct regarding Minor Thacker,
10 the child describes having to hold up cans. At the
11 time, the child was only about eight years old, and he
12 said the cans were twice the size that -- the ones that
13 Ms. Herring-Lash showed him. He also talked about
14 getting whipped with a belt and marks being left. We
15 had Michael Hope describing the child being left in the
16 corner for so long that he peed in his pants and then
17 he was forced to stand in his own pee.

18 With regard to the unlawful conduct toward a
19 child with Minor 1 Watts, we had Minor 2 Watts
20 testify that he saw his brother getting beaten, that
21 the child was handicapped, that the beating was so bad
22 that there were purple marks from the middle of the
23 child's back all the way to the tops of where his knees
24 are in the back, and that he was beaten with a belt
25 severely. I think Minor 2 Watts described one of

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1 the belts that they were beaten with as a leather belt
2 with little metal pyramids on it, and the other one
3 with holes in it. Minor2 said that Minor1 was
4 beaten frequently. And I think the fact that -- and
5 Minor1 also had to hold the cans -- that that was
6 definitely something that would harm his physical well-
7 being and his psychological well-being, especially in
8 light of the fact that he is a special-needs child.

9 Court's indulgence for just a moment.

10 THE COURT: Yes, ma'am.

11 MS. WILLIAMS: And that all these events did
12 occur in Berkeley County.

13 THE COURT: Thank you.

14 MS. WILLIAMS: Thank you, Your Honor.

15 THE COURT: Mr. Schwacke, any response?

16 MR. SCHWACKE: Your Honor, just briefly.

17 As to the indictments for unlawful conduct
18 towards a child, which are 2133, 2129, and 2126,
19 there's no physical evidence to support the
20 allegations.

21 With regard to the indictments for lewd or
22 lascivious acts, I submit to Your Honor that on
23 indictments 2125, 2128 -- I'm sorry, not 2128. That's
24 one that's been withdrawn. 2132, that there's
25 insufficient evidence to support a verdict of guilty.

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1 Your Honor, with regard to the criminal sexual
2 conduct with a minor in the first degree, I want to
3 revisit Section 16-3-655(a)(2). In it, Your Honor, it
4 requires the State to prove these elements: the actor
5 engages in a sexual battery; that the victim, who is
6 less than sixteen years of age -- and you have an
7 and -- and the actor has previously been convicted of,
8 pled guilty or nolo contendere to, or adjudicated
9 delinquent, for an offense listed in section 23-3-
10 430(c). I'll take that alternative option first,
11 because that's followed by an or. That is not what the
12 State chose to prove, so there's no evidence of a
13 conviction by this defendant for an offense listed in
14 23-3-430(c).

15 The next requirement is if it's not, that it had
16 to be or, has been ordered to be included in the sex
17 offender registry pursuant to section 23-3-430(d).

18 So, Your Honor, you would have to then look at
19 23-3-430(c). And what that says is upon conviction,
20 adjudication of delinquency, guilty plea or plea of
21 nolo contendere of a person of an offense not listed in
22 this article, the presiding judge may order as a
23 condition of sentencing that the person be included in
24 the sex offender registry if good cause is shown by the
25 solicitor.

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1 That has also not been shown. They have shown
2 that he's on the sex offender list, but not pursuant to
3 subsection -- or the alternative part of or. At 16-3-
4 655(2)(a). 16-3-655(a)(2).

5 So, Your Honor, there's a failure of proof on
6 the part of the State because the statute has to be
7 construed most strictly against them. But they have
8 not shown an offense that he's been convicted to under
9 that first part of that requirement, nor have they
10 proven that he was placed on the sex offender registry
11 for a violation not listed there, upon a determination
12 by a judge.

13 So for that reason, Your Honor, I would move for
14 a dismissal of those indictments for criminal sexual
15 conduct in the first degree with a minor.

16 MS. HERRING-LASH: Your Honor, I think that the
17 testimony that he's on the sex offender registry: he
18 could not be on the sex offender registry unless he had
19 been convicted of a crime that would place him on the
20 sex offender registry or had been ordered to be on the
21 sex offender registry under the Section D. And so the
22 testimony that he is on the sex offender registry, he
23 could -- he could not be on there without being
24 convicted of a crime, or pled guilty to or nolo
25 contendere to, a crime that would place him on there

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1 unless he pled guilty to another offense and a court
2 ordered him to be on there. And we chose to present it
3 that way out of deference to what would be least
4 prejudicial to the defendant.

5 MR. SCHWACKE: Your Honor, the statute is
6 construed most strictly against them. It's the statute
7 they decided to pursue -- or proceed under. They made
8 the decision as to how and what proof they wanted to
9 put in. I submit to Your Honor that it's insufficient
10 under the strict wording of this code section and ask
11 for the dismissal of those three indictments -- or
12 those four indictments.

13 THE COURT: I disagree with your last statement,
14 Mr. Schwacke, as to the State chose what evidence to
15 produce. I limited what they could introduce, pursuant
16 to why and how Mr. McCauley was placed on the sex
17 offender registry. There was never a discussion as --
18 and, as a matter of fact, there was extensive
19 discussion as to not discussing why he was placed on
20 the sex offender registry.

21 Based upon the testimony that this Court has
22 heard, and the State has articulated testimony matching
23 it up with the elements, I deny your motion for a
24 directed verdict as to the eight indictments that have
25 been presented that we have gone forward here today.

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1 Find that there is sufficient evidence with
2 which to submit this case to the jury on three counts
3 of sexual conduct with a minor first degree, three
4 counts of unlawful conduct towards a child, and two
5 counts of committing or attempting a lewd act upon a
6 child.

7 Note your exception for the record.

8 Mr. Schwacke, have you had sufficient time to
9 meet with our client to discuss --

10 MR. SCHWACKE: I believe we have. I don't know
11 if he needs any additional time, based on the trial as
12 it proceeded after lunch.

13 THE COURT: All right. Mr. McCauley, please
14 stand.

15 [Whereupon, Mr. McCauley complies]

16 THE COURT: I remind you that you are still
17 under oath.

18 Mr. McCauley, before we broke for lunch I went
19 over your right to testify, your constitutional rights,
20 the consequences to you of testifying, as well as the
21 benefits to you of testifying.

22 Did you have an opportunity -- after the Court
23 gave the instructions and the consequences of your
24 decision to testify, did you have time to meet with
25 Mr. Schwacke and/or Ms. Kennedy?

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1 MR. MCCAULEY: For a small amount, yes, ma'am.

2 THE COURT: All right. Are you prepared to make
3 a decision whether or not you wish to testify at this
4 time?

5 MR. MCCAULEY: There are still a couple of
6 things I want to discuss, yes, ma'am.

7 THE COURT: All right. And, Mr. McCauley, I'm
8 not -- certainly not rushing you but I'm attempting to,
9 just for scheduling for the afternoon -- do you know
10 how long you will need to meet with Mr. Schwacke and
11 Ms. Kennedy?

12 MR. MCCAULEY: Just a few minutes.

13 THE COURT: All right. Let's go ahead. We'll
14 take our afternoon break. Please be back at 3:00.

15 Mr. Schwacke, if you need additional time, I'll
16 just be in chambers. If you'll just let the Court know
17 and we'll -- take as much time as you need with Mr.
18 McCauley to make arrangements.

19 Mr. McCauley can meet with counsel in the room
20 behind chambers.

21 All right. We'll be at ease.

22 MR. SCHWACKE: Thank you, Your Honor.

23 [Whereupon, a recess is taken from 2:41 p.m. to
24 3:01 p.m.]

25 THE COURT: Mr. Schwacke --

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1 MR. SCHWACKE: Yes, Your Honor.

2 THE COURT: -- have you had an opportunity to
3 again speak with your client concerning his decision to
4 testify or not to testify?

5 MR. SCHWACKE: Ms. Kennedy and I have, Your
6 Honor, and I believe we've had sufficient time now to
7 discuss --

8 THE COURT: All right. Mr. McCauley, please
9 stand.

10 [Whereupon, Mr. McCauley complies]

11 THE COURT: And, again, I do remind you that you
12 are still under oath.

13 Mr. McCauley, do you need any additional time to
14 meet with Mr. Schwacke or Ms. Kennedy, or both, to
15 discuss your decision whether you will testify?

16 MR. MCCAULEY: No, ma'am.

17 THE COURT: Do you have any further questions
18 for either your attorneys, both of your attorneys, or
19 for the Court?

20 MR. MCCAULEY: No, ma'am.

21 THE COURT: All right. Have you reached a
22 decision whether or not you will testify?

23 MR. MCCAULEY: Yes, ma'am.

24 THE COURT: And what is that decision, sir?

25 MR. MCCAULEY: No, ma'am.

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1 THE COURT: All right. Thank you.

2 And with that, Mr. Schwacke, do you have any
3 other witnesses at this time?

4 MR. SCHWACKE: The defense will rest in the
5 presence of the jury, Your Honor.

6 THE COURT: All right. And we had an in-
7 chambers just for scheduling purposes. It's 3:10 and
8 so I was making a determination of whether or not the
9 State and the defense were ready. Both had indicated
10 that you are ready to proceed with closing arguments.

11 And is that correct, Mr. Schwacke?

12 MR. SCHWACKE: The defense is ready, Your Honor.

13 THE COURT: All right. And, Mr. Schwacke, you
14 have presented no evidence so you will have last close;
15 is that correct?

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

17 THE COURT: All right. And on behalf of the
18 State, Ms. Williams, who will be doing the closing
19 argument?

20 MS. WILLIAMS: I will, Your Honor.

21 THE COURT: All right. And I had indicated that
22 the charge is ready. There are of course eight
23 separate verdict forms, and we are in the process of
24 completing those verdict forms. I had indicated that
25 the verdict forms, only, will go back. The indictments

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1 will not go back.

2 Is that your understanding, Ms. Williams?

3 MS. WILLIAMS: Yes, Your Honor.

4 THE COURT: Mr. Schwacke?

5 MR. SCHWACKE: Yes, Your Honor.

6 THE COURT: And, Mr. Schwacke, any lesser-
7 includeds that you are requesting at this time?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Any lesser-includeds or any
10 additional charges from the State or the defendant?

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: All right. I am including the
13 limiting instruction regarding the placement of the
14 defendant on the sex offender registry.

15 With that, are there any additional -- anything
16 additional before we bring in the jury?

17 MS. WILLIAMS: The Court's indulgence, Your
18 Honor.

19 THE COURT: Yes, ma'am.

20 [Whereupon, Ms. Williams and Ms. Herring-Lash
21 confer]

22 MS. WILLIAMS: Nothing further, Your Honor.

23 THE COURT: All right. Mr. Schwacke -- and,
24 again, the defense has rested. Anything before we
25 bring in the jury?

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1 MR. SCHWACKE: No, Your Honor.

2 THE COURT: All right. Mr. Schwacke, are you
3 renewing all previous motions?

4 MR. SCHWACKE: To avoid after -- if you want to
5 speed that process up without sending the jury out? Is
6 that what you're asking?

7 THE COURT: Well, if you rest --

8 MR. SCHWACKE: I understand.

9 THE COURT: -- I'm going to allow you to rest --

10 MR. SCHWACKE: You want to hear the motions.

11 I will make the same motions that I made at the
12 close of the State's case at the close of arguments.

13 - - - - -

14 MOTION FOR A NEW TRIAL

15 THE COURT: All right. And at the close of your
16 case it is -- for all intents and purposes, it is the
17 close of your case. Are you renewing all motions and
18 are you requesting the Court to rule on those remaining
19 -- those outstanding motions again?

20 MR. SCHWACKE: I believe I probably need to
21 restate the motions just for the record and -- because
22 of the status of where we were at the close of the
23 State's case.

24 For the record I believe I also need to make a
25 motion for a new trial, based upon the objections we

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1 had to the matters of the sex offender registry or the
2 prior convictions being an element, to preserve all
3 those objections, as well. So I might need to be on
4 the record with those.

5 THE COURT: All right. Do you wish to go ahead
6 and do that? Procedurally, you've rested so it is the
7 close of your case. And so all I'm going to do
8 procedurally is in the presence of the jury allow you
9 to articulate that. But essentially you have rested;
10 is that correct?

11 MR. SCHWACKE: So, in other words, Your Honor,
12 to attend -- first, I'll renew the motion that I made
13 at the close of the State's case, for a directed
14 verdict, on the same grounds as stated.

15 I also, at the close of the defense case, would
16 move for a new trial based upon the denial by the Court
17 of our motions for bifurcation on the severance of the
18 charges as stated in our earlier motions and
19 indictments and that that was inappropriate, based upon
20 both constitutional grounds and the state and federal
21 constitutions, as well as separation of powers, matters
22 concerning the legislative intrusion into the rule-
23 making authority of the Court to control what evidence
24 is admissible and not admissible.

25 That would be it, Your Honor.

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1 THE COURT: State wish to respond?

2 MS. WILLIAMS: Your Honor, we would just -- we
3 would just lean on our earlier arguments for those
4 issues.

5 THE COURT: All right. As to the previous
6 motions on which I have ruled, there has been no
7 additional evidence presented by the defendant.

8 As to the motion for a directed verdict, I stand
9 by the Court's original articulation of those.

10 As for your motion for new trial based upon the
11 failure of the Court to bifurcate or grant your motion
12 for bifurcation, the introduction of the testimony and
13 introduction of the fact that the defendant was on the
14 sex offender registry, and the other grounds stated, I
15 am denying your motion for a new trial based -- again,
16 the bifurcation motion was addressed before we began
17 this trial and I believe that the grounds are
18 accurately and succinctly articulated for that purpose.

19 The motion for a new trial based upon the fact
20 that Mr. McCauley's placement on the sex offender
21 registry was entered into evidence has also been
22 articulated in two separate motions. And, again, deny
23 your motion for a new trial based upon those factors.

24 Note your exception.

25 Anything further, Mr. Schwacke?

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1 MR. SCHWACKE: No, Your Honor.

2 MS. WILLIAMS: Nothing from the State, Your
3 Honor.

4 THE COURT: All right. To the members of the
5 audience, we have now reached the stage of the trial
6 where we will hear closing arguments on behalf of the
7 State. The State will go first and the defendant will
8 have last close.

9 There is to be absolutely no outbursts, no
10 speaking, no whispering, no movement. I will give you
11 an opportunity -- if you must leave for any particular
12 reason, I will give you an opportunity before I
13 instruct the jury on the law applicable to this case so
14 that you may exit at that time.

15 Ladies and gentlemen, I anticipate that the
16 Court's charge on the law is approximately thirty to
17 forty-five minutes, based upon the number of
18 indictments. So if you do not feel that you can remain
19 for any particular part until the doors are opened,
20 then now is the time that you leave.

21 It is very disruptive to all of the attorneys
22 involved, as well as to the jury, who I have instructed
23 throughout this trial that they are to pay close
24 attention, as well as to the Court. It is very
25 disruptive when people are getting up during testimony

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1 or during arguments and leaving the courtroom. So I
2 encourage you now is the opportunity.

3 If you cannot remain in this courtroom and quiet
4 for at least the next hour, now is the time for you to
5 leave. My bailiffs have been instructed that they will
6 not ask any further questions, they will just escort
7 you out of the courtroom and you will be barred from
8 the courtroom until the Court has finished her
9 instruction on the law.

10 If you have any questions or concerns, now is
11 the time, again, for you to exit and the bailiff will
12 answer those questions outside of the courtroom. Thank
13 you.

14 Let's bring in the jury.

15 [Whereupon, the jury enters the courtroom at
16 3:09 p.m.]

17 THE COURT: Thank you. Please be seated.

18 Mr. Schwacke? In front of the jury?

19 MR. SCHWACKE: Your Honor, the defense rests.

20 THE COURT: Ladies and gentlemen, that indicates
21 to the Court that you have now heard all of the
22 testimony that will be presented in this case, as well
23 as received into evidence all of the exhibits that will
24 be made part of the record in this case.

25 Ladies and gentlemen, everything that was

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1 admitted into evidence throughout this trial will go
2 back with you to assist you in your deliberations. And
3 those items will go back with you in your jury room.

4 Ladies and gentlemen, now we have reached the
5 stage in the trial where you will hear closing
6 arguments on behalf of the State and the defendant. In
7 this trial the State will have their closing argument
8 and then you will hear from the attorney from the
9 defendant for his closing argument.

10 Just as I indicated to you, opening statements
11 are not to be considered evidence. Neither are what
12 the attorneys tell you in their closing argument. It's
13 merely that: an argument to the jury.

14 Ladies and gentlemen, I will instruct you on the
15 law applicable to this case after you have heard
16 closing arguments on behalf of the State and the
17 defendant. At that time I will instruct you on the law
18 and then the case will be presented to you for your
19 deliberations.

20 Ladies and gentlemen, please give close
21 attention.

22 Ms. Williams.

23 MS. WILLIAMS: Thank you, Your Honor. May it
24 please the Court. Counsel.

25 THE COURT: Yes, ma'am.

CLOSING ARGUMENT

1
2 MS. WILLIAMS: Good afternoon. I just want to
3 start by thanking you. You have paid very close
4 attention. And it's been long days. It's been kind of
5 hot in here sometimes.

6 And you've had to listen to some really ugly
7 truths, and I apologize for that. But that's what this
8 case is, ugly. It's horrible. It's horrible what
9 happened to these little boys. What kind of
10 environment were these little boys in, beyond the
11 monster that was abusing them physically and sexually?
12 Who were they around? Drag queens from Patrick's?
13 People that saw purple bruises all over Minor 1
14 bottom and legs and back and they don't call DSS? A
15 neighbor who sees the child wearing a pink dress, and
16 cutting the lawn with scissors? She didn't call DSS.

17 Nobody protected these children, not the least
18 of which is their mother. Minor 2 has the courage
19 to tell his mother what this man is doing to him. And
20 what does she do? It's up to you to fix it. He is
21 eleven years old and he has to fix it. And what does
22 that mean? It means don't tell.

23 Mr. Thacker testified about Minor 3 Mr. Thacker
24 was a compelling witness. When he looked at you and
25 said, and I could tell by his face -- when I said to

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1 use your common sense, that's what I'm talking about.
2 He could tell by his face. Minor was told not to tell,
3 too, by the person that I'm reluctant to call their
4 mother. She's getting free babysitting from the
5 defendant and he's getting unlimited access to her
6 children and she could give a darn.

7 Now, you are the sole judges of credibility.
8 And you saw Minor2 Watts sit in this chair and
9 describe all of the horrors that he lived through. And
10 then you heard an expert talk about a flat affect.
11 Minor2 has been through so much, I don't even know
12 how much pain he would feel if he really went through
13 and thought about the emotions that monster put him
14 through.

15 Minor got up and told you -- and Minor3 for lack
16 of a better word, is very spontaneous. And you could
17 tell he did not want to talk about these things. I
18 mean, what child would. But he told it. And when
19 somebody said something that wasn't true, he corrected
20 them even on the little things. Mr. Schwacke asked him
21 if his parents ever let him take a bath and if they saw
22 the bruises and he said, no, we take showers. And what
23 does that tell you? That tells you they're not just
24 repeating some script.

25 They're telling what they remember. Minor was

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1 very honest. He said that nothing happened the day
2 that Mr. McCauley was in bed with him. He told the
3 truth. That's probably why they didn't find anything
4 at the forensic interview, because nothing did happen.
5 If he was going to make something up, I don't know why
6 he wouldn't have said something happened that day. The
7 man was in bed with him. His father said that at first
8 he didn't think much of it because Minor was having
9 nightmares. I bet he was.

10 Now, ladies and gentlemen, you heard a lot of
11 testimony from people that weren't the best people, but
12 they're the only people that were around these
13 children. And who were they? Friends of his
14 [indicates]. Friends of his. Mr. Schwacke went
15 through all this business about the man in this
16 picture. Is this okay? Is this okay to do to a little
17 boy? Where was this picture found? His computer. Who
18 took this picture? He did. And there was testimony
19 that he took these pictures, by the man that's in the
20 picture.

21 Some of these pictures could look innocent. But
22 they really don't. And you can take these pictures
23 back with you. Why does he have these on his computer?
24 Why does he never show any clothing? if the children
25 have any clothing on. Pictures are worth a thousand

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1 words. And as you look at these pictures, I encourage
2 you to study them. Look at this man. Look how big he
3 is compared to this child. Would they be any match for
4 him?

5 Another interesting thing in these pictures is
6 Mr. McCauley didn't realize that he was taking a
7 picture of the one-by-four that he used to beat the
8 kids with. Even the female impersonator couldn't take
9 that. Didn't call DSS, but at least he took the board
10 away from him. Minor2 described that board as a
11 one-by-four, and that's exactly what Michael Hope
12 described it as.

13 Keep in mind, too, that these kids haven't
14 really been seeing each other very much. They're not
15 talking about this stuff, because they don't even get
16 to see each other.

17 When they talked about consequences of
18 disclosure, what's Minor2 consequences? How many
19 foster homes has Minor2 been bounced around to? He
20 doesn't have to be sexually abused anymore, but he
21 don't get to see his brothers. He's in one home after
22 another. Did his life get better? He gave a very
23 honest answer when she asked him are you glad that you
24 told. In some ways he's glad, but in other ways he's
25 not. Does he want to go back to him mom? In some ways

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1 he misses his mom. But he's smart enough to know that
2 she didn't protect him. So keep in mind that none of
3 these witnesses have been able to discuss this. They
4 just never get to see each other.

5 You heard a lot from the expert about why kids
6 don't disclose and why they disclose the way that they
7 do. But you don't need an expert for that. It's
8 common sense. You've got a man that's beating them all
9 the time. You've got a mother that does nothing about
10 it when you tell her. What does Julie Barnes do when
11 Minor 2 tells? Not only does she tell him to fix
12 it, she calls the defendant and he comes right back
13 over. I mean, why would he tell? He doesn't tell
14 until he gets to Lucy Twomey's house -- and it's early
15 January and he's away from his mom and the monster that
16 she's brought into his life -- for a good month, that's
17 when that kid tells, when he knows that he's safe.

18 Now,, I know that you've heard all of the
19 testimony. But it seems like ages ago since we
20 started, so what I am going to do very briefly, because
21 I know that you're weary, is I'm going to talk a little
22 bit about the law and I'm going to go through the
23 witnesses just to remind you of the key points of what
24 you heard. If at any point during your deliberation
25 you want to look at any of the evidence or hear some of

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1 the evidence again, you can ask the judge to do that.

2 Let me also tell you that as I discuss the law,
3 the judge is the authority on the law. If I say
4 anything that differs from what she says, defer to the
5 judge, because I must have misspoke. I'm going to try
6 to repeat the law as she will give it to you but if
7 there's any difference, the judge is the authority on
8 the law.

9 As you think about the evidence, there is one
10 piece of evidence, as disturbing as it was, that I
11 don't want you to forget, and that was the evidence
12 from Nathan Tobey. Nathan Tobey is the boy who at
13 seventeen meets Mack on Craig's List. Mack is
14 babysitting the children. Which let's think about that
15 for a minute. Why is he lying to everybody and telling
16 everybody that they're his kids? I'll tell you why.
17 Because it's weird to hang around with a bunch of
18 little kids that aren't yours. I mean, what would you
19 think about that? This guy is always with little kids.
20 He's not getting any money for it. Why would you do
21 that? So he tells people they're his kids, and then it
22 kind of makes sense. Because the real reason he wants
23 to be around these kids is to molest them.

24 So think about what Nathan Tobey says. He
25 thinks that they're Mr. McCauley's kids. He's talking

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1 to him on the phone and he says, what are you doing.
2 He says, I'm babysitting the kids and I just got
3 finished having sex with a cute little blond boy. And
4 I'm not even going to repeat the rest, because it's
5 disgusting. Think about that.

6 Now, let's go thorough the witnesses first. We
7 talked a little bit about Minor2 Watts. He was
8 thirteen years old. And that's important, because he
9 was ten and eleven when he was assaulted. And as
10 you're going to see in the statute, one of the things
11 we have to prove is that he was under the age of
12 sixteen. He talks about -- the statute talks about
13 sexual battery. He talked about anal penetration
14 numerous times. He talked about fellatio. Fellatio is
15 a fancy word for oral sex. He remembers -- I'll tell
16 you what's really disturbing is that he remembers
17 specific positions. When he described those positions
18 I think it was pretty obvious that that's what was
19 going on, because he's a child and he knows those
20 positions. He saw his brothers being beaten.
21 Minor2 sometimes took the blame for them,
22 especially Minor1 because he didn't want Minor1 to
23 be victimized because Minor1 is helpless.

24 We talked about the cans. And really the cans
25 that you saw here today just don't do it justice,

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1 because both Minor2 and Minor said the cans they
2 had to hold were twice the size. So holding the cans
3 up in the corner. He talked about getting beaten with
4 a belt, a board. Minor2 was made to cut grass
5 with scissors. And that was just some neighbor that
6 saw him. That wasn't even anybody that knew him.

7 The one thing that came out with Minor2
8 that's even sadder is that the defendant made him stay
9 -- pretend he's sick, to stay home from school, so he
10 can have access to him.

11 And so think about that testimony as you
12 evaluate the statutes. One of the things that I want
13 you to think about, too, is that Mr. Schwacke kept
14 asking what Minor1 did in order to get a beating and
15 what Minor2 did and what Minor did. Sometimes
16 children do get spanked. But -- and certainly burning
17 down the back yard might be a spankable offense.

18 But you have to look at it in the big picture.
19 I mean, what kind of beatings were they getting? How
20 frequently were they getting them? And put together
21 with the sexual abuse, you know, it's horrible. And
22 the cans. I mean, just standing in the corner for that
23 long. If you can envision holding heavy cans. How
24 small is Minor3 I mean, this tiny boy holding these
25 cans above his head for eight minutes and then if he

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1 drops them he's got to start all over again? So think
2 about that in the context in which they lived as you
3 evaluate that evidence.

4 Next you heard from -- oh. I'm sorry. As we've
5 talked about before, Minor2 Watts was dressed up
6 like a girl. Michael Hope said that that one dress was
7 from Halloween. I don't know if that was Halloween or
8 not, but certainly when the neighbor saw him she
9 clearly said it wasn't Halloween. So they're starting
10 to dress him up like a girl. They're joking around
11 about it. They're getting him used to this kind of
12 thing, as the psychiatrist testified, to groom him, to
13 make him think it's okay.

14 Minor2 testified that the defendant showed
15 him pornography. And, indeed, pornography was found on
16 his computer. Michael Hope testified that he looked at
17 pornography all the time. And, also, Nathan Tobey
18 testified that he saw child pornography on his
19 computer.

20 Minor2 said he was afraid that Mack would
21 hurt his mother. And what he said, if you remember, is
22 he was afraid if he told, that they wouldn't get to him
23 before he hurt his mother. And that's really logical.
24 He was afraid that maybe Mack would have time to get to
25 his mother before they had time to arrest him.

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1 He also -- as we discussed before, his mother
2 told him to fix this, and then she invited Mack back in
3 the home.

4 Minor2 sometimes took the punishment for
5 his brothers. He told Lucy Twomey, because she was
6 kind and caring. You know, before Lucy Twomey, the
7 only person this kid had to talk to was DSS, law
8 enforcement, some people at a forensic interview.
9 Something tells me they might not have been kind and
10 caring. This is the first person that really gave a
11 darn about him, and that's who he told -- besides his
12 mother, which we know what happened to that.

13 The other thing I find so heinous about McCauley
14 and what he did to Minor2 is that Minor2 needed a father.
15 He needed a man to love him. And the defendant knew
16 that, and he took advantage of it. This is my special
17 boy. And really preyed upon this child emotionally in
18 order to manipulate him and sexually abuse him.

19 You did not hear from Minor1 Watts but you
20 heard a lot about him. Minor1 is very smart. He's in
21 some special classes, and he's vulnerable, and yet he
22 was beaten. Probably the worst beating was given to
23 Minor1 He was also made to hold the cans. And they
24 said he was beaten other times, as well. The beating
25 after the backyard fire, which also begs the question

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1 why is this child in the back yard with a lit grill,
2 alone, anyway, if he's got some special needs. But
3 that -- those injuries were seen by Minor2 by Carrie
4 Britt, and by . And they were memorable because
5 of how much of his body was bruised and the color of
6 the bruises. The charge that involves Minor1 is
7 unlawful conduct towards a child. And that is not a
8 sexual charge, but it deals with a physical beating.

9 Minor Thacker: he's eleven now. He was eight
10 when he was assaulted. When Minor talks about what
11 happened to him, it's really hard to listen to a small
12 child say that his wiener got hard when the defendant
13 sucked on it. No child should ever have to say those
14 words or know what that is at his age. But as you
15 evaluate his credibility, think about those details.

16 He also had to hold up the cans. He said that
17 after the defendant put his penis in his mouth that
18 stuff came out and it tasted bad and he spit it out.
19 Minor doesn't just say anything. He says very specific
20 things. When asked if it happened at Julie Barnes'
21 house, he said no. He says it happened at the trailer.
22 He remembers the beatings. And you heard Michael Hope
23 talk about how the child had to stand in his own pee.

24 Minor2 and Minor both admit when they don't
25 remember something. And I think that's something you

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1 need to think about when you evaluate them as
2 witnesses. Neither of them have had very little [sic]
3 contact with each other or their other brother.

4 Another thing that's upsetting is that after
5 Minor tells his dad what happened, and after Minor2 tells
6 his mother, DSS puts them right back in Julie Barnes'
7 house and the defendant comes back over. I mean, it's
8 almost like there isn't anybody that didn't let these
9 kids down. That has an awful lot to do with why they
10 might not have told right away. Who knows what the
11 defendant said to them when he came back into that
12 home. Minor says that the defendant said, you had
13 better not tell, or else, and Minor said, I didn't want
14 to find out what the or else was.

15 He corrected, as I said before, the defense
16 attorney and the solicitor when they said something
17 wasn't true. And he also said about his dad, I just
18 don't know how he figured that out.

19 Obviously, when Minor was up there he had
20 probably rather talk about just about anything than
21 this. And I think that was obvious by his testimony.

22 Gunnells: she wasn't asked to spend the
23 night at Mack's. I don't think she was the person that
24 Mack was targeting. He had no interest in her spending
25 the night. He only wanted the boys to spend the night.

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1 She testified that they often did not want to go.
2 Julie made them go anyway. She had things to do and
3 they were rambunctious and he was convenient.

4 Mack disciplined the kids. Mack comes into
5 these kids lives in late 2006 and he's out of their
6 lives by 2008. So he's in their lives for about a year
7 and within a year he becomes the person that's
8 administering discipline, the person that takes the
9 child for his circumcision, the person that they're
10 calling dad. I mean, within a year he has completely
11 taken over this family.

12 After DSS left, saw Julie Barnes take
13 Minor2 and put him in a room and talk to him. And you
14 know why those facts are important? When we have
15 different witnesses testifying to the same thing, it
16 goes to credibility. There's overlap here. Minor2 says
17 it happened, and saw it happen. And as I said
18 over and over again, what does she do? She calls Mack,
19 who comes right back over to the house.

20 Nathan Tobey: he's the one that had the very
21 disturbing testimony. Met Mack on Craig's List when he
22 was seventeen. And Mack knew he was seventeen. Saw
23 the kids at Julie's. But when he walks in, it's 2:00
24 in the morning. Julie Barnes is on the computer,
25 completely oblivious. They are little bitty kids

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1 running around, and Mack's the one that tells them to
2 go to bed. And I think he said they looked like little
3 puppies with their tails between their legs. Nathan
4 Tobey is shown some child pornography, as he testified.
5 He's Mack's friend. He's another person that probably
6 shouldn't have been around the kids, but just one more
7 strange person that Mack brings around the kids.
8 Again, what does he tell Nathan Tobey? I just finished
9 having sex with a cute little blond boy. Very
10 disturbing.

11 Carrie Britt: Mack told her, too, that the
12 twins were his kids. She also said Mack was the one
13 that disciplined the kids, Julie just was ditsey. She
14 saw Mack hit the kids with a book. She saw the bruises
15 on Minor 1 said they were purple. She knows that Mack
16 takes Minor for his circumcision. And she thinks he's
17 getting circumcised because he's getting infections.
18 Mack wants to be there for that. And we don't know
19 why. I don't know if the doctors would have asked Minor
20 questions or not about things. But Mack definitely
21 wanted to be there. She's Mack's friend, as well, and
22 she now lives with Julie. She still lives with Julie,
23 and yet what she said wasn't very flattering to Julie.

24 Kris Phillips: she was the roommate that lived
25 on the opposite end of the trailer, saw the kids

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1 holding the cans. She saw Minor in Mack's bed a lot,
2 which Minor says and Minor2 says, too. And she was just
3 one person that chooses not to really do much. She
4 says she called DHS because she sees Minor come up and
5 touch Mack's private parts and ask when they're going
6 to do that. But she just doesn't follow up. So that's
7 just one more person in these kids' lives that doesn't
8 make sure that someone is finding out about what's
9 going on with them.

10 Crystal Brown: she's the neighbor that lived
11 next door, saw a little blond boy, Minor2 cutting grass
12 with scissors. Saw the same boy dressed up as a girl.
13 Clearly, she said, it was not Halloween.

14 Michael Hope: he was at Mack's a lot. Knew
15 Mack looked at pornography. He saw the kids getting
16 beaten. And he's the one that identified the board and
17 actually told Mack he wasn't going to hit the kids with
18 the board while he was there. He also noticed that
19 Mack acted like a father sometimes. And that's
20 probably true. And in his own way, Minor2 probably did
21 love him, because at the time he needed a father. And
22 it was a very confusing relationship for him. He also
23 notes that Minor2 does not want to be alone with Mack.
24 Mack said Minor2 was his special boy.

25 And regardless of what we think about Michael

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1 Hope -- not the greatest guy to have around your
2 kids -- again, who brought him around the kids? He
3 did. Who took the pictures of him with Minor2
4 He did. Whose computer were the pictures on? Mack
5 McCauley's.

6 Minor Thacker saw his child in bed with Mack.
7 Mack. And as I said before, he knows his child, and he
8 saw that look on his face. He just knew something
9 wasn't right. And thank goodness for Minor Thacker.
10 Because I keep saying there was no one in these kids'
11 lives to protect them. Finally, an appropriate person
12 walks in and sees what ain't right and does exactly
13 what he needed to do: immediately goes to the
14 sheriff's department, immediately takes his child to
15 MUSC. And then DSS tells him he's got to bring his kid
16 back over to Julie's, and he does it. But that was
17 probably not the best thing for him to do, for DSS to
18 tell him to do.

19 He also knows that Minor showered, had something
20 to drink, and brushed his teeth before he had his exam.
21 That's important because you heard the doctors talk
22 about how hard it is to get forensic evidence. And
23 they're certainly not going to get any forensic
24 evidence after the child has showered, changed clothes,
25 brushed his teeth and had something to drink. And you

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1 might have thought it was tedious and boring just to
2 have the people from SLED testify about that, but I
3 just wanted to make sure you have all the evidence. I
4 want to make sure that you, as the jury, everything
5 that law enforcement tried to do to collect evidence in
6 this case. We're not trying to keep any evidence from
7 you. We want you to consider all of it. And I think
8 that the SLED person did a good job of explaining why
9 sometimes we don't get forensic evidence.

10 Lucy Twomey testified. And she was very
11 emotional about what she heard from Minor2 She
12 was asked to keep the boys. She doesn't volunteer.
13 She just happens to know Julie because she's got her
14 seventy-five-year-old father-in-law living in a room in
15 the back, taking his money and neglecting him. But
16 she's called and she rises to the occasion and takes
17 the kids. She tells you that the children are sullen
18 at first, that Minor2 is very quiet, that they hoard
19 food because they don't know -- they're not used to
20 knowing if they're going to get food. She also talks
21 about the kind of neglect that they lived with.

22 Minor1 medicines weren't even up to date. They were
23 all expired.

24 Minor2 finally opens up to her. And he tells you
25 because she's kind and caring. Those are very

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1 insightful things for a child that age to say. She
2 probably was the first kind and caring person he came
3 into contact with. He calls her his guardian angel,
4 and she probably was about the closest thing to that
5 that that poor child had experienced yet.

6 Kathleen Fabrizio: you heard Ms. Herring-Lash
7 ask her some questions about how they do the exams and
8 what they expect to find. And she was very frank. She
9 said even though he did have some inflammation around
10 his anus, that that's normal. She talked also about
11 how a normal exam certainly doesn't rule out sexual
12 abuse, especially when it's oral sex. Obviously,
13 you're not going to find anything in the genital-anal
14 area when it's oral sex.

15 Another important thing to note from Kathleen
16 Fabrizio's testimony is that we keep saying that Minor
17 didn't tell, he didn't tell. Well, he did tell. He
18 told his dad on the 30th. And the same day, like at
19 3:00 in the morning, so I guess it might have been the
20 1st, he goes to get his medical exam and he tells --
21 he's half asleep, but he does tell the nurse. She
22 asked him some questions and he says that somebody
23 touched him on his pee-pee. So he does tell right
24 away. But then what happened? He goes back to Julie
25 Barnes' house, probably sees the defendant, and then

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1 that changes when he goes to his forensic interview on
2 December 8.

3 Catherine Leisy: she was the lady from the
4 South Carolina Law Enforcement Division that talked
5 about DNA and why they didn't look at fingernail
6 scrapings and that kind of thing.

7 Detective Rene Ramsey: again she confirms that
8 those pictures came from Mack's computer, that there
9 was pornography on Mack's computer. And when she gets
10 the hard drive from Julie Barnes, it's not even in the
11 computer. It's in a drawer in the jewelry box. Just
12 the hard drive. It's not in a working computer. And
13 Julie says it's Mack's.

14 And, actually, Julie was pretty protective of
15 Mack, because you heard the neighbor testify that Julie
16 tells her that she's helping sell some of Mack's stuff
17 because he's accused of something he didn't do. So I
18 don't think that Julie would purposely incriminate
19 Mack. She just probably wasn't smart enough to realize
20 that there was stuff on the hard drive.

21 Dr. Ann Abel talks about the fact that even
22 though they will do an exam if the defendant has had
23 contact with the child within seventy-two hours, it's
24 access to the child, not necessarily when he was
25 abused. Because Mack McCauley was found in his bed

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1 within seventy-two hours, that's why they did the exam.
2 But Minor told you nothing happened that day anyway, so
3 we don't really know the last time he touched him
4 inappropriately.

5 She talked a little bit about how the anal area
6 heals fast and talked about research and documented
7 cases. And you need to think about that as you
8 evaluate Minor2 exam. Minor2 gets an exam on December
9 8th. And when she talks about the research with
10 documented cases, what's she talking about is times
11 when it's been confirmed that someone has had anal sex
12 and then they examine them a couple of days later and
13 there is no evidence because that area heals so
14 quickly. And although it's not so much fun to talk
15 about, she also talked about the fact that the anus is
16 designed to expand for bowel movements and things like
17 that. And I think you can probably use your common
18 experience to think about that testimony.

19 She talked about how bruises heal. And Mr.
20 Schwacke went into all this business about what color
21 they were when they heal and all that kind of thing.
22 We all know that if you get spanked and you get
23 bruises, eventually they're going to go away. So if
24 you see the person after they've gone away, obviously
25 you're not going to have -- you know, not going to be

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1 able to see evidence of that beating.

2 Fred Thornton confirms that that's what he does
3 for the sheriff's department. This man is on the sex
4 offender registry. And that's one of the elements that
5 we have to prove, and that's why we had to put him up
6 there to say that.

7 Julie Barnes comes up and pleads the fifth.
8 Even in trial, when she could maybe help her kids,
9 she's not going to say anything because her attorney
10 has told her not to say anything. Not a big surprise
11 there.

12 Dr. Allison Foster: she was the last witness
13 you heard from. And she talked about a flat affect.
14 And, again, think about Minor2 and what she said
15 about the way that sexual abuse victims tell what
16 happened to them, that you might expect them to be
17 emotional and crying. And she said that's just not
18 what happened. And I suspect that that's probably a
19 self-preservation thing. You know, that's the only way
20 to get through it is just to kind of be robotic.
21 Eventually, he may deal with that. But she said that
22 that was a normal way for victims to react.

23 She talked about testing the waters. And I
24 think this is a classic case of that. Minor2
25 tests the waters by telling his mother. He watches

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1 what happens, and it ain't good. She starts crying and
2 yelling and then calls the defendant and invites him
3 back over. She talked about the lack of support from a
4 mother. We clearly have that here.

5 Consequences: I think it's important to note
6 that this was an accidental disclosure. Minor 2
7 did not decide to come forward and tell anyone. He was
8 kind of ripped into it because Minor 3 dad discovered
9 him in bed with Mr. McCauley. So all of a sudden all
10 of these people are questioning him. And I don't think
11 it's difficult to understand why he really didn't get a
12 full disclosure until he was with Lucy Twomey.

13 She talked about grooming. And here we have
14 both kids of grooming. We have the physical abuse so
15 that they're scared of him, but we also have some
16 affection and love and manipulation of children that
17 are in desperate need of a positive male figure. And
18 that might be the most egregious thing, because I'm
19 sure that that was extremely confusing for that child.

20 We also -- you're going to hear the judge talk
21 about the statutes. And, again, the actor engages --
22 and the actor would be him -- in a sexual battery with
23 a victim who is less than sixteen years of age. The
24 actor, Mr. McCauley, has previously been convicted of
25 an offense, listed in the sex offender registry. And

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1 a sexual battery has to take place, and a sexual batter
2 is defined -- and the judge will give you this -- as
3 fellatio, anal intercourse, and it'll go through all
4 the different kinds of definitions. But oral sex and
5 anal penetration is definitely -- both of those are
6 sexual batteries.

7 He's also charged with lewd act upon a minor.
8 We have to prove that the defendant is over the age of
9 fourteen years. And obviously he is, but Detective
10 Ramsey gave his birth date. The defendant willfully
11 and lewdly committed or attempted any lewd or
12 lascivious act upon the child with his body or the
13 child's body. And the child has to be under the age of
14 sixteen. All these kids are still under the age of
15 sixteen. It's with the intent of arousing, appealing
16 to, or gratifying the passions or sexual desires of the
17 person or the child.

18 Now, these kids testified about multiple times
19 when fellatio was performed on them and he -- that they
20 had to do it on him. And Minor2 testified about
21 numerous times of anal penetration. We only have to
22 prove one each for each of the indictments. And you'll
23 see that when you get the charge. So any of the other
24 ones could be a lewd act: any time he touched their
25 body for sexual gratification or had them touch his

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1 body for sexual gratification.

2 Unlawful conduct toward a child. And this is an
3 important charge. This is the only charge that has to
4 do with Minor 1 and it has to do with the beating. It
5 is unlawful for a person who has charge of a child --
6 clearly this man had charge of these children -- to
7 place the child at unreasonable risk or harm affecting
8 the child's physical or mental health or safety, and/or
9 do or cause to be done any bodily harm to the child so
10 that the health of the child is in danger or likely to
11 be in danger. I think that what he did to these
12 children with the beating, the cans, the cutting the
13 grass, all of the physical abuse and mental abuse,
14 clearly fits within this statute.

15 You're going to get a definition for sexual
16 battery. And I won't belabor the point because you'll
17 have it back there. But we just discussed that.

18 It is time. It is time. DSS let these kids
19 down. Their mother let them down. The parade of weird
20 people that came though this house let them down. A
21 neighbor let them down. It is time for accountability,
22 and it is time for justice. And I'm asking you to have
23 the courage of your convictions, for the sake of these
24 victims. It is time to do something about this. And
25 I'm asking you to find him guilty of each and every one

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1 of these charges.

2 THE COURT: Mr. Schwacke.

3 MR. SCHWACKE: Thank you.

4 - - - - -

5 CLOSING ARGUMENT

6 MR. SCHWACKE: This has been a difficult case,
7 I'm sure for all of you, and I can't stand up here and
8 not recognize that fact with you. These are horrible
9 charges. These are horrible accusations. The deal
10 here is is the proof there.

11 We've asked you to do one thing during the
12 course of this trial, and that was to pay attention,
13 while keeping your mind open, until you can make a
14 determination based upon the lack of reasonable doubt.
15 We asked you to sit and not form judgment, and you did
16 that, and we appreciate it.

17 The State just characterized some of their
18 witnesses as weird, circusy. And I can't stand here
19 and not tell you how impressed I was with the
20 children's testimony. I said that to Mr. Thacker when
21 he was on the stand, and I stand by that now. I
22 haven't changed my position on that. And I say it to
23 them now. They're in here.

24 But it's remarkable to me that if you take away
25 perhaps Mr. Thacker, the father of Minor3 you take away

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1 the doctors and you take away the experts and you take
2 away law enforcement, those two kids were the most
3 adult-acting witnesses you had in here. And it wasn't
4 my decision to call those witnesses. It was the State,
5 and the State sought to bolster their case with their
6 testimony. And you would think, having listened to it,
7 that the one thing the State would want to -- from
8 those people is not only distance themselves from them,
9 but seek to prosecute some of those same people,
10 because essentially what they told you from the stand
11 is, yeah, we knew it was going on and we did nothing to
12 help stop it. One of those is still sitting in the
13 courtroom, Miss Come In Here And Plead The Fifth. Yet
14 the State still wants you to rely upon her, who did not
15 testify, who wasn't subject to cross-examination. And
16 you don't get to determine whether she's truthful or
17 not. Try to prove an element of the offense dealing
18 with the photographs in the hard drive, which was found
19 in her house four months after my client was already in
20 jail.

21 And with the exception of one picture -- that
22 was testified to by Mr. Michael Hope, Auntie Michael --
23 all those pictures were taken in Julie Barnes' house.
24 And there's really nothing to tell in that picture what
25 house that other one was taken in.

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1 You have Carrie Britt who came in here. She
2 lives with Julie Barnes now. Obviously, she's going to
3 be looking out for her. You had Minor² Phillips, who
4 was being evicted from the trailer, has an ax to grind
5 against my client, Mr. McCauley, and has prior
6 convictions for drugs and forgeries. You had Nathan
7 Tobey, who I'm not sure what he was here to testify to.
8 And you heard him change his story, flip-flopping back
9 and forth, because they want to bolster their case.
10 Well, that must mean they fear that what their evidence
11 is is not enough, because it's their decision to put
12 those people up.

13 I told you before that the period of time that
14 this offense is alleged to have happened is over a
15 million minutes long. And I told you before that
16 there's no way that a person can account for their
17 whereabouts, or who they were with, or who they weren't
18 with, or who could be an alibi for them during that
19 time frame. No human person could do that. I told you
20 before that Mr. McCauley, by entering his plea of not
21 guilty, has told you, I am not guilty and I need you to
22 know -- that there's no way for me to prove the
23 negative.

24 So, ladies and gentlemen, your determination is
25 going to be made as you go back and deliberate based on

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1 the evidence as you heard it from that stand. And what
2 I'm going to ask you to consider is is there -- is
3 because of the fact that there's no physical evidence,
4 because there's been prior denials by these children,
5 that perhaps some of these adults, including Ms. Barnes
6 herself back out there, having manufactured, motivated
7 in some way. And you could tell by the orchestration
8 by Mr. Hope, and Ms. Britt, and Ms. Phillips, and Mr.
9 Tobey, that they're here trying to only do one thing as
10 a gang, as a circus gang, is to make Mr. McCauley look
11 bad. I believe you can discount all of their
12 testimony.

13 And, ladies and gentlemen, what we're about here
14 is is the evidence sufficient beyond a reasonable
15 doubt. All I can do is ask you to consider it hard,
16 consider it long, be honest to your own feelings about
17 that, to be honest to each other, give due deliberation
18 to the case that you've heard, and be fair in your
19 deliberations with Mr. McCauley. Thank you.

20 THE COURT: Ladies and gentlemen, you have now
21 heard the closing arguments on behalf of counsel. Why
22 don't we take this time just -- you may go ahead and
23 stretch in your chairs. I'm about to give you the
24 Court's charge on the law. If anybody wishes to stand
25 up and just stretch, now is the time to do so.

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1 Ladies and gentlemen, oftentimes you'll see a
2 lot of the members of the audience leave because what
3 I'm about to tell you is fairly technical and most of
4 the attorneys that have been in and out of here
5 observing have heard my charge on the law one way or
6 the other, and so that is why they go ahead and choose
7 to leave at this time.

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CHARGE OF THE COURT

1
2 THE COURT: Ladies and gentlemen, I remind you
3 that during this trial you and I have had certain
4 duties to perform. As the trial judge, it is my
5 responsibility to preside over the trial of this case
6 and I also have the duty to rule on the admissibility
7 of the evidence offered during this trial.

8 You are to consider only the competent evidence
9 before you. If there was any testimony ordered
10 stricken from the record in this case, you must
11 disregard that testimony. You are to consider only the
12 testimony from the witness stand, any exhibits which
13 have been made part of the record of this case, as well
14 as any stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge, I am
17 the sole judge of the law in this case. It is your
18 duty as jurors to accept the law and apply the law as I
19 state it to you now. If you already have any idea as
20 to what the law is or what the law ought to be, and it
21 does not agree with what I now tell you, you must
22 abandon your own idea because you were sworn to accept
23 the law and apply the law exactly as I state it to you
24 now.

25 In every case tried in this court before a jury,

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1 the jury becomes the sole and exclusive judge of the
2 facts in this case. A trial judge cannot make any
3 comment on, or any statement, to a trial jury about the
4 facts in this case. Since you, the jury, are the sole
5 judges of the facts in this case, you are not to infer
6 from anything that I have said or done throughout the
7 progress of this trial, or anything that I say now,
8 that I have any opinion about the facts in this case.
9 The law simply does not allow me to have an opinion
10 about the facts in this case. This is a matter solely
11 for you, the jury, to determine.

12 As jurors, it is your duty to determine the
13 effect, value, and weight and the truth of the evidence
14 presented during this trial.

15 The indictments in this case allege several
16 different offenses against the defendant. The charges
17 are -- and, ladies and gentlemen, in numerical order by
18 the indictment number -- 2009-GS-08-2123, criminal
19 sexual conduct with a minor first degree; indictment
20 2009-GS-08-2124, criminal sexual conduct with a minor
21 first degree; indictment 2009-GS-08-2125, committing or
22 attempting a lewd act upon a child; 2009-GS-08-2126,
23 unlawful conduct towards a child; indictment number
24 2009-GS-08-2129, unlawful conduct towards a child;
25 indictment number 2009-GS-08-2131, criminal sexual

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1 conduct with a minor first degree; indictment 2009-GS-
2 2132, committing or attempting a lewd act upon a child;
3 and indictment 2009-GS-08-2133, unlawful conduct
4 towards a child.

5 Ladies and gentlemen, each indictment charges a
6 separate and distinct offense. You must decide each
7 indictment separately on the evidence and the law
8 applicable to it, uninfluenced by your decision as to
9 any other indictment. The defendant may be convicted
10 or acquitted on any or all of the offenses charged.
11 You will be asked to write a separate verdict of guilty
12 or not guilty for each indictment.

13 The indictments charge the defendant with three
14 counts of criminal sexual conduct with a minor first
15 degree, two counts of committing or attempting lewd act
16 upon a child, and three counts of unlawful conduct
17 towards a child. I remind you the fact that the
18 defendant was arrested, charged and indicted in this
19 case is not evidence in this case and cannot be
20 considered by you as evidence of guilt in this case,
21 nor does it create any presumption or inference of
22 guilt. These documents are simply the formal written
23 instruments which contain the charges made against the
24 defendant. They are the formal documents by which this
25 case is brought into this court.

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1 The defendant has pled not guilty to each
2 indictment and that plea puts the burden on the State
3 to prove the defendant guilty. A person charged with
4 committing a criminal offense in South Carolina is
5 never required to prove himself innocent.

6 I charge you it is an important rule of the law
7 that the defendant in a criminal trial, no matter what
8 the seriousness of the charge may be, will always be
9 presumed to be innocent of the crime charged for which
10 the indictment was issued, unless guilt has ben proven
11 by evidence satisfying you of that guilt beyond a
12 reasonable doubt. This presumption of innocence does
13 not end when you begin your deliberations but it
14 accompanies the defendant throughout the trial until
15 you reach a verdict of guilt based on evidence
16 satisfying you of that guilt beyond a reasonable doubt.
17 The presumption of innocence is like a robe of
18 righteousness placed around the shoulders of the
19 defendant, which remains with the defendant until it
20 has been stripped from the defendant by evidence
21 satisfying you of the defendant's guilt beyond a
22 reasonable doubt. The presumption of innocence is not
23 mere legal theory, it is not just a legal phrase. It
24 is a substantial right to which every defendant is
25 entitled unless you, the jury, are satisfied from the

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1 evidence of the defendant's guilt beyond a reasonable
2 doubt. The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. Some of
4 you may have served as jurors before in civil cases
5 where you were told that it was only necessary to prove
6 that a fact is more likely true than not true, such as
7 by greater weight or preponderance of the evidence. In
8 criminal cases, the State's proof must be more powerful
9 than that. It must be beyond a reasonable doubt.
10 Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the defendant's guilt. There
12 are very few things in this world that we know with
13 absolutely certainty and in criminal cases the law does
14 not require proof that overcomes every possible doubt.
15 If based upon your consideration of the evidence you
16 are firmly convinced that the defendant is guilty of
17 the crime charged, you must find the defendant guilty.
18 If, on the other hand, you think there is a real
19 possibility that the defendant is not guilty, you must
20 give the defendant the benefit of the doubt and find
21 him not guilty.

22 There are two types of evidence which are
23 generally presented during a trial: direct evidence
24 and circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have actual

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1 knowledge of a fact, such as an eyewitness. It is
2 evidence which immediately establishes the main fact to
3 be proved. Circumstantial evidence is proof of a chain
4 of facts and circumstances indicating the existence of
5 a fact. It is evidence which immediately establishes
6 collateral facts from which the main fact may be
7 inferred. Circumstantial evidence is based on
8 inference and not on personal observation or knowledge.
9 The law makes absolutely no distinction between the
10 weight or value to be given either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than that
13 of direct evidence. You should weigh all of the
14 evidence in this case. After weighing all of the
15 evidence, if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 Necessarily, you must determine the credibility
19 of witnesses who have testified in this case.
20 Credibility simply means believability. It becomes
21 your duty as jurors to analyze and to evaluate the
22 evidence and determine which evidence convinces you of
23 its truth. In determining the believability of
24 witnesses who have testified in this case, you may
25 believe one witness over several witnesses or several

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1 witnesses over one witness. You may believe a part of
2 the testimony of a witness and reject the remaining
3 part of the testimony of that same witness. You may
4 believe the testimony of a witness in its entirety, or
5 reject the testimony of a witness in its entirety. You
6 may consider whether the witness has exhibited to you
7 any interest, bias, prejudice, or other motive in this
8 case. You may also consider the manner and the
9 appearance of the witness while on the witness stand.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify to opinions or to conclusions. An
12 exception to this rule exists for witnesses we call
13 expert witnesses, a witness who by education or
14 experience has become expert in some art, science,
15 profession or calling may state an opinion as to a
16 relevant and material matter in which the witness
17 claims to be an expert, and may also state the reasons
18 for that opinion. You should consider any expert
19 opinion received in evidence in this case and like any
20 other evidence, give it the weight you think it
21 deserves. If you decide that the opinion of an expert
22 witness is not based on sufficient education and
23 experience, or if you conclude that the reasons given
24 in support of the opinion are not sound, or that the
25 opinion is outweighed by other evidence, you may

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1 disregard the opinion entirely. An expert witness'
2 testimony is to be given no greater weight than that of
3 other witnesses simply because the witness is an
4 expert. Further, you are not required to accept an
5 expert's opinion, even though it is not contradicted.

6 I instruct and emphasis the fact that the
7 defendant did not testify is not a factor to be
8 considered by you in any way in your deliberation and
9 in your consideration of the question of the guilt or
10 the innocence of the defendant. It must not be
11 considered by you in any manner whatsoever. A
12 defendant has the constitutional right to remain silent
13 and the assertion of this right must not be considered
14 by you in your deliberations. I repeat, under your
15 oath, you are to draw no conclusion whatsoever from the
16 fact that the defendant in this case did not testify.
17 The fact that this defendant did not testify should not
18 even be discussed in the jury room. The burden of
19 proof, as I have stated to you, is on the State. The
20 defendant is not required to prove his innocence. The
21 burden of proof remains on the State to prove guilt
22 beyond a reasonable doubt.

23 In order to establish criminal liability,
24 criminal intent is required. For example, the mental
25 state required to be proven by the State for a

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1 particular crime might be purpose, intent, knowledge,
2 recklessness, or criminal negligence. Criminal intent
3 must be proven by the State beyond a reasonable doubt.
4 Criminal intent is always a matter that must be
5 determined by the jury from the circumstances
6 surrounding the situation. There is no way to prove
7 intent to a mathematical certainty. There is no way
8 that medical science can dissect a person's brain and
9 determine what the person had in mind, so the law says
10 that criminal intent may be inferred from the
11 circumstances shown to have existed. This is how you
12 make a determination of whether or not the element
13 requiring intent was present. It is not necessary to
14 establish intent by direct and positive evidence but
15 intent may be established by inference in the same way
16 as any other fact, by taking into consideration the
17 acts of the parties, and all the facts and
18 circumstances of the case. Criminal intent is a mental
19 state, a conscious wrongdoing. It is up to you to
20 determine what the defendant intended to do based upon
21 the circumstances shown to have existed. Criminal
22 intent can arise from an action or a failure to act.
23 It may arise from negligence, recklessness, or an
24 indifference to duty, or to consequences that is
25 considered by the law to be the equivalent of criminal

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1 intent.

2 Ladies and gentlemen, the defendant is charged
3 with three counts of criminal sexual conduct with a
4 minor first degree. I remind you that each indictment
5 must stand on its own. The State must first prove
6 beyond a reasonable doubt that the defendant engaged in
7 a sexual battery with the victim. A sexual battery is
8 sexual intercourse, cunnilingus, fellatio, anal
9 intercourse, or any intrusion, however slight, of any
10 part of the person's body or of any object into the
11 genital or anal openings of another person's body
12 except when the intrusion is accomplished for medically
13 recognized treatment or diagnostic purposes.

14 The State must then prove beyond a reasonable
15 doubt that the victim was less than sixteen years old
16 at the time of the sexual battery. Consent,
17 willingness, indifference, or ignorance, on the part of
18 the minor, if any, as to what was taking place, does
19 not in any way affect the charge of criminal sexual
20 conduct with a minor because a person under the age of
21 fourteen cannot legally consent to sexual intercourse.

22 Finally, the State must prove beyond a
23 reasonable doubt that the defendant was ordered to be
24 or was currently included in the sex offender registry
25 at the time of the sexual battery. You have heard

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1 evidence that the defendant was placed on the sex
2 offender registry. This evidence may be considered by
3 you, if you conclude it is true, only in deciding
4 whether the State has met this element and for no other
5 purpose. You must not consider this evidence of the
6 defendant's guilt of the charges we are trying today.

7 Ladies and gentlemen, the defendant is also
8 charged with two counts of committing a lewd act upon a
9 minor. Ladies and gentlemen, just as I indicated
10 before, each indictment must be considered on its own.
11 A minor, for the purposes of this statute, is a person
12 under the age of sixteen. The State must first prove
13 beyond a reasonable doubt that the defendant was over
14 the age of fourteen. Next, the State must prove that
15 the defendant willfully or lewdly committed, or
16 attempted a lewd act or a lascivious act on, or with
17 the body or its parts, of a child under the age of
18 sixteen years with the intent to arouse, appeal to, or
19 gratify the lust, passions, or sexual desires of the
20 defendant or of the child. Willfully means voluntarily
21 and intentionally, with the specific intent to do
22 something the law forbids. Lewd means obscene,
23 lustful, indecent, or lecherous. Lascivious means
24 tending to incite lust, lewd, indecent, obscene, or
25 tending to deprave the morals in respect to sexual

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1 relations.

2 Ladies and gentlemen, when two or more acts of
3 criminal sexual conduct occur at or about the same
4 time, each act is a separate crime rather than one
5 continuous crime.

6 Ladies and gentlemen, the defendant is charged
7 with three counts of unlawful conduct towards a child.
8 The State must first prove beyond a reasonable doubt
9 that the defendant had charge or custody of the child,
10 was the parent or guardian of the child, or was
11 responsible for the care and support of the child. A
12 person responsible for a child's welfare includes the
13 child's parent, guardian, or foster parent, an
14 operator, employee, or care giver of a public or
15 private residential home, institution, agency, or child
16 daycare center facility, or an adult who has assumed
17 the role or responsibility of a parent or guardian for
18 the child but does not necessarily have legal custody
19 of the child. This does not include a person whose
20 only role is as a care giver and whose contact is only
21 incidental with a child, such as with a babysitter.
22 The State must also prove beyond a reasonable doubt
23 that the defendant placed the child at unreasonable
24 risk of harm, affecting the child's life, physical or
25 mental health or safety, or unlawfully or maliciously

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1 did or caused to be done any bodily harm to the child
2 so that the life or health of the child is endangered
3 or likely to be endangered. For the purpose of this
4 charge only, child means a person under the age of
5 eighteen.

6 Ladies and gentlemen, as I indicated to you, you
7 will be asked to write a separate verdict form for each
8 of the charges that I have gone over with you,
9 independent of the other, uninfluenced by your decision
10 as to the others.

11 Ladies and gentlemen, in numeric order I will
12 read the verdict forms concurrent with the indictments.
13 The indictments do not go back to you for the -- in
14 your jury room for the purposes of your deliberations.

15 Ladies and gentlemen, in no particular order,
16 simply one must go on the paper first: in the Court of
17 General Sessions, docket 2009-GS-08-2123, we, the jury,
18 find the defendant not guilty, or, we, the jury, find
19 the defendant guilty, of criminal sexual conduct with a
20 minor in the first degree. In the caption under the
21 indictment number I have included the charge, as well
22 as to the sexual battery the State alleged in the
23 indictment and the victim that the State has alleged in
24 the indictment.

25 Ladies and gentlemen, in the docket -- in docket

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1 number 2009-GS-08-2124, we, the jury, find the
2 defendant not guilty, or, we, the jury, find the
3 defendant guilty of criminal sexual conduct with a
4 minor first degree. Again, I have listed the sexual
5 battery included in the indictment by the State, as
6 well as the victim listed. This indictment is for
7 fellatio with Minor2 Watts. That's indictment
8 2124.

9 Ladies and gentlemen, indictment number 2009-GS-
10 08-2125, we, the jury, find the defendant not guilty,
11 or, we, the jury, find the defendant guilty, of
12 committing or attempting a lewd act upon a child. This
13 is -- corresponds to indictment listing Minor2
14 Watts as the victim.

15 Ladies and gentlemen, indictment 2009-GS-08-
16 2126, we, the jury, find the defendant not guilty, or,
17 we, the jury, find the defendant guilty, of unlawful
18 conduct towards a child, listing Minor2 Watts as
19 the victim.

20 Charge number -- excuse me -- 2009-GS-08-2129,
21 we, the jury, find the defendant not guilty, or, we,
22 the jury, find the defendant guilty, of unlawful
23 conduct towards a child, listing Carl Minor1 Watts as
24 the victim.

25 In the indictment 2009-GS-08-2131, we, the jury,

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1 find the defendant not guilty, or, we, the jury, find
2 the defendant guilty, of criminal sexual conduct with a
3 minor first degree, listing the sexual battery listed
4 in the indictment, fellatio with the victim Charles
5 Minor Thacker.

6 Indictment 2009-GS-08-2132, we, the jury, find
7 the defendant not guilty, or, we, the jury, find the
8 defendant guilty, of committing or attempting a lewd
9 act upon a child, again, listing the victim, Charles
10 Minor Thacker, according to the indictment as written by
11 the State.

12 Indictment 2009-GS-08-2133, we, the jury, find
13 the defendant not guilty, or, we, the jury, find the
14 defendant guilty, of unlawful conduct towards a child,
15 listing victim Charles Minor Thacker.

16 Ladies and gentlemen, each decision, each
17 verdict form, must be signed by your foreperson
18 indicating it is the unanimous decision of the jury,
19 and you will sign and date each verdict form. And,
20 again, remember it must all be a unanimous decision and
21 each indictment must be considered by you independently
22 without concern or consideration of the previous
23 verdict form that you have filled out.

24 Ladies and gentlemen, this will be the last
25 time that I say this to you. Do not begin your

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1 deliberations. Do not discuss this case amongst
2 yourselves. We'll be gathering the verdict forms and
3 the evidence that goes back to you and once the bailiff
4 has gathered those items, the bailiff will indicate to
5 you that you may begin your deliberations, and at that
6 time you may begin your deliberations.

7 To my two alternates, you have completed your
8 service to this case at this time. I ask that you each
9 remain with us and they will put you -- the bailiffs
10 will put you in a separate room. And, again, do not
11 discuss this case amongst yourselves. Do not begin
12 your deliberations. It may be that I need to make sure
13 that all twelve have begun their deliberations before I
14 may release you from your service to this case.

15 Ladies and gentlemen, you are excused.

16 Please rise for the jury.

17 [Whereupon, the jury exits the courtroom at
18 4:14 p.m.]

19 THE COURT: Thank you. Please be seated.

20 Any objection to the charge as read? From the
21 State?

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

23 THE COURT: Any new objection from the
24 defendant?

25 MR. SCHWACKE: No, Your Honor.

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1 THE COURT: All right. There is a recent case
2 that actually just came out today, Mr. Schwacke, that
3 says if you object at the charge conference, you don't
4 then have to object after the Court has read their
5 charge. So -- but I will give you this opportunity
6 just so the record is clear.

7 MR. SCHWACKE: I don't.

8 THE COURT: All right. Thank you.

9 I have read the verdict forms out, but if you
10 would just review -- one attorney come and review. Mr.
11 Schwacke?

12 [Whereupon, counsel review documents]

13 THE COURT: Ms. Williams, if you'll just verify:
14 I show that nothing was admitted by the defendant. I
15 have --

16 MS. WILLIAMS: We have 1, 9, 11, 12, 13, 15, 16,
17 18, 20, 21, 22. And then 23 was the last one by
18 agreement.

19 THE COURT: That is what I show. Is that what
20 you verified, Madam Court Reporter?

21 THE COURT REPORTER: Yes, ma'am.

22 THE COURT: All right. Those will go back.

23 [Off the record momentarily]

24 THE COURT: Any objection to the verdict forms?

25 MS. WILLIAMS: No, Your Honor.

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1 THE COURT: Mr. Schwacke?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: All right. Any objection to the
4 verdict forms and the evidence going back?

5 MS. WILLIAMS: None from the State, Your Honor.

6 MR. SCHWACKE: No, Your Honor.

7 [Whereupon, the evidence goes to the jury at
8 4:19 p.m.]

9 THE COURT: All right. The Court has possession
10 of the eight indictments, all right, so I know that
11 they have not gone back, because we are all in
12 agreement that the indictments should not go back.

13 Counsel, let me take this opportunity -- this
14 has been a very trying, pardon the pun, case but I want
15 to commend both the State and the defense for your
16 professionalism and your courteousness to the Court and
17 to all of the parties that have been involved. So let
18 me -- before I take my break awaiting the verdict, I
19 just wanted to thank you, thank all of you.

20 And we will be at recess. We will be in recess
21 awaiting a verdict. Thank you.

22 [Whereupon, a recess is taken from 4:20 p.m. to
23 5:01 p.m.]

24 THE COURT: Be seated.

25 - - -

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VERDICT

1
2 THE COURT: I understand we have a verdict.
3 Anything from the State?

4 MS. WILLIAMS: Nothing from the State, Your
5 Honor.

6 THE COURT: Anything from the defendant?

7 MR. SCHWACKE: No, Your Honor.

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

9 [Off the record momentarily]

10 THE COURT: Please rise for the jury.

11 [Whereupon, the jury enters the courtroom at
12 5:02 p.m.]

13 [Whereupon, the evidence goes to the jury at
14 4:19 p.m.]

15 THE COURT: Thank you. Please be seated.

16 Madam Foreperson, I understand that the jury has
17 reached a verdict. If you'll hand the verdict forms to
18 the bailiff.

19 [Whereupon, the foreperson proffers documents to
20 the bailiff. The bailiff proffers documents to the
21 Court]

22 [Whereupon, the Court reviews documents]

23 THE COURT: Will the defendant rise.

24 [Whereupon, Mr. McCauley complies]

25 THE CLERK OF COURT: State of South Carolina

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1 versus -- County of Berkeley, versus Ronald McCauley,
2 indictment number 2009-GS-08-2123, we, the jury, find
3 the defendant guilty of criminal sexual conduct with a
4 minor first degree. Signed by the foreperson.

5 County of Berkeley, State of South Carolina
6 versus Ronald McCauley, indictment 2009-GS-08-2124, we,
7 the jury, find the defendant guilty of criminal sexual
8 conduct with a minor first degree. Signed by
9 foreperson.

10 County of Berkeley, State of South Carolina
11 versus Ronald McCauley, indictment 2009-GS-08-2125, we,
12 the jury, find the defendant guilty of committing or
13 attempting a lewd act upon a child. Signed by
14 foreperson.

15 County of Berkeley, State of South Carolina
16 versus Ronald McCauley, indictment number 2009-GS-08-
17 2126, we, the jury, find the defendant guilty of
18 unlawful conduct towards a child. Signed by
19 foreperson.

20 County of Berkeley, State of South Carolina
21 versus Ronald McCauley, indictment number 2009-GS-08-
22 2129, we, the jury, find the defendant guilty of
23 unlawful conduct towards a child. Signed by
24 foreperson.

25 County of Berkeley, State of South Carolina

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1 versus Ronald McCauley, indictment number 2009-GS-08-
2 2131, we, the jury, find the defendant guilty of
3 criminal sexual conduct with a minor first degree,
4 signed by foreperson.

5 State of -- County of Berkeley, State of South
6 Carolina versus Ronald McCauley, indictment number
7 2009-GS-08-2132, we, the jury, find the defendant
8 guilty of committing or attempting a lewd act upon a
9 child. Signed by foreperson.

10 County of Berkeley, State of South Carolina
11 versus Ronald McCauley, indictment number 2009-GS-08-
12 2133, we, the jury, find the defendant guilty of
13 unlawful conduct towards a child.

14 Madam Forelady and ladies and gentlemen of the
15 jury, if this be your verdict, please signify by
16 raising your right hand at this time.

17 [Whereupon, jurors indicate]

18 THE CLERK OF COURT: Thank you.

19 The record will reflect that all jurors raised
20 their hand.

21 Anything further required of the jury? Mr.
22 Schwacke?

23 MR. SCHWACKE: Nothing of the jury, Your Honor.

24 THE COURT: All right. Anything further
25 required of the jury?

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1 MS. WILLIAMS: No, Your Honor.

2 THE COURT: You may be seated.

3 Ladies and gentlemen, this concludes your
4 service to this case. It also concludes your service
5 for the week. You are excused.

6 Ladies and gentlemen, you may now discuss this
7 case amongst yourselves or with friends or family
8 members, but you also have the right not to discuss
9 this case with anyone.

10 Ladies and gentlemen, if you will please be
11 excused to your jury room. I will be in there in just
12 a few moments to personally thank you for your service
13 to Berkeley County.

14 Please rise for the jury.

15 [Whereupon, the jury exits the courtroom at
16 5:06 p.m.]

17 THE COURT: Thank you. Please be seated.

18 Anything further from the State before
19 sentencing?

20 MS. WILLIAMS: No, Your Honor. We'll just go
21 grab the sentencing sheets. And we do have the life
22 without parole notice and a certified copy of the
23 convictions for the Court.

24 THE COURT: All right. Mr. Schwacke?

25 MR. SCHWACKE: Your Honor, I just would renew

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1 all motions previously made, including that for a new
2 trial on grounds of the failure of the Court to grant a
3 bifurcation of the trial or to sever the charges.

4 Also, a motion for a new trial based upon the
5 Court allowing prior convictions to go to the jury.
6 Your Honor, I believe that that was unduly prejudicial
7 and inflammatory and allowed the jury to make a verdict
8 not based upon the evidence.

9 THE COURT: All right. And to that you're
10 referring, Mr. Schwacke, to his placement on the sex
11 offender registry?

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

13 THE COURT: All right. Thank you.

14 MR. SCHWACKE: That's it, Your Honor.

15 THE COURT: All right. And, Ms. Herring-Lash,
16 any further response regarding the request at this time
17 for a new trial by the defendant?

18 MS. HERRING-LASH: Just, Your Honor, that the
19 statute in this case required that because it was an
20 element of this offense and that it -- actually, the
21 convictions did not go, but just the fact that he was
22 on the sex offender registry.

23 THE COURT: Anything further, Mr. Schwacke?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Based upon the testimony that the

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1 Court has heard, and the previous rulings, I deny your
2 motion for a new trial at this time.

3 Mr. Schwacke, are you prepared to go forward
4 with sentencing?

5 MR. SCHWACKE: We are, Your Honor.

6 THE COURT: All right. We'll be at ease. I
7 understand that -- and, Mr. Schwacke, you agree -- that
8 the State has properly served your client with a life
9 without parole notice?

10 MR. SCHWACKE: They served us originally with
11 one notice and had to serve us a corrected notice. So
12 we do have both of those. I believe I signed for
13 these. On the first notice was September the 7th,
14 2010. The corrected notice with the accurate
15 indictment numbers was served on me October the 12th of
16 2010.

17 THE COURT: All right. And, Mr. Schwacke, you
18 agree that the State has complied with the statute
19 serving your client with notice of the intent to seek
20 life without parole pursuant to a conviction on these
21 charges?

22 MR. SCHWACKE: It's my understanding that he was
23 served personally at the detention center as I was
24 served at my office.

25 THE COURT: All right. Thank you.

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1 We'll be at ease. I'm going to release the
2 jury. We'll be at ease awaiting the sentencing sheets.
3 Thank you.

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

5 [Whereupon, a recess is taken from 5:12 p.m. to
6 5:23 p.m.]

7 THE COURT: Thank you. Please be seated.

8 MS. WILLIAMS: Your Honor, the solicitor's
9 office is experiencing a slight printing problem but it
10 was just corrected and I anticipate them to walk in any
11 second with the sentencing sheets.

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SENTENCING

THE COURT: All right. And I have sat -- I've heard the testimony. I'll be happy to hear from anyone regarding sentencing.

MS. HERRING-LASH: Your Honor, I think that Mr. Thacker and Minor22and wanted to speak, just to --

THE COURT: All right. Thank you.

Mr. Thacker, if you will please come forward.

[Whereupon, Mr. Thacker complies]

THE COURT: All right. Mr. Thacker, I'll be happy to hear from you regarding sentencing.

MR. THACKER: I would like to thank you, Your Honor, for your diligence. And I would like to thank the jury.

THE COURT: Mr. Thacker, I need you to address the Court for sentencing. I know it's very difficult. There's a lot of issues and things that have gone on, but it's very important that you address only the Court as regarding sentencing. Thank you.

MR. THACKER: I would like to thank the Court. If there's any way possible that he can get as much time as he can so that this does not happen again in the future, for the children's sake. And should he ever get out again, it would be a crime. It'll happen

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1 again. Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Thacker.

3 MR. Minor2 WATTS: I want to thank you,
4 Your Honor, and the Court, to just see if he can get
5 life. That's all. And I thank the jury.

6 THE COURT: And thank you for your kind words
7 and your professionalism while you were testifying here
8 during this week. I know it was difficult for you.
9 Thank you.

10 MR. Minor2 WATTS: Yes, ma'am. You're
11 welcome.

12 THE COURT: Ma'am, if you could state your name
13 for the record and spell your last name.

14 MS. CARRIGAN: My name is Robin Carrigan.
15 C-A-R-R-I-G-A-N.

16 THE COURT: Yes, Ms. Carrigan.

17 MS. CARRIGAN: I am Carl Minor1 Watts' foster
18 mother and I just want to thank Your Honor for your
19 time and diligence and thank the jury for what they had
20 to go through to be a part of this. And I just praise
21 God for justice. And thank you very much.

22 THE COURT: Thank you, Ms. Carrigan. Thank you
23 for what you do.

24 Anything further from the State?

25 MS. WILLIAMS: Your Honor, the State has filed

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1 an amended notice of intention to seek life without
2 parole. And I will pass up to the Court a filed
3 notice. The only reason it's amended is because the
4 original one had the indictment number for his previous
5 offense. It was a typo. So it is amended. With that
6 also, the certified copies of Mr. McCauley's previous
7 offense which makes him eligible for life without
8 parole, and that is a criminal sexual conduct with a
9 minor in the second degree that he was -- that he pled
10 guilty to in 2001. I'll also send up a certified copy
11 of the indictment. And the sentencing sheets should be
12 coming right up.

13 [Whereupon, Ms. Williams proffers documents to
14 the Court]

15 THE COURT: And that enumerated offense, is that
16 classified as a serious or most serious?

17 MS. HERRING-LASH: It's most serious, Your
18 Honor.

19 THE COURT: All right. And this incident
20 offense of criminal sexual conduct with a minor first
21 degree is a most serious; is that correct?

22 MS. HERRING-LASH: Yes, Your Honor.

23 THE COURT: All right. And so it's the State's
24 position that I must sentence Mr. McCauley to life
25 without parole based upon your notice to seek life

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1 without parole on the most serious offense; is that
2 correct?

3 MS. HERRING-LASH: Yes, Your Honor. It said one
4 that qualifies for two -- two, and it's life.

5 THE COURT: All right. And as to the lewd act
6 upon a minor, are those -- would those qualify under
7 this provision?

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

9 THE COURT: All right. And so what is the
10 possible punishment on lewd act with a minor?

11 MS. HERRING-LASH: Lewd act upon a minor is zero
12 to fifteen years, Your Honor.

13 THE COURT: And that is mandatory GPS; is that
14 correct?

15 MS. HERRING-LASH: Yes, Your Honor.

16 THE COURT: All right. And lifetime GPS; is
17 that correct?

18 MS. HERRING-LASH: Yes, Your Honor.

19 THE COURT: And unlawful conduct towards a
20 child?

21 MS. HERRING-LASH: Zero to ten years.

22 THE COURT: Mr. Schwacke, do you agree that that
23 is the possible punishment?

24 MR. SCHWACKE: I do, Your Honor.

25 THE COURT: Ms. Herring-Lash, assuming that the

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1 life without parole notice had not been filed, what's
2 the possible punishment on criminal sexual conduct
3 first degree with a minor?

4 MS. HERRING-LASH: Under this statute it's ten
5 to thirty.

6 THE COURT: And do you agree with that,
7 Mr. Schwacke?

8 MR. SCHWACKE: I do, Your Honor.

9 THE COURT: And do you agree that I have no
10 discretion but to impose life without parole on the
11 criminal sexual conduct with a minor first degree
12 charges, based upon the State's filing of this notice?

13 MR. SCHWACKE: Based upon the notice they
14 provided both to me and Mr. McCauley, and the prior
15 record as shown by the sentencing sheets, Your Honor, I
16 believe that's the only option that you have is to
17 impose -- is the life without parole sentence on a
18 criminal sexual conduct with a minor in the first
19 degree.

20 THE COURT: All right. And I'll be happy to
21 hear from the State regarding Mr. McCauley's prior
22 criminal record.

23 MS. WILLIAMS: Your Honor, Mr. McCauley has the
24 criminal sexual conduct conviction that we handed up.
25 He also has disseminating -- dissemination of

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1 obscenity. That was 99-10-2140, which he pled guilty
2 to in 2001. And he also has a criminal sexual conduct
3 in the third degree, which he also pled guilty to in
4 2001.

5 THE COURT: And a prior record? Is that the
6 extent of his prior record?

7 MS. WILLIAMS: Court's indulgence.

8 THE COURT: Yes, ma'am.

9 [Whereupon, Ms. Williams reviews documents]

10 MS. WILLIAMS: That is it, Your Honor.

11 THE COURT: Anything further from the State?

12 MS. WILLIAMS: Nothing further from the State,
13 Your Honor.

14 THE COURT: Mr. Schwacke, I'll be happy to hear
15 from you before I impose sentence.

16 MR. SCHWACKE: Thank you, Your Honor.

17 Mr. McCauley is thirty-seven years of age.

18 Your Honor, this is one of those things that
19 unfortunately you can see a cycle. The case, we've
20 already explained some kind of history back and forth
21 concerning prior representations and prior
22 prosecutions. And the bottom line of it is Mr.
23 McCauley himself -- and this is not to make any
24 excuses, it's just to explain who you have in front of
25 you today -- was himself the victim of sexual assault

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1 and had to be placed in foster care as a result of
2 abuse by his own father, and here we are now.

3 And, Your Honor, you have no option other than
4 to impose the life without parole sentence. Mr.
5 McCauley was fully aware of that at the time that we --
6 that I was appointed to represent him on this case.
7 And he has made his decisions according to the full
8 knowledge of where he could end up as a result of a
9 successful prosecution on this.

10 So, Your Honor, we thank you for being fair.
11 We're just here now to accept the sentence as you're
12 going to impose it.

13 THE COURT: Does anybody else wish to address
14 the Court, Mr. Schwacke?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: And, Mr. Schwacke, have you advised
17 your client of his right to appeal?

18 MR. SCHWACKE: Yes, Your Honor. We've had those
19 discussions already. And we'll be doing that tomorrow.

20 THE COURT: And you've advised Mr. McCauley that
21 you must do so -- he or you, as his attorney, must do
22 so within ten days of today's date?

23 MR. SCHWACKE: Yes, ma'am.

24 THE COURT: All right. And he understood that?

25 MR. SCHWACKE: He does.

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1 THE COURT: All right. Have you also advised
2 Mr. McCauley that regardless -- pursuant to the charge
3 that he has been convicted of, he will again be placed
4 on the sex offender registry, that --

5 MR. SCHWACKE: He understands that with these
6 convictions, Your Honor, he has additional requirements
7 of a lifetime electronic monitoring. He's also aware
8 of a determination, should he get to the point of any
9 release, although it's unlikely under the sentence
10 you're going to impose, ever, that provisions of the
11 sexually violent predator act would also be involved in
12 the prior release of the defendant.

13 THE COURT: Mr. McCauley, this is the part of my
14 job that I don't normally particularly care for, and
15 that is to impose and to craft a sentence that I think
16 does justice. And as this Court has sat and observed
17 what justice means -- justice means different things to
18 different people. And based upon the facts that I have
19 heard and the testimony that has been presented, the
20 State has filed the life without parole to prevent you,
21 in its opinion, to committing the very acts that were
22 committed upon you when you were a child so that you
23 don't do this to anyone. Based upon that, I do find
24 that justice will be done, and served, and has been
25 appropriately served and dispensed in my courtroom

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1 today.

2 It's the order of the Court on indictment 2009-
3 GS-08-2123 that you be committed to the State
4 Department of Corrections, under 17-25-45, for life.
5 You are to be given credit for any time that you have
6 served. That is a violent and a most serious offense
7 and you will be required to be placed on the sex
8 offender registry and mandatory GPS monitoring for your
9 lifetime.

10 It's the order of the Court on indictment 2009-
11 GS-08-2125 that you be committed to the State
12 Department of Corrections for a term of fifteen years.
13 You will also, pursuant to that plea -- pursuant to
14 this conviction, be placed upon mandatory GPS if that
15 should ever become applicable. That is concurrent to
16 2009-GS-08-2126, that you be committed to the State
17 Department of Corrections for a term of ten years.

18 Order of the Court on indictment 2009-GS-08-2127
19 that you be committed to the State Department of
20 Corrections, under 17-25-45, for a term of life.

21 It's the order of the Court on indictment 2009-
22 GS-08-2129, that you be committed to the State
23 Department of Corrections for a term of ten years.

24 It's the order of the Court on indictment 2009-
25 GS-08-2131, under 17-25-45, that you be committed to

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1 the State Department of Corrections for a term of life.

2 It's the order of the Court on indictment 2009-
3 GS-08-2132 that you be committed to the State
4 Department of Corrections for a term of fifteen years.

5 It's the order of the Court on indictment 2009-
6 GS-08-2133 that you be committed to the State
7 Department of Corrections for a term of ten years.

8 All the indictments are to run concurrent. You
9 are to be given credit for any time that you have
10 served.

11 Mr. McCauley, I wish you well.

12 MR. SCHWACKE: Thank you, Your Honor.

13 MS. KENNEDY: Thank you, Your Honor.

14 THE COURT: That concludes this matter.

15 Ladies and gentlemen of the jury, you are again
16 released. You will be escorted. I understand one of
17 you needs an escort home.

18 If anyone wishes -- has any comments or
19 questions for the Court, I will meet you back in your
20 jury deliberation room.

21 Again, thank you for your service to Berkeley
22 County.

23 [JURY TRIAL CONCLUDES AT 5:35 P.M.]

24

25

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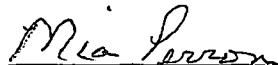
C E R T I F I C A T E

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 Wednesday, December 15, 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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FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)RONALD LEE McCauley 276407)
Full name and prison number (if any) of Applicant.)2013-CP-08-2091

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr Inst. - S.C.D.C.
2. Name and location of Court which imposed sentence BERKELEY COUNTY, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS08-2123, 2127, 2131 (16-03-0655(A)(2))
 - (b) 09-GS08-2125, 2131 (16-15-0140)
 - (c) 09-GS-08-2126, 2129, 2133 (63-05-0070)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) DECEMBER 15, 2010 - LIFE w/o PAROLE
 - (b) DECEMBER 15, 2010 - 15 yrs.

2013 SEP 17 11:09
MARTY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
Revised 3/2003
FILED
9W

(c) DECEMBER 15, 2010 - 10yrs.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. COURT OF APPEALS
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. CONVICTION AFFIRMED
 ii. _____
 iii. _____

(c) the date of each such result:

- i. HEARD MAY 07, 2013 - FILED MAY 15, 2013
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. UNPUBLISHED OPINION No. 2013-VP-202
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) CONFLICT OF INTEREST - ATTORNEY
- (c) CONFLICT OF INTEREST - JUDGE
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ERRONEOUS ADVICE CONCERNING CONFLICTS, FAILURE TO NOTIFY OF PLEA OFFER
- (b) TRIAL ATTORNEY WAS PROSECUTOR ON PAST CONVICTIONS
- (c) TRIAL JUDGE WAS CONSULTANT TO PRIOR ATTORNEY ON PRIOR CONVICTION.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DIRECT APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. AFFIRMED
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. MAY 15, 2013
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. UN PUBLISHED OPINION NO. 2013-UP-202
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PCR ISSUES
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. DAVID SCHWAKE

ii. BREEN RICHARD STEVENS

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. ARRAIGNMENT, TRIAL, SENTENCING

ii. DIRECT APPEAL

iii. _____

19. State clearly the relief you seek in filing this application:

APPLICANT SEEKS RELIEF FROM HIS CONVICTIONS AND SENTENCES. (CONT. ON BACK)

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of BERKELEY)

RONALD LEE MCCAULEY

I, V, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ronald L. McCauley

SWORN to and subscribed before me this 29
day of August, 2013.

J. Franklin

(L.S.)

Notary Public

My Commission Expires: 12-16-2019

2013-CP-08-2091
VERIFICATION

TSY
FILED
2013 SEP 17 AM 11:09
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

RONALD LEE MCCAULEY

I, v, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ronald L. McCauley
Applicant

SWORN or affirmed to and subscribed before me this

29 day of August, 2013.

J. J. Francis
Notary Public

My Commission Expires: 12-16-2019

MAF P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
2013 SEP 17 AM 11:09

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2013-CP-08-2091

Ronald Lee McCauley, #276407,
Applicant,

v.

RETURN

State of South Carolina,
Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 17, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the October 2009 term of the Berkeley County Grand Jury for three counts of criminal sexual conduct with a minor- first degree (2009-GS-09-2123, -2124, -2131), three counts of unlawful conduct (2009-GS-08-2126, -2129, -2133), and two counts of committing or attempting to commit lewd act on a child (2009-GS-08-2124, -2125). The Applicant was represented by David Schwacke, Esquire.

On December 13-15, 2010, the Applicant proceeded to trial and was found guilty as indicted. The Applicant was sentenced by the Honorable Kristi L. Harrington to confinement for a period of life without parole for criminal sexual conduct with a minor, ten years for unlawful conduct, and fifteen years for lewd act on a child. The Applicant's convictions are be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Breen Stevens, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. McCauley, No. 2013-UP-202 (S.C. Ct. App. May 15, 2013). The Remittitur was issued on June 3, 2013.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Erroneous advice concerning conflicts.
 - i. Trial attorney was prosecutor on past convictions.
 - ii. Trial judge was consultant to prior attorney on prior conviction.
 - b. Failure to notify of plea offers.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

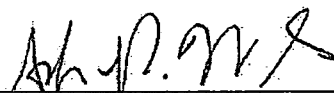
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 1st, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2013-CP-08-2091

RONALD LEE MCCAULEY, #276407)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 1st day of April, 2015.


Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
RONALD LEE MCCAULEY,	)	CASE NO. 2013-CP-08-2091
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	(PCR)
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

July 22, 2015

Charleston, South Carolina

B E F O R E:

The Honorable Roger E. Henderson

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

Lance S. Boozer, Esquire
For the Applicant

Joshua L. Thomas, Esquire
For the Respondent

Phyllis Norton, CVR, *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(RW) - DENOTES RESPONDENT'S WITNESS

Exhibit Index	--	03
PCR Hearing	--	04

WITNESSES

(AW) Ronald Lee McCauley:

Direct Examination by Mr. Boozer	--	05
Cross-Examination by Mr. Thomas	--	20

(RW) David P. Schwacke:

Direct Examination by Mr. Thomas	--	25
Cross-Examination by Mr. Boozer	--	32
Redirect Examination by Mr. Thomas	--	35

<u>CERTIFICATION OF TRANSCRIPT</u>	--	40
------------------------------------	----	----

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

E X H I B I T SAPPLICANT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	7/30/10 Memo to Schwacke, Plea Offer	16	19

REPENDENT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Defendant Check List	31	31

1 MR. THOMAS: May it please the court. This is Ronald
2 McCauley versus the State of South Carolina. It is Case
3 Number 2013-CP-08-2091. This was an October 2009 indictment
4 for two counts of lewd act on a minor, three counts of
5 unlawful conduct towards a child, and three counts of
6 criminal sexual conduct with a minor in the first grade.

7 He was represented on that charge by David Schwacke of
8 the Public Defender's Office. He went to trial December
9 13th through 15th of 2010. The jury convicted him as
10 indicted.

11 Judge Harrington sentenced him pursuant to the
12 recidivist statute to life without parole on the CSC with a
13 minor charges with concurrent 15 years on the lewd act
14 charges and a concurrent 10 years on the unlawful conduct
15 charges.

16 Breen Stevens at the Office of the Public Defense did
17 prefect an appeal. The Court of Appeals affirmed the
18 conviction in Unpublished Opinion 2013-UP-202. He filed
19 this PCR in September 2013 raising various allegations of
20 ineffective assistance of counsel. He is represented by
21 Lance Boozer, and the State is ready to proceed.

22 THE COURT: Mr. Boozer.

23 MR. BOOZER: Thank you, Your Honor. May it please the
24 court. Judge, if I may, he has a note that I have been
25 waiting for in his pocket. Do you mind if I reach in there

1 and grab it?

2 THE COURT: No, sir.

3 MR. BOOZER: Okay.

4 (WHEREUPON, note was retrieved by counsel.)

5 MR. BOOZER: Your Honor, we are ready to proceed unless
6 the court has any questions of Mr. McCauley.

7 THE COURT: Okay. And under the circumstances since he
8 was sentenced to life without parole there is not a whole
9 lot of risk he is taking in this situation so I am going to
10 let you proceed.

11 MR. THOMAS: Thank you, Your Honor. If it please the
12 court we call Mr. McCauley to the stand.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: Once seated please state your first and
15 last name and spell your last name loudly and clearly into
16 the microphone.

17 MR. MCCAULEY: Ronald McCauley, M-C-C-A-U-L-E-Y.

18 **DIRECT EXAMINATION BY MR. BOOZER OF RONALD MCCAULEY:**

19 Q. Mr. McCauley, how are you doing today?

20 A. Well, thank you.

21 Q. Good. Now you obviously filed an application for post-
22 conviction relief; is that right?

23 A. That is correct.

24 Q. All right. And you understand that the only thing this
25 court can do today should you be successful is give you a

1 new trial on your original charges?

2 A. That's correct.

3 Q. Okay. And that is what you want to do, right?

4 A. Yes, sir.

5 Q. All right. Who represent --- well, let's go to this
6 first. Did you have a trial?

7 A. Yes, sir.

8 Q. All right. When did you have a trial?

9 A. December 2010.

10 Q. All right. How many days was your trial?

11 A. Three days I believe.

12 Q. Who represented you?

13 A. David Schwacke with the Public Defender's Office.

14 Q. Okay. He was appointed to represent you?

15 A. Yes, sir.

16 Q. All right. When did you first get appointed Mr.
17 Schwacke?

18 A. I can't be exact. Maybe a year before that or so. I
19 don't know.

20 Q. Okay. And your trial was December of 2010 so you think
21 it may have been in 2009 or so that he was appointed?

22 A. Well, I mean it was in some time in 2009; yes.

23 Q. Okay. Do you know how many times you probably met with
24 him?

25 A. Maybe four. Maybe five.

1 Q. Okay. Now you have obviously filed an application for
2 PCR and you have got some allegations that you have made in
3 that application, correct?

4 A. Yes, sir.

5 Q. And if we could let's just frame those for the court
6 and then we will have you discuss them and explain them to
7 His Honor, okay?

8 A. Okay.

9 Q. All right. So the first allegation you have got is
10 erroney advice -- erroneous advice concerning conflicts that
11 you think was ineffective assistance of counsel. If you
12 could, explain what you mean by that to the court.

13 A. Now this is for the conflict?

14 Q. This is ---

15 A. Or the advice?

16 Q. Well, let's do -- let's do the erroneous advice
17 concerning conflicts. Or you can break it down however you
18 want. This is your application.

19 A. All right. Well, I had a -- I felt the conflict with
20 the judge who was Ms. Harrington. She was -- well, the
21 first time I was convicted originally in 2001. And my
22 attorney at that time ---

23 Q. You were convicted on what? Not these charges?

24 A. Not these charges, no. A separate whole case.

25 Q. What case --

1 A. Dealing with ---
2 Q. What ---
3 A. Dealing with a CSC ---
4 Q. That was a CSC ---
5 A. --- with Charleston County.
6 Q. That was a CSC case, okay.
7 A. Yes.
8 Q. Keep going.
9 A. My attorney was Carter Harrington who was Judge
10 Harrington's father who had -- by the time I went to trial
11 he had already passed away. But he was my attorney back
12 when.
13 And she was out somewhere out north or out in the mid
14 west somewhere. And I don't know if she was working for the
15 Public Defender's Office or working for some place like DSS
16 or something; but he called her, because he asked my
17 permission to do so, to get advise because he was handling
18 my family court case as well.
19 Q. You are saying he called her, and you are saying ---
20 A. Carter Harrington called his daughter.
21 Q. Which is now Judge Harrington?
22 A. Which is now Judge Harrington.
23 Q. Okay.
24 A. Because he was handling my criminal and my DSS civil
25 case.

1 Q. Okay.

2 A. And so he had called her about advice on the way to
3 go -- on bouncing ideas off of her on different things
4 because she was specializing or dealing a lot in that field
5 with sexual abuse cases.

6 Q. Do you recall any specific discussions you had with Mr.
7 Harrington at the time about any of -- any correspondence he
8 had with his daughter about your case?

9 A. One -- he recommended -- said that she recommended that
10 I plead a no colo or something like that in the family court
11 so that nothing could be brought back to the criminal court,
12 no testimony or whatever. And he was pushing -- said that
13 she recommended that I give up parental rights because that
14 might help ease things to go away more efficiently or
15 whatever.

16 Q. Okay. When did you find out that Judge Harrington was
17 going to be your trial judge?

18 A. Definitively, a month or two before. Whenever we
19 finally had a trial docket set definitively.

20 Q. And for the court's information you actually -- this
21 was addressed on the record at some point during the trial?

22 A. Yes.

23 MR. BOOZER: And, Your Honor, just for the court's
24 information that would be starting at Page 408 and through
25 410 of the record on appeal where there is some dialogue

1 about this.

2 MR. BOOZER: And, Your Honor, your transcript probably
3 has three volumes. It is Volume 3, Page 6-ish.

4 THE COURT: Okay.

5 Q. And, Mr. Macauley, did you have any discussions with
6 your lawyer prior to trial about Judge Harrington being the
7 judge and what you thought there may have been a
8 relationship with Mr. Harrington previously representing
9 you?

10 A. He mentioned about the possible conflict of interest
11 with him being the solicitor.

12 Q. Let's get to that in a moment.

13 A. Oh, okay.

14 Q. But on the -- but on this issue with Judge Harrington
15 presiding at your trial.

16 A. Yeah, we had discussed it.

17 Q. And what was really the substance of those discussions?

18 A. He had asked me -- I told him that, you know, her
19 father -- because he told me -- because I asked him --
20 originally how it started was I asked him if she was any
21 relation to Carter Harrington. And he come back and says
22 yeah that was her father and ---

23 Q. When was that?

24 A. At one of the times he had visited me ---

25 Q. Okay.

1 A. --- at Berkeley County jail.

2 Q. Keep going.

3 A. And we discussed that. As he said he didn't know if
4 that would be a conflict or not. And he asked how involved
5 she was. But I never personally spoke to her. This was
6 just something I remember him having said, you know, his
7 daughter had more experience in that field especially on,
8 you know, dealing with the family side of it.

9 And then we talked about the possibility of there
10 being a conflict and we could bring that up. And he asked
11 me that -- that day in court it came up. And I was like
12 yeah. Because he said we would bring that up as a possible
13 conflict.

14 Q. Well, let me ask you this: You have reviewed the
15 transcript, right?

16 A. Yeah, I have been through it.

17 Q. Okay. And you obviously lived through the trial?

18 A. Yes.

19 Q. I mean this was your trial. Why was it that it was
20 brought up on -- your trial started on December 13th?

21 A. That is -- yes, sir, I believe so.

22 Q. Why was this not approached or raised as an issue until
23 December 15th?

24 A. I don't know.

25 Q. Did you ever ask your lawyer when he was going to

1 address this?

2 A. I thought -- and I might be wrong, but I thought it
3 came up -- the first day I think they did like jury
4 selection or whatever. But I think the sec- -- I thought it
5 was the second day or whatever really before the trial
6 started that it came up.

7 Q. Okay.

8 A. And I might -- like I said, I might be incorrect. It
9 has been a while. But I thought it came up before the trial
10 actually started, with the conflict.

11 Q. Now Judge Harrington actually she ruled that she did
12 not believe she had a conflict; is that correct?

13 A. She ruled herself that she didn't think it was a
14 conflict of interest.

15 Q. What else do you think your lawyer should have done;
16 and you have alleged erroneous advice; what should your
17 lawyer have done?

18 A. Oh, in regards to that?

19 Q. Correct.

20 A. I didn't know that the judge herself was going to be
21 able to rule on it herself, so I would say -- I mean if
22 that's the case then knowing that beforehand maybe there
23 could have been other motions filed. I mean I -- I mean
24 legally I don't know what could have been done as far as
25 that element.

1 Q. Now let's kind of -- let's go out of order a little
2 bit ---

3 A. Okay.

4 Q. --- since we are still on this issue of advice and
5 conflict of interest. You alluded to another conflict that
6 you felt existed. What was that?

7 A. Oh, with Mr. Schwacke?

8 Q. Correct.

9 A. Well, he was -- he wasn't -- he was the head solicitor
10 for Charleston County. Though he didn't personally
11 prosecute me. Deborah Herring Lash did. But she worked
12 underneath of him and with him on my case. And we talked
13 about that, because he said that Ms. Lash had asked him if
14 there was going to be a conflict with that.

15 And the whole thing was gearing up to go to trial. And
16 he told me he says you know you probably can't win no trial
17 because we wasn't going to present no defense because by
18 presenting no defense they didn't get to have re- -- where
19 they talk to the jury one last time. They got to talk
20 first. We got to talk last. And he was setting up with all
21 the different motions grounds for direct acquittal or direct
22 appeal to win on direct appeal.

23 He said it probably -- the direct acquittal they never
24 really do nothing with but I could have good -- real good
25 grounds based on something he was setting up with the big

1 chief or chief or something like that ---

2 Q. Talking about another case?

3 A. No, talking about for that case.

4 Q. Correct, but he was arguing a case called Old Chief?

5 A. Yeah.

6 Q. Okay.

7 A. For one of the -- one of the motions he had filed. So
8 he was setting up the different motions that if Ms.
9 Harrington turned them down I would have grounds on my
10 direct appeal for relief.

11 Q. Let me stop you there. Going back to your allegation
12 on the conflict and you felt -- did you testify that you
13 felt Mr. Schwacke had a conflict because he was in the
14 Solicitor's Office when you had some prior charges?

15 A. They asked me if I thought that was. Because we
16 discussed it, and I reaffirmed when I was sitting at the
17 table. I was like, you know, if this goes through the way
18 you have got it planned I'm probably going to get convicted
19 now but I can come back on appeal and with all the things
20 you are setting up. And he said yes.

21 I said, okay, then no I don't have -- I don't feel that
22 there is a conflict there, he is doing this and that is
23 setting me up to come back on my appeal. Which the appeal
24 got shot down too but.

25 But the way it was described I felt that if he was

1 doing what he was saying he was doing he wasn't going to win
2 my trial for me that day but he set it up for me to come
3 back in the future.

4 Q. Okay.

5 A. And that obviously wasn't true.

6 Q. Is there anything else on the topic of conflicts of
7 interest either with Mr. Schwacke or with Judge Harrington
8 you want to discuss here today?

9 A. Is the other thing a conflict, or no; that is a whole
10 separate thing, the dealing with the plea?

11 THE COURT: You can't ask him a question. You have to
12 respond to his questions.

13 A. I apologize.

14 Q. I am going to be asking you questions, okay. And
15 we are going to cover all of you allegations. So let's
16 just ---

17 A. Well, I will say I think that is it.

18 Q. Well, let's keep going because you have some more
19 allegations and that is probably what you are referring to.
20 So let's move through those, okay?

21 A. Okay.

22 Q. You have alleged that -- you have already talked about
23 Mr. Schwacke being in the Solicitor's Office while your
24 other charges were pending, correct?

25 A. Correct.

1 Q. Okay. We have addressed that?

2 A. Okay.

3 Q. I am asking you have we fully addressed that?

4 A. I believe so, yes, sir.

5 Q. Okay. Now the other one was you went to trial and you

6 got a life sentence?

7 A. I did.

8 Q. Did you -- were you aware of any plea offers prior to

9 your trial?

10 A. I was never aware that there was a plea offer that come

11 up where I was offered a 25-year plea and -- no, sir.

12 Q. Okay.

13 MR. THOMAS: Your Honor, may I approach the witness?

14 THE COURT: Yes, sir.

15 MR. THOMAS: Your Honor, if we can just go ahead and

16 mark these documents for identification only, Applicant's 1.

17 THE COURT: All right, sir.

18 (WHEREUPON, Applicant's 1, 7/30/10 memo to Schwacke, was

19 marked for identification.)

20 Q. Mr. McCauley, you are discussion you were not aware of

21 a plea offer?

22 A. Right.

23 Q. Okay. Did you later become aware that there was a plea

24 offer in your case?

25 A. Yes, sir.

1 Q. How did you become aware of that?

2 A. When I got my Rule 5 or my partial Rule 5 in the
3 Berkeley County -- I forget what they call it now. I'm
4 sorry. But when David Schwacke and them sent me my Rule 5
5 to Lieber it was in there. It was in one of the first like
6 15 or 20 pages.

7 Q. When you were in SCDC after your convictions?

8 A. Correct. I was at Lieber.

9 Q. Okay. And you did that on your own; you got your
10 own -- you got the Rule 5 yourself?

11 A. Yeah, I wrote for the Rule 5; correct.

12 Q. Okay. When you got your Rule 5 what did you discover
13 with regards to a plea offer?

14 A. Oh, this one? I had three pages. One was like an e-
15 mail, and two was this same page you just marked. It looked
16 like a copy of the same page, exact page.

17 Q. What does it say up there -- what is the date of that?

18 A. July 30th, 2010.

19 Q. Okay. And who is it to?

20 A. David Schwacke, ---

21 Q. And who is it ---

22 A. --- Esquire.

23 Q. And who is it from?

24 A. Ann Williams the assistant solicitor.

25 Q. And what is it regarding?

1 A. State of South Carolina versus Ronald MaCauley.

2 Q. And the charges?

3 A. CSC first with a minor times four, unlawful conduct
4 toward a child times three, and lewd act times three.

5 Q. And what is the offer?

6 A. Plead to CSC first with a minor times three, and one
7 count of unlawful conduct with a negotiated range of 25 to
8 30 years.

9 Q. And is there an expiration date on that offer?

10 A. August 30th, 2010, term of General Sessions.

11 Q. And at the bottom it says please indicate your client's
12 response, offer accepted or offer rejected. And it appears
13 to have a line for you to check or initial. Is that filled
14 out in there?

15 A. No, sir.

16 Q. Okay. Is this a true and correct copy of the document
17 you receive in your Rule 5?

18 A. Yes, sir. This -- it has even got their own fax number
19 and stuff I guess. I don't know. But yeah, it came in my
20 Rule 5.

21 MR. BOOZER: Your Honor, I would move this in as
22 Applicant's Exhibit Number 1.

23 MR. THOMAS: I think he has already testified to the
24 substance of it, so no objection.

25 THE COURT: All right, received without objection into

1 evidence.

2 (WHEREUPON, Applicant's Exhibit Number 1 was admitted into
3 evidence.)

4 Q. Mr. McCauley.

5 A. Yes.

6 Q. In looking at that plea offer, had you known about that
7 plea offer would you have accepted it?

8 A. I would have took it under consideration. I can't say
9 100 percent. I sure would have said -- I mean looking back
10 I can say sure I would have accepted it. But I mean I can't
11 say with 100 percent because I was still under the notion
12 that everything was going to get set up the way it was
13 getting set up for beating things on the different motions
14 and things like that.

15 Q. But you never had an opportunity to consider it, did
16 you?

17 A. Correct.

18 Q. Okay. Did you have any -- were there any other plea
19 offers made?

20 A. I was told at one time that she might offer me a plea
21 for 30 years. That she may offer a plea for 30 years and if
22 she was would I considerate it.

23 And I said well if she does offer a plea I said can you
24 negotiate it down to 20 or talk her down to 20. And he says
25 well I know she won't do that. And I said well we will just

1 have to wait and see what she does.

2 I mean that came up, I don't know, a year before I went
3 to trial maybe.

4 Q. Okay.

5 A. But it wasn't a definitive offer. I guess he was
6 talking with her and said they may come up with a plea, and
7 it was talking 30 years.

8 Q. So that offer would have been before this July 30th,
9 2010, offer with an expiration of August 30th, 2010?

10 A. I would say so, yes, sir.

11 Q. Okay. Because your trial was only a few months later in
12 December, correct?

13 A. Yes, sir.

14 Q. All right. Mr. McCauley, are there -- is there any
15 area that we have not addressed with regard to the
16 allegations contained in your PCR application that you want
17 to testify to or bring to the court's attention?

18 A. I don't believe so, no, sir.

19 Q. Okay. Thank you, Mr. McCauley.

20 MR. THOMAS: No further questions, Your Honor.

21 THE COURT: Okay. Mr. Thomas.

22 MR. THOMAS: May it please the court.

23 **CROSS-EXAMINATION BY MR. THOMAS OF RONALD MCCAULEY:**

24 Q. Mr. McCauley, you said you had about four or five
25 meetings with Mr. Schwacke?

1 A. I believe so, yes, sir.

2 Q. And during those meetings did y'all go over basically
3 the State's evidence what they were going to present against
4 you?

5 A. Once or twice, yes, sir.

6 Q. Did you get a chance to tell him what you thought sort
7 of your defense should be, what your version of the events
8 was; and were y'all's discussions about how you were going
9 to challenge this at trial?

10 A. We discussed that several times. And that was
11 frustrating because every time I would bring something up a
12 few months later -- or a month-and-a-half or whatever it
13 was, the next time I would see him, every few months, the
14 solicitor would have filed motions against whatever it was I
15 had talked about, just different kinds of motions where like
16 certain things were suppressed and this, that, wasn't going
17 to be allowed. And everything that I mentioned kept on
18 becoming to where it wasn't allowed.

19 One thing in point was mentioned, you know, finding out
20 in the past that there was somebody else by the name of Mark
21 Gist I said, you know, you should be looking at and find out
22 about this past sexual abuse because they are going to come
23 out there saying oh I did this, that, and blah, blah, blah;
24 and that got suppressed.

25 Talked about Evelyn Case who was a DSS caseworker. And

1 she had a slew, a slew of paperwork and all this stuff that
2 was -- and then my Rule 5 being presented as evidence. And
3 mentioned well where was her formal training and child
4 psychology and this, that, and the other thing. And then
5 come to find out she's not a witness no more. She
6 disappeared.

7 And everything that, you know, I brought up valid
8 questions for it seemed like the next time I seen him or
9 either when I went to trial there was motions not to be able
10 to talk about it or the witnesses didn't show up.

11 Q. So it is safe to say that really the only defense you
12 could offer to this was just a denial that it wasn't you,
13 you didn't do any of that?

14 A. If I wanted to do the whole full defense I had a
15 question some of -- some of which got wrote down on the
16 yellow pad which he sent me copies of. He should still have
17 the original. There's a few questions that was written down
18 on there.

19 But I mean there was more -- they could have called
20 back some of the witnesses they had against me and
21 requested them with more specific questions towards my
22 defense that would have at least make them look less
23 credible I guess.

24 Q. Okay. I guess what I'm getting at is if you had been
25 offered a plea would you have stood up in court and admitted

1 your guilt to these crimes?

2 A. If I had been offered a plea ---

3 Q. Yeah.

4 A. --- and knowing then -- or knowing now what I know
5 then, yeah, probably, yes, sir.

6 Q. Not knowing -- but knowing then what you knew then
7 would you have admitted your guilt to the crimes?

8 A. Well, knowing then what I knew then I thought my
9 attorney had me set for an appeal case, a knockout appeal
10 case. And it was easier to go that route than to try to
11 convince a jury of non guilt.

12 Q. So in August of 2010 when that plea offer was allegedly
13 extended to you that you never received, had you gone in
14 front of a judge at that point you would have told the judge
15 you were guilty?

16 A. Possibly. I can't say yes or no definitively because I
17 wasn't there.

18 Q. And you said you discussed Judge Harrington's potential
19 conflict beforehand?

20 A. Yes, sir.

21 Q. And did you ever tell your attorney before the trial
22 started that you wanted her relieved?

23 A. Wanted her relieved?

24 Q. Or you wanted her recused?

25 A. Are you talking about the judge or my attorney?

1 Q. The judge. Did you ever tell your attorney you wanted
2 the judge relieved before the trial started?

3 A. I told him I didn't want her as a judge, yes.

4 Q. Before trial?

5 A. Before trial, yes, sir. And he said that -- he said it
6 was too late for that. He said the State wasn't going to
7 put off the trial anymore, they wanted to do it right before
8 Minor2 so that people would be anxious to get out and not
9 be there for Minor2 and be a slam dunk and that the State
10 wasn't going to put off the trial anymore.

11 Q. All right. Thank you, Mr. McCauley. That's all I
12 have.

13 A. Yes, sir.

14 THE COURT: Mr. Boozer, any redirect?

15 MR. BOOZER: No redirect, Your Honor.

16 THE COURT: All right. You can step down, sir.

17 MR. MCCAULEY: Thank you, sir.

18 THE COURT: Anything else, Mr. Boozer?

19 MR. BOOZER: No further witnesses on behalf of the
20 applicant, Your Honor.

21 THE COURT: Okay. Mr. Thomas.

22 MR. THOMAS: Your Honor, the State would call Mr.
23 Schwacke to the stand. Before that though could I get one
24 brief second with him?

25 THE COURT: Yes, sir.

1 (WHEREUPON, pause for counselors to confer.)

2 MR. THOMAS: All right. Yes, we will call Mr. Schwacke
3 to the stand.

4 THE COURT: All right, sir.

5 MR. THOMAS: Thank you, Your Honor.

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: Once seated please state your first and
8 last name and spell your last name loudly and clearly into
9 the microphone.

10 THE WITNESS: David Schwacke. It is S-C-H-W-A-C-K --
11 C-K-E. Excuse me.

12 **DIRECT EXAMINATION BY MR. THOMAS OF DAVID SCHWACKE:**

13 Q. Thank you, Mr. Schwacke. I guess let's just get some
14 background information. How long have you been practicing
15 law?

16 A. Since 1981.

17 Q. And you were the elected solicitor for the Ninth
18 Circuit for a little while?

19 A. From -- I was appointed to fill an unexpired term of
20 Solicitor Condon in March of 1992 and served through January
21 of 2001.

22 Q. Okay. So you weren't in office after January 2001?

23 A. Correct.

24 Q. Do you recall ever having anything to do with Mr.
25 McCauley's prior prosecution?

1 A. No, I did not.

2 Q. Okay. But you did have some discussions with him about
3 your role as a solicitor during his prior prosecution?

4 A. Correct, they had -- and I guess most notably because
5 that had included that as part of the notice to seek the
6 life without parole sentence, that particular conviction.

7 Q. And what did you tell him about any potential
8 conflicts?

9 A. He -- he was aware that I had been the solicitor. So
10 the discussion is does that cause you a problem, I know
11 nothing about that case and I didn't have anything to do
12 with your prosecution before. And he did not indicate to me
13 that that was going to be a problem.

14 Q. When did you become aware that Judge Harrington's
15 father might have represented him on the prior conviction?

16 A. Honestly, I don't remember that coming up until that
17 particular day of trial. Everything else happened before we
18 ever got to the point of the trial date being set. But that
19 particular information I don't recall coming out until that
20 particular day of the trial.

21 Q. When it did come out did you raise that to Judge
22 Harrington?

23 A. We did. That is obviously what was just read on the
24 record.

25 Q. And she denied that motion to recuse herself?

1 A. She did not feel like she should recuse herself. She
2 denied it.

3 Q. But as far as your discussions with him beforehand,
4 before trial, did he ever tell you that he wanted her
5 recused before trial?

6 A. No. I mean I shouldn't say it that bluntly. I think
7 we all talked about different judges who might be available
8 at different times. I am sure clearly discussing who might
9 be the judge these were the types of cases she had handled
10 when she was in the Solicitor's Office in Moncks Corner.
11 But beyond that there is no mechanism -- without the
12 information that he gave me that she had particularly had an
13 interplay with his -- her father once upon a time, just
14 because you don't like a judge you are not going to be able
15 to file a motion and have that motion excused from your
16 trial.

17 Q. And so to the best of your knowledge there is no
18 indication she had any -- she worked on this case or did
19 anything?

20 A. No indication.

21 Q. How many meetings do you think you had with Mr.
22 McCauley?

23 A. I know I had more than five. I would say it was
24 probably closer to 10, 11. We -- there were interviews of
25 the victims that had to be played for him at different time.

1 So also because of the fact he did not wish to have his Rule
2 5 in his possession while at the jail because of his safety
3 concerns it meant the meetings that we did have had to run
4 longer so that he would have an opportunity to go through
5 the information.

6 Q. So you feel like you had an opportunity to go through
7 everything with him?

8 A. I did.

9 Q. In your discussions with him what kind of defense
10 strategy did you formulate?

11 A. He was very noncommittal to Ms. Ken- -- Patty Kennedy,
12 second-chair with me on that trial. So she was involved in
13 some of this. He was very noncommittal in what he wanted us
14 to do. He said y'all just do your thing. Do your thing.

15 So obviously the decisions were to try to, whether
16 through motions, pretrial motions, something to try to
17 mitigate his prior record if it was going to come in or try
18 to avoid it coming in. So obviously I was explaining to him
19 what motions I was going to file. But beyond that he really
20 would not commit to us what he wanted us to do specifically
21 in his defense.

22 Q. As far as plea offers go did he ever indicate to you
23 that he wanted to take a plea in this case?

24 A. No.

25 MR. THOMAS: May I approach, Your Honor?

1 THE COURT: Sure.

2 Q. I am going to show you what has been admitted as
3 Applicant's Number 1. Does that -- is that a plea offer
4 sheet or something that was given in this case?

5 A. It is.

6 Q. Do you recall receiving that from the State?

7 A. I did.

8 Q. And what did you do when you got that from them?

9 A. At the next time I would have seen him at the jail we
10 would have gone through what the plea offer was.

11 Q. So you have a specific recollection of discussing that
12 25- to 30-year plea offer with him?

13 A. I -- I -- because he was noticed with life without
14 parole and was indicating he didn't want to plea despite
15 what I thought was an offer that he should accept I prepared
16 a form which lists - lists a whole bunch of things quite
17 frankly - that Ms. Kennedy and I went over and went through
18 with him, reading each one of these things in an attempt to
19 get him to sign it and initial it. We did read this to him,
20 but he would not sign it. But among it it says:

21 I have been served by the north -- the Ninth Circuit
22 Solicitor's Office with the notice of intention to seek a
23 sentence of life without parole should I be convicted of any
24 one or more of the six indictments for criminal sexual
25 conduct with a minor in the first degree.

1 I have discussed with my attorneys that the prior
2 offenses which make me eligible to be sentenced to life
3 without parole were prosecuted by the Ninth Circuit
4 Solicitor's Office during the period of time my attorney
5 served as the elected solicitor. I have informed him that I
6 would not object to his representation of me utilizing that
7 as a ground or basis. And notwithstanding the life without
8 parole notice the Ninth Circuit Solicitor's Office has
9 extended the following offer of plea negotiation. Plead to
10 three counts of criminal sexual conduct with a minor in the
11 first-degree and one count of unlawful conduct towards a
12 child and I would receive a sentence with a negotiated range
13 of 25 to 30 years to be determined in the discretion of the
14 court.

15 I understand that I would not be eligible for parole
16 unless serve a minimum of 85 percent of such sentences
17 before becoming eligible for release on community
18 supervision under the terms, conditions and durations as set
19 forth by law.

20 So that was read to him by me specifically in the
21 presence of Ms. Kennedy. Again, he would not -- he said he
22 did not wish to initial it or sign it. But that information
23 was conveyed to him.

24 MR. THOMAS: May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 MR. THOMAS: And is it okay if we make a copy of that
2 form you just read from and -- or do you have ---

3 THE WITNESS: I actually -- that's fine.

4 MR. THOMAS: Okay.

5 BY MR. THOMAS:

6 Q. And this is the -- this is a true and accurate copy of
7 the form you were just talking about?

8 A. It is. And that has more information on it that I
9 didn't cover yet. But like

10 MR. THOMAS: Court's indulgence.

11 THE COURT: Yes, sir.

12 (WHEREUPON, document reviewed by counselors.)

13 MR. BOOZER: No objection, Your Honor.

14 THE COURT: All right. That will be received into
15 evidence.

16 (WHEREUPON, State's/Respondent's Number 1, Defendant
17 Checklist, was marked for identification.)

18 (WHEREUPON, State's/Respondent's Number 1 was admitted into
19 evidence.)

20 Q. I guess let's just recap here. You thoroughly
21 discussed with him your potential conflict as a prior
22 solicitor?

23 A. To the extent -- I think the record of the trial is
24 pretty clear that I worked pretty hard on behalf of the
25 client. So he was aware of my -- my prior job and had no

1 objections to it until now.

2 Q. I think that is all I have, Mr. Schwacke. Thank you.

3 THE COURT: Mr. Boozer.

4 MR. BOOZER: Just briefly, Your Honor.

5 **CROSS-EXAMINATION BY MR. BOOZER OF DAVID SCHWACKE:**

6 Q. How are you doing, Mr. Schwacke?

7 A. All right.

8 Q. Talking about this plea offer that Mr. McCauley says he
9 never say, do you have a copy there with you?

10 A. Of this particular --

11 Q. Of ---

12 A. Of Exhibit 1.

13 Q. Here we go.

14 A. This one?

15 Q. This one. If you note, that was dated July 30, 2010.

16 A. Right.

17 Q. And the offer expires August 30th, 2010?

18 A. Right.

19 Q. This is something that you received from the
20 Solicitor's Office?

21 A. That was an attachment to a fax that she sent.

22 Q. Okay. And do you recall specifically discussing this
23 actual offer with him?

24 A. Yes.

25 Q. Okay. And earlier you had produced from your file ---

1 MR. BOOZER: If I may approach, Your Honor.

2 THE COURT: Yes, sir.

3 MR. BOOZER: Thank you.

4 Q. You had produced from your file I guess what appears to
5 be sort of -- it has quite a lot of things with a check list
6 on them for your signature and then Mr. McCauley's
7 signature; and included in that I guess is what you had
8 testified to earlier was a plea offer that is along the
9 same lines or identical to the plea offer that is marked
10 July 30th, 2010, Exhibit 1?

11 A. Correct.

12 Q. At the bottom of -- at the bottom of this checklist it
13 is dated October 2010 and it is obviously unsigned, correct?

14 A. Correct.

15 Q. Why is it dated October 2010 when the plea offer had an
16 expiration of August of 2010?

17 A. Because the solicitor was keeping the back end of that
18 plea offer ---

19 THE COURT: I'm sorry, I didn't hear your answer.

20 A. The solicitor was keeping the back end of that plea
21 offer open. The date was not a concern to her until we were
22 getting to the point where we were going to have to actually
23 put it on the final docket for that December term.

24 Q. So you are saying that the Solicitor's Office although
25 there was an alleged -- there was an expiration date on the

1 offer they were holding it open?

2 A. Correct.

3 Q. Did Mr. McCauley know that?

4 A. He did by the fact that I explained that to him on this
5 particular date.

6 Q. Do you know why it is on what is marked as Applicant's
7 Exhibit 1 that Mr. McCauley neither accepted nor rejected
8 the offer with his initials or a check mark or anything to
9 that effect?

10 A. That's because this one was extended.

11 MR. BOOZER: Your Honor, court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. BOOZER:

14 Q. Early when you testified you had indicated that Mr.
15 McCauley basically stated that he would let you guys do what
16 it is that you do ---

17 A. Do your thing.

18 Q. Or do your thing in representing you at -- representing
19 him at trial. What exactly was the strategy for do what you
20 were going to do or do your thing?

21 A. He had three victims, one of whom had learning
22 disabilities. The goal there was to try to have that
23 particular witness excluded based upon their inability to
24 testify. The other was to -- when you are dealing with
25 child testimony is first -- either if you are prosecuting it

1 or defending it the thing is the same. It is how are these
2 kids going to do in a courtroom setting with a bunch of
3 strange faces looking at them from a jury box and the judge
4 on the bench. So obviously you have got to put them to
5 their proof. So that was part of the other strategy.

6 Filing some of the motions, the motions were to try to
7 minimize what Mr. McCauley's prior record was, to find ways
8 to avoid it becoming known to the jury.

9 That statute has two ways for the State to establish
10 the prior convictions. One is by him being placed on the
11 sex offender registry where you don't say what the offense
12 is. The other one is his record coming in. Obviously the
13 fact that he was on the sex offender registry is better than
14 having his entire past criminal history come in. So it was
15 motions and it was putting the State to its case.

16 MR. BOOZER: Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. BOOZER: No further questions. Thank you, Mr.
19 Schwacke.

20 THE COURT: Anything else, Mr. Thomas?

21 MR. THOMAS: Just brief redirect, Your Honor.

22 **REDIRECT EXAMINATION BY MR. THOMAS OF DAVID SCHWACKE:**

23 Q. How long was that plea offer open for?

24 A. It would have been open from -- I gave it back to her
25 (court reporter). Whenever -- whenever it was first

1 received up until -- it would have been shortly after this
2 because I would have been required to let Ann know that he
3 has accepted the offer.

4 So it's the email -- or the offer attached to the e-
5 mail was dated July the 30th, 2010. And this would have
6 been October.

7 Q. And if he had accepted the plea at that time what would
8 have happened?

9 A. He would have been sentenced to a negotiated range
10 based on what the -- in the judge's discretion based on what
11 was in the offer..

12 Q. And the only reason -- well, let me ask you this: Why
13 is there no signature on that document?

14 A. Why is there no signature on ...?

15 Q. From Mr. McCauley.

16 A. On this document he refused to do it.

17 Q. And during your entire representation of him did Mr.
18 McCauley ever indicate to you that he was willing to admit
19 his guilt and take a plea?

20 A. He never indicated he wished to enter a plea.

21 Q. Okay. Thank you. That's all I have.

22 THE COURT: Okay. You can step down, sir. Thank you.

23 MR. THOMAS: And that is all from the State, Your
24 Honor.

25 (WHEREUPON, exhibit retrieved from the witness.)

1 THE COURT: All right. Mr. Boozer, do you wish to make
2 any argument?

3 MR. BOOZER: No, sir, Your Honor. I will let the
4 testimony and arguments stand as well as the evidence, Your
5 Honor.

6 THE COURT: Mr. Thomas, anything from you?

7 MR. THOMAS: Your Honor, I guess just briefly try to
8 run through everything. As far as the conflict regarding
9 Mr. Schwacke's representation or the alleged conflict there
10 I think that is clearly it is thoroughly gone over in the
11 record. He indicated in the record he -- Mr. McCauley
12 indicated in the record he didn't believe there was any
13 conflict there and he had no interest in relieving Mr.
14 Schwacke.

15 I would note that State versus Childers, 373 S.C. 367,
16 it is a case out of our Supreme Court where it basically
17 says a former solicitor's representation of a -- on a
18 unrelated charge is not a per se conflict; so I don't think
19 there is anything to that allegation.

20 As far as the conflict -- the alleged conflict with
21 Judge Harrington, again, that is all thoroughly gone over in
22 the record. They made a motion to recuse her. She declined
23 it. That could have been raised on appeal. PCR obviously
24 isn't an avenue to reraise something that could have been
25 raised earlier.

1 As far as the plea offer I think the testimony from Mr.
2 Schwacke is clear. He went over that plea offer. Mr.
3 McCauley never indicated any desire to take it. He declined
4 it at the time they discussed it. So it was conveyed to
5 him. It was declined by him.

6 And under the case law, Your Honor, the second, this
7 two-prong test, was their actual ineffectiveness in not
8 conveying the plea offer. I submit that the plea offer was
9 conveyed.

10 Even if it wasn't conveyed there is still the second
11 analysis is would the applicant have taken the plea offer if
12 it was conveyed; and I think his testimony was very clear
13 that he doesn't know, he is not sure; he is -- he was a
14 little back and forth.

15 So I would just submit that he hasn't met his burden on
16 any of those allegations.

17 THE COURT: Okay. All right. Thank you, sir.

18 All right, gentlemen, I will take this matter under
19 advisement. I will let you hear from me sometime this week.
20 Thank you.

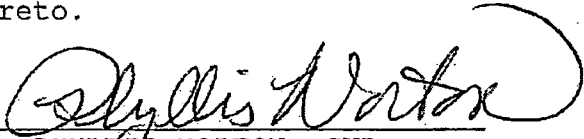
21 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 22, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: October 28, 2015

Certified Transcript Provided For: SCCID

Certification Reference #102815 ORIGINAL

- Maria Lee III - Calkey

RECEIPT FOR EXHIBITS CHARLESTON COUNTY

Case No. 2013-CP-08-2091 Judge: Roger E. Henderson
 Date ^{PCR} Trial Started: 7/22/15 Date ^{PCR} Trial Ended: 7/22/15

Received of Phyllis Norton, Court Reporter for the above case, these exhibits:

<u>Exhibit</u>	<u>Plaintiff</u>	<u>Defendant</u>	<u>Court Exhibits</u>
1.	7/30/10 Memo to Schwacke	1 Schwacke - Public Defendant CK 13-1	2A 12
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FILED
 15 JUL 29 AM 11:39
 HARRY R. DILLON
 CLERK OF COURT
 CHARLESTON COUNTY, S.C.

This 22 day of July, 2015,
 By: Janet M. [Signature]
 Deputy Clerk of Court Charleston County

DATE: July 30, 2010

TO: David Schwacke, Esquire

FROM: Anne Williams, Assistant Solicitor

RE: State of South Carolina vs. Ronald McCauley

CHARGES: CSC 1st w/ a minor X 4 Unlawful Conduct towards a child X 3
Lewd Act X 3

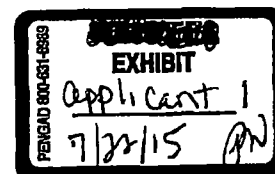
OFFER: Plead to CSC 1st w/ a minor X 3 and one count of Unlawful
conduct w/ a negotiated range of twenty-five (25) to thirty (30)
years.

OFFER EXPIRES: August 30, 2010 Term of General Sessions

PLEASE INDICATE YOUR CLIENTS RESPONSE:

OFFER ACCEPTED _____

OFFER REJECTED _____



**BERKELEY COUNTY PUBLIC DEFENDER**

219 N. HWY. 52, SUITE 1, POST OFFICE BOX 1687
MONCKS CORNER, SOUTH CAROLINA 29461
(843) 899-2777 • FAX (843) 899-2701

I am Ronald Lee McCauley and my appointed attorney is David P. Schwacke.

I am charged in Indictments 09-GS-08-2123 through 09-GS-08-2133 with the offenses of Criminal Sexual Conduct with a Minor in the First Degree (5 counts), Lewd Act upon a Minor (3 counts) and Unlawful Conduct Towards a Child (3 counts).

I have prior convictions for Criminal Sexual Conduct with a Minor in the Second Degree, Dissemination or Promotion of Obscenity to a Minor, and Criminal Sexual Conduct with a Minor in the Third Degree.

I have been served by the Ninth Circuit Solicitor's Office with a Notice of Intention to Seek a Sentence of Life without Parole should I be convicted of any one or more of the six Indictments for Criminal Sexual Conduct with a Minor in the First Degree.

I have discussed with my attorney that the prior offenses, which make me eligible to be sentenced to life without parole, were prosecuted by the Ninth Circuit Solicitor's Office during the period of time my attorney served as the elected Solicitor. I have informed him that I would not object to his representation of me utilizing that as a ground or basis.

Notwithstanding the Life without Parole Notice, the Ninth Circuit Solicitor's office has extended the following Offer of Plea Negotiation: Plea to three (3) counts of Criminal Sexual Conduct with a Minor in the First Degree and one (1) count of Unlawful Conduct Towards a Child and I would receive a sentence with a negotiated range of twenty-five (25) to thirty (30) years to be determined in the discretion of the Court. I understand that I would not be eligible for Parole and must serve a minimum of eighty-five (85%) percent of such sentence before becoming eligible for release on Community Supervision under the terms, conditions and durations as set forth by law.

I have been provided the opportunity to review copies of my Discovery (Rule 5) materials, which included recorded forensic interviews of the alleged victims. I have not requested physical copies from my attorney for reasons of safety and privacy concerns.

I have discussed with my attorney that the State has elected to prosecute me for Criminal Sexual Conduct with a Minor in the First Degree pursuant to S.C. Code of Laws §16-3-655(A)(2). My attorney has explained to me that the introduction of prior convictions and/or proof of instances of bad conduct are normally controlled by case law (see State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and its progeny) or evidentiary rule (see SCRE Rule 404(b)). However, due to the election of the State to pursue conviction under §16-3-655(A)(2), it is very possible that the jury will be informed of my full criminal history during the State's factual presentation. Although the Court must instruct the jury not to consider that as proof that I committed these offenses, but only as proof of that element of the statute, it is difficult

to consider the effect this highly prejudicial information could have upon the jury and my trial.

_____ I understand that my attorney has twenty-eight (28) years of experience as an attorney in criminal court, and that it is his advice that this plea negotiation is in my best interest and that it is his recommendation that I should accept it.

_____ I understand that if I do not accept this offer and enter into this plea, the negotiation will be withdrawn, and I will be subject to a possible life without parole sentence.

_____ I have read this document in its entirety, and have so indicated by initialing each line.

_____ It is my decision to not accept the advice of my attorney.

_____ I do not accept the offer of the State to enter into the plea negotiation, and I accept the risk of being sentenced to Life without Parole after trial.

Ronald Lee McCauley

David P. Schwacke

October ___, 2010

Moncks Corner, South Carolina

Witnessed by:

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Ronald L. McCauley, #276407,)

Case No. 2013-CP-08-02091

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 17, 2013. Respondent made a timely Return on or about April 1, 2015. The Court convened an evidentiary hearing into the matter on July 22, 2015, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, David P. Schwacke, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In October 2009, the Berkeley County Grand Jury indicted Applicant for five counts of first degree criminal sexual conduct with a minor (2009-GS-08-2123, -2124, -2127, -2130, -2131); three counts of lewd act on a minor (2009-GS-08-2125, -2128, -2132); and three counts of unlawful conduct toward a child



(2009-GS-08-2126, -2129, -2133). David P. Schwacke, Esquire ("trial counsel"), represented Applicant. The State served Applicant and trial counsel with a notice of intent to seek a life sentence based on Applicant's prior conviction for second degree criminal sexual conduct with a minor.¹ On December 13, 2010, Applicant proceeded to trial before the Honorable Kristi Lea Harrington and a jury. Before trial commenced, the State dismissed two counts of first degree criminal sexual conduct with a minor and one count of lewd act on a minor. On December 15, 2015, the jury found Applicant guilty as indicted of the remaining charges. Judge Harrington sentenced Applicant to life imprisonment without the possibility of parole.

Applicant filed a timely notice of appeal. Breen R. Stevens, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 15, 2013. State v. McCauley, Op. No. 2013-UP-202 (S.C. Ct. App. filed May 15, 2013). The Court of Appeals returned the remittitur to the circuit court on June 3, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Erroneous advice concerning conflicts.
 - i. Trial attorney was prosecutor on past convictions.
 - ii. Trial judge was consultant to prior attorney on prior conviction.
 - b. Failure to notify of plea offers.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The

¹ See S.C. Code Ann. § 17-23-45.

Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Trial Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Because Applicant alleges ineffective assistance of trial counsel as a ground for relief, he must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

I. Potential Conflicts.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective in his performance relating to potential conflicts arising in the prosecution of these charges. Initially, the Court notes the issue of Judge Harrington's disqualification was raised to Judge Harrington and ruled on by her at trial. Accordingly, this issue cannot now be raised on collateral review. See S.C. Code Ann. § 17-27-20(b) (post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

Regardless, Applicant's allegation trial counsel failed to raise an objection to Judge Harrington presiding over his trial is without merit. Applicant testified Carter Harrington represented him on his prior second degree criminal sexual conduct with a minor charge. He testified Mr. Harrington called his daughter² a lot about the prior case. Applicant testified he found out Judge Harrington would be presiding over his trial a month or two before trial began. He testified he discussed this potential conflict with trial counsel beforehand, but was not sure why it was not brought to Judge Harrington's attention at the beginning of trial. In contrast, trial counsel testified he did not realize Applicant had a concern with Judge Harrington presiding over the trial until after the trial began. Trial counsel testified he had several discussions with Applicant about the different judges that may preside over his trial. He recalled there being no indication Judge Harrington worked on Applicant's previous case. Trial counsel recalled bringing Applicant's concerns to Judge Harrington when Applicant expressed them at trial.

² The Court takes judicial notice of the fact Carter Harrington's daughter is the Honorable Kristi Lea Harrington.

The Court finds trial counsel's testimony on this issue credible and gives it great weight. Conversely, the Court finds Applicant's testimony not credible. The Court finds trial counsel fully advised Applicant that Judge Harrington would preside over his trial. Because Applicant was fully aware Judge Harrington would preside over his trial, his failure to inform trial counsel of any problems he had with her prior to trial waived any complaints he may have now. State v. Stanko, 402 S.C. 252, 270, 741 S.E.2d 708, 717 (2013) ("Appellant cannot now complain of an error which his own conduct induced." (citing State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989))). Accordingly, trial counsel was not deficient for failing to object to Judge Harrington presiding over Applicant's trial.

Additionally, Applicant failed to demonstrate he was prejudiced by trial counsel's lack of further objection to Judge Harrington presiding over the trial. There is no requirement a judge be disqualified simply because the judge may have previously represented a defendant on an unrelated matter. See Davis v. Parkview Apartments, 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014) (noting that the "judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where [...] the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case"); see also Kilgore v. Maass, 749 P.2d 1201, 1202 (Ore. App. 1988) ("A judge in a criminal case is not required to disqualify himself simply because he may have previously represented the defendant in some unrelated matter."); Cantu v. State, 802 S.W.2d 349, 351 (Tex. App. 1990) ("[J]udges who previously represented the defendant are not disqualified, provided that the prior representation involved a different event and not the one on trial. (citations omitted)). Applicant has presented no credible evidence Judge Harrington had any involvement with his prior case. In fact, the Court is persuaded by Judge Harrington's

statements at trial that she had no familiarity with Applicant or his prior case and did not represent him in that matter. (Dec. 15, 2010 Trial Tr. vol. 3, p. 8, line 19-p. 15, line 10). See Davis, 409 S.C. at 285, 762 S.E.2d at 545 (reviewing courts should accord great weight to a judge's assurance of impartiality (citations omitted)). Furthermore, Applicant has presented no specific evidence of bias or impartiality on Judge Harrington's part. Accordingly, Applicant cannot demonstrate he was prejudiced by trial counsel not objecting to Judge Harrington presiding over his trial.

Applicant's allegation trial counsel failed to move to be relieved because of a conflict of interest is also wholly without merit. Trial counsel testified he was the elected circuit solicitor at the time of Applicant's prior conviction. He testified he had no involvement with the prior case and did not know anything about it. Trial counsel testified he recalled discussing this potential conflict with Applicant and Applicant making no objections. Applicant also recalled discussing this potential conflict, but offered no testimony that he had any opposition to trial counsel's representation.

The Court finds trial counsel's testimony very credible. He discussed any potential conflict with Applicant and Applicant waived any objection to that conflict. The Court notes this matter was discussed at trial, and Applicant indicated at that time he was aware of the potential conflict he had no objection to trial counsel's representation. (Dec. 15, 2010 Trial Tr. vol 3, p. 7, line 11-p. 8, line 4). Because trial counsel fully advised Applicant of this potential conflict, trial counsel was in no way deficient. Furthermore, Applicant cannot now be heard to complain about trial counsel's representation when he waived any objection to that representation at trial. Stanko, 402 S.C. at 270, 741 S.E.2d at 717.

Regardless, Applicant has also not presented any credible evidence an actual conflict existed in this case. The mere fact trial counsel was the circuit solicitor at the time of

Applicant's conviction does not create a *per se* conflict. See State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007). Because Applicant presented absolutely no evidence trial counsel worked on the previous conviction, he has not demonstrated he was prejudiced by trial counsel's representation.

2. Plea Offer

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective in failing to convey a plea offer. To be successful on an allegation of an un-conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's plea offer constituted deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399, 1409 (2012).

Here, the Court finds Applicant failed to demonstrate trial counsel was deficient in failing to convey the State's offer. Applicant testified he was never aware the State made a twenty-five year plea offer. In contrast, trial counsel testified he specifically recalled going over the plea offer with Applicant. He also recalled preparing an acknowledgment for Applicant to sign regarding the case (Resp. Ex. # 1), and that acknowledgment included information about the

State's plea offer. However, Applicant refused to sign the acknowledgment. The Court finds trial counsel's testimony on this issue credible, while also finding Applicant's testimony lacks credibility. Accordingly, the Court finds trial counsel conveyed the State's twenty-five year plea offer to Applicant. Because the plea was conveyed, trial counsel was not deficient.

The Court further notes Applicant's testimony lacked any indication he would have affirmatively accepted the plea offer. Applicant testified he would have taken the plea offer under consideration, but could not definitively say he would have accepted it. Trial counsel testified Applicant never indicated a desire to enter a plea. The Court finds Applicant has not demonstrated a reasonable probability he would have entered into any plea agreement the State offered, even if trial counsel was in some way deficient. Frye, 132 S.Ct. at 1409; Davie, 381 S.C. at 608, 675 S.E.2d at 420.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

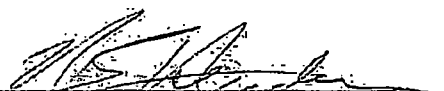


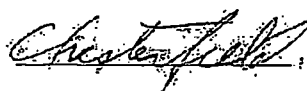
395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 28th day of August, 2015.


THE HONORABLE ROGER E. HENDERSON
Presiding Judge

, South Carolina

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2009

ACTION OF GRAND JURY

10-28-09

Scandra Morales
Foreperson of Grand Jury

e. 10-28-09

VERDICT

Foreperson of Petit Jury:

Date:

INDICT

DOCKET NO. 2009-GS-08-2123

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB: 1

W/M

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR 1ST DEGREE

FILED
2009 OCT 28 PM 12:32

2009 OCT 28 PM 12:32

FILED

2009

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County
present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Ronald McCauley, DOB [REDACTED] 73, did in Berkeley County, on or about/between June 1, 2006 through January 19, 2009, commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who was less than sixteen (16) years of age, to wit: genital/anal intercourse with [REDACTED] VICTIM 1 DOB [REDACTED] 97, and the Defendant has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in S.C. Code of Laws Section 23-3-430(C), or has been ordered to be included in the sex offender registry pursuant to S.C. Code of Laws Section 23-3-430(D), to wit: the Defendant has previously been convicted of Criminal Sexual Conduct with a minor in the second degree, Criminal Sexual Conduct in the Third Degree and Dissemination of Obscenity and the Defendant has previously been ordered to register as a sex offender, all in violation of Section 16-3-655(A)(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ANNE WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF Berkeley
STATE VS.
Ronald McCauley
AKA:
Race: W Sex: M Age: 37
DOB: 73 SS#
Address: 1147 Road
City, State, Zip: Summerville, SC 29483
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct w/ Minor 1st Degree

749
INDICTMENT/CASE#: 09GS082123
A/W#: 09GS082123
Date of Offense: 5/29/2008
S.C. Code § : 16-03-0655(A)(K)(2)
CDR Code #: 0385-3022

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(K)(2) of the S.C. Code of Laws, bearing CDR Code# 0385-3022
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Williams, Anne 76463 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 11 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Det/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Linda J. Hill

Court Reporter: Mia Person

SCCA/217 (06/2010)

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2009

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 11-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2125

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

COMMITTING OR ATTEMPTING A
LEWD ACT UPON A CHILD

MAILED
OCT 28 2009
CLERK OF COURT
BERKELEY COUNTY, S.C.

2009 OCT 28 PM 12:32

FILED

2009

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

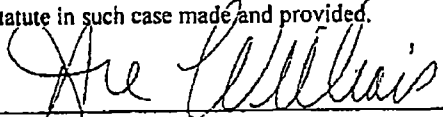
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD

That in Berkeley County, South Carolina, between June 1, 2006 through January 19, 2009, the Defendant, Ronald McCauley, DOB [REDACTED] 73, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: [REDACTED] VICTIM 1 DOB [REDACTED] 97, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ANNE WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Berkeley

VS.

Ronald McCauley

AKA:

Race: W Sex: M Age: 37

DOB: 11/73 SS#: 73

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Committing Or Attempting a Lewd Act upon Child

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS082125

A/W#: 09GS082125

Date of Offense: 5/29/2008

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *[Signature]*
Williams, Anne76463
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: *[Signature]*

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: *[Signature]*

Judge Code: _____

Sentence Date: 10/15/08

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2009

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2126

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

UNLAWFUL CONDUCT TOWARDS A
CHILD

MAILED
CLERK OF COURT
BERKELEY COUNTY, SC

2009 OCT 28 PM 12:32

FILED

JH

J

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

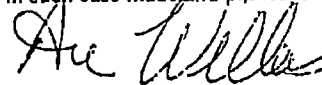
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

That Ronald McCauley while the parent or having custody or charge of victim, VICTIM 1 DOB [REDACTED] 97, did in Berkeley County on or about/between June 1, 2006 through January 19, 2009, willfully and unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health or safety and/or did do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered and/or did willfully abandon the child, to wit: Hitting and or kicking the body, face and or head of the victim and or other acts of verbal and physical acts of abuse. This in violation of Section 63-5-70 of the South Carolina Code of Laws 2008 as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

755

COUNTY OF
STATE

Berkeley

VS.

Ronald McCauley

AKA:

Race: W Sex: M Age: 37

DOB: 73 SS#:

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Unlawful Conduct Towards a Child

INDICTMENT/CASE#: 09GS082126

A/W#: 09GS082126

Date of Offense: 5/29/2008

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Williams, Anne

SC Bar# 76463

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2009

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2127

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR 1ST DEGREE

MAILED
OCT 28 2009
CLERK OF COURT
BERKELEY COUNTY

2009 OCT 28 PM 12:32

FILED

2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

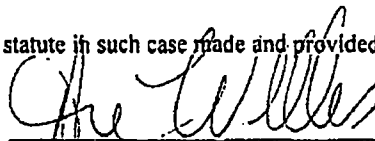
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Ronald McCauley, DOB [REDACTED] 73, did in Berkeley County, on or about/between June 1, 2006 through January 19, 2009, commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who was less than sixteen (16) years of age, to wit: fellatio with VICTIM 2 [REDACTED] DOB [REDACTED] 97, and the Defendant has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in S.C. Code of Laws Section 23-3-430(C), or has been ordered to be included in the sex offender registry pursuant to S.C. Code of Laws Section 23-3-430(D), to wit: the Defendant has previously been convicted of Criminal Sexual Conduct with a minor in the second degree, Criminal Sexual Conduct in the Third Degree and Dissemination of Obscenity and the Defendant has previously been ordered to register as a sex offender, all in violation of Section 16-3-655(A)(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE WILLIAMS
ASSISTANT SOLICITOR

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUITINDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

2011 JAN 24 AM 9:29

Name: Ronald McCauleyIndictment #: 09GS082127Race: WSex: MCase Number: 2009-01-05474MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

SSN: _____

Date of Birth: _____

Warrant Number: 09GS082127

Disposition (Check One)

Reason (Optional):

4A ☐ Dismissed

Reason: _____

4B ☒ Nolle ProsequiReason: see Solicitor's file7 ☐ Remanded

Charge: _____

Municipal Court:

Magistrate Court:

Judge: _____

8B ☐ No Bill9 ☐ Failure to Appear

Date Bench Warrant Issued: _____

Trial/Plea Docket Week: _____

Case Pre-filed with _____ Grand Jury.

Authorized by: Anne Williams

Date: _____

CLERK OF COURT'S DATE/TIME STAMP:

RECEIVED BY: _____

DATE: _____

Defense Attorney: ,

cc: PP
fail

1/24/11

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2009

ACTION OF GRAND JURY

True Bill

Sandra Morales

Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2129

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

UNLAWFUL CONDUCT TOWARDS A
CHILDMAILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

2009 OCT 28 PM 12:32

FILED

JPM

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

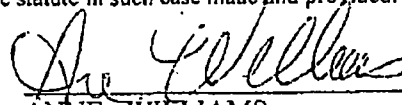
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

That Ronald McCauley while the parent or having custody or charge of victim, **VICTIM 2** DOB [REDACTED] 97, did in Berkeley County on or about/between June 1, 2006 through January 19, 2009, willfully and unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health or safety and/or did do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered and/or did willfully abandon the child, to wit: Hitting and or kicking the body, face and or head of the victim and or other acts of verbal and physical acts of abuse. This in violation of Section 63-5-70 of the South Carolina Code of Laws 2008 as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ANNE WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

761

COUNTY OF
STATE

Berkeley

VS.

Ronald McCauley

AKA:

Race: W Sex: M Age: 37

DOB: 73 SS#

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Unlawful Conduct Towards a Child

INDICTMENT/CASE#: 09GS082129

A/W#: 09GS082129

Date of Offense: 5/29/2008

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Williams, Anne

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2008

ACTION OF GRAND JURY

True Bill

Sandra Morales
Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2131

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR 1ST DEGREE

1A.W. 2009-01-00414
OCT 28 2009
RECEIVED

2009 OCT 28 PM 12:32

FILED

28N

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

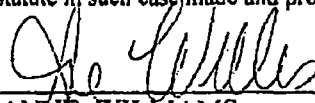
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Ronald McCauley, DOB [REDACTED] 73, did in Berkeley County, on or about/between June 1, 2006 through January 19, 2009, commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who was less than sixteen (16) years of age, to wit: fellatio with [REDACTED] VICTIM 3 DOB, [REDACTED] 99, and the Defendant has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in S.C. Code of Laws Section 23-3-430(C), or has been ordered to be included in the sex offender registry pursuant to S.C. Code of Laws Section 23-3-430(D), to wit: the Defendant has previously been convicted of Criminal Sexual Conduct with a minor in the second degree, Criminal Sexual Conduct in the Third Degree and Dissemination of Obscenity and the Defendant has previously been ordered to register as a sex offender, all in violation of Section 16-3-655(A)(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ANNE WILLIAMS
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEBerkeley
VS.

Ronald McCauley

AKA:

Race: W Sex: M Age: 37

DOB: SS#:

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct w/ a Minor (Sex Offender List)

in violation of § 16-03-0655 (A) (2) of the S.C. Code of Laws, bearing CDR Code # 3022

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Williams, Anne

76463
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS082131

A/W#: 09GS082131

Date of Offense: 5/29/2008

S.C. Code § 16-03-0655 (A) (2)

CDR Code #: 3022

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge:

Judge Code:

Sentence Date:

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2008

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2132

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

COMMITTING OR ATTEMPTING A
LEWD ACT UPON A CHILD

MAF P. H. J. M.
CLERK OF COURT
BERKELEY COUNTY SC

2009 OCT 28 PM 12:31

FILED

2009

✓

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

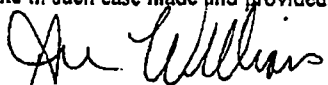
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD

That in Berkeley County, South Carolina, between June 1, 2006 through January 19, 2009, the Defendant, Ronald McCauley, DOB September 18, , a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Minor Thacker, DOB , with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

767

COUNTY OF
STATE

Berkeley

VS.

Ronald, McCauley

AKA:

Race: W Sex: M Age: 37

DOB: 1973 SS#

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Committing or Attempting a Lewd Act upon a Child

INDICTMENT/CASE#: 09GS082132

A/W#: 09GS082132

Date of Offense: 5/29/2008

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Williams, Anne

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter: Mia Benson

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date: 12/15/10

AMW2009-01-05474

WITNESSES

R Ramsey

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0811046955

ARREST WARRANT NUMBER

DIRECT INDICTMENT

DATE OF ARREST

January 13, 2008

ACTION OF GRAND JURY

True Bill

Randee McAuley
Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2133

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER Term 2009

THE STATE

vs.

Ronald McCauley

DOB:

W/M

Indictment for

UNLAWFUL CONDUCT TOWARDS A
CHILD

MAINTENANCE
CLERK OF COURT
BERKELEY COUNTY S.C.

2009 OCT 28 PM 12:31

FILED

209

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

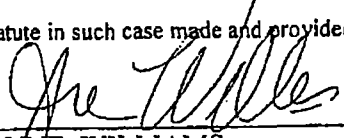
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 28, 2009 the Grand Jurors of Berkeley County present upon their oath:

UNLAWFUL CONDUCT TOWARDS A CHILD

That Ronald McCauley while the parent or having custody or charge of victim, VICTIM 3 DOB, [REDACTED] 99, did in Berkeley County on or about/between June 1, 2006 through January 19, 2009, willfully and unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health or safety and/or did do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered and/or did willfully abandon the child, to wit: Hitting and or kicking the body, face and or head of the victim and or other acts of verbal and physical abuse. This in violation of Section 63-5-70 of the South Carolina Code of Laws 2008 as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ANNE WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

770
COUNTY OF
STATE

Berkeley

VS.

Ronald McCauley

AKA:

Race: W Sex: M Age: 37

DOB: [REDACTED] 73 SS#: [REDACTED]

Address: 1147 Road

City, State, Zip: Summerville, SC 29483

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Unlawful Conduct Towards a Child

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *Ann Williams*
Williams, Anne76463
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

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☐ Set by SCDPPPS

Recipient:

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3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS082133

A/W#: 09GS082133

Date of Offense: 5/29/2008

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires
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§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date: