

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Aiken County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 4798 (S.C. Ct. App. filed 3/2/2011)
07-GS-02-650 to 653

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JUAN OROZCO,

PETITIONER

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Juan Orozco,

Appellant.

Appeal From Aiken County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 4798
Submitted February 1, 2011 – Filed March 2, 2011

AFFIRMED

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of Aiken, for Respondent.

HUFF, J.: Appellant, Juan Orozco, was convicted of two counts of first-degree criminal sexual conduct (CSC) with a minor and two counts of lewd act upon a child and was sentenced to concurrent terms of twenty years, suspended upon service of fifteen years for the CSC charges, and fifteen years on the lewd act charges. Orozco appeals, asserting the trial judge erred in (1) admitting testimony regarding Orozco's suicide attempt and (2) charging the jury that testimony of a child witness need not be corroborated. We affirm.¹

FACTUAL/PROCEDURAL HISTORY

Orozco was accused of sexually abusing two of his nieces, who are cousins. The girls, who were minors, both testified as to Orozco's sexual misconduct. Testimony shows the younger child, who was four or five years old at the time of the incidents, made the allegations to an adult on June 21, 2006. The following day, June 22, 2006, the younger child's mother, Suzie, filed a report with the sheriff's department. On that same day, Suzie also notified her older sister, Ann, of the younger child's allegations against their brother-in-law. Following this conversation between Suzie and Ann, Ann went to speak with their sister Janet, Orozco's wife, before noon on June 22, 2006, and informed Janet of the allegations made by the younger child. Ann testified she did not know what was going to happen after Suzie filed the report and she wanted to let Janet know about the allegations against her husband.

Within a few days of the allegations made by her niece, Ann contacted her minor daughter in Indiana where the older child was vacationing with another of Ann, Suzie and Janet's sisters. The older child, who was eight or nine at the time she used to visit in Orozco's home, thereafter disclosed incidents of sexual abuse committed by Orozco upon her.

The State made a pretrial motion to admit evidence of Orozco's suicide attempt asserting, although there was no South Carolina law addressing the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

issue, the courts of most states allow such evidence. Defense counsel acknowledged that a lot of states do equate a suicide attempt with flight, and while South Carolina does allow evidence of flight, there was no South Carolina law equating the two. Further, defense counsel argued there was no direct evidence Orozco was aware of the allegations and therefore attempted suicide to evade the charges. Counsel maintained the suicide note indicated only that Orozco expressed he did not want to go to prison because "somebody lied on him," and this was the only evidence that Orozco knew of the charges, but the State did not intend to introduce the suicide note. Counsel thus argued the suicide attempt was not from a guilty conscience, but from lack of faith in the judicial system. He argued the prejudice from admitting the suicide attempt evidence outweighed the probative value and would also confuse the jury. The solicitor indicated she did not intend to admit the suicide note because she believed it was hearsay, it was not an admission against Orozco's interests, and it was "more in [Orozco's] own favor." The solicitor contended that there was circumstantial evidence that Orozco was aware of the allegations inasmuch as there was evidence the mother of one of the victims told Orozco's wife the morning of the suicide attempt that the younger child had made the allegation of sexual abuse, and Orozco's wife was present when EMS and the sheriff's department arrived at the suicide attempt call. The trial judge determined the suicide attempt evidence was admissible, noting that such evidence was admissible in other states, and evidence of flight is admissible in South Carolina. The judge further informed trial counsel that the defense needed to make a decision about the suicide note, and that the court would be inclined to admit the note based on this ruling.

Thereafter, over Orozco's objection, the State presented evidence that at 2:01 p.m. on the afternoon of June 22, 2006, officers were dispatched to the Orozco residence in reference to a suicide attempt. Sheriff's Deputy Tom Gray testified when he arrived at the home, he found Orozco being treated by emergency medical personnel for taking rodent poison. Deputy Gray also found a box of rodent poison and a purported suicide note written in Spanish.

Orozco's wife Janet, who was also the complainant,² was also present at the scene.

During a discussion regarding jury charges, Orozco objected to inclusion of a charge that no corroboration of the testimony of the two children was needed, maintaining such was an impermissible comment on the facts. The trial judge determined the charge was South Carolina law, and determined he would charge the pertinent statute as written. Thereafter, the trial court included in the jury instruction a charge pursuant to section 16-3-657 of the South Carolina Code that, "in South Carolina the testimony of a victim need not be corroborated for prosecution in a criminal sexual conduct case." This was the extent of the charge given regarding corroboration.

ISSUES

1. Whether the trial judge erred in admitting testimony regarding Orozco's suicide attempt.
2. Whether the trial judge erred in charging the jury that the testimony of the child witnesses did not need to be corroborated.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The admission or exclusion of testimonial evidence falls within the sound discretion of the trial judge, whose decision will not be disturbed on appeal absent an abuse of that discretion, resulting in prejudice. State v. Holder, 382 S.C. 278, 288, 676 S.E.2d 690, 696 (2009). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009).

² In referring to "the complainant," it appears Deputy Gray was indicating Janet placed the 911 call reporting the attempted suicide.

LAW/ANALYSIS

I. Evidence of Suicide Attempt

On appeal, Orozco asserts the trial court erred in admitting evidence of his suicide attempt. He argues there is no South Carolina authority supporting the admission of a suicide attempt as evidence of consciousness of guilt, and though South Carolina law has held evidence of flight constitutes evidence of guilty knowledge and intent, our courts require proof an accused is aware of the charges before evidence of flight becomes relevant and admissible. Orozco contends the prejudicial effect of introducing evidence of his suicide attempt outweighed any probative value, as the evidence of his suicide attempt would only become relevant and admissible upon the State's establishing that he was aware of the charges against him at the time of the suicide attempt. He maintains, because the State failed to present the critical proof that he was aware of the charges at the time of his suicide attempt, the evidence was irrelevant and prejudicial and should have been excluded pursuant to Rule 403, SCRE.

Generally, all relevant evidence is admissible. Rule 402, SCRE; State v. Pittman, 373 S.C. 527, 578, 647 S.E.2d 144, 170 (2007). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; Pittman, 373 S.C. at 578, 647 S.E.2d at 170. Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one. State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). An appellate court reviews 403 rulings, balancing whether the probative value of evidence was substantially outweighed by its prejudicial effect, pursuant to the abuse of discretion standard, and gives great deference to the trial court's decision. State v. Myers, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004).

Whether evidence of attempted suicide is probative of the accused's consciousness of guilt is an issue of first impression in South Carolina. The

question, however, is easily analogized to other types of circumstantial evidence of guilt based on the accused's behavior after the crime. First, our courts have held that, as a general rule, any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt. State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976). Further, it has long been the rule in South Carolina that evidence of witness intimidation and evidence of attempted flight are probative of the accused's consciousness of guilt. See State v. Edwards, 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009) (holding witness intimidation evidence, if linked to the defendant, may be admitted to show a consciousness of guilt), see also State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (holding "[u]nexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee"); State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (noting flight, when unexplained, is admissible as indicating consciousness of guilt). Additionally, courts of other jurisdictions, applying the same principle that deems evidence of flight by one accused of a crime as probative of consciousness of guilt, have frequently held admissible evidence that the accused, after the crime was committed, attempted to commit suicide. See 29 Am. Jur. 2d Evidence § 547 (2008) ("The principle upon which evidence of flight of one accused of a crime is admitted is applicable to evidence that the accused, when in custody, and charged with a crime, attempts to take his or her own life and thereby escape further prosecution."); Dale Joseph Gilsinger, Annotation, Admissibility of Evidence Relating to Accused's Attempt to Commit Suicide, 73 A.L.R. 5th 615, 624 (1999) ("The principle on which evidence of flight by one accused of a crime is admissible is almost universally held to apply to evidence that the accused, after the crime was committed - such as at the time of arrest or while in custody for the crime for which they are being tried - attempted to commit suicide and thereby escape further prosecution."). Finally, the overwhelming majority of states considering this issue have determined that evidence of attempted suicide is generally admissible to establish consciousness of guilt. See 29 Am. Jur. 2d Evidence § 547 ("Evidence of attempted suicide by a person who is, at the time of the attempt or thereafter, charged with or suspected of a crime, is relevant as possibly indicating consciousness of guilt and admissible at trial for that crime for whatever weight the jury chooses to assign."); Gilsinger, supra at 624. ("With a single exception, courts have unanimously

held that an accused's attempt to commit suicide is probative of a consciousness of guilt and is therefore admissible."); 22A C.J.S. Criminal Law § 1011 (2006) ("Evidence is generally admissible that the accused attempted or threatened to commit suicide subsequent to the time the crime was committed. Such evidence ordinarily is admissible as indicating a consciousness of guilt."). Accordingly, we conclude that evidence of a suicide attempt is probative of a defendant's consciousness of guilt and is generally admissible for whatever value the jury decides to give it.

Orozco argues, however, that evidence of his suicide attempt should not have been admitted because the State failed to show he was aware of the allegations made against him at the time of his attempt. He argues, as in the case of evidence of flight, proof that the accused is aware of the charges at the time of the conduct is necessary before the evidence can be relevant. He notes, in particular, his argument to the trial court that the suicide note was the only indication he was aware of the charges, and without the note there was insufficient evidence of his awareness.

In addressing the admission of evidence of flight, our courts have determined that "[f]light, when unexplained, is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005). However, we have further noted that "[t]he critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities." Id. at 636, 608 S.E.2d at 891. "Flight evidence is relevant when there is a nexus between the flight and the offense charged." State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006). "It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose." Crawford, 362 S.C. at 636, 608 S.E.2d at 891. Where the circumstances fail to show the necessary nexus between a defendant's flight and the current offense for which he is on trial, the flight evidence is not relevant and should not be admitted. See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 (holding flight evidence was not relevant where the evidence did not create an inference that defendant's alleged failure to stop for a blue light was

motivated by his belief that the police were seeking him for his pending murder charge).

Here, the circumstances justify an inference that Orozco was aware of the sexual misconduct allegations against him by the younger child. Testimony shows that on June 22, 2006, the mother of the younger child informed the mother of the older child about the younger child's allegations against Orozco and that, sometime before noon that same day, the mother of the older child informed Orozco's wife of the disclosure by the younger child. Around 2:00 that afternoon, Deputy Gray responded to a dispatch for a suicide attempt at Orozco's home where he observed a box of rodent poison and a suicide note, found Orozco being treated for ingestion of the poison, and noticed Orozco's wife, the complainant, was at the scene. Thus, the totality of the evidence creates an inference that Orozco's actions in attempting suicide were motivated as a result of his belief that sexual misconduct allegations had been made against him. We therefore find the suicide attempt evidence was relevant. Further, we find no merit to Orozco's argument that the evidence was inadmissible pursuant to Rule 403, SCRE. Although Orozco summarily asserts he was prejudiced by the admission of this evidence, he fails to argue how he was prejudiced or why the prejudicial effect of the suicide attempt evidence outweighed its probative value. Accordingly, giving due deference to the trial court's ruling on this matter, we find no abuse of discretion. Myers, 359 S.C. at 48, 596 S.E.2d at 492.

II. Charge on Corroboration

On appeal, Orozco asserts the trial judge committed reversible error in giving the charge on corroboration. He argues the instruction focused the attention of the jury on a particular class of witnesses, the victims, and indicated the testimony of those particular witnesses, apart from other witnesses, needed no corroboration. Because the trial judge failed to instruct that any other class of evidence need not be corroborated, he contends the instruction constituted an unconstitutional and impermissible charge on the facts and the credibility of the witnesses. Orozco further maintains the harm was not cured by the balance of the trial court's charge. While recognizing our supreme court has addressed this issue in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006) (hereinafter Rayfield II) and found such a charge

appropriate under the circumstances, Orozco points to the dissent in Rayfield II and the fact that the earlier decision in the seminal case of State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) relied upon an Indiana case that was later overruled by the Indiana court. He further argues, even under the decision of the majority in Rayfield II, the issuance of the instruction was unduly emphasized by the State in its closing argument and therefore was reversible error.

Section 16-3-657 of the South Carolina Code (2003) provides, "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These criminal statutes, which generally encompass the prohibition of various forms and degrees of criminal sexual conduct, include criminal sexual misconduct with a minor for which Orozco was charged. S.C. Code Ann. § 16-3-655 (Supp. 2010).

In Rayfield II, our supreme court, in a majority opinion, affirmed this court's opinion in Rayfield I,³ finding no reversible error in the giving of a jury instruction on section 16-3-657. Rayfield asserted on appeal that the trial judge erred in charging section 16-3-657 to the jury because the charge constituted an impermissible comment on the facts of the case, it improperly emphasized the testimony of one witness, and it carried a strong possibility of unfairly biasing the jury against the defendant. Rayfield II, 369 S.C. at 115, 631 S.E.2d at 249.

In Rayfield I, this court found the challenged charge withstood appellate scrutiny in the Schumpert case. Rayfield I, 357 S.C. at 505, 593 S.E.2d at 491. We further determined there was no reversible error in the trial court's instruction to the jury regarding the corroboration of the victims' testimony in Rayfield's case, as the charge was consistent with Schumpert, noting the trial court: (1) properly instructed the jury that it was the sole finder of fact with the discretion to determine the credibility of the witnesses; (2) correctly charged our state's constitutional mandate prohibiting the court from commenting on the facts or having an opinion about the facts in the case; and (3) correctly charged the State's burden of proof. Id. We held,

³ State v. Rayfield, 357 S.C. 497, 593 S.E.2d 486 (Ct. App. 2004).

while a "section 16-3-657 charge is not mandatory, such charge does not constitute reversible error when the Schumpert safeguards are present." Id.

In Rayfield II, the supreme court noted the trial court charged the jury the State had the burden of proving Rayfield was guilty of the charged offenses beyond a reasonable doubt, and further instructed the jurors that they were the sole and exclusive judges of the facts of the case, that the trial court was prohibited from commenting on or having an opinion about the facts of a case, and they were responsible for assessing the credibility of the witnesses who testified in the case. Rayfield II, 369 S.C. at 116-17, 631 S.E.2d at 249-50. The supreme court then stated as follows:

It is not always necessary, of course, to charge the contents of a current statute. Section 16-3-657 prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony is not corroborated. However, § 16-3-657 does much more. In enacting this statute, the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses against the person. In many cases, the only witnesses to a rape or sexual assault are the perpetrator and the victim. An investigation may or may not reveal physical or forensic evidence identifying a particular perpetrator. The Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear--not only to the judge but also to the jury--that a defendant may be convicted solely on the basis of a victim's testimony.

Rayfield II, 369 S.C. at 117, 631 S.E.2d at 250 (emphasis added). The court then concluded, while a trial judge is not required to charge § 16-3-657, when the judge chooses to do so, giving the charge does not constitute reversible error when "this single instruction is not unduly emphasized and the charge as a whole comports with the law." Id. at 117-18, 631 S.E.2d at 250. Because the jury in that case was thoroughly instructed on the State's burden of proof and the jury's duty to find the facts and judge the credibility of witnesses, the court determined the trial judge fully and properly instructed the jury on those principles. Id. at 118, 631 S.E.2d at 250.

The arguments made by Orozco on appeal are the same as those raised and rejected by our courts in the Rayfield cases.⁴ As in Rayfield, the trial court here properly charged the jury that the State had the burden of proving the defendant guilty beyond a reasonable doubt, that the jury had the duty to find the facts and determine the credibility of the witnesses, and that the jury should disregard any indication from the trial judge that he might believe a fact to be true or not. Thus, the trial court thoroughly instructed the jury on the State's burden of proof and the jury's duty to determine the facts and judge the credibility of witnesses. Further, the only charge given by the trial court in regard to the corroboration of the victims' testimony was that "in South Carolina the testimony of a victim need not be corroborated for prosecution in a criminal sexual conduct case." Thus, this single instruction was not unduly emphasized. Accordingly, there was no reversible error.

CONCLUSION

Although South Carolina has yet to directly address the admissibility of evidence of a defendant's attempted suicide, given the almost unanimous decisions of courts of other jurisdictions finding such evidence to be generally admissible, our jurisprudence allowing other evidence of conduct showing consciousness of guilt, and the equating of attempted suicide evidence to that of flight in other jurisdictions, along with the circumstances justifying an inference that Orozco was aware of the sexual misconduct allegations against him such that the evidence was relevant and probative, and in light of our standard of review giving the trial court great discretion in weighing Rule 403 matters, we find no error in the admission of this evidence.

⁴ Orozco recognizes the significance of Rayfield II, but focuses heavily on the dissent and its reasoning. However, the decisions of the supreme court bind this court as precedents. S.C. Const. art. V, § 9; see also Bain v. Self Mem'l Hosp., 281 S.C. 138, 141, 314 S.E.2d 603, 605 (Ct. App. 1984) (holding, where the law has been recently addressed by the Supreme Court and is unmistakably clear, the Court of Appeals has no authority to change it).

We further believe Rayfield II is controlling on the issue of the corroboration charge. There are no distinguishing factors that would set this case apart from Rayfield II, and this court does not have authority to change the law of Rayfield II. Accordingly, Orozco's convictions are

AFFIRMED.

THOMAS and PIEPER, JJ., concur.

STATE OF SOUTH CAROLINA
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J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

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V.

JUAN OROZCO,

PETITIONER

Appeal from Aiken County

J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 4798

PETITION FOR REHEARING

Petitioner requests rehearing pursuant to Rule 221(a), SCACR, because this Court respectfully may have overlooked the fact that it was and is fundamentally unfair to compare a suicide attempt to evidence of flight as being evidence or consciousness of guilt. People attempt suicide for a variety of reasons pertaining to despair and depression and the accusation of child sexual abuse -- as here -- certainly conjures up those emotions given the current obsession and hatred of sex offenders by apparently a majority in our society. Suffice it say that the mere

accusation can often ruin a life, and a feeling of nothing good to live for is often the reason for suicide.

Here, further, the solicitor contended there was “*circumstantial evidence*” that petitioner was aware of the allegation of child sexual abuse. Defense counsel correctly noted that petitioner stated in his suicide note that he did not want to go to prison because “somebody lied on him.” Defense counsel correctly argued this suicide note revealed a lack of faith in the judicial system, and it can hardly be argued that child sex cases are not the most difficult cases for the defense to try given the emotions involved and the lifetime brutal consequences beyond incarceration that conviction of such an offense carries. That is not even to mention the prosecution cottage industry that has grown up surrounding such child sex cases where *the mere allegation is sufficient* to make the accused a monster worthy of scorn. A conviction of such an offense guarantees severe punishment, and lifetime retribution by way of the restrictions on the defendant ever being released from confinement, and then the intense restrictions that follow on where he can live, work, and function as anything resembling a normal member of society.

Given the novel and extremely important nature of this Court’s resolution of this issue of attempted suicide constituting or being considered evidence of guilt – petitioner strongly contends the essential demands of justice require rehearing on this issue.

A brief review of the facts is necessary. Petitioner was alleged to have committed criminal sexual conduct and a lewd act on two of his nieces, both under the age of twelve at the time. R. 7. The state sought to admit evidence of Petitioner’s June 22, 2006, suicide attempt. The assistant solicitor argued that the attempted suicide call took place at 2:00 p.m. on the same day petitioner was allegedly informed that a child had made allegations of sexual abuse against him. The solicitor argued that on the morning of his suicide attempt, petitioner was informed that his older niece had

made allegations of sexual abuse against him. R. 17-18. The solicitor indicated that at 2:15 p.m., officers were dispatched and found petitioner lying on the floor amidst a suicide note and a quantity of rat poison. Petitioner was transported by EMS for emergency treatment for the ingestion of rat poison.

The state conceded that there *was not any South Carolina authority* directly addressing the question of the admissibility of a suicide attempt to show consciousness of guilt. However, the solicitor asserted that the courts in most states have allowed evidence of an attempted suicide to be presented to the jury for whatever weight the jury chose to place upon it.

Counsel for petitioner opposed admission of evidence of a suicide attempt. Counsel argued that, although South Carolina equates flight with consciousness of guilt, there was no South Carolina authority for the concept that attempting suicide equaled flight. Defense counsel further argued that while the solicitor had informed him that petitioner's wife had first learned of the allegations on June 22, 2006, there was *no direct evidence* as to how or when Petitioner learned of the allegations against him. R. 19. Defense counsel argued:

I think even to introduce evidence of flight, which I suppose that they're asking you to equate suicide here, that the factual determination needs to be that he is aware of the charges against him and that the flight or suicide attempt was made in order to evade those charges. And from what [the assistant solicitor] told me that she intends to present, *there's no direct evidence* that he was aware of the charges against him. However, *there is a suicide note where he does talk about that he does not want to go to prison because somebody lied on him.*

Defense counsel further indicated that the solicitor had informed him that, although she intended to introduce evidence as to Petitioner's suicide attempt, she would not seek to introduce the suicide note. R. 19. Counsel argued that if the state were permitted to introduce the suicide attempt as evidence of a "guilty conscience or tantamount to a confession, here they have evidence that he is

denying it or did not confess it. So, I believe for the reasons behind the suicide attempt are not from a guilty conscience but rather perhaps from a lack of faith in the judicial system or a worry that he will be incarcerated wrongly.” R. 20, ll. 1-7

Defense counsel correctly argued that the prejudice of introducing evidence of the suicide attempt outweighed any probative value. Counsel argued that the admission of the suicide attempt would therefore confuse the jury. The solicitor conceded that the suicide note was more in petitioner’s favor and not an admission against his interests. Therefore, the state argued that the suicide attempt was admissible *but that the suicide note would not be presented*. The state argued that there was case law indicating that the state *did not have to prove* that the reason petitioner attempted suicide was because of the allegations. R. 20.

This was a blatant effort by the solicitor to unfair and cavalierly prejudice petitioner to the maximum by wanting his suicide attempt before the jury without the suicide note explaining that petitioner was attempting suicide because of a lack of faith in the judicial system. In short, the solicitor wanted the jury to conclude petitioner tried to kill himself because he was guilty of sexually assaulting a child, but she did not want the jury to have any context for the suicide attempt, in fairness, by way of the suicide note.

Our Supreme Court has disapproved such unprincipled attempts by solicitors to remove context to what occurred from the jury in other contexts. See State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004). (The solicitor introducing one statement made by the defendant which implied he intentionally killed his wife without introducing another statement made by the defendant indicating he accidentally shot his wife was fundamentally unfair under the Rule of Completeness, Rule 106, SCRE).

A jury could choose to believe or disbelieve petitioner's suicide note and that highlights the whole problem with our state starting down this attempted suicide being evidence of guilt road. Petitioner believes with fuller argument upon reconsideration that this Court would issue a different result and conclude that even if relevant evidence of a suicide attempt should be excluded under Rule 403, SCRE for the reasons stated above and below.

In Pettie v. State, 316 Md. 509, 560 A.2d 577 (1989) the court held it was error to admit evidence of an alleged suicide attempt as evidence of the accused's consciousness of guilt. The court cited various reasons for its holding. They included that inmate accused of various sex offenses may have feigned attempted suicide to invite mitigation on the sentence he was serving when the alleged sexual offense occurred. The court also noted that the suicide note itself was never even offered into evidence nor was its contents explained to the jury. The Court refused to answer the question whether evidence of a suicide attempt *was ever admissible*.

In State v. Mann, 132 N.J. 410, 625 A.2d 1102 (1993), the court found it was reversible error to admit evidence of an attempted suicide without first conducting a full pretrial hearing on the issue. The defendant argued he had a preexisting propensity to commit suicide because of other factors in his life, and the court cautioned that such ambiguities weigh strongly in favor of extreme caution before such evidence can be admitted. A defendant's psychological, social or financial situation may play a role in the suicide attempt. In short, an accusation of criminal wrongdoing can be the last straw in an otherwise troubled life.

The court in Mann also stated that if evidence of a suicide attempt was ever properly admitted that jury instructions were necessary that if the jury could credit *any alternative explanation* for the suicide attempt it could not infer consciousness of guilt. In South Carolina, of

course, the analogy to flight in this context is equally troubling since instructions of evidence of flight are improper. See, State v. Grant, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980).

The Court in State v. Coudotte, 7 N.D. 109, 72 N.W. 913 (1897), opined that a jury showed never be able to treat a suicide attempt as evidence of guilt. The court reasoned that the one who flees seeks to escape punishment where one who attempts suicide seeks to avoid the disgrace that attaches to being charged with a crime. The court stated that this motive “of delicacy” would be more powerful in an innocent, rather than a guilty person. While it may have been a cultural truth the court also wrote the incidence of suicide was higher among innocent than guilty persons.¹

Petitioner also disagrees with the state that this attempted suicide evidence was more probative than prejudicial. See Brief of Respondent at 8. The state blended its argument the children had no reason to lie together with the suicide attempt allegedly proved petitioner’s guilt:

But these children had no reason to lie. They certainly weren’t going to benefit from it and didn’t benefit from it. You know Alexis said that Carlos told her if she told she would get in trouble. Well she probably thinks I did get in trouble because she has suffered tremendously for telling, having the family torn apart, having to go through this.

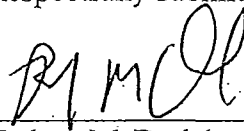
Another corroborating factor to consider is the Defendant’s suicide attempt a few hours after his wife was told about the allegations. Now, we don’t know what was in his mind but do you think it was a coincidence that he tried to commit suicide, swallowed rat poison, a few hours after his wife was told about the allegations of him sexually abusing his niece? *Do people – are people more likely to commit suicide when they find out they’ve been falsely accused of molesting a child or when they find out they’ve been caught and the secret’s out because they know they’re guilty and they’re going to jail? Think about it.*

R. 181. (emphasis added).

¹ There was also a North Dakota statute that mandated an accomplice’s testimony must be corroborated to maintain a conviction.

That is the problem and the fallacy of the state's position. It has the confusing and unduly prejudicial effect of suggesting a verdict on evidence and argument that has a spurious, not logical, connection. If evidence of attempted suicide were to be admissible then, in fairness, a defendant would have to be able to rebut that evidence with his own evidence of his financial, domestic, psychological, and other problems. This is not an evidentiary road our court system should go down in this state. Attempted suicide is vastly different and more complex than flight. Rehearing should be granted to allow further argument on this important matter.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 17th day of March, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

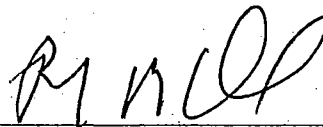
V.

JUAN OROZCO,

PETITIONER

CERTIFICATE OF SERVICE

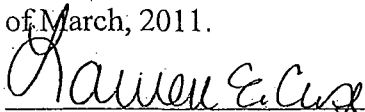
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, this 17th day of March, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of March, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Juan Orozco,

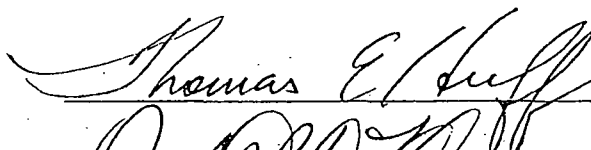
Appellant.

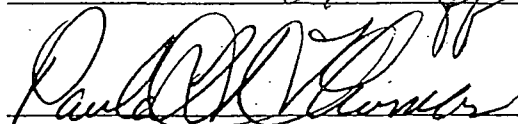
The Honorable J. Cordell Maddox, Jr.
Aiken County
Trial Court Case No. 2007-GS-02-00650
2007-GS-02-00651
2007-GS-02-00652
2007-GS-02-00653

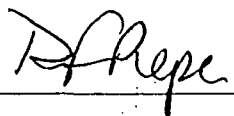
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Huff

 J. Thomas

 J. Pieper

Columbia, South Carolina

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General William M. Blitch, Jr.
James Strom Thurmond, Jr, Esquire

FILED

April 21, 2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 22, 2011

A handwritten signature in black ink, appearing to read "R M Dudek", written over a horizontal line.

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

JUL 22 2011

THE STATE,

S.C. Supreme Court

RESPONDENT,

V.

JUAN OROZCO,

APPELLANT

RECORD ON APPEAL

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EXHIBITS ARE BEING TRANSPORTED TO THE SOUTH CAROLINA COURT OF APPEALS.	

SELECTION OF THE JURY

1 First thing I'm going to do is ask the lawyers
2 for both sides to stand up and introduce themselves to
3 you. And then I'm going to ask you whether you have any
4 close business or personal relationship or are you related
5 by blood or marriage to any of the attorneys who may be
6 involved in this case, either for the State or for the
7 defense. Yes, ma'am.

8 MS. BRISBIN: I'm Assistant Solicitor Brenda
9 Brisbin for the State, and I'll be assisted by Assistant
10 Solicitor Lauren Maurice.

11 THE COURT: All right. Yes, sir.

12 MR. MAULDIN: Thank you, Your Honor. My name is
13 David Mauldin. I'm Mr. Orozco's lawyer. Also at my table
14 is Adrian Polite from my office. This is my paralegal,
15 Tesa Medlin. I have another paralegal, Pilar Alvarez, who
16 will be here tomorrow and possibly another lawyer, Grant
17 Gibbons.

18 THE COURT: All right. Thank you. Is anyone
19 related by blood or marriage or do you have any close
20 personal or business relationship with any of the
21 attorneys in this case?

22 (No response.)

23 THE COURT: Have you ever been represented by any
24 of the attorneys in this case?

25 (No response.)

1 tomorrow night, I wouldn't, think since I'm not going to
2 be here. If you would call it Wednesday night, it will
3 either tell you to call back Thursday night or that you're
4 excused for the week.

5 Again, I don't have any idea what we'll do after
6 we finish this case or how long this case is going to
7 take. I suspect that you're not going to have to come
8 back, if you want to know the truth, but I can't promise
9 you that. But you've been qualified for jury service now
10 so if you get asked a question whether or not you've
11 served as a juror or if you've been qualified as a juror
12 in three calendar years, you can say yes.

13 So, have a good week. And I will probably not
14 see you again, but call that number Wednesday night after
15 six.

16 (Jury panel excused.)

17 MR. MAULDIN: Your Honor, for record I have no
18 objections to jury selection.

19 THE COURT: No motions?

20 MS. BRISBIN: None from the State, Your Honor.

21 MR. MAULDIN: None from the Defendant, Your
22 Honor.

23 (4:20 p.m., jury enters courtroom.)

24 THE COURT: Ladies and gentlemen, I'm going to
25 send you home for the day. I'm going to ask you to be

1 the event someone asks you about your jury service and you
2 don't feel right about it, let the bailiff know on
3 Wednesday morning and I'll take care of it. This case
4 will not take but a couple of days at the most. You'll be
5 out of here, I suspect, by Thursday.

6 When you come back, Mr. Bodie, I'm appointing you
7 foreman of the jury. You're the only person that has to
8 sit in a particular spot. You have to sit in that first
9 seat right there. The rest of you can sit wherever you
10 want to sit.

11 So go and have a good couple days. I'll see you
12 at 10:30 Wednesday morning. Okay. Thanks.

13 (Jury exits courtroom at 4:26 p.m.)

14 THE COURT: So I need to watch this, make a
15 determination about the trustworthiness of the testimony;
16 is that right?

17 MS. BRISBIN: Yes, Your Honor. I have handed to
18 to you a motion for permission of an out-of-court
19 statement provided by the victims in this case,
20 and They were both
21 under the age of 12 at the time of the forensic
22 interviews. And the State is moving to admit those
23 videotaped interviews under South Carolina Code Section
24 17-23-175.

25 THE COURT: All right.

VICKIE GASKINS - DIRECT

1 MS. BRISBIN: Your Honor, I believe we'll
2 probably need to hear from the forensic interviewers as to
3 their qualifications.

4 THE COURT: Do you have them here?

5 MS. BRISBIN: Yes, sir.

6 THE COURT: All right. Let's do that.

7 MS. BRISBIN: The State calls Lieutenant Vickie
8 Gaskins.

9 VICKIE GASKINS, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Have a seat in the witness box.
12 State your full name for the Court, spelling your last.

13 THE WITNESS: Yes, ma'am. (Pause.)

14 THE COURT: No chair?

15 (Pause.)

16 THE COURT: All right. Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. BRISBIN:

19 Q. Where do you work?

20 A. Aiken County Sheriff's Office.

21 Q. And how long have you worked there?

22 A. Ten years.

23 Q. What's your position there?

24 A. I'm the lieutenant over the juvenile division for
25 criminal investigations division.

VICKIE GASKINS - DIRECT

1 Q. And do you have specific training in conducting
2 investigative interviews of children?

3 A. Yes, ma'am.

4 Q. What type of training do you have?

5 A. It's a 40-hour week training for Finding Words using a
6 semi-structured protocol known by its acronym, RATAC.

7 Q. Have you completed that training program?

8 A. Yes, ma'am.

9 Q. Is that the accepted training program in the State of
10 South Carolina?

11 A. Yes, ma'am.

12 Q. And did you also complete the advanced Finding Words
13 training program?

14 A. Yes, ma'am.

15 Q. Do you have any idea of approximately how many
16 children you have interviewed in the course of your
17 career?

18 A. Approximately a hundred. I don't know the exact
19 number.

20 Q. Okay. And did you interview Victoria Alexis Leaphart
21 in this case?

22 A. Yes, ma'am; I did.

23 Q. Was she under the age of 12 at the time of the
24 interview?

25 A. Yes, ma'am.

VICKIE GASKINS - DIRECT

1 Q. And did you videotape that interview?

2 A. Yes, ma'am.

3 Q. Is there also audio on that videotape?

4 A. Yes, ma'am.

5 Q. Do you recognize what's been marked as State's Exhibit
6 Number One?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. That's the video, the recorded video of the interview.

10 Q. And who did the forensic interview on that interview?

11 A. I did.

12 Q. And has this been altered, this DVD been altered in
13 any way to your knowledge?

14 A. No, ma'am.

15 Q. Have you watched it?

16 A. Yes, ma'am.

17 MS. BRISBIN: Your Honor, at this time I would
18 ask that State's Exhibit Number One be published for
19 purposes of this hearing.

20 THE COURT: Any objection?

21 MR. MAULDIN: No, Your Honor, not for the purpose
22 of this hearing.

23 THE COURT: All right.

24 MR. MAULDIN: Although I may have a couple
25 questions.

VICKIE GASKINS - CROSS

1 THE COURT: Okay.

2 MR. MAULDIN: I don't know when you want me to do
3 that.

4 THE COURT: You can do that now. Now will be
5 fine.

6 MR. MAULDIN: Sorry.

7 CROSS-EXAMINATION

8 BY MR. MAULDIN:

9 Q. Did you say she was 12 at the time of the interview or
10 was she ten?

11 A. She was under the age of 12.

12 Q. And what does this Finding Words training consist of?

13 A. This is a semi-structured protocol known by the
14 acronym RATAC, R. A. T. A. C. It's a non-leading,
15 information-gathering protocol.

16 Q. And how long does that training take?

17 A. The initial training is 40 hours.

18 Q. And you said you had advanced training as well?

19 A. Correct.

20 Q. And how long is that?

21 A. I think that it was three days, 36 hours.

22 Q. You said you didn't know the exact number of children
23 you had interviewed. Can you give a rough estimate or in
24 the ballpark?

25 A. Somewhere probably between 80 and 100. Around 100;

1 I'm not real sure.

2 Q. Do you update your training in any way?

3 A. The advanced Finding Words was a, an updating. And I
4 don't -- I haven't had any this year.

5 Q. When was the advanced training? When did you take
6 that?

7 A. I took the advanced probably a year to two years after
8 the original. And that probably would have been 2003 or
9 -4, and then I probably would have taken the advanced
10 2004, 2005.

11 Q. And -- all right. No further questions, Your Honor.

12 THE COURT: All right. Yes, ma'am. You can play
13 it.

14 MS. BRISBIN: Thank you, Your Honor.

15 THE COURT: We'll have to let him hear it. I
16 guess he can come up here and we'll have to bring the
17 Defendant up, too.

18 (Pause.)

19 (Thereupon the DVD was played until a malfunction
20 occurs.)

21 THE COURT: You're not objecting to this; right?

22 MR. MAULDIN: I'm not sure about the
23 disseminating pictures part, Your Honor. I might get to
24 that part.

25 THE COURT: Yeah. I guess I got to watch all of

1 it. Is the problem with the disk or the computer?

2 MR. BODIE: I'm not sure.

3 MS. BRISBIN: It was fine before today. Your
4 Honor, actually if he wanted to redact the part about the
5 pictures, we could stop it there. And then we wouldn't
6 have to worry about that. I don't have any objection to
7 that.

8 MR. MAULDIN: I'll review my notes. I think they
9 talked about some other things. I may use it as prior
10 inconsistency, but she does talk about other activities
11 post this, this period of the interview.

12 MS. BRISBIN: I didn't think so, but I could be
13 wrong.

14 MR. MAULDIN: I took detailed notes.

15 THE COURT: Okay. We'll see if we can get it
16 back up then, I guess.

17 (Pause.)

18 (DVD played.)

19 MS. BRISBIN: That's the end of the video, Your
20 Honor. I don't have any further questions for Lieutenant
21 Gaskins. And she does need to be excused, if Mr. Mauldin
22 doesn't have questions.

23 THE COURT: All right. Any questions for her?

24 MR. MAULDIN: I believe I already questioned her
25 regarding her qualifications as an expert.

1 THE COURT: All right. You can be excused.

2 Thank you.

3 MS. BRISBIN: Your Honor, did you want to hear
4 the other video of the other victim prior to ruling or did
5 you want to hear it individually?

6 THE COURT: Well, any arguments on the admission
7 of this?

8 MR. MAULDIN: Well, Your Honor, just as I
9 mentioned earlier when the video malfunctioned, I wish
10 that they'd redact the disseminating charge (inaudible)
11 here today and didn't appear to be relevant as to the
12 issue of guilt or innocence on the lewd act and criminal
13 sexual conduct charge.

14 THE COURT: Can you redact that without too much
15 trouble?

16 MS. BRISBIN: Well, according to Mr. Bodie it's a
17 lot of trouble, but I think it can be done.

18 THE COURT: It just keeps it cleaner, quite
19 frankly.

20 MS. BRISBIN: Yes, sir.

21 THE COURT: Well, based upon the requirements of
22 17-23-175, I find that there are particular guarantees of
23 trustworthiness in this based on the elements of B.-One
24 through Five for this one. So it's admitted.

25 MS. BRISBIN: Thank you, Your Honor. And you do

LISA MILLER-DUPREE - DIRECT

1 want us to redact that portion?

2 THE COURT: Yeah. I think so. That really keeps
3 it cleaner which is what worries me about stuff like
4 that. And the second one is not as long?

5 MS. BRISBIN: No, Your Honor. State calls Lisa
6 Miller DuPree.

7 LISA MILLER-DUPREE, having been duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Have a seat on witness box. State
10 your full name for the Court, spelling your last.

11 THE WITNESS: Lisa Miller-DuPree. M. I. L. L. E.
12 R. hyphen capital D. U. Capital P. R. E. E.

13 DIRECT EXAMINATION

14 BY MS. BRISBIN:

15 Q. Where are you employed?

16 A. Currently I'm employed at the Dickerson Center for
17 Children in Lexington County as the clinical coordinator
18 and forensic interviewer.

19 Q. And, where were you employed in 2006?

20 A. I was the clinical coordinator at the CAC of Aiken
21 County.

22 Q. What does CAC stand for?

23 A. The Child Advocacy Center of Aiken County.

24 Q. How long were you employed there?

25 A. I started doing interviews as the clinical director of

LISA MILLER-DUPREE - DIRECT

1 Children's Place in Aiken, so I wore two hats from 2005
2 until 2007 I came on board at Advocacy Center in Aiken
3 full-time.

4 Q. How long did you work at Children's Place?

5 A. I worked at Children's Place from 2002 until 2007 as
6 clinical director.

7 Q. And what type of educational background do you have?

8 A. I have a two-year degree in human services. I have a
9 four-year degree in social work, and I have a licensed
10 master's social-work degree.

11 Q. Do you have special training in forensic interviewing
12 of children and investigating child abuse cases?

13 A. Yeah. My program of my bachelor's and my master's in
14 social work was focused on child abuse and neglect. And
15 starting in 2002, I had forensic training in Huntsville,
16 Alabama. In 2005, I had Finding Words training in
17 Columbia, South Carolina. And in 2005, I had advanced
18 Finding Words in Columbia. And in 2007, I had forensic
19 interview training for developmentally-delayed kids. And
20 in 2008, I was at a week's training in Virginia Beach put
21 on by the Association for Prevention of Child Abuse,
22 forensic interview training also.

23 Q. Can you estimate approximately how many forensic
24 interviews of children you've done?

25 A. Approximately 300 to date.

LISA MILLER-DUPREE - DIRECT

1 Q. And did you have the opportunity to do a forensic
2 interview on Rosa Sanchez-Martinez?

3 A. Yes, I did.

4 Q. Was that videotaped?

5 A. Yes, it was.

6 Q. Where was that done?

7 A. At the Children's Advocacy Center in Aiken County.

8 Q. How old was Rosa at the time of the interview?

9 A. Six years old.

10 Q. Do you recognize what's been marked as State's Exhibit
11 Number Two?

12 A. Yes.

13 Q. And what is that?

14 A. That's her DVD that we taped during the interview.

15 Q. Did you do that interview?

16 A. Yes, I did.

17 Q. Have you watched this video?

18 A. Yes, I have.

19 Q. Is this an accurate depiction of what happened at that
20 interview?

21 A. Yes, it is.

22 MS. BRISBIN: I'd ask that State's Exhibit Number
23 Two be published for the purposes of this hearing at this
24 time, Your Honor.

25 THE COURT: Any objection?

LISA MILLER-DUPREE - DIRECT

1 MR. MAULDIN: Not for this hearing, Your Honor.

2 THE COURT: All right

3 (DVD played.)

4 THE COURT: You're moving to introduce that?

5 MS. BRISBIN: Yes, Your Honor. And if Your Honor
6 sees fit, we would redact the portions on it that don't
7 relate directly to the Defendant in this case.

8 THE COURT: Any motions? Any --

9 MR. MAULDIN: Well, Your Honor, I would move to
10 redact the portion where she's alleging he molested her
11 sister.

12 MS. BRISBIN: Yes, Your Honor.

13 MR. MAULDIN: And, again, all the portions
14 regarding dissemination of obscene materials, they don't
15 appear to be in conjunction with any of the lewd act
16 behavior. In fact, she described sneaking in and seeing
17 something on the computer and sneaking back out.

18 Similar to our motion, lastly, it's (inaudible)
19 -- he's not charged with it as well. And in addition,
20 Your Honor, the part near the end where she is guessing
21 that he's going to go lie to the police. That
22 is (inaudible) -- (COURT REPORTER COULD NOT HEAR OVER
23 INTERPRETER)

24 MS. BRISBIN: I agree with every bit of that.

25 THE COURT: If you agree with that, that's fine.

1 But otherwise -- and this one is a little bit more
2 problematic because it's a little more leading. I just
3 have to tell you that, but, you know given the totality of
4 the circumstances, I'm going to find that it's trustworthy
5 so.

6 MS. MAURICE: And, Your Honor, if it may, I just
7 had seen it for the first time there and I took a lot of
8 notes. And I think if we just take off almost the whole
9 middle part and the whole end part, it's going to do
10 this. And maybe David can come over and look at it after
11 we redact it tomorrow so he can make sure it's what we
12 agreed to.

13 THE COURT: Okay. All right. Thank you, ma'am.
14 You may step down. All right. Is that all we need to
15 deal with before Wednesday?

16 MS. BRISBIN: Your Honor, there is the matter of
17 the Defendant being out on bond. The State would ask that
18 he be taken into custody due to the delay between what we
19 saw today and this trial not starting until Thursday. We
20 have some concerns particularly with his being from a
21 foreign country and --

22 THE COURT: I assume you would object to that?

23 MR. MAULDIN: Well, Your Honor, if I may, he has
24 been on bond for two years. He's been showing up for roll
25 call over one year. When the police called him to come to

1 the police station and make a statement, he went
2 voluntarily. They did not obtain an arrest warrant. When
3 they did obtain an arrest warrant, he didn't fight it. He
4 turned himself in.

5 MS. BRISBIN: Your Honor, there's also the
6 concern about the suicide risk. He has documented several
7 suicide attempts.

8 THE COURT: Well, I understand both of your
9 arguments. I'm going to revoke bond. That's normally
10 what I would do. And I understand your argument, but I
11 revoke bond.

12 MS. BRISBIN: Thank you.

13 THE COURT: I'm just sorry that the circumstances
14 beyond his control are going to prevent him from getting
15 this tried tomorrow, but nothing I can do about that.

16 MS. BRISBIN: Thank you, sir.

17 THE COURT: Okie-doke. Wednesday morning at
18 10:30.

19 END OF DAY: 6:05 P.M.

20 ON WEDNESDAY, JULY 16, 2008 AT 11:05 A.M.:

21 THE COURT: Anything we need to take up outside
22 the presence of the jury but on the record regarding the
23 tape?

24 MS. BRISBIN: Yes, Your Honor. The State has two
25 motions to take up. The first is a motion to admit

1 evidence.

2 MR. MAULDIN: Your Honor, they're bringing my
3 client out first.

4 THE COURT: Okay.

5 MR. MAULDIN: If we can wait.

6 THE COURT: Thank you.

7 MS. BRISBIN: I'll pass this up.

8 (Pause.)

9 (Defendant enters courtroom.)

10 THE COURT: All right. Everybody here?
11 Everybody here for the defense?

12 MR. MAULDIN: Yes, sir, Your Honor.

13 THE COURT: All right. Yes, ma'am.

14 MS. BRISBIN: Thank you, Your Honor. Motion is
15 to admit evidence of a suicide attempt by the Defendant.
16 This suicide attempt was documented on June 22nd of 2006
17 when the sheriff's department, Aiken County Sheriff's
18 Department was called to Mr. Orozco's residence on an
19 attempted suicide call. That took place at two p.m. on
20 the same day that the Defendant was informed that a child
21 had made allegations of sexual abuse against him.

22 I did -- would ask to amend my motion. I thought
23 at the time I did this motion that he was aware of both
24 children making allegations. On that day he was only
25 aware of making allegations, but he was informed that

1 morning that : had made allegations of sexual abuse
2 against him.

3 And at two p.m. Aiken County Sheriff's Office
4 received the call of an attempted suicide. They were
5 dispatched at 2:15 and found the Defendant lying on the
6 floor. A suicide note was found. Rodent poison, a box of
7 rodent poison was there and he was transported by EMS to
8 the emergency room for treatment for ingestion of rodent
9 poison.

10 There is no South Carolina Appellate Court
11 decision addressing this question of whether evidence of
12 suicide attempt is admissible to show consciousness of
13 guilt. However, the courts in most states have allowed
14 evidence of attempted suicide to go to the jury for
15 whatever weight it chooses to place upon it.

16 I have listed several of those cases including a
17 Georgia case, a North Carolina case, and an Arkansas case
18 and an Oklahoma case which all stand for that
19 admissibility.

20 THE COURT: Yes, sir.

21 MR. MAULDIN: Thank you, Your Honor. I've
22 reviewed many cases across the country in the federal
23 system too, and there is no South Carolina decision on
24 it. Apparently a lot of these cases do equate a suicide
25 attempt with what flight, and there is law in South

1 Carolina on flight although there's no law saying suicide
2 equals flight.

3 Of course, in determining -- first I would ask
4 Your Honor not to make that equation, that basically it
5 hasn't been done in South Carolina and I would ask Your
6 Honor not to do it.

7 Secondly, I believe the Solicitor has informed me
8 that Mr. Orozco's wife had been informed of the allegation
9 but she has provided me no evidence of how Mr. Orozco
10 would have been informed of this allegation. I think even
11 to introduce evidence of flight, which I suppose that
12 they're asking you to equate with suicide here, that the
13 factual determination needs to be that he is aware of the
14 charges against him and that the flight or suicide attempt
15 was made in order to evade those charges.

16 And from what she told me that she intends to
17 present, there's no direct evidence that he was aware of
18 the charges against him.

19 However, there is a suicide note where he does
20 talk about that he does not want to go to prison because
21 somebody lied on him. However she says that she does not
22 intend to introduce this as evidence and this is the only
23 evidence that I'm aware of that would indicate that he was
24 aware of the charges pending.

25 However, if they intend to introduce this

1 evidence as a guilty conscience or tantamount to a
2 confession, here they have evidence that he is denying it
3 or did not confess it. And so I believe for the reasons
4 behind the suicide attempt are not from a guilty
5 conscience but rather perhaps from a lack of faith in the
6 judicial system or a worry that he will be incarcerated
7 wrongly.

8 For that reason, I believe that the prejudice as
9 introducing this evidence outweighs the probative value
10 and it should not be admitted and also it would factually
11 confuse the jury and on that basis it should not be
12 admitted as well.

13 THE COURT: What about the note? You're not
14 going to introduce the note?

15 MS. BRISBIN: I do have it. It's in Spanish. We
16 did have it interpreted in writing -- or translated. I
17 would not ask to admit it because I believe it is
18 hearsay. It's not an admission against his interests,
19 it's more in his own favor.

20 And as to that issue, there is case law that says
21 that we don't have to have proof that the reason he
22 attempted suicide was because of the allegations. There
23 is a case that specifically says that that's -- it can
24 still go to the jury and they can attach whatever weight
25 they choose.

1 MR. MAULDIN: Well, Your Honor, if I may just
2 respond briefly. They have to show that he was aware that
3 the charges were against him and that he made this attempt
4 in order to escape those and the note is the only
5 indication he was aware of the charges. I think it would
6 be a predicate for them.

7 MS. BRISBIN: Your Honor, there is circumstantial
8 evidence which we will present, the mother of one of the
9 victims told Mr. Orozco's wife, who is her sister, the
10 morning of the suicide attempt that had made the
11 allegation of sexual abuse. And the wife was present when
12 EMS and the sheriff's department arrived at the suicide
13 attempt call.

14 THE COURT: All right. Well, I'm going to allow
15 it to be introduced. I think that the law is not clear.
16 It's clear in other states. And I think evidence of
17 flight is admissible.

18 I'll tell you, I understand this puts a burden on
19 the defense to make a decision about the note, but at some
20 point I'd be inclined to introduce the note just so you
21 know, based upon this ruling.

22 MS. BRISBIN: Yes, sir.

23 THE COURT: Okay.

24 MS. BRISBIN: We also have a brief Jackson V.
25 Denno motion. And would call Jason Feemster to the stand.

JASON FEEMSTER - DIRECT

1 JASON FEEMSTER, having been duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Have a seat in the witness box,
4 stating your full name and spelling your last for the
5 Court, please.

6 THE WITNESS: My name is Jason Feemster. F. as
7 in fox E. E. M. S. T. E. R.

8 DIRECT EXAMINATION

9 BY MS. BRISBIN:

10 Q. Were you the investigating officer in this case?

11 A. Yes, ma'am.

12 Q. Where were you employed at that time?

13 A. The Aiken County Sheriff's Office.

14 Q. Where do you work now?

15 A. I'm a full time student at Southeastern Baptist
16 Theological Seminary in Wake Forest, South -- Wake Forest,
17 North Carolina. I'm sorry.

18 Q. And, how long did you work for the sheriff's
19 department?

20 A. Ten years, approximately.

21 Q. What was your position there?

22 A. I was a juvenile investigator.

23 Q. And how did you get involved in this case?

24 A. I was assigned as the investigator for the case.

25 Q. And when did the -- when was the incident -- were the

JASON FEEMSTER - DIRECT

1 incidents reported to the sheriff's department?

2 A. They were reported June 22nd, 2006.

3 Q. And what did you do?

4 A. I contacted the complainant and arranged for forensic
5 interviews to be completed for the children.

6 Q. Did you have the opportunity to interview the
7 Defendant in this case?

8 A. Yes, ma'am; I did.

9 Q. And was that interview videotaped?

10 A. Yes, ma'am.

11 Q. Did Mr. Orozco appear to understand or did you read
12 his rights to him?

13 A. Yes, ma'am; I did.

14 Q. And would you read those rights as you read them to
15 him?

16 A. Yes, ma'am. This occurred August 8th, 2006 at
17 approximately 09:52 hours. Miranda warnings stated:
18 Before we ask you any questions, you must understand your
19 rights. You have the right to remain silent. Anything
20 you say can and will be used against you in a court of
21 law. You have the right to talk to an attorney for advice
22 before we ask you any questions and have him or her
23 present during questioning. If you cannot --

24 MR. MAULDIN: Your Honor, he's talking a little
25 too fast.

JASON FEEMSTER - DIRECT

1 THE COURT: If you would just slow down.

2 THE WITNESS: Yes, sir. Would you like me to
3 start over?

4 THE INTERPRETER: Please.

5 THE WITNESS: Before we ask you any questions,
6 you must understand your rights. You have the right to
7 remain silent. Anything you say can and will be used
8 against you in a court of law. You have the right to talk
9 to an attorney for advice before we ask you any questions
10 and to have him or her present during questioning. If you
11 cannot afford an attorney, the Court will appoint an
12 attorney to represent you without cost, if you wish.

13 If you decide to answer questions now without an
14 attorney present, you will still have the right to stop
15 answering at any time. You also have the right to stop
16 answering at any time until you talk to an attorney.

17 Then it states: I have read this statement of my
18 rights and understand what my rights are. Further down it
19 has the waiver of rights which states: I am willing to
20 make a statement and answer questions. I do not want an
21 attorney at this time. I understand and know what I'm
22 doing. No promises or threats have been made to me and no
23 pressure or coercion of any kind has been used against me.

24 BY MS. BRISBIN:

25 Q. Was Mr. Orozco in custody at that time?

JASON FEEMSTER - DIRECT

1 A. No, ma'am.

2 Q. Was he handcuffed?

3 A. No, ma'am.

4 Q. Was he free to leave?

5 THE COURT: Hold on.

6 THE INTERPRETER: I didn't hear that. Would you
7 repeat that question, the last question? I couldn't hear
8 you.

9 BY MS. BRISBIN:

10 Q. Was he free to leave?

11 A. Yes, ma'am.

12 Q. Did he appear to understand the rights as they were
13 read to him?

14 A. Yes, ma'am.

15 Q. Did you ask him if he understood them?

16 A. Yes, ma'am.

17 Q. And did he say that he did understand them?

18 A. Yes, ma'am.

19 Q. Did he initial each of the rights as they were read to
20 him?

21 A. Yes, ma'am.

22 Q. Did he sign the waiver of those rights?

23 A. Yes, ma'am.

24 Q. I'm showing you what's -- I need to have that marked.

25 (State's Exhibit No. 3, Miranda waiver, marked for

JASON FEEMSTER - DIRECT

1 identification.)

2 BY MS. BRISBIN:

3 Q. I'm showing you what's been marked State's Exhibit
4 Three for the purposes of this hearing. Do you recognize
5 that?

6 A. Yes, ma'am. That's the Miranda waiver that Mr. Orozco
7 and I went over before the interview began.

8 Q. Is your signature on that?

9 A. Yes, ma'am; it is.

10 Q. Is Mr. Orozco's signature on that?

11 A. Yes, ma'am.

12 Q. And what's the date that this interview took place?

13 A. August the 8th, 2006 at 09:52 hours. And that's when
14 the Miranda began.

15 Q. Yes. I ask that State's Exhibit Number Three be
16 admitted for the purposes of this hearing, Your Honor.

17 THE COURT: Any objection?

18 MR. MAULDIN: No, Your Honor.

19 THE COURT: For purposes of this hearing.

20 (Thereupon, State's Exhibit No. 3, Miranda
21 waiver, was admitted into evidence.)

22 BY MS. BRISBIN:

23 Q. Did you coerce Mr. Orozco or threaten him or promise
24 him anything in any way prior to his speaking to you?

25 A. No, ma'am.

JASON FEEMSTER - CROSS

1 Q. Did he at any time ask for a lawyer?

2 A. No, ma'am.

3 Q. Did he agree to speak with you?

4 A. Yes, ma'am.

5 Q. And was that videotaped?

6 A. Yes, ma'am.

7 Q. Did he make any admissions to you?

8 A. The only thing that he advised was that he had cared
9 for the children while his wife would have been at work.

10 Q. Okay. And did he indicate that he had been left alone
11 with the children?

12 A. Yes, ma'am. He would have been the only adult there
13 with the children.

14 Q. And which children are you referring to?

15 A. To Suzie -- I'm sorry. Rosa Sanchez, and I believe it
16 was his children as well, and a Victoria Alexis Leaphart.

17 Q. Thank you. I don't have any further questions.

18 Please answer what Mr. Mauldin has.

19 A. Yes, ma'am.

20 THE COURT: Yes, sir.

21 MR. MAULDIN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MAULDIN:

24 Q. Now during your reading of the rights, Mr. Orozco
25 advised you he did not read English very good; is that

JASON FEEMSTER - CROSS

1 correct?

2 A. That's correct.

3 Q. And so you made an attempt, you explained it to him in
4 English and you broke it down --

5 A. Yes, sir.

6 Q. -- to make sure that he could understand that?

7 A. Yes.

8 Q. Did you sometimes have difficulty understanding what
9 he was saying?

10 A. Yes, sir.

11 Q. Or what meaning he was trying to convey during that
12 conversation?

13 A. Yes, sir.

14 Q. And your conversation with him lasted about 30
15 minutes; didn't it?

16 A. Yes, sir.

17 Q. Roughly 30 minutes. Now, how did he come to be in the
18 office? Did you call him? I mean, how did he --

19 A. I believe I contacted both he and his wife and
20 arranged to meet with them.

21 Q. So they came to the sheriff's office?

22 A. Yes, sir.

23 Q. You didn't go pick them up or anything like that?

24 A. No, sir.

25 Q. So you -- this part about I read the statement of

1 rights, you had read it to him. He hadn't read it,
2 really?

3 A. Yes, sir. I read it to him.

4 Q. Okay.

5 MR. MAULDIN: Begging the Court's indulgence for
6 a second.

7 THE COURT: All right.

8 (Pause.)

9 MR. MAULDIN: I have no further questions.

10 THE COURT: All right. Thank you. Anything
11 else?

12 MS. BRISBIN: No, Your Honor.

13 THE COURT: Thank you, sir. You can step down.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Any other witnesses?

16 MS. BRISBIN: Not for purposes of this hearing,
17 Your Honor.

18 THE COURT: All right. Yes, sir? Anything?

19 MR. MAULDIN: I don't intend to call any
20 witnesses, Your Honor.

21 THE COURT: All right. Do you want to put
22 anything on the record?

23 MR. MAULDIN: Well, Your Honor, I've discussed
24 this with my client. I watched the video and watched the
25 officer explain the rights to my client and I have talked

1 this over with my client and he has said that he did
2 understand, that the officer did go slow enough and clear
3 enough for him to understand. He's not provided with any
4 basis to object.

5 THE COURT: Okay... All right. Then it's
6 admissible.

7 MS. BRISBIN: Thank you.

8 THE COURT: Thank you. All right. Anything else
9 before we bring them in?

10 MR. MAULDIN: Yes, Your Honor. There's the
11 matter of the State introducing the recorded interviews of
12 the children from the Advocacy Center. We had a hearing,
13 a prior hearing a couple days ago regarding the redaction
14 of a couple parts of these videos and the State has
15 redacted them.

16 I have reviewed, I believe, the disks of the
17 redaction. They appear to be in line with what Your Honor
18 had ordered. However it appears that they intend to
19 introduce the disk into evidence as far as publishing to
20 the jury. They have saved on the hard drive of this
21 laptop copies of these disks. I have not had an
22 opportunity to review that hard drive.

23 If they intend to do that, I reserve the right to
24 object to any non conformity with Your Honor's previous
25 order and perhaps motions after that.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 THE COURT: Yeah. My understanding is it's an
2 exact duplicate.

3 MS. BRISBIN: Yes, sir. And Mr. Mauldin has
4 reviewed the disk themselves. It's my understanding that
5 he is willing to stipulate that they are redacted
6 according to your previous order.

7 THE COURT: All right. Well assuming, I mean,
8 I'm assuming it's an exact duplicate. Now obviously if
9 something comes up, your right to object to it is
10 reserved.

11 MR. MAULDIN: Thank you, sir.

12 THE COURT: Okay. Anything else before we bring
13 them in?

14 MS. BRISBIN: I don't believe there's anything
15 else from the State, Your Honor.

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: All right. I understand with a
18 translator it's difficult. We'll have to try to slow down
19 a little bit.

20 MS. BRISBIN: Yes, sir.

21 THE COURT: Okay.

22 (Jury enters courtroom at 11:25 a.m.)

23 THE COURT: All right. You can swear them.

24 (Jury impaneled.)

25 THE COURT: Ladies and gentlemen, I want to take

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 just a few minutes here to give you a little bit of an
2 outline about how this case is going to proceed and tell
3 you a little bit about our different roles. This is just
4 an opening charge.

5 At the end of this trial, I'll charge you a
6 fairly extensive charge on the law. And I'll just tell
7 you right now that at the end of the trial I'll read to
8 you 30 or 40 pages worth of law. I apologize now for that
9 but that's the way you do it in South Carolina, and I
10 think it's a good way to do it.

11 What I'm going to do now is tell you briefly a
12 little bit about the trial. I'm going to also tell you
13 that for whatever reason, this is just one of those
14 weeks -- I've got a tickle, so if I stop, I apologize for
15 that.

16 First let me tell you one thing that concerns
17 me. Every time I try a case a week somewhere in the
18 state, I get very concerned about the influence of
19 televisions on jurors. Every judge I know gets a little
20 concerned about it. People are sort of conditioned. I
21 don't watch those shows, but I think a lot of people do
22 and people get conditioned to courtrooms where everything
23 is solved and resolved within 22 minutes or an hour with
24 commercials. I'll tell you right now, that's just not the
25 way it works. That's one of the reasons I don't watch

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 them. It's called the CSI effect. It's an actual concern
2 of judges.

3 Please don't get frustrated with the fact that
4 the courtroom doesn't operate the way you may see it on
5 television. I understand you may consciously not think
6 that it's going to happen, but I suspect at some point
7 during this trial you're going to get a little frustrated
8 by the fact that you may have to leave the courtroom, by
9 the fact that things move slowly, by the fact that
10 sometimes you're sent out and brought back in and then
11 sent right back out.

12 I'll tell you, this is a search for the truth.
13 This is a very solemn occasion and you're charged with a
14 very solemn obligation. I just want to tell you that up
15 front that I do think that the courtroom is a place of
16 honor. And I think that sometimes the television has an
17 effect. So to the extent that I can give you that warning
18 early on and tell you that it's not going to be like
19 television, I want to do that.

20 I also want to tell you that during the course of
21 this trial you and I will have very different roles. You
22 have to determine, based upon the evidence that you hear,
23 and any, basically the testimony that you hear from the
24 witness stand and any evidence that's put into evidence
25 and admitted, you have to determine what the facts are.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 You have to determine whether you believe the
2 witnesses that will testify from this witness stand. You
3 have to determine whether they're credible. And
4 credibility under the law in South Carolina simply means
5 believability. I'll tell you now that you can believe
6 everything that a witness says from this witness stand or
7 you can believe nothing that they say. You can take a
8 portion of what they say and believe it and disregard the
9 remaining, but you have to determine what the facts are in
10 this case.

11 I have to judge the law. I have to determine
12 whether or not an objection is proper. I'm going to have
13 to determine during the course of trial whether or not
14 certain pieces of evidence should be introduced. I'll
15 tell you that you got two very good lawyers. You got
16 three, four very good lawyers. We've been working outside
17 your presence to try to streamline this thing by
18 discussing the introduction of evidence. But I'm going to
19 have to make those decisions. And as I said a few minutes
20 ago, I'm going to have to send you out of the courtroom
21 sometimes when I make these decisions.

22 And I can also tell you that invariably if I tell
23 you that I'm going to send you out for ten minutes it may
24 be 20 minutes. That's just the way things go. I want to
25 give the lawyers plenty of time to discuss what they need

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 to talk about, but I'm going to have to be the judge of
2 the law. And then at the end of the trial I will, as I
3 said, read to you a very extensive charge of the law and
4 you're going to have to take this law as I give it to you
5 at the end of the trial and apply it to the facts as you
6 determine them to be and then you'll reach a verdict.

7 If for any reason during the course of this trial
8 you think that I have an opinion about a fact, if I turn
9 red, if I yell, if I shake my head, any indication that
10 you might have that I have an opinion about a fact,
11 disregard it. Quite frankly, whether or not I believe a
12 witness or believe that a fact is true or not is totally
13 irrelevant. You are the only people in this courtroom who
14 can determine what the facts are in this case.

15 And I'll tell you also just to tell you how
16 solemn your job is, if I make a mistake in the law during
17 the course of this trial the case can be appealed and the
18 Court of Appeals or the Supreme Court can overrule me.

19 If you make a mistake in the facts, there is no
20 way to overrule it. And I will tell you that only to say
21 that you need to listen very carefully and you need to
22 make sure that during the course of this trial you don't
23 reach a conclusion until all the evidence is in.

24 The State will present their evidence first, the
25 defense will present their evidence. And don't make a

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY.

1 decision until you've heard everything. I also want to
2 tell you that you heard yesterday the State, the
3 Solicitor's Office, read from an indictment. The
4 Defendant in this case is charged with two counts of lewd
5 act upon a child and two counts of criminal sexual conduct
6 with a minor.

7 She read from these pieces of paper which are
8 indictments. Some of you may not -- some you may know,
9 some of you may not know exactly what an indictment is.
10 This is it. This is literally the piece of paper that is
11 used to start the process. But the fact that the
12 Defendant has been indicted shouldn't be considered by you
13 at all.

14 The fact that a person has an indictment against
15 them is merely the beginning of the process. And you
16 should never discuss during the course of your
17 deliberations the fact that this indictment has been
18 issued. Every person that is brought in the courtroom has
19 an indictment. Many people who are not brought into the
20 courtroom have indictments. Shouldn't be considered by
21 you at all during the course of this.

22 Don't get mad at the lawyers if they object.
23 Every now and then I sit up here and I watch jurors and
24 they get angry at lawyers who might object. They think
25 they're delaying things. That's their job. And you need

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 to understand that they have to do their job. If I send
2 you out, as I said, and you stay out there for 20 minutes
3 and you start to get frustrated because you're sitting out
4 there, blame it -- I have to control the courtroom. I
5 have to control the timing of everything. Please don't
6 blame the lawyers because they've done their job. That's
7 what they're paid to do.

8 Now, ladies and gentlemen, don't begin your
9 deliberations in this case until I charge you with the
10 law. Every time you leave this courtroom, I'm going to
11 tell you, don't discuss this case. You should never talk
12 about this case until all the evidence has been
13 introduced, I've charged you with the law at the end of
14 the trial, and I tell you, go back and begin your
15 deliberations. You'll have any piece of evidence that is
16 introduced with you in the deliberation room. That is the
17 first time that you should ever discuss this case. You
18 can talk about anything you want, but don't discuss this
19 case. As I said, you've got to basically listen to all
20 the testimony that's been given. Some of this I'm sure
21 you understand, but I am charged by law to tell you.

22 If you have a question or a problem at any point
23 during the trial, Mr. Foreman, all you need to do is write
24 it on a piece of paper, sign your name to it, knock on the
25 door and they'll bring it to me. There are some questions

OPENING STATEMENTS ON BEHALF OF THE STATE

1 that I can answer, some issues that I can help you with.
2 There are some that I can't and I'll just tell you whether
3 I can help you or not.

4 Ladies and gentlemen, the State has the burden of
5 proving their case beyond a reasonable doubt. They have
6 to prove each and every element of their case beyond a
7 reasonable doubt. At the end of this trial I will charge
8 you a fairly long and extensive charge on reasonable
9 doubt.

10 But I'll tell you now that just listen to the
11 testimony, review any evidence that you have a chance to
12 review right now and be as patient as you can. If you
13 have a problem during the course of the trial while you're
14 in the courtroom, raise your hand. We'll go for an hour
15 to an hour and a half. Quite frankly, that's as long as I
16 can sit still, about an hour and a half. So every hour
17 and a half we'll take about 15 minutes to let you stretch
18 back there. But if you need a break before that, just
19 raise your hand, we'll take a break, no questions asked.
20 And it won't be a problem. Make sure that you do that and
21 just get the bailiffs' attention.

22 Thank you very much. We'll try to make this as
23 pleasant experience for you as we can.

24 MS. BRISBIN: May it please the Court.
25 Mr. Mauldin. Ladies and gentlemen of the jury.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 The Judge just said we'll try to make it as
2 pleasant as we can. I have to warn you up front, it's
3 probably not going to be very pleasant. This is a case
4 about sexual abuse of two little girls. Unfortunately the
5 only way we can do this is to have two little girls
6 testify about what happened to them in detail. It's
7 probably not going to be pleasant for you to hear but we
8 do appreciate your listening.

9 Mr. Orozco is charged with sexually abusing
10 Alexis Leaphart and Rosa Sanchez when Alexis was about
11 eight years old and Rosa was five years old.

12 The girls first told about this two years ago.
13 Unfortunately it has taken two years for it to come to
14 trial which happens sometimes. They were -- Alexis had
15 just turned ten when she first told about the abuse and
16 Rosa was six.

17 You will hear about the relationship between the
18 girls and the Defendant. This unfortunately is one of
19 those cases where there are family members involved which
20 is always difficult. Mr. Orozco was the girls' uncle.
21 The two girls are first cousins. Their mothers are
22 sisters with Mr. Orozco's wife, Janet.

23 And the two girls used to spend a lot of time at
24 the Orozco's house, visiting, playing with their children
25 and sometimes being babysat by Mr. Orozco or his wife,

OPENING STATEMENTS ON BEHALF OF THE STATE

1 Janet. A lot of times Janet would go to work and leave
2 Mr. Orozco with the girls. Sometimes the girls were there
3 together, sometimes separately. And a lot of times
4 Mr. Orozco's two little boys were there.

5 The girls will do something that would be
6 extremely difficult for any adult to do. They will get up
7 on the witness stand and tell you about the things that
8 their Uncle Carlos did to them.

9 All I ask is that you listen carefully to all the
10 witnesses, and ask yourself, who has a reason to lie in
11 this case. As the Judge said, you are the sole
12 determinant of who's telling the truth.

13 The credibility of the witnesses, that's for you
14 to decide. I can't tell you that. He can't tell you
15 that. The Judge rules on the law, but you decide what the
16 facts are, what's true, what's not. And the only way you
17 can decide that is by listening closely to each of the
18 witnesses and ask yourself, why would that person lie.
19 What motive do they have to lie. Are they telling the
20 truth.

21 The law in the State of South Carolina
22 specifically says if you -- it says that no corroboration
23 is needed of the victims' testimony --

24 MR. MAULDIN: Objection, Your Honor.

25 THE COURT: Yeah. That's a charge on the law.

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 Just, sustain.

2 MS. BRISBIN: Okay. All I'm asking is that you
3 listen closely to the victims' testimony and all the other
4 witnesses. And you will be asked to decide who's telling
5 the truth, and to render a verdict that speaks the truth.
6 Thank you.

7 THE COURT: Yes, sir.

8 MR. MAULDIN: Thank you, Your Honor.

9 Hi. I'm David Mauldin. I'm representing Juan
10 Orozco. These opening remarks are where we're supposed to
11 get up here and tell you what we expect the evidence will
12 be in the case.

13 I've been a lawyer for sometime. You have a
14 general idea what's going to go on in the case. You've
15 got police reports, you've got witness statements, you've
16 got things like that. But generally I find that during a
17 trial that things happen. Things may change. Things may
18 be different.

19 So it's kind of difficult to get up here and tell
20 you what I suspect the evidence will show or who's going
21 to say what, whatever, until it actually happens. But
22 that's the whole purpose of being up here.

23 Mr. Orozco has pled not guilty and that's why
24 we're here today. That's why we're having a trial. These
25 indictments, he's pled not guilty to them.

VICTORIA ALEXIS LEAPHART - DIRECT

1 The evidence that the State intends to produce is
2 much like Ms. Brisbin said, we have these two children
3 come up and testify. You need to pay very careful
4 attention. There is a difficulty with child witnesses.
5 I'm sure you'll see it today and I'm sure in closing
6 arguments we'll actually get to argue, we'll argue why
7 it's a difficulty. Obviously it's a difficult thing to
8 listen to, but as far as what I expect, I do expect them
9 to get up and say that something bad happened and that
10 Mr. Orozco was the one responsible.

11 However, you've got to weigh the evidence and
12 determine whether or not you believe it beyond a
13 reasonable doubt. He's pled not guilty. And we don't
14 believe the evidence will show that. Thank you very much.

15 THE COURT: All right. You can call your first
16 witness.

17 MS. BRISBIN: The State calls Victoria Alexis
18 Leaphart.

19 VICTORIA ALEXIS LEAPHART, having been duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BRISBIN:

23 Q. Just say your name, sweetie.

24 A. (Loses composure.)

25 Q. Do you go by Alexis or Victoria?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. Alexis.

2 Q. What's your last name?

3 A. Leaphart.

4 MR. MAULDIN: Your Honor, they're going to have
5 to speak up.

6 THE COURT: All right. If you can, speak up. If
7 not, we'll figure something else out.

8 MR. MAULDIN: Both of them, Your Honor.

9 MS. BRISBIN: That's the microphone. If you
10 speak into that it will work better. Okay? Try to speak
11 loudly and spell your last name.

12 THE WITNESS: L. E. A. P. H. A. R. T.

13 MS. BRISBIN: Can you hear?

14 THE INTERPRETER: (Nods head affirmatively.)

15 BY MS. BRISBIN:

16 Q. How old are you, Alexis?

17 A. 11.

18 Q. What's your birth date?

19 A. July 17, 1996.

20 Q. July 17th, 1996?

21 A. (Nods head affirmatively.)

22 Q. So you're going to have a birthday tomorrow?

23 A. (Nods head affirmatively.)

24 Q. How old are you going to be?

25 A. 12.

VICTORIA ALEXIS LEAPHART - DIRECT

1 Q. What grade are you going to be going into this year?

2 A. Seventh.

3 Q. And do you live in Aiken now?

4 A. No, ma'am.

5 Q. Where do you live?

6 A. Greenville.

7 Q. Did you ever live in Aiken?

8 A. Yes, ma'am.

9 Q. When did you move to Greenville?

10 A. In '05.

11 Q. '05?

12 A. (Nods head affirmatively.)

13 Q. Okay. And what school year did you start in
14 Greenville?

15 A. Fourth grade.

16 Q. Okay. Alexis, do you know the Defendant, Carlos --
17 Juan Carlos Orozco?

18 A. Yes, ma'am.

19 Q. How do you know him?

20 A. He's my uncle.

21 Q. Okay. And who's he married to?

22 A. Janet.

23 Q. Who's Janet?

24 A. My aunt.

25 THE COURT: Hold on just a second. I know it's

VICTORIA ALEXIS LEAPHART - DIRECT

1 hard.

2 THE INTERPRETER: I can't hear.

3 BY MS. BRISBIN:

4 Q. Let me go back to, how do you know Carlos Orozco?

5 A. He's my uncle.

6 Q. And how is he your uncle? Who's he married to?

7 A. Janet.

8 Q. Janet's your aunt?

9 A. Yes, ma'am. (Nods head affirmatively.)

10 Q. Did you ever go to visit Carlos and Janet at their
11 house?

12 A. Yes, ma'am.

13 Q. Okay. How old were you when you stopped going to
14 their house?

15 A. Around ten, maybe.

16 Q. Okay. When you moved to Greenville, you were going
17 into, you said, fourth grade?

18 A. Yes, ma'am.

19 Q. Do you remember how old you were then?

20 A. I don't remember.

21 Q. Okay. When you were -- did you go to visit Carlos and
22 Janet's house, their house, when you were eight years old?

23 A. Yes, ma'am.

24 Q. Do you know if you went when you were nine years old?

25 A. I'm not for sure.

VICTORIA ALEXIS LEAPHART - DIRECT

- 1 Q. Okay.
- 2 A. I don't remember.
- 3 Q. Did you say probably?
- 4 A. (Nods head affirmatively.)
- 5 Q. Okay. And who lived at Carlos and Janet's house?
- 6 A. Carlos, Janet and two boys, Carlos and Miguel.
- 7 Q. Were they little boys or big boys?
- 8 A. Little, I guess.
- 9 Q. Little. Do you know what ages approximately?
- 10 A. I'm not for sure.
- 11 Q. Were they in elementary school?
- 12 A. One wasn't even in school and then one was in
13 elementary school.
- 14 Q. Okay. When you went there, was Janet always home?
- 15 A. No, ma'am.
- 16 Q. Loud.
- 17 A. No, ma'am.
- 18 Q. Why -- where -- why not?
- 19 A. She had to go to work.
- 20 Q. And when she went to work, who took care of you there?
- 21 A. Carlos.
- 22 Q. Were there any other adults there?
- 23 A. No, ma'am.
- 24 Q. Okay. And were there ever any other children there?
- 25 A. Yes, ma'am.

VICTORIA ALEXIS LEAPHART - DIRECT

- 1 Q. Who were they?
- 2 A. Rosa, me, Carlos and Miguel and sometimes Andrea.
- 3 Q. Let's slow down. Carlos and Miguel, who are they?
- 4 A. My cousins.
- 5 Q. And whose father is --
- 6 A. Carlos.
- 7 Q. Okay. So there's Carlos, Sr. and Carlos, Jr.?
- 8 A. Yes, ma'am.
- 9 Q. And who's Andrea?
- 10 A. Rosa's sister. My cousin.
- 11 Q. So sometimes she was there?
- 12 A. Yes, ma'am.
- 13 Q. And who's Rosa?
- 14 A. My cousin.
- 15 Q. Is that Rosa Sanchez?
- 16 A. Yes, ma'am.
- 17 Q. So sometimes she was there?
- 18 A. Yes, ma'am.
- 19 Q. Okay. So, were you always there when Rosa was there?
- 20 A. Not all the time.
- 21 Q. Okay. And was Rosa always there when you were there?
- 22 A. Not all the time.
- 23 Q. But sometimes you were together?
- 24 A. Yes, ma'am.
- 25 Q. Did you go there very often?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. Yes, ma'am.

2 Q. Do you have any idea how often?

3 A. A lot.

4 Q. Regularly?

5 A. Uh-huh. (Nods head affirmatively.)

6 Q. And why did you go there?

7 A. To play with his two boys.

8 Q. Okay. Did something happen to you when you were
9 there?

10 A. Yes.

11 Q. Tell me about that. You can start with the first
12 time.

13 A. Carlos would take us -- take me into the room and make
14 me, him touch my private part and me touch his private
15 part.

16 Q. Which room would he take you into?

17 A. Either his bedroom or the two toy bedrooms or the
18 living room.

19 Q. Okay. And where would the other kids be?

20 A. In one of the toy bedrooms.

21 Q. Okay. And when you said he made you touch his private
22 part and he touched your private part, what was he
23 touching your private part with?

24 A. His private part.

25 Q. His private part?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. (Nods head affirmatively.)

2 Q. Okay. And besides touching, what else did he do? Did
3 he do -- what did he do with his private part?

4 A. Touched my private part.

5 Q. Can you say that again?

6 A. Touched my private part.

7 Q. Okay. Did that go in your private part?

8 A. I'm not for sure.

9 Q. Okay. Could you feel it inside your private part at
10 all?

11 A. Yes.

12 Q. Yes?

13 A. (Nods head affirmatively.)

14 Q. Okay. So you don't know if it went all the way in?

15 A. Not for sure.

16 Q. Okay. And when he touched your private part, did you
17 have your clothes on or off?

18 A. Both. Sometimes different.

19 Q. Sometimes on, sometimes off?

20 A. (Nods head affirmatively.)

21 Q. Okay. And what were -- how were his clothes when that
22 happened?

23 A. Sometimes on, sometimes off.

24 Q. Okay. Did he ever do anything else to you, to any
25 part of your body?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. Put his private part in my mouth.

2 Q. Can you say that a little louder? I'm not sure
3 they're hearing you.

4 A. Put his private part in my mouth.

5 Q. Okay. And did that happen one time or more than one
6 time?

7 A. Probably more than once.

8 Q. And where did that happen?

9 A. The living room, the bedroom or the toy bedroom.

10 Q. Okay. And of whose house?

11 A. Carlos's.

12 Q. Okay. Did you ever see anything come out of his
13 private part?

14 A. Yes.

15 Q. What was happening when something came out of his
16 private part?

17 A. Something white.

18 Q. Oh. Something white came out? Okay. And did you see
19 where it went?

20 A. The towel.

21 Q. It went on a towel?

22 A. (Nods head affirmatively.)

23 Q. How old were you when Carlos was doing these things to
24 you?

25 A. I can't remember.

VICTORIA ALEXIS LEAPHART - DIRECT

1 Q. Okay. Was it before you moved to Greenville?

2 A. Yes, ma'am.

3 Q. Okay. And you moved to Greenville when you were going
4 into the fourth grade; right?

5 A. (Nods head affirmatively); yes, ma'am.

6 Q. Okay. And did, did you ever have a birthday party?

7 A. Yes, ma'am.

8 Q. Okay. Do you remember any particular birthday
9 parties?

10 A. Princess birthday party.

11 Q. Okay. Do you know how old you were when you had the
12 princess birthday party?

13 A. Turning nine.

14 Q. You were turning nine. Okay. Was this happening
15 during that time period?

16 A. Before that, and then I moved to Greenville.

17 Q. Okay. It happened before the princess birthday party?

18 A. (Nods head affirmatively.)

19 Q. And so when you moved to Greenville, did these things
20 stop happening?

21 A. Yes, ma'am.

22 Q. Did Carlos say anything to you about this?

23 A. I would get in trouble.

24 Q. That you would get in trouble?

25 A. If I told.

VICTORIA ALEXIS LEAPHART - DIRECT

- 1 Q. Say that again.
- 2 A. I would get in trouble if I told.
- 3 Q. Okay. So, who's the first person you did tell?
- 4 A. My Aunt Wendy.
- 5 Q. Your Aunt Wendy?
- 6 A. (Nods head affirmatively.)
- 7 Q. Where were you when you told her?
- 8 A. Indiana.
- 9 Q. Why were you in Indiana?
- 10 A. For a vacation.
- 11 Q. And does Aunt Wendy live there?
- 12 A. Yes, ma'am.
- 13 Q. Okay. Was your mom there at that time?
- 14 A. No, ma'am.
- 15 Q. No?
- 16 A. (Nods head affirmatively.)
- 17 Q. Okay. Why did you tell Aunt Wendy?
- 18 A. Because my mom called.
- 19 Q. And you can't say what your mom said?
- 20 A. (Nods head affirmatively.)
- 21 Q. But that made you tell Wendy?
- 22 A. (Nods head affirmatively.)
- 23 Q. Okay. What happened after you told?
- 24 A. I came back home and had an interview with somebody.
- 25 Q. Okay. Now, home was where then?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. In Greenville, but I came to Aiken.

2 Q. You came to Aiken for the interview?

3 A. (Nods head affirmatively); uh-huh.

4 Q. Okay. And did you tell that person in the interview
5 what happened with Carlos?

6 A. Yes, ma'am.

7 Q. Okay. Have you ever talked to Rosa about what
8 happened to her or to you?

9 A. No, ma'am.

10 Q. No. Never? Even now?

11 A. Uh-huh.

12 Q. You have to speak up.

13 A. (Nods head affirmatively.)

14 Q. Okay. You've never talked to her --

15 A. No, ma'am.

16 Q. -- about it?

17 A. No, ma'am.

18 Q. Okay. If I show you a diagram of an empty house, can
19 you show the rooms that this happened in? Can you point
20 to the rooms that this happened in?

21 A. Yeah, I'll try.

22 Q. Okay. Okay.

23 MR. MAULDIN: Your Honor, the Solicitor indicated
24 the diagram is just an empty rectangle.

25 MS. BRISBIN: Just for display purposes, not for

1 admission.

2 MR. MAULDIN: I haven't seen it but she asserts
3 it's just a rectangle.

4 THE COURT: All right.

5 MR. MAULDIN: No objection.

6 (Pause.)

7 BY MS. BRISBIN:

8 Q. Alexis, could you step down here and point to the
9 rooms? If this is -- did Carlos and Janet live in a house
10 or a trailer or what?

11 A. A trailer.

12 Q. Okay. A trailer. Speak up. Now this is just an
13 empty rectangle. Can you show us; point to where the
14 different rooms in the trailer would be?

15 A. This is the room.

16 Q. That's the front door?

17 THE COURT: She's going to have to turn around
18 and face the court reporter.

19 MS. BRISBIN: Speak loudly.

20 THE COURT: She's going to have to face the court
21 reporter.

22 MR. MAULDIN: Your Honor, this is actually not an
23 empty rectangle. There's actually dividers drawn. I
24 don't know who prepared that, how it would come in. It
25 would be a demonstrative aid.

1 THE COURT: Hold on just a second. Ladies and
2 gentlemen, I'm going to send you out. Please don't
3 discuss this case. You'll be out for ten or 15 minutes.
4 If you want to stretch.

5 (Jury exits courtroom at 11:57 a.m.)

6 THE COURT: You can sit down.

7 MS. BRISBIN: Go ahead and sit down.

8 THE WITNESS: (Complies.)

9 THE COURT: Yes, sir. Your objection it's not an
10 empty rectangle, looks like it has divided rooms?

11 MR. MAULDIN: Yes, sir, Your Honor. It appears
12 to, I think somebody may have made a diagram of the actual
13 trailer involved in the case. I don't know if anybody has
14 testified regarding the accuracy of that or how they did
15 it in order to publish it to the jury.

16 MS. BRISBIN: Well, Your Honor, I could get
17 Alexis to testify as to the accuracy of it. She was
18 there.

19 THE COURT: Anything else?

20 MR. MAULDIN: No, Your Honor.

21 THE COURT: All right. She can testify to it.
22 You know, the problem is it's so hard to hear. I don't
23 know how we're going to do this. There's not a mike, I
24 guess. Why don't we take a break? And just, if you
25 would, ask her to speak up and face the court reporter.

1 We'll take a few minutes.

2 (Thereupon a recess was taken from 11:58 a.m.
3 until 12:11 p.m., and the trial resumed:)

4 THE COURT: Before we start, let me tell you that
5 I had a note from one of the jurors. Is there a witness
6 by the name of Bodie?

7 MS. MAURICE: This is our investigator that's
8 running the thingy.

9 THE COURT: Apparently he's the cousin of the
10 foreman.

11 MS. BRISBIN: Right, but he's just doing the
12 mechanical stuff.

13 THE COURT: I just want to make sure you know
14 that they passed a note out. So, any objection?

15 MR. MAULDIN: Well, it's Norwood Bodie,
16 investigator with the Solicitor's Office. He is law
17 enforcement, related to law enforcement. He didn't answer
18 one of the questions I asked on voir dire. We'd move to
19 strike.

20 THE COURT: You want to strike him?

21 MR. MAULDIN: Yes, sir.

22 MS. BRISBIN: No objection.

23 THE COURT: All right. What I'll do is I'll
24 strike him and replace him with an alternate and then I'll
25 select at the break a new foreman. Okay?

1 MS. BRISBIN: Yes, sir.

2 THE COURT: I'm just going to call him in
3 individually and then I'll explain to the jury what I'm
4 going to do. Any objection to me doing that?

5 MR. MAULDIN: No, Your Honor.

6 THE COURT: Any objection from the State?

7 MS. BRISBIN: No, Your Honor.

8 THE COURT: All right. If you would just bring
9 the foreman in.

10 (Foreman enters courtroom.)

11 THE COURT: I understand you might be related to
12 one of the investigators; is that right?

13 FOREPERSON OF THE JURY: (Nods head
14 affirmatively.)

15 THE COURT: And that's Mr. Norwood Bodie; right?

16 FOREPERSON OF THE JURY: Yes, sir.

17 THE COURT: What I'm going to do is I'm going to
18 let you go from this case just because I think that's the
19 safe thing to do. Don't worry about it. You did the
20 right thing passing this out. It's not a problem. All
21 right. Thank you. If you would just call that jury
22 number tonight after six. There should be a number that
23 you have.

24 FOREPERSON OF THE JURY: Okay.

25 THE COURT: Thank you. Who's the first

VICTORIA ALEXIS LEAPHART - DIRECT

1 alternate?

2 THE CLERK: Martha Hicks.

3 THE COURT: Martha.

4 THE CLERK: Martha Hicks. She's number 50.

5 THE COURT: Okay. All right. If you would have
6 the witness come on back up, come on back up.

7 THE WITNESS: (Complies.)

8 (Thereupon, the jury note was marked and received
9 into evidence as Court's Exhibit No. 1.)

10 THE COURT: Okay. You can bring them back in.

11 (Jury enters courtroom at 12:15 p.m.)

12 THE COURT: All right. Ladies and gentlemen,
13 I've had to dismiss the foreman. It's not a real
14 problem. There's a technicality but I have had to dismiss
15 him and Ms. Hicks, you're now on the jury. You are the
16 first alternate. What I'll do is, yeah, you can sit up
17 there for now. I'll look at the list and appoint a new
18 foreman at the next break, probably at lunch. Okay. All
19 right.

20 You can continue.

21 MS. BRISBIN: Thank you, Your Honor.

22 DIRECT EXAMINATION (CONTINUED)

23 BY MS. BRISBIN:

24 Q. Alexis, does this diagram accurately show the layout
25 of Carlos's trailer with the different rooms designated?

VICTORIA ALEXIS LEAPHART - DIRECT

1 Does that look right?

2 A. Yes, ma'am.

3 Q. Okay. Would you step down again and we've got another
4 mike here. We're going to try. Going to have to hold the
5 mike real still or it will make noise. See if you can
6 hold it up to your mouth, see if it works.

7 A. Testing.

8 Q. Very good. Okay. You said this was the door, the
9 front door of the trailer?

10 A. Yes.

11 Q. What else do you see there?

12 A. Right here, and that would be in the trailer.

13 Q. That would be what?

14 A. A toy bedroom.

15 Q. A toy bedroom.

16 THE COURT: All right. She's going to really
17 have to speak up.

18 BY MS. BRISBIN:

19 Q. Speak up into the microphone. Okay. And what's here?

20 A. Bathroom.

21 Q. Is there a door on the toy bedroom?

22 A. I can't remember.

23 Q. Okay. And what's this?

24 A. Another bedroom. Toy bedroom.

25 Q. There are two bedrooms with toys?

VICTORIA ALEXIS LEAPHART - DIRECT

1 A. Uh-huh.

2 Q. Okay.

3 A. And this would be the living room and the kitchen.

4 Q. The living room and kitchen are all in one space?

5 A. Yeah. They're vacant.

6 Q. Okay. And what's this room?

7 A. The laundry room.

8 Q. Laundry room?

9 A. (Nods head affirmatively.)

10 Q. Is that this whole space?

11 A. Half of it.

12 Q. Which half? Top or bottom?

13 A. Top.

14 Q. Top. Okay. And what is down here?

15 A. The hallway.

16 Q. What's down here?

17 THE COURT: She's going to have to stand on the
18 other side so the court reporter can see her mouth. That
19 will help a lot.

20 BY MS. BRISBIN:

21 Q. Speak up. What is this?

22 A. Another bedroom.

23 Q. Okay. But that's not a toy bedroom?

24 A. It's Carlos and Janet's.

25 Q. Okay. Is there a door between the living room and

VICTORIA ALEXIS LEAPHART - DIRECT

1 Carlos's bedroom, a door?

2 A. You can --

3 Q. Well -- okay. So, the laundry room goes into the
4 bedroom?

5 A. No. It would be like a wall, right there. And then
6 that would be a door.

7 Q. There is a door there?

8 A. Uh-huh.

9 Q. Is there a back door on the house?

10 A. Yes. Right here.

11 Q. Okay. So, all right. So when these things -- Carlos
12 was doing these things to you, which room or rooms did he
13 take you to?

14 A. His bedroom or to the toy room.

15 Q. This is his bedroom or what?

16 A. The living room.

17 Q. Okay.

18 A. And the toy room. Two toy bedrooms.

19 Q. It happened in all those rooms?

20 A. (Nods head affirmatively.)

21 Q. So these things happened one time on one day or more
22 than one day?

23 A. More than once.

24 Q. Okay. When it happened in the living room, where in
25 the living room? On what in the living room did it

VICTORIA ALEXIS LEAPHART - DIRECT

1 happen?

2 A. Couch.

3 Q. Okay. You can go back and sit down.

4 A. (Complying.)

5 Q. And when it happened in Carlos's bedroom, where did it
6 happen in that room?

7 A. On the bed.

8 Q. And when it happened in this toy room, where did it
9 happen?

10 A. On the floor.

11 Q. And then the other toy room?

12 A. Floor.

13 Q. Okay. When he was putting his private in your
14 private, what position were the two of you in?

15 A. Uh.

16 Q. Do you understand the question?

17 A. Not really.

18 Q. Okay. You said it happened -- did that happen in --
19 which of these rooms did that happen in?

20 A. His bedroom, the two toy bedrooms or the living room.

21 Q. Oh. It happened in all of those?

22 A. (Nods head affirmatively.)

23 Q. Okay. Where would you be if it -- when it happened in
24 the bedroom, where were you?

25 A. In the living room?

VICTORIA ALEXIS LEAPHART - DIRECT

1 Q. When it happened -- did it happen in Carlos's bedroom?

2 A. Yes.

3 Q. When it happened in Carlos's bedroom, where were you?

4 A. On the bed.

5 Q. Okay. Were you sitting, lying or something else?

6 A. Lying.

7 Q. Okay. And were you lying face up or face down?

8 A. Both. Different times.

9 Q. Okay. And where was Carlos?

10 A. On the bed.

11 Q. And was he lying, sitting up, or something else?

12 A. Both. Like different times.

13 Q. Okay. And who was -- okay. When he put his private
14 in your private, which of you -- you said you were both
15 lying down --

16 A. (Nods head affirmatively.)

17 Q. -- at different times. Was -- which of you was on
18 top?

19 A. Both, at different times.

20 Q. Okay.

21 A. Sometimes -- yeah.

22 Q. Okay. Do you see the person who did this to you in
23 the courtroom today?

24 A. Yes.

25 Q. Could you point to him and describe what he looks

VICTORIA ALEXIS LEAPHART - CROSS

1 like?

2 A. (Pointing.)

3 Q. Okay. What kind of clothes is he wearing?

4 A. He has a suit on.

5 Q. Okay. Which of the three guys are you pointing to?

6 A. The one in the middle.

7 Q. Okay. Thank you. I don't have any further
8 questions. Please answer any Mr. Mauldin has.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MAULDIN:

12 Q. Hi.

13 A. Hi.

14 Q. How are you doing?

15 A. Good.

16 Q. I know it's a little nervous to be in the courtroom.

17 I get nervous. I've been here lots of times. Okay. It's
18 not a problem.

19 Now, I'm just having a little trouble trying to figure
20 out the time arrangements as far as when these things
21 happened. So I don't know if you could help me out with
22 that. All right?

23 A. (Nods head affirmatively.)

24 Q. Now, this is the trailer; right --

25 A. Yes.

VICTORIA ALEXIS LEAPHART - CROSS

1 Q. -- that they lived in? And Carlos, Sr's family was
2 Carlos, his wife Janet, his son, Carlos, Jr. and his other
3 son, Miguel; is that correct?

4 A. Yes.

5 Q. Okay. Do you know how -- was Miguel walking --

6 A. Yes.

7 Q. -- around the time these things happened?

8 A. Yes.

9 Q. He was walking around?

10 A. (Nods head affirmatively.)

11 Q. But he wasn't in school?

12 A. He was not in school.

13 Q. Okay. But he was walking around?

14 A. Yeah.

15 Q. All right. And did anybody else ever live with
16 Carlos, Sr. and Janet besides his children?

17 A. Not that I -- no.

18 Q. Okay. There wasn't an Aunt Lilia that lived there
19 with her daughters Ana and Gabriella?

20 A. Not that I know.

21 Q. Now you said you moved to Greenville, you believe,
22 around 2005; is that correct?

23 A. Yes.

24 Q. Okay. And you're going into the fourth grade then?

25 A. Yes.

VICTORIA ALEXIS LEAPHART - CROSS

1 Q. Did you move during the spring or the summer or when
2 did you move?

3 A. In the summer.

4 Q. In the summer. Like right when you got out of school
5 in Aiken or right before you --

6 A. No. It was the end of July.

7 Q. Okay. And how old were you -- July is your birthday;
8 right?

9 A. Yes.

10 Q. So you moved right after your birthday?

11 A. Yes.

12 Q. And -- let's see. How old would you have been in 2005
13 or how old on your birthday, how old would you have been?

14 A. Whenever I moved?

15 Q. No. How old would you have been on your birthday in
16 2005?

17 A. I can't remember. I'm not for sure.

18 Q. Let's see. Well, tomorrow you're going to turn --

19 A. 12.

20 Q. -- 12. And this is 2008; right?

21 A. Uh-huh.

22 Q. So, in 2005 which is three years ago, what's 12 minus
23 three?

24 A. Nine.

25 Q. What is 12 minus three -- nine. Okay. Okay. And

VICTORIA ALEXIS LEAPHART - CROSS

1 nine is when you had your princess birthday party?

2 A. Yes.

3 Q. Now, I believe that you told Ms. Brisbin there that
4 you had told your Aunt Wendy about this?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. When you were in Indiana?

9 A. Yes.

10 Q. That was after she asked you about it?

11 A. Yes.

12 Q. What were you thinking when she asked you about it?

13 A. (Shrugs shoulders). I don't know. It just popped to
14 mind.

15 Q. Pardon?

16 A. I was going to tell about Carlos because --

17 Q. Did you ever think why she was asking it?

18 A. No.

19 Q. Did you ever ask her why she asked that?

20 A. Huh-uh.

21 Q. Okay. And when she asked that, did you just tell
22 right away?

23 A. I started to cry.

24 Q. Okay. And your mother's name is Ann Leaphart; is that
25 correct?

VICTORIA ALEXIS LEAPHART - CROSS

1 A. Yes.

2 Q. And you didn't live with Carlos; did you?

3 A. No.

4 Q. And you went to school during the school year part;
5 right?

6 A. Yes.

7 Q. So you wouldn't be over at that house during the day
8 during the school year; would you?

9 A. On the weekends.

10 Q. On the weekends. Because I believe at that time your
11 mom was in nursing school or something?

12 A. Yes.

13 Q. And you had been living with your grandma; right?

14 A. Yes.

15 Q. Ms. Cochran, that's her name?

16 A. Yes.

17 Q. And Carlos had a boy that was closer to your age,
18 Carlos Jr.; is that correct?

19 A. He's younger than me but, yeah.

20 Q. Closer than your brother to play?

21 A. Yes.

22 Q. And they had a Playstation and a motorcycle and things
23 like that?

24 A. Yes.

25 Q. So you would visit them occasionally on the weekends

VICTORIA ALEXIS LEAPHART - CROSS

1 and then during the summer; is that correct?

2 A. Yes.

3 Q. I have a lot of notes I have to look at. I'm sorry.

4 It takes a while to go through them all. Okay.

5 (Pause.)

6 Now, do you know how long they had been living in that
7 trailer?

8 A. I'm not for sure.

9 Q. You used to live there; didn't you?

10 A. Yes.

11 Q. But not with them?

12 A. Yeah.

13 Q. Okay. And I believe you told the solicitor you went
14 to talk to a lady at the, I guess they called it the Child
15 Advocacy Center after you came back from Indiana?

16 A. Yes.

17 Q. And she's that nice blond lady?

18 A. Yeah.

19 Q. Do you remember her name at all?

20 A. Vickie.

21 Q. Vickie. Okay. And at that time you told Vickie
22 everything you knew about it; is that correct?

23 A. Yes.

24 Q. Now, you have a good relationship with your mom; don't
25 you?

1 A. Yes.

2 Q. And you didn't tell her about this at all until Aunt
3 Wendy had asked you about it?

4 A. Yes.

5 Q. And I know it's been a couple of years since all of
6 this has come up.

7 A. Yeah.

8 Q. It's very difficult. How many people do you think
9 you've talked to about this? You've talked to Aunt Wendy
10 and your mom and a counselor. You've talked to
11 Ms. Brisbin a couple times since this; haven't you?

12 A. Yes.

13 Q. Have you talked to other people about it over the past
14 two years?

15 A. Not really.

16 Q. Not really. You haven't been going to a counselor or
17 anything like that?

18 A. Yeah, I do.

19 Q. So how often do you do that?

20 A. I'm not for sure. A lot.

21 Q. So you've been talking about it a lot over the past
22 two years?

23 A. Yeah.

24 MR. MAULDIN: Okay. Beg the Court's indulgence
25 one moment. (Pause.)

ROSA SANCHEZ-MARTINEZ - DIRECT

1 No further questions, Your Honor.

2 THE COURT: All right. Thank you. Any
3 redirect?

4 MS. BRISBIN: No, Your Honor.

5 THE COURT: Thank you. You can step down. Thank
6 you.

7 MS. BRISBIN: State calls Rosa Sanchez-Martinez.

8 ROSA SANCHEZ-MARTINEZ, having been duly sworn,
9 was examined and testified as follows:

10 THE CLERK: Come around here and have a seat in
11 the witness box and tell us your full name and spelling
12 your last.

13 THE WITNESS: My full name is Rosa Sanchez-
14 Martinez. Is spelled M. --

15 DIRECT EXAMINATION

16 BY MS. BRISBIN:

17 Q. Do you go by --

18 A. And my --

19 Q. Which name do you go by at school?

20 A. Rosa Sanchez.

21 Q. Okay. Spell Sanchez.

22 A. S. A. N. C. H. E. Z.

23 Q. How old are you, Rosa?

24 A. I'm eight.

25 Q. What's your birth date?

ROSA SANCHEZ-MARTINEZ - DIRECT

1 A. October the 5th. And I was born in 1999.

2 Q. Okay. What grade are you going into this year?

3 A. Third grade.

4 Q. And what school do you go to?

5 A. Oakwood Windsor Elementary School.

6 Q. Have you always gone to that school?

7 A. Yes.

8 Q. Okay. Are you related -- are you kin to Alexis?

9 A. Yes.

10 Q. Do you know how?

11 A. She's my cousin.

12 Q. Okay. And do you know Carlos Orozco?

13 A. Yes.

14 Q. How do you know him?

15 A. Because he's my uncle, and he's married to my Aunt

16 Janet.

17 Q. Okay. And have you ever been to their house?

18 A. Yes.

19 Q. Just one time or lots of times?

20 A. Lots of times.

21 Q. Okay. Did something happen when you went to his

22 house?

23 A. Yes.

24 Q. Tell me about that.

25 A. He, once he, uh, once he was on the couch and I was on

ROSA SANCHEZ-MARTINEZ - DIRECT

1 the couch, and, uh, I was watching Ed, Ed, and Eddie and
2 when I turned around he was wiping something on his white
3 shirt. It was green goo.

4 Q. Did you see where it came from?

5 A. Yes.

6 Q. Where did it come from?

7 A. From his private part.

8 Q. Did anything else ever happen with Carlos when you
9 were there?

10 A. Yes.

11 Q. Tell me about that.

12 A. Once he made me suck his private part.

13 Q. Okay. Did anything come out of his private part that
14 time?

15 A. No.

16 Q. Okay. Where were you when that happened?

17 A. I was in the bathroom.

18 Q. At whose house?

19 A. His house.

20 Q. Okay. Do you remember where in the bathroom you and
21 he were?

22 A. We were near his room. I mean, near Carlos's and
23 Miguel's room, playroom.

24 Q. But where in the bathroom were you?

25 A. The regular -- like in the regular part of the

ROSA SANCHEZ-MARTINEZ - DIRECT

1 bathroom. In the middle of the floor.

2 Q. What's in the bathroom -- oh. You were in the middle
3 of the floor. Okay. What position were you in? Sitting
4 down, standing up, lying down; what?

5 A. I was on my knees.

6 Q. And what position was he in?

7 A. Standing up.

8 Q. Okay. Did anything else happen -- ever happen when
9 you were at Carlos's house to you?

10 A. Yes.

11 Q. What else?

12 A. He once got his finger and stuck it in my clothes and
13 touched my private part.

14 Q. Do you know if it went inside or not?

15 A. No.

16 Q. Did you ever see his private part?

17 A. Yes.

18 Q. What did it look like?

19 A. There was two balls and a long stick.

20 Q. Okay. And where were you when you saw that?

21 A. In the bathroom whenever he made me suck his private
22 part.

23 Q. Okay. And where was his wife, Janet, when all these
24 things happened?

25 A. She was at work.

ROSA SANCHEZ-MARTINEZ - DIRECT

1 Q. Okay. And where were his kids?

2 A. In a separate room.

3 Q. Okay. Do you know what room they were in?

4 A. The playroom.

5 Q. Okay. Is that the room with the toys?

6 A. Yes.

7 Q. Okay. Was anybody else ever at Carlos' house when you
8 were there besides the boys?

9 A. There was once this teenage girl there, but --

10 Q. How about Alexis? Was she ever there when you were
11 there?

12 A. Yes.

13 Q. Okay. And was she sometimes -- were you sometimes
14 there when she was not there?

15 A. Yes.

16 Q. Okay. Have you ever talked to Alexis about what
17 Carlos did to you?

18 A. No.

19 Q. Has she ever told you what he did?

20 A. No.

21 Q. Okay. Did you talk to a lady at the Children's
22 Advocacy Center about this?

23 A. No.

24 Q. Do you remember a lady named Lisa at the Children's
25 Advocacy Center?

ROSA SANCHEZ-MARTINEZ - DIRECT

1 A. No.

2 Q. Do you remember being videotaped some place?

3 A. Yes.

4 Q. Okay. Did you tell that lady about what Carlos did to
5 you?

6 A. Yes.

7 Q. Okay. And you don't know where it was?

8 A. (No response.)

9 Q. That's okay. Who was the first person you told about
10 what Carlos did to you?

11 A. Candy.

12 Q. Who's Candy?

13 A. She is my mama's friend. They were friends ever since
14 they were babies.

15 Q. Okay. And where did she live?

16 A. She's our neighbor.

17 Q. Okay. A close neighbor?

18 A. Uh-huh.

19 Q. Okay. And you said she was the first person you ever
20 told?

21 A. Yes.

22 Q. Okay. Do you see the person who did this to you,
23 Carlos Orozco, in the courtroom?

24 A. Yes.

25 Q. Could you point to him?

ROSA SANCHEZ-MARTINEZ - CROSS

1 A. (Complying.)

2 Q. And of those three men sitting there, which one is he?

3 A. The one in the middle.

4 Q. Okay. Thank you.

5 I don't have any more questions but Mr. Mauldin is
6 going to ask you a few, I think. Okay -- oh. I do have
7 one more question. I'm sorry. Beg the Court's
8 indulgence.

9 Q. Do you know how old you were when these things
10 happened to you at Carlos's house?

11 A. Yes.

12 Q. How old were you?

13 A. I was four and five.

14 Q. Okay. Thank you.

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q. Hi.

18 A. Hello.

19 Q. Now, you say you visited over with Carlos and Janet;
20 right?

21 A. Yes.

22 Q. You didn't go all the time; did you?

23 A. Not all the time.

24 Q. Would you say that you went five times?

25 A. No.

ROSA SANCHEZ-MARTINEZ - CROSS

1 Q. Was it less than five?

2 A. No. I went there a lot but not that much.

3 Q. Well, I'm trying to figure out what a lot is. I don't
4 know if you can help me out with that, but can you make a
5 guess how many times in a year or how many times in a
6 month?

7 A. I think about, uh, probably, like I was five and four
8 whenever I first went there.

9 Q. Right. I understand how old you were saying when you
10 went there.

11 A. But --

12 Q. But, I mean, how many -- did you go maybe once every
13 other month?

14 A. It stopped whenever I turned six. So it must have
15 been, like, five or four.

16 Q. Okay. But did you go once a month, once every other
17 month, maybe once in the summer, two times in the summer;
18 how many times?

19 A. Well, we spend the night and we, uh, and he baby
20 sitted us so that's, and we usually was there.

21 Q. Did he baby sit during the day or during the night?

22 A. During the day.

23 Q. And was that when Janet would go to work?

24 A. Yes.

25 Q. And there was Carlos, Jr.; right?

ROSA SANCHEZ-MARTINEZ - CROSS

- 1 A. (Nods head affirmatively.)
- 2 Q. He lived there?
- 3 A. (Nods head affirmatively.)
- 4 Q. And Miguel, he lived there, too?
- 5 A. (Nods head affirmatively.)
- 6 Q. And when you were over there and when these things
- 7 happened, was Miguel walking around? I know he wasn't in
- 8 school, but --
- 9 A. Uh, he was walking around at first.
- 10 Q. Uh-huh.
- 11 A. And, uh, he was -- gave birth by Janet and after a
- 12 little while it was still going and he was walking.
- 13 Q. You understand we're here today because of these
- 14 things that you say happened between you and your uncle;
- 15 right? Okay?
- 16 A. (Nods head affirmatively.)
- 17 Q. And when you were over there and you say these things
- 18 happened, was Miguel there but in another room?
- 19 A. Uh-huh, (nods head affirmatively).
- 20 Q. And when you were there and these things happened, was
- 21 Miguel able to walk then?
- 22 A. Well, not at first but he was able to walk.
- 23 Q. Now, you have an Aunt Ann; right?
- 24 A. Yes.
- 25 Q. And did you tell her about this at all?

ROSA SANCHEZ-MARTINEZ - CROSS

1 A. Tell her what?

2 Q. About what you say happened between you and Uncle
3 Carlos?

4 A. No. I told Candy.

5 Q. Candy. And how many times have you told about this,
6 do you think?

7 A. Like how many times have I told people?

8 Q. Uh-huh.

9 A. I think four.

10 Q. Four times. Does that include today?

11 A. Uh-huh.

12 Q. Okay. And you've never talked with Alexis about this;
13 is that right?

14 A. (Shakes head negatively.)

15 Q. Or her mama, Ann?

16 A. (Shakes head negatively.)

17 Q. Why did you tell -- I guess her name is Candy?

18 A. Yes.

19 Q. Why did you tell Candy about this?

20 A. Because I felt like I had to tell someone.

21 Q. Okay. Why didn't you tell your mommy?

22 A. Because Mama, because my mama was still at work so I
23 had to tell Candy because she not at work.

24 Q. You were over at Candy's place; right?

25 A. Yeah. She used to baby sit us whenever she didn't

ROSA SANCHEZ-MARTINEZ - CROSS

1 have a job.

2 Q. And this is about two years ago, right, that you told
3 her this?

4 A. Yes.

5 Q. When you were six years old; is that right?

6 A. Yes.

7 Q. Okay. And had you not been to Carlos's house in a
8 long time?

9 A. You mean like right now, like?

10 Q. No. When, when you talked to Candy about it, had you
11 gone to Carlos's house any period of time before that?

12 A. No.

13 Q. Okay. So it had been a while?

14 A. Uh-huh.

15 Q. Okay. Well, what made you decide all of a sudden to
16 tell Candy about this if you had been gone for a while?

17 A. I stopped going whenever I told my -- Candy.

18 Q. Okay. Now, your grandmother is Ms. Cochran; right?

19 A. Yes.

20 Q. Her name is Doris Gail Cochran; is that right?

21 A. Yes.

22 Q. You call her Nanny sometimes; is that right?

23 A. Yes.

24 Q. Or Nana?

25 A. Yes.

1 Q. Did this ever happen at her place?

2 A. No.

3 Q. After you had talked to the police, did you ever tell
4 your Nanny that Carlos had touched you at her house?

5 A. No, because it never happened at her house.

6 Q. Okay. Do you remember any other people living with
7 Carlos, big Carlos rather than Carlos, Jr., Janet and
8 Miguel?

9 A. No.

10 Q. Okay. You don't remember maybe an older lady named
11 Lilia?

12 A. No.

13 Q. No? or a teenage girl named Gabriella?

14 A. Yes.

15 Q. How about a girl named Ana?

16 A. No.

17 Q. Was your Aunt Ann over at the house any time when you
18 were over there at Carlos's house?

19 A. No.

20 MR. MAULDIN: Beg the Court's indulgence. Let me
21 check with my client and co-counsel. (Pause.) No further
22 questions, Your Honor.

23 THE COURT: All right. Redirect?

24 MS. BRISBIN: Nothing further, Your Honor.

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

CANDICE LEE HARTLEY ORTIZ - DIRECT

1 MS. BRISBIN: State calls Candice Ortiz.

2 CANDICE LEE HARTLEY ORTIZ, having been duly
3 sworn, was examined and testified as follows:

4 THE CLERK: Have a seat in the witness box
5 stating your full name for the Court, spelling your last,
6 please.

7 THE WITNESS: My name is Candice Lee Hartley
8 Ortiz. O. R. T. I. Z.

9 DIRECT EXAMINATION

10 BY MS. BRISBIN:

11 Q. Do you know Rosa Sanchez?

12 A. Yes, I do.

13 Q. How do you know her?

14 A. Her mother and I grew up together and I live right
15 next door.

16 MR. MAULDIN: Can't hear the witness.

17 THE COURT: If you would speak up.

18 MS. BRISBIN: Try testing it, see if it works.

19 THE WITNESS: Testing.

20 BY MS. BRISBIN:

21 Q. Would you repeat what you just said about Rosa?

22 A. Her mother and I grew up together and I live right
23 next door.

24 Q. And, did you see Rosa on June 21st of 2006?

25 A. Yes. I used to baby sit.

CANDICE LEE HARTLEY ORTIZ - DIRECT

1 Q. Okay. And where was she? You babysat her where?

2 A. At my home.

3 Q. Okay. And where was her mother, Suzie?

4 A. At work.

5 Q. Okay. Did Rosa disclose to you that she had been
6 sexually assaulted?

7 A. Yes.

8 Q. Did she say where that had happened?

9 A. She said at her Poppy's house which is Carlos Orozco.

10 Q. She calls him Poppy?

11 A. Poppy.

12 Q. Do you know him?

13 A. I know of him through Janet, but I don't know him on a
14 personal basis.

15 Q. But you knew that she called him Poppy?

16 A. Yes.

17 Q. Okay.

18 A. All the nieces and nephews did.

19 Q. What did you do when Rosa disclosed this to you?

20 A. When she told me that he had touched her --

21 MR. MAULDIN: Objection, Your Honor.

22 MS. BRISBIN: Don't go into any detail.

23 THE WITNESS: Okay.

24 THE COURT: Sustained.

25 THE WITNESS: What did I do?

1 BY MS. BRISBIN:

2 Q. What did you do?

3 A. I told her to wait until her mom gets home and we need
4 to talk to her.

5 Q. Did you do that?

6 A. Yes, as soon as she got home.

7 Q. So you told her mom?

8 A. Yes.

9 Q. Okay. Thank you. No further questions.

10 THE COURT: Yes, sir.

11 MR. MAULDIN: No questions for this witness, Your
12 Honor.

13 THE COURT: All right. Thank you. You can step
14 down.

15 MS. BRISBIN: Your Honor, this might be the best
16 time for our break.

17 THE COURT: Okay. All right. Ladies and
18 gentlemen, we're going to break for lunch now. We'll
19 start back at 2:30. When you come back, Mr. Pressley, I'm
20 appointing you foreman of the jury. You just need to sit
21 in the same spot. As you know, it's not much you have to
22 do right now. Just notify me if there's a problem.

23 Don't discuss your jury service during lunch. If
24 anybody approaches you about your jury service, let me
25 know as soon as you get back and I'll take care of it

1 pretty quick. Have a good lunch and we'll see you at
2 2:30.

3 (Jury exits courtroom at 12:55 p.m.)

4 THE COURT: Okay. Let me ask you this, this
5 afternoon, what do you have planned? Just for planning
6 purposes. I won't hold you to it.

7 MS. BRISBIN: We had Dr. Maureen Dever-Bumba
8 supposed to come by 5:15, so it's going be a long day. We
9 have the two videos. And I think we'll have plenty to
10 keep us busy until then.

11 THE COURT: All right. See you at 2:30.

12 MS. BRISBIN: Your Honor, we have a matter to
13 take up.

14 THE COURT: Y'all shut that door just a second.

15 MS. BRISBIN: We have -- our next witness is
16 Investigator Feemster. Just told me that he knows one of
17 the jurors, knows him pretty well, was his youth leader at
18 church and that person didn't disclose that. I think the
19 question you asked was: Are you a close personal friend
20 of any of the potential witnesses. So I don't know if
21 that's a problem but just wanted to make the Court aware
22 of that. What's his name?

23 MR. FEEMSTER: I can't remember his first name,
24 haven't seen him in like three years. I just realized
25 when I walked in from break.

1 THE COURT: Who is it?

2 MR. FEEMSTER: He's got a chin strap and beard,
3 green or white stripe. I'm colorblind.

4 MS. BRISBIN: Must not know each other very well.

5 MR. FEEMSTER: Just have a lot of names and faces
6 in my head.

7 THE COURT: All right. We'll figure out what to
8 do when we get back. Figure out who it is. If y'all can
9 do that it will help me. I may come back, I may just
10 start running now.

11 (Thereupon the luncheon break was taken from
12 12:58 until 2:24 p.m., when other matters were heard by
13 the Court. The trial resumed at 2:52 p.m.:)

14 THE COURT: Everybody ready?

15 MS. BRISBIN: Judge, we figured out the name of
16 that juror that Jason Feemster knows. It's number 145,
17 Dalton Welch.

18 THE COURT: Okay. Any motions in regard to
19 Mr. Welch?

20 MR. MAULDIN: Your Honor, out of abundance of
21 caution, I would request that you question him regarding
22 his relationship, whether or not it

23 THE COURT: Do you want me to question him; any
24 objection to that?

25 MS. BRISBIN: No objection, Your Honor.

1 THE COURT: Okay. How about bringing Mr. Welch
2 in? Is it Mr. Feemster?

3 MS. BRISBIN: Feemster.

4 THE COURT: Feemster.

5 (Juror enters courtroom)

6 THE COURT: Mr. Welch, let me ask you something.
7 I want to put this on the record. One of the witnesses in
8 this case is a Mr. Feemster.

9 THE JUROR: Yes, sir.

10 THE COURT: And he brought to our attention that
11 he thinks he may know you from several years ago in some
12 type of group; is that right?

13 THE JUROR: Uh-huh.

14 THE COURT: The fact that he might be a witness,
15 will that prevent you from being fair and impartial in
16 this case?

17 THE JUROR: No, sir.

18 THE COURT: Can you render a verdict based only
19 on the evidence that you hear in this case?

20 THE JUROR: Yes, sir.

21 THE COURT: I guess the question I'm really
22 asking is: Are you going to give his testimony any
23 greater credibility because you've known him in the past?

24 THE JUROR: No, sir.

25 THE COURT: Okay. Hold on just a second. Any

1 other questions?

2 MR. MAULDIN: Just when his last contact with
3 Mr. Feemster was.

4 THE COURT: When was the last time you had any
5 contact with Mr. Feemster?

6 THE JUROR: Three or four years ago maybe.

7 MR. MAULDIN: I have no problems.

8 THE COURT: That was what we thought. I just
9 wanted to clear it up. You can go back. Appreciate it.

10 THE JUROR: Yes, sir.

11 (Juror exits courtroom.)

12 THE COURT: Any motions in regard to him?

13 MR. MAULDIN: No, Your Honor.

14 THE COURT: All right. Thank you. And, look,
15 that's the right way to do it so I appreciate it.

16 Are you ready to start? I know we're having
17 trouble with the translator. I understand that. If you
18 would just tell your witnesses to please face the court
19 reporter. That makes it a lot easier for her. And it's
20 difficult to hear. Okay?

21 MS. BRISBIN: Yes, sir.

22 THE COURT: Bring them back in.

23 THE BAILIFF: Okay.

24 (Jury enters courtroom at 2:55 p.m.)

25 THE COURT: All right. Ladies and gentlemen, I

JASON FEEMSTER - DIRECT

1 hope you had a good lunch and Mr. Pressley basically
2 you'll be doing the same thing as I said earlier. If you
3 have an issue in the jury room either prior to
4 deliberations beginning or after deliberations beginning,
5 just write it out on a piece of paper, sign your name to
6 it, knock on the door and the bailiffs will bring it out
7 to me.

8 Yes, ma'am.

9 MS. BRISBIN: Thank you, Your Honor. The State
10 calls Jason Feemster.

11 JASON FEEMSTER, having been duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Have a seat in the witness box
14 stating your full name for the Court, spelling your last
15 please.

16 THE WITNESS: My name is Jason Feemster F. as in
17 fox E. E. M. S. T. E. R.

18 DIRECT EXAMINATION

19 BY MS. BRISBIN:

20 Q. Were you the chief investigator in this case, Jason?

21 A. Yes, ma'am.

22 Q. Where were you employed at the time?

23 A. The Aiken County Sheriff's Office.

24 Q. How long did you work there?

25 A. Close to ten years.

JASON FEEMSTER - DIRECT

1 Q. And what was your position there?

2 A. I was a juvenile investigator..

3 Q. Where -- what are you doing now?

4 A. I'm currently a student at Southeastern Baptist
5 Theological Seminary in Wake Forest, North Carolina.

6 Q. How long ago did you leave the sheriff's department?

7 A. It's 13 months.

8 Q. But you were still there back in 2006?

9 A. Yes, ma'am.

10 Q. When was this case reported?

11 A. The report was filed on 6-22-06.

12 Q. June 22, 2006?

13 A. Yes, ma'am.

14 Q. And how did you get involved?

15 A. I was assigned to further investigate the complaint
16 that was filed.

17 Q. And what did you do?

18 A. I contacted the complainants involved in the case and
19 I arranged for the children to receive forensic
20 interviews.

21 Q. Okay. Anything else?

22 A. I arranged medical exams and I also interviewed
23 Mr. Orozco.

24 Q. Where did you interview him at?

25 A. I interviewed him at the sheriff's office.

JASON FEEMSTER - DIRECT

1 Q. And what was the date of that interview?

2 A. His interview was on August the 8th, 2006.

3 Q. Was he under arrest at that time?

4 A. No, ma'am.

5 Q. Was he free to leave?

6 A. Yes, ma'am.

7 Q. Did he have handcuffs on?

8 A. No, ma'am.

9 Q. Did you threaten him or promise him anything or coerce
10 him to talk to you in any way?

11 A. No, ma'am.

12 Q. Did you read him his Miranda rights?

13 A. Yes, ma'am.

14 Q. I'm showing you what's been marked State's Exhibit
15 Number Three. Do you recognize that?

16 A. Yes, ma'am. That's the Miranda warning that was used.

17 Q. Does that have your signature on it?

18 A. Yes, ma'am.

19 Q. And does it have Mr. Orozco's signature on it?

20 A. Yes, ma'am.

21 Q. And would you read the Miranda rights now as you read
22 them to him?

23 A. Yes, ma'am. It's dated August the 8th, 2006, at 09:52
24 hours. It states: Before we ask you any questions you
25 must understand your rights. You have the right to remain

JASON FEEMSTER - DIRECT

1 silent. Anything you say can and will be used against you
2 in a court of law. You have the right to talk to an
3 attorney for advice before we ask you any questions and to
4 have him or her present during questioning. If you cannot
5 afford an attorney, the Court will appoint an attorney to
6 represent you without cost if you wish. If you decide to
7 answer questions now without an attorney present, you will
8 still have the right to stop answering at any time. You
9 also have the right to stop answering at any time until
10 you talk to an attorney.

11 It then states: I have read this statement of my
12 rights. I understand what my rights are. There's a place
13 for a signature and then further down it states, waiver of
14 rights. It states: I am willing to make a statement and
15 answer questions. I do not want an attorney at this time.
16 I understand and know what I am doing. No promises or
17 threats have been made to me and no pressure or coercion
18 of any kind has been used against me.

19 There again is a place for signature, both the person
20 in question and then the investigator.

21 Q. Did he sign the waiver of his rights?

22 A. Yes, ma'am.

23 Q. Did he initial each of the rights as you read them to
24 him?

25 A. He initialed them after I had completed reading him

JASON FEEMSTER - DIRECT

1 his rights; yes, ma'am.

2 Q. Did he appear to understand his rights?

3 A. Yes, ma'am.

4 Q. Did you question him to ascertain whether or not he
5 understood your English?

6 A. Yes, ma'am.

7 Q. And did he ever ask for a lawyer?

8 A. No, ma'am.

9 Q. Did he agree to speak to you voluntarily, willingly?

10 A. Yes, ma'am.

11 Q. Your Honor, I'd ask that State's Exhibit Number Four
12 be admitted into evidence at this time or Number Three.

13 Excuse me.

14 THE COURT: Any objection?

15 MR. MAULDIN: No -- Three? No objection.

16 THE COURT: No objection.

17 (Thereupon State's Exhibit No. 3, Miranda, was
18 received into evidence.)

19 BY MS. BRISBIN:

20 Q. Did Mr. Orozco make any admissions to you at that
21 time?

22 A. He stated to me that there were times when he would
23 watch the children.

24 Q. Which children?

25 A. Rosa and Alexia (sic) with his other children.

JASON FEEMSTER - CROSS

1 Q. The victims in this case?

2 A. Yes, ma'am.

3 Q. And anything else?

4 A. Just that he had watched them and that there were
5 times he would have been the only adult present with the
6 children.

7 Q. Okay. Do you have a record of Mr. Orozco's date of
8 birth?

9 A. Yes, ma'am. It is April 1st, 1968.

10 Q. And what was the location of these incidents according
11 to your records?

12 A. It was his address which is 107 Juanita Drive, Aiken
13 County, South Carolina.

14 Q. That is in Aiken County?

15 A. Yes, ma'am.

16 Q. Thank you. Please answer any questions Mr. Mauldin
17 has.

18 THE WITNESS: Yes, ma'am.

19 MR. MAULDIN: Thank you.

20 CROSS-EXAMINATION

21 BY MR. MAULDIN:

22 Q. Mr. Orozco came to your office voluntarily; is that
23 correct?

24 A. Yes, sir.

25 Q. You had managed to contact him and he came in?

1 A. Yes, sir.

2 Q. He actually left your office that day; is that
3 correct?

4 A. Yes, sir.

5 Q. And then sometime later you obtained arrest warrants;
6 is that correct?

7 A. Yes, sir.

8 Q. It's your understanding that he turned himself in on
9 those as well?

10 A. Yes, sir.

11 Q. Is it also your understanding that he's been out on
12 bond for about the past two years?

13 A. To my knowledge; yes, sir.

14 Q. Now your conversation with Mr. Orozco, that was, I
15 guess the Miranda was from 9:52 to 9:58; is that correct?

16 A. Yes, sir.

17 Q. The entire conversation lasted about 30 minutes; is
18 that correct?

19 A. The entire interview. Yes, sir; a little over 30
20 minutes.

21 MR. MAULDIN: No further questions, Your Honor.

22 THE COURT: All right.

23 MS. BRISBIN: Nothing further.

24 THE COURT: Thank you, sir. You may step down.

25 THE WITNESS: Thank you.

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 MS. BRISBIN: State calls Suzie Sanchez-Martinez.

2 SUZIE SANCHEZ-MARTINEZ, having been duly sworn,
3 was examined and testified as follows:

4 THE CLERK: Have a seat in the witness box,
5 stating your full name, spelling your last for the Court,
6 please.

7 THE WITNESS: My name is Suzie Sanchez. S. A. N.
8 C. H. E. Z.

9 DIRECT EXAMINATION

10 BY MS. BRISBIN:

11 Q. I'm a little confused about the names. Is that a
12 hyphenated name?

13 A. Yes.

14 Q. You sometimes use just Sanchez?

15 A. Yes.

16 Q. And how are you related to Rosa Sanchez?

17 A. She is my daughter.

18 Q. And what about the Defendant, Carlos Orozco?

19 A. He would be my brother-in-law by marriage. He's
20 married to my sister, Janet.

21 Q. And how about Alexis Leaphart?

22 A. She's my niece. She's the daughter of my sister, Ann.

23 Q. So there are at least three girls in your family?

24 A. Yeah.

25 Q. Are there other kids?

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 A. There's actually four girls total. Myself, I have a
2 twin, Wendy, who's the aunt of Alexis and Rosa. I have a
3 younger sister, Janet, who is the aunt of Alexis and Rosa
4 and the wife of Carlos.

5 MR. MAULDIN: Your Honor, she needs to speak up
6 and more slowly.

7 THE COURT: If you could, slow down just a little
8 bit for the translator.

9 THE WITNESS: Okay.

10 BY MS. BRISBIN:

11 Q. Did Rosa ever stay or visit in Carlos and Janet's
12 home?

13 A. Yes.

14 Q. Do you remember what ages she would be going there to
15 visit?

16 A. She was between the ages of four and six years old.

17 Q. Okay. And was she going just to visit or were they
18 baby sitting or what?

19 A. It started off being where they, meaning my daughters
20 because I have two, would go for visits, play dates,
21 family outings, things of that nature. And then when I
22 changed jobs is when I needed for them to have a
23 babysitter. And that became Carlos or sometimes his wife,
24 Janet, would be there, too.

25 Q. Okay. So, are you saying there were times when Janet

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 would leave the kids with Carlos?

2 A. There will be times when she would leave. They work
3 opposite shifts because they both manage the restaurant.
4 She worked in the mornings, he worked in the afternoons.
5 She would have to leave in order to manage the
6 restaurant. He would be there by himself. He meaning
7 Carlos.

8 Q. You say you have another daughter?

9 A. Yes.

10 Q. What's her name?

11 A. Andrea.

12 Q. How old is she --

13 A. Currently now?

14 Q. -- in relation to Rosa. Yes.

15 A. Rosa is eight years old and my younger daughter is
16 seven.

17 Q. So they're a year apart?

18 A. A little less than a year.

19 Q. Was Andrea always there when Rosa was there?

20 A. Majority of the time.

21 Q. Pardon?

22 A. Majority of the time.

23 Q. Okay.

24 A. With him being my primary care giver, he would have to
25 watch both of them.

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 Q. For all of that time from age four to six?

2 A. Yes.

3 Q. But there were times when Andrea was not there and
4 Rosa was there?

5 A. Right. Yes.

6 Q. What about Alexis, was she sometimes there when Rosa
7 was there?

8 A. Yes.

9 Q. And were there times that Rosa was there without
10 Alexis there?

11 A. Yes.

12 Q. What did you do when you found out about the
13 allegations that Rosa had made?

14 A. I found out about the allegations on the 21st of June
15 and I went the very next day on the 22nd after I was able
16 to work my shift at my job, I went directly to the
17 sheriff's department and filed a report.

18 Q. Okay. So you filed a report on what date?

19 A. June 22nd of 2006.

20 Q. Did you tell anyone else?

21 A. Meaning tell anyone else that day of?

22 Q. Did you tell anyone else in the family about the
23 allegations?

24 A. Yes.

25 Q. That same day or?

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 A. On the date that I filed the initial report which was
2 the 22nd, I notified my older sister which is Ann, the
3 mother of Alexis, of what Rosa had disclosed.

4 Q. Okay. And did -- where was Alexis living at that
5 time?

6 A. At that time she was living in --

7 Q. Not where she was staying, where she was living.

8 A. Where she was living then?

9 Q. Uh-huh.

10 A. I do believe she was in Greenville or they were in
11 process of moving to Greenville, South Carolina.

12 Q. And at the time that Rosa disclosed, where was Alexis?

13 A. She was in Indianapolis, Indiana with my twin sister,
14 Wendy, spending the summer there.

15 Q. Did Rosa have the opportunity to talk to Alexis prior
16 to having her forensic interview?

17 A. No. They never spoke. They never saw each other. As
18 a matter of fact, almost a whole year went by before they
19 ever saw each other. Forensic interviews and
20 conversations and things that happened, they were
21 purposefully scheduled different times and dates so they
22 never saw each other.

23 Q. And Alexis was living in another town?

24 A. Yes.

25 MS. BRISBIN: Thank you. Please answer any

SUZIE SANCHEZ-MARTINEZ - DIRECT

1 A. On the date that I filed the initial report which was
2 the 22nd, I notified my older sister which is Ann, the
3 mother of Alexis, of what Rosa had disclosed.

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5 time?

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11 process of moving to Greenville, South Carolina.

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14 Wendy, spending the summer there.

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16 to having her forensic interview?

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18 a matter of fact, almost a whole year went by before they
19 ever saw each other. Forensic interviews and
20 conversations and things that happened, they were
21 purposefully scheduled different times and dates so they
22 never saw each other.

23 Q. And Alexis was living in another town?

24 A. Yes.

25 MS. BRISBIN: Thank you. Please answer any

ELIZABETH ANN LEAPHART - DIRECT

1 A. Suzie and Wendy, they're twins, and then Janet which
2 is Carlos's wife.

3 Q. And you?

4 A. And me.

5 Q. Where do you live now?

6 A. Greenville, South Carolina.

7 Q. And when did you move there?

8 A. July 2005.

9 Q. Okay. And did Alexis go at the same time you went?

10 A. We moved all our belongings and everything. My
11 husband had a job transfer and I had to stay behind
12 because I'm in college and I had a few courses I had to
13 take, so I stayed behind to finish that but the children
14 moved with their father. They were there. I was here for
15 my courses.

16 Q. Okay. And where were you living prior to Greenville?

17 A. With my mother.

18 Q. In what city?

19 A. Aiken. Sorry.

20 Q. Okay. And how long had you lived in Aiken?

21 A. All my life.

22 Q. Okay. How do you know the Defendant, Carlos Orozco?

23 A. He is my brother-in-law. He's married to Janet, my
24 sister.

25 Q. Okay. Did Alexis ever stay over at their house?

ELIZABETH ANN LEAPHART - DIRECT

1 A. Yes.

2 Q. Was it frequent or about how often would you say?

3 A. Pretty often. Weekends, you know, when she didn't
4 have school. Summertime it was regularly to play, go
5 places with my sister.

6 Q. Okay. So why was she going over there?

7 A. Why was Alexis going over there?

8 Q. Uh-huh.

9 A. To play.

10 Q. Just to play?

11 A. Yeah, and her kids, you know.

12 Q. With his kids?

13 A. Right.

14 Q. Okay. Did Alexis ever go over there -- who was home
15 -- do you know -- to your knowledge, was she ever there
16 when Janet was not home?

17 A. Yes.

18 Q. And who was watching her then?

19 A. Carlos.

20 Q. Okay. Were there times when Rosa was there when
21 Alexis was there?

22 A. Yes.

23 Q. Were there times when Alexis was there and Rosa was
24 not there?

25 A. Yes.

ELIZABETH ANN LEAPHART - DIRECT

1 Q. Where was Alexis on June 22nd of 2006?

2 A. She was in Indiana with my sister, Wendy.

3 Q. Okay. And what was she there for?

4 A. Summer vacation.

5 Q. Okay. And when did you find out that Rosa had made
6 her disclosure?

7 A. June 22nd, 2006.

8 Q. What did you do?

9 A. I had went to the store. My sister, Suzie, works at
10 and she told me what Rosa had disclosed and then I went to
11 speak to my sister, Janet, which is Carlos's wife.

12 Q. What did you tell her?

13 A. That Rosa had disclosed that Carlos had touched her.

14 Q. Okay.

15 A. And I wanted her to know --

16 MR. MAULDIN: Objection, Your Honor. Move to
17 strike.

18 THE COURT: What portion?

19 MR. MAULDIN: The telling and who touched who.
20 Hearsay.

21 MS. BRISBIN: Your Honor, may I be heard on
22 that? I don't believe it's hearsay because it's not
23 offered for the truth of the matter asserted but to show
24 knowledge of --

25 THE COURT: Overruled. I'll allow that.

ELIZABETH ANN LEAPHART - DIRECT

1 MS. BRISBIN: Thank you.

2 BY MS. BRISBIN:

3 Q. So, you told Janet?

4 A. Yes, ma'am.

5 Q. And who is Janet?

6 A. Carlos's wife. My sister.

7 Q. And that was on what date?

8 A. June 22nd, 2006.

9 Q. Do you know what time of day you told her?

10 A. I know it was before noon because Suzie couldn't get

11 off work yet and that was why I went to tell my sister,

12 Janet, because I didn't really know what was going to

13 happen after that once she filed the report. I wanted my

14 sister to know. I wanted Janet to know.

15 Q. Okay. And what else did you do?

16 A. What do you ...

17 Q. Did you file a police report?

18 A. Yes, I did. It was within a few days. After I had --

19 after Rosa disclosed what she disclosed, I spoke to my

20 husband. And we decided that we needed to talk to

21 Alexis.

22 And I called my sister Wendy's house, and I asked to

23 speak to Alexis. And I had just explained to her that

24 there were some things going on. I had a couple of

25 questions for her and she said okay. And I asked her, I

ELIZABETH ANN LEAPHART - DIRECT

1 said, Alexis, I need to know if anyone has ever touched
2 you. I did not name any names.

3 And she got quiet. And then I told her that, you
4 know, nothing of that sort would ever be against her. I
5 just needed to know if anything like that ever happened to
6 her and she started to cry.

7 And --

8 Q. What did you do next?

9 A. I asked her if Carlos had ever touched her. And she
10 just started crying worse. And I couldn't understand
11 anything after that. So I hung up the phone. And I had
12 to call my sister, Wendy, because she, her husband is a
13 music minister at the church and she had ran over to the
14 church. And I called her and told her that Alexis was
15 upset. She needed to go home and talk to her.

16 Q. Okay. Did Alexis come back from Indiana at that time?

17 A. Not right away. I had filed a report. I went myself
18 just to let the sheriff's department know what was going
19 on on my daughter's behalf because my sister, Wendy, had
20 said she was disclosing things. And I went late in the
21 afternoon and a few days, I think it was a few days, Jason
22 Feemster called me and set up the interview and
23 everything.

24 Q. Interview?

25 A. The forensic, I guess, interview for her to be checked

1 and stuff.

2 Q. Okay.

3 A. And then I had asked if she needed to come back right
4 away and the interview, I think, I'm not sure of the time
5 period but she did not come back right away. It was a
6 scheduled time for her to return when my sister was going
7 to come back and bring the kids home.

8 Q. When she came back, did she come to Aiken or to
9 Greenville?

10 A. She came to Aiken. And then my husband picked them up
11 and took them to Greenville.

12 Q. Okay. And then did she have the interview before she
13 went back to Greenville or after?

14 A. I'm not sure. I think it was before she went back.

15 Q. Okay. Did she have the opportunity to see Rosa or
16 talk to her about this before the interview?

17 A. No. I purposefully asked my sister to keep them
18 separate because I did not want them to talk about it.

19 Q. Okay.

20 MS. BRISBIN: Please answer any questions
21 Mr. Mauldin has.

22 MR. MAULDIN: Beg the Court's indulgence one
23 second.

24 THE COURT: All right.

25 (Pause.)

TOM RANDALL GRAY - DIRECT

1 MR. MAULDIN: No questions for this witness, Your
2 Honor.

3 THE COURT: You may step down.

4 MS. BRISBIN: State calls Tom Gray.

5 TOM RANDALL GRAY, having been duly sworn, was
6 examined and testified as follows:

7 THE CLERK: Have a seat in the witness box,
8 stating your full name, spelling your last, for the Court,
9 please.

10 THE WITNESS: My name is Tom Randall Gray. Last
11 name spelled G. R. A. Y.

12 DIRECT EXAMINATION

13 BY MS. BRISBIN:

14 Q. Where do you work now?

15 A. I work for Wagener Police, part-time.

16 Q. Okay. And where were you working back in 2006?

17 A. Working for the Aiken County Sheriff's Office.

18 Q. And what was your position there?

19 A. Patrolman. Deputy sheriff.

20 Q. How long did you work there?

21 A. Off and on for about ten years.

22 Q. Okay. Were you working there on June 22nd of 2006?

23 A. Yes, ma'am.

24 Q. And did you have the occasion to go to the Orozco's
25 residence?

TOM RANDALL GRAY - DIRECT

1 A. Yes, ma'am; I did.

2 MR. MAULDIN: Your Honor, at this time I'd object
3 to this line of questioning based on my prior motion.

4 THE COURT: Subject to the ruling in your prior
5 motion, you're protected for that. Overruled.

6 BY MS. BRISBIN:

7 Q. And what was the nature of the dispatched call that
8 you answered?

9 A. I was dispatched to a suicide attempt.

10 Q. And who was the subject of the suicide attempt?

11 A. I'm not sure if I can pronounce it correctly. Juan
12 Carlos --

13 Q. Can you spell the last name?

14 A. That's O. R. E. Z. C. O. (sic) the way I have it
15 written on my incident report.

16 Q. Orozco.

17 A. Orozco.

18 Q. What time were you dispatched to that location?

19 A. I was dispatched at 14:01 which is two o'clock, I
20 believe.

21 Q. Is that morning or afternoon, middle of the night or?

22 A. It's p.M. which is afternoon.

23 Q. And what was that address?

24 A. It's 107 Juanita Drive, Aiken, South Carolina which is
25 in Aiken County.

TOM RANDALL GRAY - DIRECT

1 Q. And what did you find when you arrived there?

2 A. I found that the victim on my incident report here,
3 Mr. Carlos, was laying in his bedroom. He was being
4 treated by EMS for taking rodent poison.

5 Q. Rodent poison?

6 A. Yes, ma'am.

7 Q. By taking it, how do you mean taking it?

8 A. By mouth, the way I understand.

9 Q. And did you see what he had taken?

10 A. I did see a box of rodent poisoning at the residence
11 which I believe EMS took it with them to the ER.

12 Q. And did they also take Mr. Orozco to the ER?

13 A. Yes, ma'am; they did.

14 Q. EMS, was it?

15 A. Emergency Medical which is ambulance, you know.

16 Q. Okay. And so they were already there treating him --

17 A. Yes, ma'am.

18 Q. -- when you arrived?

19 A. Yes.

20 Q. And did you find any other evidence of an attempted
21 suicide?

22 A. No, ma'am.

23 Q. Was there any note? Letter?

24 A. Oh, yes. Yes, there was a note there.

25 Q. Okay. Who else was present?

LISA MILLER-DUPREE - DIRECT

1 A. The complainant which would be the -- Janet Orozco.

2 Q. His wife?

3 A. His wife; yes.

4 Q. Okay.

5 CROSS-EXAMINATION

6 BY MR. MAULDIN:

7 Q. Did you take this note with you?

8 A. No, sir; I don't believe I did.

9 Q. Was it in English or Spanish?

10 A. Spanish.

11 Q. Do you read and understand Spanish?

12 A. No, sir; I don't.

13 Q. Are you sure you didn't take it with you?

14 A. I don't have an evidence sheet with me, so I couldn't
15 tell you for sure.

16 Q. You couldn't tell me for sure if you did or didn't?

17 A. If I took the note? No, I couldn't tell you if I took
18 it.

19 MR. MAULDIN: No further questions, Your Honor.

20 THE COURT: All right. Any follow up?

21 MS. BRISBIN: No, Your Honor.

22 THE COURT: All right. You can step down. Thank
23 you.

24 MS. BRISBIN: State calls Lisa Miller-DuPree.

25 LISA MILLER-DUPREE, having been duly sworn, was

LISA MILLER-DUPREE - DIRECT

1 examined and testified as follows:

2 THE CLERK: Have a seat in the witness box,
3 stating your full name, spelling your last, for the Court,
4 please.

5 THE WITNESS: Lisa Miller DuPree. M. I. L. L. E.
6 R. hyphen D. U. capital P. R. E. E.

7 DIRECT EXAMINATION

8 BY MS. BRISBIN:

9 Q. Where do you work now, Lisa?

10 A. The Dickerson Center for Children in Lexington County,
11 South Carolina.

12 Q. And where were you working back in 2006?

13 A. Child Advocacy Center in Aiken, South Carolina.

14 Q. And what was your position there?

15 A. I worked part time as a forensic interviewer. And I
16 was also clinical director at Children's Place at that
17 time. I wasn't full-time at the Advocacy Center yet when
18 this interview took place.

19 Q. You worked part-time as what?

20 A. A forensic interviewer at the Advocacy Center.

21 Q. Okay. What type of educational background do you
22 have?

23 A. I've got a master's degree in social work and a
24 bachelor's degree in social work and a two-year degree in
25 human services. And I've been certified by Finding Words

LISA MILLER-DUPREE - DIRECT

1 to do forensic interviews in the State of South Carolina.

2 Q. Is -- have you had the advanced training in that as
3 well?

4 A. Yes, I have.

5 Q. And what is Finding Words?

6 A. Finding Words is a training for forensic interviews to
7 learn how to talk to children and it's, it's a semi-
8 structured protocol. So RATAC is what they call that and
9 it's rapport building, anatomy identification, touch
10 scenario, abuse scenario and closure is what what we're
11 supposed to go through with the child during the interview
12 process.

13 Q. So RATAC is an acronym for all of that?

14 A. Correct.

15 Q. What is the purpose of going through that protocol?

16 A. Information gathering for investigative purposes, to
17 find out what the facts are as the child sees it.

18 Q. Can you estimate approximately how many forensic
19 interviews or interviews with children who have made
20 allegations of abuse that you have done over your time of
21 your career?

22 A. To date I've probably done over 300 but at the time of
23 this interview it was probably less than a hundred.

24 Q. Okay. Did you have the opportunity to interview Rosa
25 Sanchez-Martinez in this case?

LISA MILLER-DUPREE - DIRECT

1 A. Yes, I did.

2 Q. What was the date of that interview?

3 A. July 5th, 2006.

4 Q. And where was it done?

5 A. At the CAC of Aiken. Children's Advocacy Center of
6 Aiken, South Carolina.

7 Q. Okay. And how old was Rosa at that time?

8 A. She was six years old.

9 Q. Was the interview videotaped?

10 A. Yes, it was.

11 Q. And do you recognize what's been marked State's
12 Exhibit Number Five?

13 A. Yes, I do.

14 Q. And have you watched the videotape?

15 A. Yes, I have.

16 Q. Is the video an accurate depiction of what took place
17 in that forensic interview with Rosa?

18 A. Yes. Yes, it is.

19 MS. BRISBIN: Your Honor, at this time I'd ask
20 that State's Exhibit Number Five be admitted into evidence
21 and published.

22 THE COURT: All right.

23 MR. MAULDIN: No objection at this time, Your
24 Honor.

25 THE COURT: All right. Without objection.

LISA MILLER-DuPREE - DIRECT

1 (Thereupon, State's Exhibit No. 5, DVD-Rosa, was
2 received into evidence.)

3 (Thereupon the DVD was played from 3:29 p.m.,
4 until 3:43 p.m.)

5 BY MS. BRISBIN:

6 Q. Lisa, did you get confused on some of the names on
7 that?

8 A. Yes. I knew there was sister Ana and when I -- I
9 thought that's what the child said and when she didn't
10 correct me I didn't change it. I just kept it as Ana.

11 Q. So who was she talking about, do you think? Do you
12 know?

13 A. She said Carlos in Carlos's house.

14 MR. MAULDIN: Objection, Your Honor.

15 THE COURT: Hold on a second. What's your
16 objection?

17 MR. MAULDIN: I think it's hearsay.

18 THE COURT: Rephrase that question. Sustained.

19 MS. BRISBIN: Okay.

20 BY MS. BRISBIN:

21 Q. On the video where you said Ana --

22 A. Right. That's what I thought the child said.

23 Q. -- what was the correct name; do you know?

24 A. Now I do --

25 MR. MAULDIN: Objection, Your Honor.

1 THE COURT: Overruled.

2 BY MS. BRISBIN:

3 Q. Go ahead.

4 A. At the time I did not -- I did not realize that and
5 the child did not correct me so I kept in my mind that she
6 was talking about Carlos's wife Ana and that's --

7 Q. But her name's not really Ana?

8 A. Right. But I didn't know that then.

9 Q. Thank you.

10 THE COURT: Yes, sir?

11 MR. MAULDIN: I have no questions for this
12 witness.

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

14 MR. MAULDIN: Your Honor, I request a short
15 break.

16 THE COURT: We'll take a break now. We have one
17 more tape that's longer; is that correct?

18 MS. BRISBIN: It's longer than this. I think
19 it's 40 minutes.

20 THE COURT: All right. Ladies and gentlemen, I'm
21 going to give you ten or 15 minutes to stretch. We'll
22 have one more videotape that's going to take us to five
23 o'clock at least. So please don't discuss the case.
24 We'll call you back in in a little while.

25 (Jury exits courtroom at 3:45 p.m.).

MAUREEN DEVER-BUMBA - DIRECT

1 (Thereupon a recess was taken from 3:46 until
2 4:06 p.m., when the trial resumed:)

3 THE COURT: I have a motion to admit evidence of
4 a suicide attempt as a Court's Exhibit but apparently
5 there's not one in the clerk's file so I'll just make it a
6 Court's exhibit.

7 (Thereupon, motion to admit evidence of suicide
8 attempt was marked as Court's Exhibit No. 2 and received
9 into the record.)

10 THE COURT: We're going to do the second
11 videotape tomorrow; is that it?

12 MS. BRISBIN: Yes, sir, because it's getting late
13 and some of the jurors have to leave at six.

14 THE COURT: Yes. That's news to me. I just
15 found out one or two of the jurors have to work at six.
16 That may create a problem but we'll figure it out.

17 THE BAILIFF: Judge --

18 (Pause.)

19 THE COURT: Okay. You can bring them back.

20 (Jury enters courtroom at 4:15 p.m.)

21 THE COURT: Thank you, ladies and gentlemen. All
22 right. You can call your next witness.

23 MS. BRISBIN: State calls Dr. Maureen Dever-
24 Bumba.

25 MAUREEN DEVER-BUMBA, having been duly sworn, was

MAUREEN DEVER-BUMBA - DIRECT

1 examined and testified as follows:

2 THE CLERK: Have a seat in the witness box
3 stating your full name, spelling your last for the Court,
4 please.

5 THE WITNESS: My name is Maureen M. A. U. R. E.
6 E. N. Dever-Bumba. D. E. V. E. R. hyphen B. U. M. B. A.

7 DIRECT EXAMINATION

8 BY MS. BRISBIN:

9 Q. Where do you work, Dr. Dever-Bumba?

10 A. I currently work for the University of South Carolina
11 School of Medicine.

12 Q. And where did you work prior to that?

13 A. Prior to that I worked at the Medical College of
14 Georgia, and also at the Child Advocacy Center in Aiken.

15 Q. What type of educational background do you have?

16 A. I received my bachelor's degree in nursing from
17 Bowling Green State University in Ohio. Master's degree
18 as a nurse practitioner from the University of
19 Pennsylvania and doctoral studies at the University of
20 South Carolina in public health.

21 Q. What is your position at -- where do you work now?

22 A. I'm the director of education.

23 Q. And that's USC?

24 A. School of Medicine.

25 Q. School of Medicine. And when you were at MCG, what

MAUREEN DEVER-BUMBA - DIRECT

1 was your position there?

2 A. I was the director of the nurse practitioner program.

3 Q. And how long have you been in this field?

4 A. Oh gosh. I graduated '82, so 25 years or so.

5 Q. Okay. When you were at the Child Advocacy Center,
6 what was your position there?

7 A. I was nurse practitioner.

8 Q. What was your role there?

9 A. I examined children who had been referred for sexual
10 abuse and physical abuse.

11 Q. And can you estimate approximately how many of those
12 types of exams you've done in your career?

13 A. Probably between 75 and a hundred. The majority of
14 them at the Child Advocacy Center.

15 Q. Do you have any special training in child sexual abuse
16 examinations?

17 A. My initial training was during my master's studies at
18 the University of Pennsylvania, but I also had additional
19 training in 2004 through the PeeDee-AHEC. And I also did.

20 Q. I'm sorry what is that?

21 A. PeeDee-AHEC was the area educational center. It was a
22 continuing education program for evaluation of physical
23 and sexual abuse. It is an agency that is certified to
24 give those programs.

25 Q. And you're a nurse practitioner in what area?

MAUREEN DEVER-BUMBA - DIRECT

1 A. I'm duly certified. I have certification as a
2 pediatric nurse practitioner as well as a family nurse
3 practitioner.

4 Q. Have you been qualified to testify as an expert
5 witness in court prior to this?

6 A. Yes.

7 Q. Do you know approximately how many times?

8 A. Three, I believe.

9 Q. I'm sorry?

10 A. Three, I believe.

11 Q. Okay. And, Your Honor, at this time I would ask that
12 Dr. Dever-Bumba be qualified as an expert witness in the
13 field of child sexual abuse examination.

14 THE COURT: Any objection?

15 MR. MAULDIN: No, Your Honor.

16 THE COURT: All right. Without objection.

17 BY MS. BRISBIN:

18 Q. Where were you employed in July and August of 2006?

19 A. I was employed at the Medical College of Georgia and
20 the Child Advocacy Center.

21 Q. And you were working -- were you working part-time at
22 the Child Advocacy Center?

23 A. The Child Advocacy Center contracted with the Medical
24 College of Georgia School of Nursing to provide nurse
25 practitioner services. So part of my job was doing

MAUREEN DEVER-BUMBA - DIRECT

1 clinical work at the Child Advocacy Center.

2 Q. Did you have the opportunity to examine the victims in
3 this case, Rosa Sanchez and Alexis Leaphart?

4 A. Yes, I did.

5 Q. Let's take one at a time. When did you examine Alexis
6 Leaphart?

7 A. July 31st of 2006.

8 Q. And what type of examination did you do?

9 A. I did a medical examination. So I did a history, past
10 medical history as well as a history of any present
11 problems and I did a physical examination that included a
12 careful colposcopic exam of genitalia.

13 Q. Did you obtain a history of what had happened from the
14 child herself?

15 A. Yes, I did.

16 Q. And did -- starting with Alexis, did she disclose to
17 you that she had been sexually assaulted?

18 A. She had told me that she had been touched by the
19 perpetrator's hand and penis to her vaginal area with
20 partial penetration.

21 Q. And did she say when that had happened?

22 A. I didn't have an exact date on when that happened.

23 She had told me it happened a significant time ago. She
24 didn't give me a particular date, just that it had been at
25 least a year or two earlier.

MAUREEN DEVER-BUMBA - DIRECT

1 Q. Do you have her date of birth?

2 A. 7-17-1996.

3 Q. So how old was she at the time of your examination?

4 A. Ten years old.

5 Q. And it was done when?

6 A. It was done July 31st of 2006.

7 Q. So she had just turned ten?

8 A. Just turned ten.

9 Q. And did you find any medical findings -- were there
10 any significant medical findings in her examination?

11 A. No. Her examination indicated that an annular hymen
12 that was mildly estranized. She was tender one which is
13 the earliest stage of development for a child basically
14 not through puberty. And her lab work that we did was
15 negative. So it was essentially a normal examination.

16 Q. In your experience, is a normal examination in a child
17 sexual abuse exam unusual?

18 A. No, it's actually the norm. Probably 85 to 95 percent
19 of the time there's no physical findings in examinations
20 for sexual abuse.

21 Q. And why is that?

22 A. Well, there's lots of reasons. One of the reasons is
23 that the physical area, the genitalia is relatively
24 elastic, pretty flexible and it gives pretty well. So if
25 there is any particular injury, it heals relatively

MAUREEN DEVER-BUMBA - DIRECT

1 quickly, some injuries within 48 hours.

2 If there is an injury to that area it can heal and it
3 can heal without scarring. Different than if, you know,
4 like you cut yourself on your face or your skin it can
5 heal without scarring. A lot of times in order to have a
6 physical finding there has to be a significant injury, and
7 usually significant injury indicates significant
8 violence.

9 And in sexual abuse violence, severe violence only
10 happens maybe one in four times. So unless the child was
11 seen immediately after the incident, it's highly unlikely
12 for us to have any findings. So if there's been a
13 significant time frame, months or years, the chance of
14 finding anything is really small.

15 Q. What about in cases of oral sex with penetration of
16 the penis in the mouth, would you expect to find medical
17 evidence in an old case of that?

18 A. No. And, again, you know, the inside of our mouths is
19 mucosa. And mucosa usually turns over completely within
20 three days. And again, unless there are significant
21 injuries, we're really not going to see anything.

22 Q. What about if there's partial penetration of the penis
23 into the vagina, how would that affect the potential
24 medical findings?

25 A. Well, partial penetration or complete penetration,

MAUREEN DEVER-BUMBA - DIRECT

1 unless there's significant injuries associated with it,
2 it's not going to have a physical finding.

3 Q. So this idea that the hymen just goes away when a girl
4 has sex, is that not correct?

5 A. No. Actually the myth is that a girl's hymen
6 completely covers her vaginal opening and the reality is
7 that's not true. The vaginal opening is kind of like a
8 doughnut and the outside of the doughnut is what the hymen
9 looks like.

10 And years ago we used to think if the doughnut hole
11 was really big it meant there was sexual abuse, but what
12 we found is that the opening is sort of dependant on how
13 relaxed the woman is during the examination. And so you
14 can have quite a wide opening and it has nothing to do
15 with loss of hymen or sexual abuse or even sexual
16 contact.

17 We've even had women who have had children whose
18 hymens are still intact.

19 Q. Through the birth canal?

20 A. Through the birth canal, because the hymen is on the
21 outside area and that has happened where women have had
22 complete hymens and they're pregnant.

23 Q. Okay. Moving on to Rosa's examination, when was that
24 done?

25 A. Her examination was August 7th of 2006.

MAUREEN DEVER-BUMBA - DIRECT

1 Q. And do you have her date of birth?

2 A. Her date of birth was October 5th, 1999.

3 Q. So that would make her what age at the time of the
4 examination?

5 A. She was six -- seven -- six. She hadn't turned seven
6 yet.

7 Q. Okay. And did you also obtain a history of the
8 incident from Rosa herself?

9 A. Yes, I did.

10 Q. And what was that?

11 A. Rosa indicated that the contact with her had been
12 sometime ago but she really was not very clear when that
13 is and at six it's kind of difficult for them to set up
14 times anyways.

15 She indicated that the contact was too many times for
16 her to know or tell me about. She indicated that there
17 had been various kinds of contact including penile contact
18 with her mouth, her vaginal area and her bottom though she
19 indicated the contact with her bottom was over clothes.
20 She indicated there had been digital or hand contact to
21 her vagina. She said that she had been made to touch her
22 mouth to the penis of the perpetrator and also her hand
23 touched the penis of the perpetrator. And at least one
24 time she indicated that some green slime came from the
25 penis, though she did not say that the green slime touched

MAUREEN DEVER-BUMBA - CROSS

1 her at all. She said that the perpetrator wiped that with
2 his shirt so it never touched her skin. It never touched
3 her body.

4 Q. And what were your findings in Rosa's case?

5 A. Rosa had a crescent shaped hymen that was very thin
6 and smooth which is absolutely normal for a child her
7 age. She had a little bit of what I call physiologic
8 drainage which as anyone that knows six-year-old kids
9 knows they're not terribly clean sometimes. So she had
10 probably been a little bit busy. She also was
11 undeveloped. Definitely had not gone through puberty.

12 And in her case, we did a whole series of laboratory
13 tests, for gonorrhea, for clamidia, for syphilis, for HIV
14 and for hepatitis B., all of which were negative.

15 Q. Were those tests done for Alexis as well?

16 A. With Alexis we do tests based on what they tell us the
17 contact was. So Alexis had vaginal testing for clamidia
18 and gonorrhea which were negative. Because the history
19 from Rosa was much more extensive, we tested her oral
20 cavity, her vaginal cavity and her rectal cavity.

21 MS. BRISBIN: Please answer any questions
22 Mr. Mauldin has.

23 CROSS-EXAMINATION

24 MR. MAULDIN: Thank you.

25 BY MR. MAULDIN:

MAUREEN DEVER-BUMBA - CROSS

1 Q. You have a title. Is it doctor or nurse?

2 A. I'm --

3 Q. Missus?

4 A. Nurse practitioner. You can call me Missus if you'd
5 like.

6 Q. Okay. All right. And oftentimes you said basically
7 these were normal exams and that you could not rule out
8 abuse; is that correct?

9 A. Correct.

10 Q. But you could not specifically say that there was
11 either --

12 A. That's correct.

13 Q. -- is that correct?

14 And when you talk about this percentage of times that
15 there would be none, some of those times would be because
16 the contact would be in a place where it would leave no
17 evidence. Like if you touched on the outside of the
18 clothes, there'd probably be no evidence of that or if
19 they had been fondled?

20 A. That's partially correct. That's absolutely true but
21 there's been a number of research studies where there has
22 been testing of children who had definite child sexual
23 abuse. Abuse did happen. It was recognized as it
24 happened. And they evaluated those children and even in
25 those cases, they only found between five and 15 percent

MAUREEN DEVER-BUMBA - CROSS

1 of the children had evidence. And, again, it's that
2 timing issue.

3 Q. Well, I mean, the children are saying that they're
4 abused?

5 A. No. In the studies there had to have been a
6 conviction and there often was a witness. It was a small
7 study, I admit, only maybe 60 cases.

8 Q. Only 60 cases?

9 A. Yes. 60 children were evaluated.

10 Q. In this one study?

11 A. In just this one study, yes. It's very hard to do
12 that type of research because the exclusion criteria would
13 be pretty high.

14 Q. That's exactly -- it's not a very broad spectrum?

15 A. That's correct.

16 Q. Was it just in one city or one area?

17 A. I'm sorry?

18 Q. Was that study done in one state or one area?

19 A. I can pull it out if you want. I think it was a
20 Kellogg study. It was in the United States.

21 Q. But to say again, you -- based on what your findings,
22 you can't say if anything happened or not?

23 A. No, no. The majority of the time we base our findings
24 on the history that the child gives us.

25 Q. Right. So basically your finding was a normal exam?

1 A. Right.

2 Q. And you can't rule it out but you can't rule it in,
3 either; is that correct?

4 A. Correct.

5 MR. MAULDIN: Thank you. No further questions.

6 THE COURT: Any redirect?

7 MS. BRISBIN: Just briefly.

8 REDIRECT EXAMINATION

9 BY MS. BRISBIN:

10 Q. How many child sexual assault examinations did you say
11 you've done in your career?

12 A. Probably between 75 and a hundred.

13 Q. And of those 75 or 100 examinations, in how many did
14 you have medical findings?

15 A. Two.

16 MS. BRISBIN: Thank you.

17 THE COURT: All right. Thank you, ma'am. You
18 can step down.

19 MS. BRISBIN: May she be excused, Your Honor?

20 THE COURT: Any objection?

21 MR. MAULDIN: No, Your Honor.

22 THE COURT: All right. Without objection. Thank
23 you, ma'am.

24 MS. MAURICE: Thank you so much.

25 THE COURT: Is that it?

1 MS. BRISBIN: Yes, Your Honor. I believe we'll
2 continue in the morning with our next witness.

3 THE COURT: All right. Ladies and gentlemen,
4 that's going to be all the testimony you're going to hear
5 today. The next bit of testimony I know is another
6 videotape. It's longer than the last one. It would put
7 us past the five o'clock hour. I will tell you that we do
8 our best to get you out of here at five. I can't promise
9 that I can do that tomorrow night though, just so you can
10 plan.

11 If you would go home and have a good night's
12 rest. Please don't talk about this case. As I told you
13 yesterday, I know you're going to be tempted to answer
14 questions if your family asks you questions. I'm asking
15 you not to do that. Just tell them you can't talk about
16 it.

17 I suspect we're going to get this case to you for
18 deliberations tomorrow. So have a good night. So, if
19 you're approached or contacted by anybody let me know
20 tomorrow morning. Thank you.

21 MS. MAURICE: Judge, also ask them not to read
22 the newspaper.

23 THE COURT: As I told you the other day, I'll
24 reiterate, please, I don't know if there's going to be any
25 press. I looked at the paper at lunch, there was nothing

1 that I saw so please don't watch any television, listen to
2 any radio or read any newspapers if you see anything about
3 this case.

4 Let me tell you. You know more about this case
5 than anybody in the world except the lawyers involved in
6 this case. There's nothing you can read in the press
7 that's going to help you out. And I can tell you that
8 it's rarely correct. Okay.

9 All right. Have a good night.

10 THE JUROR: What time in the morning?

11 THE COURT: What time?

12 THE CLERK: Time?

13 THE COURT: Anybody coming from out of town?

14 MS. BRISBIN: We have a witness coming from
15 Columbia but nowhere far.

16 THE COURT: 9:30.

17 MS. BRISBIN: We can do the video first.

18 THE COURT: 9:30 tomorrow morning.

19 (Jury exits courtroom at 4:33 p.m.)

20 END OF DAY: 4:33 P.M.

21 ON THURSDAY, JULY 17, 2008 AT 9:55 A.M.:

22 THE COURT: Anything we need to talk about this
23 morning? We got the video, and anything else?

24 MS. BRISBIN: One more witness for the State
25 after that.

1 THE COURT: All right. Okay. Y'all ready?

2 MS. BRISBIN: Yes, sir.

3 MR. MAULDIN: Waiting on him.

4 THE COURT: Okay.

5 (Pause. Defendant enters courtroom.)

6 THE COURT: All right. Everybody ready?

7 MR. MAULDIN: Yes, sir.

8 MS. BRISBIN: Yes, sir.

9 THE COURT: Bring them in.

10 (Jury enters courtroom at 9:59 a.m.)

11 THE COURT: Good morning, ladies and gentlemen.

12 I'm sorry you had to wait back there. I had to take care
13 of a matter, had nothing to do with this trial and I
14 apologize for that.

15 Again, if you have a problem or if -- y'all have
16 been very good. If you need to take a break at any point
17 before I take a break, just raise your hand, let me know.

18 MR. MAULDIN: Your Honor, I'm sorry. I forgot
19 one thing. I believe there was a newspaper article in the
20 case. I ask if the jury has read it.

21 THE COURT: Any objection to that?

22 MS. BRISBIN: No, Your Honor.

23 THE COURT: I didn't know that. Obviously I'm
24 staying in a hotel and not looking at the paper but
25 apparently there was some article. I'm assuming that none

VICKIE GASKINS - DIRECT

1 of you read it. Did any of you read the article in the
2 paper today?

3 Okay. Thank you very much. They all -- for the
4 record, all of them stated that they hadn't. And thank
5 you very much for following my instruction if you happened
6 to see it. Okay.

7 You can call your next witness.

8 MS. BRISBIN: State calls Lieutenant Vickie
9 Gaskins.

10 VICKIE GASKINS, having been duly sworn, was
11 examined and testified as follows:

12 THE CLERK: Have a seat in the witness box.
13 State your full name for the Court, spelling your last.

14 THE WITNESS: My name is Vickie Gaskins. G. A.
15 S. K. I. N. S.

16 DIRECT EXAMINATION

17 BY MS. BRISBIN:

18 Q. Where do you work?

19 A. Aiken County Sheriff's Office.

20 Q. How long have you worked there?

21 A. Ten years.

22 Q. And what's your position there?

23 A. I'm the lieutenant over the juvenile division.

24 Q. Could you speak up a little? Do we need go over that
25 again?

VICKIE GASKINS - DIRECT

1 THE INTERPRETER: Yes, please.

2 BY MS. BRISBIN:

3 Q. I'm sorry. What's your name?

4 A. Vickie Gaskins.

5 Q. And where do you work?

6 A. Aiken County Sheriff's Office.

7 Q. What is your position, ma'am?

8 A. I'm the lieutenant over the juvenile division.

9 Q. How long have you worked there?

10 A. Ten years.

11 Q. What type of educational background do you have?

12 A. I have a bachelor's degree in criminal justice and a
13 partial master's.

14 Q. Have you had any specialized training for forensic
15 interviewing of children?

16 A. Yes, ma'am. It's a 40-hour week course for Finding
17 Words.

18 Q. Have you also had the advanced Finding Words?

19 A. Yes, ma'am.

20 Q. What is Finding Words?

21 A. It is a training seminar to teach persons how to
22 interview children using a semi-structured protocol known
23 by its acronym RATAC. It's for fact-finding information
24 purposes.

25 Q. And is that the accepted training program for forensic

VICKIE GASKINS - DIRECT

1 interviewers in South Carolina?

2 A. Yes, ma'am.

3 Q. Did you have the opportunity to interview one of the
4 victims in this case, Alexis Leaphart?

5 A. Yes, ma'am.

6 Q. Where did that take place?

7 A. I interviewed her at our Children's Advocacy Center
8 here in Aiken.

9 Q. And when did that take place?

10 A. On July 25th of 2006.

11 Q. Do you know where Alexis was living at that time?

12 A. She was living in Greenville.

13 Q. But the interview was done here in Aiken?

14 A. Correct.

15 Q. And did she disclose that she had been sexually
16 abused?

17 A. Yes, ma'am.

18 Q. Was the interview videotaped?

19 A. Yes, ma'am.

20 Q. I'm showing you what's been marked State's Exhibit
21 Number Four. Do you recognize that?

22 A. Yes, ma'am.

23 Q. What is it?

24 A. It's the recorded video of her interview.

25 Q. Of her interview?

1 A. Yes, ma'am.

2 Q. And is that an accurate depiction of what took place?

3 A. Yes, ma'am.

4 MS. BRISBIN: Your Honor, I'd ask that State's
5 Exhibit Number Four be admitted into evidence and
6 published at this time.

7 THE COURT: Any objection?

8 MR. MAULDIN: Not at this time, Your Honor.

9 THE COURT: All right. Without objection.

10 (Thereupon, State's Exhibit Number 4, redacted DVD of
11 Alexis Leaphart, was received into evidence. DVD played
12 for the jury from 10:04 a.m. until 10:52 a.m.)

13 MS. BRISBIN: I don't have any further
14 questions. Please answer Mr. Mauldin has.

15 MR. MAULDIN: I have no questions for this
16 witness.

17 THE COURT: All right. You can step down.

18 MS. BRISBIN: Your Honor, this might be a good
19 time for a little break. I've got a witness, I think,
20 waiting out in hall.

21 THE COURT: Ladies and gentlemen, I'm going to
22 send you out for ten or 15 minutes. I know we have an
23 inordinate number of speakers. So I'll let you go down
24 and smoke. Please don't discuss the case.

25 (Jury exits courtroom at 10:52 a.m.)

1 THE COURT: Who else have you got?

2 MS. BRISBIN: Pardon me?

3 THE COURT: Who else do you have?

4 MS. BRISBIN: Just one expert witness.

5 THE COURT: Okay.

6 (Thereupon a break was taken from 10:53 a.m.
7 until 11:04 a.m., and the trial resumed as follows:)

8 THE COURT: Let me talk to y'all about just an
9 ancillary matter. This jury has apparently yesterday
10 requested to be reimbursed for lunch and the clerk and I
11 talked about it last night. She's of the opinion that
12 we'll just send them as a group to lunch and get them
13 lunch rather than me bringing them in and telling them
14 they're not entitled to lunch which is what I'm really
15 tempted to do. The issue is we've got call ahead. You've
16 got one more witness?

17 MS. BRISBIN: Yes.

18 THE COURT: What I think I'm going to do is send
19 them to lunch early. I want you both to have a chance to
20 look at the charge and, of course, I don't know what
21 you're going to do, but we'll have to deal with a couple
22 issues there, too.

23 So I think we'll do this next witness and then
24 send them to lunch rather than have them sit back there.
25 Okay?

1 MS. BRISBIN: Yes, sir.

2 MR. MAULDIN: Yes, sir.

3 THE COURT: It's a complication I don't like.

4 And, really, to be honest with you, this is exactly what I
5 was talking about. I've had this everywhere in the
6 state. There's sort of like there's some ingrained
7 obligation that you have to feed them. I don't get it,
8 but why don't you go ahead and call because we'll do this
9 last witness and send them to lunch early. That will give
10 them a chance to look at the charge.

11 THE BAILIFF: Basically what time do I need to --

12 THE COURT: I'd say anytime from 11:45 to 12.

13 THE BAILIFF: Okay.

14 MR. MAULDIN: Your Honor, let me run out into the
15 hallway ...

16 THE COURT: Okay.

17 (Pause.)

18 THE COURT: Everyone ready?

19 MS. BRISBIN: State's ready, Your Honor.

20 MR. MAULDIN: Yes, sir, Your Honor.

21 THE COURT: Very good. You can bring them in.

22 THE BAILIFF: Bring them, please.

23 (Jury enters courtroom at 11:12 a.m.)

24 THE COURT: All right. Thank you, ladies and
25 gentlemen. You can call your next witness.

ALLISON FOSTER DeFELICE - DIRECT

1 MS. BRISBIN: State calls Dr. Allison DeFelice.

2 ALLISON FOSTER DeFELICE, having been duly sworn,
3 was examined and testified as follows:

4 THE CLERK: Have a seat in the witness box.
5 State your full name for the Court, spelling your last.

6 THE WITNESS: My name is Allison Foster DeFelice
7 which is spelled D. E. F. E. L. I. C. E.

8 DIRECT EXAMINATION

9 BY MS. BRISBIN:

10 Q. Where do you work?

11 A. I'm the director of a program called the ARC, the
12 Assessment and Resource Center with the South Carolina --

13 Q. Slow down a little bit. We have a Spanish
14 interpreter.

15 A. Sorry. I beg your pardon.

16 I am the program director of a center that we call the
17 ARC which stands for Assessment and Resource Center. And
18 I'm employed by the South Carolina Department of Mental
19 Health.

20 Q. And what is your position there?

21 A. I'm a licensed clinical psychologist and I'm the
22 director of the program which is a nationally-accredited
23 children's advocacy center. So my duties include actually
24 conducting interviews of suspected victims of child
25 abuse. I do that one or two times a week.

ALLISON FOSTER DeFELICE - DIRECT

1 I supervise a team of 15 staff members which includes
2 several forensic interviewers and therapists. We provide
3 treatment to victims. We provide case coordination and
4 expert consultation and testimony. And we assist children
5 in being prepared when they're required to be witnesses in
6 trial.

7 Q. And what is your educational background?

8 A. I attended college at Emory University in Atlanta,
9 Georgia. And I graduated with degrees in psychology and
10 English literature. And then I worked for a year full-
11 time in Kennesaw, Georgia at a residential treatment
12 center called Devereux. And then I moved to Columbia
13 where I was accepted into the Ph.D. program at the
14 University of South Carolina. And I was in school from
15 1989 to 1996. I graduated in the spring of 1996 with my
16 doctorate in clinical psychology.

17 As part of that training you do a year in what's
18 called a pre-doctoral internship. And so during that year
19 I worked for the South Carolina Department of Mental
20 Health at the William S. Hall Psychiatric Institute. And
21 part of that program of services includes the ARC. So I
22 was an intern at the ARC for a year from 1994 to 1995, and
23 then I become its clinical contractor in the fall of 1995.

24 Q. And are you licensed in South Carolina?

25 A. Yes, I am.

ALLISON FOSTER DeFELICE - DIRECT

1 Q. As, what kind of licensure?

2 A. I'm licensed as a clinical psychologist and I should
3 also say I'm the assistant professor with the Medical
4 School with the University of South Carolina School of
5 Medicine in the Department of Neuropsychiatry and
6 Behavioral Science.

7 Q. Can you estimate approximately how many child sexual
8 abuse evaluations you've done?

9 A. Yes. I have done -- I don't keep a specific tally,
10 but more than a thousand.

11 Q. And have you ever testified in court before?

12 A. Yes, I have.

13 Q. Can you estimate approximately how many times?

14 A. Yes. Definitely more than 50 and probably close to a
15 hundred, but I would say between 50 and a hundred times.

16 MS. BRISBIN: Your Honor, I would ask that
17 Dr. DeFelice be qualified as an expert witness in the
18 field of child sexual abuse evaluation.

19 THE COURT: Any objection?

20 MR. MAULDIN: No, Your Honor.

21 THE COURT: All right. Without objection.

22 BY MS. BRISBIN:

23 Q. Do you know the victims in this case, Alexis Leaphart
24 and Rosa Sanchez?

25 A. No, I do not.

ALLISON FOSTER DeFELICE - DIRECT

1 Q. Have you ever met them?

2 A. No.

3 Q. Just speaking in general terms of child abuse victims
4 in general then --

5 A. Uh-huh.

6 Q. -- what is meant by the term delayed disclosure?

7 A. Delayed disclosure is a term we use in our field to
8 describe the phenomenon or the fact that most allegations
9 of child abuse are delayed. And by delay we mean that
10 there's not typically an immediate outcry.

11 So there's not an event that leads to an immediate
12 outcry and an intervention, but instead, in fact, what we
13 know from 30 years of research is that two-thirds of all
14 child sexual abuse victims never tell in childhood at
15 all. They only tell in adulthood.

16 So the one-third that my career is based on is the
17 exception to the rule because that's the third where, it's
18 where the concern is identified while they're still
19 children.

20 Now within that third, the delay in disclosure can be
21 anywhere from days to weeks to months to years. So, that
22 is a phenomenon that we understand and it has to do with
23 kind of the dynamics of most child sexual abuse and the
24 circumstances that promote it.

25 Q. What are some of the factors that would influence that

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1 delay, whether or not they tell right away or wait a year
2 or more?

3 A. Some of the factors that are understood to be
4 associated with it include the relationship to the
5 perpetrator. So child sexual abuse by and large is
6 something that occurs within the family. So it's a
7 parent-child or step-parent-child, uncle-cousin, that kind
8 of thing that tends to be a familial relationship. So it
9 is a complicated relationship. It has a lot of emotional
10 layers.

11 It also is a relationship with a power difference. So
12 this is somebody who's in kind of a trusted, ordained
13 position within the family where people, you know, will
14 even direct children to respect, to obey, to follow the
15 rules of this individual. So there's a whole lot of power
16 built in and complex emotional and kinship ties.

17 So for children to realize that in spite of the fact
18 that this is a family member, in spite of the fact that
19 this is somebody with power, maybe in spite of the fact
20 that they made threats or gave gifts or involved the child
21 in other behavior that the child may fear that he or she
22 will be in trouble for being involved in something they
23 knew they shouldn't have been. So they have to jump over
24 all those barriers in order to make the decision to come
25 forward and make a disclosure.

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1 So we recognize that, you know, there are a lot of
2 obstacles to children coming forward and telling.

3 Q. I forgot to ask you this first, and I meant to. Do
4 you know anything about this case that we're trying this
5 week?

6 A. No, I don't.

7 Q. You don't know any of the facts, any of the people
8 involved?

9 A. None.

10 Q. What is meant by the term piecemeal disclosure?

11 A. So piecemeal disclosure is a way that we describe what
12 we call the process of disclosure. So understanding first
13 of all that most disclosures of abuse will be delayed, not
14 all but most, the majority, then the question is, well,
15 how does the disclosure happen.

16 So, like I was testifying about before, there are all
17 these barriers to coming forward and telling. So what
18 children will often do is if they decide to tell, they may
19 provide what we call a tentative disclosure. So they may
20 provide some information, a piece of it, piecemeal.

21 So they're sort of testing the waters. They're seeing
22 how people will react; will they be believed; or will they
23 be blamed; will very negative things happen; will they be
24 punished; or will they be supported. So a lot of times
25 they're going to test the waters and provide some

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1 information.

2 Now if they're supported and believed, if they're
3 provided counseling, for example, or a supportive
4 environment, over time we expect more of the disclosure to
5 come out. So part of it is that they're testing whether
6 or not it's going to be okay to tell.

7 The other part of it is, about piecemeal disclosure,
8 is that it's, literally the victim is changing course.
9 So, most of the time children are suppressing the memory.
10 They're working to not tell and to not think about it. So
11 they can just get along with life.

12 So then they're literally having to shift mentally to
13 the idea of, okay, I'm going to remember and I'm going to
14 give it words and I'm going to tell. So just from what we
15 call a cognitive standpoint in terms of remembering, they
16 really have to have an opportunity to process this
17 information that they previously never gave voice to. And
18 that means that they won't literally be able to give all
19 of the same facts the first time as they may be able to
20 provide later.

21 Q. So are you saying that they sometimes try to forget
22 and therefore don't --

23 A. That's it.

24 Q. Okay.

25 A. When we -- we talk in terms of -- psychologists talk

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1 in terms of coping styles and coping mechanisms but we all
2 have ways we cope with information that is, or
3 circumstances that are, that make us feel afraid or make
4 us feel anxious or scared. And as children the most
5 classic coping mechanism that we all used and that
6 children used is avoidance.

7 So, you know, you just avoid thinking about it, avoid
8 talking about it, avoid being around people who remind you
9 of something. You know, when we interview little kids,
10 sometimes they do things that are kind of funny. Like,
11 they'll say things like, I need to go now because my mommy
12 needs me, or they just try to flee the information. So
13 mentally they're doing that, too. They're trying not to
14 remember.

15 Q. Would they be more likely to block out the memories
16 that are more traumatic to them?

17 A. The more traumatic something is, the more overwhelming
18 it is, by definition. So if something is particularly
19 traumatic because it's either physically the most invasive
20 and painful or it's emotionally the most overwhelming or
21 both, that's going to be the hardest material for the
22 child to be able to comprehend and talk about because it's
23 overwhelming.

24 So it's what we call traumagenic. So they're going to
25 be most invested in not remembering those things that are

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1 the most traumatic. Because if they do remember it,
2 that's going to spike their symptoms the most, their
3 anxiety and their traumatic symptoms..

4 Q. How does the delay in disclosure affect the memory?

5 A. Well, delay in disclosure affects the memory in a
6 couple of ways. One is we remember things, you know, best
7 when the memory is fairly new and fresh. When we've been
8 suppressing a memory for a length of time and trying not
9 to think about it and moving away from it, you know,
10 literally with time memory fades.

11 In fact, one of the ways we do remember things is by
12 rehearsal. So if you're studying for a test or whatever,
13 part of how you remember information is to go over it, say
14 it out loud, write it down, you know, practice the
15 information so you can remember it.

16 Well, if you're trying not to think about something,
17 you know, you're telling your brain not to do those
18 things, don't review it, don't rehearse it, don't, don't
19 let the picture come into your head. So in suppressing it
20 you're really working against remembering.

21 Q. How does a child's age affect their memory of times
22 and dates?

23 A. Well, time is -- first of all, time is -- of all of
24 the parts of human memory, memory for time is the least
25 reliable even in adulthood. It's why adults use calendars

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1 and, you know, different mechanisms to try to remember
2 things. And we can have arguments even in adulthood about
3 when something happened even if it's a very important
4 event. So time is one of these real vulnerable pieces of
5 memory but for children in particular, especially young
6 children, it's time to do something when somebody tells
7 you it's time to do something.

8 Children are not really responsible for monitoring
9 events in time. It's the least important piece to them.
10 I mean, they're living in the concrete. They're
11 experiencing things in the here and now. They're
12 interested in what's happening and they're really not
13 categorizing things in terms of a calendar.

14 The more children age, you know, when we get to upper
15 elementary age, third, fourth, fifth grade, that's when
16 children by and large are becoming more responsible for
17 time. They're being, you know, in school and in their
18 families they tend to become more required to pay
19 attention to time and organize their lives and begin to
20 participate in life going in a timely fashion.

21 So as that increases they're more likely to be able to
22 talk about when something happened. But having said that,
23 there are real cultural differences and there are
24 experience differences. So how much, how much does time
25 matter in a family or what's their family sense of a long

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1 time ago or a short time ago, or the importance of
2 particular dates and events.

3 So there are cultural differences and individual
4 differences. And when we're doing forensic interviewing,
5 it's one of the things I teach all the time is, you know,
6 of all of the facts that we're trying to collect from
7 children the idea of when in time something happened,
8 that's probably the best one to try to get through other
9 informants, through collateral information that kind of
10 places events in time on the basis of what the children
11 said was going on, where they were living, who was around,
12 that sort of thing.

13 Q. Thank you. Please answer any questions Mr. Mauldin
14 has.

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q. Now, when you're speaking of all these things you're
18 speaking in generalities; is that correct?

19 A. That's correct.

20 Q. Okay. So as far as whether or not somebody releases
21 information piecemeal or not, you can't actually diagnose
22 somebody with that --

23 A. No.

24 Q. -- syndrome or whether or not they delay telling.
25 There's no real diagnosis of that; is that correct?

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1 A. Right. Just because somebody tells something over
2 time in and of itself, we would never say because it was
3 piecemealed something must have happened. It doesn't work
4 that way.

5 Q. As far as saying you can diagnose somebody with
6 schizophrenia; correct?

7 A. Sorry. Say again.

8 Q. Somebody could be diagnosed with schizophrenia?

9 A. Yes.

10 Q. Or bi-polar?

11 A. Yes.

12 Q. And you can't really say for sure that this is what
13 happened but this is what they suffered from or
14 accommodation syndrome?

15 A. Right. You're asking about something called
16 accommodation syndrome which I don't really think I
17 testified to what that is. So maybe I should just explain
18 it.

19 Q. Well, the delay is part of that; is that correct?

20 A. Yes. Delayed disclosure is part of a series of
21 dynamics that we look at in terms of the facts. It helps
22 us understand why, why victims behave in a way that might
23 seem counter-intuitive or might seem illogical. You know,
24 why don't they tell sooner and so on.

25 So the issue is child abuse occurs with a stage of

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1 secrecy. The child feels helpless. There's a sense of
2 being trapped by the circumstances. So, there's
3 entrapment and accommodation which is what you asked me
4 about.

5 So accommodation is the fact that children, while not
6 telling, they have to get along with their business of
7 life, go to school, you know, accommodate, do your chores,
8 go to church, follow directions. And so, they are
9 accommodating with this abuse going on that they feel
10 helpless to change.

11 And then eventually may make this delayed tentative
12 disclosure. And in fact, some victims will even take it
13 back once they've told. If things go badly they may even
14 take it back. What we know is that those dynamics exist
15 in true cases but with what he's asking me, is that a
16 diagnosis. The answer is no. It's not a mental health
17 diagnosis.

18 Q. It's just a theory that you use to attempt to explain
19 what happens or the phenomenon?

20 A. That's it.

21 Q. But you can't actually say that's what happened in any
22 instance?

23 A. No. We're not there to say therefore these facts must
24 have happened. That's not our job.

25 Q. And of course, you don't know anything about this

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1 case; is that correct?

2 A. That's correct.

3 Q. You haven't made any kind of diagnosis or counseling
4 in this case; is that correct?

5 A. That's right.

6 Q. And it is consistent or at least from what's been
7 observed it can be consistent with sexual abuse is there
8 is this delayed disclosure; correct?

9 A. Right. So a delayed disclosure is perfectly
10 consistent with a history of sexual abuse.

11 Q. But then some people do tell right away or fight back
12 right away, and that's consistent with it as well?

13 A. Right. Yes.

14 Q. And, there are many consistent behaviors of after the
15 abuse occurred they can act out or act inappropriate, have
16 poor behavior problems; is that correct?

17 A. Right. There's a range of symptoms during the
18 accommodation phase where it's kind of like in hindsight
19 people will say, ah, you know, these symptoms were
20 probably related to the accommodation. But there's a
21 range of symptoms which may or may not be there.

22 Q. And then some other people may just withdraw and not
23 be a behavior problem; is that correct?

24 A. Well, I mean, I would call withdrawal a problem. You
25 know, we talk about internalizing and externalizing. So

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1 some people act out, misbehave, get argumentative,
2 oppositional, break rules, they're defiant because they're
3 angry. Other people get withdrawn, depressed, anxious,
4 they don't enjoy things as much anymore.

5 Still, is it a problem? Yes, it's a problem if it
6 means that it's a negative change.

7 Q. Well, just basically it's the wide range of behaviors
8 that can be exhibited afterwards; is that correct?

9 A. Sure. Yes.

10 Q. There's just no definite one or the other, it
11 basically runs the gamut?

12 A. Right. Symptoms are never going to be -- one would
13 never say, well, because there's this set of -- well, one
14 should never and I would never say because there's this
15 set of symptoms, the child must have been abused. It
16 would be a hypothesis. It would be something depending on
17 the situation that might need to be evaluated, but it's,
18 it's -- there's nothing about that that's specific.

19 Q. All right. And you talked about retraction. And
20 sometimes they do retract it because they did lie about
21 it; is that correct?

22 A. Well, right. I mean, but that would be another
23 point. Let's say a child tells, okay, that sexual abuse
24 occurred and then at some point takes it back. What we
25 know and the reason accommodation syndrome is helpful is

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1 because we do know from scientific studies that true
2 victims may go through this stage where they take it
3 back.

4 However that doesn't mean that just because somebody
5 says something and takes it back it isn't true. Obviously
6 another hypothesis would be that they said something that
7 wasn't true and then took it back.

8 So, you know, these are hypotheses that professionals
9 like myself have to evaluate. We have to evaluate on each
10 individual case.

11 Q. Because obviously children do lie; correct?

12 A. Well, people lie.

13 Q. People lie. And children are people; is that
14 correct?

15 A. There you go. Yes.

16 Q. And they do lie about things like sexual abuse?

17 A. I'll be happy to give you the numbers on that.

18 Generally speaking, when fabrications of child abuse are
19 made, they're made by adults. And when fabrications of
20 child sexual abuse are made by children, it is typically
21 an adolescent who possesses the capacity to understand
22 that an allegation can be a means to an end in the
23 criminal justice system.

24 In terms of fabrications just initiated by younger
25 children, that's -- I would never say that it, you know --

1 could it happen, sure, but that phenomenon is not a common
2 phenomenon.

3 Q. But it does happen?

4 A. You'd have to give me a specific. Little children
5 don't usually possess the sexual knowledge or the capacity
6 to understand that it's a means to an end. So these are
7 motive --

8 Q. Children aren't often rational, are they?

9 A. Are children often rational? Children are emotional
10 and rational.

11 MR. MAULDIN: I have no further questions.

12 THE COURT: Any redirect?

13 MS. BRISBIN: No, Your Honor.

14 THE COURT: All right. Thank you, ma'am. You
15 may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. BRISBIN: The State rests, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, at
20 this point you've heard all the testimony you're going to
21 hear from the State in this case. I have to take up
22 several matters outside your presence and I know there's
23 been an issue of lunch that's been brought up.

24 What I've decided to do is send you together as a
25 group. I'm going to have to send you early. I'm not

1 going to make you sit around and wait until one o'clock
2 while we finish up what we have to do outside your
3 presence and then send you. So I'm going to go ahead and
4 send you at 11:45. I know that's early. That's the only
5 choice I really have if I'm going to send you as a group.

6 We'll start about back about 1:15. As I said, we
7 have several matters we have to take up outside your
8 presence. Please don't discuss the case. Talk about
9 anything else you want. Go back to the jury room and I'll
10 figure out who's going to take you. Have a good lunch.

11 (Jury exits courtroom at 11:36 a.m.)

12 THE COURT: All right. Any motions? Anything
13 else we need to take up?

14 MR. MAULDIN: Yes, sir, Your Honor. At this time
15 on behalf of Mr. Orozco, I move to make a directed verdict
16 motion on all the indictments taking the evidence
17 presented in the light most favorable to the State that
18 they have not submitted a case sufficient for the triers
19 of facts.

20 THE COURT: All right. That's denied. You're
21 protected for the record. Do you need some time to talk
22 to your client? Have you decided what you're going to
23 do?

24 My intention is this. It's not magic language.
25 My law clerk left me this morning the charge that she's

1 put together. I need to spend some time with it, quite
2 frankly, but I thought I'd let y'all look at it over lunch
3 to make any additions or suggestions.

4 MR. MAULDIN: Your Honor, I've discussed this
5 with my client before and I've checked again. He does not
6 intend to testify. If your Honor wishes to go over his
7 rights not to testify.

8 THE COURT: Yes. If y'all would, come up here.
9 Y'all step up here.

10 (Pause.)

11 THE COURT: All right. Let me know if I speak
12 too quickly.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Mr. Orozco, I need to explain to you
15 your fifth amendment rights. Do you understand that?

16 THE DEFENDANT: Si.

17 THE INTERPRETER: Yes.

18 THE COURT: Have you had plenty of time to speak
19 with your lawyer about that?

20 THE DEFENDANT: Yes.

21 THE INTERPRETER: Yes.

22 THE COURT: Do you understand that under the
23 fifth amendment no person can be compelled to testify
24 against himself?

25 THE DEFENDANT: Yes.

1 THE INTERPRETER: Yes.

2 THE COURT: That you have a right to testify but
3 you can't be forced to do that. Do you understand that if
4 you testified you would be subject to the same rights of
5 cross-examination, the State could cross-examine you on
6 any crime that included dishonesty or one year in
7 prison --

8 THE DEFENDANT: (Nods head affirmatively.)

9 THE COURT: -- if I determine that the probative
10 value outweighed the prejudicial effect; do you understand
11 that?

12 THE DEFENDANT: Yes.

13 THE INTERPRETER: Yes.

14 THE COURT: But if you don't testify, I'm going
15 to instruct the jury not to take that into account. Do
16 you understand that?

17 THE DEFENDANT: Si.

18 THE INTERPRETER: Yes.

19 THE COURT: The waiver of that fifth amendment
20 right has to be voluntarily, intelligently made by you.
21 Do you understand that?

22 THE DEFENDANT: Si.

23 THE INTERPRETER: Yes.

24 THE COURT: And have you talked to your lawyer
25 about that?

1 THE DEFENDANT: Si.

2 THE COURT: Do you have any questions for him
3 now?

4 THE INTERPRETER: No.

5 THE COURT: And you've made the decision not to
6 testify; is that right?

7 THE INTERPRETER: Yes.

8 THE DEFENDANT: Yes.

9 THE COURT: Anything else you want to add for the
10 record?

11 MR. MAULDIN: No, Your Honor.

12 THE COURT: All right. Thank you, sir.

13 THE DEFENDANT: (Nods head affirmatively.)

14 THE COURT: All right. Why don't we go ahead and
15 break. As I said, I haven't really looked at them. There
16 are certain issues, my -- when I was training seven years
17 ago to do this job, I was actually training with Jim
18 Johnson who passed away. And one of his pieces of advice
19 was always read it because I sat there while he ad libbed
20 which is a real problem for me, and he inserted the word
21 not guilty for guilty throughout his final charge and then
22 had to go back and recharge. I've always remembered
23 that. I hate reading this to the jury, but I read it word
24 for word.

25 So if you want to take a copy of it and look at

1 it during lunch, you can.

2 MS. BRISBIN: Your Honor, did you want to see our
3 requests to charge?

4 THE COURT: Yeah. If you got anything.

5 MS. BRISBIN: Yes, sir.

6 THE COURT: I'll need to check and see. That's
7 the law, but I'll look to see if it's included. If it
8 isn't I will. Do you need some time to look at
9 something?

10 MS. BRISBIN: I forgot to give them to him. I'm
11 sorry.

12 THE COURT: Let him look at it.

13 MS. BRISBIN: Corroboration charge.

14 THE COURT: It's just corroboration and consent.
15 It's not a defense charge.

16 MR. MAULDIN: I would object to the corroboration
17 charge, Your Honor. If I need to go into it further now
18 or later.

19 THE COURT: No, you can do it later. Take these
20 two and look at them again. I'm going to look at them
21 over lunch, too. Like I said, there's nothing really
22 magic about it, but we'll meet back here at one o'clock.

23 Now are you going to have any testimony or you've
24 got to make that decision?

25 MR. MAULDIN: I believe we're not going to

1 present any testimony.

2 THE COURT: All right. We'll be back at one
3 o'clock and go over this and then we'll bring them in and
4 move forward.

5 (Thereupon the luncheon recess was taken at
6 11:40 a.m. At 1:10 p.m. The trial resumed as follows:)

7 THE COURT: Did you have a chance to look at the
8 charge?

9 MS. BRISBIN: Yes, sir. There are a couple of
10 things that don't apply in this case.

11 THE COURT: Yeah. Actually I realized that.
12 I've got good character taken out.

13 MS. BRISBIN: Right.

14 THE COURT: Penalty.

15 MS. BRISBIN: Right.

16 THE COURT: Statements made by defendants. I
17 should have X'd those out.

18 MS. BRISBIN: And the Defendant's good character.

19 THE COURT: Yeah, that's out.

20 MS. BRISBIN: One thing I noticed, the lewd act
21 definition is an old one that says lewd act upon a minor,
22 a minor is a person under the age of 18. And it should be
23 lewd act on a child, and then strike the minor clause.
24 That's been changed because it applies to under 16, not
25 under 18.

1 THE COURT: So, lewd act upon a child --

2 MS. BRISBIN: Yes, sir.

3 THE COURT: -- is correct?

4 MS. BRISBIN: Yes.

5 THE COURT: What does yours say?

6 MS. BRISBIN: Pardon me?

7 THE COURT: What does yours say? Mine says lewd
8 act on a child.

9 MS. BRISBIN: Mine says, under your --

10 MR. MAULDIN: The verdict.

11 MS. BRISBIN: -- definition, it says --

12 THE COURT: All right. I gotcha. At the end.

13 MS. BRISBIN: Yes, sir.

14 THE COURT: So that should be child instead of
15 minor?

16 MS. BRISBIN: Yes, sir. And that minor statement
17 would be misleading because it's now under 16 not under
18 18. So we usually just strike that.

19 THE COURT: Charge lewd act on a child?

20 MS. BRISBIN: Yes, sir.

21 THE COURT: And then strike the next sentence?

22 MS. BRISBIN: Yes, sir.

23 THE COURT: Okay.

24 MS. BRISBIN: Also, one concern of mine under the
25 jury verdict, I think if it's done this way it's going to

1 be very confusing.

2 THE COURT: No, no. That's out.

3 MS. BRISBIN: Okay.

4 THE COURT: I'm just going to have them write --
5 to be honest with you, I'm not sure why that's in there.
6 I'm just going to have them write on the back of the
7 indictment.

8 MS. BRISBIN: I was going to say, we need to
9 distinguish between the two children.

10 THE COURT: No. I think the only way to really
11 do that, and I can't wait to get back to Anderson and find
12 out why she inserted that. It seems overly complicated.

13 What about you, did you get a chance?

14 MR. MAULDIN: Yes, Your Honor. I would object to
15 the section regarding the testimony of children. That
16 would be about on the tenth page.

17 THE COURT: What's the objection? I think that's
18 the law, isn't it?

19 MR. MAULDIN: Well, Your Honor, it appears to be
20 something that's pulled from Am Jur. I don't believe it's
21 the law in South Carolina. I believe it's an improper
22 comment on the facts. It treats the State's witnesses
23 different from other witnesses. I believe a generic
24 charge of determining the credibility of witnesses would
25 be sufficient.

1 As far as testifying at a trial, the law doesn't
2 specify difference based on age. It appears to go into
3 some things if the credibility, not the credibility but
4 the competency of the witnesses were challenged in front
5 of the jury, there was no such challenge made or
6 questioning done as far as whether or not they're
7 competent.

8 MS. BRISBIN: Actually, Your Honor, I agree with
9 him on that. I think it's -- it raises a question as to
10 whether or not children should be treated differently for
11 good or bad. It says it's up to you to decide whether the
12 child understood the questions. Well, that's true with
13 adults, too. I mean, it kind of gives the impression that
14 children's testimony is more questionable than adults.

15 THE COURT: Okay. Well, I understand y'all's
16 objection. I think that's the law in South Carolina. I
17 mean, I don't think it's from Am Jur. I think it's
18 basically directly from the charge book.

19 MR. MAULDIN: Well, additionally, Your Honor, the
20 comments in there about them understanding the questions
21 and responding to the questions and the mode that they're
22 asked is that I believe the comment on the right of cross-
23 examination. It may diminish the effectiveness of the
24 cross-examination, the cross-examination perfected during
25 trial.

1 Furthermore some of these things may have been
2 testified to by the State's expert witness during the
3 trial and would tend to bolster her testimony as well.
4 All of these things would deprive Mr. Orozco of his due
5 process guaranteed by the South Carolina and the federal
6 constitution.

7 THE COURT: All right. You're protected on the
8 record.

9 MS. BRISBIN: Your Honor, are you planning to
10 charge that no corroboration is needed?

11 THE COURT: Yeah. Did you look at that?

12 MR. MAULDIN: Well, Your Honor, I would object to
13 that charge as well. I believe it is an impermissible
14 comment beyond the facts. I know the cases like with
15 Shumpert about that, Shumpert held it was not reversible
16 error in the context of the other charge but nonetheless
17 it would seem to be an error made. It was just rectified
18 by the fact that the remainder of the charge seemed to
19 overcome it. I would say that an error made knowingly is
20 never harmless and would object to that.

21 Additionally, Your Honor, that statute only
22 references criminal sexual conduct charges. It does not
23 reference lewd act charges. I believe it would be
24 confusing to the jury.

25 And additionally, I'm not agreeing that you do

1 charge it but I take exception to the charge but if you do
2 charge I would ask that you charge that does not apply to
3 the lewd act on a child charges.

4 THE COURT: Well, it only applies to criminal
5 sexual conduct under the statute.

6 MS. BRISBIN: Yes, sir. Your Honor, I would just
7 ask that you charge it as the statute. I mean, it is
8 South Carolina law.

9 THE COURT: Yeah.

10 MS. BRISBIN: And there's no case law that says
11 it's not, that it is error.

12 THE COURT: Well, I would never knowingly make an
13 error but I think that's the law. So I'll charge it.

14 MS. BRISBIN: I believe you already have the
15 consent is not an issue in your charge.

16 THE COURT: Yeah. The question is whether I
17 differentiate between lewd act and criminal sexual conduct
18 in that 16-3-657 charge.

19 MS. BRISBIN: Your Honor, if you read the statute
20 as it's written, it says it applies to criminal sexual
21 conduct cases. I would ask that it be read as it's
22 written and just not mention lewd act.

23 The fact is corroboration is not required in lewd
24 act either. There's not a law specifically that says
25 that.

1 THE COURT: All right. Well, in the abundance of
2 caution I'm going to leave it the way it is. I understand
3 your objection. It may be legitimate but I think I'm just
4 going to read it the way it's stated there.

5 Anything else?

6 MS. BRISBIN: Not from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. MAULDIN: No, Your Honor. Oh.

9 MS. BRISBIN: He has to rest.

10 THE COURT: Yeah. I'm just talking about now. I
11 understand that. But let me ask you this before we bring
12 them back in. Are you -- are there any exhibits marked
13 that -- I mean, have you all made sure that everything is
14 there?

15 MS. BRISBIN: Now?

16 THE COURT: Yeah. Do that now. So if we do it
17 again -- I've had a problem last week or two weeks ago
18 with that. Just make sure y'all have gotten everything in
19 that you want to get in.

20 (Pause. Attorneys comply and verify exhibits
21 entered into evidence.)

22 THE COURT: I don't see it in here and it may be
23 I'll catch it on the fly. But I'm also going to tell them
24 about his failure to testify, that they shouldn't take
25 that into account.

1 MR. MAULDIN: Oh yes, sir. Or election not to
2 testify.

3 THE COURT: All right. We'll bring them back in,
4 let you rest and then if you're ready I'll explain they've
5 heard all the testimony they're going to hear.

6 I assume there are no further motions at this
7 point?

8 MR. MAULDIN: Not at this point.

9 THE COURT: Okay. All right. You can bring them
10 in.

11 THE BAILIFF: Okay.

12 (Jury enters courtroom at 1:23 p.m.)

13 THE COURT: All right. Ladies and gentlemen, I
14 hope you had good lunch. Yes, sir?

15 MR. MAULDIN: Your Honor, the defense rests.

16 THE COURT: All right. Thank you.

17 Ladies and gentlemen, you've heard all the
18 testimony that you're going to hear in this case. As I
19 told you earlier, after all the testimony has been
20 introduced each party will have the opportunity to give
21 you a closing argument. The closing argument is not
22 evidence and shouldn't be considered by you to be evidence
23 but it's merely an opportunity for them to argue their
24 point of view and try to sway you to their point of view.

25 After the closing arguments in this case, I will

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1 read to you, as I told you, a fairly long charge on the
2 law. After the closing arguments, depending on the amount
3 of time we've taken up, I might give you a break before I
4 give you the charge because once I start the charge I
5 don't want to stop.

6 And as I said it will take me 20 or 30 minutes to
7 read this. But you've heard the testimony. It's now time
8 for the closing arguments. And I appreciate your
9 attention. If you do need a break at any time, just raise
10 your hand and let me know.

11 MS. BRISBIN: May it please the Court.

12 THE COURT: Yes, ma'am.

13 MS. BRISBIN: Mr. Mauldin. Ladies and gentlemen
14 of the jury. I told you at the beginning of this trial
15 that it's probably not going to be a pleasant experience
16 for you. And I'm sure some of are you probably thinking,
17 boy, that's an understatement.

18 I know you have listened closely and we all
19 appreciate that. The good news is that it's almost over.

20 First I'd like to tell you a little bit about the
21 law that applies in this case. In a few minutes the Judge
22 is going to tell you the law and you go by what he says if
23 I say anything different. He's the one who determines the
24 law in the case.

25 But I want to go over it just briefly so you have

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1 an idea of what it is you're looking for when you're
2 looking to see if we have met our burden of giving you
3 evidence for each of the elements of the crimes that
4 Mr. Orozco is charged with.

5 He's charged with two counts of criminal sexual
6 conduct with a minor in the first degree and two counts of
7 lewd act on a child, one for each of the two victims,
8 Alexis Leaphart and Rosa Sanchez.

9 Criminal sexual conduct with a minor in the first
10 degree means that there's a sexual battery on a child
11 under the age of 11. Sexual battery can be one of several
12 different acts. It includes oral sex. It includes
13 digital penetration which means a finger in the genital or
14 anal openings, and it includes penetration with the penis
15 or any other object into the genital or anal openings.

16 The wording of the statute which defines sexual
17 battery says penetration, however slight. What that means
18 is if, for example, the finger or the penis goes into the
19 vaginal opening, it doesn't have to go all the way in. It
20 can be just barely in the, inside the edge of the vagina
21 and that is still a sexual battery.

22 And that's very important to distinguish because
23 in this case you've got two little girls who told you they
24 couldn't be sure it went all the way in. And the key to
25 that is to look at the wording of the statute, that

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1 penetration, however slight, does meet the elements of
2 that crime.

3 You also have both little girls saying that there
4 was oral sex and that alone makes Mr. Orozco guilty of
5 criminal sexual conduct with a minor because oral sex is
6 one of the types of sexual battery according to the law.
7 You don't have to have oral sex and intercourse and
8 digital. Either of the -- any of the three. Any one of
9 the three is enough to convict the Defendant on that
10 charge.

11 Both of the girls were under 11 years old. They
12 both testified about their age at the time. And Alexis
13 said she was eight or nine, and Rosa said she was four or
14 five. And it doesn't -- they don't have to know the exact
15 age. They just have to know that they were under age 11.
16 And as Dr. DeFelice, the psychologist, explained to you,
17 young children don't have a good concept of time and
18 dates.

19 For one thing, it's been about three years since
20 this happened. It's been two years since they disclosed
21 because it's taken two years for it to come to trial,
22 unfortunately. And it happened somewhere around a year
23 prior to that to each of them more or less because it was
24 an ongoing thing. And they couldn't possibly tell you
25 exactly when it happened if it happened many times as they

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1 said. Obviously children don't mark it on the calendar
2 when their uncle molests them. That would be totally
3 unrealistic to expect that.

4 But they told you to the best of their ability
5 about what age they were when it happened. That was
6 corroborated by their mothers explaining when they had
7 access, when Mr. Orozco had access to the children.

8 In Rosa's case her mother explained that she was
9 visiting in her Aunt Janet and Uncle Carlos' home when she
10 was between the ages of four, five and six, throughout
11 that period. And Alexis's mother explained that they
12 moved to Greenville in July of 2005. If you remember the
13 birth date which you probably write down and you probably
14 don't, but Alexis was born today, as a matter of fact, 12
15 years ago. She is 12 years old today, July 17th and she
16 was born on July 17th of 1996.

17 So, they moved in 2005. She had just turned nine
18 in July of 2005 when they moved to Greenville. So it had
19 to have happened prior to that because once they moved to
20 Greenville Mr. Orozco didn't have access to her.

21 Let's see. What else. Criminal sexual conduct
22 with a minor in the first degree, I think I've covered all
23 of that.

24 Lewd act on a child is the other charge for both
25 of the victims. And lewd act on a child essentially means

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1 fondling, any kind of sexual touching that would cause --
2 for the purpose of arousal, sexual arousal of either the
3 perpetrator or the child. And in this case there was
4 ample testimony about touching of the child to the
5 Defendant's penis and as well as his touching the
6 children's vaginal area, and with both his penis and his
7 fingers.

8 In the charge when the Judge tells you about the
9 law, he'll also talk about reasonable doubt and I'm sure
10 the defense attorney will talk about reasonable doubt. It
11 is very true the State has the burden to prove beyond a
12 reasonable doubt every element of the crime. And
13 reasonable doubt as the Judge, I believe, will tell you,
14 does not mean the State has to prove beyond every possible
15 doubt in your mind that this occurred. It means that you
16 are firmly convinced that these crimes occurred.

17 There are very few things in life that you know
18 with absolute certainty. If you weren't there, you can't
19 know with absolute certainty. But you can know within
20 reason or be firmly convinced and that's what the law
21 requires for you to convict.

22 The State of South Carolina has a law which
23 specifically says that the victim's testimony in a
24 criminal sexual conduct case does not need to be
25 corroborated.

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1 MR. MAULDIN: Your Honor, I object to that. Have
2 a standing objection.

3 THE COURT: All right. Overruled.

4 MS. BRISBIN: What that means and the Judge will
5 tell you this, I believe, when he charges you as well.
6 What that means is if you believe that Alexis and Rosa are
7 telling the truth that all these things they said happened
8 really happened, then you must find the Defendant guilty.

9 You don't need any other evidence whatsoever.
10 But in this case you actually have corroborating evidence
11 because you don't just have one child saying this
12 happened. You have two children saying this happened.
13 They are witnesses for each other. They were there
14 together many times. Sometimes they were there separately
15 but they both testified to that. Their mothers testified
16 to that.

17 And, so you don't have to take one child's word
18 for it. You've got two children independently saying
19 basically the same thing about what this man did to them.

20 And Alexis was already living in Greenville for a
21 year when the disclosures were made. So she wasn't
22 talking to Rosa about what happened. In fact, she said
23 she had never talked to Rosa about what he did to her and
24 Rosa said she had never talked to him -- to Alexis about
25 what he did to her. And their mothers testified that they

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1 did not have the opportunity to talk, the children did not
2 have the opportunity to talk after the disclosure was made
3 and prior to the forensic interviews.

4 The forensic interviews are videotaped evidence
5 that what they were saying two years ago is consistent
6 with what they said on the witness stand two years later,
7 at age eight and 12 now. Back then they were six and
8 eight -- excuse me. Six and ten when they disclosed.

9 So, even though there are some minor differences
10 in what they said on the witness stand and what you see on
11 the video, those differences are only in partial
12 disclosure versus full disclosure on the witness stand.

13 As Allison DeFelice, the psychologist, explained
14 to you, children who are sexually abused typically
15 disclose in a piecemeal fashion. They even have a term
16 for that, piecemeal disclosure, meaning that children
17 seldom tell all the details of what happened to them when
18 they were sexually abused the first time they're asked.
19 They kind of -- I think she said they test the waters to
20 see what the reaction is going to be before they tell it
21 all.

22 And especially the most traumatic things they may
23 not say, even on the witness stand because they may have
24 blocked it out because they don't want to think about it.
25 It's too painful to think about it.

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1 And you will find it in the video, if you haven't
2 noticed it, Alexis didn't mention the oral sex. Either
3 she didn't think of it or it was too painful for her to
4 think about and to say. But she did mention it on the
5 witness stand.

6 And Rosa has consistently said he had them -- her
7 perform oral sex on him. In fact, she described it in
8 detail how she got down on her knees in the bathroom and
9 sucked his penis. She called it private part.

10 Those kinds of details are important to
11 consider. When a six-year-old child, she was six when she
12 disclosed, can give those types of details and remember
13 them two years later on the witness stand, that tells you
14 this happened.

15 And why would they lie? Can you imagine how
16 difficult it is? It's difficult for you to sit through it
17 listening to this. Can you imagine how difficult it was
18 for an eight year old and a 12 year old to get up there
19 and tell you all the gory details about what their uncle
20 did to them in front of all, a room full of strangers, a
21 big open courtroom, a Judge and a bunch of lawyers,
22 everybody staring at them, saying talk louder, talk
23 louder. And worst of all, with the Defendant sitting
24 there staring at them, the man who did this to them and
25 someone they trusted, their uncle.

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1 Why would they lie? You think it was fun for
2 them? Alexis burst out crying before she even spelled her
3 name. It didn't look like she was having fun. So what
4 was in it for them to lie? Do children lie? Sure they
5 do. Children lie for the same reasons adults lie, either
6 to get something they want or to get out of trouble.

7 So let's think about that. They weren't in any
8 trouble. Alexis was on summer vacation in Indianapolis at
9 her aunt's house. Rosa was at her next-door neighbor,
10 Candice's house, and just out of the blue she decided to
11 tell. She wasn't in any trouble. I think she said on the
12 witness stand something to the effect that she just
13 thought she needed to tell.

14 And what's in it for them to make up something
15 like this? They had to go through a medical exam, pelvic
16 exam at age six and ten. They had to go through the
17 videotaped interview process. And then come here and
18 testify at their young ages, be cross-examined by the
19 defense attorney.

20 The psychologist said that of course children
21 lie, sometimes for the same reasons adults lie. But she
22 said they, little children don't generally lie about
23 something that involves sex because that's not -- it
24 wouldn't occur to them to do that.

25 Teenagers occasionally do. And the reason

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1 teenagers occasionally do is when there's something in it
2 -- something to be gained. But as I said, these children
3 had nothing to gain by telling this about their uncle.
4 This was someone they would -- they enjoyed going over
5 there. Alexis was talking about all the neat toys their
6 kids had. They liked going over there. They had no
7 reason to want to get Uncle Carlos in trouble.

8 Can you imagine what trauma this has caused for
9 that family, that entire family? The four sisters who
10 were obviously, obviously had a close relationship. For
11 two of the children from two of the sisters to be molested
12 by the husband of one of the other sisters, can you
13 imagine how that tears a family apart? How could that
14 possibly be a good thing for these children?

15 The childlike descriptions tell you that these
16 children were not coached by someone to make this stuff
17 up. I mean, how can a child make up the descriptions Rosa
18 gave when she described what his private parts looked
19 like. She said two balls like, you know, like on a dog
20 and then this stick thing. They're childlike descriptions
21 because she's a child. She was six years old on that
22 video. She's still a child. They both are.

23 Rosa will be going into third grade and Alexis
24 will be going into seventh grade. And as much as she acts
25 like little adults, Alexis is still a child. But she got

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1 up there and did something that I dare say any adult would
2 have a really difficult time doing, describing sex acts
3 performed on her by this grown man when she was eight or
4 nine years old. And the same thing for Rosa when she was
5 four, five, six years old.

6 There were a lot of details that Alexis gave as
7 well. She -- when I asked her what position they were in
8 when these sex acts were happening, she didn't seem to
9 understand the question. In fact I said, do you
10 understand the question. She said, not really. And then
11 I asked her, were you sitting up or lying down or
12 something else. And she explained that, well, sometimes
13 we were sitting up, sometimes we were lying down,
14 sometimes we were standing up. And I asked her, when you
15 were lying down were you face up or face down. She said,
16 sometimes I was face up and sometimes I was face down.
17 Those kinds of details make it real.

18 Her crying when she starts to talk about it means
19 it's real. I mean, if that was an act she's got good
20 chances in Hollywood. I mean, to be 12 today and be able
21 to make this up and cry on key and be consistent. And the
22 same thing for Rosa, although she didn't show much
23 emotion. I don't know if you noticed in the video, she
24 was scared to death in that video. If you get a chance
25 after -- when you start to deliberate, you can look at the

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1 videos again if you'd like. And feel free to do that.
2 You may pick up on some things you didn't notice before.

3 But these children had no reason to lie. They
4 certainly weren't going to benefit from it and didn't
5 benefit from it. You know Alexis said that Carlos told
6 her if she told she would get in trouble. Well she
7 probably thinks I did get in trouble because she has
8 suffered tremendously for telling, having the family torn
9 apart, having to go through this.

10 Another corroborating factor to consider is the
11 Defendant's suicide attempt a few hours after his wife was
12 told about the allegations. Now, we don't know what was
13 in his mind but do you think it was a coincidence that he
14 tried to commit suicide, swallowed rat poison, a few hours
15 after his wife was told about the allegations of him
16 sexually abusing his niece? Do people -- are people more
17 likely to commit suicide when they find out they've been
18 falsely accused of molesting a child or when they find out
19 they've been caught and the secret's out because they know
20 they're guilty and they're going to jail? Think about it.

21 Alexis also cried when her mother called her from
22 Aiken. She was in Indianapolis with her Aunt Wendy on
23 vacation when her mother found out that Rosa had made the
24 allegations that she had, that Rosa had been molested by
25 Uncle Carlos. So her mother called Alexis in Indianapolis

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1 and she was very careful to say, I didn't use any names.
2 I just asked her if anybody had touched her and she
3 immediately started crying. And she said she was so upset
4 that she had to hang up and ask her sister Wendy to talk
5 to her and call her back which she did. And that's how
6 Alexis's disclosure was made. She was nowhere near Rosa.

7 And Rosa's disclosure was made when Alexis was
8 nowhere near her. So these were two independent
9 disclosures about the same man doing basically the same
10 things to both of these girls.

11 The reason -- there's a reason why South Carolina
12 law says that no corroboration is required or needed in,
13 of the victim's testimony in criminal sexual conduct
14 case. The reason for that is, in most criminal sexual
15 conduct cases, as Dr. Bumba said, there is no medical
16 evidence. And of course you're going to have -- not have
17 eyewitnesses in most of these cases because child
18 molesters seldom molest children in front of
19 eyewitnesses.

20 And Dr. Bumba explained that there is, I think
21 she said, 85 to 95 percent of cases of suspected child
22 sexual abuse there is no medical evidence. And she
23 explained in detail why that is. In this case, of course,
24 there was, at least in Alexis's case she said that Carlos
25 put his private part in her private part but she didn't

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1 know if it went all the way in.

2 Of course, under the law slight penetration is
3 enough but it doesn't -- it's not likely to cause any type
4 of physical damage. As Dr. Bumba explained, even when
5 there is full penetration there's usually not any physical
6 evidence of that.

7 And she even described cases where women have
8 actually given birth through the birth canal and still had
9 an intact hymen. And she said that it is not unusual and
10 in fact in most cases of child sexual abuse the hymen is
11 intact. It's a myth that the hymen just disappears when a
12 girl has sex.

13 Of course, in this case oral sex, fellatio it's
14 called when it's on the man's penis, as in this case, it's
15 not going to be any physical evidence of that, obviously.
16 And fondling is not going to leave physical evidence
17 behind.

18 So, that's the reason why corroboration is not
19 required in a criminal sexual conduct case because most of
20 the time there's not going to be any medical findings. So
21 if the law required that, there wouldn't be very many
22 convictions for molesting children. They'd pretty much
23 all get away with it.

24 Former Supreme Court Justice Benjamin Cardozo
25 once said, justice though due the accused is due the

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1 accuser also. Justice for all includes eight years old
2 and 12 year olds as well as 40 year olds.

3 If you believe that Alexis and Rosa are telling
4 the truth, you must find Carlos Orozco guilty. I ask you
5 to render a verdict that speaks the truth. Thank you.

6 THE COURT: Yes, sir.

7 MR. MAULDIN: Thank you, Your Honor.

8 Ladies and gentlemen of the jury. The truth is
9 the truth. No matter how many times you repeat it, no
10 matter how many times you tell it, no matter how many
11 times different people see it. The details may change
12 little to little, here to there. But the big details
13 remains the same. The truth remains the truth over a
14 period of time.

15 And the stories which is what you've heard here
16 today which is what you've heard on those videotapes and
17 which is what that nurse heard when the girls told what
18 happened to her, they have changed so much and so
19 drastically over time and they differ from each other so
20 much and so drastically that the girls aren't credible.
21 You shouldn't believe them.

22 And because you shouldn't believe them, Carlos
23 Orozco is not guilty. He's been not guilty the whole time
24 he's been here this week, from the time the jury selection
25 until now. He was not guilty out in the street. He is

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1 continuously not guilty. That's just not a term of art or
2 anything.

3 He sits there not guilty. And he will continue
4 to be not guilty when you go back to the jury room to
5 deliberate. And he will still be not guilty when you come
6 out of that jury room after y'all have made your decision.

7 Now, the State wants to bring up the fact that
8 Mr. Orozco had made a suicide attempt to show evidence of
9 guilt or confession or that he somehow tried to avoid
10 prosecution or being put in jail but imagine what it would
11 mean to somebody to be accused of this. It would destroy
12 their life. It would destroy their reputation in the
13 community. They may lose their job. It would destroy
14 their relationship with their family. The wife may leave
15 them, may not have to have contact with the kids. Any of
16 those reasons could cause somebody to commit such a
17 drastic act, even if they were innocent of these charges.

18 Would a man trying to avoid these charges or
19 escape these charges, had a guilty conscience of these
20 charges and voluntarily go to the sheriff's office when he
21 was called several weeks later by the investigator and go
22 and sit and talk with them?

23 He talked with that investigator for 30 minutes,
24 but all you got out of it here is that he admitted that he
25 sometimes watched the children. What else did he say to

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1 them? What can you infer from that? He said he wasn't
2 guilty of the charges then. What did he say in the
3 suicide note? It was there. Do you think if it had
4 benefited the State they would have put that in evidence?
5 You betcha. If it didn't benefit them, they wouldn't put
6 it in evidence and they'd hide it away. Would a man
7 that's trying to avoid prosecution and evade this turn
8 himself in when the warrants were obtained and he was
9 notified. Would he, after bonding out of jail, come to
10 court two years later and not run away to Mexico or
11 Timbuktu, Peru, anywhere to avoid prosecution? If he was
12 trying to escape this, why would he do that? He didn't,
13 because he's not guilty.

14 Now the State does have to prove beyond a
15 reasonable doubt their entire case. He does not have to
16 prove anything. You have to be firmly convinced of his
17 guilt. And this burden of proof doesn't change depending
18 on what kind of charge he's charged with. You don't lower
19 it down because the charge is more serious and you're
20 afraid that somebody that may have done something serious
21 might get off the hook and get away.

22 It is at the same level whether you're charged
23 with murder or sexual assault to stealing a car to
24 shoplifting a candy bar, all the way down to speeding.
25 That burden remains the same and remains the high level of

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1 proof. And the State has not satisfied the burden here
2 because these girls are not credible.

3 What evidence did they attempt to present? They
4 presented these two experts who really said nothing one
5 way about the case, about whether or not this could have
6 happened.

7 The nurse, the -- Bumba, got up on stand and said
8 there's no evidence of it but I can't say it can't
9 happen. So they get to have it both ways. If they had
10 actual evidence of it they'd be screaming and yelling up
11 and down look it happened, it happened. And then when
12 they don't have evidence, they just say, hey, we just
13 can't say whether it happened or not.

14 And she talks about this study where they look at
15 60 cases. Now, I know that people listen to the news and
16 you hear studies all the time. Somebody can fund a study
17 and find about anything, low carb diet is good, low carb
18 diet is bad, smoking wasn't harmful to your health years
19 ago based on studies and now it's harmful to your health.
20 And this study only involved 60 cases. Dr. DeFelice said
21 that she had conducted about a thousand interviews in
22 South Carolina alone and that's just her. And this study
23 is only 60 cases.

24 And let's talk about DeFelice. She's a hired
25 gun. She works for the State. She is a true believer.

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1 She believes in these things, but she can't say definitely
2 that something happened or really diagnose a person say,
3 yes, they're suffering from this delayed syndrome. It's
4 just a thing that she uses to explain away what actually
5 happened.

6 Children can tell right away. They can delay for
7 months, years, never tell at all. Don't let them have it
8 both ways. Children, well, they may lie. They're
9 emotional. They're irrational.

10 Ladies and gentlemen, she didn't even talk to
11 these girls or look at any of this evidence or examine
12 them. She just came in off the street and just spouted
13 out some generalizations that had nothing to do with this
14 case. She has no knowledge of this case. She didn't talk
15 to these people. She doesn't know the facts.

16 And we're dealing with child witnesses here and
17 we know children lie. I know you want to believe them.
18 They look cute, but everybody knows that children lie.
19 They lie when they have a reason sometimes and sometimes
20 they lie when they don't have a reason. Things just come
21 out. They don't consider the consequences of their
22 actions. They don't consider the fact that if they said
23 something like this that they may have to go to a video
24 interview and then to a doctor and then the courtroom.
25 They didn't think about that.

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1 did Rosa say that was really odd during the video? She
2 said, he made me suck it but I didn't put my tongue on it,
3 yuck. And then half a second later, man, do you have
4 anything to eat around here. Is that the proper demeanor
5 of somebody? Is that somebody that's scared or worried
6 about anything? That's a rather cavalier attitude to
7 have. They're not appreciating the seriousness of it
8 all. They didn't see the consequences of their actions.

9 Then she talks about green goo coming out of his
10 penis. That's ridiculous. She doesn't know it -- and
11 right after, I don't know what that signifies. That's a
12 very adult phrase for a six year old. He had green goo
13 come out of his --

14 MS. BRISBIN: Objection, Your Honor, I don't
15 think she used the word signifies there but they can look
16 at the tape.

17 THE COURT: Sustained. Go ahead.

18 MR. MAULDIN: All right.

19 Ms. Brisbin had the nurse up here. Never had her
20 explain if such a thing could even have occurred, if green
21 goo could come out of a penis. You know why, because it
22 can't. There's no such thing as green goo. And where
23 does she get this from? She talked during the interview
24 about her best friend Michaela and they called things
25 chi-chis (chee-cheez) and wieners.

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1 no. Now I don't see how that's more drastic than putting
2 it in her private part or something that she would repress
3 rather than him putting it in her private part.

4 And when she talked with the nurse, she didn't
5 tell the nurse that he had put it in her mouth either.
6 She also didn't tell the nurse that anything came out of
7 his penis. She also didn't tell the interviewer,
8 Ms. Gaskins, that anything came out of his penis. She
9 asked several times, did anything come out then. No. Did
10 anything come out then. No. But now white stuff comes
11 out. Several years later after she's been in counseling
12 and learned a lot of things.

13 And finally what I think is most telling here is
14 that during the video interview she said it happened to
15 them both again. They both were taken into the same room
16 and it happened to both at the same time. That wasn't
17 testified to in the courtroom yesterday by either her or
18 Rosa. And I don't think Rosa ever said he took us
19 together and he did this to us and that to us. That's
20 because it didn't happen.

21 She also said that he -- she saw it happen to
22 Rosa and that he put his private part in her private
23 part. Yesterday during the interview she never said that
24 he put his private part into her private part.

25 It's inconsistent because it didn't happen. What

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 They didn't think about it at all. They didn't
2 think about the consequences of what would happen to
3 them. They didn't think about the consequences of what
4 would happen to the family. And they certainly didn't
5 really think about the consequences of what would happen
6 to Carlos.

7 Now why is their testimony not credible? I said
8 before, there are drastic differences throughout the time
9 that they said things have happened, both to them and
10 possibly to each other.

11 We will start with Alexis which is the older
12 one. Yes, she did cry when she got up on the stand. But
13 if you paid attention, she cried for about half a minute,
14 less, and then she was fine. She answered the questions
15 fine. She didn't appear upset at all throughout her
16 testimony. She didn't appear upset throughout my
17 questioning. What do you make of that demeanor?

18 Now she did say today that he put his penis in
19 her mouth or he put his private part in her mouth. If you
20 watch that video, that interviewer asked her several times
21 is that all he did. No, he didn't put his private part in
22 my private part, put my hand on his private part. Several
23 times that was all she said, over and over again. You can
24 watch it, take notes. Several times. And one time she
25 was specifically asked, did he put it in her and she said

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 Obviously she's been talking with people about
2 sex and sexual parts of the body. She's demonstrated
3 prior knowledge. They got the green goo wrong. Sometimes
4 kids get things wrong. So there's no green goo because
5 nothing happened.

6 Now, they made a big deal about they didn't get
7 the girls together and no one talked and no one talked and
8 no one talked and no one talked. I bet no one talked
9 before because Alexis knew that Rosa had said something.
10 She was on that interview. I know Rosa had already been
11 talked to. So she knows Rosa has already been talked to
12 and they're asking her, did Carlos do something to you.
13 Well, she makes up the story, yeah, he did something to me
14 and her at the same time because she knows that she's
15 talked and she's putting it in too and it's inconsistent
16 with anything Rosa said and that's because none of it
17 happened.

18 Ladies and gentlemen, the State has to prove this
19 case beyond a reasonable doubt. And I said before that
20 level of proof should not be changed based on the
21 seriousness of the crime. And additionally, that level of
22 proof shouldn't change because of the type of witnesses
23 they have. If two adults got up here and had such stories
24 that changed over a period of time and differed from each
25 other, would you believe them beyond a reasonable doubt?

1 No. What if it was two teenagers? No.

2 Now I understand there may be little differences
3 here and there, but these are big differences. These are
4 drastic differences. They're not little things. How much
5 leeway are you going to give the State here?

6 Don't lower the bar. Don't cut them any slack.
7 And you shouldn't, because you can't believe them. And
8 because you can't believe them, you must find Mr. Orozco
9 not guilty.

10 THE COURT: Ladies and gentlemen, I know you've
11 been sitting for over an hour. I'm going to give you a
12 break. As I said, the last time other than the trial
13 during the charge that I read, the people I read, the
14 people -- get them to go to sleep. I used to read to my
15 children. I don't want you to go to sleep. I'm going to
16 give you 15 minutes to stretch. I'll bring you back in
17 and I'll get the charge to you and then we'll let you
18 begin your deliberations.

19 If anybody needs smoke this is their last chance
20 for a while so. Don't discuss the case yet, though.

21 (Jury exits courtroom at 2:05 p.m.)

22 THE COURT: All right. I'll give them a little
23 time to stretch and then bring them back in..

24 MR. MAULDIN: Thank you.

25 (Thereupon a break was taken from 2:06 p.m.,

JUDGE'S CHARGE TO THE JURY

1 until 2:23 when the trial resumed:)

2 THE COURT: All right. Anything we need to take
3 up before I bring them in and charge them?

4 MR. MAULDIN: I have one final ground to object
5 to that charge on child witnesses, Your Honor.

6 THE COURT: Okay.

7 MR. MAULDIN: That it would be inconsistent with
8 the constitution because it appears to lower the standard
9 of reasonable doubt where children witnesses are
10 concerned.

11 THE COURT: You object to the child charge, too?
12 Is that correct? I mean --

13 MS. BRISBIN: I would prefer not to have it in
14 there.

15 THE COURT: Well, I don't think it's something
16 that has to be in there. Again in the abundance of
17 caution, I will remove it.

18 MS. BRISBIN: Thank you.

19 THE COURT: All right. Bring them in.

20 (Jury enters courtroom at 2:32 p.m.)

21 THE COURT: All right. Ladies and gentlemen, as
22 I told you, you heard all the testimony that you're going
23 to hear in this case. You've heard the arguments from
24 both the State and the defense. It's now my obligation to
25 charge you on law.

JUDGE'S CHARGE TO THE JURY

1 As I have also told you several times, I read the
2 charge to you verbatim. And again, I apologize for doing
3 that. It's not something I like doing. I'll do my best
4 to read it as slowly as possible. I will tell you now and
5 I'll tell you at the end of this process that if at any
6 point you need any portion of the law recharged to you
7 while you begin your deliberations, I'll be happy to do
8 it. You will not have the charge with you in the jury
9 deliberation room but I'll be happy to charge any other
10 portion to you.

11 Now, ladies and gentlemen, as I told you at the
12 beginning of this trial, the fact that this Defendant has
13 been arrested and charged and indicted with these charges
14 should not be considered by you at all when you begin your
15 deliberations. Again, you will actually have the
16 indictments in the jury room with you because that's how
17 you, Mr. Foreman, will use to -- you'll actually use them
18 to write your verdict on. So you'll have them.

19 But don't consider the fact that they've been
20 issued as evidence in this case. They're merely pieces of
21 paper that are used to begin the process. And you
22 shouldn't ever consider or deliberate based upon the fact
23 that this person has been charged, arrested and indicted.
24 That is not a subject for you to begin your deliberations
25 or to use in your deliberations.

JUDGE'S CHARGE TO THE JURY

1 Now, ladies and gentlemen, the indictments in
2 this case allege several different offenses against the
3 Defendant. The charges on two of the indictments are lewd
4 act upon a child, and on two, criminal sexual conduct with
5 a child. Each indictment charges a separate and distinct
6 offense.

7 Now what you should do when you begin your
8 deliberations is to treat each indictment separately. In
9 other words, you may find a defendant guilty or not guilty
10 on one indictment and then you must proceed to the second
11 indictment and then the third and then the fourth.

12 They're distinct charges and shouldn't be considered as a
13 group. They have to be considered individually and you
14 should do that.

15 The Defendant in this case has pled not guilty.
16 And one of the -- in fact, one of the judges in one of
17 these portraits here, many years ago, described a robe of
18 righteousness. When I was a young lawyer, I actually
19 thought it was a very arcane way of describing the
20 presumption of innocence. But over the course of years
21 I've decided it's a pretty good way to do it.

22 When we started this trial, the Defendant had a
23 robe of righteousness or innocence about his shoulders.
24 And that robe of righteousness or innocence continues on
25 his shoulders. He continues during the course of the

JUDGE'S CHARGE TO THE JURY

1 trial to have this robe of righteousness or innocence
2 about his shoulders and that robe of innocence or
3 righteousness will continue about his shoulders when you
4 begin your deliberations. That robe can only be removed
5 by you as jurors in this case.

6 The presumption of innocence is not just a cute
7 legal phrase. It's the cornerstone of our system. It's
8 also a cornerstone of our system that the Defendant can
9 elect not to testify. You should not consider in your
10 deliberations the fact that the Defendant elected not to
11 testify in this case. The constitution requires the State
12 to prove each and every element of an offense. It does
13 not require the defense to do anything at all.

14 So you shouldn't consider that fact when you
15 begin your deliberations. As I said, the Defendant has
16 pled not guilty to each indictment. And that plea puts
17 the burden on the State to prove the Defendant guilty.

18 A person charged with committing a criminal
19 offense in South Carolina is never required to prove
20 himself innocent. I charge you that it's an important
21 rule of law that the Defendant in a criminal trial, no
22 matter what the seriousness of the charge may be, will
23 always be presumed to be innocent of the charge until you
24 decide otherwise. The State has the burden of proving the
25 Defendant guilty beyond a reasonable doubt.

JUDGE'S CHARGE TO THE JURY

1 Now, some of you may have been jurors in civil
2 cases where the burden is less. In a civil case you only
3 have to prove a fact true by a greater weight or
4 preponderance of the evidence. In criminal cases the
5 State's proof must be more powerful than that. It must be
6 beyond a reasonable doubt. Proof beyond a reasonable
7 doubt is proof that leaves you firmly convinced of the
8 Defendant's guilt.

9 Now, there are very few things in this world that
10 we know with absolute certainty. In criminal cases the
11 law does not require proof that overcomes every possible
12 doubt. If, based on your consideration of the evidence,
13 you're firmly convinced that the Defendant is guilty of
14 the crime charged, you must find the Defendant guilty.

15 If on the other hand you think there's a real
16 possibility that the Defendant is not guilty, you must
17 give the Defendant the benefit of the doubt and find him
18 not guilty.

19 Now as I told you at the beginning of this trial,
20 you and I have very different roles. You've had to listen
21 to the testimony in this case and determine what the facts
22 are. Again, if you have any indication from me during the
23 course of this trial that I believe a fact to be true or
24 not true, you should disregard that. It's not my job to
25 determine what the facts are.

JUDGE'S CHARGE TO THE JURY

1 Likewise, it's not your job to determine what the
2 law is. I've been here during the course of this week,
3 and my law clerk, putting together this charge. I've had
4 to rule on admission issues. You're going to have to take
5 the law as I charge it to you today and apply it to the
6 facts as you determine them to be based upon your
7 deliberations and reach a verdict. Now, you can't take a
8 law as you wish it were. You have to take this law as I'm
9 giving it to you today, and you have to apply it to the
10 facts.

11 Ladies and gentlemen, generally during the course
12 of the trial there are two types of evidence that are
13 presented. There's direct evidence and there's
14 circumstantial evidence. Direct evidence is the testimony
15 of a person who claims to have actual knowledge of a fact,
16 such as an eyewitness. It is evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes
21 collateral facts from which the main fact may be
22 inferred. Circumstantial evidence is based on inference
23 and not on personal knowledge or observation. The law
24 makes absolutely no distinction in the weight or value to
25 be given either direct or circumstantial evidence nor is a

JUDGE'S CHARGE TO THE JURY

1 greater degree of certainty required of circumstantial
2 evidence than of direct evidence.

3 You should weigh all of the evidence in this case
4 and after weighing all the evidence if you're not firmly
5 convinced of the Defendant's guilt beyond a reasonable
6 doubt you must find the Defendant not guilty.

7 Now necessarily as a part of your deliberations,
8 you have to determine the credibility of the witnesses.
9 Credibility, as I told you earlier, literally means
10 believability. You have to look at the way the witness
11 testified, the way they presented themselves in the
12 courtroom, and you have to determine whether or not you
13 believe them.

14 You can take a portion of a witness's testimony
15 and believe only that portion and disregard the
16 remainder. You can believe all that a witness has said,
17 and disregard the testimony of other witnesses. I can't
18 tell you how to do it but you have to determine the
19 credibility or believability of witnesses and then you
20 have to use that in your deliberations.

21 Now, the rules of evidence do not permit
22 witnesses to testify to opinions or conclusions. An
23 exception to this rule exists for what we call expert
24 witnesses. A witness who by education or experience has
25 become expert in some art, science, profession or calling

JUDGE'S CHARGE TO THE JURY

1 may state an opinion as to relevant and material matter in
2 which the witness claims to be an expert, and may also
3 state the reasons for that opinion.

4 You should consider any expert opinion received
5 in evidence in this case and like the other evidence, give
6 it the weight that you think that it deserves. If you
7 decide that the opinion of the expert witness is not based
8 on sufficient education or experience or if you conclude
9 that the reasons given in support of the opinion are not
10 sound or that the opinion is outweighed by other evidence,
11 you may disregard the opinion in its entirety.

12 An expert witness's testimony is to be given no
13 greater weight than that of other witnesses simply because
14 the witness is an expert. Further, you're not required to
15 accept an expert's opinion even though it's uncontradicted
16 or contradicted.

17 Now, ladies and gentlemen, in order to establish
18 criminal liability criminal intent is required. For
19 example, the mental state required to be proven by the
20 State for a particular crime might be purpose, intent,
21 knowledge, recklessness or criminal negligence. Criminal
22 intent must be proven by the State beyond a reasonable
23 doubt. Criminal intent is always a matter that must be
24 determined by you, the jury, from the circumstances
25 surrounding the situation.

JUDGE'S CHARGE TO THE JURY

1 There's no way to prove intent with mathematical
2 certainty. There's no way we can dissect a person's brain
3 and determine what they intended. So the law says that
4 criminal intent may be inferred from the circumstances
5 shown to have existed at the time of the act.

6 This is how you make a determination of whether
7 or not the element requiring intent is present. It's not
8 necessary to prove intent by direct and positive evidence,
9 but intent may be established by inference in the same way
10 as other facts, by taking into consideration the acts of
11 the parties and all the facts and circumstances
12 surrounding the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It's up to you, the jury, to determine what
15 the Defendant intended to do based on the circumstances
16 shown to have existed. Criminal intent can arise from
17 action or a failure to act. It may arise from negligence,
18 recklessness or an indifference to duty or to consequences
19 that is considered by law to be the equivalent of criminal
20 intent.

21 Now, ladies and gentlemen, the Defendant in this
22 case is charged with first degree criminal sexual conduct
23 with a minor. The State must prove beyond a reasonable
24 doubt that the Defendant engaged in a sexual battery with
25 the victim. I charge you that the law states that a

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1 sexual battery is sexual intercourse, cunnilingus,
2 felatio, anal intercourse, or any intrusion however slight
3 of any part of a person's body or of any object into the
4 genital or anal openings of another person's body except
5 when the intrusion is accomplished for medically-
6 recognized treatment or diagnostic purposes.

7 The State must then prove beyond a reasonable
8 doubt that the Defendant (sic) was less than 11 years old
9 at the time of the sexual battery. Consent, willingness,
10 indifference or ignorance on the part of the minor, if
11 any, as to what was taking place does not in any way
12 affect the charge of criminal sexual conduct with a minor
13 because an unmarried woman under the age of 14 in this
14 state cannot legally consent to sexual intercourse.

15 The Defendant is also charged with committing a
16 lewd act on a child. The State must prove that the
17 Defendant willfully and lewdly committed or attempted to
18 commit a lewd or lascivious act on or with the body parts
19 of a child under the age of 16 years with the intent to
20 arouse, appeal to, or to gratify the lust, passions and
21 sexual desires of the Defendant or the child. Willfully
22 means any -- voluntarily and intentionally with the
23 specific intent to do something that the law forbids.

24 Under the law lewd means obscene, lustful
25 indecent or lecherous. Lascivious means tending to

JUDGE'S CHARGE TO THE JURY

1 insight lust, lewd, indecent, obscene or tending to
2 deprave the morals in respect to sexual relations.

3 Now, ladies and gentlemen, what I'm going to do
4 is I'll send you back in a few minutes and I'll tell you
5 that your verdict is going to have to be unanimous. That
6 is the law in this state. I also want to charge you that
7 in South Carolina the testimony of a victim need not be
8 corroborated for prosecution in a criminal sexual conduct
9 case. I also charge you that consent by the victim is not
10 a defense in a criminal sexual conduct case, as I said.

11 Now, ladies and gentlemen, when you go back and
12 you begin your deliberations, you'll have the indictment
13 form. And, Mr. Foreman, what I'm going to ask you to do
14 is write down here on the -- as you can see on each
15 indictment, there's a place for a verdict. You'll just
16 write guilty or not guilty. And then sign your name there
17 as the foreperson.

18 As I said, your verdict must be unanimous. You
19 all have to agree on the verdict. You can begin your
20 deliberations in a few minutes after I've given the State
21 and the defense an opportunity to ask me to change my
22 charge or to add to it or subtract to it.

23 So I'm going to send you out in a few minutes.
24 I'm going to ask you not to begin your deliberations until
25 I actually send back the evidence which you'll have in the

1 room with you. You'll also have these disks and if you
2 want to review the disks we'll make those available to
3 you, too. You should have all the evidence with you and
4 you'll have the indictments.

5 As I said, you won't have the jury charge. If at
6 any time during the course of your deliberations you want
7 me to recharge or reread to you a portion of this charge,
8 I'll be happy to do it.

9 If you have a question or a problem during your
10 deliberations, Mr. Foreman, just write it out on a piece
11 of paper, sign your name and date it, knock on the door
12 and they'll bring it to me. What I'll do if you have a
13 question is I'll look at it, I'll disclose it to both
14 parties, and then I'll make a decision about whether or
15 not I can actually answer it. If I can't answer it, I'll
16 bring you in and tell you that I can't answer it. If I
17 can answer it, what I'll do is bring you in and answer the
18 question.

19 Again, I'm going to send you back now. May take
20 us five minutes or so to gather up all the exhibits and
21 also to determine whether I need to change my charge. If
22 I don't bring you back in here, you can begin your
23 deliberations once we deliver all those exhibits to you.
24 All right.

25 If you would, send them back and keep the

1 alternate out.

2 THE BAILIFF: Okay.

3 (Jury exits courtroom at 2:48 p.m.)

4 THE COURT: Any objections from the State?

5 MS. BRISBIN: No, Your Honor.

6 THE COURT: From the defense other than
7 previously stated?

8 MR. MAULDIN: Well, Your Honor, previously stated
9 as far as the corroboration charge. I'm not too sure, but
10 in all fairness, I believe you said they had to prove that
11 the Defendant was under 11, and not the alleged victim.

12 THE COURT: If I said that I'll bring them back
13 in. I mean, I don't know if I did. Did I say Defendant
14 under the age of 11?

15 MS. BRISBIN: She said yes, but I didn't catch
16 it.

17 THE COURT: That was in the criminal sexual
18 conduct portion?

19 MR. MAULDIN: Yes, sir.

20 THE COURT: Well, so much for reading something
21 verbatim. All right. I'll bring them in and tell them
22 that the Defendant doesn't have to be under the age of 11
23 but the victim does. Bring them back in.

24 (Jury enters courtroom at 2:49 p.m.)

25 THE COURT: Ladies and gentlemen, during the

1 charge when I was explaining criminal sexual conduct with
2 a minor in the first degree, I may have actually said that
3 the Defendant had to be under the age of 11. It's
4 obviously the minor victim has to be under the age of 11.
5 That's one of the requirements. And I think that's what I
6 said and that was an error. So I apologize for that.

7 If you'll go back. We'll send the evidence to
8 you in a minute, and you can begin your deliberations.

9 (Jury exits courtroom at 2:51 p.m.)

10 THE COURT: Okay. Do me a favor and make sure
11 that evidence is right. There were two, the two disks
12 that were originally, the pre-redacted disks, I've made
13 Court's Exhibit which I think was a suggestion from
14 somebody. I think that's a clean way to do it. I believe
15 they were introduced for the purposes of the preliminary
16 motion.

17 MS. BRISBIN: Right.

18 THE COURT: Okay. So I'm going to make them
19 Court's Exhibits in the event there's an appeal. Now,
20 what are you going to do if they want to look at these?
21 Is there a disk player back there or --

22 MS. BRISBIN: We could do it that way although
23 it's hard to hear that way. This, the big monster, we
24 call it, it also helps with volume. So it would be ideal
25 for them to watch it on that again. Just bring them back

1 out here and we'll set it up.

2 THE COURT: I'd rather them watch it back there
3 so that they can talk about it. I mean that's sort of the
4 concern I've got. We'll just let them do it on the
5 computer. We'll deal with that if they want to look at
6 it. I mean, originally during the trial it was on the
7 computer. Is there a disk actually that's been made of
8 the redacted portions?

9 MS. BRISBIN: Yes, sir. And that's in evidence.

10 THE COURT: Okay. Double-check everything.
11 Here's the indictments. I'll be out to talk to the
12 alternate in a second.

13 (Thereupon unredacted CD, formerly State's
14 Exhibit No. 1 was marked and received as Court's Exhibit
15 No. 3, and unredacted CD, formerly State's Exhibit No. 2
16 was marked and received as Court's Exhibit No. 4.)

17 (Jury deliberations begin at 3:03 p.m.
18 Thereafter, other matters were heard by the Court. At
19 3:45 p.m., the trial resumed as follows:)

20 THE COURT: All right. We got a verdict. What
21 I'll do is bring them in. After the verdict's published,
22 I'll send them back out. I usually go back and speak to
23 them, let them ask me any questions they want to ask me.
24 And then I give them the option of coming in later if they
25 want to.

VERDICT

1 I think it goes without saying that I don't want
2 any outbursts or any noise when the verdict is read,
3 however it goes.

4 Okay. You can bring them in.

5 (Jury enters courtroom at 3:45 p.m.)

6 THE COURT: Mr. Foreman, I understand you have a
7 verdict.

8 FOREPERSON OF THE JURY: Yes, sir.

9 THE COURT: If you would hand it here.

10 FOREPERSON OF THE JURY: (Complying.)

11 THE COURT: Thank you.

12 THE CLERK: Your Honor, we have case number 2007-
13 GS-02-650, indictment for Juan Carlos Orozco. We, the
14 jury, find the Defendant guilty. Signed by Curtis
15 Pressley, 7-17-2008.

16 Your Honor, we have 2007-GS-02-652, indictment
17 for Juan Carlos Orozco. We, the jury, find the Defendant
18 guilty. Signed by Curtis Pressley, 7-17-2008.

19 Your Honor, we have 2007-GS-02-651, indictment
20 for Juan Carlos Orozco. We, the jury, find the Defendant
21 guilty. Signed by Curtis Pressley, 7-17-2008.

22 Your Honor, we have 2007-GS-02-653, indictment
23 for Juan Carlos Orozco. We, the jury, find the Defendant
24 guilty. Signed by Curtis Pressley, 7-17-2008.

25 Mr. Foreman, ladies and gentlemen of the jury, is

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1 this your verdict and if you still agree, please indicate
2 by raising your right hands.

3 THE JURY: (Complying.)

4 THE CLERK: All hands raised.

5 THE COURT: Thank you. All right. Ladies and
6 gentlemen, I need to send you back one last time. I'll be
7 back there in just a minute to talk to you. Thank you
8 very much publicly for your service and I'll be back in
9 just a second.

10 (Jury exits courtroom at 3:50 p.m.)

11 THE COURT: All right. Any motions on behalf of
12 the State?

13 MS. BRISBIN: No, Your Honor.

14 THE COURT: Defense?

15 MR. MAULDIN: Your Honor, at this time I would
16 make a motion for a new trial. I would base this on all
17 my prior motions and objections, specifically the
18 introduction of the suicide evidence, charging of the
19 corroboration and other motions and objections I've made.
20 Also base this motion that a reasonable jury could not
21 have found Mr. Orozco guilty beyond a reasonable doubt
22 based on the evidence presented.

23 THE COURT: And you're protected for the record.
24 Those motions are denied and I'm assuming that all
25 previous motions are encapsulated in that motion. And

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1 you're protected for that.

2 What I'm going to do is go back and talk to them
3 and give them an opportunity to speak to me and then if
4 they want to come back for sentencing that's their
5 option. Anybody object to that on behalf of the State?

6 MS. BRISBIN: No, Your Honor.

7 THE COURT: From the defense?

8 MR. MAULDIN: No Your Honor.

9 THE COURT: All right. I'll be back in a minute
10 and we'll do the sentencing.

11 (Judge exits courtroom at 3:52 p.m., returns at
12 4:02 p.m., and the trial resumes:)

13 THE COURT: Thank you. Have a seat. All right.
14 Come on up.

15 THE DEFENDANT: (Complies.)

16 THE COURT: All right. Yes, sir. Anything you
17 want to tell me before I pass sentence?

18 MR. MAULDIN: Yes, sir. Mr. Orozco is 40 years
19 old. He's originally from Mexico, from the State of
20 Mexico. He grew up with his mother and father, four
21 brothers and three sisters. He did graduate secondary
22 school there. A period of time in the early to mid 90's
23 his father, who was an alcoholic, died. He came to the
24 United States to come work here to help his family down in
25 Mexico. He wanted to help his mother who had worked a lot

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1 to maintain all his brothers and sisters.

2 About ten years ago he worked in a Mexican
3 restaurant where his wife, Janet, was a customer. She
4 came in very often and he would know what she liked to
5 order and would bring it out just as soon as she came in.
6 They were married. They have two children. Carlos, Jr.,
7 who I believe is nine years old. And Miguel who's four
8 years old. While he's been here he has worked at various
9 places, Mexican restaurants, at Moe's, at Crystal's, most
10 recently he was working with the horses. And at times
11 he's taken a second and even third jobs in order to
12 support both his family at home in Mexico and his family
13 here in the United States.

14 He is a permanent resident. He's been a resident
15 since June of '03. And he just loves his children very
16 much, Your Honor. His wife, Janet, is here. She wishes
17 to say a few things on his behalf.

18 THE COURT: All right. You can come up. If you
19 would, give us your name just for the record.

20 MS. OROZCO: Give you my name?

21 THE COURT: Yes, ma'am.

22 MS. OROZCO: My name is Janet Orozco. I just
23 want to say that I believe in all my heart that he didn't
24 do this.

25 And he has two babies that want to be with him

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1 more than anything. He's a good father. He's always been
2 there for them, does everything for them. His mother
3 lives down in Mexico, and he loves his mother very much.
4 And he doesn't -- also he does everything he can to take
5 care of this family as well as that family. I just know
6 that I want my babies to be with their father more than
7 anything.

8 He is a good man. He has never had any trouble
9 with the police, with the law or anything. I mean, that's
10 all I can say is that, I mean, I love this man. My
11 children love this man. And all they talk about is their
12 father.

13 Please have mercy for my babies. That's all.

14 THE COURT: All right. Thank you.

15 MR. MAULDIN: In addition, Your Honor, he does
16 have a brother, Javier, and a cousin, Anna, who is in the
17 audience here. They do not wish to speak but they have
18 been here this morning as well as some other family
19 members.

20 THE COURT: Anything else? Anything you want to
21 tell me, Mr. Orozco?

22 THE INTERPRETER: The only thing I can say here
23 to my wife's family, when I lived with them I tried to
24 help them. I helped my mother-in-law a lot, a lot. I
25 helped them a lot. Don't let me live. I always try to

1 help them monetarily, physically. And with my heart I
2 also helped them a lot. I don't know why they're throwing
3 this at me right now. If that's their decision I accept
4 it, but it's not just that I'm going to pay for something
5 I never did. That's all I can say.

6 THE COURT: All right. Anything else?

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: All right. MR. OROZCO, THE JURY HAS
9 FOUND YOU GUILTY ON THE CRIMINAL SEXUAL CONDUCT FIRST
10 DEGREE WITH A MINOR, INDICTMENT 07-02-653, SENTENCE IS 20
11 YEARS PROVIDED UPON THE SERVICE OF 15 YEARS, THE BALANCE
12 IS SUSPENDED WITH PROBATION FOR FIVE.

13 ON CRIMINAL SEXUAL CONDUCT FIRST DEGREE WITH A
14 MINOR, INDICTMENT 07-02-652, IT'S 20 YEARS PROVIDED UPON
15 THE SERVICE OF 15 YEARS THE BALANCE SUSPENDED WITH
16 PROBATION FOR FIVE.

17 ON THE LEWD ACT, BOTH OF THESE INDICTMENTS,
18 2007-02-651 AND 650, THE SENTENCE IS 15 YEARS. ALL THOSE
19 RUN CONCURRENT AND CREDIT FOR ANY TIME SERVED thus far
20 which would be how much?

21 MR. MAULDIN: I had it written down somewhere,
22 Your Honor. I misplaced it.

23 THE COURT: Okay. CREDIT FOR YOUR TIME SERVED
24 ACCORDING TO THE DEPARTMENT OF CORRECTIONS. Good luck to
25 you.

1 (Defendant exits courtroom.)

2 THE COURT: If anyone wants to leave, now would
3 be a good time to do it.

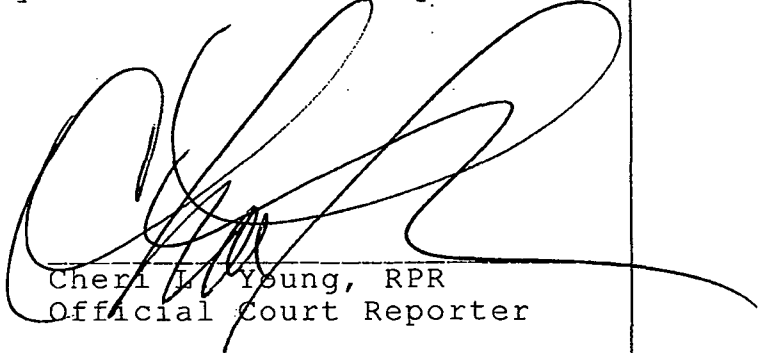
4 END OF PROCEEDINGS: 4:13 P.M.

5
6 CERTIFICATE OF REPORTER

7 I, Cheri L. Young, Registered Professional
8 Reporter, and Official Court Reporter for the State of
9 South Carolina, do hereby certify that the foregoing
10 transcript of proceedings heard on July 14, 16 and 17,
11 2008, in Aiken, South Carolina, was reported by me using
12 machine shorthand and realtime computer-aided translation
13 and is a true, accurate and complete transcript of the
14 proceedings had and evidence introduced in the hearing of
15 the matter.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.

18 I have hereunto set my hand this 30th day of
19 August, 2008.

20
21
22
23 
Cheri L. Young, RPR
Official Court Reporter
24
25

16
2

WITNESSES

J. Feemster, A.C.S.O.

FILED

March 15 2007

CCCP&GS

Deputy Clerk

ARREST WARRANT NUMBER

H-964802

ACTION OF GRAND JURY

True Bill

Richard H. H. H.

Foreperson of Grand Jury

Date: March 15, 2007

VERDICT

GUILTY

Curtis Prosser #110

Foreperson of Petit Jury

Date: 7-17-08

DOCKET NO. 2007-GS-02-

650

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 19, TERM 2007

THE STATE

vs.

JUAN CARLOS OROZCO

Indictment for

LEWD ACT UPON CHILD

SC Code: 16-15-140

CDR Code: 2468

Class FEL-D

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on March 19, 2007, the Grand Jurors of Aiken County present upon their oath:

LEWD ACT UPON CHILD

That JUAN CARLOS OROZCO, being over the age of fourteen (14) years, did in Aiken County on or between July 17, 2004 and July 31, 2005, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Victoria Alexis Leaphart, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

180
21

WITNESSES

J. Feemster, A.C.S.O.

FILED March 15 2007

Liz Godard

C.C.P. & G.S.

Pauline Jimmy Pet

Deputy Clerk

ARREST WARRANT NUMBER

H-964801

ACTION OF GRAND JURY

True Bill

Robert M. M. M.

Foreperson of Grand Jury

Date: March 15, 2007

VERDICT

Guilty

Antis Pressley #110

Foreperson of Petit Jury

Date: 7-17-08

DOCKET NO. 2007-GS-02-

651

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 19, TERM 2007

THE STATE

VS.

JUAN CARLOS OROZCO

Indictment for

LEWD ACT UPON CHILD

SC Code: 16-15-140

CDR Code: 2468

Class FEL-D

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

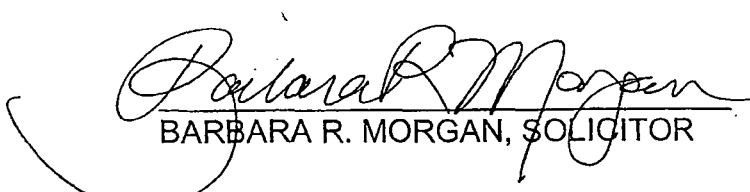
INDICTMENT

At a Court of General Sessions, convened on March 19, 2007, the Grand Jurors of Aiken County present upon their oath:

LEWD ACT UPON CHILD

That JUAN CARLOS OROZCO, being over the age of fourteen (14) years, did in Aiken County on or between October 5, 2003 and October 4, 2005, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Rosa Sanchez Martinez, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-15-140 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES

J. Feemster, A.C.S.O.

FILED

March 15 2007

Liz Godard

C.C.P. & G.S.

Deputy Clerk

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 19, TERM 2007

ARREST WARRANT NUMBER

H-964803

THE STATE

vs.

JUAN CARLOS OROZCO

ACTION OF GRAND JURY

True Bill

Richard A. Seidel

Foreperson of Grand Jury

Date: March 15, 2007

VERDICT

GUILTY

Artis Pressley

Foreperson of Petit Jury

Date: 7-17-08

#110

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH MINOR-FIRST DEGREE

SC Code: 16-3-655(1)

CDR Code: 385

Class FEL-A(V)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on March 19, 2007, the Grand Jurors of Aiken County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR-FIRST DEGREE

That JUAN CARLOS OROZCO did in Aiken County on or between July 17, 2004 and July 31, 2005, commit the crime of Criminal Sexual Conduct With A Minor In The First Degree, in that the Defendant did commit a sexual battery upon Victoria Alexis Leaphart, a minor who was less than eleven (11) years of age at the time of the incident. All in violation of §16-3-655, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

DOCKET NO. 2007-GS-02- 653

222
WITNESSES

J. Feemster, A.C.S.O.

FILED

March 15, 2007

Liz Godard

C.C.P. & G.S.

Online Entry #7

CLK

ARREST WARRANT NUMBER

H-964800

ACTION OF GRAND JURY

True Bill

Richard D. Hulen

Foreperson of Grand Jury

Date: March 15, 2007

VERDICT

C-4167

Anty Pressley # 110

Foreperson of Petit Jury

Date: 7-17-08

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 19, TERM 2007

THE STATE

vs.

JUAN CARLOS OROZCO

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH MINOR-FIRST DEGREE

SC Code: 16-3-655(1)

CDR Code: 385

Class FEL-A(V)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

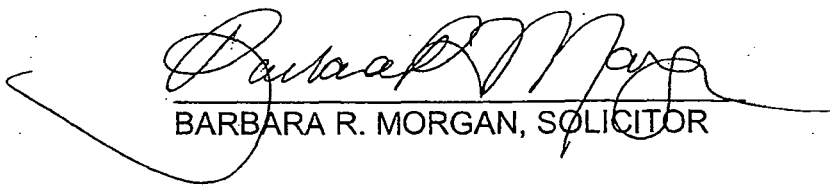
INDICTMENT

At a Court of General Sessions, convened on March 19, 2007, the Grand Jurors of Aiken County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR-FIRST DEGREE

That JUAN CARLOS OROZCO did in Aiken County on or between October 5, 2003 and October 4, 2005, commit the crime of Criminal Sexual Conduct With A Minor In The First Degree, in that the Defendant did commit a sexual battery upon Rosa Sanchez Martinez, a minor who was less than eleven (11) years of age at the time of the incident. All in violation of §16-3-655, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BARBARA R. MORGAN, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 26, 2009

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN OROZCO,

APPELLANT

FINAL BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in admitting over defense objection testimony regarding appellant's attempting suicide?
2. Did the trial judge err in charging the jury over defense objection that the testimony of the child witnesses did not need to be corroborated?

STATEMENT OF THE CASE

Juan Carlos Orozco, appellant, was indicted by the Aiken County Grand Jury for two counts of criminal sexual conduct with a minor, first degree and two counts of lewd act on a child. On July 14, 2008, appellant proceeded to trial before the Honorable J. Cordell Maddox, Jr. and a jury. The jury found appellant guilty as charged. The trial judge sentenced him to incarceration for twenty years for CSC with a minor, first degree (R. 222), suspended upon service of fifteen years with five years probation to follow; to incarceration for twenty years for CSC with a minor, first degree (R. 220), suspended upon service of fifteen years with five years probation; to fifteen years incarceration for lewd act on a child (R. 218); and to fifteen years incarceration for lewd act on a child (R. 216). The judge ordered that all sentences be served concurrently and that appellant be given credit for time served.

STATEMENT OF THE FACTS

The older child victim was born on July 17, 2006; she was eleven years old at the time of trial. (R. p. 43). The child testified that appellant is her uncle and that, up until the age of ten, she had regularly visited her uncle and aunt and their two male children at their home in Aiken. The child testified that her aunt was sometimes not at home during her visits because she had to go to work. (R. p. 46). She testified that she was sometimes there with appellant, his two sons, and sometimes appellant's other nieces, the younger child victim and her younger sister. (R. p. 47).

The child testified that during her visits, appellant took her into the room and forced her to touch his private part and he touched her private part with his private part. The older child testified that this abuse took place "probably more than once." She testified that appellant also put his private part in her mouth. (R. p. 50). The child testified that something white sometimes came out of appellant's penis and that the substance went onto a towel. The child testified that she moved to Greenville when she was going into the fourth grade and that these incidents stopped happening when she moved to Greenville in 2005. The child testified that appellant told her that if she said anything about the abuse, she would get in trouble. (R. p. 60).

The younger child was born on October 5, 1999; she was eight years old at the time of trial. The younger child testified that appellant is her uncle and that she had been to her uncle and aunt's house lots of times. The younger child testified that something happened with appellant during her visits. She recalled one time when she was watching appellant's son, "and when I turned around, [appellant] was wiping something on his white shirt. It was green goo." The younger child testified that the green goo came from appellant's private

part. The younger child further testified that appellant "once" made her "suck his private part." (R. p. 73). She testified that appellant "once got his finger and stuck it in my clothes and touched my private part. She testified that she did not know if appellant's private part went inside or not. She testified that she saw appellant's private part; describing it as "two balls and a long stick." (R. p. 74). The younger child testified that the older child was sometimes there when she was there but that she was sometimes there when she was not there. The younger child testified that she had never talked to the older child about what appellant did to her and that the older child had never told her what appellant did to her.

Neither child gave a specific time that these alleged abuses took place. The State had alleged that the incidents of CSC and lewd act upon the younger child took place between October 4, 2003 and October 4, 2005 and that the incidents of CSC and lewd act upon the older child took place between July 17, 2004, and July 31, 2005. Thus, the State had alleged that the last incident of abuse took place approximately a year prior to disclosure. The State dated the allegations from the fact that the Leaphart family moved to Greenville in July of 2005, almost a year prior to the disclosure in June of 2006. (R. p. 173).

Officer Jason Feemster testified that appellant voluntarily spoke to him, indicating only that there were times when he watched the children, including the older niece and the younger niece, along with his own little boys. (R. p. 94). The officer testified that appellant had stated only that he watched the children and that there were times when he was the only adult present with the children. The officer agreed that appellant voluntarily came in to give a statement and that, after arrest warrants were obtained, he turned himself in on the warrants. (R. p. 96).

Suzie Sanchez-Martinez is the mother of the younger niece. She testified that she found out about the allegations of sexual abuse on June 21, 2006 and, after she was able to complete her shift at work, the next day, June 22, 2006, she filed a report with the sheriff's department. Suzie testified that she notified her older sister, the mother of the older niece, of what her daughter had disclosed on June 22, 2006. Suzie testified that her daughter and the older niece never saw each other or spoke about the allegations prior to the forensic interviews. She testified, "Forensic interviews and conversations and things that happened, they were purposefully scheduled at different times and dates so they never saw each other." (R. p. 101).

Elizabeth Ann Leaphart is the mother of the older niece. She testified that her daughter, sometimes along with the younger niece, habitually visited appellant's home and that sometimes, appellant's wife was at work at the time. Elizabeth testified that she found out about the allegations on June 22, 2006. She testified that, that day, she had gone to the store where her sister, Susie, works and Susie told her what the younger child had disclosed. Elisabeth testified, "And then I went to speak to my sister, Janet, which is Carlos' wife." (R. p. 105). She testified, "I know it was before noon because Suzie couldn't get off work yet and that was why I went to tell my sister, Janet, because I didn't really know what was going to happen after that, once she filed the report. I wanted my sister to know. I wanted Janet to know." (R. p. 106). However, this family matter was not immediately addressed; Elizabeth testified that she made a police report of her daughter's allegations "within a few days." (R. p. 106).

Officer Tom Randall Gray testified that he was dispatched to a suicide attempt at 2:01 p.m. on June 22, 2006. He testified that when he arrived at appellant's house, he found

that appellant was being treated by EMS for taking rodent poison by mouth. (Tr.p. 130).

The officer testified that appellant's wife was present in the home and there was also a note found. (R. p. 112).

Dr. Maureen Dever-Bumba is a certified pediatric nurse practitioner. She testified that she performed a medical examination on the older child on July 31, 2006. The doctor testified that the child told her that she had been touched by appellant's hand and penis to her vaginal area with partial penetration. However, she testified that the child could provide no real time frame; she reported that it happened "a significant time ago... at least a year or two earlier." (R. p. 122). Dr. Dever-Bumba performed a medical examination on the younger child on August 7, 2006. The doctor testified that the younger child was "not very clear" as to the timing of the alleged abuse. The doctor testified that the younger child had told her "that there had been various kinds of contact including penile contact with her mouth, her vaginal area, and her bottom, though she indicated the contact with her bottom was over clothes. She indicated that there had been digital or hand contact to her vagina. She said that she had been made to touch her mouth to the penis of the perpetrator and also her hand touched the penis of the perpetrator. And at least one time she indicated that some green slime came from the penis, though she did not say that the green slime touched her at all." (R. pp. 126-127).

ARGUMENT

- I. The trial judge erred in admitting over defense objection testimony regarding appellant's attempting suicide.

Appellant was alleged to have committed criminal sexual conduct and a lewd act on two of his nieces, both under the age of twelve at the time. (R. p. 7). Appellant was arrested on June 2006. At trial, the State was given leave to present the videotaped forensic interview of each of the victims. (R. p. 10; 30). Additionally, the State sought to admit evidence of appellant's June 22, 2006, suicide attempt.

The assistant solicitor argued that the attempted suicide call took place at 2:00 p.m. on the same day that appellant was informed that a child had made allegations of sexual abuse against him. The State argued that on the morning of his suicide attempt, appellant was informed that his older niece had made allegations of sexual abuse against him. (R. pp. 17-18). The State indicated that at 2:15 p.m., officers were dispatched and found appellant lying on the floor amidst a suicide note and a quantity of rat poison. Appellant was transported by EMS for emergency treatment for the ingestion of rat poison.

The State conceded that there is no South Carolina authority directly addressing the question of the admissibility of a suicide attempt to show consciousness of guilt. However, the assistant solicitor asserted that the courts in most states have allowed evidence of an attempted suicide to be presented to the jury for whatever weight the jury chose to place upon it. Counsel for appellant opposed admission of evidence of a suicide attempt. Counsel argued that, although South Carolina equates flight with consciousness of guilt, there was no South Carolina authority for the concept that attempting suicide equaled flight. Defense counsel further argued that while the solicitor had informed him that appellant's wife had

first learned of the allegations on June 22, 2006, there was no direct evidence as to how or when appellant learned of the allegations against him. (R. p. 19). Defense counsel argued:

I think even to introduce evidence of flight, which I suppose that they're asking you to equate suicide here, that the factual determination needs to be that he is aware of the charges against him and that the flight or suicide attempt was made in order to evade those charges. And from what [the assistant solicitor] told me that she intends to present, there's no direct evidence that he was aware of the charges against him. However, there is a suicide note where he does talk about that he does not want to go to prison because somebody lied on him.

Defense counsel further indicated that the State had informed him that, although she intended to introduce evidence as to appellant's suicide attempt, she would not seek to introduce the suicide note. (R. p. 19). Counsel argued that if the State were permitted to introduce the suicide attempt as evidence of a "guilty conscience or tantamount to a confession, here they have evidence that he is denying it or did not confess it. So, I believe for the reasons behind the suicide attempt are not from a guilty conscience but rather perhaps from a lack of faith in the judicial system or a worry that he will be incarcerated wrongly." (R. p. 20, lines 1-7)

Defense counsel rightly argued that the prejudice of introducing evidence of the suicide attempt outweighed any probative value. Counsel argued that the admission of the suicide attempt would therefore confuse the jury. The assistant solicitor conceded that the suicide note was more in appellant's favor and not an admission against his interests. Therefore, the State argued that the suicide attempt was admissible but that the suicide note would not be presented. The State argued that there was case law indicating that the State

did not have to prove that the reason appellant attempted suicide was because of the allegations. (R. p. 20).

There is no South Carolina authority supporting admission of evidence of a suicide attempt as evidence of consciousness of guilt. However, evidence of flight has been held to constitute evidence of guilty knowledge and intent. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. State v. Brown, 528 A.2d 1098 (R.I.1987). See also Commonwealth v. Jones, 457 Pa. 563, 576, 319 A.2d 142, 150 (1974) (circumstances justify inference that accused's actions were motivated as result of his belief that officers were aware of his wrongdoing and were seeking him for that purpose), cited in State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). In State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (S.C. 2006), the Court held that proof that the accused was aware of the charges and sought to avoid them was critical.

The Pagan Court held that without proof that the accused was aware of the charges against him at the time of his flight, the evidence of flight was irrelevant and its admission was erroneous. Likewise here, as defense counsel correctly argued, evidence of appellant's suicide attempt would only become arguably relevant and admissible upon the State's establishing that appellant was aware of the charges against him at the time of the suicide attempt. Defense counsel argued that contrary to the State's argument, in order to establish relevance, the State *was* required to show that appellant was aware of the charges against him and that he made this attempt in order to escape the charges.

Defense counsel argued that, here, the suicide note was the only indication that appellant was aware of the charges. Defense counsel argued that admission of the note would be a necessary predicate to admission of the suicide attempt. The State argued, to the contrary, that it would present circumstantial evidence indicating that appellant's wife was informed that morning of the allegations of sexual abuse against her husband and that she was present when EMS and the sheriff's department arrived in response to the attempted suicide.

The trial judge ruled, "Well, I'm going to allow it to be introduced. I think that the law is not clear. It's clear in other states. And I think evidence of flight is admissible. I'll tell you, I understand this puts a burden on the defense to make a decision about the note, but at some point I'd be inclined to introduce the note, just so you know, based upon this ruling." The State did not present the suicide note in evidence; therefore the jury was asked to assume without evidence that appellant was aware of the charges at the time of his suicide attempt. The State presented only testimony indicating that appellant's wife was aware of the charges against him at the time of appellant's suicide attempt.

The trial judge erred in admitting evidence of the suicide attempt despite the State's failure to present any evidence indicating that appellant was aware of the charges against him and attempting to evade those charges at the time of his suicide attempt. Without the "critical" proof that appellant was aware of the charges, the evidence of his suicide attempt was irrelevant and prejudicial to appellant. The evidence should have been excluded as irrelevant and on the grounds that the unfairly prejudicial effect of the evidence outweighed its probative value. Rule 403, SCRE.

The trial judge erred reversibly in allowing admission of evidence of appellant's suicide attempt.

- II. The trial judge erred in charging the jury that the testimony of the child witnesses did not need to be corroborated.

The State sought to present evidence of appellant's videotaped interview, taken on August 8, 2006. Counsel for appellant indicated that the defense had no objection to introduction of his statement. (R. p. 30).

During his opening statement to the jury, the assistant solicitor indicated, "The law in the State of South Carolina specifically says if you - - it says that no corroboration is needed of the victim's testimony - - " Defense counsel interposed an objection to which the trial judge responded, "Yeah. That's a charge on the law. Just, sustain." (R. pp. 40-10). However, at the close of the case, the State requested the judge to himself charge the jury that the testimony of the child witnesses need not be corroborated pursuant to S.C. Code Ann. § 16-3-657, which provides "[t]he testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." The statutes cited reference criminal sexual conduct prosecutions.

Defense counsel objected to the issuance of a no corroboration charge. (R. p. 161). Counsel argued, "I don't believe it's the law in South Carolina. I believe it's an improper comment on the facts. It treats the State's witnesses different from other witnesses. I believe a generic charge of determining the credibility of witnesses would be sufficient." (R. p. 164). Prior to the judge's charge to the jury, defense counsel inquired and the trial judge indicated that he was planning to issue the charge indicating that no corroboration of the child witnesses' testimony was needed. Counsel objected to the issuance of such a charge.

"I believe it is an impermissible comment beyond the facts. I know the cases like with Schumpert about that, Schumpert held it was not reversible error in the context of the other charge but nonetheless it would seem to be an error made. It was just rectified by the fact that the remainder of the charge seemed to overcome it. I would say that an error made knowingly is never harmless and would object to that." (R. p. 166).

Counsel further pointed out that the no corroboration statute referenced only charges of criminal sexual conduct and not lewd act. Counsel maintained his objection, but indicated that if the charge was given, it should be specifically applied only to the CSC and not to the lewd act charges. Therefore, defense counsel argued that it would be confusing to the jury. The assistant solicitor argued that the charge was according to the statute and that there was "no case law that says it's not, that it is error." The trial judge responded, "Well, I would never knowingly make an error, but I think that's the law. So, I'll charge it." (R. p. 167). The State argued that although there was no law specifically providing that the testimony of child witnesses in cases alleging a lewd act did not require corroboration, the judge should charge the statute as written and not differentiate between lewd act and CSC. The trial judge indicated, "Well, in the abundance of caution, I'm going to leave it the way it is. I understand your objection. It may be legitimate but I think I'm just going to read it the way it's stated there." (R. p. 168).

Thereafter, the "no corroboration" charge was featured during the State's closing argument. During his closing argument, the assistant solicitor reviewed the jury's duties and the law as to the State's burden of proving appellant guilty beyond a reasonable doubt. The State continued, "The State of South Carolina has a law which specifically says that the

victim's testimony in a criminal sexual conduct case does not need to be corroborated." (R. p. 174). Counsel for appellant's immediate objection was overruled.

The State continued to explain, "What that means and the judge will tell you this, I believe, when he charges you as well. What that means is if you believe that the child witnesses were telling the truth that all these things they said happened really happened, then you must find the Defendant guilty. You don't need any other evidence whatsoever." (R. p. 175). The assistant solicitor applied the charge to the specific facts of this case: "So there were two independent disclosures about the same man doing basically the same things to both of these girls. The reason - - there's a reason why South Carolina law says that no corroboration is required or needed in, of the victim's testimony in criminal sexual conduct cases. The reason for that is, in most criminal sexual conduct cases, as Dr. Bumba said, there is no medical evidence. And of course, you're going to have - - not have eyewitnesses in most of these cases because child molesters seldom molest children in front of eyewitnesses." (R. p. 182). The assistant solicitor conceded that there was no physical evidence to corroborate the child witnesses' allegations, "So, that's the reason why corroboration is not required in a criminal sexual conduct case because most of the time there's not going to be any medical findings. So if the law required that, there wouldn't be very many convictions for molesting children. They'd pretty much all get away with it." (R. p. 183).

In response, defense counsel argued that the stories of the girls had "changed so much and so drastically over time and they differ from each other so much and so drastically that the girls aren't credible. You shouldn't believe them. And because you shouldn't believe them, Carlos Orozco is not guilty." (R. p. 184). Counsel pointed out that, during the

videotaped forensic interview, the older girl had absolutely denied that appellant put his private part in her mouth. Counsel argued, "If you watch that video, that interviewer asked her several times is that all he did. No he didn't put his private part in my private part, put my hand on his private part. Several times that was all she said, over and over again. You can watch it, take notes. Several times. And one time she was specifically asked, did he put it in her and she said no." (R. p. 190). Counsel pointed out that, likewise, when the older child spoke to the nurse, she did not tell the nurse that anything came out of his penis. Counsel pointed out that the interviewer asked her several times if anything had come out of appellant's penis and the older child repeatedly denied that anything came out. However, at trial, "But now, white stuff comes out. Several years later after she's been in counseling and learned a lot of things." (R. p. 190).

Counsel argued that it was most telling that during the videotaped interview, the older child said that it "happened to them both again. They were both taken into the same room and it happened to both at the same time." Counsel pointed out that no such allegation of joint abuse was testified to in the trial by the older or the younger child. Counsel argued, "And I don't think [the younger child] ever said he took us together and he did this to us and that to us. That's because it didn't happen." (R. p. 190). Counsel pointed out that during the interview, the older child had stated that she saw it happen to the younger child and that he put his private part in her private part. However, the younger child did not testify that appellant put his private part in her private part and she did not mention such an assault in her videotaped interview. (R. p. 190).

Counsel further pointed out the obvious weaknesses in the younger child's testimony. He emphasized the child's statement indicating that appellant had made her such

his penis, but that she “didn’t put my tongue on it, yuck.” (R. p. 189). Counsel further pointed out the younger child’s supposed memory of “green goo” coming out of appellant’s penis. Counsel argued that, given the inconsistencies and given the impossible allegations made, the jury should not believe the incredible testimony of appellant’s nieces. However, the State was able to rely on the no corroboration charge to persuade the jury that, if the girls said something happened they needed nothing more to find appellant guilty.

The trial judge concluded his charge to the jury by indicating, “I also want to charge you that in South Carolina, the testimony of a victim need not be corroborated for prosecution in a criminal sexual conduct case.” (R. p. 204). Thus, over defense objection, the trial judge issued an improper and impermissible charge on the facts of the case when he instructed the jury that the testimony of the child witnesses against the accused required no corroboration. In State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), the South Carolina Supreme Court had relied on the authority of the Indiana Supreme Court’s decision in Lottie v. State, 273 Ind. 529, 406 N.E.2d 632 (1980), to evaluate the no corroboration charge.

Here, defense counsel correctly argued that the issuance of such a no corroboration charge would constitute an error of law. The South Carolina Supreme Court in Schumpert did not approve the issuance of the statutory charge to the jury. Instead, the court held that, in that particular case, due to the balance of the judge’s charge and due to the strength of the State’s case against Schumpert, the issuance of the charge was “harmless error.” In fact, the Schumpert court concluded that the issuance of the charge was harmless error with reference to the Indiana Supreme Court’s Lottie decision. However, the Lottie decision was thereafter

reversed by the Indiana Supreme Court's decision in Ludy v. State, 784 N.E.2d 459 (Ind. 2003).

In Ludy, the Indiana Supreme Court held that issuance of the jury instruction stating that a conviction could be based on the uncorroborated testimony of a victim was error; overruling Lottie v. State, 273 Ind. 529, 406 N.E.2d 632 (1980). In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244(S.C. 2006), the South Carolina Supreme Court found that the State's willfully and successfully making a meritless Batson motion for the sole purpose of seeking a second chance to draw a jury which might look more favorably upon the State's case constituted only harmless error. The Rayfield Court further addressed the issuance of a jury charge indicating that the testimony of child witnesses needed no corroboration pursuant to South Carolina Code Ann. § 16-3-657 (2003).

The Rayfield Court noted the actual purpose for the codification of the statute, "Section 16-3-657 prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony is not corroborated." Rayfield, 631 S.E.2d at 244. However, the Rayfield Court found that the statute did "much more." The Court found:

In enacting this statute, the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses against the person. In many cases, the only witnesses to a rape or sexual assault are the perpetrator and the victim. An investigation may or may not reveal physical or forensic evidence identifying a particular perpetrator. The Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear-not only to the judge but also to the jury-that a defendant may be convicted solely on the basis of a victim's testimony.

Thus, despite recognizing that the purpose of the statute was to prevent trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim's testimony was not corroborated, the Court in Rayfield found that, in enacting this statute, the legislature intended to affect a change on the way criminal juries evaluate the credibility of the testimony of child witnesses in cases where the crime of CSC is alleged. The Court found that the legislature had decided that it was reasonable and appropriate in criminal sexual conduct cases to make it abundantly clear to the jury that a defendant may be convicted solely on the basis of a victim's uncorroborated testimony. However, the dissenting judges, Judges Pleicones and Bartlett noted that they were unable to find any indication in the statute or elsewhere that the legislature ever intended the language of this statute to be charged to the jury. Notably, the Court of Appeals decision had made no suggestion that there was any indication that the legislature intended this statutory language to be charged to the jury.

While the reasoning and statements of policy supporting such an intention on the part of the legislature as set out in the Court's Rayfield opinion appear reasonable, these considerations sprang from the Rayfield Court and not from the legislature. However, even assuming that the legislature did intend the statutory language to be charged to the jury, it would remain for the Courts to rule that any such charge constitutes an unconstitutional and impermissible comment on the facts and the credibility of the witnesses.

The dissenters in Rayfield rightly concluded, "Contrary to the majority opinion, we did not hold in Schumpert that this no-corroboration charge was proper. Rather, "[t]aking the charge as a whole, we [found] no reversible error." Schumpert, 312 S.C. at

509, 435 S.E.2d at 863. We observed that the trial judge, in addition to charging the jury under section 16-3-657, had charged the jury it could believe any single witness over several, it was the sole judge of the facts, [the trial judge] had no opinion about those facts, and the State had the burden of proving the offense charged beyond a reasonable doubt.” Thus, just as defense counsel argued and in contradiction of the State’s claim, the Schumpert Court actually held that the issuance of the no corroboration charge was erroneous but that the error was not reversible in that case.

The giving of the no corroboration charge constituted reversible error in this case. When deciding whether to believe the victims or to believe appellant’s denial of the charges, the jury was able to rely on the judge’s instruction that the testimony of the victims needed no corroboration. The jury was given no such instruction regarding the testimony of any other witness. Therefore, the instruction given constituted a comment on the facts and on the relative credibility of the witnesses. The charge focused the attention of the jury on the testimony of a particular class of witnesses, victims, and indicated that the testimony of those particular witnesses, apart from all other witnesses, needed no corroboration. A review of the entire charge reveals that nowhere else does the judge suggest that any type or class of evidence is or is not in need of corroboration. Thus, the charge itself isolated one particular class of witnesses- - child victims, and informed the jury that the testimony of those witnesses in particular did not need to be corroborated to be believed. Therefore, the charge constituted a charge on the facts and the credibility of the witnesses. The charge was also confusing and misleading, leaving the very clear impression that the testimony of some others did need corroboration to be believed.

It is axiomatic that a trial judge must not indicate an opinion or express a view reasonably calculated to influence the jury in deciding a material issue of fact because such comment is forbidden by the South Carolina Constitution. Article V, §21 of the South Carolina Constitution specifically provides, “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” This Section has been interpreted to mean that a trial Judge cannot convey to the jury, either expressly or impliedly, his opinion of the force and effect of testimony upon any question of fact at issue. State v. Campbell, 297 S.C. 24, 374 S.E.2d 668 (1998); State v. Pruitt, 187 S.C. 58, 196 S.E. 371 (1938). A trial judge must refrain from comment that tends to indicate his opinion as to weight or sufficiency of evidence, credibility of witnesses, guilt of accused, or any fact in controversy. State v. Brisbon, 323 S.C. 323, 474 S.E.2d 433 (1996), State v. Jackson, 297 S.C. 523, 377 S.E.2d 570(1989). A trial judge may not inject into trial his opinion as to truth and veracity of any witness as this is matter for counsel to argue to the jury. State v. Hardee, 279 S.C. 409, 308 S.E.2d 521(1983).

The Court held in State v. Bagwell, 23 S.E.2d 244 (1942), “A judge cannot express in his charge or intimate any opinion concerning weight or sufficiency of testimony of an accomplice without violating constitutional prohibition as to charging on the facts. In Bagwell, a requested instruction indicating that although conviction could be rested on uncorroborated statements of alleged accomplice, uncorroborated statements should be received and scrutinized by the jury with caution was properly refused as a ‘charge on the facts’ in violation of the constitution.”

Even if actually intended for the jury by the legislature, the “no corroboration” charge constitutes an unconstitutional and impermissible comment on the

facts and interference with the jury's determination as to the relative credibility of the witnesses. The giving of this confusing and misleading charge in this case further constituted a denial of due process in that the charge lessened the State's burden of proof in a very close case where the State relied exclusively on the questionable testimony of the alleged victims.

The Court in Schumpert specifically indicated that its holding that the erroneous charge did not constitute reversible error was in accord with the holding of the Indiana Supreme Court in Lottie v. State, 273 Ind. 529, 406 N.E.2d 632 (1980). Given that the Indiana Supreme Court has since reconsidered its holding and reversed the Lottie decision on grounds very similar to the arguments raised by appellant, the Court should consider the reasoning and conclusion of the Indiana Supreme Court. In Ludy v. State, 784 N.E.2d 459 (2003), the Indiana Supreme Court overruled Lottie in a well reasoned decision, explaining:

The challenged instruction is problematic for at least three reasons. First, it unfairly focuses the jury's attention on and highlights a single witness's testimony. Second, it presents a concept used in appellate review that is irrelevant to a jury's function as fact-finder. Third, by using the technical term "uncorroborated," the instruction may mislead or confuse the jury.

The Indiana Supreme Court further indicated, "Instructions that unnecessarily emphasize one particular evidentiary fact, witness, or phase of the case have long been disapproved. [A]n instruction directed to the testimony of one witness erroneously invades the province of the jury when the instruction intimates an opinion on the credibility of a witness or the weight to be given to his testimony." The Ludy Court aptly observed that the meaning of the legal term "uncorroborated" in this instruction is likely not self-

evident to the lay juror and that use of the word "uncorroborated" in the charge of the court without a definition renders this instruction "confusing, misleading, and of dubious efficacy." The Ludy Court held that giving this instruction was error and overruled all prior decisions approving such instruction, including the Lottie decision specifically referenced in Schumpert.

Here, the dangers warned against by the Indiana Supreme Court befell this appellant and prejudiced his right to a fair trial. Through this instruction, the trial judge invaded the province of the jury and intimated an opinion as to the credibility of the witnesses and the weight to be given certain testimony. The judge did not explain what was meant by the term "corroborated," which left the instruction confusing, misleading, and of questionable effect. The harm from the erroneous charge was not cured by the balance of the judge's charge. In fact, the giving of the proper, standard, charges on credibility of the witnesses could have little effect regarding the damage caused by the no-corroboration charge which emphasized and favored the testimony of a particular class of witnesses and which likely confused and misled the jury as to the statute's meaning in indicating that the testimony of a child witness need not be corroborated.

The evidence presented at trial determines the charged jury instruction. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. Only law applicable to the case should be charged to the jury; instructions that do not fit the facts of the case may

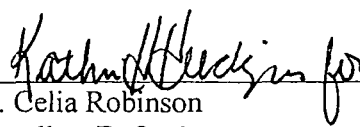
serve only to confuse the jury. State v. Blurton, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (S.C. 2002). Errors are harmless where they could not reasonably have affected the result of the trial. State v. Jolly, 304 S.C. 34, 402 S.E.2d 895 (1991). When credibility is a central issue, an error is less likely to be harmless. State v. Gray, 304 S.C. 482, 405 S.E.2d 420 (Ct. App. 1991).

The Rayfield dissenters found, “Charging this rule does not assist the jury in fulfilling its function of deciding the facts and determining whether the state has proved the charged offense beyond a reasonable doubt. In fact, it ‘has the potential for creating more problems than solutions,’ for it might cause confusion when read with the general charge on witness credibility.” These are precisely the concerns which formed the basis of trial counsel’s argument in opposition to the issuance of the no corroboration charge. The trial judge erred in overruling the defense objection and in allowing the no corroboration charge to become the theme of the case. The Rayfield majority held, “A trial judge is not required to charge § 16-3-657, but when the judge chooses to do so, giving the charge does not constitute reversible error when this single instruction is not unduly emphasized and the charge as a whole comports with the law.” In appellant’s case, the single instruction was unduly emphasized by the State. The State introduced its case on opening by informing the jury of the “no corroboration” law. The State continued the focus on the “no corroboration” charge by explaining its take on meaning and import of the no corroboration charge during its closing argument. Therefore, even under the decision of the majority in Rayfield, the issuance of the instruction in this case was impermissibly unduly emphasized and, therefore, unfairly prejudiced appellant, constituting reversible error.

CONCLUSION

For all the forgoing reasons, appellant's convictions and sentence should be reversed and a new trial ordered.

Respectfully submitted,



M. Celia Robinson
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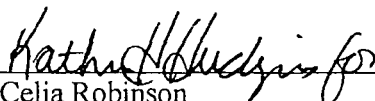
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This 26th day of October, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 26, 2009


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

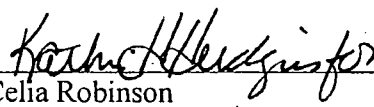
V.

JUAN OROZCO,

APPELLANT

CERTIFICATE OF SERVICE

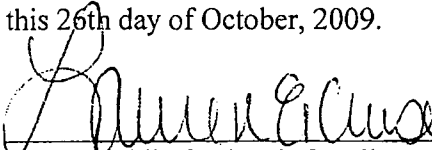
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 26th day of October, 2009.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 26th day of October, 2009.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 23, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE

RESPONDENT

V.

JUAN OROZCO,

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly admitted evidence of Appellant's attempted suicide as evidence demonstrating of consciousness of guilt.
- II. The trial court charged the jury with the applicable and appropriate law.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant is the uncle of the two minor victims, who are cousins. The minor victims would occasionally visit Appellant and his wife to play with Appellant's children. (T.65-67; R. 46-48). Appellant would take the older niece into his bedroom or one of the spare bedrooms and make her touch his "private part" and he would touch her "private part." (T.67; R. 48). Appellant put his penis inside the older niece's vagina as well as in her mouth. (T.68-69; R.49-50). The older niece indicated Appellant ejaculated and wiped it on a towel. (T.69; R. 50). Appellant told the older niece she would get into trouble if she told anyone about what they were doing. (T.70-71; R.51-52). It was only after being questioned by her mother that the older niece confided in an aunt about the abuse. (T.71; R.52).

Appellant made the younger niece, who was four or five at the time, perform oral sex on him in Appellant's bathroom. (T.91-92; R. 72-73). Further, Appellant placed his finger inside the younger niece's clothes and touched her genitalia. (T.93; R. 74).

The younger niece disclosed the abuse to a neighbor. (T.102-103; R. 83-84). The neighbor told the younger niece's mother, Suzie Sanchez-Martinez. Ms. Sanchez-Martinez informed the older niece's mother, Ms. Sanchez-Martinez's sister, about the allegations. (T.124; R. 105). The older niece's mother, Elizabeth Leaphart, informed Appellant's wife of the allegations. (T.124-126; R. 105-107).

Sometime after Appellant's wife was told of the allegations of abuse made by the younger niece, Appellant's wife returned home. Within a couple of hours, EMS was called to Appellant's residence because he had attempted suicide by ingesting rat poison. (T.129-131; R. 110-112).

ARGUMENT

I. The trial court properly admitted evidence of Appellant's attempted suicide as evidence demonstrating of consciousness of guilt.

Appellant contends the trial court erred in allowing into evidence testimony regarding his attempted suicide, which based on the circumstantial evidence presented at trial occurred shortly after learning of the allegations by the younger niece and the fact her mother planned to file a police report. Sufficient circumstantial evidence demonstrated the nexus between the attempted suicide and the charges related to the younger niece. Further, evidence of attempted suicide, just as evidence of flight, indicates a consciousness of guilt. The testimony regarding Appellant's attempted suicide was properly admitted.

The admission of evidence or testimony related to an appellant's attempted suicide appears to be a novel issue in this State. There is no reason for the Court to consider evidence or testimony of the attempted suicide any different than it would consider evidence of flight or witness intimidation. In all instances, the defendant is seeking to avoid prosecution and has demonstrated a consciousness of guilt. See State v. Edwards, Op. No. 26657 (S.C. Sup.Ct. filed June 1, 2009) (Shearouse Adv. Sh. No.23 at 48) (finding evidence of witness intimidation is admissible to show consciousness of guilt); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension).

Attempted suicide could be viewed as the ultimate attempt to flee prosecution. As discussed by the Supreme Court of New Jersey:

Daniel Webster once described suicide as a confession by conduct compelled by the overpowering force of a guilty conscience.

Meantime the guilty soul cannot keep its secret. . . . It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed! It will be confessed! There is no refuge from confession, but suicide-and suicide is confession.

State v. Mann, 625 A.2d 1102, 1107 (N.J. 1993) (citing Commonwealth v. Knapp, 7 American State Trials 395 (1830) (quoted in 2 Wigmore on Evidence § 276, at 132 (Chadbourn rev. 1979))).

“With a single exception, courts have unanimously held that an accused’s attempt to commit suicide is probative of a consciousness of guilt and is therefore admissible.” Annotation, Admissibility of Evidence Relating to Accused’s Attempt to Commit Suicide, 73 A.L.R.5th 615, 624 (1999) (internal citations omitted). Numerous courts around the country have considered this issue and have evidence of an attempted suicide, similar to evidence of flight, is admissible to show consciousness of guilt and can be considered and given such weight as determined by the jury. See People v. Barrett, 136 P. 520 (Cal. Dist. Ct. App. 1913); Walker v. State, 483 So. 2d 791 (Fla. Dist. Ct. App. 1986); Aldridge v. State, 494 S.E.2d 368, (Ga. Ct. App. 1997); State v. Mitchell, 450 N.W.2d 828 (Iowa 1990); Com. v. Sheriff, 680 N.E.2d 75 (Mass. 1997); State v. Painter, 44 S.W.2d 79 (Mo. 1931); State v. Campbell, 405 P.2d 978, (Mont. 1965); State v. Brown, 517 A.2d 831 (N.H. 1986); State v.

Mann, 625 A.2d 1102 (N.J. 1993); State v. Lawrence, 146 S.E. 395 (N.C. 1929); State v. Marsh, 66 S.E.2d 684 (N.C. 1951); State v. Hunt, 287 S.E.2d 818 (N.C. 1982); Com. v. Homeyer, 94 A.2d 743 (Pa. 1953); Com. v. Sanchez, 610 A.2d 1020 (Pa. Super. 1992); State v. White, 649 S.W.2d 598 (Tenn. Crim. App. 1982); State v. Onorato, 762 A.2d 858 (Vt. 2000).

The South Carolina Supreme Court discussed the admission of evidence of flight in State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). The Court found:

The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury.

Pagan, at 209, 631 S.E.2d at 266 (citing State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999)).

In the instant case, there is clear circumstantial evidence linking Appellant's attempted suicide to the accusations of the currently charged crimes. Elizabeth Ann Leaphart, the mother of the older niece and sister of Appellant's wife, met Suzie Sanchez-Martinez, the mother of the younger niece and also a sister of Appellant's wife, at Martinez's place of work. Martinez detailed to allegations against Appellant related to the victimization of the younger niece. (T.119-120; 124; R. 100-101; 105). Leaphart testified she then went to meet Appellant's wife to tell her about the allegations and the fact Martinez was planning

to file a police report. Leaphart testified she told Appellant's wife what happened around noon on June 22, 2006. (T.124-125; R.105-106).

At around 2:00 p.m. on June 22, 2006, Officer Tom Gray testified he was called to Appellant's residence. (T.128-129; R. 109-110). EMS was on scene and it appeared Appellant had attempted suicide by swallowing rat poison. (T.129-130; R.110-111). Officer Gray testified Appellant's wife was also at the scene of Appellant's attempted suicide. (T.130-131; R.111-112).

The circumstantial evidence, including the timing of when Leaphart was told and when she told Appellant's wife who was present at the time of his attempted suicide, leads to the clear inference Appellant learned of the allegations and upcoming police report from his wife while she was home with him between noon and 2:00 p.m. on the day of his attempted suicide. The jury could certainly reach the conclusion his attempted suicide by ingesting rat poison was the result of his wife telling him what she had just shortly before learned from Leaphart. As a result, the trial court properly allowed the jury to consider and give such weight to Appellant's attempted suicide as it determined was appropriate.

Further, the evidence is clearly relevant and is more probative than prejudicial. The evidence demonstrated a consciousness of guilt and is an expression of Appellant's desire to avoid facing prosecution, which is the same showing made by evidence of flight. Its probative value outweighs its prejudicial value because his attempted suicide can be tracked directly to his learning of the allegations and upcoming police report from his wife. The jury was properly allowed to consider the evidence of Appellant's attempted suicide.

II. The trial court charged the jury with the applicable and appropriate law.

Appellant maintains the trial court improperly charged the jury regarding the fact corroboration of the victim's testimony is not necessary in criminal sexual conduct cases. He argues the trial judge erred in charging section 16-3-657 of the South Carolina Code (2003) to the jury because the charge constitutes an impermissible comment on the facts of the case and likely confused the jury. The same arguments were squarely rejected by the majority opinion of the South Carolina Supreme Court in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006). When the charge is viewed as a whole, the trial court properly charged the jury on the applicable and relevant law in South Carolina.

Generally, a trial court is required to charge only the current and correct law of South Carolina. See Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. See Rayfield, 369 S.C. at 119, 631 S.E.2d at 251; Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006).

Section 16-3-657, provides "[t]he testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These referenced statutes prohibit various forms of criminal sexual conduct, including criminal sexual conduct with a minor for which Appellant was charged.¹ While the Appellant seems more focused on the dissent in Rayfield, the majority of the Supreme Court rejected Appellant's arguments and found: "A trial judge is not required to charge § 16-3-657, but when the judge chooses to do so,

¹ See S.C. Code Ann. § 16-3-655 (Supp. 2007).

giving the charge does not constitute reversible error when this single instruction is not unduly emphasized and the charge as a whole comports with the law.” Rayfield, 369 S.C. at 117-18, 631 S.E.2d at 250. Further, the Court explained the need for the statute:

Section 16-3-657 prevents trial or appellate courts from finding a lack of sufficient evidence to support a conviction simply because the alleged victim’s testimony is not corroborated. However, § 16-3-657 does much more. In enacting this statute, the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses against the person. In many cases, the only witnesses to a rape or sexual assault are the perpetrator and the victim. An investigation may or may not reveal physical or forensic evidence identifying a particular perpetrator. The Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear--not only to the judge but also to the jury--that a defendant may be convicted solely on the basis of a victim’s testimony.

Id. at 117, 631 S.E.2d at 250 (emphasis added). Accordingly, the trial court charged the jury with the correct and applicable law.

Additionally, the trial court began the proceedings by explaining to the jury its role in the proceedings. The court explained:

You have to determine, based upon the evidence that you hear, and any, basically the testimony that you hear from the witness stand and any evidence that’s put into evidence and admitted, you have to determine what the facts are.

You have to determine whether you believe the witnesses that will testify from this witness stand. You have to determine whether they’re credible. And credibility under the law in South Carolina simply means believability. I’ll tell you now that you can believe everything that a witness says from this witness stand or you can believe nothing that they say. You can take a portion of what they say and believe it and disregard the remaining, but you have to determine what the facts are in this case.

(T.52-53; R. 33-34). Shortly thereafter, the trial court explained:

If for any reason during the course of this trial you think that I have an opinion about a fact, if I turn red, if I yell, if I shake my head, any indication that you might have that I have an opinion about a fact, disregard it. Quite frankly, whether or not I believe a witness or believe that a fact is true or not is totally irrelevant. You are the only people in this courtroom who can determine what the facts are in this case.

(T.54; R. 35).

Further, the charge, when viewed as a whole, properly charged the jury with the applicable and correct law. In the instant case, as in Rayfield, the trial court charged the jury that Appellant was presumed innocent and the State has the burden of proving his guilt beyond a reasonable doubt. (T.216-217; R. 197-198). The trial court charged the jury that its job is to determine the facts of the case and explained: "Again, if you have any indication from me during the course of this trial that I believe a fact to be true or not true, you should disregard that. It's not my job to determine what the facts are." (T.217; R. 198). After explaining the types of evidence, the court pronounced:

You should weigh all of the evidence in this case and after weighing all the evidence if you're not firmly convinced of the Defendant's guilt beyond a reasonable doubt you must find the Defendant not guilty.

Now necessarily as a part of your deliberations, you have to determine the credibility of the witnesses. Credibility, as I told you earlier, literally means believability. You have to look at the way the witness testified, the way they presented themselves in the courtroom, and you have to determine whether or not you believe them.

You can take a portion of a witness's testimony and believe only that portion and disregard the remainder. You can believe all that a witness has said, and disregard the testimony of other witnesses. I can't tell you how to do it but you have

to determine the credibility or believability of witnesses and then you have to use that in your deliberations. (T.219; R. 200).

From the beginning of the trial when the court explained to the jury its role juxtaposed to the court's in the proceeding, until the end of the judge's instructions, the jury clearly knew they were the finders of fact. Taking the charge as a whole, it cannot be reasonably understood as a charge on the facts. The complete charge regarding the jury's duty as fact-finder and their ability and responsibility to consider all the evidence and reach their own conclusions is remarkably similar to the charge given in Rayfield. As in that case, the charge given in this case, when considered as a whole, could not be read to have prejudiced Appellant by acting as a comment on the facts or by confusing the jury.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

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September 15, 2009

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IN THE COURT OF APPEALS

Appeal From Aiken County
Hon. J. Cordell Maddox, Jr., Circuit Court Judge

The State,

Respondent,

v.

Juan Carlos Orozco,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 15th day of September 2009.



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